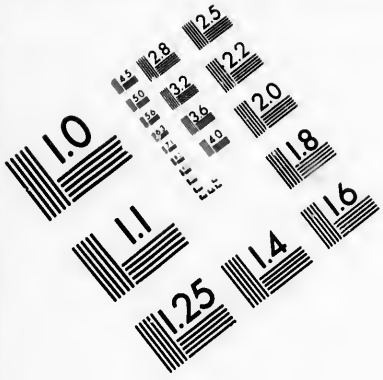

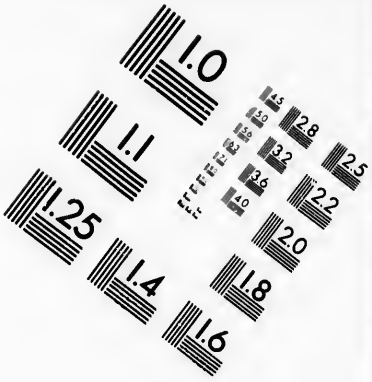

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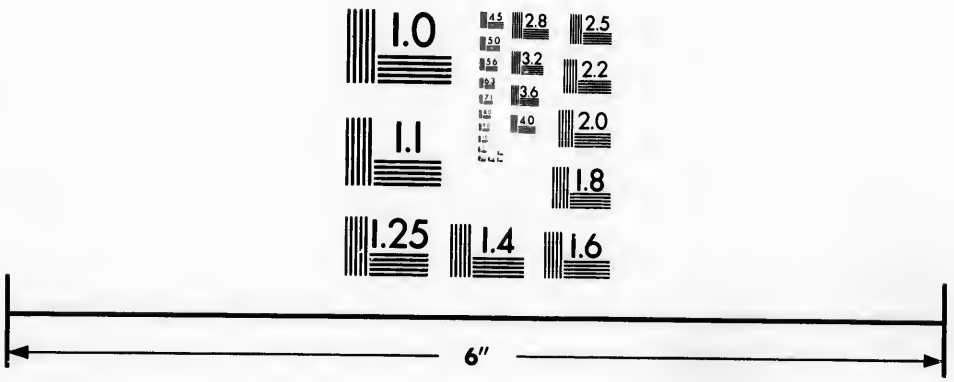

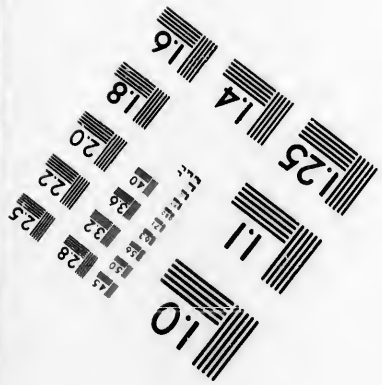

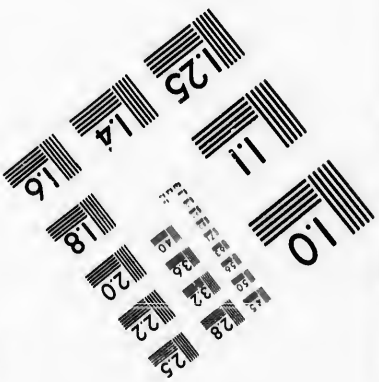

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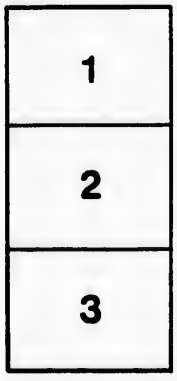

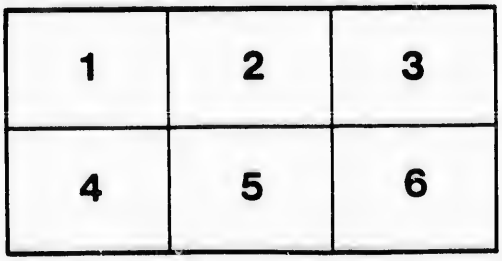

NORTH AMERICA. No. 1 (1873).

PAPERS

RELATING TO THE

PROCEEDINGS

OF THE

TRIBUNAL OF ARBITRATION

AT

GENEVA.

PART I.

PROTOCOLS, CORRESPONDENCE, &c.

Presented to both Houses of Parliament by Command of Her Majesty.
1873.

LONDON:
PRINTED BY HARRISON AND SONS.

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TABLE OF CONTENTS.

APPENDIX.

PROTOCOLS I TO VII. AND PAPERS REFERRED TO THEREIN.

Proceedings of the Tribunal of Arbitration at Geneva.

No. 1.

Lord Tenterden to Earl Granville.—(*Received July* 19.)

My Lord, *Geneva, July* 15, 1872.

I HAVE the honour to report that I returned to Geneva this day accompanied by Sir Roundell Palmer, Mr. Lee Hamilton, Mr. Langley, and Mr. Markheim, in order to attend the meeting of the Tribunal of Arbitration appointed for 2 o'clock this afternoon.

Mr. Mountague Bernard is also at Geneva as requested by your Lordship.

I have, &c.

(Signed) TENTERDEN.

No. 2.

Lord Tenterden to Earl Granville.—(*Received July* 19.)

My Lord, *Geneva, July* 15, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 28th ultimo as approved and signed at the meeting this day.*

I am, &c.

(Signed) TENTERDEN.

Inclosure in No. 2.

Protocol No. VIII.—Record of the Proceedings of the Tribunal of Arbitration at the Eighth Conference, held at Geneva, in Switzerland, on the 28th of June, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Sir Alexander Cockburn, as one of the Arbitrators, then proposed to the Tribunal to require a written or printed statement or argument by the Counsel of the two Governments, for further elucidation on the following points, viz:—

1. What is the "due diligence" required from a neutral State, according to the general rules of international law, and according to the Rules of the VIth Article of the Treaty of Washington?

2. What were the international obligations of neutral States, in respect to the construction, sale, and fitting out, within neutral territory, of ships intended for warlike use by a belligerent, independently of the municipal legislation of the neutral State, and of the Rules laid down by the Treaty of Washington?

3. What rights are conferred upon a belligerent Power by the municipal legislation of a neutral State for the maintenance of its neutrality, if such legislation exceeds

* For the first seven Protocols, see Appendix. French versions were prepared of all the Protocols and of all other documents presented to the Arbitrators, but it has not been thought necessary to include these in the present series of papers, where English originals exist.

the limits of the obligations previously imposed upon neutral States by international law?

4. Is a neutral State under any international obligation to detain in, or exclude from, its ports vessels fitted out in violation of its neutrality, after such vessels have been commissioned as public ships of war by a belligerent Power, whether such Power be, or be not, recognized as a Sovereign State?

5. Whether Her Majesty's Proclamation of Neutrality, recognizing the belligerency of the Confederate States, is in any, and what way, material to the question of the liability of Great Britain for losses sustained by the United States, in consequence of the acts of the vessels referred to in the Treaty of Washington?

6. Whether the laws of Great Britain, during the civil war, were, or were not, sufficient, if properly enforced, for the fulfilment of Her Britannic Majesty's neutral obligations?

7. If a vessel, which has been fitted out in violation of the neutrality of a neutral State, has escaped from the neutral territory, through some want of due diligence on the part of the neutral Government, ought such neutral State to be held responsible to the other belligerent for captures made by such vessel?

If so, to what period does this responsibility extend? May it be modified or terminated by circumstances afterwards supervening (as, for instance, by assistance afterwards rendered to the vessel by an independent Power, without which her capacity for warlike purposes would have ceased, or by her entrance into a port of the belligerent to whom she belongs); or does it necessarily extend to the end of the war?

Furthermore, does this responsibility still exist, when the persons who made such captures were insurgent citizens of the State against which they waged war, to whom, upon the conclusion of the war, such illegal acts have been condoned?

8. If a vessel, which has not been fitted out or armed in violation of the neutrality of a neutral State, is afterwards permitted to receive supplies of coal and repairs in a neutral port, does the neutral State, in whose port she receives such supplies and repairs, incur on that account a responsibility for her subsequent captures, or any of them?

After deliberation, a majority of the Tribunal decided not to require such statement or argument at present.

The Tribunal then decided that, in the course of their discussions and deliberations, the Agents should attend the Conferences, accompanied by the Counsel of their respective Governments, except in cases when the Tribunal should think it advisable to conduct their discussions and deliberations with closed doors.

The Tribunal then determined to permit publicity to be given to the statement made by the Agent of Her Britannic Majesty at the third Conference, the declaration of the Arbitrators made at the fifth Conference, the subsequent statements of the Agent of the United States made at the sixth Conference, and of the Agent of Her Britannic Majesty made at the seventh Conference, and the address of the President of the Tribunal delivered at the seventh Conference.

The Tribunal then adjourned until Monday the 15th proximo, at 2 o'clock in the afternoon.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 3.

Lord Tenterden to Earl Granville.—(Received July 18.)

Geneva, July 16, 1872.

My Lord,

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration yesterday, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 3.

Protocol No. IX.—Record of the Proceedings of the Tribunal of Arbitration at the Ninth Conference, held at Geneva, in Switzerland, on the 15th of July, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Count Sclopis, as President, said that it would be necessary in the first place to determine the method and order of proceeding in the consideration of the subjects referred to the Tribunal.

M. Staempfli stated that he had prepared, and proposed to submit for the adoption of the Tribunal, a written programme on this question.

After discussion the consideration of this programme was deferred to the next Conference.

The Tribunal then adjourned until Tuesday, the 16th instant, at 2 o'clock in the afternoon.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 4.

Lord Tenterden to Earl Granville.—(Received July 18.)

My Lord, *Geneva, July 16, 1872.*

I HAVE the honour to transmit to your Lordship a copy of a paper drawn up by M. Staempfli and circulated to the Arbitrators yesterday evening, but which has not been formally presented to them.*

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 4.

Memorandum by M. Staempfli.

(A.) INDICATIONS GÉNÉRALES.

I.—*Question à décider.*

LA question à décider par le Tribunal est précisée de la manière suivante dans l'Article VII du Traité :—

"Le dit Tribunal commencera par déterminer pour chaque navire séparément, si la Grande Bretagne a manqué par une action ou une omission à remplir un des devoirs énoncés dans les trois précédentes Règles, ou reconnus par les principes du droit des gens, qui ne sont pas en désaccord avec ces règles, et il certifiera ce fait à l'égard de chacun des navires susdits."

Puis le Tribunal est chargé éventuellement de procéder, s'il le juge convenable, à l'adjudication d'une somme en bloc pour toutes les réclamations.

II.—*Délimitation des Faits.*

Les mémoires et pièces produits par les deux parties contiennent une foule de faits qui n'entrent pas en considération dans le jugement à rendre par le Tribunal.

* This paper, corrected and rearranged, was subsequently communicated officially by the Secretary to Lord Tenterden with M. Staempfli's other printed statements, see pp. 182 and 379.

Tels sont notamment :—

(1.) La reconnaissance par le Gouvernement Britannique des Etats insurgés comme Puissance belligérante ;

(2.) Les expressions de sympathie ou d'antipathie durant la guerre, les discours individuels au sein ou en dehors des Parlements ou autres corps officiels, l'attitude de la Presse, &c.

(3.) La permission du commerce des armes et de la sortie des ports de navires destinés à traverser le blocus, en tant qu'il n'y a rien dans la permission de l'un ou de l'autre de ces actes qui soit en désaccord avec la défense d'armer et d'équiper des vaisseaux de guerre et des corsaires.

(4.) Les précédents historiques de violation ou d'inégal maintien des lois de la neutralité, et les arrêts judiciaires, en tant qu'il n'en découle point des principes du droit des gens non sujets à controverse.

Les faits que le Tribunal doit prendre en considération ne sont que les actions et les omissions de la Grande Bretagne à l'égard de chacun des vaisseaux qui forment l'objet d'une plainte de la part des Etats Unis.

III.—*Principes Généraux de Droit.*

Dans ses considérants juridiques le Tribunal se guidera d'après les principes suivants :—

(1.) En premier lieu, par les trois Règles posées dans l'Article VI du Traité portant que :—

"Dans la décision des matières à eux soumises, les Arbitres seront guidés par les trois Règles suivantes, que les Hautes Parties Contractantes sont convenues de regarder comme des règles à prendre comme applicables à la cause, et par tels principes du droit des gens qui, sans être en désaccord avec ces règles, auront été reconnus par les Arbitres comme ayant été applicables dans l'espèce.

"*Règles.*

"Un Gouvernement neutre est tenu—

"1. De faire les dues diligences pour prévenir la mise en état, l'armement en guerre ou l'équipement dans sa juridiction de tout vaisseau qu'il est raisonnablement fondé à croire destiné à croiser ou à faire la guerre contre une puissance avec laquelle ce Gouvernement est en paix ; et de faire aussi même diligence pour empêcher le départ hors de sa juridiction de tout navire destiné à croiser ou à faire la guerre comme il est dit ci-dessus, ce navire ayant été spécialement adapté, en tout ou en partie, dans les limites de sa dite juridiction, à des usages belligérants.

"2. De ne permettre ni souffrir que l'un des belligérants fasse usage de ses ports ou de ses eaux comme d'une base d'opérations navales contre l'autre, ni pour renouveler ou augmenter ses munitions militaires ou son armement, ou s'y procurer des recrues.

"3. D'exercer les dues diligences dans ses propres ports et eaux, et à l'égard de toutes personnes dans les limites de sa juridiction, afin d'empêcher toute violation des obligations et devoirs précédents."

D'après le Traité ces trois Règles ont la préférence sur les principes que l'on pourrait déduire du droit des gens historique et de la science.

(2.) Le droit des gens historique, ou bien la pratique du droit des gens, ainsi que la science et les autorités scientifiques, peuvent être utilisés comme droit subsidiaire, en tant que les principes à appliquer sont généralement reconnus et ne sont point sujets à controverse ni en désaccord avec les trois Règles ci-dessus. Si l'une ou l'autre de ces conditions vient à manquer, c'est au Tribunal d'y suppléer en interprétant et appliquant les trois Règles de son mieux et au plus près de sa conscience.

(3.) Les lois sur la neutralité propres à un Etat ne constituent pas un élément du droit des gens, dans le sens qu'elles ne peuvent être, en tout temps, abrogées, modifiées ou complétées sans la co-opération ou le consentement d'autres Etats, le droit des gens lui-même étant absolument indépendant de ces lois municipales ; cependant, tant que dans un Etat il subsiste des lois pareilles, et qu'elles n'ont pas été abrogées, des Etats belligérants ont le droit d'en réclamer l'observation loyale, puisque sans cela il pourrait se commettre des fraudes ou des erreurs au détriment de l'une ou de l'autre des belligérants : comme, par exemple, quand subsiste publiquement, bien qu'on ne l'observe pas, l'ordonnance qui défend à un navire belligérant de séjourner plus de vingt-quatre heures dans un port, ou d'embarquer plus de charbon qu'il ne lui en faut pour regagner le port le plus proche appartenant à son propre pays, ou de s'approvisionner de nouveau au même port avant que trois mois se soient écoulés.

Ce principe implique en même temps que le manque de toute loi municipale ou le manque de lois suffisantes sur la matière ne déroge en rien au droit des gens, soit aux droits et obligations internationales.

En outre sont admis encore les principes suivants, que l'on cite ici pour en éviter la répétition dans le jugement à porter sur chacun des vaisseaux :—

(4.) Le fait qu'un vaisseau construit contrairement aux lois de neutralité s'échappe et gagne la mer ne décharge pas ce vaisseau de la responsabilité qu'il a encourue pour avoir violé la neutralité; il peut donc être poursuivi s'il rentre dans la juridiction de l'Etat lésé. Que ce navire ait été cédé ou commissionné dans l'intervalle, ce fait ne détruit pas la violation commise, à moins que la cession ou le commissionnement, selon le cas, n'ait eu lieu *bonâ fide* (de bonne foi).

(5.) Les "dues diligences" à employer comprennent implicitement la *propre* vigilance et la *propre* initiative dans le but de découvrir et d'empêcher toute violation de la propre neutralité; un Etat belligérant n'a ni le devoir ni le droit d'exercer la surveillance, ni de faire la police dans un Etat neutre à la place des autorités du pays.

(B.)—Décision relative à chacun des Vaisseaux.

Observations Préliminaires.

Il est admissible que les Etats Unis étendent leurs réclamations à d'autres vaisseaux que les quatre mentionnés dans le Mémoire Britannique, à savoir, le Florida, l'Alabama, le Georgia, et le Shenandoah. Le Contre-Mémoire Britannique ne soulève d'ailleurs pas d'objection à cet égard.

Par contre et dès le principe, l'on ne prendra point en considération les demandes d'indemnités pour destructions causées par des vaisseaux qui ne sont point mentionnés dans les Mémoires des Etats Unis, et à l'égard desquels, par conséquent, l'on n'avance ni ne prouve aucun acte contraire à la neutralité, ni aucune omission de la part de la Grande Bretagne. Cela a trait aux corsaires Confédérés indiqués seulement dans les listes des réclamations pour pertes, le Boston, Jefferson Davis, Sallie, V. H. Joy, et le Music.

En traitant de chacun des vaisseaux l'on adopte l'ordre suivi par le Mémoire Américain.

(Translation.)

(A.) General Indications.

I.—*Question to be decided.*

THE question to be decided by the Tribunal is laid down in the following words in Article VII of the Treaty :—

"The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three Rules, or recognized by the principles of international law not inconsistent with such Rules, and shall certify such fact as to each of the said vessels."

Moreover, the Tribunal is authorized, if it think proper, to proceed eventually to award a sum in gross in payment of all claims.

II.—*Definition of facts.*

The Cases and documents put in by the two Powers contain a quantity of facts which should not be taken into consideration in the Judgment to be pronounced by the Tribunal. Notably :—

1. The recognition of the Insurgent States as a belligerent Power by the British Government;

2. Expressions of sympathy or antipathy during the war, individual speeches in or out of Parliament or other official assemblies, the attitude of the press, &c.;

3. The permission granted for the trade in arms, and for the departure from port of ships intended to run the blockade,—in so far as there is nothing in the toleration of either of these acts, which is at variance with the prohibition to arm and equip vessels of war and cruizers;

4. The historical precedents of the violation or unequal execution of neutrality laws and of judicial decrees, in so far as these do not furnish the means of deducing principles of the law of nations, not open to controversy.

The facts to be taken into consideration by the Tribunal are only the acts and omissions of Great Britain with regard to each of the vessels which form the subject of a complaint on the part of the United States.

III.—*General Principles of Law.*

In its decisions on points of law, the Tribunal will be guided by the following principles:—

1. In the first place, by the three Rules laid down in Article VI of the Treaty, which provides that—

"In deciding the matters submitted to the Arbitrators they shall be governed by the following three Rules, which are agreed upon by the High Contracting Parties, as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

"RULES.

"A neutral Government is bound—

"First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly. To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

According to the Treaty, these three Rules take precedence of the principles which might be drawn from the history and science of the law of nations.

2. Historical international law or the practice of the law of nations, as well as science and scientific authorities, may be made use of as subsidiary law, in so far as the principles to be applied are generally recognized, and are not liable to controversy, nor at variance with the three Rules quoted above. If any of these conditions fail, it is for the Tribunal to supply what is wanting by interpreting and applying the three Rules to the best of its power and conscience.

3. The laws of a State touching neutrality do not constitute an element of the law of nations in the sense that they cannot, at any time, be abrogated, modified, or added to without the co-operation or consent of other States, the law of nations itself being absolutely independent of these municipal laws; yet, so long as there exist such laws in a State, and they have not been abrogated, belligerent States have the right to require their loyal observance, as otherwise frauds or errors might be committed, to the detriment of one or other of the belligerents; as, for instance, when there is known to exist (although no attention may be paid to it) a decree forbidding a belligerent vessel of war to remain in a port for more than twenty-four hours, or to take on board more coal than is necessary for her to reach the nearest port of her country, or to obtain fresh supplies in the same port within three months.

This principle, at the same time, implies that the absence of all municipal laws, or the want of sufficient laws on the subject, does not, in any way, detract from the law of nations, either as regards international rights or obligations.

Moreover, the following further principles are admitted, which are cited here to avoid a repetition of them in the judgment to be given respecting each of the vessels.

4. The fact that a vessel, built in contravention of the laws of neutrality, escapes and gets out to sea, does not free that vessel from the responsibility she has incurred by her violation of neutrality; she may, therefore, be proceeded against if she returns within the jurisdiction of the injured State. The fact of her having being transferred or commissioned in the meanwhile, does not annul the violation committed, unless the transfer or commissioning, as the case may be, was a *bonâ fide* transaction.

5. The "due diligence" to be exercised implicitly comprises vigilance and

initiative *on the part of the neutral itself*, with the object of discovering and preventing any violation of its own neutrality. A belligerent State is neither bound, nor has it the right to exercise surveillance or to perform police duties in a neutral State in lieu of the local authorities.

(B.) DECISION WITH REGARD TO EACH OF THE CRUIZERS.

Preliminary Observations.

It is admissible that the United States should extend their claims to other vessels besides the four mentioned in the British Case, viz.: the Florida, Alabama, Georgia, and Shenandoah. Moreover, the British Counter-Case does not raise any objection on this head.

On the other hand, and from the very nature of things, no account can be taken of the claims for indemnity for losses caused by vessels not mentioned in the pleadings of the United States, and with regard to which, consequently, no act or omission in violation of neutrality is advanced or proved against Great Britain. This has reference to the cruizers named only in the lists of claims for losses, viz.: the Boston, Jefferson Davis, Sallie, V. H. Joy, and Music.

In discussing each of these vessels the order followed by the American Case will be adhered to.

No. 5.

Lord Tenterden to Earl Granville.—(*Received July* 19.)

My Lord, *Geneva, July* 17, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration yesterday, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 5.

Protocol No. X.—Record of the Proceedings of the Tribunal of Arbitration at the Tenth Conference, held at Geneva, in Switzerland, on the 16th of July, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The following programme, submitted by M. Staempfli at the last meeting, was taken into consideration:—

(A.) *Indications générales.*
I. Question à décider.
II. Délimitation des faits.
III. Principes généraux.

(B.) *Décision relative à chacun des croiseurs.*

Observations préliminaires.

I. LE SUMTER.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugement.

II. LE NASHVILLE.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugement.

III. LE FLORIDA.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugement.

IV. L'ALABAMA.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugement.

V. Le RETRIBUTION.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugemen'.
VI. Le GEORGIA.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugement.
VII. Le TALLAHASSEE ou le OLUSTEE.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugement.
VIII. Le CHICKAMAUGA.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugement.
IX. Le SHENANDOAH.
(*a*) Faits.
(*b*) Considérants.
(*c*) Jugement.

(C.) *Détermination du Tribunal d'adjuger une somme en bloc.*

(D.) *Examen des éléments pour fixer une somme en bloc.*

(E.) *Conclusion et adjudication définitive d'une somme en bloc.**

Sir Alexander Cockburn, one of the Arbitators, submitted the following propositions to the consideration of the Tribunal:—

I. That the complaint of the Government of the United States is of a threefold character, and may be stated under the three following heads, viz.:

1. That, by want of due diligence on the part of the British Government, vessels of war were suffered to be equipped in ports of Her Majesty, and to depart therefrom, to the injury of American commerce;

2. That such vessels, having been again found in British ports or waters, were not seized or detained, but were suffered to go forth again on the same destructive service;

3. That such vessels received undue assistance, or were permitted to remain an unduly long time, in ports within Her Majesty's dominions.

II. That on each of these heads of complaint, the decision of the Tribunal must depend, not only on the facts relating to each vessel, but also on the principles of International Law applicable to the particular subject.

III. That the rational, logical, and most convenient course to be pursued will be, before proceeding to deal with each of these heads of complaint, to consider and determine what are the principles of law applicable to the subject, and by which the decision of the Tribunal must ultimately be determined.

IV. That it will be convenient to take the three heads of complaint separately, and in the order hereinbefore stated.

V. That there is nothing in the VIIth Article of the Treaty which prevents the adoption of this mode of proceeding, the only object and effect of that Article being to

* (Translation.)

(A.) *General Indications.*
I. Question to be decided.
II. Definition of facts.
III. General principles.

(B.) *Decision relative to each of the Cruizers.*

Preliminary Observations.

I. The SUMTER.
(*a*) Facts.
(*b*) Considerations.
(*c*) Judgment.
II. The NASHVILLE.
(*a*) Facts.
(*b*) Considerations.
(*c*) Judgment.
III. The FLORIDA.
(*a*) Facts.
(*b*) Considerations.
(*c*) Judgment.
IV. The ALABAMA.
(*a*) Facts
(*b*) Considerations.
(*c*) Judgment.
V. The RETRIBUTION.
(*a*) Facts.
(*b*) Considerations.
(*c*) Judgment.
VI. The GEORGIA.
(*a*) Facts.
(*b*) Considerations.
(*c*) Judgment.
VII. The TALLAHASSEE or OLUSTEE.
(*a*) Facts.
(*b*) Considerations.
(*c*) Judgment.
VIII. The CHICKAMAUGA.
(*a*) Facts.
(*b*) Considerations.
(*c*) Judgment.
IX. The SHENANDOAH.
(*a*) Facts.
(*b*) Considerations.
(*c*) Judgment.

(C.) *Resolution of the Tribunal to award a sum in gross.*

(D.) *Examination of the elements for fixing a sum in gross.*

(E.) *Conclusion and definitive award of a sum in gross.*

insure the separate consideration of the facts relating to each vessel, and a separate and distinct judgment of the Tribunal on the complaints specifically referable to each in particular.

VI. That the consideration of the first-mentioned head of complaint, reference being had to the VIth Article of the Treaty, and the rules therein laid down, necessarily involves three questions of law: the first, what effect is to be given to the term "due diligence," with reference to the different allegations of the want thereof put forward by the United States' Government; the second, whether the general principles of International Law referred to in such VIth Article have, relatively to the rights and duties of neutrals, any and what effect in determining what constitutes due diligence or the want of it, or in extending or limiting the liability of a neutral State with reference to this head of complaint; the third, whether a Government acting in good faith, and honestly intending to fulfil the obligations of neutrality, is to be held liable by reason of mistake, error in judgment, accidental delay, or even negligence on the part of a subordinate officer.

VII. That it will be convenient, and indeed necessary, to commence our proceedings with the consideration of these questions of law.

VIII. That, looking to the difficulty of these questions, and the conflict of opinion which has arisen among distinguished jurists on the present contest, as well as to their vast importance in the decision of the Tribunal on the matters in dispute, it is the duty, as it must be presumed to be the wish, of the Arbitrators, in the interest of justice, to obtain all the assistance in their power to enable them to arrive at a just and correct conclusion. That they ought, therefore, to call for the assistance of the eminent counsel who are in attendance on the Tribunal, to assist them with their reasoning and learning, so that arguments scattered over a mass of documents may be presented in a concentrated and appreciable form, and the Tribunal may thus have the advantage of all the light which can be thrown on so intricate and difficult a matter, and that its proceedings may hereafter appear to the world to have been characterized by the patience, the deliberation, and anxious desire for information on all the points involved in its decision, without which it is impossible that justice can be duly or satisfactorily done.

After discussion, the Tribunal decided to proceed with the case of the Florida at the next meeting, according to the programme of M. Staempfli.

The Tribunal then adjourned until Wednesday, the 17th instant, at 1 o'clock in the afternoon.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 6.

Lord Tenterden to Earl Granville.—(*Received July* 23.)

My Lord, *Geneva, July* 19, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 17th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 6.

Protocol No. XI.—Record of the Proceedings of the Tribunal of Arbitration at the Eleventh Conference, held at Geneva, in Switzerland, on the 17th of July, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the agents of the two Governments.

On the proposal of Sir Alexander Cockburn, it was decided that the written opinions or statements read by the Arbitrators to the Tribunal should be printed

and distributed to the Arbitrators and to the Agents and Counsel of the two Governments.

The Tribunal then proceeded with the consideration of the case of the Florida.

The Conference was adjourned until Friday, the 19th instant, at 1 o'clock in the afternoon.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statement of M. Staempfli on the Case of the Florida, discussed at the Meeting of the 17th July.

LE FLORIDA.

(A.)—FAITS ET CONSIDÉRANTS.

LES faits relatifs à ce vaisseau sont tellement compliqués et si variés que, par raison de clarté et de brièveté, ils ne peuvent se décrire à part des considérants.

I.—*Construction et Equipement du Navire à Liverpool et sa Sortie du Port.*

1. Ce vaisseau fut d'abord connu sous le nom de l'Oreto; c'était une canonnière à hélice, jaugeant 700 tonneaux, munie de deux cheminées et de trois mâts; il fut commandé chez Fawcet, Preston et C^ie^, à Liverpool, par Bullock, agent militaire des Etats insurgés, peu de temps après son arrivée en Angleterre, dans le courant de l'été 1861.

2. Réclamation du Ministre Américain, Adams, à Lord Russell, en date du 18 Février, 1862, s'appuyant sur une communication à lui faite par Dudley, Consul Américain, à Liverpool, et désignant l'Oreto comme "steamer de guerre," destiné à commettre des hostilités contre les Etats Unis, nommant aussi les personnes qui avaient pris part à la commande du navire, déclarant que Fraser, Trenholm, et C^ie^ à Liverpool (agence financière des Etats insurgés) avaient fait les avances de fonds, et que, s'il était nécessaire, il fournirait encore des preuves.

3. Les Commissaires des Douanes à Liverpool, dans leur rapport du 22 Février, 1862, se fondant sur les rapports de leurs agents, constatent que "c'est un magnifique steamer qui conviendrait pour un service d'aviso; il est percé pour 4 canons. . . . Il paraît qu'il est destiné à l'usage de Thomas frères, de Palerme . . . . Notre collecteur déclare qu'il a toute raison de croire le navire destiné au Gouvernement Italien." Ils ajoutent *qu'ils ont donné des instructions spéciales pour faire surveiller le vaisseau.*

4. Le 26 Février, 1862, Lord Russell transmet à M. Adams copie du rapport des Commissaires de la Douane; il ne lui demande point d'autres preuves, bien qu'on lui en eût offert. Il se contente de charger l'Ambassadeur d'Angleterre à Turin de s'informer de la destination du navire.

5. Le 3 Mars, 1862, le navire fut enregistré au nom de "Henri Thomas, de Liverpool;" le lendemain, il s'acquitta au bureau de la Douane pour Palerme et la Jamaïque;—le 11 Mars, Bullock arriva avec 4 officiers et se rendit immédiatement à bord du vaisseau.

Le 22 Mars, l'Oreto *partit de Liverpool sur lest,* avec un équipage de 52 hommes, tous Anglais, à l'exception de trois ou quatre parmi lesquels un seul Américain.

Dans le même temps, le vapeur Bahama quittait le même port avec des canons, des armes et des munitions, amenés en chemin de fer de Hartlepool (côte orientale de l'Angleterre) à Liverpool, où ils furent pris à bord.

6. Sur les informations demandées par l'Ambassadeur d'Angleterre, le Ministre Italien des Affaires Etrangères déclara qu'il n'avait aucune connaissance de l'Oreto, mais qu'il s'informerait encore (1^er^ Mars); il ne fournit toutefois pas d'autre nouvelle, et l'Ambassadeur d'Angleterre ne demanda pas non plus d'autres renseignements. D'après le rapport de Dudley, le Consul d'Italie à Liverpool n'avait aucune connaissance que ce navire fut destiné à l'Italie; du reste, les autorités Anglaises ne prirent point de renseignements chez lui ni chez le Ministre d'Italie à Londres.

7. Les rapports des officiers Anglais constataient que l'Oreto était un vaisseau de guerre;

L'état de belligérance entre les Etats Unis et les Etats insurgés était officiellement reconnu, et la neutralité de la Grande Bretagne avait été officiellement proclamée.

Malgré cela, et malgré les réclamations de M. Adams, les autorités Anglaises ne prirent point d'initiative; elles n'insistèrent point pour que l'on constatât la véritable destination du navire, quel en était le véritable propriétaire, qui l'avait commandé et qui devait le payer; elles n'insistèrent point sur la légitimation de la position de Fraser, Trenholm, et C^ie^, ne demandèrent point d'être positivement renseignées sur l'équipage du navire, ni sur l'arrivée d'officiers de marine des Etats Confédérés.

8. Les instructions spéciales données pour faire surveiller le navire paraissent ne pas avoir été suivies, ou bien être restées sans résultat.

Les autorités Coloniales ne furent point avisées après le départ du navire; en général, il ne fut pris aucune mesure, nonobstant les représentations réitérées de M. Adams, accompagnées de détails fournis par Dudley, sous la date du 26 Mars, 1862.

II.—*Ce qui se passa à Nassau jusqu'à l'acquittement de l'Oreto.*

9. Le 28 Avril, 1862, l'Oreto arriva à Nassau; le Bahama, quelques jours plus tard.

Réclamation faite, le 9 Mai, par le Consul Américain Whiting au Gouverneur; *l'Attorney-General* répond "*qu'il faut des faits positifs.*"

Les autorités ne font d'elles-mêmes aucune enquête.

Le 4 Mai, nouvelle réclamation, accompagnée de dépositions de témoins; même réponse.

10. McKillop, capitaine du navire de la Marine Royale le Bulldog, rapporte que "l'Oreto se prépare et se dispose, selon les apparences, en bâtiment de guerre."

A la suite de ce rapport, on fait surveiller ce navire par un vaisseau de guerre.

Le 8 Juin, McKillop rapporte de nouveau "*qu'il a fait la visite et l'examen du vaisseau, qu'il est disposé pour des usages de guerre, qu'il y a des installations qui ne répondent pas au caractère d'un vaisseau marchand.*"

Le 9 Juin, on commence à charger le navire; on y embarque entr'autres des armes et des munitions; cependant, le 10, on décharge la cargaison et le navire s'acquitte sur lest pour la Havane.

11. Rapport de Hickley, Commandant du Greyhound, signé par tous les officiers et employés de son vaisseau, le 13 Juin, 1862:

"L'Oreto est sous tous les rapports armé en bâtiment de guerre, d'après le système des cannonières-avisos de la Marine Anglaise."

Pourtant l'*Attorney-General* déclare qu'il ne croit pas que l'on puisse justifier la saisie du vaisseau.

12. Le 15 Juin, l'équipage quitte l'Oreto, parce que la destination du navire n'est pas certaine.

Le 17 Juin, au matin, le Commandant Hickley saisit le vaisseau, mais le relâche aussitôt, l'*Attorney-General* étant d'avis qu'il n'y avait pas de preuves suffisantes.

Toutefois, le même jour, on renouvelle la saisie avec la sanction du Gouverneur.

13. Là-dessus, commencement d'enquête judiciaire, de laquelle il résulte que le vaisseau est consigné par Fraser, Trenholm et C^ie^ (agents financiers des insurgés en Angleterre), à Adderley et C^ie^ (agence commerciale des insurgés) à Nassau.

Le 2 Août, 1862, l'Oreto fut acquitté; mais toutefois, "comme il existait de sérieux soupçons," sans adjudication de dépens ni d'indemnité. "Ce qui se passa," dit le jugement, "avant l'arrivée de l'Oreto à Nassau ne peut être admis qu'à titre d'éclaircissements ou d'explications,"—théorie que le Mémoire Britannique qualifie lui-même d'erronée.

14. La manière d'agir des autorités de Nassau, la procédure et le jugement dans cette affaire, témoignent particulièrement des actes de négligence et des défauts suivants:

Nulle initiative en vue de se procurer des preuves;

Nul compte tenu des rapports des officiers de la flotte;

Nul compte tenu des précédents de l'Oreto;

Incomplète audition de témoins: Maffit, Commandant de l'Oreto, ne fut point entendu; comme témoins dans l'intérêt de la Couronne, on n'entendit que des personnes appartenant au navire inculpé; comme témoin à décharge, un associé de la maison intéressée de Adderley et C^ie^, et autant qu'il appert dans les actes, toutes ces dépositions furent non assermentées.

15. Le fait que, de Londres, l'on omit de communiquer à temps des instructions aux autorités coloniales, eut un effet également désavantageux sur ce qui se passa à Nassau :

Les autorités de Nassau n'étaient pas, dès l'abord, instruites des précédents de l'Oreto ni de la manière de voir du Ministère ;

L'acquittement judiciaire de l'Oreto à Nassau se fit sans que l'on eût attendu la confirmation de la saisie et les instructions que l'on envoyait de Londres, et qui se trouvaient encore en chemin.

16. L'objection que l'arrêt judiciaire de Nassau dégage la Grande Bretagne de toute responsabilité n'est pas soutenable : vis-à-vis des lois intérieures (municipales) le jugement est valable ; mais à l'égard du droit des gens, il ne change pas la position de la Grande Bretagne.

III.—*Ce qui se passa ultérieurement aux Iles Bahamas, immédiatement après l'acquittement.—Armement, équipement.*

17. Enrôlement de quarante hommes d'équipage à Nassau (d'après le Mémoire Britannique lui-même, l'Oreto s'acquitta en douane, le 7 Août, avec cinquante-deux hommes, pour St. John (New Brunswick).

Il se pourvoit de canons, de munitions, &c., avec l'aide du vaisseau Anglais le Prince Alfred, qui embarqua au quai de Adderley et Cᵉ la cargaison amenée par le Bahama, pendant que, dans l'intervalle, l'Oreto s'approvisionnait de charbon et de vivres à l'Ile de la Providence ; de ce dernier endroit il remorqua le Prince Alfred jusqu'à Green Cay, où eut lieu le transbordement de l'armement.

Cela fait, il part pour les côtes de Cuba, sous le nom de "le Florida," et de là, en traversant le blocus, pour Mobile, où il arriva le 4 Septembre, 1862.

18. L'enrôlement de l'équipage et l'armement du Florida aux Bahamas sont imputables à la négligence des autorités Britanniques, et l'on ne peut considérer comme fondées les objections suivantes :

Que l'Oreto venait d'être acquitté ;—car l'enrôlement et l'armement constituaient de nouveaux faits, et les autorités avaient d'autant plus le devoir d'exercer une rigoureuse attention que, abstraction faite de toutes les autres circonstances, l'arrêt judiciaire déclarait lui-même le navire sérieusement suspect ;

Que Green Cay était éloigné et peu fréquenté ;—cette objection est d'autant moins importante que tout ce qui se fit à Green Cay partit de Nassau, et pouvait fort bien s'apercevoir depuis ce dernier endroit ;

Il n'y eut point d'enquête soulevée contre le Prince Alfred comme complice, malgré la dénonciation et la réclamation du Consul Américain, auquel on se contenta de répondre qu'il devait "déposer des preuves."

IV.—*Croisière du Florida, et ses approvisionnements réitérés de Charbon, dans des Ports Britanniques.*

19. Parti de Mobile, le Florida revient, le 26 Janvier, 1863, dans la Baie de Nassau ; il y fait du charbon pour trois mois, en prend 180 tonneaux, d'après l'exposé Américain ; il n'aurait eu place que pour 130 tonneaux, d'après l'exposé Anglais ; mais des dépositions de témoins constatent qu'il y avait du charbon déposé sur le pont et partout à bord ;

Au dire des experts Anglais, il lui en aurait fallu 46 tonneaux pour retourner à Wilmington, port insurgé le plus proche.

Au bout de trente-six heures de séjour (l'exposé Anglais dit vingt-six heures), il repart pour croiser, et détruit un certain nombre de vaisseaux Américains.

20. Le 24 Février, 1863, il entre au port Britannique de Barbade et y embarque 100 tonneaux de charbon.

21. Le 16 Juillet, il arrive à St. George, port des Bermudes, y séjourne neuf jours, y fait un complet approvisionnement de charbon, et repart pour Brest ; pendant ce voyage, nouvelles destructions de vaisseaux.

22. Le 13 Avril, 1864, il touche de nouveau à Bermude, mais uniquement, disait-il, dans le but de mettre à terre un officier malade ; il n'y resta que quelques heures, mais y reparut le 18 Juin, 1864, demanda d'être admis pour faire des réparations et embarquer du charbon ; il obtint permission pour cinq jours, mais en resta neuf : embarquement frauduleux de charbon, jusqu'à 150 tonneaux ; il croisa plusieurs jours en vue de l'île ; les officiers aux stations maritimes voyaient tout, mais ne prirent aucune mesure.

Il détruisit encore des navires Américains.

23. Le 7 Octobre, 1864, il termina sa carrière dans le port de Bahia.

24. Les approvisionnements réitérés de charbon, que nous venons de mentionner, sont, en premier lieu, une infraction aux lois municipales et aux réglements de la Grande Bretagne, notamment:

A la Circulaire du 31 Janvier, 1862, qui, à l'époque où ces faits se passèrent, était depuis longtemps proclamée dans toutes les Colonies, et aux instructions explicatives adressées, sous la date du 16 Juiliet, 1863, aux Gouverneurs des Colonies des Indes Occidentales et connues au moins pendant une partie de la même période;

Ils sont surtout en désaccord avec la 2e Régle du Traité, d'après laquelle un Etat neutre ne doit pas souffrir que ses ports servent de base d'opérations pour faire la guerre ou croiser en mer.

25. Les objections faites par la Grande Bretagne, que les courses du Florida et les destructions commises par ce navire eurent lieu seulement après qu'il eut franchi le blocus, et qu'il y eut négligence de la part des officiers Américains chargés de garder le blocus, ne sont pas de nature à pouvoir décharger la Grande Bretagne de la responsabilité pour ses propres négligences; celles-ci étant la première et seule cause non-seulement de la traversée du blocus, mais encore de toutes les hostilités commises par le Florida contre les Etats Unis; et la prétendue négligence des officiers chargés de garder le blocus n'est d'ailleurs pas constatée, pas plus que l'assertion ultérieure que l'armement et l'équipement du Florida se soit fait dans le port de Mobile.

26. L'objection ultérieure, faite de la même part, que l'on accorda les mêmes facilités d'approvisionnement aux vaisseaux des Etats Unis, entr'autres au "San Jacinto," est également sans importance, et en outre, d'après l'exposé Américain, elle n'est pas fondée sur des faits, du moins pour ce qui concerne le San Jacinto.

V.—*Armement et Equipement de Navires Auxiliaires (Tenders).*

27. Durant le cours de sa croisière, le Florida fournit des officiers et des équipages aux vaisseaux auxiliaires suivants:—

Le 6 Mai, 1863, le Clarence fut capturé sur les côtes du Brésil et fut muni de canons et d'un équipage; il détruisit plusieurs vaisseaux;

Le 10 Juin, le Clarence captura le Taeony; le Clarence fut détruit et le Taeony transformé en tender; ce dernier détruisit également plusieurs vaisseaux;

Le 25 Juin, le Tacony captura l'Archer, qui fut transformé en tender, et le Taeony fut brûlé. L'Archer détruisit le Caleb Cushing, vaisseau garde-côtes des Etats-Unis.

Relativement à la question de responsabilité, il va sans dire que les vaisseaux auxiliaires sont sujets aux mêmes règles que le vaisseau principal.

(B.)—Résumé.

(*a.*) Lors de la construction, de la préparation, et de l'équipement de l'Oreto à Liverpool, et lors de sa sortie du port, de même que lors de la sortie qui eut lieu peu de temps après du Bahama, chargé des armes de l'Oreto, les autorités Britanniques ont négligé d'employer les "dues diligences" dans le maintien des devoirs de la neutralité, notamment aussi en ce qu'elles n'ont fait aucune communication ni envoyé d'instructions aux autorités coloniales relativement à ces vaisseaux.

(*b.*) Il en est de même pour ce qui concerne les faits arrivés à Nassau; il y eut surtout négligence—dans l'absence de toute initiative pour établir la vérité, dans la manière défectueuse de procéder en justice, et, l'acquittement de l'Oreto ayant eu lieu, dans l'absence de tout contrôle et de toute surveillance de la conduite de l'Oreto (ce qui seul fournit à ce vaisseau la possibilité de s'armer et de s'équiper dans les eaux Britanniques); et alors même il y eut encore négligence en ce que, après avoir reçu des communications et des instructions, on ne procéda pas, le cas échéant, contre le vaisseau coupable, sous l'imputation d'actes de violation de la neutralité de la Grande Bretagne.

(*c.*) Il en est de même encore pour ce qui concerne le fait d'avoir toléré à plusieurs reprises que le vaisseau, connu dès lors sous le nom de "le Florida," s'approvisionnât de charbon en quantité telle que, chaque fois, il pouvait entreprendre de nouvelles courses.

(Translation.)

The Florida.

(A.)—Facts and Considerations.

THE facts relative to this vessel are so complicated and so various, that, for the sake of clearness and brevity, they cannot be reviewed apart from the considerations.

I.—*Construction and Equipment of the Ship at Liverpool, and her Departure from that Port.*

1. This vessel was first known under the name of the Oreto; she was a screw gun-boat, of 700 tons burden, with two funnels and three masts; she was ordered from Fawcett, Preston, and Co., of Liverpool, by Bullock, military agent of the insurgent States, soon after his arrival in England in the course of the summer of 1861.

2. Representation of the American Minister, Adams, to Lord Russell, dated February 18, 1862, founded upon a communication made to him by Dudley, the American Consul, at Liverpool, and describing the Oreto as a "war-steamer" intended to commit hostilities against the United States, naming also the persons who had taken part in the ordering of the vessel, declaring that Fraser, Trenholm, and Co., of Liverpool (financial agents of the insurgent States), had advanced the funds, and that, if necessary, he would produce further evidence.

3. The Commissioners of Customs at Liverpool, in their report of the 22nd of February, 1862, founded on the reports of their agents, state that: "She is a splendid steamer, suitable for a dispatch-boat; she is pierced for 4 guns . . . . . It appears that she is intended for the use of Thomas Brothers, of Palermo . . . . Our Collector states that he has every reason to believe that the vessel is for the Italian Government." They add *that they have given special instructions to watch the vessel.*

4. On the 26th February, 1862, Lord Russell forwards to Mr. Adams a copy of the report of the Commissioners of Customs; he does not ask him for further evidence, although it had been offered to him. He contents himself with directing the English Ambassador, at Turin, to make inquiries as to the destination of the vessel.

5. On the 3rd of March, 1862, the vessel was registered in the name of "Henry Thomas, of Liverpool;" the next day she cleared out for Palermo and Jamaica: on the 11th of March, Bullock arrived with 4 officers and immediately went on board the vessel.

On the 22nd of March, *the Oreto left Liverpool in ballast*, with a crew of fifty-two men, all English, with the exception of three or four, among whom there was a single American.

At the same time the steamer Bahama left the same port with guns, arms, and munitions, brought by rail from Hartlepool (on the east coast of England) to Liverpool, where they were put on board.

6. In reply to the inquiries made by the English Ambassador, the Italian Minister for Foreign Affairs declared that he had no knowledge of the Oreto, but that he would make further inquiries (March 1); he, however, supplied no further intelligence, nor did the English Ambassador request any further information. According to Dudley's report, the Italian Consul at Liverpool had no knowledge of the vessel being intended for Italy; the English Authorities, however, made no inquiries of him, or of the Italian Minister in London.

7. The reports of the English officials showed that the Oreto was a vessel of war;

A state of war had been officially recognized as existing between the United States and the Insurgent States, and the neutrality of Great Britain had been officially proclaimed;

In spite of this, and in spite of the complaints of Mr. Adams, the English Authorities took no initiative; they did not insist on its being proved what was the true destination of the vessel, nor who was her real owner, who had ordered her and who was to pay for her. They did not insist on the true position of Fraser, Trenholm, and Co. being shown by legal proof, did not demand positive information as to the crew of the vessel, nor as to the arrival of naval officers from the Confederate States.

8. The special instructions given for watching the vessel appear not to have been carried out or to have been without result.

The Colonial Authorities were not communicated with after the departure of the vessel; and, generally, no steps were taken, notwithstanding the representations of

Mr. Adams, which were repeated and accompanied by details furnished by Dudley, under date of the 26th March, 1862.

II.—*What took place at Nassau up to the Time of the Acquittal of the Oreto.*

9. On the 28th April, 1862, the Oreto arrived at Nassau; the Bahama, a few days later.

Representation made on the 9th May by the American Consul, Whiting, to the Governor; the Attorney-General replies, "that positive facts are required."

The Authorities make no inquiries themselves.

On the 4th of May a fresh representation, accompanied by depositions of witnesses; the same answer.

10. McKillop, Captain of Her Majesty's ship Bulldog, reports that "the Oreto is apparently fitting and preparing for a vessel of war."

In consequence of this report, the vessel is watched by a ship of war.

On the 8th June, McKillop again reports, "*that he has visited and examined the vessel, that she is fitted for war purposes, that she has fittings at variance with the character of a merchant-vessel.*"

On the 9th of June the lading of the vessel begins: among other things arms and munitions are placed on board her; on the 10th, however, the cargo is discharged, and the vessel clears out in ballast for Havana.

11. Report of Hickley, Commander of the Greyhound, signed by all the officers of his vessel, the 13th June, 1862:—

"The Oreto is in every respect fitted out as a man-of-war, on the principle of dispatch gun-vessels in the English navy."

Nevertheless the Attorney-General states that he does not think that the seizure of the vessel would be justifiable.

12. On the 15th June the crew leave the Oreto, because her destination is not certain.

On the 17th June, in the morning, Commander Hickley seizes the vessel, but releases her at once, the Attorney-General being of opinion that there is not sufficient evidence.

The same day, however, the seizure is renewed with the sanction of the Governor.

13. Thereupon a judicial inquiry is commenced, from which it appears that the vessel is consigned by Fraser, Trenholm, and Co. (financial agents of the insurgent States in England) to Adderley and Co. (commercial agency of the Insurgents) at Nassau.

On the 2nd of August, 1862, the Oreto was acquitted; still, however, "as there existed grave suspicions" without costs or indemnity being granted. "What took place" says the judgment, "before the arrival of the Oreto, at Nassau, can only be admitted by way of elucidation or explanation," a theory which the British Case itself admits to be erroneous.

14. The course of action of the Authorities at Nassau, the proceedings and the judgment in this matter, exhibit in particular the following defaults and acts of negligence.

No initiative was taken to procure evidence;

No account was taken of the reports of the officers of the fleet;

No account was taken of the previous history of the Oreto;

The evidence heard was imperfect; Maffit, Commander of the Oreto, was not heard at all; as witnesses on behalf of the Crown, persons belonging to the vessel under trial only were heard; as witness for the defence, a partner in the interested house of Adderley and Co., and so far as appears in the minutes, none of these depositions were sworn to.

15. The fact of the omission to transmit instructions in time to the Colonial Authorities also operated disadvantageously, in regard to what took place at Nassau:

The Authorities at Nassau were not, from the first, informed of the previous history of the Oreto, nor of the views of the Government;

The judicial acquittal of the Oreto at Nassau took place without waiting for the approval of her seizure, and for the instructions which had been sent from London and which were still on their way.

16. The objection that the judicial decision at Nassau relieves Great Britain of all responsibility, cannot be maintained. As regards the internal (or municipal) law the judgment is valid; but as far as international law is concerned, it does not alter the position of Great Britain.

III.—*What took place subsequently at the Bahamas immediately after the Acquittal.—Armament and Equipment.*

17. Enlistment of forty men of the crew at Nassau (according to the British Case itself, the Oreto cleared out, on the 7th of August, with fifty-two men, for St. John, New Brunswick).

She is provided with guns, munitions, &c., with the aid of the English vessel Prince Alfred, which shipped at the wharf of Adderley and Co., the cargo brought by the Bahama, while the Oreto meantime took in coal and provisions at the Island of Providence; from this latter place she towed the Prince Alfred to Green Cay, where the transhipment of the armament took place.

This having been done, she left for the coast of Cuba, under the name of the Florida, and thence, running the blockade, to Mobile, which she reached on the 4th of September, 1862.

18. The enlistment of the crew and the armament of the Florida at the Bahamas are to be attributed to the neglect of the British Authorities, and the following objections cannot be considered as valid:—

That the Oreto had just been acquitted; for the enlistment and armament constituted new acts, and it was the more the duty of the Authorities to have exercised the strictest vigilance, inasmuch as, leaving all other circumstances out of consideration, the judicial sentence itself declared the vessel to be under grave suspicion.

That Green Cay was distant and little frequented. This objection has the less importance inasmuch as all that was done at Green Cay, had its point of departure at Nassau, and could easily have been perceived from the latter place.

There were no proceedings taken against the Prince Alfred as an accessory, in spite of the denunciation and representation of the American Consul, to whom it was thought sufficient to reply that he must "produce evidence."

IV.—*Cruize of the Florida and her repeated Shipments of Coal in British Ports.*

19. Having left Mobile, the Florida returned, on the 26th of January, 1863, to Nassau Bay. She there shipped coal for three months, taking 180 tons, according to the American statement; according to the British statement she had only room for 130 tons; but the depositions of witnesses state that there was coal placed on the deck and everywhere on board.

According to the report of English experts, she required 46 tons to return to Wilmington, the nearest port of the insurgents.

At the end of thirty-six hours' stay (the British Case says twenty-six hours) she sails off again on a cruize, and destroys a certain number of American vessels.

20. On the 24th February, 1863, she enters the British port of Barbados and there ships 100 tons of coal.

21. On the 16th July, she reaches St. George, the port of Bermuda, stays there nine days, takes in a complete supply of coal, and sets off again for Brest; during this voyage more vessels are destroyed.

22. On the 13th April, 1864, she again touches at Bermuda, but only, it was said, for the purpose of landing a sick officer; she only remained there a few hours, but reappeared on the 18th July 1864, and requested to be admitted to effect some repairs and to ship some coal; she obtained permission for five days, but stayed nine: fraudulent shipment of coal to the amount of 150 tons; she cruized for several days in sight of the island; the officers on the naval station saw all this, but took no steps.

She destroyed more American ships.

23. On the 7th of October, 1864, she closed her career in the port of Bahia.

24. The repeated supplies of coal which we have just mentioned are, in the first place, an infraction of municipal law and of the British regulations; especially—

Of the Circular of the 31st of January, 1862, which, at the time these events took place, had been for a long time published in all the Colonies, and of the explanatory instructions, bearing date the 16th July, 1863, addressed to the Governors of the West Indian Colonies, and known at least during a portion of the same time.

They are, in particular, contrary to the second Rule of the Treaty, according to which a neutral State may not allow its ports to serve as a base of operations for carrying on war or cruizing.

25. The objections made by Great Britain, that the cruizes of the Florida and the depredations committed by that vessel took place only after she had run the blockade, and that there had been negligence on the part of the American officers charged with the maintenance of the blockade, are not such as to release Great Britain from the

responsibility of her own negligence; this last was the primary and sole cause not only of her running the blockade, but also of all the hostilities committed by the Florida against the United States; and the assumed negligence of the officers who maintained the blockade is, moreover, not proved, any more than the further assertion that the armament and equipment of the Florida took place in the port of Mobile.

26. The further objection, made on the same side, that equal facilities of supply were accorded to vessels of the United States, among others to the San Jacinto, is equally immaterial and, besides, according to the American Case, it is not founded on fact, at least as far as the San Jacinto is concerned.

V.—*Armament and Equipment of Tenders.*

27. In the course of her cruize, the Florida supplied officers and crews to the following tenders:—

On the 6th May, 1863, the Clarence was captured off the Brazilian coast, and was supplied with guns and with a crew. She destroyed several vessels.

On the 10th June, the Clarence captured the Tacony; the Clarence was destroyed, and the Tacony transformed into a tender; the latter also destroyed several vessels.

On the 25th June, the Tacony captured the Archer, which was transformed into a tender, and the Tacony was burnt. The Archer destroyed the Caleb Cushing, a United States' coast-guard vessel.

With regard to the question of responsibility, it is needless to say that tenders are subject to the same rules as the principal vessel.

(B.)—Summary.

(*a.*) In regard to the construction, fitting out, and equipment of the Oreto at Liverpool, and to her departure from that port, in regard also to the departure of the Bahama, laden with arms for the Oreto, which took place shortly afterwards, the British Authorities failed to use "due diligence" in the fulfilment of the duties of neutrality, particularly also in that they neither communicated with nor sent instructions to the Colonial authorities with respect to these vessels.

(*b.*) The same applies to the events which took place at Nassau; there was negligence especially in the absence of all initiative to ascertain the truth, in the defective nature of the judicial proceedings, and, the Oreto having been acquitted, in the absence of all control, and of all watch over her proceedings which alone rendered it possible for this vessel to be armed and equipped in British waters; and, furthermore, there was again negligence in that, after communications and instructions had been received, no proceedings were taken when the opportunity offered, against the guilty vessel, on the charge of acts in violation of the neutrality of Great Britain.

(*c.*) The same again applies to the fact that, on several occasions, the vessel, known thenceforth by the name of the Florida, was permitted to supply herself with coal in such quantities that, each time, she was enabled to undertake a fresh cruize.

No. 7.

Lord Tenterden to Earl Granville.—(*Received July* 24.)

My Lord, *Geneva, July* 22, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 19th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 7.

Protocol No. XII.—Record of the Proceedings of the Tribunal of Arbitration at the Twelfth Conference, held at Geneva, in Switzerland, on the 19th of July, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The Tribunal continued with the consideration of the case of the Florida.

The Tribunal decided that the meetings should for the present be held on Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays.

The Conference then adjourned until Monday, the 22nd instant, at half-past 12 o'clock.

(Signed) TENTERDEN. (Signed) FREDERIC SCLOPIS. ALEX. FAVROT, *Secretary*. J. C. BANCROFT DAVIS.

No. 8.

Lord Tenterden to Earl Granville.—(*Received August* 1.)

My Lord, *Geneva, July* 25, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration of the 22nd instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 8.

Protocol No. XIII.—Record of the Proceedings of the Tribunal of Arbitration at the Thirteenth Conference, held at Geneva, in Switzerland, on the 22nd of July, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal, and the Agents of the two Governments.

The Tribunal continued with the consideration of the case of the Florida.

Sir Alexander Cockburn, as one of the Arbitrators, proposed to the Tribunal, under the Vth Article of the Treaty of Washington, to call for the assistance of Counsel upon the effect of the term "due diligence," and as to the principles of international law applicable to the case under the terms of that Article.

After deliberation, a majority of the Tribunal decided that it does not at present require the assistance of the Agents and Counsel upon the point proposed by Sir Alexander Cockburn, but that it reserves the right of requiring that assistance on any point, if necessary, according to the Vth Article of the Treaty.

The Tribunal also decided to consider at the next Conference the case of the Alabama, and the questions of "due diligence" and the effect of a commission in connection with that vessel.

The Conference was adjourned until Thursday, the 25th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS. ALEX. FAVROT, *Secretary*.
(Signed) TENTERDEN. J. C. BANCROFT DAVIS.

Statements of Mr. Adams, Baron d'Itajubá, and Count Sclopis on the Case of the Florida, discussed at the Meetings of the 19th and 22nd July.

Statement of Mr. Adams.

THE FLORIDA.

ON the 18th February, 1862, Mr. Adams addressed a note to Lord Russell, calling his attention to a letter he had received from Mr. Dudley, the Consul of the United

States at Liverpool, touching a certain gun-boat fitting out at that port, which he had reason to believe was intended for the use of the American insurgents in their war against their Government.

On the 19th, Mr. Hammond, on behalf of Lord Russell, replied to this note, apprising Mr. Adams that he "would move the Lords Commissioners to cause immediate inquiries to be made respecting the vessel, and to take such steps in the matter as might be right and proper."

On the 22nd, the Commissioners of the Customs made a Report to the effect that there was a vessel of the sort described called the Oreto; that it had been built by Messrs. Miller and Sons for Messrs. Fawcett, Preston, and Co., engineers, and intended for the use of Messrs. Thomas, Brothers, of Palermo. Messrs. Miller and Sons expressed their belief that her destination was Palermo.

The fact is now clear that in this statement there was either equivocation or positive falsehood somewhere between the parties named. The testimony of Mr. Prioleau, of the firm of Fraser, Trenholm, and Co., of Liverpool, agents of the insurgent organization in America (than whom no man on earth was more sure to know), testimony, too, extorted from him with great reluctance on his oath in a British Court, establishes beyond dispute the fact that she was built for the order of J. D. Bullock, agent of the insurgents.

So with regard to the statement made by Mr. S. Price Edwards, Collector of Liverpool, in his letter of the 21st, transmitted by the Commissioners to Lord Russell, that *he had every reason to believe* that she was for the Italian Government, it is now made clear that he either told a falsehood or had been wilfully deceived by Mr. Thomas or others connected with the transaction.

Earl Russell directed Her Majesty's Minister at Turin to inquire as to the fact of this proceeding on the part of the Italian Government, and on the 1st of March he received an answer that Baron Ricasoli had no knowledge whatever of any such ship.

It is admitted that at the time now in question Her Majesty's Government had no reason to suspect any of these statements to be false, excepting the last. Subsequently on the 25th of March the final information came, completely establishing the fact in that case. But even the earlier information would have been likely, as it would seem, at least to shake confidence in the veracity of the party making the statement. And here I trust I may be permitted a general remark, possibly rather trite, as to the moral effect of falsehood upon the general credit of n. n. In the private relations established between persons, if any individual in a matter of importance be once detected in a deliberate falsehood, the consequence is an habitual distrust of him by his associates for the future in any transaction whatever. So I doubt not if my respected colleague who has done so much honour to the bench over which he has long presided should discover, in the examination of any important witness in a case, the fact that he had deliberately perjured himself, he would at once feel it his duty in charging the jury to set his evidence aside as generally undeserving of confidence.

Now upon a calm review of the voluminous transactions recorded in the numerous volumes which have been submitted to the judgment of this Tribunal, I do not hesitate to say that it contains a record of the most continuous, persistent, wilful, and flagrant falsehood and perjury, carried on in the British Possessions by individuals associated in the American insurgent cause and their British affiliations, from the date of the building of the Oreto at the beginning, to that of the return of the Shenandoah to Liverpool at the close, that has yet been brought to light in history.

The earliest evidences of the truth of this affirmation are found thickly strewn among the transactions relating to this vessel. They appear most strikingly in the reports made by Mr. Dudley, the Consul of the United States at Liverpool, both to his own Government and to Mr. Adams. His duty was, with such imperfect means as he had in his possession, to exercise due diligence in exposing every trace of an attempt to carry on from that place hostile operations against his own country; and, I must add, most faithfully and energetically does he seem to me to have performed it. But just in the proportion to the efficacy of his exertions was the attention of those engaged in such enterprises directed to the means of baffling his aim. To this end it appears clear that, among the parties to which he was driven to resort for the purpose of gathering information, were not a few of indifferent character, and probably some employed by his opponents expressly to put him on a false scent. Having no power in his hands to extort unwilling testimony, he was compelled to rely entirely on his own judgment to pick out of the mixed mass before him that which might seem to him most in harmony with the probabilities of the case. That he should have been occasionally misled, and thus have made representations through Mr. Adams to Her

Majesty's Government which were proved on investigation not to be accurate, ought to be neither surprising nor matter of blame to him. In point of fact he seems in the present case to have supplied pretty much all the correct information which Her Majesty's Government actually received, and which, if they had followed it up with corresponding diligence, would certainly have ended in the detention of the vessel. And her detention at that critical moment in these enterprises would probably have had the effect of putting a stop to them all, as well as to the necessity of any such Tribunal as the one now constituted here.

But this was not to be. The Government, which had in its hands all the means of extorting unwilling testimony, through efficient and trustworthy agents, does not seem to have been, at this moment at least, conscious of the existence of any obligation to originate investigations at all. It may reasonably be doubted, from the evidence before us, whether it believed in it, if it was. On the 1st of March, that is, twenty days before the escape of the Oreto, an inquiry made of the Government of Italy respecting one of the official statements received from Liverpool had been replied to in terms which, if not absolutely decisive as to its falsehood, certainly tended to throw the greatest possible doubt upon its truth. In such an important transaction as the building of a gun-boat, it would seem to be clear that a grave misstatement of its destination by responsible parties was not likely to be made carelessly, or without giving rise to some possible suspicion of an adequate motive to account for it. It does not appear from anything contained in the papers before us that the attention of the parties concerned was called to this circumstance at all. But it does appear very clear that both in the letters of Mr. Adams and Mr. Dudley under the eyes of Her Majesty's Government, there was presented an adequate motive to explain it, to wit, the wish to elude the vigilance of Her Majesty's Government and her officers in preventing the outfit from one of her ports of a vessel sadly wanted by the insurgent Americans to carry on war on the ocean against their Government. All the external circumstances indicating a state of peace everywhere else in the civilized world pointed to that quarter alone as the probable one, not simply to explain the destination of the vessel itself, but likewise the false representation which had be a made for the purpose of concealing it. Her Majesty's Government does not seem to have entered into any such process of reasoning.

On the 23rd of February it has already been observed that Her Majesty's Commissioners of Customs had addressed a letter to the Treasury Board, making a report in regard to the condition and destination of the vessel called the Oreto. At the close of that letter are the following words:—

"We beg further to add that special directions have been given to the officers at Liverpool to *watch the movements of the vessel*, and that we will not fail to report forthwith any circumstances which may occur worthy of your Lordship's cognizance.

(Signed) "Tho. F. Fremantle.
"Grenville C. L. Berkeley."

After a diligent search, I do not succeed in finding a trace of any report of these gentlemen earlier than the 4th April. Probably they did not regard the circumstances of her outfit and departure from the port as worthy of their Lordships' cognizance, unless the news were absolutely demanded.

Yet when Mr. Adams, on the 25th of March, addressed another remonstrance to Earl Russell, it seems to have had the effect of prompting his Lordship, on the 26th of March, to direct a note to be sent to the Secretary of the Treasury requesting the Commissioners of Customs "to give directions that the Oreto may be diligently watched."

This seems to have brought forth a letter from Mr. S. Price Edwards to the following effect. It is dated the 28th of March:—

"To the Commissioners of Customs,

"The screw-vessel Oreto was registered at this port on the 3rd instant, as per copy of registry annexed. She cleared on the following day, the 4th, for Palermo and Jamaica in ballast, as per inclosed victualling bill. She sailed on the 22nd instant, the day upon which the American Consul's letter is dated, having a crew of fifty-two men, all British, save some three or four, one of whom only was an American. She had nothing whatever on board save the stores enumerated. She had neither gunpowder nor even a signal gun, and no colours save Maryatt's Code of Signals and a British ensign. With reference to the passengers brought by the Annie Child, it is clear that they were not intended to form any portion of the crew of the Oreto, for they are still in Liverpool; and as respects the dipping of the ensign, this, as far as I can ascertain, was a compliment paid to one of the Cunard steamers and some other vessel which saluted the Annie Child on her arrival, the masters being parties known to one another."

What became of this letter it is difficult to explain. It seems clear that Lord Russell could have known nothing of it on the 7th of April, for he appears then to have directed Mr. Hammond to write to the Secretary of the Treasury "to cause his Lordship to be informed whether any report has been received from the Commissioners of Customs respecting the vessel the Oreto." This was the sixteenth day after that vessel had sailed—a fact which he appears at that time not to have officially known, though doubtless he had gathered it from the newspapers.

The report before alluded to was then produced, dated the 4th, but not received until the 8th. It then first gave the information that the vessel had sailed on the 22nd, having been registered in the name of John Henry Thomas of Liverpool as sole owner, and cleared for Palermo and Jamaica in ballast.

The reports indicative of any observation whatever made in watching the movements of the Oreto appear not to have been collected until the latter part of August, and then only at the instance of Lord Russell for another purpose.

One more report was made by the Commissioners of Customs on the 1st of May. The official declaration of the Minister of State of the Italian Government to Earl Russell, denying all knowledge whatever of the Oreto, had been put into their hands. This declaration had been sent to Mr. Edwards, the Collector of the port, who had been the first person to declare his faith in the falsehood, and was now called to make further observations. He did not think fit to make any explanation of the reasons of his belief nor of its source, but contented himself with a reference to the registry of the vessel in the name of a native of Palermo, which he probably knew to have been a fraud, because he went on to admit the fact of its real destination, and to place his absence from action on the ground that "*even* in that case no act had been committed to justify his interference." It does not seem to have occurred to him to ask himself, if the dispatch of the steamer was a legitimate act, where was the need of the falsehood about the Italian Government or the further falsehood of the ownership of Mr. Thomas. Neither does it seem to have occurred to Her Majesty's Government to consider whether they had been cheated by their own officers.

A steamer completely fitted in all respects as a man-of-war had succeeded in escaping from Liverpool, and nothing was left to make her a power on the ocean but the receipt of arms and ammunition. How that proceeding was accomplished we shall see in the sequel. At present I desire to point out the extent to which the falsehood and fraud that had been resorted to in the course of the transaction, to cover it from observation, betray the consciousness of the parties concerned in it of the danger they were incurring of the indignation of Her Majesty's Government, in case they were detected in preparing such a hostile enterprise in a British port. At least they appear to have had no idea that such an attempt, if really understood, was not an act which would justify the interference of the Government. Hence the studied efforts to misrepresent the transaction from the beginning to the end. Hence the labour to substitute a false British owner, and a false destination for the real one. Hence the studied representation of Palermo in Sicily as the term of the voyage even to the simple seamen decoyed by this means into an unwilling service. In a word, the affair reeks with malignant fraud from its inception to its close. The parties concerned appear to have had no conception how easy it was to paralyse the action of Her Majesty's Government, or they would at once have relieved themselves of all the opprobrium that attended their proceedings. Doubtless they would not have indulged in mendacity for the mere love of it. They did not then conceive that the principle of action was not to initiate any active measures of thorough investigation into the truth of their words and the good faith of their acts, but to wait for the disclosure of the necessary evidence by the agents of the United States, who could not in the nature of things possess anything like their power of extorting the truth from unwilling lips.

I have now reached the moment when it seems necessary to apply myself to the question so much discussed in the arguments laid before us by the respective parties to the litigation. What is the diligence due from one nation to another in preventing the fitting-out of any vessel which it has reasonable ground to believe intended to cruize against the other? Although my own judgment is distinctly formed upon it, I feel that this is not the place in which I can, with the most propriety, explain my reasons in full. It is enough for my purpose here to say that, in my mind, the diligence manifested by all the requisite authorities of Great Britain in the case now before us does not appear to me to be that contemplated by the language of the Treaty, because it was not in any sense a spontaneous movement. So far as the papers before us are concerned, I cannot perceive that Her Majesty's Government acted in any case excepting after representations made by the Agent of the United States; and even when

they did act, they confined themselves exclusively to the allegations therein made, presuming that if they could report upon them satisfactorily to themselves, their obligations were fully performed. It must be obvious that such a method of action furnishes every possible opportunity to the parties implicated, if they be at all adroit, to escape conviction by resort to equivocation, if not absolute falsehood. I can form no definition of the word "diligence" which does not embrace direct original action, persevered in not merely to verify acts of offence one by one, but to establish the general fact of intent as obtained from continuous observation of the operations going on; not merely to detect the motives for falsehood, but to penetrate to the bottom of the truth. If there was a conspiracy of persons at home engaged in a treasonable effort to overthrow the Government, would not due diligence comprehend in its meaning a close and constant observation of each and every one of the persons reasonably suspected of being engaged in it, and an immediate action to prevent any movement in advance of its maturity? Especially, would not such energy be called for in time of war, when the danger to the State from external co-operation might become extreme? Most of all, would it not be natural to expect from every Power in amity to furnish all the means it could command to render abortive every combination suspected to be forming within its borders to render assistance to the manœuvres of the malcontents at home? All these are parts of a complete whole, the maintenance of order at home and of peace abroad.

That there did exist in Great Britain a combination of persons, composed partly of Americans and partly of British subjects, having for its object and intent the fitting out of vessels to carry on war with the United States to the end of overturning the Government, is made perfectly plain by the evidence placed before us by the two parties. That Her Majesty's Government considered it no part of her duty to originate any proceedings tending to prevention, at the time of the outfit of the Oreto, or to pass at all beyond the range of investigation especially pointed out by the agents of the American Government to its attention, appears to me certain. At a later stage of the difficulties this policy appears to have been partially changed. The favourable effects of it are claimed as a merit in a portion of the papers before us, and I am ready at any and at all proper times to testify to my sense of its efficiency and value wherever it is shown. But after close examination I fail to see any traces of this policy in the present instance.

It is, then, my opinion at this stage of the transactions that Her Majesty's Government did fail to use due diligence to prevent the fitting out, within its jurisdiction, of the Oreto, which it had reasonable ground to believe intended to cruise against the United States.

I now proceed to the next step in the career of this vessel.

Nassau.

On the 22nd of March, 1862, the Oreto escaped from Liverpool with an intent to carry on war against the United States. Her Majesty's Government had not been tempted to penetrate the deception which had been deliberately practised upon it.

On the 28th of April she arrived at Nassau, and was reported by the Governor as a registered British vessel and carrying the British flag.

On the 30th Commander McKillop, of Her Majesty's ship Bulldog, addressed a letter to the Secretary of the Admiralty to this effect:—

"A very suspicious steamer, the Oreto, evidently intended for a gun-boat, is now in the upper anchorage under the British flag; but as there are no less than three cargoes of arms and ammunition united to run the blockade, some of these guns, &c., would turn her into a privateer in a few hours. Agents of the Confederate Government and officers of their navy are here on the spot, and *I have no doubt that the Oreto is intended for their service.*"

Such was the natural and just conclusion of a gallant British officer writing under no bias on one side or the other, but moved only by his sense of justice and fair dealing. Let us now proceed to consider the manner in which events contributed to verify his prediction to the letter.

On the 9th of May, Mr. Whiting, the Consul of the United States at Nassau, addressed a note to the Governor, calling his attention to the fact of the almost concurrent arrival from the port of Liverpool of the gun-boat Oreto, and of the tug Fanny Lewis, laden with gunpowder for the insurgent Americans.

This letter was referred by the Governor to the consideration of the Attorney-General, with an endorsement on it to the effect that he wished the agents of the Oreto

to be informed that if they put arms on board that vessel he should then enforce the rules laid down in the Queen's Proclamation.

The Receiver-General enters his minute on Mr. Whiting's letter, to the effect that the Fanny Lewis has an assorted cargo not to be landed. He is confident that no part of the cargo had then been transferred.

But on the 26th of the month his tone changes, and he is convinced that the consignees of the Oreto intend shipping large quantities of arms and munitions as cargo.

Two days later Commander McKillop writes to the Governor as follows:—

"Several steamers having anchored at Cochrane's anchorage, I sent an officer, yesterday, to visit them and muster their crews, and ascertain what they were and how employed.

"The officer reports that one steamer, the Oreto, is apparently fitting and preparing for a vessel of war; under these circumstances, I would suggest that she should come into the harbour of Nassau, to prevent any misunderstanding as to her equipping in this port, contrary to the Foreign Enlistment Act, as a privateer or war vessel."

The Governor referred the question to the Attorney-General, who gave it as his deliberate opinion that an order for the removal of the Oreto to a place where she was within reach of observation should not be made, as such order could not be legally enforced unless it was distinctly shown that such a violation of law had taken place in respect to her as would justify her seizure.

Here also it is to be noted that the Attorney-General, following the example given in the mother-country, considers it not incumbent upon the Government to initiate any measures whatever of a preventive nature. In other words, not until a vessel should succeed in an undertaking of an illegal nature, which would necessarily imply her escape from the jurisdiction, would the proper time come for proceeding with proof that she ought to have been detained.

It was not until I became familiar with all these transactions that I fully comprehended the singular facility of adaptation of the law, as understood and practised in Great Britain, to the delay and defeat of the ends of justice.

It is due to the Governor to say that he was not altogether satisfied with the passive policy recommended by his Attorney-General; and he proceeded to recommend to Commander McKillop to take active measures of prevention in the event of his being convinced that the vessel was about to be armed within that jurisdiction.

On the 8th of June, Commander McKillop, in a letter to the Governor, announces that he will seize the vessel should she attempt to take ammunition on board.

On the very next day the consignees of the Oreto began to load the Oreto with arms and ammunition. But Commander McKillop did not execute his purpose. On that day he quitted his command.

But on the very next day his successor, Commander Hickley, of Her Majesty's ship Greyhound, visited the Oreto, and found the consignees just as busy discharging the arms and ammunition taken in the day before. In point of fact, they had received a private notice from the Governor and the Commander that it would not do; but it was not a menacing intimation as to absolute action. They were cunning enough to take the hint, and change the line of their operations.

They now declared their intention to clear the Oreto in ballast for Havana. This assurance quieted the apprehensions of the British Commander. But finding that the vessel still remained, on the 15th of June he again visited her, in company with eight of his officers. The crew had refused to get the anchor up until they could be made certain as to where the ship was going. The Oreto was a suspicious vessel. After close observation, Captain Hickley and his eight officers all signed a report addressed to the Governor, to the effect that she is in every respect fitted as a man-of-war. She had left Liverpool fitted in all respects as they saw her. No addition or alteration had been made at Nassau.

This paper was submitted to the Attorney-General for his opinion, and he gave it to the effect that nothing contained in it would justify the detention of the vessel.

But Commander Hickley saw the thing in a different light from the Attorney, and on the 15th addressed a new letter to the Governor, reporting the result of his conversations with the portion of the crew that had come to see him. He was now so convinced of the intent of the parties controlling the Oreto, that he was strongly inclined to take the responsibility of her seizure and removal to another station at which was placed the Commodore or Commander-in-chief. And he actually put one of his officers temporarily in charge.

On the 16th of June the Governor wrote, in reply, deprecating all action of the

kind contemplated, and throwing the responsibility wholly upon him, if he should take it.

On the same day the Attorney-General gives an opinion that no case has yet been made out for seizure. He does not appear to have thought it his duty to initiate any measures to ascertain what was the evidence upon which Commander Hickley was impelled to his convictions. It was the passive policy, the example of which had been set at home. The evidence must come to the Government. It was not for the Government to go to the evidence. Of course it naturally happened that this worked entirely for the benefit of the malefactors, and to the injury of the party that ought to have been protected. On the same day Commander Hickley wrote a reply maintaining his conviction, but declining to assume the responsibility of acting in the face of the Attorney-General's opinion. He therefore withdrew the officer whom he had placed in charge of the ship.

But the Governor is not satisfied with the action of either party, and is afraid to commit himself entirely against the clear conviction of the Commander, so he decides in favour of a seizure of the vessel with a view to a submission of the question to the local Court of Vice-Admiralty at Nassau.

This was on the 17th of June. The information of the act of Captain Hickley was transmitted to the Government at London, and received the approbation of Earl Russell. Indeed, there is a degree of heartiness in the terms he uses to express it, and in his anxiety to see the officer properly secured from any hazard to himself by reason of his course, that clearly shows the earnestness of his satisfaction. I hope I may not be exceeding my just limits if I seize this occasion to do a simple act of justice to that eminent Statesman. Much as I may see cause to differ with him in his limited construction of his own duty, or in the views which appear in these papers to have been taken by him of the policy proper to be pursued by Her Majesty's Government, I am far from drawing any inferences from them to the effect that he was actuated in any way by motives of ill-will to the United States, or, indeed, by unworthy motives of any kind. If I were permitted to judge from a calm comparison of the relative weight of his various opinions with his action in different contingencies, I should be led rather to infer a balance of goodwill than of hostility to the United States.

The Law Officers of the Crown were likewise consulted, and they gave an opinion favourable to the action of Governor Bayley, but strongly urging that evidence of what occurred at Liverpool of building and fitting out should be at once sent forward in order to complete the proof of her hostile destination to the United States.

And here I trust I may be permitted to express my sense of gratification on reading the Reports and observing the action of the two gallant naval officers. Their clear good sense and rapid judgment had led them straight forward to the penetration of the motives of the authors of the wretched equivocations and falsehoods by which they were surrounded, as well as to the adoption of the most effective measures to bring their machinations to nought. Neither does this course appear to have been in any way prompted by a mere spirit of good will to the United States, which were to be protected by their action. It seems to have sprung from that natural impulse of a conscience void of offence, which perceived an act of injustice and fraud to be in contemplation, and determined at once to resort to the best measures to prevent it.

Had such an energetic spirit animated the whole action of Her Majesty's Government at all times and in all conjunctures, there would have been no question about the exercise of due diligence in this narrative.

The opinion of the Law Officers in London was received by Earl Russell on the 12th of August. Ten days before that date he had addressed a letter to Mr. Stuart, the British Secretary at Washington, requesting him, in view of this proceeding, to dissuade the American Government from proceeding in the measure then contemplated of issuing letters of marque. He little thought of what had been laid up in store for him by the learned Judge of the Court of Nassau.

On that very same day he had pronounced his judgment that there was no sufficient evidence to prove any act committed at Nassau to justify the seizure. But considering the very suspicious nature of the circumstances, he should release his own Government from the payment of costs.

It is the general rule of courtesy between nations to recognize the action of their respective Courts without seeking to analyse the principles upon which the decisions are made. And it is a wise rule, as conducive to the general maintenance of law and order in the performance of their reciprocal duties of protection to individual interests. But I am not altogether sure whether this rule should be held to extend so far as to bind the members of this Tribunal to absolute silence in this and similar instances that come

before us. Whilst most anxious upon all occasions to preserve the decorum appropriate to a station of such eminence, I am at the same time oppressed by the conviction that in no portion of the history of this proceeding is the responsibility of Her Majesty's Government for the subsequent career of this vessel more deeply implicated than by the action of this Vice-Admiralty Judge, in letting this vessel go upon the reasoning which he presents in his justification. It would be easy for me, if it were necessary, to go into an analysis of the various points in which he appears to have ruled erroneously both in regard to the law and to the evidence. It is made certain by the papers that, in the former, he was not sustained by the Law Officers of the Crown at home. And as to the latter, I cannot but assume the presence of some strong external bias which should have induced him to give credit to certain persons on the mere score of personal character where testimony proves them so clearly, in my eyes, to have been arrant cheats, and to discredit the seamen, chiefly on account of their low condition, who are as clearly manifested to have told the substantial truth. My mode of explanation of this flagrant perversion of the law is, that the Judge partook so largely of the general sympathy admitted by the Governor to have held sway over the entire population of the island, as to render him absolutely incapable, in this case, of a perception of justice. It is not probably without a strong conviction of this truth that the plain sense and clear appreciation of facts prompted Commander Hickley to advise the removal of the vessel entirely out of this jurisdiction. For the honour of Great Britain, which must be held responsible through its agents for this flagrant wrong done to the injured party, it had been perhaps well if the desire of the gallant officer had been complied with.

Many strictures have likewise been made upon the action of the Attorney-General, Mr. Anderson, throughout these proceedings, of so harsh a nature as to have called from him a formal paper in his justification which has been placed among the documents before us.

After a careful examination of the question, I am led to the belief that it is possible to arrive at a clear comprehension of the motives which actuated him without the necessity of imputing any purpose deeply affecting his integrity.

It appears that if, on the one hand, he was slow in his disposition to reach any effective action to defeat the enterprize of the Oreto in 1862, on the other he appears in proportion quite as swift in the process of seizing the vessel known as the Alexandra, and subsequently the Mary, and pressing for her condemnation, when she made her appearance at Nassau in the winter of 1864, under much less dubious circumstances.

The reason is plain. Mr. Anderson virtually admits in his statement that in the earlier stages of the struggle in America he considered the fate of the United States as settled and he did not regret it. But in the last months of the war not a shadow of doubt could have remained in his mind as to its permanence. He then cheerfully accepted a retainer on their side. The transition from one state of feeling to the other can be no cause of surprise to any one observant of the relations of the small population of Nassau to the United States. Neither is it difficult to perceive among the documents the traces of a similar revolution of sentiment and action going on simultaneously in other portions of Her Majesty's dominions far removed from that relatively insignificant island.

Be this as it may, the effect of the decision of the Admiralty Court in 1862 was not only to liberate the ship, but to put an end to all serious attempts to prevent the full accomplishment of the nefarious purpose of her owners. On or about the 7th of August the Oreto sailed from Nassau. On the 9th of the same month the schooner Prince Alfred also left the place. They met at a spot agreed upon about sixty miles distant, called Green Cay; and there the Oreto received her armament and ammunition, as well as her true officers and crew. The Commander was relieved from the terror of a new arrest which he had felt in the event of his continuance at Nassau for another day. There was no cause for this apprehension. His victory was complete. On the morning of the 11th August in a place called Blossom Channel, believed to be within the British jurisdiction, the logbook found in his vessel shows the transaction to have been completed. The authority of Her Majesty's Government had been successfully defied, and the decision of her Admiralty Court proved a mockery and a show.

Hence it appears to me that Great Britain had clearly failed in enforcing the second rule prescribed in the Treaty of Washington, as well as the first; and if these two rules were not enforced as they should have been, a failure in regard to the third appears to result as a matter of course.

The next step in the career of the Florida, material to the present discussion, is the fact of her entry into Mobile, a port held by the insurgents, although at the time blockaded by the vessels of the United States. Here she remained for more than four months. On the 15th of January, 1863, she again succeeded in running the blockade

outward, and on the 25th her captain had the cool insolence to go at once to the very place of the Island of Nassau from which he had just escaped under terrors which belong only to a malefactor. It is proper to add that in the interval he had shipped an additional motley force of fifty-four men at Mobile.

The question here naturally arises whether by this process the vessel had so far changed her previous character as to be divested of any trace of her British origin and fraudulent equipment, and entitled to claim a new departure as a legitimate offspring of a recognized belligerent power. This question, appertaining exclusively to the case of this vessel among all those submitted to our consideration, and touching the release of Her Britannic Majesty's Government from any further responsibility for the taint of her origin, appears to me one of the most interesting and difficult of all that we are called to decide. But in order to complete the review of the career of the vessel, so far as it relates to the action of Great Britain upon the occasion of her visits at any ports within that jurisdiction, I deem it expedient to postpone the observations I propose to make upon it until the end.

Whatever may be the doubts elsewhere expressed about this point, none whatever were admitted at Nassau, the very spot where the flagrant fraud had been most successfully perpetrated and Her Majesty's dignity insulted and defied. She was immediately recognized as a legitimate belligerent, the only objection made to her presence being a violation of a minor regulation of the port, which required a previous application for permission before coming to anchor. For this minor offence the captain could afford to apologize, when the vastly greater one had been so readily condoned. The object he now had in view was the procuring a good supply of coals for the prosecution of his cruize. Permission seems to have been given without stint. Some question has been raised about the precise quantity; but if there was no limit prescribed by the authorities, it may reasonably be inferred, from the general sympathy strongly manifested by the population, that all would be supplied the captain would be ready to take. So, likewise, with provisions. A person on board of the Florida at the time seems to have recorded his impression that enough had been supplied to last several months. This is doubtless exaggerated. So with the testimony of two persons, taken several years afterwards, of their recollection of the facts, which would naturally be subject to serious reduction. Yet, after making every possible allowance for these circumstances, it appears reasonable to me to conclude that Captain Maffit succeeded in getting all that he desired to put him in a condition to commence, and continue for some time, a predatory cruize. It is also alleged that the captain shipped here eleven men, which is not unlikely to be true also, if he needed them.

Captain Maffit, thus completely fitted out from Nassau as a basis, proceeded on his cruize, which lasted for about a month, and in which he alleges that he experienced very rough weather. This is the reason assigned for his visit to Barbadoes, where he applied for more coal and some lumber. He suppressed the fact of his late supply, and reported himself as last from Mobile. He succeeded in obtaining 90 tons, and thus prosecuted his predatory voyage on his renewed stock.

Much damage as these permissions unquestionably entailed upon the United States' commerce, it is proper to add that they had not been given so much from any wilful disposition on the part of the officers of Her Majesty's Government, but rather from their indifference to all measures of early prevention. So soon as information of these events had been received at the Colonial Office in London this liberality was checked, and orders were issued to be more cautious in the future.

After a visit of four days to Pernambuco, the next British port entered by Captain Maffit was Bermuda on the 15th of July. His application for Government coal was here, for the first time, refused. He succeeded, however, in obtaining plenty from other sources, and in transgressing the limit prescribed for his stay for repairs without censure, which enabled him to cross the ocean and reach Brest, in France, on the 23rd of August.

It should be noted that this long cruise, from the 25th of January to the 23rd of August, of nearly seven months, was made with supplies of coal received exclusively from British sources.

It seems to be unnecessary to enter into further particulars of her career after she left Brest. She seems to have touched at some British ports in the West Indies and obtained assistance, and she finally put into Bahia, which proved to be the termination of her record, in October. The length of her term on the ocean had been about eighteen months—long enough to perpetrate much too large an amount of mischief.

It now remains to me only to recur to the question, already proposed in the course of this opinion, regarding any change of original character that may be considered to

have taken place in this vessel by the fact of her having succeeded in reaching a port of the belligerent Power to which she claimed to belong.

I have endeavoured to give to this point the most careful and diligent study of which I am capable. The result is, that I cannot arrive at any conclusion satisfactory to myself which even implies a necessity to assent to the proposition that *success sanctifies fraud*. All law recognized by the conscience of civilized nations has for its only solid basis a conviction that it is based upon clear principles of right. In some languages the word used to express these ideas is identical. At the same time I am not unaware that in the progress of international relations there may happen from time to time occasions when a neces sity will arise to recognize a simple fact without reference to its nature. But this must happen under circumstances which imply neither participation nor approval. It ought not to be permitted to happen when these circumstances are clearly within control, and the motive to act should be imperative as upholding the majesty of law.

In the case before us it seems to me conclusively established by evidence that, from the moment of inception to that of complete execution, the building, equipping, and despatching of the vessel were equally carried on by a resort to every species of falsehood and fraud in order to baffle and defeat the legitimate purpose of Her Majesty's Government to uphold the sanctity of her laws and make good her obligations to a foreign nation with which she was at peace. Down to the moment of arrival at Mobile I fail to perceive any good reason for supposing that the character the vessel took at the outset had not substantially adhered to it to the end.

It has always been to me a cause of profound regret that Her Majesty's Government had not seen fit to mark her sense of the indignities heaped upon her by the flagrant violation of her laws in these cases, at least by excluding the vessels from her ports. Thus she would have rescued her own honour and escaped the evil consequences which have ever since attended her opposite decision. Such a course had not been without its advocates among jurists of eminence in the Kingdom, at least one of whom had recorded his opinion. A significant example may be found in the papers before us. Such a course could not have failed to maintain itself in the end by the simple force of its innate harmony with justice and with right.

To suppose that the moral stain attached to a transaction of this character can be wiped out by the mere incident of visiting one place or another without any material alteration of the constituent body inspiring its action, seems to me to be attaching to an accident the virtue which appertains solely to an exercise of the will. I cannot therefore concede to this notion any shade of weight. The vessel called the Florida, in my view, carried the same indelible stamp of dishonour from its cradle to its grave; and in this opinion I have been happy to discover that I am completely sustained by the authority of one of the most eminent of the jurists of my own country who ever sate in the highest seat of her most elevated Tribunal. I find it recorded in one of the volumes submitted to our consideration by the Agent of Her Majesty's Government, from which I pray for leave to introduce the following extract, as making an appropriate close:—

> "If this were to be admitted," says Chief Justice Marshall, "the laws for the preservation of our neutrality would be completely eluded. Vessels completely fitted in our ports for military expeditions need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crew, to become perfectly legitimate cruisers, purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired. This would indeed be fraudulent neutrality, disgraceful to our own Government and of which no nation would be the dupe."

For the reasons herein specified, I have come to the conclusion in the case now presented of the Florida, that Great Britain, by reason of her omission to use due diligence to prevent the fitting-out, arming, and equipping within its jurisdiction, of that vessel, and further of her omission to forbid the crew of that vessel from making use of its ports or waters as the base of operations against the United States, has failed to fulfil the duties set forth in each and every one of the three rules prescribed to the Arbitrators as their guide under the terms of the Treaty of Washington.

No. 11.

Statement of Baron d'Itajubá.

Le Florida.

LE Soussigné, après examen consciencieux de tous les documents soumis au Tribunal d'Arbitrage par les Gouvernements des Etats Unis et de la Grande Bretagne relatifs au croiseur Confédéré le Florida,—

Considérant,

Que de tous les faits relatifs à la construction de l'Oreto* dans le port de Liverpool, et à la sortie de ce navire, ainsi que du Bahama, chargé d'armement pour l'Oreto, lesquels faits n'amenèrent de la part des Autorités Britanniques l'emploi d'aucunes mesures propres à empêcher la violation de la neutralité de la Grande-Bretagne, malgré les avis et les réclamations réitérées des Autorités Diplomatiques et Consulaires des Etats Unis, il ressort que le Gouvernement de Sa Majesté Britannique a négligé d'employer les dues diligences pour le maintien des devoirs de sa neutralité;

Considérant,

Que de tous les faits relatifs au séjour de l'Oreto à Nassau, à sa saisie dans ce port, à son acquittement, à sa sortie de ce port, à l'enrôlement d'un équipage, à son approvisionnement, à son armement avec l'aide du bateau Anglais le Prince Alfred à Green Cay, il ressort qu'il y a eu négligence de la part des Autorités Coloniales Anglaises;

Considérant,

Que malgré les infractions évidentes à la neutralité de la Grande Bretagne, commises par l'Oreto, ce même navire, alors connu comme croiseur Confédéré sous le nom de Florida, fut encore à plusieurs reprises librement admis dans les ports des Colonies Britanniques;

Considérant,

Que le fait de l'entrée du Florida dans le port Confédéré de Mobile, et de son séjour dans ce port pendant quatre mois, ne saurait détruire la responsabilité antérieurement encourue par la Grande Bretagne;—

Est d'avis,

Que la Grande Bretagne a manqué aux devoirs prescrits dans les règles établies par l'Article VI du Traité de Washington, et que par conséquent elle est responsable des faits imputés au croiseur Confédéré le Florida, ainsi que de ceux imputés à ses navires auxiliaires le Clarence, le Tacony, et le Archer.

(Translation.)

The Florida.

THE Undersigned, after a conscientious examination of all the documents submitted to the Tribunal of Arbitration by the Governments of the United States and of Great Britain, relating to the Confederate cruizer the Florida,—

Considering,

That it results from all the facts relating to the building of the Oreto† in the port of Liverpool, and to the departure of that vessel and of the Bahama, freighted with arms for the Oreto—which facts did not induce the British authorities to employ any measures calculated to prevent the violation of the neutrality of Great Britain, notwithstanding the repeated warnings and representations of the Diplomatic and Consular Authorities of the United States—that the Government of Her Britannic Majesty neglected to use due diligence for the fulfilment of its duties as a neutral;

Considering,

That it results from all the facts relating to the stay of the Oreto at Nassau, to her seizure in that port, to her acquittal, to her departure from that port, to the enlistment of a crew, to her taking in supplies, to her armament at Green Cay, with

* Premier nom du Florida.

† First name of the Florida.

the assistance of the English vessel Prince Alfred, that there was negligence on the part of the English Colonial authorities;

Considering,

That, in spite of the evident infractions of the neutrality of Great Britain committed by the Oreto, this same vessel, then known as a Confederate cruizer, under the name of the Florida, was again on several occasions freely admitted into the ports of the British Colonies;

Considering,

That the fact of the entrance of the Florida into the Confederate port of Mobile, and of her stay of four months in that port, cannot annul the responsibility previously incurred by Great Britain;—

Is of opinion,

That Great Britain failed to fulfil the duties prescribed in the Rules laid down in Article VI of the Treaty of Washington, and that she is consequently responsible for the acts imputed to the Confederate cruizer Florida, as well as for those imputed to her tenders the Clarence, the Tacony, and the Archer.

Statement of Count Sclopis.

LE FLORIDA, *alias* ORETO.

EN me servant de la liberté que chacun des Arbitres s'est réservée de donner à l'expression de son opinion sur la décision de la cause telle forme qui lui paraîtrait plus convenable, je m'abstiendrai de suivre ici en détail toutes les phases de la carrière parcourue par le vaisseau le Florida. Je m'en rapporte pour l'ensemble aux volumineux documents qui nous ont été communiqués et qui ont par trois fois fourni matière aux dires des parties. Je ne suis pourtant pas moins obligé aux honorables collègues qui m'ont précédé en prenant la parole, des exposés qu'ils nous ont faits de la série des événements qui les ont conduits à asseoir un jugement, certes pas encore irrévocable, mais déjà toutefois très-fondé sur les derniers résultats de leurs investigations.

Je me bornerai donc, pour ma part, à vous faire connaître les points en fait qui ont eu le plus d'influence à établir mes convictions sur le fond des questions que nous avons à juger, convictions qui pourront bien se modifier par la suite de l'échange de vos idées, mais qui, pour le moment, me paraissent appuyées en fait et en droit.

Il ne me semble pas tout à fait nécessaire de s'étendre beaucoup sur la première partie de la carrière du Florida, puisque durant cet espace de temps ce vaisseau n'a ni fait de captures, ni donné aucun appui aux opérations des Confédérés. Il me suffit de constater que ce vaisseau a été construit en Angleterre, que dès les premiers jours il a été l'objet des avertissements adressés par le Ministre des Etats Unis à Londres au Gouvernement Britannique, sans que celui-ci, à part quelques renseignements qu'il a demandés sur la véritable destination du navire, se soit beaucoup occupé d'en empêcher la sortie. Il est également constaté que si ce vaisseau n'avait point l'actualité d'un bâtiment de guerre, il avait du moins la capacité de devenir tel à un moment donné, et qu'il a été enregistré comme un navire Anglais et monté par un équipage presque entièrement composé de sujets Britanniques.

On conteste l'appareil de guerre du Florida à l'époque où il sortit des eaux de la Grande Bretagne; mais il résulte d'un rapport des officiers du Greyhound, vaisseau de la Marine Royale de Sa Majesté Britannique, qu'à son arrivée à Nassau le Florida avait un complet appareil de guerre, et que seulement il manquait des munitions de guerre à son bord. Il résulte de plus que le capitaine de ce navire, formellement et solennellement interrogé en présence de trois de ses officiers et des officiers du Greyhound, si en quittant Liverpool le navire était déjà dans cet appareil, répondit: "*Yes, in all respects; and no alteration or addition had been made whatever.*"

C'est à son arrivée à Nassau que le caractère propre de ce vaisseau et les conséquences de sa véritable destination se dessinent.

Il faut que je revienne sur une autre déclaration claire et complète du même Capitaine commandant le Greyhound. Ce document me semble le plus convainquant pour la moralité de la chose. Le Capitaine Hickley n'hésite pas un moment à demander au Gouverneur de Nassau la saisie du navire.

Lorsqu'un officier de ce grade et de cette expérience dit que, dans la condition actuelle du Florida, son opinion professionnelle est "qu'avec son équipage, ses canons, ses armes et ses munitions, s'il est accompagné d'un autre vaisseau, il peut être prêt à livrer bataille dans vingt-quatre heures," tous mes doutes disparaissent, et la certitude se fait en moi des desseins immédiats de ce bâtiment.

La situation de Nassau, qui devint l'asile protecteur du Florida, augmente à mes yeux la responsabilité de l'Angleterre. Lord Russell n'hésitait pas à dire à M. Adams, dans une lettre citée à la page 714 du premier volume de l'Appendice au "Case" des Etats Unis, que "Nassau est une position de laquelle d'un côté les corsaires Confédérés ont pu porter un grand trouble dans le commerce des Etats Unis, et qui d'un autre côté a pu fournir une base d'opération convenable pour les forces maritimes des Etats Unis.

Ces circonstances données, n'était-il pas un devoir rigoureux pour l'Angleterre de veiller à ce que tous les devoirs de la plus scrupuleuse neutralité fussent remplis ?

Il est vrai que la Cour de la Vice-Amirauté de Bahama par son jugement, qu'on lit à la page 521 du cinquième volume de l'Appendice au "*Case*" Américain, a acquitté le Florida de toute accusation ; mais tout en respectant l'autorité de la chose jugée, je demande si on peut induire de là un argument solide de conviction morale, qui décharge le Gouvernement Anglais de sa responsabilité d'après les règles établies à l'Article VI du Traité de Washington. Je m'abstiens de répéter les développements que les honorables collègues qui m'ont précédé nous ont fournis à ce sujet.

Ce n'est point de la responsabilité juridique spéciale que nous avons à nous occuper ici ; c'est bien plutôt de la responsabilité qui dérive des principes du droit des gens ; c'est de la conviction morale que nous avons acquise par la suite des faits imputés au Florida.

Cette conviction s'accroît en considérant les termes de la conclusion du jugement de la Cour de Vice-Amirauté, où il est dit "que l'ensemble des circonstances de la cause est de nature à justifier de fortes présomptions qu'une tentative d'infraction à la neutralité, si sagement admise en principe par le Gouvernement de Sa Majesté, était en voie d'exécution."

La décision de la Cour de Vice-Amirauté peut donc être considérée comme concluante, si ce n'est comme parfaitement juste, entre ceux qui réclamaient le navire, et le Gouvernement Britannique qui en demandait la confiscation d'après les clauses du *Foreign Enlistment Act*, mais je ne pense pas qu'elle suffise pour débouter les Etats Unis de leurs prétentions envers le Gouvernement Anglais. Les Etats Unis n'étaient point en cause ; tout ce qui tient à ce procès est pour eux *res inter alios acta*.

Quant aux errements du Florida, tolérés sciemment, si ce n'est favorisés par le Gouvernement Britannique, tels que les représenta le Gouvernement des Etats Unis, le même Gouvernement Britannique déclare à la page 78 de son "Counter-Case" "qu'il n'a pas les moyens, soit de vérifier, soit de contester la vérité de ce que l'on avance. Tout en admettant que cela soit vrai, il ne peut, dit-il, y avoir de doutes qu'une violation de la souveraineté et des droits de neutralité de la Grande Bretagne a été commise. Mais du fait que cette violation a eu lieu, on ne peut pas arguer qu'il y ait eu de la négligence de la part du Gouvernement de Sa Majesté."

La conduite du commandant et de l'équipage du Florida, après qu'il fut relâché, justifie, et au-delà, tous les soupçons qu'on avait conçus sur le caractère véritable de son expédition.

Quant à ce qui se passa entre ce vaisseau et la goëlette Prince Alfred pour l'armement du premier, les nombreux *affidavits* relatés au sixième volume de l'Appendice Américain peuvent servir de preuve irrécusable des faits imputés au Florida.

On s'explique ainsi facilement pourquoi le Florida, tout en étant en appareil de guerre à son arrivée à Nassau, n'avait pas, ainsi que je l'ai noté, des munitions de guerre à son bord ; c'est qu'il en attendait par le Prince Alfred, à l'endroit convenu d'avance pour devenir le théâtre de ses opérations.

Les chargements de charbon jouent un rôle considérable dans les imputations faites au Florida. Le "Case" Américain dit que pendant un séjour de trente-six heures dans le port de Nassau, il en chargea une quantité suffisante pour trois mois de navigation. Je ne dois point omettre toutefois de faire observer que l'indication de la quantité de charbon ne résulte que de *l'affidavit* de John Demeritt, un ouvrier qui

avait travaillé pour le chargement du charbon, et qui dit que la quantité pouvait en être de 180 tonnes, quantité exubérante au jugement du Gouvernement des Etats Unis.

Ce Gouvernement prétend que le Gouverneur de Nassau, qui permettait ces largesses au Florida, n'avait accordé au vaisseau Fédéral le Dacotah la permission de charger du charbon que dans une proportion fort inférieure. Le Gouvernement Anglais fait ressortir le peu de solidité de ce chef d'accusation en assurant que le Gouverneur de Nassau n'avait aucune instruction qui lui défendît d'accorder la faculté de prendre plus de charbon, et que c'est le commandant du Dacotah qui n'en a pas voulu davantage.

Peu de temps après, le Florida chargea encore dans la rade des Barbades environ cent tonnes de charbon. Les plaintes soulevées à cet égard par le Contre-Admiral Wilkes n'obtinrent du Gouvernement de l'île qu'une réponse évasive.

Les Etats Unis demandent que le Gouvernement Anglais prouve qu'il n'y a pas eu de sa faute dans les facilités accordées au Florida pendant que ce vaisseau était dans les eaux territoriales des colonies Anglaises.

Il s'agirait donc d'appliquer la deuxième Règle de l'Article VI du Traité de Washington en considérant toutes les ressources que le Florida trouvait à Nassau, aux Bermudes, et aux Barbades comme l'usage d'une base d'opérations navales qui lui valurent quatorze prises de vaisseaux. Les dévastations ne se bornèrent point là; plusieurs autres vaisseaux de la Marine commerçant des Etats Unis devinrent sa proie, jusqu'à ce que ce vaisseau acheva sa carrière de croiseur à Bahia, le 7 Octobre, 1864.

Il paraît assez prouvé que la facilité avec laquelle on laissa le Florida s'approvisionner de charbon, malgré qu'il y eût défense de la part du Gouvernement Anglais d'établir des depôts de cette matière dans ces Colonies, ne répondait pas à la stricte neutralité qu'il aurait fallu observer dans ces parages, soit en vue des localités, soit à cause des sympathies que la population de ces mêmes colonies montrait pour la cause des Confédérés.

A ces données précises viennent s'ajouter des réclamations d'un genre de faits plus difficile à constater, tels que le trop de condescendance du Gouvernement Anglais à tolérer que le temps demandé pour procéder à des réparations et à des radoubs se prolongeât au gré du commandant du navire au delà de ce que le véritable besoin aurait exigé. On ne saurait toutefois ne pas reconnaître que le champ que le Florida avait choisi pour faire ses ravages réunissait des éléments spéciaux pour lui assurer des succès.

Quant au séjour du Florida dans le port de Mobile et aux conséquences qui purent en dériver, je me bornerai à les considérer comme une preuve spéciale du caractère décisif de la carrière du Florida, et j'adopte à ce sujet les réponses contenues sous le No. 25 des observations de notre honorable collègue M. Staempfli aux objections faites par la Grande Bretagne. Je me réserve expressément de traiter la question relative à l'effet que peut produire la transformation d'un corsaire en vaisseau de guerre d'un belligérant, lorsque cette matière, qui doit être considérée sous un point de vue général, entrera en discussion parmi nous.

Je m'abstiendrai d'inculper trop gravement le Gouvernement Britannique du salut officiel rendu par les autorités de Bermude au salut du Florida entrant dans le port; cela peut être la faute personnelle momentanée d'un employé d'un ordre inférieur, mais je maintiens que dans les affaires d'administration habituelle et dans ce qui tient à l'exécution de règlements spéciaux, la responsabilité des faits de tous les agents subalternes, lorsqu'il s'agit de controverse entre deux Etats, doit remonter à ceux qui tiennent le Gouvernement supérieur.

En considérant les *tenders* comme des corps détachés d'un corps d'armée et conséquemment sujets à la même responsabilité du vaisseau principal, on devra l'étendre aux cas du Clarence, du Taeony, et de l'Archer, qui ont servi successivement d'alléges au Florida.

Je finirai la série d'appréciations que je soumets à mes honorables collègues par une citation qui me paraît d'un poids décisif. Lord Russell dans une dépêche à Lord Lyons du 27 Mars, 1863, en rapportant une conversation qu'il avait eue avec M. Adams, s'exprime en ces termes: "Je lui ai dit que le Cabinet était d'opinion que la loi suffisait; mais qu'on n'avait pas pu toujours apporter des preuves légales; que le Gouvernement de la Grande Bretagne avait fait tout ce qui était en son pouvoir pour exécuter la loi, mais que je reconnaissais que les cas de l'Alabama et de l'Oreto avaient été un scandale, et en quelque degré un reproche à nos lois."

Il s'agit maintenant à mon avis de réparer les effets produits par les causes de ce scandale et de ce reproche en ne partant plus des dispositions d'un droit municipal,

mais des principes du droit des gens, et des règles posées à l'Article VI du Traité. La responsabilité de la Grande Bretagne y est engagée.

Bien édifiés sur les points de fait et de droit, nous allons procéder à l'examen de chaque chef de réclamations considéré séparément, et à l'analyse comparative de chiffres portés sur la liste révisée des réclamations produite par le Département d'Etat des Etats Unis, et de ceux portés sur les deux Rapports de la Commission nommée par le Conseil de Commerce produits par le Gouvernement Britannique.

(Translation.)

THE FLORIDA, *alias* ORETO.

AVAILING myself of the liberty which each Arbitrator has reserved to himself of giving to the expression of his opinion on the decision of the case, such form as may appear to him most convenient, I will abstain from following in detail here all the phases of the career of the vessel Florida. For this, as a whole, I refer to the voluminous documents which have been communicated to us, and which have furnished matter for three separate statements by the parties. I am none the less obliged, however, to my honourable colleagues who have spoken before me for the statements they have made to us of the series of events which have led them to form a judgment, not indeed as yet irrevocable, but still strongly defined as the final results of their investigations.

I will confine myself, then, for my part, to informing you of the points of fact which have had most influence in fixing my convictions on the subject-matter of the questions which we have to decide, convictions which may no doubt be modified in consequence of an interchange of opinions with you, but which, for the moment, seem to me to be supported both by facts and principles.

It does not seem to me to be very necessary to dilate much on the first part of the career of the Florida, since, during that period, this vessel neither made any captures, nor assisted in any way the operations of the Confederates. It is sufficient to state that this vessel was built in England, that from the first she was the object of representations addressed by the United States' Minister in London to the British Government, and that the latter, with the exception of some inquiries which it instituted as to the real destination of the vessel, made no great effort to prevent her departure. It is also proved that if this ship was not actually a vessel of war, she was, at all events, capable of becoming one at any moment, and that she was registered as an English vessel, and manned by a crew almost entirely composed of British subjects.

It is denied that the Florida was equipped for war at the time she left the waters of Great Britain, but it results from a report of the officers of the Greyhound, a vessel of the Royal Navy of Her Britannic Majesty, that on her arrival at Nassau, the Florida had a complete warlike equipment, and that all that was wanting on board of her were munitions of war. It further results that the captain of the vessel, when formally and solemnly interrogated in the presence of three of his officers, and of the officers of the Greyhound, whether the vessel was already thus fitted on leaving Liverpool, replied, "Yes, in all respects; and no alteration or addition had been made whatever."

It is on her arrival at Nassau that the true character of the vessel and the consequences of her real destination stand forth.

I must refer to another clear and complete declaration of the same captain commanding the Greyhound. This document seems to me most conclusive as to the moral aspect of the case. Captain Hickley does not hesitate for a moment to ask the Governor of Nassau to seize the vessel.

When an officer of this rank and experience says that, in the present condition of the Florida, his professional opinion is that, "with her crew, guns, arms, and ammunition, going out with another vessel alongside of her, she could be equipped in twenty-four hours for battle," all my doubts disappear, and I become convinced of the immediate intentions of the vessel.

The situation of Nassau, which became an asylum of protection for the Florida, increases in my view the responsibility of England. Lord Russell did not hesitate to tell Mr. Adams, in a letter given at page 714 of the first volume of the Appendix to the Case of the United States, that "Nassau is a position from which, on the one hand, Confederate privateers might have greatly annoyed the commerce of the United States, and which, on the other hand, might have been a convenient base of operations for the United States' Navy."

Under these circumstances, did it not become the imperative duty of England to take care that all the duties of the most scrupulous neutrality were fulfilled?

It is true that the Vice-Admiralty Court of the Bahamas, by its judgment, which is given at page 521 of the fifth volume of the Appendix to the American Case, acquitted the Florida of every charge; but, while respecting the authority of the *res judicata*, I ask whether it is possible to deduce from this an argument on which to found a moral conviction that the English Government is released from its responsibility under the Rules laid down in Article VI of the Treaty of Washington. I abstain from repeating the considerations into which my honourable colleagues who have preceded me have entered on this subject.

It is not the question of special legal responsibility with which we have here to deal, but rather that of the responsibility which results from the principles of international law, and the moral conviction at which we have arrived in consequence of the acts imputed to the Florida.

This conviction is strengthened by a consideration of the terms of the conclusion of the judgment of the Vice-Admiralty Court, where it is said, "that all the circumstances of the case taken together seem sufficient to justify strong suspicion that an attempt was being made to infringe that neutrality so wisely determined upon by Her Majesty's Government."

The decision of the Vice-Admiralty Court may then be considered as conclusive, even if not perfectly correct, as between those who claimed the vessel and the British Government, which claimed its confiscation under the clauses of the Foreign Enlistment Act; but I do not think it is sufficient to bar the claim of the United States against Great Britain. The United States were not parties to the suit; everything relating to it is for them *res inter alios acta*.

As to the proceedings of the Florida, knowingly permitted, if not favoured by the British Government, as represented by the Government of the United States, the same British Government declares, at page 78 of its Counter-Case, "that it has not the means of verifying or disproving the truth of this statement. Assuming it to be true, there can be no doubt that a violation of the sovereignty and neutral rights of Great Britain was committed by the Commander of the Florida. But the fact of such a violation having occurred does not argue negligence on the part of Her Majesty's Government."

The conduct of the commander and crew of the Florida, after she was released, justifies, and more than justifies, all the suspicions that had been entertained as to the true character of her voyage.

As to what passed between that vessel and the schooner Prince Alfred for the purpose of arming the former, the numerous affidavits given in the sixth volume of the American Appendix offer irrefutable evidence of the acts imputed to the Florida.

It is thus easily understood why the Florida, while equipped for war on her arrival at Nassau, had not, as I have mentioned, any munitions of war on board: it was because she expected them by the Prince Alfred, at the spot agreed on beforehand for the scene of her operations.

Supplies of coal play a considerable part in the charges brought against the Florida. The American Case says that, during a stay of thirty-six hours in the port of Nassau, she took in a sufficient quantity for three months' navigation. I must not, however, omit to observe that the statement of the quantity of coal results only from the affidavit of John Demeritt, a labourer who had worked at putting the coal on board, and who says that the quantity might be 180 tons, which is considered excessive by the United States' Government.

That Government asserts that the Governor of Nassau, who permitted these facilities to the Florida, had only granted to the Federal vessel Dacotah permission to take in a much smaller supply of coal. The English Government shows the unfounded character of this charge, declaring that the Governor of Nassau had no instructions which forbade him to grant permission to take more coal, and that it was the Commander of the Dacotah who did not choose to take more.

Shortly afterwards the Florida again took on board about 100 tons of coal in the port of Barbados. The complaints made on this point by Rear-Admiral Wilkes only elicited an evasive answer from the Governor of the island.

The United States call upon the British Government to prove that it is not in fault with regard to the facilities granted to the Florida whilst that vessel was in the territorial waters of the English Colonies.

Here then would be a case for the application of the second Rule of Article VI of the Treaty of Washington, taking all the resources which the Florida obtained at

Nassau, Bermuda, and Barbados as equivalent to the use of a base of naval operations which enabled her to make prize of fourteen vessels. Her devastations did not end there; several other vessels of the mercantile navy of the United States became her prey, until she terminated her career at Bahia on the 7th October, 1864.

It seems to be sufficiently proved that the facility with which the Florida was allowed to supply herself with coal, notwithstanding that the English Government had prohibited the formation of depôts of this article in those colonies, was not in conformity with the strict neutrality which should have been observed in these latitudes, whether in view of the nature of the localities or of the sympathy which the population of those same colonies showed for the Confederate cause.

To these precise data are added a class of facts more difficult to ascertain, such as too easy compliance on the part of the English Government in allowing the time requested for repairing and refitting to be prolonged at the will of the commander of the vessel, beyond what the real necessity of the case required. It cannot but be acknowledged, however, that the field which the Florida had chosen for her depredations offered special circumstances to insure her success.

As to the stay of the Florida in the port of Mobile, and the consequences resulting therefrom, I shall confine myself to considering them as a special proof of the decisive character of the career of the Florida, and I adopt on this subject the answers to the objections raised by Great Britain, contained in paragraph 25 of the observations of our honourable colleague, M. Staempfli. I reserve to myself expressly to treat the question relative to the effect which may be produced by the transformation of a privateer into a vessel of war of a belligerent, when that subject, which is to be considered generally, comes before us for discussion.

I refrain from attaching to the British Government any very serious blame for the official salute returned by the authorities of Bermuda to the salute of the Florida on her entry into that port; this may have been the personal fault at the moment of an official of subordinate rank, but I maintain that, in matters of habitual administration, and in what relates to the execution of special regulations, the responsibility for acts of all subordinate agents, in questions of controversy between two Governments, must attach to those who are charged with the supreme government.

Considering the tenders as corps detached from a *corps d'armée*, and consequently as subject to the same responsibility as the principal vessel, that responsibility must be extended to the cases of the Clarence, Tacony, and Archer, which served successively as tenders to the Florida.

I will conclude the series of opinions which I submit to my honourable colleagues by a quotation which appears to me to have decisive weight. Lord Russell, in a despatch to Lord Lyons of the 27th March, 1863, reporting a conversation which he had had with Mr. Adams, expresses himself in these terms:—"I said that the Cabinet was of opinion that the law was sufficient, but that legal evidence could not always be procured, that the British Government had done everything in its power to execute the law; but I admitted that the cases of the Alabama and Oreto were a scandal, and in some degree a reproach to our laws."

We have now, in my opinion, to repair the effects produced by the causes of that scandal and that reproach, no longer taking as our point of departure the provisions of a municipal law, but the principles of international law, and the Rules laid down in Article VI of the Treaty. Great Britain thereby becomes responsible.

Having acquired a complete knowledge of the points of fact and law, we shall now proceed to the examination of each head of claims considered separately, and to the comparative analysis of the figures contained in the revised list of claims presented by the Department of State of the United States, and those contained in the two Reports of the Committee appointed by the Board of Trade which have been presented by the British Government.

[N.B.—The statement of Sir A. Cockburn on the case of the Florida will be found embodied in his "Reasons for dissenting from the Award of the Tribunal" in Part II of the present series of papers (North America, No. 2, p. 116).]

No. 9.

Lord Tenterden to Earl Granville.—(Received August 1.)

My Lord, *Geneva, July 29, 1872.*

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 25th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 9.

Protocol No. XIV.—Record of the Proceedings of the Tribunal of Arbitration at the Fourteenth Conference, held at Geneva, in Switzerland, on the 25th of July, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal, and the Agents of the two Governments.

On the proposal of Baron d'Itajubá, as one of the Arbitrators, the Tribunal decided to require a written or printed statement or argument from the Counsel of Great Britain upon the following questions of law:—

1. The question of due diligence, generally considered;
2. The special question as to the effect of the commissions of Confederate ships of war entering British ports;
3. The special question as to supplies of coal in British ports to Confederate ships;

With the right to the other Party to reply either orally or in writing, as the case may be.

Baron d'Itajubá proposed that, when a proposition should be made to the Tribunal, the discussion of that proposition should always be put off to the next following Conference, which was agreed to.

The Tribunal then proceeded with the case of the Alabama.

The Tribunal also decided to consider at the next Conference the cases of the Sumter, Nashville, and Chickamauga successively.

The Conference was then adjourned until Monday, the 29th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statements of Mr. Adams, Baron d'Itajubá, M. Staempfli, and Count Sclopis on the Case of the Alabama, discussed at the Meeting of the 25th July.

Statement of Mr. Adams.

THE ALABAMA.

ON the 24th of June, 1862, Mr. Adams addressed a note to Earl Russell, reminding him of the representation he had made some time before touching the equipment of the Oreto, and alluding to the verification of his apprehension of its true destination.

In point of fact, Lord Russell had had in his hands for a fortnight a copy of a letter of Commander McKillop to the Secretary to the Admiralty, which has already been quoted in the Memoir on the Florida, as clearly indicating the character of that vessel and its destination.

Her Majesty's Government had then had no reason to doubt as to the nature of the vigilance which had been promised on the part of her officers at Liverpool, or of the manner in which it had been deceived.

Mr. Adams then proceeded to call his Lordship's attention to another and more remarkable case of a vessel in process of construction at Liverpool, in the yard of one of the most noted building firms of that place, intended for the same purpose as designated in the case of the Oreto, and controlled virtually by the same parties.

Mr. Adams at the same time transmitted to his Lordship a letter from Mr. Dudley, the Consul of the United States at Liverpool, addressed to himself, giving all the information touching the matter he had been able to collect.

On the next day Mr. Hammond, on behalf of his Lordship, addressed one letter to the Secretary of the Treasury, requesting immediate inquiries to be made respecting this vessel, &c., in the customary form.

At the same time he addressed another to the Law Officers of the Crown, transmitting the note of Mr. Adams and the letter of Mr. Dudley for their consideration, and asking for such observations as they might have to make on the subject.

It is presumed that this last measure was a precaution additional to anything that had been done in the case of the Oreto.

Five days later a report was made by the Law Officers, in reply to this application, in substance to this effect:—

"If the representation made by Mr. Adams is in accordance with the facts, the building and equipment of the steamer is a manifest violation of the Foreign Enlistment Act, and steps ought to be taken to put that Act in force, and to *prevent the vessel from going to sea*."

This was a great step in advance of anything that had taken place in the former case. It fully recognized the duty of prevention, and strongly recommended that proper steps be taken by the authorities at Liverpool to ascertain the truth, and if sufficient evidence could be obtained to justify proceedings under the Act, to take such proceedings as soon as possible.

Nothing could be more satisfactory than this direction. If it had been carried out in its spirit by the parties who had it in charge, there is little reason to doubt that the policy pointed out would have been effected.

But it appears more than doubtful whether this injunction produced the smallest effect upon the parties concerned. For it could hardly have reached its destination before the time at which the report of the Commissioners of the Customs was made up. That report was clearly made in answer to the earlier letter of Mr. Hammond of the 25th; for the reports of Mr. S. Price Edwards, the Collector, and of E. Morgan, Surveyor at Liverpool, dated the 28th instant, inclosed therein, precede by two days the opinion of the Law Officers. No allusion appears to be made to it in this reply. The substance of it is the admission of the fact that the vessel is intended for a ship of war. But no evidence has been produced of its destination sufficient to justify proceedings, and unless the Consul, Mr. Dudley, should be able to submit such evidence to the Collector of the port, any attempt to seize the vessel would end only in entailing upon the parties concerned very serious consequences.

The report of the Commissioners terminates in the customary form, to wit:—

"We beg to add that the officers at Liverpool will keep a strict watch on the vessel, and that any further information that may be obtained concerning her will be forthwith reported."

On a first examination this paragraph would seem by its terms to imply a promise in the nature of a pledge of constant vigilance; but upon comparing the phrases with the almost identical ones used in the preceding case of the Oreto, and observing the results which happened in both cases, it must be inferred that it was regarded by the parties only as one of the established forms of ending a despatch.

A copy of this report was, on the 4th of July, transmitted to Mr. Adams, with a request that the United States' Consul at Liverpool, Mr. Dudley, should be instructed to submit to the Collector of the Customs such evidence as he might possess tending to show that his suspicions as to the destination of the vessel were well founded.

The name of this Collector was S. Price Edwards, and I have already had occasion to point out in my examination of the destination of the Oreto the very peculiar situation in which he was placed by the representations on that subject made by him at that time to Her Majesty's Government.

Mr. Dudley, in accordance with Mr. Adams's instructions, accordingly addressed to Mr. Edwards on the 9th July, a letter furnishing a long array of details as to the nature and source of the information he had obtained, and providing, as it would appear, abundant means of prosecuting further inquiries if there were any inclination so to do.

To this letter Mr. S. Price Edwards replied by promising that he would submit it to the consideration of the Board of Customs. He did not fail, however, to add an expression of opinion that the statements made by him must, first of all, be substantiated by evidence furnished by himself.

But this Mr. S. Price Edwards happened to have received from the same Consul, Mr. Dudley, nearly three weeks before, a letter giving many details strongly pointing to the destination of this vessel, which, so far as appears from these papers, must have been entirely suppressed. It has been published in one of the latest volumes of the papers appended to the American Case. I can only account for this omission upon the supposition that as Mr. Dudley's letter addressed to Mr. Adams on the following day had found its way to him soon after, he inferred that a notice of the latter would do for both. The fact really is, however, that the evidence is of a different kind, and, though not decisive in itself, was calculated to open a way to further investigation if such were desired.

The letter of the 9th July was referred to the Solicitor of the Customs, Mr. Hamel, who replied in the customary manner—"insufficient evidence."

On the 15th of July the Commissioners of Customs wrote to the Collector of Liverpool to the same effect, and on the 17th copies of papers were sent to the Treasury for the information of the Lords Commissioners.

Thus it appears that three weeks had passed since the injunction laid upon the authorities of the Customs at Liverpool to ascertain the truth, and not a syllable had been returned to them excepting of a negative character. No sufficient evidence of intention offered to them, and no disposition to search for any; that was the sum of the whole matter.

Tired of waiting for the action of Her Majesty's Government, Mr. Adams, on the 17th July, wrote instructions to Mr. Dudley to employ a solicitor, and get up affidavits to lay before the Collector. That officer had had abundant reason to know, in the case of the Oreto, how difficult it was, in a city swarming with sympathisers in the success of these adventures, for him to find persons who, however clearly they might know what was going on, were not at all disposed to subject themselves to the odium attending a public declaration of the truth. He did, however, by the 21st succeed in procuring six persons ready to take their depositions before the Collector. The process was completed, and the Collector transmitted them on the 22nd to the Commissioners of Customs, who handed them to the Solicitor, who promptly returned his customary reply, "no sufficient evidence." But the United States' authority might try to stop the vessel at their own risk.

But there were two influences now converging from different quarters which were destined to threaten the sluggish officers of the Customs with responsibilities much greater than their Solicitor had laboured to throw upon the United States.

The one proceeded from the United States' Agents, who had assumed the entire labour of procuring eight depositions to prove what should have been established by the energy of Her Majesty's Government itself, the intent and destination of the gun-boat. But they seem scarcely likely to have had any chance of weight if supported exclusively by the authority of their judgment alone. The first symptom now appeared of the possibility of a doubt of the policy which had been marked out by the Customs Solicitors. The papers had been submitted to the consideration of an eminent gentleman of the law, a Queen's Counsellor, Mr. R. P. Collier, who, in reply, gave the following as his deliberate opinion:—

"I have perused the above affidavits, and I am of opinion that the Collector of Customs would be justified in detaining the vessel. Indeed, I should think it his duty to detain her, and that if after the application which has been made to him, supported by the evidence which has been laid before me, he allows the vessel to leave Liverpool, he will incur a heavy responsibility, of which the Board of Customs, under whose directions he appears to be acting, must take their share."

The last sentence was the most significant of all. It was this:—

"It well deserves consideration whether, if the vessel be allowed to escape, the Federal Government would not have serious grounds of remonstrance."

The idea that, instead of a responsibility for stopping the vessel thrown upon the United States, there was to be a responsibility to be imposed upon the Customs authorities and their superiors in office, appears never to have entered into their conception. It was like a thunderbolt in a clear sky.

The Assistant Solicitor of Customs immediately sought to put himself under the protection of the Law Officers of the Crown. Meanwhile the same papers had been transmitted by Mr. Adams to Lord Russell, and by him likewise referred to the Law Officers of the Crown.

These papers reached their destination at different dates: those sent from the Customs on the 23rd July, in the evening, whilst those from Mr. Adams got to them

three days later, though his note appears to have been dated on the 24th. It is obvious that this difference could have no effect in delaying their decision. But one additional deposition was added, which could scarcely have done more than confirm the result.

Five whole days passed before a decision was returned. Meanwhile the vessel was rapidly getting ready to depart. On the 28th, Mr. Dudley's Solicitor sent a communication to the Board of Customs, to the effect that they had every reason to believe the vessel would go on the 29th. This letter did not reach them until the 29th. The vessel sailed on the 29th. That intelligence likewise was obtained from the same source. Meanwhile what becomes of the profession made on the 1st of July by the Commissioners of Customs, that "a strict watch should be kept on the vessel, and that any further information that might be obtained concerning her would be *forthwith* reported."

To be sure, on the 1st of August, Mr. S. Price Edwards addresses a letter to the Commissioners of Customs, in which appears the following significant line, "The Board will see that the vessel has left the port." How they could have seen through the spectacles presented by that officer remains to be explained. The Surveyor, however, is more communicative. On the day before he gravely states that he had followed the Collector's directions to keep a strict watch on the vessel. He is confident she had no ammunition on board. He had visited the tug Hercules, where he found a considerable portion of the crew, some of whom were on their way in that vessel to join the gunboat. Mr. Dudley had given the same information to the Collector. Even then the vessel could have been traced and stopped by an energetic interposition of Government authority. The Commissioners of Customs preferred to send harmless telegraphic orders to Liverpool and Cork, to Beaumaris and Holyhead, which looked like dispatch, but could by no reasonable probability have been of any avail. And the Collector could promise that "*should opportunity offer*, the vessel should be seized in accordance with the directions given." It is presumed this must have meant if the vessel should voluntarily present itself, and not otherwise. On a calm examination of the evidence presented to us respecting the measures taken by the authorities charged with the duty of prevention, it really looks as if they had chosen to look any way for it rather than the right way.

Upon a careful comparison of the language and the action of Mr. Edwards, the Collector, as it has been heretofore explained in my observations upon the case of the Florida, with the course taken by him in this case, it is very difficult in my mind to resist the suspicion that he was more or less in direct sympathy with the designs of the insurgents, and not unwilling to accord to them all the indirect aid which could be supplied by a purely passive policy on his part. Very surely, if he had wished actively to promote their ends, he could scarcely have hit upon more effective means than those to which he resorted.

It is alleged that the escape of this vessel was effected earlier than originally contemplated, by reason of the reception, by the managers, of intelligence from London of the intent of the Government to detain her. This statement appears in the deposition of one of the persons who served as an officer on board from the start and during the whole of her first cruize. Certainly a delay of five whole days in announcing a decision might furnish ample opportunity for active sympathisers, of whom there was notoriously an abundance in that capital, to watch and report every symptom of change that might be gathered from sources of authority. Even the fact of the long delay itself might be construed as ominous. Of the causes of that delay no absolute knowledge has ever yet been completely obtained. Neither is it deemed expedient here to enter into any examination of it. It is sufficient to the present purpose to say that the omission to act in season was due to causes wholly within the province of Her Majesty's Government to control, and that the failure is one which must entail the responsibility for the great injuries that ensued, not upon the innocent parties whom it was the admitted duty of that Government to have protected, but upon those through whom the injuries became possible.

One portion of this transaction having been, by the means already indicated, with difficulty accomplished, the other portion remaining to complete it met with no resistance whatever. The British steamer Bahama, laden with the armament prepared for the vessel by Fawcett, Preston, and Co., and having for passengers the insurgent Americans and others destined to command the cruizer, cleared on the 13th of August on the pretence of going to Nassau. The English barque Agrippina almost simultaneously left London, ostensibly for Demerara, laden with coals and munitions of war. Somewhere about the third week in August the three steamers met at Angra Bay in the Azores, and under the sanction of the British flag this great fraud reached the

point of its full accomplishment. The hospitality so freely extended to strangers of all nations in that kingdom, at once so enlightened and so energetic, had been basely abused, almost with an intent, not merely to gain an undue advantage on the ocean, but to sow the seeds of dissension between it and a kindred nation with which it was under the most solemn obligations to keep the peace.

Thus it was that the vessel which then first received the name of the Alabama commenced her reckless career of destruction on the ocean. Everything on board of her was of British origin, excepting a few of the directing spirits bent on making use of the means thus placed in their hands to do an injury to their fellow-countrymen in America which they could have compassed in no other possible manner.

I pass over the minor details of the mode in which supplies of coal were subsequently obtained exclusively from British sources, as matters of relatively little consequence, and come to what appears to me the next essential point in the narrative.

On the 11th of January, Captain Semmes, whilst on his cruise off the coast of the United States, met the United States' gun-boat Hatteras, and, after a short engagement, sent her to the bottom. He was compelled to take the prisoners on board, and having received six large shot-holes at the water line, to navigate the ocean not without peril, in quest of a port of some sovereign Power or other in which he could not only land his excess of numbers but likewise obtain the necessary means wherewith to renew his capacity of cruising at all. The captain seems to have reflected upon the matter carefully, and to have made up his mind that, although at a very considerable distance from his actual position, his best chance of a favourable reception would be in a port of the kingdom whose laws had been so dexterously defied. He accordingly made his way, not without great difficulty, to Port Royal in Her Majesty's Island of Jamaica. In his own statement of this transaction will be most clearly discovered the state of his feelings on approaching this crucial experiment :—

> "This was the first English port I had entered since the Alabama had been commissioned, and no question whatever as to the antecedents of my ship was raised. I had, in fact, brought in pretty substantial credentials that I was a ship-of-war, 130 of the officers and men of one of the enemy's sunken ships. Great Britain had the good sense not to listen to the frantic appeals either of Mr. Seward or Minister Adams, both of whom claimed, as the reader has seen, that it was her duty to stultify herself and ignore the commission of my ship. Nor did Commodore Dunlop say anything to me of my destruction of British property, &c."

From this passage it appears very clearly that the possibility of such an obstacle had not been entirely out of the line of his apprehension. If the objection had been made, it is altogether probable that the career of this vessel would have been terminated in a manner very different from that which subsequently happened. But it was not raised. Governor Eyre, who was then the ruling authority, appears to have acted with some hesitation, and to have been mainly determined by the obvious necessity of landing the great number of prisoners as a pure act of humanity. The order sanctioning the repairs does not appear to have been expressed by him in terms, and he immediately addressed a letter to the Duke of Newcastle, the Colonial Secretary at home, submitting the facts, and soliciting his approbation.

On the 14th of February, by a letter from Mr. Hammond, on behalf of Earl Russell, that approbation appears to have been granted, though not without reluctance, for it is followed by an injunction to get rid of the vessel as soon as possible.

Nevertheless the evil was done. And by this proceeding Her Majesty's Government appear, at least to my eyes, practically to have given their formal assent to the principle in international law that SUCCESS SANCTIFIES A FRAUD. In the Memoir which I have heretofore prepared on the subject of the Florida, I have gone so much into the examination of that question that there is no necessity for my dwelling upon it further. I have always regretted that on this occasion Her Majesty's Government failed to use the occasion for establishing a law on the ocean most consistent with the principles of equity which should prevail upon men, and not unlikely, in the distant future, to enure to the benefit of her own marine quite as largely as to that of any other nation.

The next step in the order of events essential to the purposes of the narrative was the arrival of Captain Semmes at Cape Town. But I do not, at this time, propose to pursue the matter farther, partly because the consideration of it is likely to be renewed in examining the case of the Tuscaloosa, and partly because the facts material to a judgment in the case seem to me to have been already collected.

It thus appears, that this vessel was built and fitted up with the intent to carry on war with the United States, in the kingdom of Great Britain, in violation of her law and that, notwithstanding the evidence of the fact was established so far in the opini

of Her Majesty's Law Officers as to justify detention, by reason of the absence of due vigilance, not without suspicion of connivance on the part of some of Her Majesty's officers, and of an extraordinary delay in issuing the necessary orders at the most critical moment, the vessel was suffered to escape out of the jurisdiction. That her armament, her supplies and her crew were all provided and transported from Her Majesty's kingdom without the smallest effort to investigate their nature or their purposes. That though orders were freely given for the detention of the vessel at any of the colonial ports at which she might arrive, the first time that she did actually appear she was received and recognized with all the honours due to the marine of a recognized belligerent Power, without the smallest manifestation of dissatisfaction with the gross violation of laws that had entailed upon Her Majesty's Government a grave responsibility to a Power with which she was at peace.

Thus it appears to me beyond a doubt that in the case of the Alabama, Great Britain, by her omission to exercise due diligence in preventing the fitting out of this vessel, which it had reason to believe intended to cruize against a Power with which it is at peace, has failed to fulfil the duties set forth in the first Article prescribed to the Arbitrators as their guide under the terms of the Treaty of Washington.

Statement of Baron d'Itajubá.

L'ALABAMA.

LE Soussigné, après examen consciencieux de tous les documents soumis au Tribunal d'Arbitrage par les Gouvernements des Etats Unis et de la Grande Bretagne relatifs au croiseur Confédéré l'Alabama,—

Considérant,

Que de tous les faits relatifs à la construction du "290,"* dans le port de Liverpool, à son équipement et armement sur les côtes de Terceira par les soins des bateaux Anglais l'Agrippina et le Bahama, après que le navire Anglais le Hercule lui eut amené un équipage, il ressort clairement que le Gouvernement de la Grande Bretagne a négligé d'employer les dues diligences pour le maintien des devoirs de sa neutralité, puisque, malgré les avis et réclamations réitérées des Autorites Diplomatiques et Consulaires des Etats Unis pendant le cours de la construction du "290," on ne prit aucune mesure convenable, et que celles finalement prises pour faire arrêter le navire furent si tardivement ordonnées qu'elles ne purent être exécutées;

Considérant,

Qu'après la fuite du navire, les mesures prises pour le poursuivre et le faire arrêter furent si incomplètes qu'elles n'amenèrent aucun résultat et ne peuvent être considérées comme suffisantes pour dégager la responsabilité de la Grande Bretagne;

Considérant,

Que malgré les infractions flagrantes à la neutralité de la Grande Bretagne commises par le "290," ce même navire, alors connu comme croiseur Confédéré sous le nom de l'Alabama, fut encore admis à plusieurs reprises dans les ports des colonies Britanniques, quand il aurait fallu procéder contre lui dans le premier port Britannique où il aurait été rencontré;—

Est d'avis,

Que la Grande Bretagne a manqué aux devoirs prescrits dans les règles établies par l'Article VI du Traité de Washington, et que par conséquent elle est responsable des faits imputés au croiseur Confédéré l'Alabama, ainsi que ceux imputés à son navire auxiliaire le Tuscaloosa.

(Translation.)

THE ALABAMA.

THE Undersigned, after a conscientious examination of all the documents submitted to the Tribunal of Arbitration by the Governments of the United States and of Great Britain, relating to the Confederate cruizer the Alabama,—

* Chiffre sous lequel l'Alabama fut désigné dans l'origine.

Considering,

That it results clearly from all the facts, relating to the building of the 290* in the port of Liverpool, to her equipment and armament on the coast of Terceira by the aid of the English vessels Agrippina and Bahama, after the English vessel Hercules had conveyed a crew on board of her; that the Government of Great Britain neglected to use due diligence for the fulfilment of its duties as a neutral, since, notwithstanding the repeated warnings and representations of the Diplomatic and Consular authorities of the United States whilst the 290 was in course of construction, no suitable measures were taken, and those which were at length adopted for the arrest of the vessel were ordered so late that they could not be executed;

Considering,

That, after the escape of the vessel, the measures taken for pursuing and arresting her were so incomplete that they led to no result, and cannot be considered as sufficient to free Great Britain from responsibility;

Considering,

That, in spite of the flagrant infractions of the neutrality of Great Britain committed by the 290, this same vessel, then known as a Confederate cruizer under the name of the Alabama, was again admitted on several occasions into the ports of British Colonies, whereas she ought to have been proceeded against in the first British port in which she might have been found;—

Is of opinion,

That Great Britain failed to fulfil the duties prescribed in the Rules laid down in Article VI of the Treaty of Washington, and that she is consequently responsible for the acts imputed to the Confederate cruizer Alabama, as well as for those imputed to her tender the Tuscaloosa.

Statement of M. Staempfli.

L'ALABAMA.

(A.)—FAITS.

I.—*Ce qui se passa jusqu'au moment où ce vaisseau s'échappa de Liverpool.*

1. Il fut commandé à Liverpool, les plans en furent acceptés et le marché fut signé par Bullock, le 9 Octobre, 1861; machines de la force de 300 chevaux, percé de six canons de 32 sur les côtes; armé en outre de deux canons à pivot, dont l'un rayé de 100 livres et l'autre lisse de 8 pouces.

Le 15 Mai, il fut mis à l'eau sous le nom de "290."

2. Le 23 Juin, 1862, *première réclamation d'Adams à Lord Russell*, disant que c'était un vaisseau de guerre, qu'il fallait en arrêter l'expédition ou constater que ce bâtiment n'était pas destiné à opérer contre les Etats Unis.

3. Le 25 Juin, cette réclamation est transmise par Lord Russell au Secrétaire de la Trésorerie;

Aux Jurisconsultes de la Couronne;

Le Secrétaire de la Trésorerie la transmet aux Commissaires des Douanes;

Ceux-ci au Collecteur.

4. Les Jurisconsultes de la Couronne font rapport à Lord Russell, le 30 Juin, disant: "Si les faits présentés par M. Adams s'accordent avec la vérité, c'est une violation manifeste du Foreign Enlistment Act, . . . *mais il faut des preuves.* Ils conseillent d'ailleurs à Lord Russell de communiquer à M. Adams que *le Gouvernement va s'enquérir de l'affaire.*"

5. Le Collecteur fait rapport aux Commissaires des Douanes, et ceux-ci s'appuyant sur sa déclaration, rapportent à leur tour, le 1er Juillet, à la Trésorerie:—

"Est destiné à des usages de guerre;

"Plusieurs boîtes à poudre embarquées, mais pas de canons;

"Pour un Gouvernement étranger, ce qui n'est pas nié par MM. Laird; mais ils

* Number by which the Alabama was originally designated.

ne paraissent pas disposés à répondre à aucune question relative à la destination future du vaisseau, lorsqu'il aura quitté le port de Liverpool.

" Les Agents n'ont point d'autre source de renseignements certains.

" Le Consul devrait communiquer tous les documents qu'il possède.

" *Les officiers de Liverpool exerceront une stricte surveillance sur le vaisseau.*

6. Le 4 Juillet, 1862, Lord Russell transmet ces rapports à M. Adams, et relève entr'autres les points suivants :—

" Que le Gouvernement va s'enquérir de l'affaire,"—que le Consul Dudley " devrait communiquer au Collecteur les documents,—*que les fonctionnaires de Liverpool surveilleront attentivement le vaisseau.*"

7. Entre la réclamation de M. Adams et la réponse de Lord Russell, il se passa quinze jours pour arriver au résultat que " *les preuves ne sont pas suffisantes.*"

8. *Deuxième essai des Agents Américains.*

Le 9 Juillet, 1862, le Consul Dudley au Collecteur :—Communication des documents.

9.—10. Le Collecteur ne les trouve pas suffisants, " *il demande des preuves légales.*"

Le 10 Juillet, 1862, l'Inspecteur au Collecteur :—a trouvé le vaisseau dans le même état que lors de sa première visite.

Le 11, le Solliciteur aux Commissaires des Douanes :—repose sur des *ouï-dire ;* qu'elle est inadmissible ; *rien qui monte à des preuves suffisantes pour justifier une saisie.*

Le 15, Commissaire au Collecteur : pas suffisantes pour justifier la saisie.

10. Le 21, Consul au Collecteur, avec témoins et dépositions assermentées :—demande la saisie.

" Collecteur aux Commissaires :—demande des instructions par télégraphe, *attendu que le navire paraît prêt à prendre la mer* et peut partir à tout moment.

" Les Commissaires au *Solicitor* pour préavis."

Le 22, l'Assistant du Solliciteur et le Solliciteur aux Commissaires :—

" Sommes d'avis qu'il n'y a *pas de preuves suffisantes.*

" Les Commissaires au Collecteur :—

" Pas de preuves suffisantes, *mais le Consul peut se charger des poursuites à ses risques et périls.*"

Les mêmes à la Trésorerie :—Communication des pièces. S'il y aurait lieu à consulter les Jurisconsultes de la Couronne ?

Hamilton (Commissaire à la Trésorerie) à Layard, Sous-Secrétaire du Foreign Office : " *Comme le cas peut être jugé pressant,* je vous écris officieusement pour économiser du temps ; *on dit que le navire est, peu s'en faut, prêt à prendre la mer.*"

11. Adams à Lord Russell :—Communication des documents et preuves de Dudley.

Le 23, réception des pièces au Foreign Office.

Foreign Office aux Jurisconsultes de la Couronne :—" Communiquez votre opinion à Lord Russell *aussitôt que vous le pourrez.*"

Dudley au Conseil des Douanes :—

Communication de deux nouvelles dépositions *avec consultation de M. R. P. Collier,* qu'il y a violation flagrante du Foreign Enlistment Act.

Le Conseil des Douanes à l'Assistant Solicitor pour préavis.

L'Assistant Solicitor au Conseil :—*n'apportent pas un renfort essentiel, mais vu la haute position de M. Collier,* les Lords de la Trésorerie pourraient recourir aux lumières des Jurisconsultes de la Couronne.

Layard communique aussi toutes ces pièces additionnelles ce jour même aux Jurisconsultes avec recommandation de communiquer leur avis *dans le plus bref délai* à Lord Russell.

12. Le 29, matin, les Jurisconsultes au Comte Russell :—*recommandez la saisie du vaisseau jusqu'à ce que les accusés aient prouvé sa destination innocente ; ordre de saisie partit immédiatement pour Liverpool.*

Dudley au Conseil des Douanes, du 28 :—avertit que le vaisseau doit partir le 29.

13. *Le vaisseau sort dans la nuit du 28 au 29 Juillet,* 1862.

14. Du 9 au 29, il s'écoula vingt-et-un jours, et le résultat de ce délai fut *la fuite du vaisseau.*

II.—*Mesures prises pour poursuivre l'Alabama.*

15. Deux jours après que la fuite du vaisseau fut connue, les Commissaires des Douanes donnèrent le premier ordre de le poursuivre, le 31 Juillet, 1862, d'abord aux

Collecteurs de Liverpool et de Cork, leur intimant de saisir le navire, s'il venait à aborder à l'un de ces ports.

Le 1er Août, le même ordre fut donné aux Collecteurs de *Beaumaris* et de *Holyhead.*

Le 2 Août, cet ordre fut aussi envoyé au Gouverneur des Iles Bahamas, pour le port de Nassau ; il n'y eut point de communications faites, ni d'instructions envoyées à d'autres ports et Colonies Britanniques ; il n'y eut point de vaisseaux envoyés à la poursuite dans les eaux Britanniques voisines.

Dans la nuit du 30 au 31, deux jours après sa fuite de Liverpool, le vaisseau était encore dans les eaux Britanniques de Moelfra et d'Anglesey. La poursuite du "290" dans ces eaux eut lieu trop tard.

III.—*Le Hercule amène un Equipage.*

16. Le remorqueur l'Hercule, qui ramena à Liverpool MM. Laird, constructeurs de navires, et leurs dames, qui avaient accompagné le "290," embarqua dans ce dernier port un certain nombre de matelots destinés au "290." Le Collecteur, instruit de ce fait par une lettre de Dudley du 30 Juillet, 1862, fit examiner le navire l'Hercule.

L'officier chargé de l'exécution de cet ordre rapporta "qu'il y avait à bord un certain nombre de personnes qui admirent qu'elles faisaient partie de l'équipage et qu'elles allaient rejoindre la canonnière."

Malgré cela, le Collecteur n'arrêta point l'Hercule.

Lui qui avait l'ordre de saisir le "290" ne fit pas même suivre l'Hercule.

Il en écrivit à Londres par la poste, au lieu de télégraphier.

Il ne reçut non plus de Londres aucun ordre relatif à l'enrôlement ; on le chargea seulement de s'informer s'il y avait à bord de la poudre et des canons.

Le patron de l'Hercule reconnut lui-même, le 1er Août, "avoir emmené vingt-cinq à trente hommes, qui, à ce qu'il croyait, devaient faire partie de l'équipage du '290.'"

Le "290" quitta la Baie de Moelfra avec un équipage d'environ quatre-vingt hommes, et arriva le 10 Août sur les côtes de *Terceira.*

IV.—*L'Agrippina et le Bahama amènent des Armes et du Charbon.*

17. L'Agrippine, Capitaine Quinn, arriva, le 18 Août, 1862, de Londres à Terceira, ayant à bord du charbon, des canons et des munitions pour le "290."

Le Bahama, le même vaisseau qui devait avoir mené l'armement au Florida, vint ensuite de Liverpool, le 20 du même mois, ayant à bord Semmes et d'autres officiers du Sumter pour le "290," ainsi que des canons et des munitions, qui avaient été régulièrement acquittés en douane à Liverpool.

Le transbordement du charbon, des canons et des munitions sur le "290" eut lieu du 20 au 23.

Dimanche, le 24 Août, 1862, le "290" arbora le pavillon des insurgés et prit le nom de l'Alabama.

Bullock et d'autres revinrent à bord du Bahama.

V.—*Croisière et sort final de l'Alabama.*

18. Il partit de Terceira pour les Indes Occidentales. A la Martinique, l'Agrippine lui fournit de nouveau du charbon. Dans le Golfe du Mexique, il détruisit des vaisseaux de la marine marchande des Etats Unis et le vapeur de guerre le Hatteras.

Le 18 Janvier, 1863, il arriva à la Jamaïque, y déposa ses prisonniers, fit ses réparations et embarqua des provisions. Trois vaisseaux de guerre Britanniques étaient présents ; mais il ne paraît pas qu'il soit jamais venu de Londres l'ordre d'arrêter le navire.

Il quitta la Jamaïque le 25 Janvier pour se rendre sur les côtes du Brésil ; à Bahia il rencontra le Georgia. De là il fit voile pour le Cap de Bonne Espérance, et le 23 Juillet il entra au port de Table Bay. Le cas qui se présenta en voyage avec le Tuscaloosa sera décrit plus loin, sous le No. VI.

De cet endroit il partit pour les Indes Orientales et, le 23 Décembre, 1863, il jeta l'ancre à Singapore, où il fit du charbon. Le 20 Mars, 1864, il revint à la Ville du Cap

(Capetown), où il se repourvut également de charbon. Quitta ce port le 25 Mars, et jeta l'ancre à Cherbourg le 11 Juin, 1864.

Ce fut à sa sortie de ce port, le 19 Juin, qu'il fut coulé à fond par le vaisseau de guerre des Etats Unis, le Kearsarge.

Une partie des officiers et de l'équipage furent sauvés par le yacht Anglais le Deerhound qui se trouvait dans ces parages.

VI.—*Le Tender Tuscaloosa.*

19. En route depuis les côtes du Brésil au Cap de Bonne Espérance, "l'Alabama" captura le "Conrad," navire de commerce des Etats Unis, de Philadelphie, se rendant de Buenos Ayres à New York avec une cargaison de laine.

On amena ce navire à la Ville du Cap (Capetown) sous le nom de Tuscaloosa, et en annonçant qu'il était commissionné comme croiseur.

Cette simple déclaration fut acceptée, et au départ du vaisseau principal pour l'Océan Indien, Semmes envoya le Tuscaloosa croiser sur les côtes du Brésil.

A son retour à la Ville du Cap, le vaisseau fut saisi par le Gouverneur et retenu jusqu'à la fin de la guerre.

(B.)—Considérants.

Pour ce qui concerne l'Alabama, la Grande Bretagne n'a pas rempli les obligations qui lui incombaient en vertu des trois Règles du Traité de Washington :—

I.—*A l'égard de la Construction et de la Fuite du Vaisseau.*

(*a.*) Il est hors de doute que l'Alabama a été préparé comme vaisseau de guerre des Etats insurgés dans des ports Britanniques ;

(*b.*) Les précédents de l'Oreto faisaient un devoir aux autorités Britanniques d'être sur leurs gardes vis-à-vis de faits de ce genre ;

(*c.*) A la suite des dénonciations de Dudley et d'Adams, elles ne prirent pourtant pas la moindre initiative en vue de s'enquérir du véritable état des choses, malgré qu'elles eussent donné l'assurance que les autorités prendraient la chose en mains ;

(*d.*) Après que l'on eut fourni des preuves suffisantes, l'examen de celles-ci fut tellement retardé, et les mesures prises pour faire arrêter le vaisseau furent si défectueuses, que le navire put s'échapper immédiatement avant que l'on eût donné l'ordre de le saisir.

II.—*A l'égard des Mesures prises pour le faire poursuivre.*

(*a.*) Les ordres de poursuivre et d'arrêter le vaisseau après sa fuite ne furent donnés que quarante-huit heures plus tard, et ne furent adressés qu'à quelques ports rapprochés ;

(*b.*) Il ne fut donné aucune instruction aux autres ports de la Grande Bretagne ni à ceux d'outre-mer, excepté à ceux de Nassau ;

(*c.*) Il n'y eut pas même de vaisseaux envoyés à la poursuite dans les eaux Anglaises du voisinage.

III.—*A l'égard de Poursuites Judiciaires à cause de l'Enrôlement d'un Equipage et de l'Armement.*

(*a.*) Il n'y eut pas plus d'enquête instituée contre ceux qui avaient enrôlé l'équipage de l'Alabama et ceux qui lui avaient amené son armement, que contre ceux qui l'avaient commandé et ceux qui l'avaient construit ;

(*b.*) On ne considère point comme enquête sérieuse les peines disciplinaires prononcées contre quelques matelots de l'Alabama, revenus en Angleterre.

IV.—*A l'égard de la libre Admission dans des Ports Britanniques subséquemment accordée à ce Navire.*

(*a.*) L'armement du vaisseau dans la juridiction de l'Angleterre et contrairement à la neutralité était constaté par l'arrêt de saisie rendu par les autorités Britanniques ;

(*b.*) Il en était de même de la sortie illégale et frauduleuse du navire du port de Liverpool.

(*c.*) L'on avait aussi constaté la connaissance et la complicité du Gouvernement des insurgés, qui avait commissionné le vaisseau, et respectivement des agents de ce Gouvernement à Liverpool et des officiers qui commandaient le navire;

(*d.*) Les autorités Britanniques avaient donc non seulement le droit, mais encore le devoir, de saisir ce vaisseau, dans quelque port Britannique qu'on le rencontrât;

(*e.*) Le Gouvernement Britannique a même reconnu ce droit et ce devoir pour ce qui concerne le port de Nassau.

V.—*Les objections suivantes ne sont pas fondées.*

(*a.*) Que l'armement et l'équipement du vaisseau n'ont pas eu lieu dans la juridiction Britannique, mais seulement dans les eaux situées en dehors de cette juridiction;

D'après la Règle I, et selon une interprétation naturelle des obligations du droit des gens, une préparation même partielle à des buts de guerre n'est pas admissible; c'est ce que, du reste, les Jurisconsultes de la Couronne en Angleterre ont reconnu eux-mêmes dans leur préavis du 29 Juillet, 1862; en outre, il est constaté que même l'armement et le premier équipement de l'Alabama furent préparés dans la juridiction Britannique et partirent de ports Britanniques; une division des circonstances du délit n'invalident pas ce délit en lui-même, surtout lorsqu'on rencontre, chez toutes les personnes intéressées, la même connaissance et la même intention criminelle;

(*b.*) Que le vaisseau ayant été commissionné pour les Etats insurgés, une saisie de ce vaisseau dans la juridiction Anglaise n'était plus admissible; cette objection est réfutée par la règle générale de droit No. 5,* posée au commencement de ce projet.

(*c.*) Que la Grande Bretagne ne peut être responsable pour des négligences qui ont pu se présenter de la part d'employés subalternes dans la poursuite du vaisseau, pour l'indiscrétion qui a pu se commettre par un subalterne inconnu, concernant la saisie imminente, &c.: pris isolément, un acte d'imprudence ou de négligence de la part d'autorités et d'employés subalternes n'entraîne pas nécessairement, il est vrai, la responsabilité pour les conséquences extrêmes de cet acte; mais lorsqu'il s'agit d'une série de négligences, chacun des faits prend alors de l'importance;

(*d.*) Que les Etats Unis se sont eux-mêmes rendus coupables de négligence;

En fournissant défectueusement et trop tard des preuves par le moyen de leurs agents;—cette objection est refutée par la règle générale de droit No. 4,* posée plus haut;

Par la conduite peu active du vaisseau de guerre le Tuscarora dans les eaux de Liverpool; quand même il serait établi, ce fait ne serait pas une excuse pour les actes de négligence des autorités Britanniques.

(Translation.)

THE ALABAMA.

(A.)—FACTS.

1.—*What took place up to the time when this vessel escaped from Liverpool.*

1. She was ordered at Liverpool, the plans were accepted and the contract signed by Bullock, the 9th October 1861; her engines were of 300 horse-power, she was piereed for six 32-pounder broadside guns; she was further provided with two pivot guns, the one a rifled 100-pounder, the other an 8-inch smooth-bore gun.

On the 15th May she was launched under the name of the "290."

2. On the 23rd June, 1862, *Mr. Adams' first representation to Lord Russell*, stating that she was a vessel of war, and that her departure must be stopped, or that it must ascertained that this vessel was not intended for operations against the United States.

3. June 25, this remonstrance is transmitted by Lord Russell to the Secretary to the Treasury;

To the Law Officers of the Crown;

The Secretary to the Treasury forwards it to the Commissioners of Customs;

These latter to the Collector.

4. The Law Officers of the Crown report to Lord Russell, June 30, as follows: "If the facts alleged by Mr. Adams are in accordance with truth, it is a manifest violation of the Foreign Enlistment Act, . . . *but evidence is necessary.* They

* See p. 183.

further advise Lord Russell to inform Mr. Adams that *the Government will investigate the case.*"

5. The Collector reports to the Commissioners of Customs, and the latter, relying on his statement, report in their turn to the Treasury, on the 1st July, that:—

"She is intended for warlike purposes;

"Several powder cannisters are on board, but no guns;

"She is built for a Foreign Government, a fact which is not denied by Messrs. Laird; but they do not appear disposed to reply to any questions respecting the future destination of the vessel after she leaves Liverpool.

"The agents have no other reliable source of information.

"The Consul should communicate all the documents in his possession.

"*The officials at Liverpool will keep a strict watch on the vessel.*"

6. July 4, 1862, Lord Russell transmits these reports to Mr. Adams, and informs him among other things:—

"That the Government will inquire into the matter,"—that Consul Dudley "ought to communicate the documents to the Collector,—*that the officials at Liverpool will watch the vessel attentively.*"

7. Between Mr. Adams' representation and Lord Russell's reply, fifteen days elapsed before the result was arrived at that "*the evidence is insufficient.*"

8. *Second effort of the American Agents.*

9. July 9, 1862, Consul Dudley to the Collector:—Communication of documents.

9—10. The Collector is not satisfied with them,—"*he asks for legal evidence.*"

July 10, 1862, the Inspector informs the Collector that he finds the vessel in the same condition as on the occasion of his first visit.

On the 11th, the Solicitor writes to the Commissioners of Customs that the evidence rests on *hearsay*; that it is inadmissible; *that there is nothing which amounts to proof sufficient to justify a seizure.*

On the 15th, the Commissioners inform the Collector that the case is not sufficient evidence to warrant a seizure.

10. On the 21st, the Consul to the Collector, with witnesses and sworn depositions:—demands the seizure of the vessel.

"The Collector to the Commissioners:—requests instructions by telegraph, *as the vessel appears to be ready for sea*, and may leave at any moment.

"The Commissioners to the Solicitor for opinion."

On the 22nd, the Assistant-Solicitor and the Solicitor to the Commissioners:—

"We are of opinion that *there is not sufficient evidence.*

"The Commissioners to the Collector:—

"Not sufficient evidence, *but the Consul may take proceedings at his own risk and peril.*"

The same to the Treasury:—Communicate documents. Shall the Law Officers of the Crown be consulted?

Hamilton (Commissioner to the Treasury) to Layard, Under-Secretary of State for Foreign Affairs: "*As the case may be considered pressing,* I write to you unofficially to save time; *it is said that the vessel is very nearly ready for sea.*"

11. Adams to Lord Russell:—Communication of Dudley's documents and evidence.

July 23, documents received at the Foreign Office.

Foreign Office to the Law Officers of the Crown:—"To report their opinion to Lord Russell *as soon as possible.*"

Dudley to the Board of Customs:—

Communicates two fresh depositions *with an opinion of Mr. R. P. Collier,* that there is a flagrant violation of the Foreign Enlistment Act.

The Board of Customs to the Assistant Solicitor for opinion.

The Assistant Solicitor to the Board:—the documents *do not materially strengthen the case, but in consideration of the high position of Mr. Collier,* the Lords Commissioners of the Treasury might have recourse to the Law Officers of the Crown for their opinion.

Layard communicates all these additional documents also, on the same day, to the Law Officers, requesting them to report their opinion to Lord Russell *at the earliest possible moment.*

12. On the morning of the 29th, the Law Officers write to Lord Russell: *Order the arrest of the vessel until the accused shall have proved her destination to be innocent. The order for her seizure was immediately sent to Liverpool.*

Dudley informs the Board of Customs on the 28th:—that the vessel is to sail on the 29th.

13. *The vessel sails during the night of the 28th–29th of July*, 1862.

14. From the 9th to the 29th, twenty-one days elapsed, and the result of this delay was *that the vessel escaped.*

II.—*Measures taken to pursue the Alabama.*

15. Two days after the escape of the vessel had become known, the Commissioners of Customs on the 31st July, 1862, gave the first order to pursue her, to the Collectors at Liverpool and Cork in the first place, desiring them to seize her if she should touch at either of those ports.

On the 1st August the same order was sent to the Collectors at *Beaumaris* and *Holyhead.*

On the 2nd August this order was also sent to the Governor of the Bahamas, for the port of Nassau; no communications or instructions were sent to any other British ports or colonies; no ships were dispatched in pursuit into neighbouring British waters.

On the night of the 30th, 31st, two days after her escape from Liverpool, the vessel was still in British waters off Moelfra and Anglesey. The pursuit of the "290" in these waters took place too late.

III.—*The Hercules brings her a crew.*

16. The tug Hercules, which brought back to Liverpool the Messrs. Laird and their ladies, who had accompanied the "290," took on board at the latter port a certain number of sailors intended for the "290." The Collector being informed of this fact by a letter from Dudley, dated July 30, 1862, caused the Hercules to be searched.

The officer charged with the execution of this order reported, "that there were on board a certain number of men who admitted that they formed part of the crew, and were about to join the gun-boat.

In spite of this the Collector did not arrest the Hercules.

Although he had been ordered to seize the "290," he did not even cause the Hercules to be followed.

He wrote about her to London by post instead of telegraphing.

Nor did he receive from London any instructions with regard to the enlistment; he was only desired to find out if there were powder and guns on board.

The Captain of the Hercules himself acknowledged, on the 1st of August, that he had "taken off from twenty-five to thirty men who, as he believed, were about to form part of the crew of the '290.'"

The "290" left Moelfra Bay with a crew of about eighty men and arrived on the 10th of August, off the coast of *Terceira.*

IV.—*The Agrippina and Bahama bring Arms and Coal.*

17. The Agrippina, Captain Quinn, arrived at Terceira, from London, on the 18th of August, 1862, having on board coal, guns, and ammunition for the "290."

The Bahama, the same vessel which was to have taken her armament to the Florida, next arrived from Liverpool on the 20th of the same month, with Semmes and other officers of the Sumter on board for the "290," and also guns and ammunition, which had been regularly cleared at the Custom-house at Liverpool.

The transhipment of coal, guns, and ammunition to the "290" took place from the 20th to the 23rd.

On Sunday, August 24, 1862, the "290" hoisted the insurgent flag, and took the name of the Alabama.

Bullock and others returned on board of the Bahama.

V.—*Cruize and eventual Fate of the Alabama.*

18. She left Terceira for the West Indies. At Martinique the Agrippina supplied her afresh with coal. In the Gulf of Mexico she destroyed some vessels of the United States' merchant navy and the war-steamer Hatteras.

On the 18th January, 1863, she arrived at Jamaica, landed her prisoners, made repairs, and shipped stores. Three British men-of-war were in port, but no order appears ever to have arrived from London for the arrest of the vessel.

She left Jamaica on the 25th January for the coast of Brazil; at Bahia she fell in with the Georgia. Thence she sailed for the Cape of Good Hope, and, on the 23rd of July entered the harbour of Table Bay. The circumstance which arose on the

voyage in connection with the Tuscaloosa will be mentioned further on, under No. VI.

She left Table Bay for the East Indies, and, on the 23rd December, 1863, she anchored at Singapore, where she coaled. On the 20th March, 1864, she returned to Capetown, where she also coaled. She left this port on the 25th March, and anchored at Cherbourg on the 11th June, 1864.

It was on leaving this port, on the 19th June, that she was sunk by the United States' man-of-war Kearsurge.

Part of the officers and crew were saved by the English yacht Deerhound, which happened to be in the neighbourhood.

VI.—*The Tender Tuscaloosa.*

19. Whilst on her way from the coast of Brazil to the Cape of Good Hope, the Alabama captured the Conrad, a United States' merchant-vessel, of Philadelphia, bound from Buenos Ayres to New York with a cargo of wool.

This vessel was brought to Capetown under the name of the Tuscaloosa, it being announced that she was commissioned as a cruizer.

This mere declaration was accepted, and, on the departure of the principal vessel for the Indian Ocean, Semmes dispatched the Tuscaloosa to cruize off the coast of Brazil.

On her return to Capetown the vessel was seized by the Governor and detained till the end of the war.

(B.)—Considerations.

With regard to the Alabama, Great Britain did not fulfil the obligations incumbent on her by virtue of the three Rules of the Treaty of Washington.

I.—*With regard to the building and escape of the vessel.*

(*a.*) It is beyond doubt that the Alabama was fitted out in British ports as a vessel of war of the insurgent States.

(*b.*) The example of the Oreto made it the duty of the British Authorities to be on their guard against acts of this kind.

(*c.*) They nevertheless did not in any way take the initiative, on the representations of Dudley and Adams, with the view of inquiring into the true state of affairs, although they had given an assurance that the Authorities should take the matter up.

(*d.*) After sufficient evidence had been furnished, the examination of it was so much procrastinated, and the measures taken to arrest the vessel were so defective, that she was enabled to escape just before the order for her seizure was given.

II.—*With regard to the measures taken for her pursuit.*

(*a.*) The orders to pursue and arrest the vessel were not given until forty-eight hours afterwards, and were only sent to a few ports close at hand.

(*b.*) No instructions were sent to the other ports of Great Britain or to those beyond the seas, except to those of Nassau.

(*c.*) Nor were vessels even sent in pursuit into the neighbouring English waters.

III.—*With regard to judicial proceedings on account of the enlistment of a crew, and of the armament of the vessel.*

(*a.*) There were no proceedings instituted either against those persons who had enlisted the crew of the Alabama, or against those whose had conveyed her armament on board, or against those who had ordered, or those who had built her.

(*b.*) The disciplinary penalties inflicted on some seamen of the Alabama on their return to England cannot be looked upon as a serious prosecution.

IV.—*With regard to the free admission to British ports subsequently allowed to this vessel.*

(*a.*) The fact that the vessel was armed within English jurisdiction, and in contravention of neutrality, was established by the order for her seizure issued by the British Authorities.

(*b.*) The same is the case with regard to the illegal and fraudulent departure of the vessel from the port of Liverpool.

(*c.*) The cognizance and complicity of the insurgent Government, which had

commissioned the vessel, as also of the agents of that Government at Liverpool, and of the officers who commanded her, had likewise been established.

(*d.*) Not only, therefore, had the British authorities the right, but it was also their duty, to seize this vessel, in whatever British port she might be found.

(*e.*) The British Government even admitted this right and this duty so far as the port of Nassau is concerned.

V.—*The following objections are not valid :—*

(*a.*) That the arming and equipping of the vessel did not take place within British jurisdiction, but only in waters lying beyond that jurisdiction.

By the 1st Rule, and according to the natural interpretation of the obligations of the law of nations, even a partial equipment for warlike purposes is not allowable. This is, moreover, admitted by the English Law Officers of the Crown in their report of July 29, 1862; it is further established that even the armament and the original equipment of the Alabama were prepared within British jurisdiction, and shipped from British ports. A division of the circumstances attending an offence does not, in itself, do away with the offence, more especially when the same cognizance and criminal purpose attach to all the persons concerned.

(*b.*) That, the vessel having been commissioned for the insurgent States, her seizure within British jurisdiction was not allowable; this objection is refuted by the 5th general rule of law laid down at the beginning of this draft.*

(*c.*) That Great Britain cannot be held responsible for the negligence of which subordinate officials may have been guilty in the pursuit of the vessel, for indiscretions which may have been committed by some unknown subordinate with regard to her impending seizure, &c.; taken by itself, an act of imprudence or negligence on the part of subordinate authorities or officials does not, it is true, necessarily entail responsibility for the extreme consequences of such act, but when a series of acts of neglect are in question, each of the acts in that case becomes of importance.

(*d.*) That the United States were themselves guilty of negligence—

In having furnished incomplete and tardy evidence through their agents;—this objection is refuted by the 4th general rule of law laid down above.*

By the inaction of the vessel of war Tuscarora in the waters of Liverpool;—even if this fact were established, it would be no excuse for acts of negligence on the part of the British authorities.

Statement of Count Sclopis.

L'ALABAMA.

LE vaisseau qui a eu le triste privilége de donner son nom à la masse de réclamations adressées par le Gouvernement des Etats Unis au Gouvernement de Sa Majesté Britannique, a été l'objet de vives sollicitudes de la part des représentants des Etats Unis dès le temps où il était en construction.

Le contrat pour cette construction avait été conclu par le Capitaine Bullock, agent connu des Confédérés, d'une part, et par MM. Laird de l'autre. C'était évidemment un vaisseau de guerre. Il était d'environ 900 tonnes, avait 230 pieds de long, 32 de large, 20 de profondeur; quand il était approvisionné et était pourvu de charbon nécessaire à une croisière, son tirant était de 15 pieds. Sa machine était de la force de 300 chevaux: il était armé de huit canons, six sur les côtés et deux à pivot placés, l'un à l'avant, l'autre à l'arrière du grand mât. Le 15 Mai 1862, le vaisseau fut lancé sous le nom de "290," chiffre de construction au chantier. Des réclamations formelles furent portées à Lord Russell par M. Adams, le 23 Juin; il y était expressément fait demander d'arrêter l'expédition projetée, ou bien d'établir que le vaisseau n'avait pas d'intentions hostiles contre le peuple des Etats Unis. M. Adams se fondait sur la voix publique, sur les présomptions spéciales, et sur une lettre interceptée par le Gouvernement des Etats Unis.

Lord Russell remit l'affaire au Département compétent du Gouvernement de Sa Majesté Britannique. Il s'ensuivit un rapport des officiers des Douanes dans lequel il est dit que les constructeurs du navire n'essayaient pas de dissimuler un fait très-évident, savoir, qu'il était destiné à devenir un vaisseau de guerre. Une surveillance spéciale fut promise de la part du Gouvernement Britannique. Le système adopté par les fonctionnaires de la Douane pendant tout ce cours de plaintes de M. Adams était

* See page 185.

de ne prendre aucune initiative et d'exiger toujours une instance formelle de la part des Etats Unis recevable par les tribunaux Anglais. Un éminent légiste Anglais, Sir R. P. Collier, interrogé par le Consul Américain à Liverpool, n'hésita point à déclarer que le vaisseau en question pouvait être saisi par le chef des officiers de Douanes au susdit port, et il conseilla au dit Consul de s'adresser au Ministère des Affaires Etrangères, afin qu'il ratifiât cette saisie si elle était faite, ou l'ordonnât si elle ne l'était pas.

Cinq *affidavits* furent produits, que M. Collier d'abord et ensuite le Gouvernement reconnurent comme preuves concluantes sur la qualité et la destination du vaisseau en pleine contravention au *Foreign Enlistment Act;* si ce statut n'est pas appliqué *dans cette circonstance*, ajoutait M. Collier, *il n'est guère qu'une lettre morte.* Le Consul Américain à Liverpool remit cette consultation au Sous-Secrétaire d'Etat des Affaires Etrangères, et au Secrétaire du Bureau des Douanes. Le Sous-Secrétaire d'Etat ne donna pas de suite immédiate à cette communication, et le Secrétaire du Bureau des Douanes dut attendre les ordres des Lords de la Trésorerie qui ne lui parvinrent que le 28 Juillet; les mêmes documents furent aussi communiqués à Lord Russell. Ce même jour, 28 Juillet, les Conseillers Légaux de la Couronne ayant formulé leur avis de faire arrêter le vaisseau, le 29 des ordres furent donnés dans ce sens par le Gouvernement Britannique. Pour justifier le long délai qui était intervenu entre la présentation des documents au Ministère des Affaires Etrangères et le prononcé de l'avis des Conseillers Légaux de la Couronne, on invoqua la circonstance de la maladie de l'Avocat de la Reine. On a de la peine à s'arrêter sur cette excuse, du moment qu'il se trouvait d'autres légistes qui pouvaient remplacer ce fonctionnaire, et qu'il y avait péril en la demeure. Sur ces entrefaites, le vaisseau eut tout le temps de s'échapper. Je ne m'étendrai pas sur les détails des précautions prises par le Commandant de l'Alabama pour éluder la vigilance assez peu sévère des officiers des Douanes, ni sur les calculs des distances, plus ou moins longues, qu'on aurait à franchir pour arriver à temps de faire arrêter le navire touchant à Beaumaris, à Moelfra Bay, et à Point Lynas. Ces difficultés d'agir promptement à la dernière heure ne couvrent pas, il faut l'avouer, le manque d'une surveillance active, telle qu'elle avait été promise, mais qui malheureusement n'a pas été exercée.

Qu'il me soit permis de reproduire ici un passage du Plaidoyer de la Grande Bretagne, où il est dit à propos des plaintes des Etats Unis, au sujet de l'évasion de l'Alabama: "C'est demander qu'un Gouvernement avec ses branches variées, ses ressorts dont l'action est nécessairement compliquée et plus ou moins méthodique, fonctionne en tout temps avec une précision mécanique qui n'est pas applicable au train ordinaire de la vie." Il me paraît d'abord que les circonstances où se trouvait le Gouvernement Britannique, en ce moment, n'étaient point précisément le train ordinaire de la vie. Trop d'intérêts étaient en jeu, trop de craintes et d'espérances se contrecarraient au commencement de la lutte formidable entre le Nord et le Sud de l'Union Américaine, pour que les affaires qui avaient trait à ces grandes agitations dussent suivre le train ordinaire de la vie.

Les mesures à prendre pour sauvegarder la neutralité Anglaise n'étaient d'ailleurs ni trop compliquées ni trop ardues. Il aurait suffi que les officiers des Douanes eussent été plus attentifs, plus alertes, et peut-être moins prévenus en faveur d'une cause qui, à Liverpool et dans d'autres chantiers Anglais, était devenue populaire.* Il y a lieu d'être quelque peu surpris, en entendant le Collecteur des Douanes s'ériger en appréciateur de preuves légales, tandis qu'il aurait fallu recourir promptement à des moyens plus directs de garantir les devoirs de la neutralité. Dans le "Counter-Case" présenté par le Gouvernement de Sa Majesté Britannique (page 81), je lis qu'il est vrai que dans des cas de cette nature, les Gouvernements neutres s'attendent d'*ordinaire* à recevoir des renseignements des Ministres ou des Consuls qui représentent sur leurs territoires les Puissances belligérantes. Je m'arrête sur le mot d'*ordinaire* (ordinarily) et j'en déduis que le Gouvernement Britannique reconnaît lui-même, avec grande raison, qu'il peut y avoir des cas extraordinaires où un neutre doit agir sans attendre des renseignements d'un belligérant, pour faire respecter sa neutralité.

Que le cas du No. 290 ne fut point un cas ordinaire, cela me paraît démontré, puisque sa construction avait donné l'éveil à tant de sollicitudes.

Quand le départ de ce vaisseau fut constaté, Lord Russell, prévoyant que probablement il ne pourrait plus être arrêté dans les eaux où on allait le chercher aux côtes de l'Angleterre, dit, qu'au surplus il donnerait des ordres pour l'arrêter à Nassau, où il était probable qu'on le trouverait.

Quand l'Alabama quitta la Baie de Moelfra, il avait un équipage de quatre-vingt

* Voir "Speeches and Dispatches of Earl Russell," vol. ii, p. 259 à 260.

hommes, il suivit pendant quelque temps la mer d'Irlande, puis tourna la côte nord de cette île et se dirigea sur Terceira, l'une des Açores, où elle arriva le 10 Août.

L'Alabama fut rejoint dans les eaux de Terceira par deux vaisseaux : l'Agrippine et le Bahama, sortis également des ports d'Angleterre, qui lui apportèrent un renfort considérable de canons, de munitions et d'approvisionnements.

L'action combinée de vaisseaux portant et recevant des munitions et des approvisionnements constitue un fait complexe emportant une responsabilité solidaire. A ceux qui soulèveraient des doutes à cet égard, on pourrait répondre avec les paroles de Sir Robert Peel, prononcées dans la séance de la Chambre des Communes, le 28 Avril, 1830 :—" Etait-ce à dire qu'aucune expédition n'était une expédition militaire à moins que les troupes n'eussent leurs armes avec elles sur le même vaisseau ? Si les troupes étaient sur un vaisseau et les armes sur un autre, cela faisait-il une différence ? Une telle prétention était-elle supportable par le sens commun ? "

Le vaisseau armé complétement en guerre, quitta son indicateur arithmétique " 290 " pour prendre le nom d'Alabama, hissa le pavillon du Gouvernement des Confédérés, qu'à l'occasion cependant il remplaçait par le pavillon Britannique pour mieux tromper les vaisseaux qu'il voulait attaquer. Il entreprit et poursuivit ainsi ses courses aventureuses et dévastatrices. Elles parurent décrites avec des détails minutieux et techniques dans le journal tenu à bord par M. Fullam, et même sous des formes romanesques dans un ouvrage destiné à défrayer la curiosité publique, alors surexcitée. Parmi les destructions de vaisseaux opérées par l'Alabama, il y eut celui du steamer de guerre Fédéral, le Hatteras.

Arrivé à la Jamaïque, l'Alabama y rencontra dans le port trois vaisseaux de guerre Anglais. Au lieu d'être arrêté dans ces eaux Anglaises par des navires Anglais, l'équipage y reçut le meilleur accueil ; on lui donna les moyens de réparer ses avaries, et sept jours après l'Alabama se dirigea sur la côte du Brésil et de là vers le Cap de Bonne Espérance.

La conduite des autorités Anglaises, dans ces circonstances, fut approuvée par Lord Russell, qui se borna à espérer que ce vaisseau aurait été requis de partir aussitôt après que les réparations indispensables auraient été terminées.*

Arrivé à la baie de Saldanha dans la colonie du Cap de Bonne Espérance et partant dans les eaux territoriales de la souveraineté Anglaise, le Commandant de l'Alabama informa le Gouvernement qu'il était venu à cette baie dans le but de faire quelques réparations indispensables.

Le Consul des Etats Unis ne tarda pas à protester en demandant que le vaisseau fût saisi et envoyé en Angleterre, d'où il s'était échappé clandestinement, en ajoutant qu'on ne pouvait pas considérer comme une réparation urgente du navire celle que l'on faisait, c'est-à-dire, de le repeindre. Le même Consul ajoutait qu'il avait vu de ses propres yeux l'Alabama exécuter des prises dans ces mêmes eaux. Il lui fut répondu par le Gouvernement que cela s'était passé à une distance de la côte à laquelle la juridiction Anglaise ne pouvait pas s'étendre.

Après son arrivée à la ville du Cap, le Commandant de l'Alabama informa le Gouvernement qu'il avait laissé hors des eaux Anglaises une de ses captures précédentes le Tuscaloosa, et qu'elle arriverait bientôt en qualité de *tender*. Ce navire arriva en effet, céda sa cargaison de laine à un marchand de Cape Town pour la transporter en Europe, afin d'y être vendue. La cargaison fut débarquée sur un point appelé Angra Pequeña, en dehors de la juridiction Britannique.

Lorsque le Tuscaloosa parut dans cet endroit, le Contre-Amiral Anglais, Sir Baldwin Walker, écrivit au Gouverneur pour savoir si ce vaisseau devait être encore considéré comme une prise, bien qu'il n'eût jamais été condamné comme telle par un Tribunal compétent. Il insista dans son opinion tout à fait opposée à la tolérance du Gouverneur : celui-ci en référa à l'Attorney-General, et répondit ensuite d'après l'avis de ce dernier, mais dans des termes qui trahissaient une conviction chancelante, que ce navire pouvait se considérer comme vaisseau de guerre.

Une correspondance s'ensuivit entre le Gouverneur du Cap et le Ministre des Colonies, Duc de Newcastle, sur la légalité des captures. Ce Ministre désapprouva la conduite du Gouverneur et l'application des principes de droit sur lesquels l'Attorney-General s'était fondé.

Pendant que cela se passait, le Tuscaloosa était rentré dans le port et s'étant ainsi placé dans les limites de la juridiction Anglaise, il fut saisi. Le Gouvernement Britannique informé de cet acte, le désavoua et fit rendre ce vaisseau au Lieutenant Confédéré qui le commandait ; dans le cas où cet officier eût quitté le Cap, il ajouta qu'il fallait attendre pour remettre le vaisseau à la personne que le Commandant de

* Lettre de M. Hammond à Sir F. Rogers, 14 Février, 1863.

l'Alabama ou le Gouvernement des Etats Confédérés auraient désignée à cet eff le Ministre Anglais, revenant en quelque sorte sur ses premières décisions, bas des instructions relatives à la restitution du navire *sur les circonstances exceptionnelles* de l'affaire.*

Le Ministre de Sa Majesté Britannique déclare dans la même dépêche *qu'il n'est plus utile de discuter si à son retour au Cap le Tuscaloosa conserrait toujours le caractère d'une prise ou s'il avait perdu ce caractère pour prendre celui d'un bâtiment de servitude armé pour l'Alabama, et si ce nouveau caractère, dûment constaté et admis, lui aurait donné droit aux mêmes priviléges d'admission qu'on aurait accordés à son vainqueur l'Alabama.*

Dans ma qualité d'arbitre je ne puis pas écarter une discussion, quand même elle ne serait point utile à l'une des parties, et je dois avouer que les observations faites d'abord avec autant de loyauté que de bon sens par le Contre-Amiral Walker, de la Marine Britannique, me paraissent devoir diriger l'opinion des juges dans la décision de ce point que le Gouvernement Britannique envisageait comme difficile et douteux.

En me résumant, je suis d'avis que le vaisseau nommé l'Alabama a gravement compromis la neutralité Britannique. Conséquemment, la responsabilité de la Grande Bretagne se trouve engagée tant pour les faits du dit vaisseau que pour ceux de son *tender* le Tuscaloosa.

(Translation.)

THE ALABAMA.

THE vessel which had the unenviable privilege of giving its name to the mass of claims advanced by the Government of the United States against the Government of Her Britannic Majesty was the object of anxious care on the part of the Representatives of the United States from the time when she was in course of building.

The contract for her construction had been concluded between Captain Bullock, a known agent of the Confederates, on the one part, and Messrs. Laird on the other. She was evidently a vessel of war. She was of about 900 tons, was 230 feet in length, 32 in breadth, and 20 in depth; when provisioned and supplied with the coal necessary for a cruize she drew 15 feet of water. Her engines were of 300 horse-power, she carried eight guns, six broadside and two on pivots, one forward, the other abaft the mainmast. On the 15th May, 1862, the vessel was launched under the name of the 290, her building number in the yard. Formal representations were addressed to Lord Russell by Mr. Adams on the 23rd June, in which he made an express demand that the projected expedition should be stopped, or else that it should be established that the purpose of the vessel was not inimical to the people of the United States. Mr. Adams based his statements on public report, on special presumptions, and on a letter intercepted by the Government of the United States.

Lord Russell referred the matter to the proper Department of Her Britannic Majesty's Government. A report was received from the Customs officers in which it was said that the builders of the vessel did not attempt to disguise what was, in fact, apparent, namely, that she was intended for a ship of war. The British Government promised to keep special watch on her. The system adopted by the Customs officials during the whole course of Mr. Adams' complaints was to take no initiative, and to require always a formal requisition on the part of the United States, admissible before an English Court of law. An eminent English Counsel, Sir. R. P. Collier, consulted by the American Consul at Liverpool, did not hesitate to declare that the vessel in question might be seized by the Principal Officer of Customs at that port, and he advised the said Consul to apply to the Secretary of State for Foreign Affairs to ratify the seizure if made, or to direct it if it was not.

Five affidavits were produced, which Mr. Collier, in the first instance, and the Government afterwards, recognized as furnishing conclusive evidence that the character and destination of the vessel were in direct contravention of the Foreign Enlistment Act. If the Act is not enforced *on this occasion*, added Mr. Collier, *it is little better than a dead letter.* The American Consul at Liverpool forwarded this opinion to the Under-Secretary of State for Foreign Affairs, and to the Secretary to the Board of Customs. The Under-Secretary of State took no immediate steps upon this communi-

* Dépêche du Duc de Newcastle à Sir P. Wodehouse, 10 Mars, 1864:—"I have now to explain that this decision was not founded on any general principle respecting the treatment of prizes captured by the cruizers of either belligerent, but on the peculiar circumstances of the case."

cation, and the Secretary to the Board of Customs had to await the orders of the Lords of the Treasury, which only reached him on the 28th July; the same documents were also communicated to Lord Russell. That same day, the 28th, the Law Officers of the Crown having given their opinion that the vessel should be seized, orders were given in that sense on the 29th by the British Government. To justify the length of time which elapsed between the presentation of the documents to the Minister for Foreign Affairs, and the delivery of the opinion of the Law Officers of the Crown, the circumstance of the illness of the Queen's Advocate has been advanced. It is difficult to accept this excuse, bearing in mind that there were other Counsel to replace this officer, and that any delay was perilous. Under these circumstances, the vessel had ample time to escape. I will not enter into the details of the precautions taken by the Commander of the Alabama to elude the not over strict vigilance of the Customs officers, nor into the calculations of the distances, longer or shorter, which had to be traversed, in order to arrive in time to arrest the vessel on her touching at Beaumaris, Moelfra Bay, and Point Lynas. These difficulties in the way of prompt action at the last moment do not, it must be admitted, atone for the want of an active supervision such as had been promised, but which, unfortunately, was not exercised.

Allow me here to reproduce a passage from the pleadings of Great Britain, in which it is said, with reference to the complaints of the United States on the subject of the escape of the Alabama, "It is a demand that the conduct of a Government, with its various departments, with modes of action which are, of necessity, methodical and more or less complex, shall proceed with a mechanical precision which is not applicable to the practical business of life."* It seems to me, in the first place, that the circumstances in which the British Government was placed at this moment were not exactly the ordinary course of life. Too many interests were at stake, too many contending fears and hopes were brought into play at the commencement of the formidable contest between the north and the south of the American Union, to allow of the matters which related to these great agitations following the ordinary course of life.

The measures to be taken for the preservation of English neutrality were, moreover, neither very complicated nor over arduous. It would have sufficed that the Customs officers should have been more attentive, more alert, and, perhaps, less prejudiced in favour of a cause which had become popular at Liverpool, and other British ship-building centres.† There is ground for some surprise at finding the Collector of Customs constituting himself a judge of legal evidence, when what was required was a prompt recourse to more direct means of guaranteeing the duties of neutrality. In the Counter-Case presented by the Government of Her Britannic Majesty (page 81), I read that it is true that, in cases of this nature, neutral Governments *ordinarily* expect to receive information from the Ministers or Consuls of belligerent Powers resident within their territories. I stop at the word *ordinarily*, and I infer from it that the British Government itself recognizes, and with great reason, that there may be extraordinary cases in which a neutral should take action to enforce respect for its neutrality, without awaiting information from a belligerent.

That the case of the No. 290 was not an ordinary case seems to me evident, since the construction of the vessel had given rise to so much anxiety.

When the departure of this vessel was ascertained, Lord Russell, foreseeing that probably it might not be possible to arrest her in the waters on the coast of England, where search was being made for her, stated that he would further give orders to arrest her at Nassau, where it was probable that she might be found.

When the Alabama quitted Moelfra Bay she had a crew of eighty men, she kept for some time along the Irish Sea, then rounded the north coast of that island, and steered for Terceira, one of the Azores, where she arrived on the 10th August.

The Alabama was joined in the waters of Terceira by two vessels, the Agrippina and the Bahama, which had also started from English ports, and which brought her a considerable supply of cannon, munitions, and stores.

The combined action of vessels carrying and receiving munitions and provisions, constitutes a complex act entailing a joint responsibility. Those who may raise any doubts on this question, may be answered in the words of Sir Robert Peel, pronounced in the House of Commons on the 28th April, 1830: "Was it then to be contended that no expedition was a military expedition except the troops had their arms on board the same vessels with them? If they were on board one vessel and their arms

* These words were rendered in the French translation by "train ordinaire de la vie."
† See Speeches and Despatches of Earl Russell, vol. ii, pages 259–260.

in another, did that make any difference? Was such a pretence to be tolerated by common sense?"

The vessel, completely armed, abandoned her arithmetical designation "290" for the name of the Alabama and hoisted the flag of the Confederate Government, which, however, on occasions she replaced by the British flag in order the better to deceive vessels which she wished to attack. She thus commenced and pursued her adventurous and devastating cruizes. They appeared, described with minute and technical details, in the journal kept on board by Mr. Fullam, and even under the form of romance in a work intended to satisfy public curiosity, at that time much excited on the subject. Among the vessels destroyed by the Alabama, was the Federal war-steamer Hatteras.

On arriving at Jamaica, the Alabama found in the port three English vessels of war. Instead of being arrested in English waters by the English ships, the crew met with the best reception; she was supplied with the means of repairing her damages, and seven days afterwards the Alabama steered for the coast of Brazil and thence to the Cape of Good Hope.

The conduct of the English Authorities, under these circumstances, was approved by Lord Russell, who confined himself to expressing a hope that the vessel would be required to leave as soon as the necessary repairs were finished.*

On her arrival at Saldanha Bay, in the Colony of the Cape of Good Hope, and consequently in the territorial waters of the British Empire, the Commander of the Alabama informed the Governor that he had put into this Bay with the object of effecting some indispensable repairs.

The United States' Consul protested, without loss of time, demanding that the vessel should be seized and sent to England, from whence she had clandestinely escaped, adding that the repairs making to the vessel, namely, that of repainting her, could not be considered as of an urgent nature. The same Consul added that he had, with his own eyes, seen the Alabama make a prize in those same waters. The Government replied that this had taken place at a distance from the shore to which British jurisdiction did not extend.

After her arrival at the Cape, the Commander of the Alabama informed the Government that he had left outside of British waters one of his previous prizes, the Tuscaloosa, and that she would shortly arrive in the capacity of tender. This vessel in fact arrived, and her cargo of wool was made over to a merchant of Cape Town to be taken to Europe and sold there. The cargo was disembarked at a point named Angra Pequeña, outside of British jurisdiction.

When the Tuscaloosa appeared in the port, the British Rear-Admiral, Sir Baldwin Walker, wrote to the Governor to know if this vessel ought still to be considered as a prize, although she had never been condemned as such by a competent Tribunal. He persisted in his opinion, which was in direct variance with the tolerance of the Governor; the latter referred to the Attorney-General, and he subsequently replied on the advice of this last officer, but in terms which betrayed a faltering conviction, that the vessel might be considered as a vessel of war.

A correspondence ensued between the Governor of the Cape and the Colonial Minister, the Duke of Newcastle, as to the legality of the captures. That Minister disapproved the conduct of the Governor and the application of the principles of law on which the Attorney-General had based his opinion.

While this was taking place, the Tuscaloosa had returned to the port, and having thus placed herself within the limits of British jurisdiction, she was seized. The British Government, when informed of this act, disavowed it, and ordered that the vessel should be restored to the Confederate Lieutenant who commanded her; in case that officer had left the Cape, directions were given to wait till the vessel could be handed over to some person whom the Commander of the Alabama or the Government of the Confederate States might nominate for the purpose. The English Minister, reversing in some degree his former decision, based the instructions as to the restitution of the vessel on the peculiar circumstances of the case.†

Her Britannic Majesty's Minister declares, in the same despatch, "*that it becomes unnecessary to discuss whether, on her return to the Cape, the Tuscaloosa still retained the character of a prize, or whether she had lost that character and had assumed that of an armed tender to the Alabama, and whether that new character, if properly established and admitted,*

* Letter from Mr. Hammond to Sir F. Rogers, February 14, 1863.

† Despatch of the Duke of Newcastle to Sir P. Wodehouse, March 10, 1864:—"I have now to explain that this decision was not founded on any general principle respecting the treatment of prizes captured by the cruizers of either belligerent, but on the peculiar circumstances of the case."

would have entitled her to the same privilege of admission which might be accorded to her captor, the Alabama."

In my capacity as Arbitrator, I cannot avoid a discussion, even though it should be without utility to one of the parties, and I must admit that it seems to me that the observations originally made with equal candour and good sense by Rear-Admiral Walker of the British Navy, should guide the opinion of the Tribunal in the decision of the point which the British Government regarded as difficult and doubtful.

To resume, I am of opinion that the neutrality of Great Britain was gravely compromised by the vessel named the Alabama. Consequently, Great Britain is responsible for the acts of the said vessel, as well as for those of her tender the Tuscaloosa.

[N.B.—The statement of Sir A. Cockburn on the case of the Alabama will be found embodied in his "Reasons for dissenting from the Award of the Tribunal" in Part II of this series of papers (North America, No. 2, p. 179.)]

No. 10.

Lord Tenterden to Earl Granville.—(Received August 4.)

My Lord, *Geneva, July 31*, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 30th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 10.

Protocol No. XV.—Record of the Proceedings of the Tribunal of Arbitration at the Fifteenth Conference, held at Geneva, in Switzerland, on the 29th of July, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Lord Tenterden, Agent of Her Britannic Majesty, announced that he had already delivered to the Secretary a written statement or argument from the Counsel of Her Britannic Majesty upon the three questions of law required by the Tribunal at the preceding Conference.

The Tribunal then proceeded with the cases of the vessels the Sumter, the Nashville, and the Chickamauga, as decided at the last meeting.

The Tribunal also decided to consider at the next Conference the cases of the Olustee or Tallahassee, the Retribution, and the Tuscaloosa.

The Conference was then adjourned until Tuesday, the 30th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statements of Mr. Adams and Baron d'Itajubá on the cases of the Sumter, Nashville, and Chickamauga, and of M. Staempfli on the case of the Sumter, discussed at the Meeting of the 29th July.

Statement of Mr. Adams.

THE SUMTER.

IN the second part of the volume called the Case, submitted to us on the part of Her Majesty's Government, on the 7th page I find a paragraph in the following words:—

"In and soon after the month of May 1861 a number of armed ships, mostly of small tonnage, were fitted out in and sent to sea from ports in the Confederate States, and a considerable number of

captures were made by them. Some of these were commissioned as public ships of war of the Confederate States, and commanded by officers in the naval service of the Confederacy; others as private ships of war or privateers. Among the armed vessels which were so fitted out and made prizes were the Calhoun, a steamer of 1,000 tons, sent to sea in May 1861, the Jeff. Davis, Savannah, St. Nicholas, Winslow, and York. More than twenty prizes were made by these vessels. The Sumter (to which reference will be made hereafter) went to sea in June 1861; the Sallie and Nashville in October 1861; the Echo in 1862; the Retribution and Boston in 1863; the Chickamauga, Olustee, and Tallahassee in 1864. These vessels are stated to have taken from sixty to seventy prizes."

If by this grave report it was intended to establish that the insurgent Americans were in 1861 entitled in any way to be considered as a belligerent on the ocean, the motive can only be explained by presuming either an absence of all acquaintance with the actual condition of the insurgent States at that time, or deliberate misrepresentation. I prefer to adopt the earlier construction.

In point of fact it is clearly shown in these papers, as well as from the past condition of that region of coast ever since the time of its first settlement, that it has never possessed any commerce or navigation of its own. Whatever might have been the list presented, it could contain only such vessels as might accidentally have been found in its ports at the moment of the insurrection, belonging to owners outside of the jurisdiction. That all such vessels were at once seized, and made for a short period to play a part for which they were utterly unfitted, is strictly true. Yet so far from presenting any just ground for recognizing these people as a maritime belligerent, all the facts tend the more to convince me that to all intents and purposes Her Majesty's Government might with quite as much justice recognize, in any similar emergency, these Cantons of Switzerland as such. Be this as it may, I am ready to admit there was for a short time a slight appearance of a naval force that might deceive strangers. Out of the number of vessels arrayed in the passage I have quoted, is the steamer Sumter—a case now presented to our consideration as founding a claim for damages from Her Majesty's Government by that of the United States.

This was a steamer built in no sense for a war vessel. She had been employed as a packet between New Orleans and the Havana, and though most likely to have belonged to private proprietors in New York, may possibly have had some in New Orleans. I am willing to concede the benefit of the doubt. At all events, she was seized by the Insurgent Government, fitted up in haste with the few guns that she could bear, and pushed through the blockade, at the mouth of the Mississippi, to the high sea. This was on the 30th of June, 1861. After making some prizes and touching at various ports belonging to other Powers, she at last made her appearance in a harbour of Her Majesty's Island of Trinidad. This was on the 30th of July. Here she was recognized in due form, was supplied with a new main-yard, provisions, and eighty tons of coal. She next appeared at Paramaribo, in Dutch Guiana, nineteen days after sailing from Trinidad, and there received an additional supply of coals. From thence she proceeded to various ports of other sovereign Powers, until at last she found her way to Her Majesty's port of Gibraltar.

This experience had completely established the fact that in her then condition she was utterly unfitted for her undertaking. The efforts to get her refitted had failed; and although there was a long delay permitted at Gibraltar—much longer, indeed, than seems altogether justifiable—the end of it was that she was disarmed, dismantled, sent to Liverpool, and never afterwards tried as a cruizer. The truth probably was, that it was found cheaper to build efficient vessels in Great Britain, which this one never could have been.

It appears that eleven of her prizes were made before reaching Trinidad, where she coaled. None were made between Trinidad and Paramaribo, and only five afterwards.

If Her Majesty's Government had been called to exercise due vigilance to prevent the fitting-out, arming, or equipping this vessel, it might perhaps have been liable, but it is clear it had no opportunity. Such as it was, the fact is well established that the entire work was done at New Orleans.

Neither was it in a way to permit this vessel to make use of its ports or waters as the base of naval operations, for the plain reason, if there were no other, that its career so soon terminated in the second of the only two ports she visited.

The only resemblance to such a thing was the supply of coals received at Trinidad. But that was exhausted, without an opportunity of doing damage, before reaching the port of another Sovereign, and nothing was ever received from British sources afterwards. All the supplies obtained with that exception came from ports belonging to other Powers.

I fail, therefore, to see wherein Her Majesty's Government has omitted to fulfil

any duty presented in this case, for I cannot discover what duty it was called to fulfil.

It is very true that, at the moment, this proceeding of the recognition of the Sumter at Trinidad was regarded by the Government of the United States as an unfriendly act, and much remonstrance was made against it. Whether this was made with or without just foundation it does not seem necessary here to consider. The question now is solely of damages incurred by failure to fulfil certain specified duties. I can discover no damages, and very trifling duty.

But there is one more question in connection with the history of this vessel that demands consideration. It is alleged that she was suffered to remain an undue length of time in the port of Gibraltar, and that a fraudulent sale was recognized which enabled the insurgents to transfer the vessel to Liverpool and use her again under a British register as a transport for their cause.

The answer to this is, that her detention at Gibraltar, however it may be considered, was certainly productive of no damage, while her presence on the ocean might have been. And as to the fraudulent sale, the vessel was open to capture in her defenceless state, and it was conceded that no reclamation could have been made for it. So likewise she was open to capture in her latest capacity as a transport. In neither case does Her Majesty's Government appear to me to have incurred any responsibility under the three rules of the Treaty, which can be estimated in damages.

Of just such a character as this one are the other vessels presented so gravely in the extracts which I have made from the British Case at the outset. These are the wretched rags over which Her Majesty's Ministers condescended to throw the mantle of a belligerent. This they had an unquestionable right to do. Having done so, it is not possible for me to reach any other decision in the present case. At the same time it may be remarked that it is made clear from these papers that at no time did this belligerent ever send to sea during the struggle a single war-vessel built within the limits of the territory it temporarily controlled.

The Nashville.

This appears to be another instance of a seizure of a steamer constructed for a packet to run between New York and Charleston in South Carolina, and an attempt to turn her into a vessel of war by putting two light guns upon her, and the necessary ammunition to frighten unarmed merchant-ships.

In this state she received the requisite officers, and on the 26th of August, having run the blockade of Charleston, made her way to the port of St. George, in the Island of Bermuda, on the 30th, in the guise of a war-vessel. In order to get safely out of Charleston harbour, she had been constrained to go light, in consequence of which she stood in need of considerable supplies of coal at St. George, to enable her to effect her contemplated passage to Southampton. She obtained between 400 and 500 tons from private sources.

Her stay at this place must have been from the 30th of August to the 4th of November, when she started for Southampton. A stay of sixty-six days permitted at this place, in connection with the large supply of coal, indicate an extremely liberal construction of the civility due to such a vessel at the outset of a struggle like that in America.

At the same time it should be observed that Her Majesty's Government had not yet found time to mature the necessary regulations to be observed in her remoter dominions, in regard to the stay of and the supplies to be furnished to the vessels of the contending parties when touching at her ports.

In her trip across the ocean the Nashville met and destroyed one merchant-vessel of the United States—the Harvey Birch. After leaving Southampton she stopped again at Bermuda, where she received 150 tons of coal, which enabled her to return home. On her way she seems to have destroyed one schooner. It is to be inferred that her utter unfitness for the business to which she had been put had been clearly proved, and she was laid aside.

It is contended that the reception which this vessel met with at various ports of Her Majesty's kingdom, and the abundant supplies of coal received by her, are sufficiently proved to bring her within the purview of the second rule specified in the Treaty of Washington for the guidance of the Arbitrators.

But in order to establish this claim, it seems to me necessary to consider the question of intent on the part of the authorities, as well as that of negligence.

From the evidence furnished in the papers before us in regard to these two points, I confess that I cannot gather sufficient materials to enable me to decide against Her Majesty's Government on either of them. At the outset of the struggle, and before the receipt of clear directions to regulate their conduct, it might very well happen that the authorities in the remote dependencies would make mistakes of judgment in permitting supplies, without meaning to be partial to one side more than to another. I have no reason to suspect that just the same measure would not then have been granted to any vessel of the United States. A few tons more or less of coal can scarcely be called convincing proof of malicious intent. From my observation of the general course of Governor Ord, I fail to gather any clear traces of a disposition to be otherwise than impartial in that officer.

With respect to the stay of the Nashville at Southampton, and her supplies received there, I do not find that the case was essentially different from that of the United States' steamer the Tuscarora, which was at that port at the same time.

Last of all, I entertain very serious doubts whether this vessel was ever intended, by those who fitted her out, for the purpose of cruizing as a depredator on the ocean. Certainly, her long period of utter inaction at the only port where she stopped, and her straight course to Southampton and back, do not at all indicate it. Even the two captures which she actually made seem to have been vessels she chanced to meet on her track, which she could destroy without the slightest deviation. The Governor of St. George's seems to have been convinced that the object of the voyage was connected with the establishment of diplomatic relations in Europe, and procuring naval supplies and stores. At one time it was intended to bring out Messrs. Mason and Slidell, and it actually did have on board Colonel Peyton, supposed to be charged with a mission of the same kind.

However this may be, I fail to find solid ground upon which to base, in this case, any charge either of intention or negligence against Her Majesty's Government under the terms of the Treaty of Washington.

The Chickamauga.

On or about the first week in March 1864 a steamer called the Edith, which had been built within the Kingdom of Great Britain for the purpose of running the blockade of the insurgent ports in the United States, sailed from London. She appears to have been one of a number constructed under a joint ownership of the insurgent authorities in the United States and certain commercial houses in Great Britain. As such, she made her way successfully into the port of Wilmington in North Carolina. It being ascertained by experiment that she was a fast and staunch vessel, it was then determined by the insurgent authorities to put three guns upon her, with the necessary equipment, and transform her into a regular cruizer. As such she claimed to be recognized at Bermuda on the 7th of November. Here her Commander applied for leave to coal and repair machinery, which was granted. She was supplied by the authorities with twenty-five tons and permitted to remain for repairs eight days. If it was proper to recognize her at all, in no instance have I perceived a firmer tone in dealing with a vessel of the kind, or a clearer execution of the orders given by Her Majesty's Government. If it happened that the Commander succeeded in getting a larger supply from private sources, it must have been done surreptitiously and in defiance of their will. On her outward trip from Wilmington she seems to have destroyed some merchant-vessels. But when she got back the experiment appears to have been considered unsatisfactory, for it was not continued. She was again reduced to a transport. Not long afterwards, Wilmington was taken by the United States, and the last traces of spurious belligerency on the American coast were expunged.

Here I fail to see any reason for charging Her Majesty's Government with any default under either of the three rules prescribed for the guidance of the Arbitrators by the terms of the Treaty of Washington.

Statement of Baron d'Itajubá.

LES NAVIRES LE SUMTER, LE NASHVILLE, LE CHICKAMAUGA.

LE Soussigné, après examen consciencieux de tous les documents soumis au Tribunal d'Arbitrage par les Gouvernements des Etats Unis et de la Grande Bretagne relatifs aux croiseurs Confédérés:—

Le Sumter,
Le Nashville,
Le Chickamauga,—

Est d'avis,

Que la Grande Bretagne n'a pas manqué aux devoirs prescrits dans les Règles établies par l'Article VI du Traité de Washington, et qu'elle n'est pas responsable des faits imputés à ces navires.

(Translation.)

THE VESSELS THE SUMTER, THE NASHVILLE, THE CHICKAMAUGA.

THE Undersigned, after a conscientious examination of all the documents submitted to the Tribunal of Arbitration by the Governments of the United States and of Great Britain, relating to the Confederate cruizers,

The Sumter,
The Nashville,
The Chickamauga,—

Is of opinion,

That Great Britain did not fail to fulfil the duties prescribed in the Rules laid down in Article VI of the Treaty of Washington, and that she is not responsible for the acts imputed to these vessels.

Statement of M. Staempfli.

LE SUMTER.

(A.)—FAITS.

1. Le Sumter était un croiseur des Etats insurgés, équipé dans leurs ports; il sortit des passes du Mississippi et commença ses courses le 30 Juin, 1861.

2. Après avoir fait six prises, il entra d'abord au port Espagnol de Cienfuegos (Cuba), où il embarqua du charbon; le 15 Juillet, 1861, il arriva au port Hollandais de Ste. Anne, dans l'ile de Curaçoa, y embarqua du charbon et y séjourna huit jours;—le 30 Juillet il atteignit le port Britannique de la Trinité, après avoir fait en tout onze prises depuis sa sortie des eaux du Mississippi; il resta six jours dans ce port et y fit un complet approvisionnement de charbon;—après avoir quitté la Trinité, le Sumter toucha encore, entr'autres, aux ports de Paramaribo (Guyanne Hollandaise), où il s'approvisionna de charbon, du 9 au 31 Août;—de Port Royal à la Martinique, où il embarqua du charbon et resta quatorze jours, du 10 au 23 Novembre; de Cadix, où il séjourna quinze jours; il entra, le 18 Janvier, 1862, à Gibraltar, après avoir fait six nouvelles prises depuis son départ de la Trinité.

3. Le Sumter resta au port de Gibraltar jusqu'en Décembre 1863, époque à laquelle il fut désarmé et vendu aux enchères publiques.

Les officiers, parmi lesquels se trouvait le Capitaine Semmes, plus tard Commandant de l'Alabama, abandonnèrent le vaisseau et se rendirent en Angleterre.

4. Dès le mois de Février 1862, il y avait eu des navires de guerre des Etats Unis stationnés dans les eaux d'Algésiras pour guetter le Sumter.

5. Les représentants des Etats Unis à Gibraltar et à Londres protestèrent contre la vente du Sumter, comme fictive et inadmissible d'après le droit des gens.

6. Le 9 Février, 1863, le Sumter s'échappa de Gibraltar et arriva à Liverpool; il y resta jusqu'au 3 Juillet, fut de là employé comme vaisseau de transport et quitta ce port sous le nom de le "Gibraltar," emportant une cargaison d'artillerie de gros calibre. On ne sait pas au juste ce qu'il devint dans la suite. Il ressort seulement des pièces que des vaisseaux de guerre des Etats Unis le guettèrent encore plusieurs mois après sa sortie de Liverpool. (Le Connecticut du 3 Août jusqu'en Septembre 1863; Appendice Américain, tome iv, page 120, tableau.)

(B.)—Considérants.

I.—*Concernant ce qui se passa jusqu'au moment de l'entrée du vaisseau à Gibraltar.*

(*a.*) A l'exception du séjour et de l'approvisionnement que fit le Sumter à la Trinité, aucun des faits en question n'eut lieu dans la juridiction Britannique: par conséquent, la Grande Bretagne n'est responsable pour rien de ce qui se passa, avant l'arrivée du Sumter à la Trinité.

(*b.*) La permission donnée au Sumter de séjourner et de faire du charbon à la Trinité ne constitue pas à elle seule une base suffisante pour que l'on puisse accuser les Autorités Britanniques d'avoir manqué à leurs devoirs de neutralité; car, ce fait ne peut être considéré isolément, puisque, avant et après, le Sumter avait été admis dans les ports de plusieurs autres Etats, où il séjourna et fit du charbon, et qu'il est constaté que le dernier approvisionnement qu'il fit pour traverser l'Océan Atlantique n'eut pas lieu dans un port Britannique: de sorte que l'on ne saurait prétendre que le port de la Trinité ait servi de base d'opérations au Sumter.

II.—*Concernant la permission de séjour et de vente du Sumter à Gibraltar.*

(*a.*) Le séjour du Sumter comme vaisseau de guerre armé des Etats Confédérés au port de Gibraltar, depuis le mois de Janvier au mois de Décembre 1862 fut moins la suite d'un état de détresse qu'un asile contre le danger provenant de vaisseaux ennemis.

(*b.*) Une pareille concession d'asile est en désaccord avec la 2e Règle du Traité, d'après laquelle un port neutre ne doit pas servir de base d'opérations aux belligérants, par conséquent ne doit pas non plus leur servir de lieu de refuge contre l'ennemi, tout en leur laissant la possibilité d'en ressortir à volonté.

(*c.*) L'objection qui est faite que le Sumter était entré à Gibraltar avant la publication de la circulaire ministérielle du 31 Janvier, 1862, laquelle limite la durée du séjour des vaisseaux belligérants dans les ports neutres, est sans portée; car:

(*d.*) Même sans la publication de cette circulaire, la concession d'asile qui eut lieu eût été en désaccord avec les devoirs découlant de la Règle 2 et des principes d'une neutralité réelle à effectuer.

(*e.*) En outre, interpréter la circulaire du 31 Janvier, 1862, dans le sens qu'elle ne devait concerner que les navires des belligérants qui entreraient à l'avenir dans les ports Britanniques et non ceux qui s'y trouvaient déjà alors, c'est se mettre en désaccord, sinon avec la lettre, du moins avec le sens et l'esprit dans lesquels cette circulaire fut publiée.

(*f.*) Le désarmement et la vente du Sumter au bout de onze mois de séjour dans le port de Gibraltar furent la continuation et la conclusion du procédé suivi jusqu'alors, et qui consistait à sauver de l'ennemi le vaisseau, son armement et son équipage; et ces actes aussi furent aussi peu conformes au maintien d'une neutralité réelle et effective, que tout le procédé, dès le commencement, et cela d'autant moins qu'ils étaient accompagnés des circonstances aggravantes suivantes:

(*g.*) La vente du vaisseau ne fut que fictive, ainsi qu'il appert d'après les actes:

Le produit de la vente des armes, &c., fut versé dans la caisse des insurgés;

Les officiers du vaisseau et le reste de l'équipage restèrent en état de liberté, et

un certain nombre d'entr'eux rentrèrent, peu de temps après, au service des Etats insurgés.

(*h.*) D'après les principes de neutralité observés sur terre, les hommes qui cherchent un refuge contre l'ennemi sont désarmés et internés, le matériel qu'ils emportent est saisi et n'est restitué qu'à la fin de la guerre : les autorités de Gibraltar auraient dû agir d'une manière analogue, ou bien elles auraient dû forcer le navire avec son armement et son équipage à quitter le port, dans un délai fixé, sauf à le pourvoir d'un sauf-conduite jusqu'aux limites de la juridiction Britannique.

JUGEMENT.

1. La Grande Bretagne n'a pas manqué à ses devoirs, découlant des trois Règles, en ce qui concerne le Sumter jusqu'à l'entrée de ce vaisseau à Gibraltar, et elle n'est, par conséquent, pas responsable pour les destructions de navires effectuées par le Sumter.

2. Par contre, la Grande Bretagne a violé la Règle 2 en accordant un asile prolongé au Sumter et en tolérant le désarmement et la prétendue vente de ce vaisseau dans le port de Gibraltar, et elle est, par conséquent, responsable pour le prix de vente du Sumter, de son armement et de son équipement, pour les frais de surveillance par les navires des Etats Unis devant les eaux de Gibraltar, pendant toute la durée du séjour que fit le Sumter dans ce port, et pour les frais de sa poursuite après son départ de ce port.

(Translation.)

THE SUMTER.

(A.)—FACTS.

1. The Sumter was a cruizer of the insurgent States, equipped in their ports; she left the mouth of the Mississippi and commenced cruizing on the 30th of June, 1861.

2. After having made six prizes, she first entered the Spanish port of Cienfuegos (Cuba), where she took in coal. On the 15th July, 1861, she arrived at the Dutch port of St. Anne, in the Island of Curaçoa, there took in coal, and stayed eight days. On the 30th July she reached the British port of Trinidad, after having made in all eleven prizes since her departure from the waters of the Mississippi; she remained six days in this port, and there shipped a complete supply of coal. After having left Trinidad, the Sumter touched, among other places, at the port of Paramaribo (Dutch Guiana), where she took in a supply of coal, from the 9th to the 31st of August; at Port Royal in Martinique, where she took in coal and remained fourteen days, from the 10th to the 23rd of November; at Cadiz, where she stayed fifteen days; she put in, on the 18th January, 1862, at Gibraltar, after having made six fresh prizes since her departure from Trinidad.

3. The Sumter remained at the port of Gibraltar until December 1863, when she was disarmed and sold by public auction.

The officers, among whom was Captain Semmes, who subsequently commanded the Alabama, abandoned the vessel and went to England.

4. From February 1862, there had been United States' ships of war stationed in the waters of Algeciras, to watch the Sumter.

5. The representatives of the United States at Gibraltar and London protested against the sale of the Sumter as fictitious and inadmissible, according to international law.

6. On the 9th of February, 1863, the Sumter escaped from Gibraltar and arrived at Liverpool; she remained there till the 3rd July, was from thence employed as a transport ship, and left that port under the name of the Gibraltar, carrying a cargo of heavy artillery. What became of her afterwards is not exactly known. It only appears, from the evidence, that United States' ships still watched her for several months after she left Liverpool. (The Connecticut, from the 3rd of August to September 1863; United States' Appendix, vol. iv, p. 120, Table.)

(B.)—Considerations.

I.—*Respecting what took place up to the moment of the vessel's entry into Gibraltar.*

(*a.*) With the exception of her stay, and the supply of coal which the Sumter took in at Trinidad, none of the acts in question took place within British jurisdiction; consequently, Great Britain is responsible for nothing which occurred before the arrival of the Sumter at Trinidad.

(*b.*) The permission given to the Sumter to remain and to take in coal at Trinidad does not in itself constitute a sufficient basis for accusing the British Authorities of having failed in the observance of their neutral duties; for this fact cannot be considered singly, since, before and afterwards, the Sumter had been admitted into the ports of several other States, where she stayed and took in coal, and it is proved that the last supply she obtained to cross the Atlantic did not take place in a British port; so that it cannot be held that the port of Trinidad served as a base of operations for the Sumter.

II.—*Respecting the permission to stay, and the sale of the Sumter at Gibraltar.*

(*a.*) The stay of the Sumter, as an armed ship of war of the Confederate States, at the port of Gibraltar, from the month of January to the month of December 1862, was less the result of her being in distress than a refuge from the danger arising from the ships of the enemy.

(*b.*) The granting of such shelter is contrary to the IInd Rule of the Treaty, according to which a neutral port must not serve as a base of operations to belligerents, and, consequently, must not serve them either as a refuge from the enemy, while giving them, at the same time, the opportunity of leaving it at will.

(*c.*) The objection which is made that the Sumter entered Gibraltar before the publication of the official Circular of the 31st January, 1862, which limits the stay of belligerent vessels in neutral ports, is immaterial; for

(*d.*) Even without the publication of that Circular, the granting of shelter which took place would have been contrary to the duties laid down in the second Rule and to the principles of a real and effective neutrality.

(*e.*) Moreover, to interpret the Circular of the 31st January, 1862, in the sense that it related only to the ships of belligerents which should in the future enter British ports, and not to those which were already in them, is in opposition, if not with the letter, at least with the sense and spirit in which that Circular was published.

(*f.*) The disarmament and sale of the Sumter after she had been eleven months in the port of Gibraltar, were the continuation and conclusion of the course pursued up to that time, and which consisted in saving the ship, her armament and her crew from the enemy; and these acts were as little in conformity with the maintenance of a real and effective neutrality as the whole of the proceedings, from the beginning, and the less so because they were accompanied by the following circumstances in aggravation:

(*g.*) The sale of the ship was only fictitious, as appears from the documents;

The proceeds of the sale of the arms, &c., were paid over to the treasury of the insurgents;

The officers of the vessel and the rest of her crew remained at liberty, and a certain number of them re-entered shortly afterwards the service of the Insurgent States.

(*h.*) According to the principles of neutrality observed on land, men who seek refuge from the enemy are disarmed and interned, the munitions they bring with them are seized and not restored till the end of the war: the Authorities of Gibraltar ought to have acted in like manner, or else they ought to have compelled the vessel with her armament and crew to leave the port, within a stated time, providing her with a safe-conduct as far as the limits of British jurisdiction.

Judgment.

1. Great Britain has not failed in her duties, as laid down in the three Rules, in respect to the Sumter up to the entrance of that vessel into Gibraltar, and is not, therefore, responsible for the ships destroyed by the Sumter.

2. On the other hand, Great Britain has violated the second Rule in affording a protracted shelter to the Sumter, and in permitting the disarmament and pretended sale of that vessel in the port of Gibraltar, and is, therefore, responsible for the sum for which the Sumter, her armament and equipment, were sold, for the expense of

watching her by the ships of the United States before the waters of Gibraltar, during the whole period of the stay of the Sumter in that port, and for the expense of her pursuit after her departure from that port.

[The statements of Sir A. Cockburn on the cases of the Sumter, Nashville, and Chickamauga will be found embodied in his "Reasons for Dissenting from the Award of the Tribunal," in Part II. of this Series of Papers (North America, No. 2, pp. 228, 239, 245.]

No. 11.

Argument of Her Britannic Majesty's Counsel on the Points mentioned in the Resolution of the Arbitrators of July 25, 1872.—(Presented July 29.)

Chapter I.—On the Question of "Due Diligence," generally considered.

1. On the source of the obligation.

When the inquiry is, whether default has been made in the fulfilment of a particular obligation, either by a State or by an individual, it is first necessary to have an accurate view of the ground, nature, and extent of the obligation itself.

The examination of this question will be simplified by considering, in the first instance, such a case as that of the Alabama, at the time of her departure from Great Britain; namely, a vessel built and made ready for sea, with special adaptation for warlike use, by British shipbuilders in the course of their trade, within British territory, to the order of an agent of the Confederate States, but not armed, nor capable of offence or defence at the time of her departure.

Any obligation which Great Britain may have been under towards the United States, in respect of such a vessel, could only be founded at the time when the transaction took place; (1) upon some known rule or principle of international law; or (2) upon some express or implied engagement on the part of Great Britain.

The three Rules contained in the VIth Article of the Treaty of Washington become elements in this inquiry solely by virtue of the declaration made in that Article, that:—

> "Her Majesty's Government cannot assent to the foregoing Rules as a statement of principles of International Law which were in force at the time when the claims mentioned in Article I arose; but that Her Majesty's Government . . . . agree that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in those Rules.'

In order rightly to understand the effect of the agreement embodied in this declaration, it is important to see how the question between the two Governments would have stood without it.

1.—*As to the Rules and Principles of International Law.*

2. Source I. Rules and principles of International Law.

These must be obtained from the authorities which show what had previously been received and understood among nations, as to the obligations of neutral States towards belligrents; remembering always, that what is called international law (in the absence of particular compacts between States) is imposed only by the moral power of the general opinion and practice of civilized nations; that (in the words of Lord Stowell, quoted with approval by the great American jurist, Wheaton, "Histoire des Progrès du Droit des Gens," vol. i, p. 134) "une grande partie du droit des gens est basée sur l'usage et les pratiques des nations. Nul doute qu'il a été introduit par des principes généraux (du droit naturel); mais il ne marche avec ces principes que jusqu'à un certain point; et s'il s'arrête à ce point nous ne pouvons pas prétendre aller plus loin, et dire que la seule théorie générale pourra nous soutenir dans un progrès ultérieur."

In a case in which no active interference in war is imputed to a neutral State, international law knows nothing of any obligation of that State towards a belligerent, as such, except to preserve its neutrality. To constitute a merely passive breach of neutrality on the part of such a State, some act must have been done by, or in aid of a belligerent, for the purposes of the war, which, unless done by the permission of the neutral State, would be a violation of its territory, or of its sovereignty and independence within that territory, and such act must have been expressly or tacitly permitted on the part of the neutral Government. For acts done beyond the neutral jurisdiction by subjects of the neutral Power, to the injury of a belligerent, the law of nations has appropriate remedies;

but those acts, involving no violation or hostile use of neutral territory, are not imputed as breaches of neutrality to the neutral State. And for a violation or hostile use of neutral territory without the permission or intentional acquiescence of the neutral State, reparation may be due from the offending belligerent to the injured neutral, but the neutral so injured has been guilty of no breach of any neutral obligation towards the other belligerent, whether he does, or does not, subsequently obtain reparation from the offender.

Between the commercial dealings of neutral citizens, in whatever kinds of merchandize (and whether with the citizens or with the Governments of belligerent States), and the levying or augmentation of military or naval forces, or the fitting out and dispatch of military or naval expeditions by a belligerent within neutral territory, international law has always drawn a clear distinction. The former kind of dealings, if they are permitted by the local law of the neutral State, involve on the part of that State no breach of neutrality; if they are prohibited, a disregard of the prohibition is not a violation or hostile use of the neutral territory, but is an illegal act, the measure of which, and the remedies for which, must be sought for in the municipal, and not in international law. The other class of acts cannot be done, against the will of the neutral Sovereign, without a violation of his territory, or of his sovereignty and independence within that territory; and to permit this, for the purposes of the war, would be a breach of neutrality.

The continuance during war, within the neutral territory, of trade by neutral citizens with both or either belligerent, in the produce or manufactures of the neutral State, whether of those kinds which (when carried by sea to a belligerent) are denominated contraband of war, or of any other description, has always been permitted by international law: and no authority, anterior to the departure of the Alabama from Great Britain, can be cited for the proposition that unarmed ships of war, constructed and sold by neutral shipbuilders in the course of their trade, were, in the view of international law, less lawful subjects of neutral commerce with a belligerent than any other munitions or instruments of war.

The authorities on this subject are quoted at large in Annex (A) to the British Counter-Case. Galiani, one of these authorities, argued that the sale in a neutral port, to a belligerent, of a ship not only built, but *armed* for war, ought to be deemed prohibited; but Lampredi, Azuni, and Wheaton rejected that opinion, and held that (the transaction being a commercial one on the part of the neutral seller) the addition even of an armament would make no difference. Story took the same view of the dispatch by a neutral citizen of a ship of war fully armed from the neutral territory to a belligerent port, with a view to her sale there to a belligerent Power.* Mr. Adams himself, in his official correspondence with Earl Russell (April 6, 1863†), admitted the soundness of these doctrines, assuming the transaction of sale and transfer by the neutral to be "purely commercial;" and also assuming the belligerent country, to which such vessels of war might be sold and transferred, to be "not subject to blockade." It cannot, however, be seriously imagined that the existence of a blockade of the ports of the belligerent purchaser would make such a transaction, if it would otherwise be lawful, a violation of the neutrality of a neutral State, in the view of international law.

It may be true that, when an armed ship of war is sold to a belligerent within neutral territory, and goes to sea from thence, fully capable of offence and defence, under the control of the belligerent purchaser, there would often (perhaps generally) exist grounds for contending that the transaction was not substantially distinguishable from the dispatch of a naval expedition by the belligerent from the neutral territory; and this was doubtless a cogent reason for the special legislation of the United States and of Great Britain, which (whatever further scope it may have had), was undoubtedly intended to prevent such expeditions, by striking at the armament of ships of war within neutral territory, for the service of a belligerent. But the case of a ship leaving the neutral country unarmed is, in this respect, wholly different. Her departure is no operation of war; she is guilty of no violation of neutral territory; she is not capable, as yet, of any hostile act. The words of Mr. Huskisson in the debate on the Terceira expedition in the British Parliament (Huskisson's Speeches, vol. iii, p. 55[illegible] of Mr. Canning, as there quoted by him, are strictly applicable to such a case, and deserve reference, as showing the view of this subject, taken long ago by [illegible] eminent British statesmen. Speaking of certain complaints made by Turkey during the Greek revolutionary war, he said:—

* Sir R. Phillimore, in Vol. III. of [illegible] (published in 1857), rejects the distinction of these writers between the export of contraband and the sale of the same kinds of articles within the neutral territory. But he does not, of course, maintain that it is part of the international duty of a neutral State to prohibit or prevent dealings in contraband articles by its subjects [illegible] either of these ways.

† Appendix to Case of the United States, Vol. I, p. 592.

"To these complaints we constantly replied: 'We will preserve our neutrality within our dominions; but we will go no further. Turkey did not understand our explanation, and thought we might summarily dispose of Lord Cochrane, and those other subjects of Her Majesty who were assisting the Greeks.' To its remonstrances, Mr. Canning replied: 'Arms may leave this country as matter of merchandize; and however strong the general inconvenience, the law does not interfere to stop them. It is only when the elements of armaments are combined, that they come within the purview of the law; and, if that combination does not take place until they have left this country, we have no right to interfere with them.' Those were the words of Mr. Canning, who extended the doctrine to steam-vessels and yachts, that might afterwards be converted into vessels of war; and they appear quite consistent with the acknowledged law of nations."

II.—*As to an express or implied Engagement of Great Britain.*

3. Source II. Express or implied engagements of Great Britain.

Great Britain had no Treaty or Convention with the United States, as to any of these matters, but she had, in 1819, for the protection of her own peace and security, and to enable her the better to preserve her neutrality in cases of war between other countries, enacted a municipal law prohibiting under penalties (among other things), "the equipment, furnishing, fitting out, or arming of any ship or vessel within British jurisdiction, with intent or in order that such ship or vessel should be employed in the service of any foreign Prince" (or other belligerent) "with intent to cruize or commit hostilities against any Prince, State or Potentate" &c., with whom Great Britain might be at peace. Every attempt or endeavour to do, or to aid in doing, any of these prohibited acts was also forbidden; every ship or vessel which might be equipped, or attempted to be equipped, &c., contrary to these prohibitions was declared forfeited to the Crown; and the officers of Her Majesty's Customs were authorized to seize and to prosecute to condemnation in the British Court of Exchequer every ship or vessel with respect to which any such act should be done or attempted within British jurisdiction. This law (which was called the Foreign Enlistment Act) was regarded by Her Britannic Majesty's advisers, not only as prohibiting all such expeditions and armaments, augmentation of the force of armaments, and recruitments of men, as, according to the general law of nations, would be contrary to the duties of a neutral State; but also as forbidding the fitting out or equipping, or the special adaptation, either in whole or in part, to warlike use, within British jurisdiction, of any vessel intended to carry on war against a Power with which Great Britain might be at peace, although such vessel might not receive, or be intended to receive, any armament within British jurisdiction, and although she might be built and sold by shipbuilders in the ordinary course of their trade to the order of a belligerent purchaser, so as not to offend against any known rule of international law.

4. Effect of prohibitory municipal laws.

It has never been disputed by Her Majesty's Government, that when, at the time of the breaking out of a war, prohibitions of this kind, exceeding the general obligations of international law, exist in the municipal law of a neutral nation, a belligerent, who accepts them as binding upon himself and renders obedience to them, has a right to expect that they will be treated by the neutral Government as equally binding upon his adversary, and enforced against that adversary with impartial good faith, according to the principles and methods of the municipal law, of which they form part. Obligations which are incumbent upon neutral nations by the universal principles of international law, stand upon a much higher ground: as to them, a belligerent has a right to expect that the local law should make proper provision for their performance; and, if it fails to do so, the local law cannot be pleaded as constituting the measure or limit of his right. But a right, created by the municipal law of a neutral State, must receive its measure and limit, as much with respect to any foreign belligerent Power, as with respect to the citizens of the neutral State itself, from the municipal law which created it. Any engagement of the neutral towards a belligerent State, which may be implied from the existence of such a law, can go no further than this. And if to this is superadded an express promise or undertaking to apply the law in good faith to all cases, to which there is reasonable ground for believing it to be applicable, that promise and undertaking leaves the nature of the obligation the same; it does not transfer the prohibition, or the right of the belligerent with respect to the manner of enforcing it, from the region of municipal, to that of international law.

Accordingly, the Minister of the United States, during the civil war, constantly applied to Her Majesty's Government to put this municipal law of Great Britain in force. To select two, out of a multitude of instances:—On the 9th of October, 1862 (soon after the departure of the Alabama), Mr. Adams sent to Earl Russell an intercepted letter from the Confederate Secretary of the Navy, in which the Florida was referred to, "as substantiating the allegations made of infringement of the Enlistment Law by the insurgents of the United States, in the ports of Great Britain:" and added:

"I am well aware of the fact to which your Lordship calls my attention in the note of the 4th instant. . . . That Her Majesty's Government are unable to go beyond the law, municipal and

international, in preventing enterprises of the kind referred to. But in the representations, which I have had the honour lately to make, I beg to remind your Lordship, that I base them upon evidence, which applies directly to infringements of the municipal law itself, and not to anything beyond it."*

And on the 29th of September, 1863, writing with respect to the iron-clad rams at Birkenhead, he said—

"So far from intimating hostile proceedings towards Great Britain, unless the law, which I consider insufficient, is altered" (quoting words from a letter of Earl Russell) "the burden of my argument was to urge a reliance upon the law as sufficient, as well from the past experience of the United States, as from the confidence expressed in it by the most eminent authority in this kingdom."†

In answer to all these applications, Her Majesty's Government uniformly undertook to use their best endeavours to enforce this law, and to do so (notwithstanding a diversity of opinion, even upon the judicial Bench of Great Britain, as to its interpretation), in the comprehensive sense in which they themselves understood it, not only by penal, but by preventive measures (*i.e.*, by the seizure of any offending vessels before their departure from Great Britain), upon being furnished with such evidence as would constitute, in the view of British law, reasonable ground for believing that any of the prohibited acts had been committed, or were being attempted.

5. The three Rules of the Treaty of Washington.

When, therefore, Her Majesty's Government, by the VIth Article of the Treaty of Washington, agreed that the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the three Rules (though declining to assent to them as a statement of principles of international law, which were in force at the time when the claims arose), the effect of that agreement was not to make it the duty of the Arbitrators to judge retrospectively of the conduct of Her Majesty's Government according to any false hypothesis of law or of fact, but to acknowledge, as a rule of judgment for the purposes of the Treaty, the undertaking which the British Government had actually and repeatedly given to the Government of the United States, to act upon the construction which they themselves placed upon the prohibitions of their own municipal law, according to which it was coincident, in substance, with those Rules.

With respect to these three Rules, it is important to observe that not one of them purports to represent it as the duty of a neutral Government to prevent, under all circumstances whatever, the acts against which they are directed. The first and third Rules recognize an obligation (to be applied retrospectively upon the footing, not of an antecedent international duty, but of a voluntary undertaking by the British Government) "*to use*" within the neutral jurisdiction "*due diligence to prevent*" the acts therein mentioned; while the second recognizes a like obligation, "*not to permit or suffer*" a belligerent to do certain acts; words which imply active consent or conscious acquiescence.

III.—*Principles of Law relative to the diligence due by one State to another.*

6. General principles for finding what diligence is due.

The obligation of "due diligence," which is here spoken of, assumes under the first Rule expressly, and under the third by necessary implication, the existence of a "reasonable ground of belief;" and both these expressions, "due diligence" and "reasonable ground of belief," must be understood, in every case, with respect to the nature of the thing to be prevented, and the means of prevention with which the neutral Government is, or ought to be, provided. When the obligation itself rests, not upon general international law, but upon the undertaking of a neutral Government to enforce in good faith the provisions of its own legislation, the measure of due diligence must necessarily be derived from the rules and principles of that legislation. When the obligation rests upon the more general ground of international law, inasmuch as it is requisite, in the nature of things, that every obligation of a Government, of whatever kind, must be performed by the use of the lawful powers of that Government within the sphere of its proper authority, it will be sufficient if the laws of the neutral State have made such proper and reasonable provision for its fulfilment, as is ordinarily practicable, and as, under the conditions proper for calling the obligation into activity, may reasonably be expected to be adequate for that purpose; and if, upon the occurrence of the emergency, recourse is had, at the proper time and in the proper manner, to the means of prevention provided by such laws.

Nothing could be more entirely abhorrent to the nature, or more inconsistent with the foundations, of what is called international law, than to strain it to the exaction from

* British Appendix, vol. i, p. 216. † Ibid., vol. ii, p. 378.

neutral Governments of things which are naturally or politically impossible, or to the violation of the principles on which all national Governments (the idea of which necessarily precedes that of international obligation), themselves are founded.

7. The maxims cited by the United States from Sir R. Phillimore, on the question, "*Civitasne deliquerit, an cives?*"

It will be convenient, in this place, to examine the meaning of certain propositions extracted in the Argument of the United States from Sir Robert Phillimore's work on International Law, which were certainly not intended by that jurist to be understood in the absolute and unqualified sense in which the Counsel of the United States seem desirous of using them. It is proper here to mention that Sir Robert Phillimore, the author of that work, was appointed Her Britannic Majesty's Advocate, in the room of Sir John Harding, in August, 1862; and that with respect to all the questions which afterwards arose between the British Government and the United States, till some years later than the termination of the war, the British Government acted under his advice, which must be presumed to have been in accordance with his view of international obligations. That period covers the ground of all the claims now made by the United States against Great Britain, except those which relate to the Sumter and the Nashville, and to the original departure of the Florida and the Alabama from Great Britain.

The following extract (United States Argument, page 35) is from the Preface to the second edition of the first volume of Sir R. Phillimore's work (pp. 20–22):—

"There remains one question of the gravest importance, namely, the *responsibility of a State* for the acts of her citizens, involving the duty of a neutral to prevent armaments and ships of war issuing from her shores for the service of a belligerent, though such armaments were furnished and ships were equipped, built, and sent without the knowledge and contrary to the orders of her Government.

"The question, to what extent the State is responsible for the private acts of its subjects (*civitasne deliquerit, an cives?*) is one of the most important and interesting parts of the law which governs the relations of independent States.

". . . It is a maxim of general law, that so far as foreign States are concerned, the will of the subject must be considered as bound up in that of his Sovereign.

"It is also a maxim that each State has a right to expect from another the observance of international obligations, without regard to what may be the municipal means which it possesses for enforcing this observance.

"The act of an individual citizen, or of a small number of citizens, is not to be imputed without clear proof to the Government of which they are subjects.

"A Government may by *knowledge* and *sufferance*, as well as by direct *permission*, become responsible for the acts of subjects whom it does not prevent from the commission of any injury to a foreign State.

"A Government is presumed to be able to restrain the subject within its territory from contravening the obligations of neutrality to which the State is bound."

Upon this passage, which couples together "armaments and ships of war," it is to be observed, in the first place, that there is nothing in it which implies any different view of the extent of those international obligations (as distinct from its own municipal prohibitions) by which a State is bound, from that which is shown to have been established by earlier authorities. Sir R. Phillimore is too sound a jurist to suppose that any private opinion of a particular jurist could impose retrospectively upon the Governments of the civilized world obligations not previously recognized. He does not define here what are "the obligations of neutrality by which the State is bound;" he leaves them to be ascertained from the proper sources of information.

Next, when he lays it down as a maxim, that "each State has a right to expect from another the observance of international obligations, without regard to what may be the municipal means which it possesses for enforcing this observance," he says nothing at all inconsistent with the proposition, that a neutral State will have observed its international obligations with due diligence, if, having provided itself with municipal means suitable to the nature and character of those obligations, it proceeds to use those means in good faith, on the proper occasions, and in the proper manner, though (it may be) without succeeding in the prevention of everything which it is bound to endeavour to prevent. The learned author's meaning, and the kind of cases which he has in view, are apparent from the reference which he makes in the footnote to Part iv., ch. i, of the same volume, where he discusses the doctrine of "intervention" in the following terms:—

"CCCXCII. And first of all, it should be clearly understood, that *the intervention of bodies of men, armed or to be armed*, uncommissioned and unauthorized by the State to which they belong, *in a war*, domestic or foreign, of another State, has no warrant from international law. It has been already observed (Section CCXIX.), that it is the duty of a State to restrain its subjects from *invading the territory* of another State; and the question, when *such an act* on the part of subjects, though unauthorized by the State, may bring penal consequences upon it, has received some consideration. It is a question to which the events of modern times have given great importance, and as to which, during the last half-century, the opinions of statesmen, especially of this country (Great Britain) have undergone a material change. That this duty of restraining her subjects is incumbent upon a State, and

that her inability to execute it cannot be alleged as a valid excuse, or as a sufficient defence to *the invaded State*, are propositions which, strenuously contested as they were in 1818, will scarcely be controverted in 1870. The means which each State has provided for the purpose of enabling herself to fulfil this obligation form an interesting part of public and constitutional jurisprudence, to the province of which they, strictly speaking, belong. This question, however, borders closely upon the general province of international law, and upon the particular theme of this chapter."

The proposition that "a Government is presumed to be able to restrain the subject within its territory from contravening the obligations of neutrality, to which the State is bound," is properly qualified, in the immediately preceding context, by the statement that "the act of an individual citizen, or of a small number of citizens, is not to be imputed without clear proof to the Government of which they are subjects, and that either "*knowledge and sufferance*," or "direct permission," is necessary to make a Government responsible for the acts of subjects "whom it does not prevent from the commission of injury to a foreign State."

Another passage bearing upon this latter point, is also cited in the American Argument, from volume iii, p. 218 of the same work:—

"In fact, the maxim adverted to in a former volume of this work is sound, viz. that a State is *primâ facie* responsible for whatever is done within its jurisdiction; for it must be *presumed* to be capable of preventing or punishing offences committed within its boundaries. A body politic is therefore responsible for the acts of individuals, which are *acts of actual or meditated hostility* towards a nation with which the Government of these subjects professes to maintain relations of friendship or neutrality."

The passage in a former volume here referred to is in the chapter on "Self-Preservation," vol. i, part 3, chap. x. This, as well as all the other passages relied on by the United States, has reference to the *organization of hostile expeditions* against a foreign Power in a neutral or friendly territory. "If" (says the learned author) "the hostile expedition of the present" (or late) "Emperor of the French in 1842 against the existing monarchy of France had taken place *with the sanction or connivance of the English Government*, England would have been guilty of a very gross violation of international law;" and, after some intervening remarks applicable to "*all cases where the territory of one nation is invaded from the country of another*," he refers to "a very important chapter, both in Grotius and in his commentator Heineccius, entitled '*De Pœnarum Communicatione*,' as to when the guilt of a malefactor, and its consequent punishment, is communicated to others than himself."

"The question," he proceeds, "is particularly considered with reference to the responsibility of a State for the conduct of its citizens. The tests for discovering '*civitatsne deliquerit an cives*' are laid down with great precision and unanimity of sentiment by all publicists, and are generally reduced to two, as will be seen from the following extract from Burlamaqui, who repeats the opinion of Grotius and Heineccius: "In civil societies (he says), when a particular member has done an injury to a stranger, the Governor of the Commonwealth is sometimes responsible for it, so that war may be declared against him on that account. But to ground this kind of imputation, we must necessarily suppose one of these two things, sufferance or reception, viz. either that the Sovereign has suffered this harm to be done to the stranger, or that he afforded a retreat to the criminal. In the former case it must be laid down as a maxim that a Sovereign who, knowing the crimes of his subjects—as, for example, that they *practise piracy* on strangers—and being also able and obliged to hinder it, does not hinder it, renders himself criminal, because he has permitted, and consequently furnished a just reason of war. *The two conditions above mentioned—I mean the knowledge and sufferance of the Sovereign—are absolutely necessary*, the one not being sufficient without the other to communicate any share in the guilt. Now, it is presumed that a Sovereign knows what his subjects openly and frequently commit: and as to his power of hindering the evil this likewise is always presumed, unless the want of it be clearly proved."

"Son principe: c'est qu'un Souverain qui pourrait retenir ses sujets dans les règles de la justice et de la paix, sont coupables qu'ils maltraitent une nation, ou dans son corps ou dans ses membres, il ne fait pas moins de tort à toute la nation, que s'il la maltraitait lui-même.

"The act of an individual citizen or of a small number of citizens is not to be imputed, without special proof, to the nation or Government of which they are subjects. A different rule would of course apply to the acts of large numbers of persons, especially if they appeared in the array and with the weapons of a military force, as in the case of the invasion of Portugal, which has been referred to above."

To the principles of these extracts, relating as they do only to hostile expeditions for the invasion of territory or other operations of war, organized and carried on in a neutral country against a belligerent State, with the knowledge and sufferance of the neutral Government, no just exception can be taken. But they do not assert, and they have no tendency to prove, that the construction and sale of an unarmed ship of war by neutral shipbuilders to a belligerent within neutral territory is, in the view of international law, a

"hostile expedition." Upon the question of the due diligence required from a neutral Government for the prevention of those things which (when the requisite knowledge of them exists) it is bound to endeavour to prevent, and for which it will become responsible if it "knows and suffers" them, they throw no light beyond this,—That a neutral Government is presumed, in general, to have the means of performing its international obligations; that it may also be presumed to know (and to suffer, if it does not interfere with them) hostile acts of an unequivocal character done within its territory by large numbers of persons without disguise or concealment; and, on the other hand, that it is not presumed to have the means of preventing, and is therefore not held responsible for suffering those things (though done by its citizens to the injury of a friendly State) of which it cannot be presumed or proved to have had knowledge; and that the knowledge or sufferance of such acts on the part of individual citizens, or of small numbers of citizens, is not to be imputed to their Government without positive proof of such knowledge and sufferance, in each particular case, as a matter of fact.

8. For what purposes Great Britain refers to her municipal law.

These are among the elementary principles on which, in the present controversy, the British Government relies. Nothing can be further from the truth than that the British Government has ever (as is repeatedly, and in a manner not free from offence, imputed to it in the Argument of the United States) "defended itself against charges of wrong by setting up a plea of incapacity to discharge the duties of a sovereign State." It has always maintained, and it still maintains, that it has justly and adequately discharged all those duties. Wherever, in this controversy, it has referred to the limitations upon its own power, imposed by the laws of Great Britain, from which its existence and its authority are derived, it has done so in strict accordance with the principles of international equity and justice. Those principles, being founded on the laws of nature and reason and the received usages of nations, cannot contemplate the performance of international obligations by national Governments as against their own citizens and within their own territory, except by means of just and reasonable general laws made for that purpose, and by the proper use of the legal means so provided.

Those principles also recognize the absolute right and duty of every national Government, which has extended the prohibitions of its own municipal law to things which it was not, by international law, antecedently bound to prohibit, to act upon those municipal laws, as constituting, with respect to such matters, the just and the only measure, as well of the right of a foreign nation seeking to have the benefit of them, as of its own powers of prevention.

9. Doctrine of Tetens as to municipal laws, in excess of antecedent international obligations.

The passage in Tetens' work ("Considérations des Droits Réciproques des Puissances Belligérantes et des Puissances Neutres sur Mer") cited from M. Reddie's English, in the note at page 23 of the British Counter-Case, is irrefragably sound and just:—

"It is a wise foresight for neutral Governments to obviate, during war, as far as possible, all illegal conduct on the part of their subjects, for the double advantage of preserving them from risks, and of preventing the suspicions of belligerents against the traders, who sail under neutral flags.

* * * * * *

"What neutrals, however, may do in this respect does not arise from any right which imposes on them the obligation of maintaining a more special surveillance over their subjects during war than they are in the habit of doing during peace, nor to exercise a more extensive inspection over the legality of their conduct towards belligerents than that which is prescribed by law.

* * * * * *

"From neutral Governments not being under an obligation to obviate the abuses of their subjects, it follows that belligerents, whatever condescension they may have to expect from them for that purpose, cannot reasonably require them to extend their measures beyond what is in practice in these same neutral countries for preventing frauds being committed on their own Customs, and for checking the other deceitful contrivances for evading payment of the revenues of the State. The maximum of precaution, in this case, is to maintain and enforce the observance of neutrality in vessels and cargoes with the same diligence and exactness as are exercised in inquiries and other proceedings relative to taxes or imposts and Customs. He who does as much to prevent a wrong meditated against another as he does for his own protection, satisfies every just and reasonable expectation on the part of that other. Perhaps, however, more might be done, if it were wished, completely to attain the object. In time of war special instructions might be ordered; tribunals of inquiry might be established against the frauds of merchants and shipowners, and more rigour might be shown in the punishment of their delinquencies. But this cannot be demanded on the one side; and, on the other, it might be difficult to grant it, because there might result from it consequences inconsistent with the general spirit of the prohibitory laws of the State. At least, this care must be left to the neutral Governments, to whom alone it belongs to judge what it may be proper for them to do with reference to the circumstances of the war."

10. Influence upon the question

Furthermore, in considering any question of "due diligence" on the part of a national Government, in the discharge of any of its duties, it is unavoidably necessary, upon those

of diligence of the different forms of National Governments.

general principles of reason, and of the practice of nations, which are the foundations of international law, to have regard to the diversity in the forms and Constitutions of different Governments, and to the variety of the means of operation, for the performance of their public duties, resulting from those various forms and Constitutions. Thus, it is stated, at page 49 of the Argument of the United States, that "in the United States it was necessary to impart such executive powers" (as were given by the Acts of Congress of 1794, 1817, and 1818) "to the President; because, according to the tenor of our Constitution, it does not belong to the President to declare war, nor has he complete and final jurisdiction of foreign affairs. In all that he must act with the concurrence, as the case may be, of Congress or of the Senate." If the President has no executive power in the United States, except what is conferred upon him expressly by the law of that country, it is equally certain that the Sovereign of Great Britain, and the various Ministers of State and other officers by whom the executive Government in Great Britain is carried on under her authority, have also no executive power except what is conferred upon them by British law; and that (assuming the laws of both those countries to make just and reasonable provision for the fulfilment, within their respective jurisdictions, of their international obligations), the question whether the Government has, or has not, acted with "due diligence" in a particular case, is one which is incapable of being determined abstractedly, without reference to those laws. If the inquiry be, whether the provision which the national laws have made for the performance of international obligations is in fact just, and reasonably sufficient, it is impossible rationally to deny that principles of administration and rules of legal procedure which experience has proved to be just, and reasonably sufficient for all the great purposes of internal government (the primary objects for which all Governments exist), may be generally adhered to when the legal repression of acts injurious to foreign States becomes necessary, without exposing the national Government which relies on them to the imputation of a want of due diligence.

11. Objections to any theory of the diligence due from Neutral Governments, which involves a universal hypothesis of arbitrary power.

Any theory of diligence in the performance of international obligations which implies that foreign Governments, to whom such obligations are due, owe no respect whatever to the distinctive Constitutions of national Governments, or have a right to call for their violation in particular cases, or to dictate legislative changes at variance with them, would be fatal to national independence; and (as no great Power could tolerate or submit to it) would tend, not to establish, but to subvert the peace and amity of nations. In the words of the British Summary (page 9, sec. 30), "its tendency, if admitted, would be to introduce a universal hypothesis of absolute and arbitrary power as the rule of judgment for all such international controversies." The practical falsehood of such a hypothesis, as applied at the present time to the two nations engaged in the present controversy, to the three nations which furnish the judges of that controversy, and to most of the other civilized nations of the world,—its probably universal falsehood as to every European and American State in the not remote future,—is perhaps not the gravest objection to it. It is at variance with all the highest principles of progress, of advancing liberty, and of extended civilization, which distinguish modern society. If the dreams of some political philosophers could be accomplished, and if all the nations of the earth could be united in one great federation under the most perfect imaginable political constitution, the rights both of particular States, and of individual citizens, and all questions, whether as to the repression and prevention, or as to the punishment of unlawful acts by States or citizens, would certainly be determined, not by arbitrary power, but by fixed and known laws and settled rules of procedure. Is it conceivable that it should enter into the mind of man (nay, of citizens of one of the freest States in the world, whose whole history is a refutation of such a doctrine) that practical impossibilities, which (if they were possible) would be hostile to the highest interests and intelligence of mankind, can be demanded by one State of another, in the name of international law?

IV.—*On the preventive powers of the Laws of Great Britain.*

12. The Argument of the United States, as to the necessity of a reliance on Prerogative, for due diligence.

There are several passages, in the Argument of the United States, which appear (A) to contend that the Royal prerogative in Great Britain actually extends, under the British Constitution, to a power of summary and arbitrary control, without legal procedure, over the persons and property of its citizens, when there is any ground to suppose that such citizens may be about to act, or that such property may be about to be employed, in a manner hostile to a foreign belligerent Power, with which Her Majesty is at peace;—and (B) to assume that, if such a prerogative power does not actually exist under the British Constitution, the very fact of its absence is proof of a defect of British law, in itself amounting to an abnegation of the use of due diligence (or, what is the same thing, to a want of the means of due diligence) for the prevention of such acts.

There are, also, other passages which assert (C) that "Great Britain pretends, that punitive law is the measure of neutral duties:" while (D) "all other Governments, including the United States, prevent peril to the national peace by means of prerogative force, lodged, by implied or express constitutional law, in the hand of the Executive" (page 72).

These arguments require to be severally examined.

13. The arguments as to prerogative powers belonging to the British Crown

(A.) The following passages embody the American argument as to the prerogative power, supposed by it to be actually vested in the Crown of Great Britain:—

"(1.) We find, on the most cursory observation of the Constitution of Great Britain, that the declaration of war, the conclusion of peace, the conduct of foreign affairs, that all these things are in Great Britain elements of the prerogative of the Crown.

"We cannot believe, and do not concede, that in all these greater prerogative powers there is not included the lesser one of *preventing* unauthorized private persons from engaging in private war against a friendly foreign State, and thus committing Great Britain to causes of public war on the part of such foreign State" (pages 43, 44).

"(2.) The whole body of the powers, suitable to the regulation and maintenance of the relations of Great Britain, *ad extra*, to other nations, is lodged in the prerogative of the Crown. The intercourse of peace, the declaration and prosecution of war, the proclamation and observance of neutrality (which last is but a division of the general subject of international relations in time of war), are all, under the British Constitution, administered by the Royal Prerogative.

"We refer to the debates in Parliament upon the Foreign Enlistment Bill in 1819, and on the proposition to repeal the Act in 1823, and to the debate upon the Foreign Enlistment Bill of 1870 (as cited in Note B of the Appendix to this Argument), as a clear exhibition of this doctrine of the British Constitution, in the distinction between the Executive power to *prevent* violations of international duty by the nation, through the acts of individuals, and the *punitive* legislation in aid of such power, which needed to proceed from Parliament.

"We refer, also, to the actual exercise of this Executive power by the Government of Great Britain, without any enabling Act of Parliament to that end, in various public acts in the course of the transactions now in judgment before the Tribunal.

"1. The Queen's Proclamation of Neutrality, May 13th, 1861.

"2. The regulations issued by the Government of Her Britannic Majesty in regard to the reception of cruizers and their prizes in the ports of the Empire, June 1st, 1861—June 2nd, 1865.

"3. The Executive orders to detain the Alabama at Queenstown and Nassau, August 2, 1862.

"4. The Executive orders to detain the Florida at Nassau, August 2, 1862.

"5. The Executive orders to detain the rams at Liverpool, October 7, 1863.

"6. The debate and vote in Parliament justifying the detention of the rams by the Government 'on their own responsibility,' February 23rd, 1864.

"7. The final decision of Her Majesty's Government in regard to the Tuscaloosa, as expressed by the Duke of Newcastle to Governor Wodehouse, in the following words: 'If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of Her Majesty's orders made for the purpose of maintaining her neutrality, I consider that the mode of proceeding in such circumstances most consistent with Her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under Her Majesty's control and jurisdiction, until properly reclaimed by her original owners.' November 4th, 1863.

"8. The Executive order that, 'for the future no ship of war belonging to either of the belligerent Powers of North America shall be allowed to enter or to remain, or to be in any of Her Majesty's ports for the purpose of being dismantled or sold.' September 8, 1864.

"9. The final Executive orders to retain the Shenandoah in port 'by force, if necessary,' and to 'forcibly seize her upon the high seas.' September and October, 1865.

"10. The rejection by Parliament of the section of the new Foreign Enlistment Bill, which provided for the exclusion from British ports of vessels which had been fitted out or dispatched in violation of the Act, as recommended by the Report of the Royal Commission. This rejection was moved by the Attorney-General and made by Parliament, on the mere ground that this power could be exercised by Order in Council.

"That these acts were understood by the Government of Great Britain to rest upon the prerogative and its proper exercise, is apparent from the responsible opinions of the Law Officers given upon fitting occasions" (pages 323—325).

These passages exhibit a very strange confusion of ideas, between the prerogative of the British Crown, as representing the British nation in its external relations towards foreign Powers, not subject to its laws, and its means of control within its own territory over its own citizens or commorant subjects, its relations to whom are created and defined by those laws. The declaration of war and peace, or of neutrality in a foreign war; the issuing orders and regulations as to the reception of foreign cruizers or their prizes in British ports; the exercise of control over foreign belligerent vessels or prizes (as in the supposed case of the Tuscaloosa), brought into British ports by a belligerent Power contrary to Her Majesty's orders and regulations; the exclusion of foreign belligerent vessels from being brought into British ports to be dismantled or sold, or from being brought into such ports at all, if originally fitted out or dispatched from British territory

in violation of British law; the seizure of a foreign vessel (as in the supposed case of the Shenandoah), if found committing depredations on the high seas, after the belligerency of the Power, by which she was commissioned, had ceased;—all these are acts within the former category, concerning the external relations of Great Britain towards foreign Powers, not subject to British law or to British national jurisdiction.

The executive orders to detain the Alabama at Queenstown and Nassau, the Florida at Nassau, and the rams at Liverpool, were on the other hand, all issued by virtue of the powers with which the British Government was armed against its own subjects by British municipal law (viz., by the Foreign Enlistment Act of 1819), and not by virtue of any actual or supposed prerogative of the Crown.

The words used by the British Attorney-General in Parliament, on the 23rd of February, 1864, with reference to the detention of the rams at Birkenhead (or to the preliminary notice that they would be seized if any attempt were made to remove them), have been several times quoted in the American Argument.* Those words were, that the Government had given the orders in question, "on their own responsibility." But this does not mean that the orders given were, or were supposed to be, founded on any other authority than the powers of seizure given by the Foreign Enlistment Act; to which reference had been expressly made, as the authority for what was done, in a letter to the Law Officers dated October 19, 1863, also quoted at page 326.

Those orders were necessarily given upon the responsibility of the Executive Government, on whom the burden was thrown, by the Foreign Enlistment Act, of first taking possession of an offending vessel, in any case in which they might have reasonable ground for belief that the law was, either by act or by attempt, infringed; and afterwards justifying what they had done by a regular judicial proceeding for the condemnation of that vessel, in the proper Court of Law. Exactly the same language had been used, by the same Law Officer of the British Government, when Solicitor-General, in a previous debate on the seizure of the Alexandra (24 April, 1863, Hansard's Debates, vol. clxx, pp. 750—752). After expressly saying that "in this case everything had been done according to law," he added, "it was our duty, upon having *primâ facie* evidence which in our judgment came up to the requirements of the clause, to seize the ship or vessel, according to the form of proceeding under the Customs Acts. There is no other way of dealing with the ship; you cannot stop the ship by going before a magistrate; it must be done upon the responsibility of the Government; and so it has been done."

14. The true doctrine as to the powers of the Crown under British law.

The fundamental principles of British Constitutional Law, relative to this branch of the Argument, will be found in all the elementary works on that subject. The subjoined extracts are from Stephen's edition of Blackstone's Commentaries:

"It is expressly declared, by Statute 12 and 13 William III., cap. 2, that the laws of England are the birthright of the people thereof; and all the Kings and Queens who shall ascend the throne of this realm ought to administer the Government of the same according to the said laws; and all their officers and ministers ought to serve them respectively according to the same." (Vol. ii, p. 424.—6th edition.)

"Since the law is in England the supreme arbiter of every man's life, liberty, and property, Courts of Justice must at all times be open to the subject, and the law be duly administered therein." (Ibid. p. 505).

"The law of nations . . . is a system of rules established by universal consent among the civilized inhabitants of the world. . . . As none of these (independent) States will allow a superiority in the other therefore, neither can dictate nor prescribe the rules of this law to the rest; but such rules must necessarily result from those principles of natural justice in which all the learned of every nation agree, and to which all civilized States have assented. In arbitrary States, this law, wherever it contradicts, or is not provided for by the municipal law of the country, is enforced by the Royal power; but, since in England no Royal power can introduce a new law, or suspend the execution of the old, therefore, the law of nations, whenever any question arises which is properly the subject of its jurisdiction, is here adopted in its full extent by the common law, and held to be the law of the land. Hence those Acts of Parliament, which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of this kingdom, without which it must cease to be a part of the civilized world. . . . . " (Vol. iv, pages 302, 303.)

With respect to the particular question of the power of the British Crown to prevent, by virtue of its prerogative, the building of ships of war for foreign Powers within its dominions, the law of Great Britain was authoritatively explained as long ago as 1721.

"In Michaelmas vacation, 1721" (says Fortescue, in his Reports, page 388), "the Judges were ordered to attend the House of Lords concerning the building of ships of force for foreigners; and the

* Pages 45, 326, &c.

question the Lords asked the Judges was, whether by law His Majesty has a power to prohibit the building of ships of war, or of great force, for foreigners, in any of His Majesty's dominions? And the Judges were all of opinion, except Baron Mountague (Chief Justice Pratt delivering their opinion), that the King had no power to prohibit the same; and declared that Mountague said he had formed no opinion thereon. This question was asked on the occasion of ships built and sold to the Czar being complained of by the Minister of Sweden. Trevor and Parker, gave the same opinion in 1713."

15. The American view of an *a priori* obligation on this subject.

(B.) In the following passages of their Argument, the American Counsel appear to contend that the British Government must be deemed to have been wanting in due diligence because they proceeded by law, and not by suspension of law, or by prerogative without law.

(1.) "Apart from other and direct proofs of permission, or knowledge and sufferance, the responsibility for any injury is fixed on the local Sovereign, if he depend on municipal means of enforcing the observance of international obligations, instead of acting preventively to that end in his prerogative capacity as Sovereign." (p. 41.)

(2.) "The next great failure of Great Britain to use *due diligence to prevent* the violation of its neutrality, in the matters within the jurisdiction of the Tribunal, is shown in its entire omission to exert the direct Executive authority, lodged in the Royal Prerogative, to intercept the preparations and outfits of the offending vessels, and the contributory provisions of armament, munitions, and men, which were emitted from various ports of the United Kingdom. We do not find in the British Case or Counter-Case any serious contention, but that such powers as pertain to the Prerogative, in the maintenance of international relations, and are exercised as such by other great Powers, would have prevented the escape of every one of the offending vessels emitted from British ports, and precluded the subsidiary aids of warlike equipment and supplies which set them forth and kept them on foot for the maritime hostilities which they maintained." (pages 357, 358.)

(3.) "The British Ministers do not scruple to suspend the privileges of the writ of *habeas corpus*, whether with or without previous Parliamentary authorization, and whether in the United Kingdom or in the Colonies, on occasion of petty acts of rebellion or revolt, that is, the case of *domestic war*: *à fortiori*, they should and may arrest and prevent subjects or commorant foreigners engaged in the commission of acts of foreign war to the prejudice of another Government." (p. 44.)

The answer to these arguments has been, in substance, anticipated; but, with respect to each of them, a few further remarks may not be superfluous.

With respect to the first, it is difficult to understand whether the Counsel for the United States mean to imply (in the face of the admission as to the limitation of the powers of their own President to such authority as was expressly conferred upon him by the Acts of Congress of 1794, 1817, and 1818, which is found at page 49 of their Argument) that the President of the United States has a "prerogative capacity as Sovereign," by which he can "act preventively," or that he does not "depend upon municipal means" for the enforcement of such international obligations as are now in question with Great Britain. Legal powers conferred upon the President of the United States by Acts of Congress for the performance of international obligations, are as much "municipal means" as legal powers conferred upon the the Sovereign of Great Britain by an Act of the British Parliament, for the like purpose.

With respect to the second passage, it is to be observed, that it not only imputes as a want of due diligence the abstinence from the use of arbitrary powers to supply a supposed deficiency of legal powers, but it assumes that the United States has a right, by international law, to expect Great Britain to prevent the exportation from her territory of what it describes as "contributory provisions," arms, munitions, and "subsidiary aids of warlike equipment and supplies," though such elements of armaments were uncombined, and were not destined to be combined, within British jurisdiction, but were exported from that territory under the conditions of ordinary exports of articles contraband of war. For such a pretension no warrant can be found either in international law, or in any municipal law of Great Britain, or in any one of the three Rules contained in the VIth Article of the Treaty of Washington.

The third passage requires more particular attention, because it presents, in a particularly striking manner, a radically false assumption, which pervades many other portions of the United States' Argument; viz., that the acts done within British jurisdiction, which Great Britain is said not to have used due diligence to prevent, were "*acts of war*" by British subjects or commorant foreigners against the United States; justifying and calling for similar means of repression to those which might be necessary in a case of "rebellion or revolt, *i.e.*, of domestic war."

It is impossible too pointedly to deny the truth of this assumption, or too positively to state that, if any military or naval expeditions, or any other acts or operations of war against the United States, in the true and proper sense of those words, had been attempted within British territory, it would not have been necessary for the British Government either

16. The British Crown has power, by common law, to use the civil, military, and naval

forces of the realm to stop acts of war within British territory.

to suspend the Habeas Corpus Act or to rely on the Foreign Enlistment Act, in order to enable it to intercept and prevent by force such expeditions or such acts or operations of war. The whole civil police, and the whole naval and military forces of the British Crown would have been lawfully available to the Executive Government, by the common law of the realm, for the prevention of such proceedings. But the fact is, that nothing of this kind ever happened or was attempted, during the civil war in the United States, in Great Britain, or in any of the British Possessions, except (in the year 1863-64) in some of the British North American Provinces; and, when such attempts were made in those provinces, the powers of the common law were at once put in force for their repression, and were strengthened by special and extraordinary legislation; nor is any complaint now made by the Government of the United States of any want of due diligence on the part of the British North American authorities in that respect. Not only was no military or naval expedition and no act or operation of war ever attempted elsewhere within British territory against the United States, but (unless the arming of the Florida at Green Cay, in the Bahamas, be an exception), no attempt was ever made in any other part of the British dominions, so much as to equip or dispatch for the Confederate service any armed vessel, by which the question whether it had or had not the character of a naval expedition prohibited by international law might have been raised.

17. The assertion of the United States that Great Britain relies on punitive, and not on preventive law, disproved.

(C.) The next propositions are, that "Great Britain alone pretends that punitive law is the measure of neutral duties;"—that the powers vested in the Executive Government of Great Britain by the Foreign Enlistment Act of 1819 were punitive only, and not preventive;—and that (D) "all other Governments, including the United States, prevent peril to the national peace through means of prerogative force, lodged, by implied or express constitutional law, in the hands of the Executive."

It is necessary to notice in passing (with reference to the points (A) and (B), already dealt with), the fallacy here introduced by the improper use of the term "prerogative force," to signify definite legal powers, vested by law in the Executive Government of a nation. Such is not the sense in which the word "prerogative" is used in Great Britain: nor does it appear to be that, in which it is used in the parts of the American Argument already dealt with.

18. The preventive power of the British law explained.

The answer to proposition (C) is, simply, that it is without foundation in fact. Great Britain has never pretended that punitive law is the measure of neutral duties; it is not true that the powers vested in the Executive Government of Great Britain by the Foreign Enlistment Act of 1819, were punitive only and not preventive. If the powers given, by the Acts of Congress already mentioned, to the President of the United States, can with any propriety of language be described as powers to "prevent peril to the national peace by means of prerogative force," the same description is equally applicable to the powers given to the Executive Government of Great Britain, by the Foreign Enlistment Act of 1819.

That Act, as already noticed, prohibited under penalties the equipment or armament of ships for foreign belligerent service; the augmentation of the warlike force of foreign ships of war: and the enlistment or recruitment of men for foreign belligerent service. *It prohibited also any attempt or endeavour to do any of those acts*:—the prohibition as to ships, &c., being restricted to acts done, or attempts made, within British jurisdiction. So far as this Act imposed penalties, it was of course punitive. But it was preventive also (for which reason it struck at attempts and endeavours, as well as acts)—and prevention was the main purpose for which it was passed, as appears from the preamble, which recites, that the laws previously in force "were not sufficiently effectual *for preventing* the prohibited acts.

These preventive powers are contained in the 5th, 6th, and 7th sections. The 5th and 6th sections authorized the Executive Government, in any part of the British dominions, upon receiving information on oath of the violation of the provisions against enlistment by persons on board any vessel within British jurisdiction, to detain such vessel, and prevent her from proceeding to sea on her voyage with the persons so unlawfully enlisted on board; and also to detain her until certain penalties had been paid, if her commander had been privy to the unlawful enlistment. The 7th section authorized any officer of Customs or Excise, or any other officer of the British navy, by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise or the laws of trade and navigation, to seize any ship or vessel equipped or armed, or attempted to be equipped or armed, contrary to its provisions, in such places and in such manner, in which the same officers respectively would be empowered to make seizures under the laws of Customs or Excise, or under the laws of trade and navigation.

The powers of seizure (to be followed afterwards by proceedings in the Court of Exchequer for the condemnation of the vessel) which from 1860 to 1866 were available for the purpose of prevention under this statute, are contained in section 223 of the

British Customs Law Consolidation Act of 1853, and in section 103 of the Merchant Shipping Act of 1854. By section 223 of the Customs Act, power was given to any officer of Her Majesty's Navy, duly employed for the prevention of smuggling, and on full pay, or any officer of Customs or Excise, to seize or detain, in any place, either upon land or water, all ships and boats, and all goods whatever, liable to forfeiture. By section 103 of the Merchant Shipping Act, power was given to any commissioned officer on full pay in the naval service of Her Majesty, or any British officer of Customs, to seize and detain any ship, which might, either wholly or as to any share thereof, have become liable to forfeiture under that Act.

The papers before the Arbitrators contain several instances of the employment of officers in Her Majesty's naval service, both at Liverpool and at Nassau, for the execution of duties connected with the enforcement of these laws. In most cases, those duties were entrusted in practice to the officers of Her Majesty's Customs; but the whole naval force of the British kingdom might, in case of need, have been lawfully employed, within British jurisdiction, in aid of those officers. When the Georgia was reported to have gone to Alderney, a British ship of war was sent there after her; and if the commander of that ship had found her in British waters, and had ascertained the existence of any grounds warranting her detention, she would have been undoubtedly detained by him. Whenever evidence was forthcoming of an actual or contemplated illegal equipment of any vessel within British jurisdiction, there was ample preventive power under these statutes. Without such evidence, no rule of international law gave a foreign State the right to require, that any vessel should be prevented from leaving the British dominions.

19. The doubtful points as to the construction of the British Foreign Enlistment Act, never affected the diligence of the British Government.

The United States have referred, in their Argument, to the question raised as to the interpretation of the British Foreign Enlistment Act before the English Court of Exchequer, in the case of the Alexandra, and to the opinion in favour of its more restricted construction, which prevailed in that case; the judges being equally divided, and the right of appeal being successfully contested on technical grounds. But in another case (that of the Pampero), a Scottish Court of equal authority adopted the more extended construction, upon which the British Government, both before and after the case of the Alexandra, always acted; and, as no vessel was ever employed in the war service of the Confederate States, which was enabled to depart from Great Britain by reason of this controversy as to the interpretation of the Act, it would seem to be of no moment to the present inquiry, even if it had related to a point, as to which Great Britain owed some antecedent duty to the United States by international, as distinguished from municipal, law. But the controversy did not, in fact, relate to any such point. There was no question as to the complete adequacy of the provisions of that Statute to enable the British Government to prevent the departure, from British jurisdiction, of any warlike expedition, or of any ship equipped *and armed*, or attempted to be equipped *and armed*, within British jurisdiction, for the purpose of being employed to cruise or carry on war against the United States. The sole question was, whether the language of the prohibition comprehended a ship built and specially adapted for warlike purposes, but not armed or capable of offence or defence, nor intended so to be, at the time of her departure from British jurisdiction. All the judges were of opinion, that the departure of such a ship from neutral territory was not an act of war, was not a hostile naval expedition, and was not prohibited, *inter gentes*, by general international law; and two of them thought, that, not having any of those characters, it was also not within the prohibitions of the Statute; while the other two were of opinion that the existence of those characters was not, under the words of the law, a necessary element in the municipal offence.

20. Baron Bramwell's view of the international, as distinct from municipal obligation, agreed with that of the American Attorney-General in 1841.

The language of Baron Bramwell, an eminent British Judge, (afterwards a Member of the British Neutrality Laws Commission), explains clearly and forcibly the view of the case, as it would have stood under international law only, which was taken by the entire Court.

"If we look at the rights and the obligations created by international law, if a hostile expedition, fitted out by a State, leaves its territory to attack another State, it is war; so also, if the expedition is fitted out, not by the State but with its sufferance, by a part of its subjects or strangers within its territories, it is war, at least in the option of the assailed. They would be entitled to say, either you can prevent this, or you cannot. In the former case, it is your act, and is war; in the latter case, in self-defence we must attack your territory, whence this assault on us proceeds. And this is equally true, whether the State assailed is at war or at peace with all the world.

"The right, in peace or war, is not to be attacked from the territory of another State; that that territory shall not be the basis of hostilities. But there is no international law forbidding the supply of contraband of war; and an armed vessel is, in my judgment, that, and nothing more. It may leave the neutral territory under the same conditions, as the materials of which it is made might do so. The State interested in stopping it must stop it, as it would other contraband of war; viz., on the high seas."

Not only is the doctrine, thus stated, conformable to all the authorities of international law, to which reference has been made in the earlier part of this paper; but the same doctrine was officially laid down by Mr. Legaré, then Attorney-General of the United States, in December 1841, when advising his Government that two schooners of war, built and fitted out, and about to be furnished with guns and a military equipment, in New York, for Mexican service against Texas, ought to be treated as offending against the Act of Congress of 1818:—

"The policy," he said, "of this country (the United States), is, and ever has been, perfect neutrality, and non-interference in the quarrels of others. But, by the law of nations, that neutrality may, in the matter of furnishing military supplies, be preserved by the two opposite systems, viz., either by furnishing both parties with perfect impartiality, or by furnishing neither. For the former branch of the alternative, it is superfluous to cite the language of publicists, which is express, and is doubtless familiar to you. *If you sell a ship of war to one belligerent, the other has no right to complain, so long as you offer him the same facility. The law of nations allows him, it is true, to confiscate the vessel as contraband of war, if he can take her on the high seas; but he has no ground of quarrel with you for furnishing, or attempting to furnish it.* But, with a full knowledge of *this undoubted right of neutrals*, this country has seen fit, with regard to ships of war, to adopt the other branch of the alternative, less profitable with a view to commerce, but more favourable to the preservation of a state of really pacific feeling within her borders; she has forbidden all furnishing of them, under severe penalties."—(British Appendix, vol. v, p. 360.)

V.—*On the preventive powers of the Laws of Foreign Countries.*

21. On the arguments as to due diligence derived by the United States from foreign laws.

(D.) It now becomes necessary to observe upon the proposition, that "all other Governments, including the United States, prevent peril to the national peace through means of prerogative force, lodged by implied or express constitutional law in the hands of the Executive." In other words, a general want of diligence is sought to be established against Great Britain, by an argument derived from the laws of the United States, and of other countries, with a view to show, by the comparison, the insufficiency of the preventive powers of British Law.

To the whole principle of this argument, so far as it relates to matters not prohibited by the general law of nations, Great Britain demurs; and, even with respect to matters which are prohibited by that general law, it is obvious that nothing can be more fallacious than an attempt at comparison, which, without exact and special knowledge of the whole complex machinery of laws, judicature, and legal procedure, and political and civil administration, which prevails in each different country, can pretend to decide on the relative efficiency of those various laws for political purposes. The materials, however, on which reliance is placed for this comparison in the American Argument, are so manifestly scanty and insufficient as to make the answer to this part of the argument simple, even if it were in principle admissible.

As to the laws of France, Italy, Switzerland, Portugal, Brazil, Belgium, and the Netherlands; and, in fact, of almost every country mentioned in the Argument, except the United States, it can hardly be thought that the Counsel for the United States understand these laws, which are all substantially the same, better than M. van Zuylen, the Netherlands Minister, who has to administer them; and who, in reply to certain inquiries from the British Chargé d'Affaires at the Hague, wrote:—

"There is no code of laws or regulations in the Kingdom of the Netherlands concerning the rights and duties of neutrals, nor any special laws or ordinances for either party on this very important matter of external public law. The Government may use Articles 84 and 85 of the Penal Code; but no legislative provisions have been adopted to protect the Government, and serve against those who attempt a violation of neutrality. It may be said that no country has codified these regulations, and given them the force of law; and, though Great Britain and the United States have their Foreign Enlistment Act, its effect is very limited."

This language is criticised in the American Argument as "inaccurate," but it is in reality perfectly exact, for such provisions as those of Articles 84 and 85 of the French Penal Code cannot possibly be described as either prohibiting or enabling the Government to prevent, those definite acts and attempts against which it was the object of the British and the American Foreign Enlistment Acts to provide. These Articles are punitive only, and they strike at nothing but acts, unauthorized by the Government, which may have "exposed the State to a declaration of war," or "to reprisals." The language of the corresponding laws of almost all the other States, except Switzerland, is admitted to be similar. That of Switzerland prohibits generally, under penalties, all "acts contrary to the law of nations," while it regulates (by an enactment, the particular provisions of which are not stated) the enlistment of troops within the Swiss Federal territory."

No man having the least knowledge of the laws and constitutional systems of Great

Britain and the United States, can be supposed to imagine that enactments conceived in these vague and indefinite terms, if they had been adopted by either of those countries, would have been of the smallest use for the purpose of preventing such acts as those of which the Government of the United States now complain; much less that they would have been comparable in point of efficiency with the definite means of prevention provided and directed against attempts, as well as acts, by the Acts of Congress and of Parliament, which were actually in force in those nations respectively.

But it is assumed, in the Argument of the United States, that these special laws were in all these countries supplemented by an elastic and arbitrary executive power. Of this assertion no proof in detail is attempted to be given; nor is it believed to be consistent with the fact.

If the French and other Governments issued executive Proclamations forbidding their subjects to do acts of the nature now in question, so also did the Queen of Great Britain. By Her Majesty's Proclamation of Neutrality (13th May, 1861), she "strictly charged and commanded all her subjects to observe a strict neutrality during the hostilities" (between the United States and the Confederates), "and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto;" and she warned them, "and all persons whatsoever entitled to her protection"—

"That if any of them should presume to do any acts in derogation of their duty, as subjects of a neutral Sovereign, in the said contest, or in violation of the law of nations in that behalf, as for example, and more especially, by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers, or soldiers; or by serving as officers, sailors, or marines, on board any ship or vessel of war, or transport, of, or in the service of, either of the said contending parties; or by engaging to go, or going, to any place beyond the seas with intent to enlist or engage in any such service, or by procuring, or attempting to procure, within Her Majesty's dominions, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war, or privateer, or transport, by either of the said contending parties;" (or by breach of blockade, or carriage of contraband), "all persons so offending would incur and be liable to the several penalties and penal consequences," by the (British Foreign Enlistment) Act, "or by the law of nations, in that behalf imposed or denounced."

If this Proclamation referred (as it did) to British law in some cases, and to the law of nations in other cases for its sanctions, the French and all other Proclamations of the like character also had reference, for the like purposes, to their own respective national laws, and to the law of nations. Whatever surveillance may have been exercised by the French Government, according to the particular provisions of their own laws, over the builders of the rams intended for the Confederates, at Nantes and at Bordeaux, the *construction* of those vessels was at all events *not stopped;* and one of them, the Stonewall, did eventually pass into the hands of the Confederates; nor was it by any power of the French Executive, or of the French law, that she was afterwards intercepted, before she had actually committed destructive acts against the shipping of the United States. The Georgia received her armament in French waters. Commodore Barron, "the head of the Confederate Navy Department in Europe,"* was established in Paris; a Frenchman residing in Paris, named Bravay, intervened in the Confederate interest as the ostensible purchaser of the rams at Birkenhead, and claimed them, against the seizure of the British Government, without any aid from French authority to Her Majesty's Government, in their resistance to that claim. These facts are not mentioned as implying any want of proper diligence on the part of the French Government; but to show, that even in that country, at a time when the Imperial Government exercised much larger powers of control over public and private liberty than could ever be possible in Great Britain (or, as it is believed, in the United States), the Executive either did not possess, or did not find it practicable to exercise with the preventive efficacy which the American Argument seems to deem necessary, any merely discretionary powers of interference.

VI.—*On the Preventive Powers of the Law of the United States.*

22. On the comparison made by the United States between their own laws and British law, in order to prove a general want of due diligence against Great Britain.

The comparison between the law of Great Britain and the law of the United States is more easy; because they have a very close historical and juridical relation to each other; and because both these nations exclude from their constitutional systems all forms of arbitrary power.

What then are the preventive powers, found in the several Acts of Congress from time to time passed upon this subject in the United States, and which are admitted (at page 49

* See letter, dated January 27, 1865, from Consul Morse to Mr. Adams. (United States' Appendix, vol. ii, p. 175.)

of the American Argument) to be the only preventive powers which the Executive Government of the United States of right possesses? How have those powers been used in practice? And with what degree of success and efficiency so far as regards the practical object of prevention? This inquiry is directly challenged in the Case, in the Appendix to the Counter-Case, and in the Argument of the United States, for the purpose (as it would seem) of showing that if the law of Great Britain had been equal in efficiency to that of the United States, and had been enforced with an equal degree of diligence, the present causes of complaint might not have arisen. Great Britain has no reason to shrink from the test of diligence so tendered on the part of the United States; nor, in accepting it, is it just to impute to her Government an intention to recriminate, to introduce any irrelevant topics, or to call in question the general good faith of the Government of the United States, in the conduct of its relations with foreign Powers.

23. Examination of the preventive powers of the American Government, under their Acts of Congress for the preservation of neutrality.

The only preventive powers material to this question, which were expressly or by implication conferred by the several Acts of Congress relating to this subject, are contained in (1.) the third section of the Act of 1794, amended by the first section of the Act of 1817, and re-enacted, on the repeal of those Acts, by the third section of the Act of 1818: (2.) The seventh section of the Act of 1794, re-enacted by the eighth section of the Act of 1818: (3.) The second section of the Act of 1817, re-enacted by the tenth section of the Act of 1818; and, lastly, the third section of the Act of 1817, re-enacted by the eleventh section of the Act of 1818.

It will be sufficient to consider these different powers as they stand in the latest Act, by which the provisions of the two former were consolidated, and the former Acts themselves repealed.

(1.) Section 3 of the Act of 1818 made it penal for any person, within the limits of the United States, to "fit out *and arm*, or attempt to fit out *and arm*, or procure to be fitted out *and armed*, or knowingly to be *concerned in the furnishing, fitting out, or arming*, of any ship or vessel," with the intent that such ship or vessel should be employed in any foreign belligerent service; and forfeited every such ship or vessel, with her tackle, &c.; one-half to any informer, and the other half to the use of the United States.

This clause agrees in substance with the seventh section of the British Foreign Enlistment Act; except that, in the definition of the principal offences under it, it always couples armament with equipment, which the British clause, using the word "*or*" ("equip, furnish, fit out, *or* arm," &c.) instead of the word "*and*" ("fit out *and* arm," &c.) throughout disjoins; and it omits to state by what officers, or in what manner, seizures under it are to be made, the British clause expressly empowering such seizures to be made by Her Majesty's naval officers, or officers of the Customs or Excise, authorized to make seizures under the Customs and Navigation Acts. Inasmuch, however, as forfeiture necessarily implies the power of seizure, this clause (though the means of seizure are not here defined) is one of preventive efficacy. There is a further difference, which it seems right to mention (as it has been mentioned by the Counsel of the United States), viz., that half the benefit of forfeitures is given to informers.

(2.) The eighth section of the Act of 1818 is that which, in the present Argument, seems to be mainly relied on by the United States. "The American Act," says the Argument (page 53), "is preventive, calls for executive action; and places in the hands of the President of the United States the entire military and naval force of the Government, to be employed by him in his discretion, for the prevention of foreign enlistments in the United States."

In reality, however, the powers given to the President by that section are dependent upon conditions, which, if an exactly similar clause had been contained in the British Foreign Enlistment Act, would have made them inapplicable to the case of the equipment in, and departure from, British territory, of an unarmed ship of war intended for the Confederates; and as, in any case of resistance to lawful civil authority in the execution of the British laws of Customs and Navigation, or of the Foreign Enlistment Act, the seizures which Her Majesty's officers of her Customs and Navy are authorized to make, may be supported by the use of adequate force, under the direction of those officers, at Her Majesty's discretion, such an enactment would have had the effect rather of limiting than of enlarging the powers now possessed for that purpose by the British Crown.

This section authorizes the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be judged necessary, in any one or more of the several cases there enumerated, viz.:—

(*a.*) In every case in which *a vessel shall be fitted out and armed*, or attempted "to be *fitted out and armed*" (*i. e.*, against the prohibitions of the third section).

(*b.*) "Or in which the force of any vessel of war, cruiser, or armed vessel, shall be

increased or augmented: (*i. e.*, against the prohibitions of the fifth section, "by adding to the number of the guns of any such vessel which, at the time of her arrival in the waters of the United States, was in the service of a foreign Prince, &c., or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war.")

(*c.*) "Or in which any military expedition or enterprise shall be begun to be set on foot, contrary to the provisions and prohibitions of this Act":* (*i. e.* against the prohibitions of the sixth section, which makes it penal for any person, "within the territory or jurisdiction of the United States," to "begin or set on foot, or provide the means for, any *military expedition or enterprise to be carried on from thence* against the territory or dominions of any foreign State," &c.)

(*d.*) "And in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States, as before defined:" (*i. e.*, by the seventh section, which enables District Courts of the United States to "take cognizance of complaints, by whomsoever instituted, in cases of capture made within the waters of the United States, or within a marine league of the coasts thereof.")

(*e.*) "And in every case, in which any process issuing out of any Court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruizer, or other armed vessel of any foreign Prince," &c.

It will be seen that none of these cases, except the first, are material to the present inquiry; and that, to constitute the first case, the vessel must have been *armed, or attempted to be armed*, within the jurisdiction of the United States.

The purposes for which, in any of these cases, the President is authorized by the section to employ the land or naval forces, or the militia of the United States, are the following:—

(*a.*) "For the purposes of detaining any *such* ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this Act," (a purpose applicable only to such ships or vessels, as are comprehended within cases (*a*), (*b*), (*d*), and (*e*).

(*b.*) "And to the restoring the prize or prizes in cases in which restoration shall have been adjudged," (a purpose applicable only to cases (*d*) and (*e*).

(*c.*) "And also for the purpose of preventing the carrying on any *such* expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign Prince," &c. (a purpose applicable only to case (*c*).

It is thus seen, that all these powers of prevention, given by section 8 to the President, are limited, and not arbitrary, and that they would none of them have been applicable to prevent the departure from the United States of an unarmed vessel, not intended to be armed within American jurisdiction, built and equipped within the United States, and despatched from thence for the use and service of a belligerent.

Nor is there believed to be any trace, in the annals of the law or history of the United States, of their ever having been employed for such a purpose.

But further, this 8th clause of the Act of Congress of 1818 is a re-enactment of the 7th clause of the Act of 1794, the purpose and effect of which was examined and authoritatively explained, by the Supreme Court of the United States, in the year 1818, in a case of "Gelston *v.* Hoyt," (reported in the 4th volume of Judge Curtis' Reports, pages 211-231.) An action was brought against certain officers of the Customs of the United States, for the wrongful seizure of a vessel, and they attempted (among other things) to justify themselves by pleading that, in taking possession of, and detaining the ship, they had acted under the instructions of the President, given by virtue of the 7th section of the Act of 1794. That defence was disallowed on the grounds that the plea *did not allege any forfeiture under the 3rd section, nor justify the taking or detaining the ship for any supposed forfeiture;* and did not show that the defendants belonged to the naval or military forces of the United States, or *were employed in such capacity, to take and detain the ship, in order to the execution of the prohibitions and penalties of the Act.*

Mr. Justice Story, in giving the judgment of the Court, observed:—

"The power thus intrusted to the President is of a very high and delicate nature, and manifestly intended to be exercised only when, by the ordinary process or exercise of civil authority, the purposes of the law cannot be effectuated. It is to be exerted on extraordinary occasions, and subject to that high responsibility which all executive acts necessarily involve. Whenever it is exerted, all persons

* The words "contrary to," &c., apply, in the construction of the section, to cases (*a*), (*b*), and (*c*); the particular provisions and prohibitions applicable to each case being those above stated.

who act in obedience to the executive instructions, *in cases within the Act*, are completely justified in taking possession of and detaining the offending vessel, and are not responsible in damages for any injury which the party may suffer by reason of such proceeding. Surely it never could have been the intention of Congress that such a power should be allowed as a shield to the seizing officer, in cases where that seizure might be made by the ordinary civil means? One of the cases put in the section is, where any process of the Courts of the United States is disobeyed and resisted; and this case abundantly shows that *the authority of the President was not intended to be called into exercise unless where military and naval forces were necessary to ensure the execution of the law.* In terms, the section is confined to the employment of military and naval forces; and *there is neither public policy nor principle to justify an extension of the prerogative, beyond the terms in which it is given.* Congress might be perfectly willing to entrust the President with the power to take and detain, *whenever, in his opinion, the case was so flagrant that military or naval forces were necessary to enforce the laws;* and yet, with great propriety deny it, where, from the circumstances of the case the civil officers of the Government might, upon their private responsibility, without any danger to the public peace, completely execute them. *It is certainly against the general theory of our institutions to create great discretionary powers by implication, and, in the present instance, we see nothing to justify it.*"

In how many instances it has been found necessary, or thought proper, to call into exercise this power of the President of the United States, it would not be material for the present purpose to inquire. It seems enough to observe, that in order to call this power into exercise at all in any case of a vessel equipped or adapted for war within the United States, there must be a state of facts established or deemed capable of being proved in due course of law, constituting an infringement of the prohibitory and penal clauses of the Act of 1818, and producing a forfeiture of the vessel by reason of that infringement; and that, in any corresponding case under the British Foreign Enlistment Act of 1819, the Queen of Great Britain possessed similar and not less effective powers, to fortify the ordinary administration of the law, in case of need, by the use of extraordinary force, as was exemplified by the employment of a force under the command of Captain Inglefield, at Birkenhead in 1863, to prevent the forcible removal of the iron-clad rams from the Mersey.

3. The 10th section of the Act of Congress of 1818 requires security to be given by "the owners or consignees of *every armed ship or vessel* sailing out of the ports of the United States, belonging wholly or in part to citizens thereof," against the employment of such ship or vessel "*by such owners*, to cruize or commit hostilities against any foreign Prince," &c. This clause is inapplicable to any ship, not actually *armed* within the jurisdiction of the United States; and, even as to any vessel so armed, no security is required, unless it is owned by citizens of the United States; nor, even as to a ship so armed and so owned, is any security required against her employment to cruize or commit hostilities by any foreign Power, to whom it may be transferred after leaving the waters of the United States.

4. The 11th section of the same Act authorizes and requires the collectors of United States Customs "to detain *any vessel manifestly built for warlike purposes*, and about to depart from the United States, *of which the cargo shall principally consist of arms and munitions of war*, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed *by the owner or owners* to cruize or commit hostilities upon the subjects, citizens, or property, of any foreign State, &c., until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section."

The power thus given to detain ships "manifestly built for warlike purposes," when circumstances "render it probable that they are" intended to be employed "to cruize or commit hostilities upon the subjects, &c., of a foreign State," &c., is confined to the single case, *in which such ships have a cargo, principally consisting of arms and munitions of war;* and even in that case it ceases, upon security being given, in the same manner as under the 10th section, *i.e.*, security against the employment of the ship *by her then existing owners* to cruize or commit hostilities against any foreign State, leaving her perfectly free to be so employed by any foreign owner to whom she may afterwards be transferred.

24. Testimonies of Mr. Bemis and Mr. Seward on this subject.

It is honourable to the candour of Mr. Bemis, an American writer, not partial certainly to Great Britain (some of whose controversial writings have been brought before the Arbitrators as part of the evidence of the United States, in vol. iv of their Appendix, pp. 12-32 and 37-46), that he pointed out, in a work published in 1866, from which extracts will be found in Annex (B) to the British Counter-Case (pp. 149, 150), the inferiority (not superiority), for preventive as well as for other purposes, of the Act of Congress of 1818 (the only law then, and now, in force in the United States for the maintenance of their neutrality) as compared with the British Foreign Enlistment Act of 1819. Nor was there any reason to complain of the fairness of Mr. Seward, when

(disregarding, as in his view practically unimportant, all those points of detail in respect of which these two Acts differed from each other) he described the laws made for this purpose in the United States on the 9th April, 1863, as "in all respects the same as those of Great Britain," and on the 11th of July, 1863, as "exactly similar." (See Annex (A) to the British Argument or Summary, page 40.) But it is certainly astonishing, after these acknowledgments (and in view of the facts above stated) now to find these differences between the British and American Statutes insisted upon, in the Argument of the United States, as amounting to nothing short of the whole difference between a merely penal Statute and a law intended, and effective, for the purpose of prevention; and as constituting, on that account, a sufficient ground for inferring, *à priori*, a general want of due diligence on the part of Great Britain, with respect to all the matters covered by the present controversy.

25. Argument of the United States from the British Foreign Enlistment Act of 1870.

Some reference must here be made to an argument, derived by the Counsel of the United States from the fact that a considerable change and amendment of the British law has since been made, and that new preventive powers (of a kind not found, either in the Act of Congress of 1818 or in the British Act of 1819) have been conferred upon the Executive Government of Great Britain, by a recent Statute passed by the British Legislature in 1870. The Legislature of the United States has not yet thought it necessary or expedient to introduce any similar or corresponding provisions or powers into the law of that country; it cannot, therefore, be supposed that the Government of the United States deems such provisions or powers to be indispensable to enable a constitutional Government, the Executive of which is bound to act according to law, to fulfil, with due diligence, its international obligations. No one can seriously contend that because, after experience gained of the working of a particular law or administrative machinery of this nature, certain points may be found, on a deliberate examination, in which it appears capable of being improved, this is a proof that it was not, before these improvements, reasonably adequate for the fulfilment of any international obligations to which it may have been meant to be subservient. In all improvements of this kind, it is the object of wise legislation not to limit itself by, but in many respects to go beyond, the line of antecedent obligation; the domestic policy and security of the State which makes the law, and the reasonable wishes, as well as the strict rights of foreign Powers, are proper motives and elements in such legislation. No nation would ever voluntarily make such improvements in its laws, if it were supposed thereby to admit that it had previously failed to make such due provision for the performance of its public duties as other Powers might be entitled to require.

26. Illustrations of the doctrine of due diligence, from the history of the United States.

With respect to the light which is thrown upon these questions by American history, it is, in the first place, to be observed that the violations of neutrality which the Government of President Washington took measures to prevent, did not include the mere building or sale of vessels adapted for war, for or to a belligerent, within the territory of the United States, or the sending abroad of such vessels. They consisted (in the words of Jefferson) in "the practice of commissioning, equipping, or manning vessels in ports of the United States to cruize on any of the belligerent parties."*

Next it will be seen from that history that the Government of the United States, having made (as it considered) just and reasonable provision by its laws for the fulfilment of its international obligations, always, both before and after 1817-18, referred to those laws, and to the evidence and procedure required by them, as the proper measure of the diligence which it ought to use when foreign Governments complained that ships had been or were being fitted out or dispatched from ports of the United States for the war service of their enemies or revolted subjects. Of the truth of this statement, examples will be found in the letters of Mr. Mallory to Don Antonio Villalobos (16 December, 1816), Mr. Rush to Don Luis de Onis (March 28, 1817), Mr. Fisk to Mr. Stoughton (September 17, 1817), Mr. Adams to Don Luis de Onis (August 24, 1818), Mr. Adams to the Chevalier de Serra (March 14, 1818; October 23, 1818; September 30, 1820; and April 30, 1822); all of which are in the IIIrd Volume of the Appendix to the British Case (pages 100, 106, 120, 129, 150, 157, 158, 160), also in the letters of District Attorney Glenn to the Spanish Consul Chacon (September 4, 1816), and to Secretary Monroe (February 25, 1817), and of Secretary Rush to Mr. Mallory and Mr. McCulloch (March 28, 1817), which are among the documents accompanying the Counter-Case of the United States (Part II, pages 40, 53-56, 61, and 62); and in those of Attorney-General Hoar to District Attorney Smith (March 18, 1869), and to United States' Marshal Barlow (May 10, 1869), among the documents accompanying the Counter-Case of the United States (Part III, pages 743 and 745-747); and in the Circular of Attorney-General Hoar

* British Appendix, vol. v, p. 242.

to the District Attorneys (March 23, 1869), and in the letter of District Attorney Pierrepoint to Attorney-General Hoar (May 17, 1869); which are in the "Cuban Correspondence, 1866-1871," accompanying the Counter-Case of the United States (pages 29 and 59).

VII.—*Objections of the United States to the Administrative System of Great Britain, and to the evidence required for the enforcement of the Law.*

27. Arguments of the United States from suggested defects in the administrative machinery of British law, and from the evidence required by the British Government.

It appears, however, to be suggested that it was necessary, for the exercise of due diligence on the part of Her Majesty's Government, that they should have organized some system of espionage, or other extraordinary means of detecting and proving the illegal equipment of vessels, during the late civil war; that it was inconsistent with due diligence to treat evidence of illegal acts or designs, producible in a British Court of Justice, as generally necessary to constitute a "reasonable ground for believing," that an illegal equipment, which ought to be prevented, had taken place or was being attempted; and that, in all such cases, the officers of the British Government ought to have obtained for themselves the proper evidence, without asking for assistance from the Ministers, Consuls, or other Agents of the United States.

"We present now" (says the Argument of the United States, pages 344 to 346) "to the notice of the Arbitrators, certain *general facts* which inculpate Great Britain for failure to fulfil its obligations in the premises, as assigned by the Treaty.

"I. The absolute omission by Great Britain to organize or set on foot any scheme or system of measures, by which the Government should be put and kept in possession of information concerning the efforts and proceedings which the interests of the rebel belligerents, and the co-operating zeal or cupidity of its own subjects, would, and did, plan and carry out, in violation of its neutrality, is conspicuous from the outset to the close of the transactions now under review. All the observations in answer to this charge, made in the contemporary correspondence or in the British Case or Counter-Case, necessarily admit its truth, and oppose the imputation of want of 'due diligence' on this score upon the simple ground that the obligations of the Government did not require it, and that it was an unacceptable office, both to Government and people.

"Closely connected with this omission, was the neglect to provide any systematic or general official means of immediate action in the various ports or ship-yards of the kingdom, in arrest of the preparation or dispatch of vessels, threatened or probable, until a deliberate inspection should *seasonably* determine whether the hand of the Government should be laid upon the enterprize, and its project broken up and its projectors punished. The fact of this neglect is indisputable; but it is denied that the use of 'due diligence to prevent,' involved the obligation of any such means of prevention.

"We cannot fail to note the entire absence from the proofs presented to the Tribunal of any evidence exhibiting any desire or effort of the British Government to impress upon its staff of officers or its magistracy, of whatever grade, and of general or local jurisdiction, by proclamation, by circular letters, or by special instructions, any duty of vigilance to detect, of promptitude to declare, of activity to discourage, the illegal outfit or dispatch of vessels in violation of international duty towards the United States.

"It is not less apparent that Great Britain was without any prosecuting officers to invite or to act upon information which might support legal proceedings to punish, and, by the terror thus inspired, to prevent, the infractions of law which tended to the violation of its international duty to the United States. It was equally without any system of executive officers specially charged with the execution of process or mandates of courts, or magistrates to arrest the dispatch or escape of suspected or incriminated vessels, and experienced in the detective capacity that could discover and appreciate the evidence open to personal observation, if entrusted with this executive duty."

And in another place (pages 348, 349) they added that,

"The Arbitrators will observe the wide difference from these views and conduct of Great Britain in the estimate which the United States have put upon their duty in these respects, of spontaneous, organized, and permanent vigilance and activity, and in the methods *and efficacy of its performance*. On all the occasions upon which this duty has been called into exercise, the Government of the United States has enjoined the spontaneous and persistent activity of the corps of District Attorneys, Marshals, Collectors, and the whole array of subordinates, in the duties of observation, detection, information, detention, prosecution, and prevention."

They ask, also (page 176), for the assent of the Arbitrators to the views of Mr. Dudley, the United States' Consul at Liverpool, when (writing to Mr. Seward with respect to the request of the British Government for evidence as to the destination of the Alabama, before such evidence had been supplied) he said:—

"I do not think the British Government are treating us properly in this matter. They are not dealing with us as one friendly nation ought to deal with another. When I, as the Agent of my Government, tell them from evidence submitted to me that I have no doubt about her character, they ought to accept this until the parties who are building her, and who have it in their power to show if her destination and purpose are legitimate and honest, do so. . . . . The burden of proof ought not to be thrown upon us. In a hostile community like this it is very difficult to get information at any

time upon these matters. And if names are to be given it would render it almost impossible. The Government ought to investigate it and not call upon us for proof."

28. Inconsistency of the Rules of the Treaty with the requirement of diligence to prevent, when there were not reasonable grounds of belief.

If the line of argument contained in the two first of the foregoing extracts is used for the purpose of inducing the Arbitrators to hold the British Government responsible for matters which were never actually brought to their knowledge, so as to make their prevention possible (as in the cases of the departure of the Georgia and the Shenandoah, and of the vessels which took out armaments to those ships, and to the Alabama and the Florida respectively, from Great Britain), it appears to lose sight of the fact that, according to the express words of the first Rule, and the evident meaning of all the three Rules of the VIth Article of the Treaty of Washington, the obligation to "use due diligence to prevent," is consequent upon, and not antecedent to, the existence of "reasonable ground for believing," that in the particular case, something which (if known), ought to be prevented, is intended to be done. If that reasonable ground for belief was, in any particular case absent, there was no such obligation; and to invite the judgment of the Arbitrators upon some supposed defects in the administrative system of Great Britain, with regard to the discovery of offences against the Foreign Enlistment Act, or the laws of Customs and navigation, in order to found thereon a conclusion that, under some different system of administration, facts, which never actually came to the knowledge of the British Government, and of which they had no information, either from the Agents of the United States, or from any other quarter, might possibly have been discovered in time for prevention, is, practically, to ask for the substitution of different Rules for those of the Treaty, and to impose retrospectively upon Great Britain obligations, which neither usage nor international law has ever hitherto recognized as incumbent upon any nation.

29. The British Government took active and spontaneous measures to acquire all proper information, and to prevent breaches of the law.

As, however, it is conceivable that this line of argument may be thought to deserve rather more attention, when it comes to be applied to cases in which information, unaccompanied by legal evidence of any actual or intended violation of the law, was given to the British Government before the departure of a vessel alleged to have been illegally equipped, it seems expedient not to pass it by without refutation.

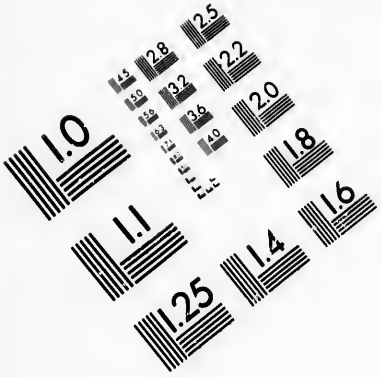
It is a complete error to suppose, that the British Government did, in fact, ever rely merely on such information and evidence of actual or intended violations of the Foreign Enlistment Act, as might reach them from the Ministers, Consuls, or Agents of the United States; or that they did not recognize and fulfil the duty of endeavouring, by the independent activity and vigilance of their own officers, and by following up all such information as reached them from any other quarters by proper inquiries made through those officers, to discover and prevent any intended breaches of the law.

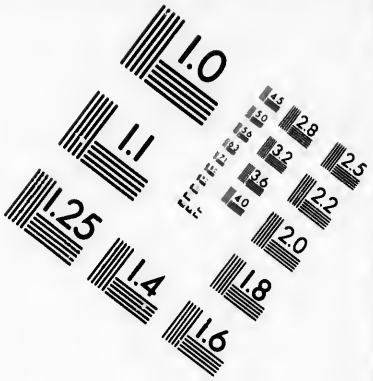
The warnings of the Proclamation of Neutrality, issued at the commencement of the war, announced to all the Queen's subjects Her Majesty's determination to enforce the Foreign Enlistment Act against all offenders, to the best of her power. Notwithstanding the statements (already cited at pages 345, 346 of the American Argument), it is the fact, that there did exist "systematic and general means of action," adequate in all respects for the due and *bonâ fide* enforcement of the law, in all the ports and places where ship-yards existed, throughout the British Empire. It is also the fact—notwithstanding what is there said—that special instructions were issued to the Custom-house authorities of the several British ports, where ships of war might be constructed, and also by the Secretary of State for the Home Department to the various authorities with whom he was in communication, to "endeavour to discover and obtain legal evidence of any violation of the Foreign Enlistment Act, with a view to the strict enforcement of that Statute, wherever it could really be shown to have been infringed." These instructions were repeated, in or before April 1863; and Earl Russell, when communicating that fact to Mr. Adams (2nd April, 1863, Appendix to Case of United States, Vol. i, page 590), stated that "Her Majesty's Government would be obliged to him, to communicate to them or to the local authorities at the several ports, any evidence of illegal acts, which might from time to time become known to him."

"Of these facts," says the American Argument, "no evidence is found in the proofs submitted to the Tribunal." Is not Earl Russell's statement of the fact to Mr. Adams evidence? Is his veracity, in a matter which was necessarily within his knowledge, disputed? The British Government have not so dealt with statements made, as to matters within their knowledge, by men of honour in the public service of the United States.

But this is not all. There are facts which speak for themselves.

In the case of the Pampero, (which was afterwards seized and prosecuted to condemnation) and of another suspected vessel at Glasgow, information was collected by the Commissioners of Customs, and communicated to Mr. Adams by Earl Russell in a letter of the 21st of March, 1863, which was transmitted by Mr. Adams to Mr. Seward in another letter dated March 27, 1863, in which he (Mr. Adams) used these words: "It is proper to





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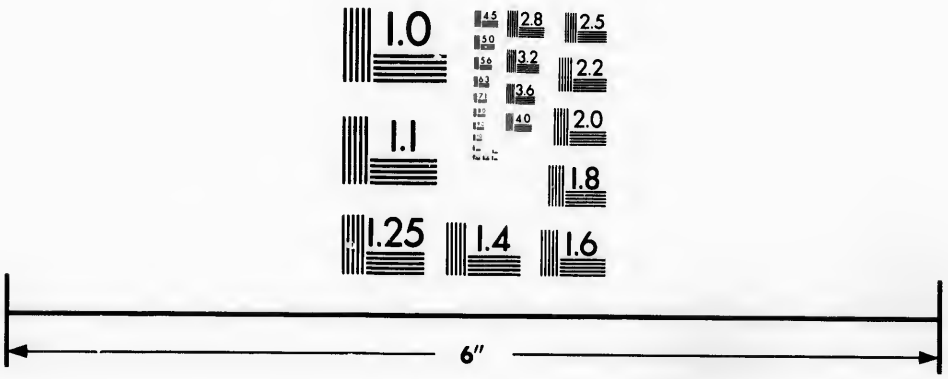

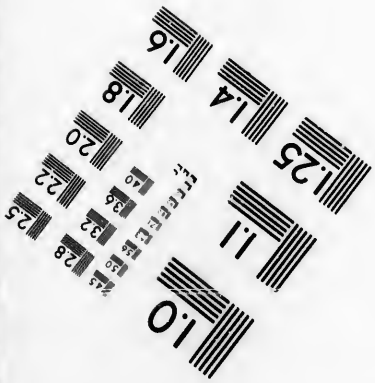

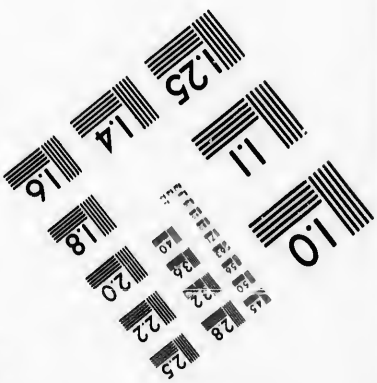

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mention, that the investigation appears to have been initiated by his Lordship, upon information not furnished from this Legation; and that his communication to me was perfectly spontaneous." (Appendix to the Case of the United States, vol. ii, page 203; and see British Appendix, vol. ii, page 474, &c.)

The circumstances relative to the Georgiana, after her arrival at Nassau, were first brought to the notice of Her Majesty's Government by information (derived from a New York newspaper) which they received from Mr. Archibald, the British Consul at New York, in April 1863. This information was followed up by careful and spontaneous inquiries as to this ship and as to another vessel, called the South Carolina, said to be arming in the Clyde, neither of which proved to be intended for war. (British Appendix, vol. ii, page 158.)

In the case of the Amphion, respecting which a representation was first made by Mr. Adams on the 18th of March 1864, inquiries had been set on foot by Her Majesty's Government as early as the preceding 13th of January. In the case of the Hawk, the first representation made by Mr. Adams was dated 18th of April 1864; but inquiries had been previously made by the British Government, upon information received by them on the 2nd of April from the Commissioners of Customs. In the case of the Ajax, as to which no representation was made before she sailed by the American Minister or Consul, careful inquiry had been made by the Customs Department in Ireland, in January 1865; their attention having been called to the ship by the Coast Guard officers. The action of the British Government to prevent the Anglo-Chinese flotilla, early in 1864 (as to which no obligation, municipal or international, was incumbent upon them), from falling into the hands of the Confederates, was wholly spontaneous and unsolicited.

30. The British Government followed up all information received, by the proper inquiries.

Furthermore:—In every case, in which information, however unsupported by evidence, as to any suspected vessel, was communicated to Her Majesty's Government by Mr. Adams, or otherwise, a strict watch was directed to be kept on the vessel, and special inquiries were ordered to be made by the proper persons. The results of these inquiries were reported, in every case, to Mr. Adams by Earl Russell. In a great majority of instances, even when Mr. Dudley or Mr. Morse (the United States' Consuls), had stated and reiterated their suspicions and belief, with the utmost confidence, and had supported it by hearsay statements, or hearsay depositions, in which mention was often made of the connection of Captain Bullock, and of the firms of Fraser, Trenholm, and Co., Fawcett, Preston, and Co., and W. C. Miller and Sons, or one or more of them, or other known or suspected Confederate agents, with the vessels in question,—the belief of the local authorities, that the law had not been, and was not about to be, infringed, proved to be well founded. In the cases of the Florida and the Alabama, inquiries were made by the Custom-house officers, among other persons, of the builders of these ships, and other information was obtained by those officers, which was duly reported to Her Majesty's Government. Earl Russell made inquiries concerning the Florida of the Italian Government; and the zeal and activity of the proceedings of Commanders McKillop and Hickley, at Nassau, with respect to that ship, will not be called in question. It was by means of a very difficult investigation, conducted by Her Majesty's Government, through their own Agents in France, Egypt, and elsewhere, that the evidence applicable to the rams at Birkenhead was brought up to the point, necessary to establish a "reasonable ground for belief" that those rams were really intended for the Confederate service.

Nor is there any trace of proof, in any part of the voluminous Appendices to the Cases and Counter-Cases on either side, that the various officers of the Customs and other civil or naval authorities to whom the duty of taking proper measures for the discovery and prevention of offences against the Enlistment Act was intrusted, neglected any proper means, which they could and ought to have used, to obtain information or evidence. It was not, indeed, their practice to search out and interrogate all persons who might be criminally implicated by any accusation; because such persons are not obliged, by British law, or according to the general principles of justice, to answer any questions tending to criminate themselves; and also because the general experience of those accustomed to the administration of the law is, that statements voluntarily made by such persons, if really guilty, are not likely to be of assistance in the discovery of truth. Nor was any general system of espionage established; though, on what were considered proper occasions (see British Appendix, vol. ii, page 169), the agency of detective officers was employed by the municipal authorities for these purposes. Such a general system would be contrary to the genius and spirit of British institutions: it cannot be pretended that, to establish such a system, was part of the "diligence due" by any free country to any foreign nation. But, speaking generally, everything was done which, in the usual and proper course of the civil and political administration of affairs by the Executive Government of Great Britain, ought to have been done; and, if these means were not sufficient, in all cases, to discover

and prevent (though they did prevent in most cases) the violation of the law, the experience of the British Government, in this respect, was only the ordinary experience of all Governments, with respect to the occasional success and impunity of every species of crime.

VIII.—*Results of the Administrative System, and of the practice with respect to evidence of the United States in similar cases.*

31. Necessity and propriety of seeking evidence from those who give information.

In a question of due diligence between Great Britain and the United States, it cannot, with any show of justice or reason, be considered irrelevant, that the general system and principles, with respect to evidence and otherwise, on which the British Government acted throughout these transactions, were substantially the same as those which have been usually and in good faith acted upon, in similar cases, by the Executive Authorities of the United States. A neutral Government, though it ought spontaneously to use all proper means of discovering and preventing violations of law, which are really within its power, may, in many cases, not have the same means of knowledge which the agents of a foreign Government (to which those illegal acts would be dangerous) may happen to possess; and, when its information proceeds from those agents, it is both natural and reasonable that they should be requested to furnish evidence in support of their statements. In transactions of this kind (as Mr. Dudley stated to Mr. Seward in his first letter about the Florida, February 4, 1862, with respect to that vessel) "there is much secrecy observed;" and, when this happens (as in ordinary cases of crime), the preventive powers of the law cannot be called into activity, without some timely information; and the persons who give that information are usually able, and may properly be requested, to produce some evidence in its support, if such evidence is really forthcoming.

32. Mr. Jefferson's letter of September 5, 1793.

Mr. Jefferson, in his letter to Mr. Hammond, dated the 5th September, 1793, (annexed to the Treaty between Great Britain and the United States of the 19th November, 1794), after promising to use all the means in the power of his Government to restore British prizes captured by vessels "fitted out, armed, and equipped in the ports of the United States," and brought into any of those ports by their captors after the 5th June, 1793, and acknowledging the obligation to make compensation for such prizes, if such means for their restitution should not be used, added the following just and reasonable remarks:—

"Instructions are given to the Governors of the different States to use all the means in their power for restoring prizes of this last description, found within their ports. Though they will, of course, take measures to be informed of them, and the general Government has given them the aid of the Custom-house officers for this purpose, yet you will be sensible of the importance of multiplying the channels of this information, as far as shall depend on yourself or any person under your direction, in order that the Governors may use the means in their power for making restitution. Without knowledge of the capture, they cannot restore it. It will always be best to give notice to them directly; but any information which you shall be pleased to send to me also, at any time, shall be forwarded to them as quickly as distance will permit."*

33. The onus imposed upon British claimants against the United States by the Commissioners of Claims under the Treaty of 1794.

When the questions of compensation, claimed by the owners of captured British ships, which had not been restored according to this letter, came for decision before the Commissioners under the Treaty of 1794, no such claim was allowed, except when the claimant had substantiated his legal right to have the prize restored by a regular judicial proceeding, properly conducted before the proper Court of the United States: which, of course, threw upon him, in all such cases, the burden of proving, by legal evidence, the illegal outfit and armament, within the jurisdiction of the United States, of the capturing vessel.†

34. Uniform reference of the Executive authorities of the United States in similar cases, to legal procedure, and the necessity for legal evidence.

Extracts are here subjoined from some of the letters of the various authorities of the United States (to which reference has been already made), during the wars between Spain and Portugal, and their revolted Colonies in 1816—1820; and, more recently, at the time of certain designs against Cuba, in 1869. These will be found to throw some light upon the functions and powers of the District Attorneys and Marshals of the United States, and on the practical rules, by which the exercise of their functions and powers has always been governed.

On the 4th September, 1816, Mr. Glenn (District Attorney for Maryland) wrote to the Spanish Consul (Chacon), in answer to certain representations made by him:—

"I must beg leave to suggest, that my powers are merely legal, and not political. I have already the power, *when I am officially informed, in a legal manner, of any violation of the laws of the United States*, to institute a prosecution against the offenders, and conduct the same to a final issue; and if

* British Appendix, vol. v, p. 256.
† Case of the Elizabeth: British Appendix, vol. v p. 327–328.

hope I shall always be ready and willing to go thus far on all proper occasions. If an armament be fitting out within the district of Maryland for the purpose of cruizing against the subjects of the King of Spain, it is a breach of our laws, and the persons concerned therein are liable to punishment; *but before I can take any legal steps in the affair, the facts of the case must be supported by affidavit taken before some Judge or Justice of the Peace*, and when that is done, I will, without delay, proceed to call upon the offenders to answer for a breach of our laws. *If, therefore, you will be pleased to furnish me with the names of any witnesses who can make out the case which you have stated*, I will at once have them summoned, if within the reach of the process of our Judges or Justices, and attend to taking their depositions, or, if you have it in your power to bring within this district any persons who can testify on the cases referred to, I will be prepared to receive the statements on oath as the foundation for a judicial inquiry into the conduct of the offenders. *I shall here take occasion to say that I cannot proceed in the cases you have mentioned, upon the mere suggestion of any person, unless that suggestion be accompanied by an affidavit.*" (Documents accompanying the Counter-Case of the United States, Part ii, pages 39, 40.)

On the 25th February 1817, the same District Attorney wrote to Mr. Monroe, Secretary of State:

"You are well aware *I cannot proceed to arrest persons and proceed under the laws of our country, for a breach of those laws, upon a mere suggestion alone; but whenever a suggestion shall be accompanied by anything like proof*, I will take great pleasure in prosecuting the offenders to punishment, and their property to condemnation, in all proper cases." (Ibid., pages 55, 56.)

On the 28th March, 1817, Mr. Rush (Acting Secretary of State) wrote to Mr. Mallory, Collector of Customs at Norfolk, directing him to make inquiry into the cases of two armed vessels, the Independence of the South, and the Altravida, which had then lately arrived at Norfolk from voyages, in the course of which they had cruised against, and made captures of vessels or property belonging to subjects of the King of Spain.

"If," said Mr. Rush "*there be any proof of their having committed, or of their intending to commit, an infraction of any of the laws or Treaties of the United States*, you will cause prosecutions, subject to the the advice of the Attorney of the United States, to be instituted against all parties concerned, or such other legal steps taken, as events may make necessary, and justice require."

And on the same day, Mr. Rush also wrote to Mr. MacCulloch, Collector of Customs at Baltimore, directing inquiries to be made as to another vessel called the Congress:—

"It," (he said) "*there be any sufficient proof that this vessel either has committed, or that she intends to commit* a breach of any of the laws or Treaties of the United States, you will advise the District Attorney, and cause prosecutions to be forthwith instituted against all parties concerned, and such other steps taken, *whether with a view to prevent* or punish offences, *as justice requires, and the laws will sanction.*

On the 11th of April, 1817, Mr. Collector Mallory, [illegible] been requested by Don Antonio Villalobos to detain the Indepencia del Sud, and the Altravida, and certain goods (in fact prize goods) landed from that vessel, for alleged violation of the Act of Congress of 1794, answered by the request:—

"That I may have the aid of every light to guide me which facts can afford, and *as the allegations made by you, in an official form, must be presumed to be bottomed on positive facts, which have come to your knowledge, you will have the goodness, I trust, to furnish me with evidence of their existence in your possession.*"

The Spaniard replied (12 April, 1817):—

"With regard to the evidence you require, I will not hesitate to say that, as the facts I have stated are matter of public notoriety, known to everybody, and I had no reason to suppose you were ignorant of them, I did not deem it incumbent upon me to add any proof to the simple narration of them; and I was confident that, by going on to point out to you the stipulations and laws which are infringed in consequence of these facts, you would think yourself authorized to interfere in the manner requested."

He then mentioned several circumstances, justifying (as he thought) a strong presumption of illegality against those vessels, as "known facts," and added:—

"If these public facts, falling within the knowledge of every individual, require more proof than the public notoriety of them, I must request to be informed as to the nature of that proof, and also whether you are not warranted to act upon just grounds of suspicion, without that positive evidence which is only necessary before a Court of Justice."

Mr. Mallory rejoined (14 April, 1817):

"From the view I have taken of the facts, as now stated by you, which it is to be presumed are to be regarded as specifications under the more general charges set forth in your letter of the 10th instant, I must really confess I do not at present see grounds sufficient to justify the steps you require me to take against the armed vessels now in this port, and the merchandize which has been permitted to be landed from them and deposited in the public store."

He then observed that, if the facts alleged as to the original equipment of the Independencia were to be taken as true, they did not clearly or unequivocally prove that her original equipment in, or dispatch from, the United States was unlawful; and, with respect to a subsequent alleged enlistment of men in the port of Norfolk, he stated that he was engaged in inquiries, in order to be satisfied upon that point before the vessel was permitted to sail, and to be governed by the result, "although," (he said,) "it does not appear to be perfectly certain that such an augmentation of their force is interdicted by the Act of Congress of the 3rd of March last, which, being a law highly penal in its nature, will admit of no latitude of construction. (British Appendix, vol. iii. pages 112-114.)

This correspondence has the more interest, as relating to the case, in which the legality of the dispatch of the Independencia (fully armed and equipped) from an American port to Buenos Ayres, for sale there to the belligerent Government of that revolted colony, and the illegality of her subsequent augmentation of force, became the subject of decision by Mr. Justice Story in the well-known prize suit of the Santissima Trinidad.

On the 16th September, 1817, the Spanish Consul, Mr. Stoughton, wrote to Mr. Fisk (District Attorney for New York), stating a case of illegal enlistment of men, then alleged to be in progress on board a Venezuelan privateer schooner called the Lively, or the Americano Libre.

"Now" (he said), "as there must be provisions in the laws and Treaties of the United States, vesting an authority in some of its officers to prevent the equipment of vessels and the enlistment of men in the United States, I make this application to you, most urgently requesting you to take whatever measures may be necessary immediately, *in order to prevent the departure of the above vessel, at least until she shall give bonds that she will not commit hostilities against Spanish subjects. The vessel, it is said, will sail to-morrow morning.* Indeed, if an inquiry were instituted, I am induced to believe the above brig would be found to be a pirate."

In support of this application, two depositions of persons, who stated that attempts had been made to induce them to enlist on board the vessel in question, were sent on that and the following day. Mr. District Attorney Fisk replied, on the 17th September, 1817:—

"I have duly received your notes of yesterday evening and of this day, and have referred to the statutes providing for the punishment of the offences stated. *It is not a case, from the evidence mentioned, that would justify the Collector in detaining the vessel:* the aggression is to be punished in the ordinary mode of prosecuting those who are guilty of misdemeanours. Oath is to be made of the facts by the complainant, who enters into a recognizance to appear and prosecute the offenders before any process can issue. This oath being made and recognizance taken, the Judge of the Circuit Court will issue a warrant to apprehend the accused, and bring them before him, to be further dealt with according to law. When apprehended, it is the province of the Attorney of the United States to conduct the prosecution to judgment. I have no authority to administer an oath, or to issue a warrant, *nor have I the power to issue any process to arrest and detain the vessel in question, unless by the direction of an Executive officer of the United States.* . . . By adverting to the statutes, it will be seen that the vessel is not liable to seizure for the act of any person enlisting himself to go on board, or for hiring or retaining another person to enlist: *the punishment is personal to the offenders.* . . . *It is impracticable for me, or for any other officer of the United States, to take any legal measures against aggressors, upon the indefinite statement of certain persons being concerned in an illegal transaction.*" (British Appendix, vol. iii, pp. 119, 120.)

This precedent will (it is trusted) be borne in mind whenever the Arbitrators may have occasion to consider the questions connected with the enlistment of certain men on board the Shenandoah on the night of the departure of that vessel from Melbourne in 1864.

On the 30th September, 1820, Mr. Secretary Adams wrote thus to the Portuguese Minister, the Chevalier de Serra:—

"The judicial power of the United States is, by their constitution, vested in their Supreme Court and in Tribunals subordinate to the same. The Judges of these Tribunals are amenable to the country by impeachment, and if any Portuguese subject has suffered by the act of any citizen of the United States within their jurisdiction, it is before these Tribunals that the remedy is to be sought and obtained. For any acts of citizens of the United States, committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible. . . .

"The Government of the United States have neither countenanced nor permitted any violation of

their neutrality by their citizens. They have, *by various and successive acts of legislation*, manifested their constant earnestness to fulfil their duties towards all parties to that war: *they have repressed every intended violation of them, which has been brought before their Courts, and substantiated by testimony conformable to principles recognized by all tribunals of a similar jurisdiction.*" (British Appendix, vol. iii, pp. 157, 158.)

On the 14th May, 1869, Mr. Hoar, Attorney-General of the United States, thus instructed Mr. Smith, District Attorney for Philadelphia:—

"*If heavier complaint is made against any vessel on trustworthy evidence sufficient to establish before a Court of Justice probable cause to believe that such vessel is forfeitable for a violation of the Neutrality Laws*, you are instructed to file a libel, and arrest the vessel." (Documents accompanying the Counter-Case of the United States, part iii, p. 743.)

On the 17th May, 1869, Mr. Pierrepoint, District Attorney of New York, wrote to Mr. Attorney-General Hoar with respect to certain vessels called the Memphis and Santiago, accused of a hostile destination against Cuba:—

"*There is no evidence, as yet, on which to detain them.* I would suggest that *if the Spanish Minister would instruct the Spanish Consul here to take some pains and collect some evidence* relating to these matters, and bring it to my notice, I shall act with the greatest promptness."

On the 11th May, 1869, Attorney-General Hoar, forwarding this letter to Mr. Secretary Fish, said:—

"The several District Attorneys are instructed that *whenever sufficient evidence is made known to them to establish before a Court of Justice probable cause to believe that any vessel is forfeitable for a violation of the neutrality laws*, they are to file a libel, and arrest the vessel." (Cuban Correspondence, 1866-71, presented with the American Counter-Case, pp. 58, 59.)

On the same day, Mr. Attorney-General Hoar sent, as general instructions to the United States' Marshals, a copy of a letter addressed on the 20th of May to the Marshal for the Southern District of New York, which contained the following passage:—

"*It is not deemed best, at present, to authorize or require you to employ detectives for the special purpose of discovering violations of the provisions of this Act*" (the Act of Congress of 1818); "*but you and your deputies are expected to receive all information that may be offered*, and to be attentive to all matters of suspicion that may come to your knowledge; and, in cases where your action is required, to be vigilant, prompt, and efficient. I will thank you to communicate to me, from time to time, any information that you may deem trustworthy and important."

On the 28th December, 1870, Mr. Fish, Secretary of State, wrote thus to Mr. Roberts, the Spanish Minister:—

"The Undersigned takes the liberty to call the attention of Mr. Roberts to the fact that a District Attorney of the United States is an officer, whose duties are regulated by law, and who, in the absence of executive warrant, *has no right to detain the vessels of American citizens without legal proofs, founded not upon surmises, or upon the antecedent character of a vessel, or upon the belief or conviction of a Consul, but upon proof submitted according to the forms required by law.*" (British Counter-Case, page 46).

These extracts are conceived to show, that the principles and rules of practice of the Executive authorities of the United States, as to the evidence necessary to constitute "reasonable ground for belief," that any illegal equipment has been made or is being attempted within their jurisdiction, and to call for "diligence" in the use of the preventive powers of their law, have always been, and still are, essentially the same with those, on which the Government of Great Britain acted during the transactions which are the subject of the present inquiry.

. Of the suggestion, that the belief of the Consuls of the United States, in British ports, should be treated as sufficient *primâ facie* evidence.

After these instances of the practice of the United States in similar cases, it seems hardly necessary to recur to the extraordinary suggestion of Mr. Dudley, adopted in the American Argument (page 176), that whenever the American Consul at Liverpool told the British authorities that "he had no doubt" about the character of a particular vessel, they ought to have accepted this as sufficient till the contrary was shown, and not to have thrown the burden of proof upon the persons giving the information; that "the Government ought to investigate it, and not call upon us for proof." It was indeed quite right and proper that the officers of the British Government should investigate every case of which they were so informed for themselves, as well as they were able; and this is what they actually did on all occasions. But the British authorities at Liverpool had too frequent experience of the error and fallacy of Mr. Dudley's conclusions drawn from the association with particular vessels of firms or persons known or believed to be in

the Confederate interest, to make it possible for them, as reasonable men, to act upon Mr. Dudley's charges as sufficient to throw the burden of proof upon the parties accused, even if such a principle had not been opposed both to British and to American law. In August 1861, the American Consul at Liverpool, through Mr. Adams, denounced the Bermuda as an "armed steamer," which was "believed to be about to be dispatched with a view of making war against the people of the United States," and which was "ostensibly owned by Fraser, Trenholm, and Co." (British Appendix, vol. ii, page 133). Mr. Adams, writing to Mr. Seward on the 30th August, 1861, said:—"No stronger case is likely to be made out against any parties than this. The activity of our Consuls, Messrs. Wilding and Davy, furnished me with very exact information of all the circumstances attending the equipment of this vessel, and yet Her Majesty's Government, on being apprized of it, disclaimed all power to interfere" (American Appendix, vol. i, page 518). The Bermuda, nevertheless, turned out to be an ordinary blockade-runner. In March and April 1863, a ship called the Phantom, building at Liverpool by W. Miller and Son, for Fraser, Trenholm, and Co., and supplied with engines by Fawcett, Preston, and Co., at the launch or trial trip of which Captain Bullock, Mr. Tessier and Mr. R. Hamilton, &c. were present; and another ship called the Southerner, building at Stockton for Fraser, Trenholm and Co., and meant to be commanded by Captain Butcher, were in like manner denounced. Affidavits of the connection of these firms and persons with the ships were furnished; and the accusations were pressed with great pertinacity, even after Mr. Squarey, the legal adviser of Mr. Dudley at Liverpool, had admitted that (as to the Phantom) there was no case. About the Southerner, Mr. Dudley affirmed, from the beginning, with the utmost positiveness, that "there was no doubt." And yet it turned out that the charges as to both these vessels also were wholly groundless, notwithstanding the interest in them of those firms and persons, whose very names seem to have been supposed by the Consuls of the United States to be sufficient *primâ facie* evidence of a violation of the law. The Phantom proved to be a blockade-runner, and the Southerner to be a passenger vessel, whose first employment was to carry Turkish pilgrims in the Mediterranean. (British Appendix, vol. ii, pages 167-209.)

With respect to the value of the suggestions, in the Argument of the United States, that certain parts of their administrative machinery (such as the employment of District Attorneys, and the encouragement offered to informers by the law, which gives them half the forfeitures obtained by their means), and more effective than the practice of Great Britain, under which the Attorney-General is (in England) the only public prosecutor, and no share of any forfeiture under the Foreign Enlistment Act is given to informers; light may also be derived from the preceding extracts. On these, however, and all similar points (giving to the authorities of the United States the credit which they claim for using such preventive powers as they possessed in good faith, and with what they deemed due diligence for their intended purposes), no evidence can be more instructive than that of *practical results*.

36. The preventive efficacy of the American law tried by the test of practical results.

Between the years 1815 and 1818 (notwithstanding everything which the Executive of the United States could do to the contrary), twenty-eight vessels were armed or equipped in, and dispatched from the ports of the United States, or within their jurisdiction, for privateering against Spain, viz., seven at New Orleans, one at Barrataria in the Gulf of Mexico, two at Charleston, two at Philadelphia, twelve at Baltimore and four at New York. (See the list furnished by the Spanish Minister; Appendix to British Case, vol. iii, page 132).

In the years 1816 to 1819, twenty-six ships were armed in and dispatched from Baltimore alone for privateering against Portugal. (Letter from Chevalier de Serra, November 23, 1819. Ibid., page 155.)

In the period between 1816 and 1828, sixty Portuguese vessels were captured or plundered by privateers armed in American ports, and the ships and cargoes appropriated by the captors to their own use. (Letter from Senhor de Figaniere e Morao. Ibid., page 165.)

The Proclamation of President Van Buren, of the 5th of January, 1838, stated, that information had been received that, "notwithstanding the Proclamation of the Governors of the States of New York and Vermont, exhorting their citizens to refrain from any unlawful acts within the territory of the United States, and notwithstanding the presence of the civil officers of the United States . . . . arms and munitions of war and other supplies have been procured by the (Canadian) insurgents in the United States; that a military force, consisting in part, at least, of citizens of the United States, had been actually organized, had congregated at Navy Island, and were still in arms under the command of a citizen of the United States, and that they were constantly receiving accessions and aid."

On the 10th March, 1838, a temporary Act of Congress was passed to provide for more efficacious action in repressing these outrages than was provided by the Act of 1818.

Nevertheless, on the 21st November, 1838, President Van Buren found it necessary to issue another Proclamation, in which he said that, in disregard of the solemn warning heretofore given to them by the Proclamations issued by the Executive of the general Government, and by some of the Governors of the States, citizens of the United States had combined to disturb the peace of a neighbouring and friendly nation; and a "hostile invasion" had "been made by the citizens of the United States in conjunction with Canadians and others," who "are now in arms against the authorities of Canada, in perfect disregard of their own obligations as American citizens, and of the obligations of the Government of their country to foreign nations."

In August 1849, President Taylor issued a Proclamation, stating that there was "reason to believe that an armed expedition" was "about to be fitted out in the United States with an intention to invade Cuba;" and letters were written on the subject to the District Attorneys in Louisiana and at Philadelphia, Baltimore, and Boston. (Appendix to American Counter-Case, pages 646-648.)

On the 7th of May, 1850, Lopez, nevertheless, left Orleans with 500 men; landed at Cardenas, and, after occupying the town, fled on the approach of the Spanish troops, and returned to the United States.

It appears, from the Appendix to the American Counter-Case, that orders were given for his arrest on the 25th of May, 1850, but the result is not mentioned. (Pages 666, 667.)

On the 27th May, 1850, he was arrested, but discharged; and although the Grand Jury brought in a true bill against him on the 21st July, the prosecution was abandoned.

On the 3rd August, 1850, he started on a second expedition with 400 men, and was executed in Cuba on the 11th September. (British Counter-Case, pages 36, 37. See also Appendix to American Counter-Case, pages 676-686).

In October 1853, an expedition against Mexico issued under Walker from San Francisco, and seized the town of La Paz. In May 1855, a second expedition issued from the same city, under the same adventurer, against Central America. This expedition landed at Realejo, and Walker continued in Central America until May 1857, when he was conveyed from Rivas in the United States' ship of war St. Mary's. He then made preparations in the United States for a third expedition; and these renewed preparations occasioned the circular of September 18, 1857, urging the District Attorneys and Marshals to use "due diligence" to enforce the Act of 1818. (British Counter-Case, page 38).

In spite of this, Walker again eluded the law on the 11th September, 1857, and sailed from Mobile with 350 men. After occupying Fort Castillo in Central America, he was intercepted by Commodore Paulding, and brought to the United States. The American Argument mentions this officer as one of those who have been employed "to maintain the domestic order and foreign peace of the Government" (page 70); presumably on this occasion; but it will be seen, from the Appendix to the American Counter-Case, that his conduct was severely censured by the President at that time (page 612).

In December 1858, another expedition started from Mobile in the Susan, but was frustrated by the vessel being wrecked.

In November 1859, a further expedition was attempted in the Fashion.

In June 1860, Walker made his last expedition from the United States, and was shot at Truxillo. (British Counter-Case, pages 37-40. See also Appendix to American Counter-Case, pages 515-518, 612-627, 632-643, 707-709).

It may be interesting to mention that a correspondence, respecting claims between the Republic of Nicaragua and the United States, has recently been published in the official Gazette of that Republic, in which the Government of Nicaragua desired that, in a proposed adjustment of claims by a Mixed Commission, the claims of Nicaragua for injuries and losses sustained by these "filibustering" expeditions should be taken into consideration. The Government, however, of the United States declined all responsibility, on the ground that they had fulfilled all that could be required of them, either by the laws of the United States or by international law, and declared these claims to be inadmissible.

The British Counter-Case gives an account of the open preparations for an attack on Canada continued during the years 1865-66. The first raid took place from Buffalo and St. Alban's in June 1866.

The second raid was from Malone and St. Alban's, in May 1870.

The third raid was on the Pembina frontier, in October 1871.

Expeditions proceeded from the United States in aid of the Cuban insurgents, in the

Grapeshot and Peritt, in May 1869; and from New Orleans in the Cespedes, or Lilian, in October 1869. (The latter was stopped at Nassau.)

Another expedition, in the Hornet or Cuba (the vessel having been previously libelled in the Admiralty Court and bonded in 1870), landed in Cuba in January 1871. (British Counter-Case, page 45.)

The foregoing narrative is necessarily brief and imperfect; but it shows, besides the systematic privateering practised, by subjects of the United States, against Spain and Portugal in 1816-28 (when upwards of 54 privateers are mentioned as having been armed and dispatched from American ports), two expeditions against Cuba under Lopez; six expeditions under Walker; three Fenian raids; and three expeditions in aid of the Cuban insurgents. The latter, according to the reports in the American press, would appear to be still continued.

IX.—*General Conclusion: the failure to prevent does not always prove a want of "due diligence."*

37. The general result proves, that many failures to prevent may happen, without want of due diligence, from causes for which Governments cannot be held responsible.

The general result, to which we have been led as well by reason and principle as by experience, is this:—that occasional, (it may even be frequent), failures to prevent acts contrary to law, and injurious to a friendly State, may nevertheless be entirely consistent with a serious intention and *bonâ fide* endeavour, on the part of the Government whose subjects commit such acts within its jurisdiction, to prevent them, and with the use of due diligence for that purpose; that, without timely information and evidence of a legal kind, sufficient and proper to constitute a "reasonable ground of belief," no obligation to use any such diligence arises, and that the Government of a civilized nation cannot be held wanting in due diligence, if, having made reasonable provision by law for the prevention of illegal acts of this nature on the part of its citizens, it proceeds to deal with all such cases in a legal course, according to its accustomed methods of civil administration. This is, in fact, the "diligence," and the only diligence which is, in such cases, generally "due" from an independent State to a foreign Government; and from this it follows that accidental and unintentional difficulties or delays, or even slips and errors, such as are liable to result, in the conduct of public affairs, from the nature of the subordinate instruments by which, and the circumstances under which, civil Government is necessarily carried on, and against which no human foresight can always absolutely provide, ought not in themselves to be regarded as instances or proofs of a want of "due diligence," where good faith and reasonable activity on the part of the Government itself has not been wanting. Least of all can the Government of a free country be held wanting in due diligence, on the ground of errors of judgment, into which a Judge of a Court of Law, in the exercise of a legal jurisdiction properly invoked, may have fallen (as when the Florida was acquitted at Nassau), in the decision of a particular case.

"The United States agree with Her Majesty's Government when it says, *c.*, it does in its Counter-Case, that it should not be, and they hope it is not, in the power of Her Majesty's Government to instruct a Judge, whether in the United Kingdom or in a Colony or dependence of the Crown, how to decide a particular case or question. No Judge in Her Majesty's dominions should submit to be so instructed; no community, however small, should tolerate it; and no Minister, however powerful, should ever think of attempting it." (Argument of the United States, p. 257.)

This being so, if the Government had information and evidence which made it their duty to detain such a ship as the Florida, and to endeavour to prosecute her to condemnation, and if they actually did so, and offered for that purpose proper evidence, they used all the diligence which was due from them. Over the judgment, whether right or erroneous, they had no control; and for it, if erroneous, they have no responsibility.*

But the Counsel of the United States say that—

"The efforts of the British Case and Counter-Case to ascribe to, or apportion among, the various departments of national authority, legislative, judicial, and executive, principal or subordinate, the true measure of obligation and responsibility, and of fault or failure, in the premises, *as among themselves*, seem wholly valueless. If the sum of the obligations of Great Britain to the United States was not performed, the nation was in fault, wherever, in the functions of the State or their exercise, the failure in duty arose." (Argument, p. 319.)

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* The judgment of acquittal, when once pronounced by the Court of Admiralty in favour of the vessel, was conclusive, as a judgment *in rem*, preventing the possibility of her being afterwards again seized as forfeited for a breach of the British Foreign Enlistment Act, except on the ground of some new violation of the law, subsequent to that judgment. This point of law was expressly determined by the Supreme Court of the United States, in the case of Gelston *v.* Hoyt, already mentioned. The effect of judgments *in rem*, by Courts of Admiralty, is everywhere recognized by international law.

The question, whether "the sum of the obligations of Great Britain to the United States" was or was not performed (which is the point at issue), seems to be here assumed. A *petitio principii* cannot, of course, be an answer to arguments intended to show that the sum of those national obligations was, in fact, performed. The United States affirm that in the various cases, in which they themselves failed to prevent within their own territory equipments and expeditions hostile to other States, the sum of their own national obligations was performed; and yet they seem to deny to the Government of Great Britain the benefit of the same equitable principles of judgment.

X.—*Of the burden of Proof, according to the Treaty.*

38. Attempt of the United States to change generally the *onus probandi*, in the present controversy.

They go further: they seek to invert the whole burden of proof, in the present controversy:—

"*The foundation of the obligation* of Great Britain to use 'due diligence to *prevent*' certain acts and occurrences within its jurisdiction, *as mentioned in the three Rules, is, that those acts and occurrences within its jurisdiction, are offences against international law*, and, being injurious to the United States, furnish just occasion for resentment on their part, and for reparation and indemnity by Great Britain, *unless* these offensive acts and occurrences shall be affirmatively shown to have proceeded from conduct and causes for which the Government of Great Britain is not responsible. *But by the law of nations the State is responsible for all offences committed against international law arising within its jurisdiction*, by which a foreign State suffers injury, *unless the former can clear itself of responsibility by demonstrating its freedom from fault in the premises.*" (Page 334.)

And again, at page 335:—

"*The nature of the presumptive relation which the State bears to the offences and injuries imputed and proved, necessarily throws upon it the burden of the exculpatory proof demanded*, that is to say, the proof of due diligence on its part to prevent the offences which, in fact, and in spite of its efforts, have been committed within its jurisdiction, and have wrought the injuries complained of."

39. In so doing they transgress the rules of the Treaty.

In the face of the VIth Article of the Treaty, by which Her Majesty expressly declines to assent to the three Rules, as a statement of principles of international law which were in force when these claims arose, but agrees that the Arbitrators may apply these Rules to the decision of the claims, *upon the footing of an undertaking by Great Britain* to act upon their principles,—it is here assumed that all such acts or occurrences within British jurisdiction as are mentioned in the Treaty, are to dealt with by the Arbitrators as *offences against international law*; notwithstanding the proofs, given in the British Counter-Case and the Annex (A) thereto, and referred to at the commencement of this paper, that international law never did require a neutral Government to prohibit and prevent the manufacture, sale, and dispatch of unarmed ships of war, by its citizens within its territory, for a belligerent.

In the face of the three Rules themselves, which affirm the obligation of due diligence to prevent, only when there are "reasonable grounds to believe" that some prohibited act has been or is about to be done, the United States decline the burden of establishing, in each or any case, the existence of this preliminary and indispensable condition, *reasonable ground for belief*; and they ask that this should be taken for granted in every case, until it is disproved.

40. The law of nations does not justify this attempt.

To justify this disregard of the primary condition of the Rules, they appeal to a supposed law of nations, which is said universally to throw the onus of demonstrating its own freedom from "fault in the premises" upon every State, whose citizens commit any offence against international law, injurious to a foreign State, within its jurisdiction; which principle, as was shown in the early part of this paper, has never been extended to cases (like the present) when the acts in question have been done by individuals, or by small numbers of citizens. The United States do not admit themselves to be responsible for all the equipments and hostile expeditions of their citizens against foreign States which they have failed to prevent, under the propositions that "it is presumed that a Sovereign knows what his subjects openly and frequently commit;" that, "as to his power of hindering the evil, this likewise is also presumed unless the want of it be clearly proved." But, if those propositions would not be applicable against the United States, why are they to be applied, against Great Britain, to cases much further removed in their nature and circumstances from the terms of the propositions?

41. The decision in the case of the Elizabeth by the Commissioners under the Treaty of 1794, is against it.

It happens that there is a decision of weight, of which the United States long ago had the benefit in a former controversy with Great Britain, under circumstances not very dissimilar in principle, which is directly opposed to this attempt on their part now to alter the burden of proof. The United States come before the Arbitrators under an agreement of the Queen of Great Britain, by which Her Majesty authorises the Arbitrators to assume

that she had undertaken, when the present claims arose, to act upon the principles set forth in the three Rules, though not admitting them to have been then in force as rules of international law. In 1798, Great Britain came before the Commissioners of Claims under the Treaty of 1794, with an actual undertaking by the United States to use all the means in their power to restore all British prizes brought into ports of the United States, after a certain date, by any vessel illegally armed within their jurisdiction, and with an acknowledgment of their consequent obligation to make compensation for such, if any, of those prizes as they might not have used all the means in their power to restore. The undertaking of Great Britain, now to be assumed by the Arbitrators, is conditional upon the existence of "*reasonable grounds for belief*" of certain facts by the British Government in the case of each of the vessels for which Great Britain is sought to be made responsible. The undertaking of the United States, in 1794, was also dependent upon certain conditions of fact. What was the decision of the Commissioners in the case of the Elizabeth? (British Counter-Case, pages 29, 30, and British Appendix, vol. v, page 322):—

"From this examination of the letter which is given to us for a rule (Mr. Jefferson to Mr. Hammond 5th September, 1793), it results that it was the opinion of the President, therein expressed, that it was incumbent on the United States to make restitution of, or compensation for, all such vessels and property belonging to British subjects as should have been—first, captured between the dates of June 5th and August 7th within the line of jurisdictional protection of the United States, or even on the high seas; if, secondly, such captured vessel and property were brought into the ports of the United States; and, thirdly, provided that, in cases of capture on the high seas, this responsibility should be limited to captures made by vessels armed within their ports; and, fourthly, that the obligation of compensation should extend only to captures made before the 7th August, in which the United States had confessedly forborne to use all the means in their power to procure restitution; and that, with respect to cases of captures made under the first, second, and third circumstances above enumerated, but brought in after the 7th August, the President had determined that all the means in the power of the United States should be used for their restitution, and that compensation would be equally incumbent on the United States in such of these cases (if any such should at any future time occur) where, the United States having decreed restitution, and the captors having opposed or refused to comply with or submit to such decree, the United States should forbear to carry the same into effect by force.

"Such was the promise. In what manner was that promise to be carried into effect? It was not absolute to restore by the hand of power, in all cases where complaint should be made. . . . . .

"No, the promise was conditional. We will restore in all those cases of complaint *where it shall be established by sufficient testimony that the facts are true which form the basis of our promise*—that is, that the property claimed belongs to British subjects; that it was taken either within the line of jurisdictional protection, or, if on the high seas, then by some vessel illegally armed in our ports; and that the property so taken has been brought within our ports. *By whom were these facts to be proved? According to every principle of reason, justice, or equity, it belongs to him who claims the benefit of a promise to prove that he is the person in whose favour, or under the circumstances in which the promise was intended to operate.*"

XI.—*Special questions remaining to be considered.*

42. Special questions remaining to be considered.

These are the arguments, upon the subject of the diligence generally due by Great Britain to the United States, with reference to the subjects to which the three Rules of the Treaty of Washington relate, and the principles according to which that diligence is to be proved or disproved, which it has been desired by Her Britannic Majesty's Counsel to submit to the Arbitrators. There remain some other special questions, which require separate examination:

1. Whether the diligence due from Great Britain, as to any vessel equipped contrary to the first Rule, extended to the pursuit of the vessel by a naval force after she had passed beyond British jurisdiction?

2. Whether the diligence, so due, extended to an obligation, on the re-entry of any such vessel into a British port, after she had been commissioned by the Confederate States as a public ship of war, to seize and detain her in such port?

And (3), whether supplies of coal, furnished in British ports to Confederate cruizers, can be regarded as infractions of the second Rule of the Treaty, or as otherwise wrongful against the United States?

XII.—*There existed no duty to pursue ships beyond the limits of British jurisdiction.*

43. As to the alleged duty of pursuit: The Terceira Expedition.

Upon the first of these three points, the sole argument of the United States appears to be derived from the precedent of the Terceira expedition in 1829. It is a strange proposition, and one unsupported by any principle or authority in international law, that, because a Government, which conceived its neutrality laws to have been infringed upon a particular occasion, may have thought fit to visit that offence by extraordinary measures (really in the nature of war or reprisals), beyond its own territory, therefore it placed

itself under an obligation to take similar measures upon subsequent occasions, if any such should occur of a like character. In point of fact, there is no similarity between the Terceira case, which (in the view taken of it by the British Government) was an expedition of embodied, though unarmed troops, proceeding in transports from Great Britain, against an express prohibition of the British Government, for the invasion of a friendly territory,—and the departure of unarmed vessels, for the use of the Confederates, from British ports. In point of international law the British Government was not only under no obligation to pursue the Terceira expedition, but Sir Robert Phillimore (whose authority is so much extolled in the Argument of the United States,) distinctly condemns that proceeding. "The Government," he says, "were supported by a majority in both Houses of Parliament; but in the protest of the House of Lords, and in the resolutions of (*i. e.*, moved in) the House of Commons (which condemned the proceedings of the Government), the true principles of international law are found." (Commentaries, vol. iii, page 235.)

The two remaining points are those on which the Arbitrators have consented to receive arguments, embracing other important questions, both of international law, and as to the proper interpretation of the Rules of the Treaty of Washington, in addition to the question of the diligence (if any) due from Great Britain to the United States, in those respects.

Chapter II.—On the Special Question of the Effect of the Commissions of the Confederate Ships of War, on their Entrance into British Ports.

1. The true construction of the 1st Rule of the Treaty.

It is contended by the United States that these ships (or at least such of them as had been illegally equipped in British territory) ought to have been seized and detained, when they came into British ports, by the British authorities. This argument depends upon a forced construction of the concluding words of the first Rule, in Article VI of the Treaty of Washington; which calls upon the neutral State to "use due diligence to *prevent the departure from its jurisdiction* of any vessel *intended* to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use." Does this Rule authorize the Arbitrators to treat it as a duty undertaken by Great Britain, to seize Confederate cruizers commissioned as public ships of war and entering British ports in that character, without notice that they would not be received on the same terms as other public ships of war of a belligerent State, if they were believed to have been "specially adapted, in whole or in part, within British jurisdiction, to warlike use?" The negative answer to this inquiry results immediately from the natural meaning of the words of the Rule itself; which plainly refer to a departure from the neutral territory of a vessel which has not at the time of such departure ceased to be *subject*, according to the law of nations, to *the neutral jurisdiction;* and the cruizing and carrying on war by which still rests in *intention and purpose only*, and has not become an accomplished fact, under the public authority of any belligerent Power.

2. The privileges of public ships of war in neutral ports.

If a public ship of war of a belligerent Power should enter neutral waters in contravention of any positive regulation or prohibition of the neutral Sovereign, of which due notice had been given, she might, according to the law of nations, be treated as guilty of a hostile act, a violation of neutral territory; and hostile acts may of course be justifiably repelled by force. But the original equipment and dispatch from neutral territory of the same ship, when unarmed, whether lawful or unlawful, was no hostile act; and a foreign Power, which afterwards receives such a ship into the public establishment of its navy, and gives her a new character by a public commission, cannot be called upon to litigate with the neutral Sovereign any question of the municipal law of the neutral State, to whose jurisdiction it is in no matter subject. The neutral State may, if it think fit, give notice (though no authority can be produced for the proposition that it is under any international obligation to do so), that it will not allow the entrance of a particular description of vessels, whether commissioned or not, into its waters; if it gives no such notice it has no right, by the law of nations, to assume or exercise any jurisdiction whatever over any ship of war coming into its waters under the flag and public commission of a recognized belligerent.* Such a ship, committing no breach of neutrality while within neutral waters, is entitled to

* The proceedings of the British Government, in the case of the Tuscaloosa, turned entirely upon the question whether she was, or was not, a *prize* whose entrance into a British port was prohibited by the Rules publicly issued by the Queen at the beginning of the war.

extra-territorial privileges; no court of justice of the neutral country can assume jurisdiction over her; the flag and commission of the belligerent Power are conclusive evidence of his title and right; no inquiry can be made, under such circumstances, into anything connected with her antecedent ownership, character, or history. Such was the the decision (in accordance with well established principles of international law) of the highest judicial authority in the United States in 1811, in the case of the Exchange, a ship claimed by American citizens, in American waters, as their own property; but which, as she had come in as a public ship of war of France, under the commission of the first Emperor Napoleon, was held to be entitled to recognition as such in the waters of the United States, to the entire exclusion of every proceeding and inquiry whatever, which might tend in any way to deprive her of the benefit of that privileged character. The principles laid down in the following extracts from that judgment are in accordance with those which will be found in every authoritative work on international law which treats of the subject. (See the passages from Ortolan, Hautefeuille, Pando, &c., cited at length in the note to the British Counter-Case, pp. 14, 15; also Azuni, vol. ii (Paris edition, 1805), pp. 314, 315, &c.; and Bluntschli's "Droit International," Article 321, p. 184 of the French translation by Lardi.)

3. The case of the Exchange.

"The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all Sovereigns have consented to a relaxation in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers.

"This consent may, in some instances, be tested by common usage and by common opinion growing out of that usage.

"A nation would justly be considered as *violating its faith*, although that faith might not be expressly plighted, which should suddenly, and without previous notice, exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilized world.

"This full and absolute territorial jurisdiction being alike the attribute of every Sovereign, and being incapable of conferring extra-territorial power, would not seem to contemplate foreign Sovereigns nor their sovereign rights as its objects. One Sovereign being in no respect amenable to another, and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express licence, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him.

"This perfect equality and absolute independence of Sovereigns, and this common interest impelling them to mutual intercourse and an interchange of good offices with each other, have given rise to a class of cases in which every Sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction which has been stated to be the attribute of every nation.

"If, for reasons of State, the ports of a nation generally, or any particular ports, be closed against vessels of war generally, or the vessels of any particular nation, notice is usually given of such determination. If there be no prohibition, the ports of a friendly nation are considered as open to the public ships of all Powers with whom it is at peace, *and they are supposed to enter such ports, and to remain in them, while allowed to remain, under the protection of the Government of the place.*

"When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant-vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction and the Government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign Sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries are not employed by him, nor are they engaged in national pursuits. Consequently, there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter, can never be construed to grant such exemption.

"But in all respects different is the situation of a public armed ship. She constitutes a part of the military force of her nation; acts under the immediate and direct command of the Sovereign; is employed by him in national objects. He has many and powerful motives for preventing those objects from being defeated by the interference of a foreign State. Such interference cannot take place without affecting his power and his dignity. The implied license, therefore, under which such vessel enters a friendly port, may reasonably be construed, and it seems to the Court ought to be construed, as containing *an exemption from the jurisdiction of the Sovereign* within whose territory she claims the rights of hospitality.

"Upon these principles, by the unanimous consent of nations, a foreigner is amenable to the laws of the place; but certainly, in practice, *nations have not yet asserted their jurisdiction* over the public armed ships of a foreign Sovereign entering a port open for their reception."

4. Other authorities.

The words of Bluntschli are:—

"Exceptionellement on accorde l'exterritorialité aux navires de guerre étrangers, lorsqu'ils sont entrés dans les eaux d'un Etat avec la permission de ce dernier."

Mr. Cushing, when Attorney-General of the United States, in 1855, thus stated the rule, as received in the United States:—

"A foreign ship of war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the right of exterritoriality, and is not subject to the local jurisdiction."*

5. The Rule cannot require an act wrongful by international law.

It cannot, therefore, be supposed that when two nations, by both of which these principles of international law had been habitually acted on, recognized, in the first Rule of the Treaty of Washington, an obligation to "*use due diligence to prevent the departure of a ship intended to cruize*" &c, from the "*neutral jurisdiction*," either of them meant to authorize the other to demand, under any circumstances, a violation of these principles, in the case of any ship cruizing as a ship of war by the public authority of a belligerent at the time of her entrance into neutral waters, and which, according to these principles, was there entitled to the privilege of exterritoriality, and was not subject to the neutral jurisdiction. Had an innovation of so important and extraordinary a kind been intended, it would certainly have been unequivocally expressed; and it would have become the plain duty of any neutral State, which had entered into such an engagement, to give notice of it beforehand to all belligerent Powers, before it could be put in force to their prejudice. It is impossible that an act, which would be a breach of public faith and of international law towards one belligerent, could be held to constitute any part of the "*diligence due*" by a neutral to the other belligerent. The Rule says nothing of any obligation to *exclude* this class of vessels, when once commissioned as public ships of war, from entrance into neutral ports upon the ordinary footing. If they were so excluded by proper notice they would not enter; and the Rule (in that case) could never operate to prevent their departure. If they were not so excluded, instead of being "due diligence," it would be a flagrant act of treachery and wrong to take advantage of their entrance in order to effect their detention or capture. Can Her Majesty be supposed to have consented to be retrospectively judged, as wanting in due diligence, because, not having excluded these Confederate ships of war from her ports by any prohibition or notice, she did not break faith with them, and commit an outrage on every principle of justice and neutrality by their seizure? The Rules themselves had no existence at the time of the war; the Confederates knew, and could know, nothing of them; their retrospective application cannot make an act *ex post facto* "due," upon the footing of "diligence," to the one party in the war, which, if it had been actually done, would have been a wholly unjustifiable outrage against the other.

These principles receive illustration from the controversy which took place in December 1861, between Brazil and the United States, on the subject of the reception of the Sumter in Brazilian ports. Señor Taques, the Foreign Minister of Brazil, wrote thus to Mr. Webb, the United States Minister at Rio, on the 9th December, 1861:—

"Some Powers have adopted as a rule not to admit to entry in their ports either the privateers or vessels of war of belligerents; others are holden to do so under the obligations of Treaties concluded with some of the belligerents before or during the war. Brazil has never placed herself in this exceptional condition, but under the general rule which admits to the hospitality of her ports ships of war, and even to a privateer compelled by stress to seek it, provided she brings no prizes, nor makes use of her position in such ports for acts of hostility by taking them as the basis for her operations.

"The rule adopted by civilized nations is to detain in port vessels equipped for war until twenty-four hours after the departure of any hostile vessel, or let them go, requiring from the commanders of vessels of war their word of honour, and from privateers pecuniary security and promise, that they will not pursue vessels which had left port within less than twenty-four hours before them. Nor do the rules of the law of nations, nor usage, nor the jurisprudence which results from Treaties, authorize a neutral to detain longer than twenty-four hours in his ports vessels of war or privateers of belligerents, unless it could be done by the indirect means of denying them facilities for obtaining in the market the victuals and ship's provisions necessary to the continuance of their voyages. *A neutral who should act in this manner, incarcerating in his ports the vessels of one of the parties, would take from one of the belligerents the exercise of his rights, turn himself by the act into an ally and co-operator with the other belligerent, and would violate his neutrality.*

"*Without a previous declaration, before the principles adopted in Brazil and in the United States being known, such a proceeding on the part of the Brazilian authorities towards the Sumter would take the character of a snare, which would not meet the esteem or approval of any Government.*"†

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* It has been the practice of the United States to restore prizes, when brought into their ports, if made by ships illegally equipped in their territory, on proof of such illegal equipment in their Courts of Law: all the world having notice of their rule and practice in this respect. It has not been their rule or practice to seize or detain, on the ground of any such illegal equipment, ships afterwards commissioned, and coming into their ports as public ships of war of a recognized belligerent Power.

† British Appendix, vol. vi. p. 14.

The absence of any Rule obliging a neutral to *exclude* from his ports foreign ships of war, if originally adapted, wholly or in part, to warlike use within the neutral jurisdiction, rests evidently upon good reasons, and cannot have been unintentional. Whatever, as a matter of its own independent discretion and policy, a neutral Government may, at any time, think fit to do in such cases, it will certainly do with all public and proper notice; which cannot be retrospectively assumed to have been given, or agreed to be given, contrary to notorious facts. The reasons, which in some cases might make a policy of this kind just and reasonable, as against a Power which, first infringing the laws of a neutral State by procuring vessels to be illegally equipped within its territory, might afterwards employ them in war, would not apply to other cases, which may easily be supposed: *e.g.*, if such a vessel, having been disposed of to new owners after her first equipment, were afterwards commissioned by a Power not in any sense responsible for that equipment. The offence is one of persons, not of things; it does not adhere necessarily to the ship into whatever hands she may come; even a ship employed by pirates in their piracy, if she is afterwards (before seizure in the exercise of any lawful jurisdiction) actually transferred to innocent purchasers, ceases to have the taint of piracy in the hands of such new owners; as was lately decided by the Judicial Committee of the English Privy Council, in the case of the Dominican ship Telegrafo. Nor, in a question of this kind between Great Britain and the Confederate States, is it possible to assume (in view of the facts that the interpretation of the British prohibitive law was disputed and doubtful, and that international law had never treated the construction, equipment, and dispatch of unarmed ships of war by neutral shipbuilders, to the order of a belligerent, as a violation of the territory or sovereignty of the neutral State), that the authorities of the Confederate States, when they commissioned the vessels in question, were actually in the situation of a Power which had wilfully infringed British law, or British neutrality, within British territory.

6. There is no Rule obliging a neutral to exclude from his ports ships of this description.

Even if the latter part of the first Rule could be construed as the United States suggest, with respect to the subject of the present chapter, it would not apply to the Georgia,—a ship, whose special adaptation, within British jurisdiction, to warlike use, the Tribunal is asked to take for granted without any evidence, though it is denied by Great Britain, and though the ship actually proved to be unsuitable for such use. Still less could the Rule apply to the Shenandoah—a merchant ship, transferred to the Confederates, without receiving, within British jurisdiction, any new equipment or outfit whatever, of any kind, in order to enable her to cruize or to be employed in the Confederate service. It is clear, beyond controversy, that when the Shenandoah entered the port of Melbourne as a public ship of war of the Confederates, nothing had been done to her, in any part of the British dominions, which could be so much as pretended to be an infringement of the first Rule of the Treaty, or of the law of nations, or of any British law whatever. And yet, in the Argument of the United States (pages 256, 257), a statement by the United States' Consul at Melbourne, in a letter to Mr. Seward, to the effect, that, in some conversation with him, the Colonial Law Officers had "*seemed to admit*, that she was liable to seizure and condemnation, if found in British waters," is gravely brought forward, and seriously commented on, as a reason why she ought to have been seized at Melbourne.

7. In any view the latter part of Rule 1 cannot apply to the Georgia or the Shenandoah.

The Argument of the United States suggests, however, a distinction between "public ships of recognized nations and Sovereigns," and "public ships belonging to a belligerent Power, which is *not a recognized State*." For such a distinction, there is neither principle nor authority. The passage cited in the British Summary (page 31) from the judgment of Mr. Justice Story, in the case of the Santissima Trinidad, states the true principles, applicable to this part of the subject. The ship Independencia del Sud, whose character was there in controversy, had been commissioned by the revolutionary Government of Buenos Ayres:—

8. The distinction suggested by the United States between ships of war of recognized nations, and ships of a non-recognized State.

> "There is another objection," said the learned Judge, "urged against the admission of this vessel to the privileges and immunities of a public ship, which may well be disposed of in connection with the question already considered. It is, that Buenos Ayres has not yet been acknowledged as a sovereign independent Government by the Executive or Legislature of the United States, and, therefore, is not entitled to have her ships of war recognized by our Courts as national ships. We have, in former cases had occasion to express our opinion on this point. The Government of the United States has recognized the existence of a civil war between Spain and her Colonies, and has avowed a determination to remain neutral between the parties, and to allow to each the same right of asylum and hospitality and intercourse. *Each party is, therefore, deemed by us a belligerent nation, having so far as concerns us, the sovereign rights of war*, and entitled to be respected in the exercise of those rights. We cannot interfere, to the prejudice of either belligerent, without making ourselves a party to the contest, and departing from the posture of neutrality. All captures, made by each, must be considered as having the same validity; *and all the immunities which may be claimed by public ships in our ports under the law of nations, must be considered as equally the right of each.*"

In like manner, in the recent case of the Hiawatha (a British prize, taken by the United States at the commencement of the late civil war),—when the question arose, whether the civil contest in America had the proper legal character of war, *justum bellum*, or that of a mere domestic revolt, and was decided by the majority of the Supreme Court of the United States in accordance with the former view,—Mr. Justice Grier, delivering the opinion of the majority, said:

"It is not the less a civil war with belligerent parties in hostile array, because it may be called an 'insurrection' by one side, and the insurgents be considered as rebels or traitors. It is not necessary that the independence of the revolted province or State be acknowledged, in order to constitute it a party belligerent in a war, according to the law of nations. Foreign nations acknowledge it as war by a declaration of neutrality. The condition of neutrality cannot exist unless there be two belligerent parties. In the case of the Santissima Trinidad (7 Wheaton, 337), this Court says: 'The Government of the United States has recognized the existence of a civil war between Spain and her Colonies, and has avowed her determination to remain neutral between the parties. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the Sovereign rights of war.'"

Professor Bluntschli, in a contribution to the "Revue de Droit International" for 1870 (pages 452-470), in which, upon the assumptions of fact contained in a speech of Mr. Sumner in the Senate of the United States (and on those assumptions only), he favours some part of the claims of the United States against Great Britain, so far as relates to the particular ship Alabama, distinctly lays down the same doctrine:

"Du reste, le parti révolté, qui opère avec des corps d'armée militairement organisés, et entreprend de faire triompher par la guerre un programme politique, agit alors même qu'il ne forme point un Etat, tout au moins comme s'il en constituait un, au lieu et place d'un Etat ('an Staates statt'). Il affirme la justice de sa cause, et la légitimité de sa mission, *avec une bonne foi égale à celle qui se présume de droit chez tout Etat belligérant*" (pages 455-6).

Again:—

"Pendant la guerre on admet, dans l'intérêt de l'humanité, *que les deux parties agissent de bonne foi* pour la défense de leurs prétendus droits" (page 458).

And, at pages 461, 462:—

"Si l'on tient compte de toutes ces considérations, on arrive à la conclusion suivante. C'est que, à considérer d'un point de vue impartial, tel qu'il s'offrait et s'imposait aux Etats Européens, en présence de la situation que créaient les faits, la lutte engagée entre l'Union et la Confédération, c'est-à-dire, entre le Nord et le Sud, il était absolument impossible de ne pas admettre que les Etats Unis fussent alors engagés dans une grande guerre civile, ou les deux partis avaient le caractère de Puissances politiquement et militairement organisées, se faisant l'une à l'autre la guerre, suivant le mode que le droit des gens reconnait comme régulier, et animés d'un égale confiance dans le bon droit. . . . . *Tout le monde était d'accord qu'il y avait guerre, et que, dans cette guerre, il y avait deux parties belligérantes.*"

9. All the ships in question were duly commissioned ships of war.

That all the vessels of which there is any question before the Arbitrators, and especially those which are alleged to have been equipped or adapted for warlike uses within British territory, were, in fact, commissioned and employed as public ships of war by the authorities then exercising the powers of public government in the Confederate States, is not seriously (if it be at all) disputed by the United States. The proofs of it* abound both elsewhere and in those intercepted letters from Confederate authorities, and other Confederate documents (such as the Journal of Captain Semmes, &c.), which the United States have made part of their evidence; and to which, for this purpose at all events, they cannot ask the Arbitrators to refuse credit. All these vessels were always received as public ships of war in the ports of France, Spain, the Netherlands, Brazil, and other countries. "As to the Florida," said the Marquis d'Abrantes, the Foreign Minister of Brazil, writing to Mr. Webb on the 22nd June, 1863:—

"The Undersigned must begin by asking Mr. Webb's consent to observe that if the President of Pernambuco knew that that steamer was the consort of the Alabama, as was also the Georgia, it does not follow, as Mr. Webb otherwise argues, that the said President should consider the Florida as a pirate.

"According to the principles of the neutrality of the Empire, to which the Undersigned has already alluded, all these vessels of the Confederate States are vessels of war, exhibiting the flag, and bearing the commission of the said States, by which the Imperial Government recognized them in the character of belligerents."†

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* See Appendix to Case of the United States, vol. ii, pp. 486, 487 (Sumter); ibid., pp. 550, 551 (Nashville); ibid., pp. 614, 633, and vol. i, p. 543 (Florida); vol. vi, p. 486 (Alabama); vol. ii, pp. 673, 680, 713 (Georgia); vol. iii, p. 332, &c. (Shenandoah); also Mr. Benjamin's Instructions, vol. i, pp. 621-624.

† British Appendix, vol. vi, pp. 59, 60.

Upon the same footing the Shenandoah was delivered up to the United States, as public property when she arrived at Liverpool after the conclusion of the war. And though the terms "pirates" and "privateers" have been freely applied to these vessels in many of the public and other documents of the United States, the former term was only used as a vituperative or argumentative expression, in aid of the objections of the United States to the recognition, by foreign Powers, of the belligerent character of the Confederates. Neither Captain Semmes, of the Alabama, nor any other officer or seaman engaged in the naval service of the Confederates, was ever, during the war or after its conclusion, actually treated as a pirate by any political or other authority of the United States. And with respect to the denomination of "privateer," a privateer is a vessel employed by private persons, under letters of marque from a belligerent Power, to make captures at sea for their private benefit. None of the vessels in question, at any moment of their history, can be pretended to have had that character.

Chapter III.—On the Special Question of Supplies of Coal to Confederate Vessels in British Ports.

The next point which remains is that as to the supplies of coal in British ports to Confederate cruizers.

That such supplies were afforded equally and impartially, so far as the regulations of the British Government and the intentions and voluntary acts of the British Colonial authorities are concerned, to both the contending parties in the war, and were obtained, upon the whole, very much more largely by the ships of war of the United States than by the Confederate cruizers, are facts which ought surely to be held conclusive against any argument of the United States against Great Britain founded on these supplies. That such arguments should be used at all can hardly be explained, unless by the circumstance that they are found in documents maintaining the propositions that the belligerent character of the Confederates ought never to have been recognized, and that impartial neutrality was itself, in this case, wrongful. Let those propositions be rejected, and their own repeated acts in taking advantage of such supplies (sometimes largely in excess of the limited quantities allowed by the British regulations) are conclusive proof that the United States never, during the war, held or acted upon the opinion that a neutral State, allowing coal to be obtained by the war-vessels of a belligerent in its ports, whether with or without any limitation of quantity, was guilty of a breach of neutrality or of any obligation of international law.

1. Both parties in the war equally received such supplies.

That such supplies might be given, consistently with every hitherto recognized rule or principle of international law, is abundantly clear.

Chancellor Kent, in his Commentaries, first lays down the rule against using neutral territory as a base of warlike operations, as that Rule had been understood and acted upon, both in Great Britain and in America:

2. Such supplies are not within the Rule, as to not using neutral territory as a base of operations.

"It is a violation of neutral territory for a belligerent ship to take her station within it, in order to carry on hostile expeditions from thence, or to send her boats to capture vessels being beyond it. No use of neutral territory, for the purpose of war, can be permitted. This is the doctrine of the Government of the United States. It was declared judicially in England, in the case of the Twee Gebroeders; and, though it was not understood that the prohibitions extended to remote objects and uses, such as procuring provisions and other innocent articles, which the law of nations tolerated, yet it was explicitly declared that *no proximate acts of war were in any manner to be allowed to originate on neutral ground.* No act of hostility is to be commenced on neutral ground. No measure is to be taken that will lead to immediate violence." (Vol. i, page 118).

At page 120, he says:

There is no exception to the rule, that every voluntary entrance into neutral territory, with hostile purposes, is absolutely unlawful. The neutral border must not be used as a shelter for making preparations to renew the attack; and, though the neutral is not obliged to refuse a passage and safety to the pursuing party, he ought to cause him to depart as soon as possible, and not permit him to lie by and watch his opportunity for further contest. This would be making the neutral country directly auxiliary to the war, and to the comfort and support of one party."*

Ortolan (Diplomatie de la Mer, vol. ii, p. 291) says:—

"Le principe général de l'inviolabilité du territoire neutre exige aussi que l'emploi de ce territoire reste franc de toute mesure ou moyen de guerre, de l'un des belligérants contre l'autre. C'est une

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* See also Wheaton's "Elements" (Lawrence's edition), p. 720; Phillimore, vol. ii, p. 452.

obligation pour chacun des belligérants de s'en abstenir; c'est aussi un devoir pour l'Etat neutre d'exiger cette abstention; et c'est aussi pour lui un devoir d'y veiller et d'en maintenir l'observation à l'encontre de qui que ce soit. Ainsi il appartient à l'autorité qui commande dans les lieux neutres où des navires belligérants, soit de guerre, soit de commerce, ont été reçus, de prendre les mesures nécessaires pour que l'asile accordé ne tourne pas en machination hostile contre l'un des belligérants; pour empêcher spécialement qu'il ne devienne un lieu d'où les bâtiments de guerre ou les corsaires surveillent les navires ennemis pour les poursuivre et les combattre, et les capturer lorsqu'ils seront parvenus au-delà de la mer territoriale. Une de ces mesures consiste à empêcher la sortie simultanée des navires appartenant à des Puissances ennemies l'une de l'autre."

Again, at page 302:—

"Si des forces navales belligérantes sont stationnées dans une baie, dans un fleuve, ou à l'embouchure d'un fleuve, d'un Etat neutre, a dessein de profiter de cette station pour exercer les droits de la guerre, les captures faites par ces forces navales sont aussi illégales. Ainsi, si un navire belligérant mouillé ou croisant dans les eaux neutres capture, au moyen de ses embarcations, un bâtiment qui se trouve en dehors des limites de ces eaux, ce bâtiment n'est pas de bonne prise: bien que l'emploi de la force n'ait pas eu lieu dans ce cas, sur le territoire neutre, néanmoins il est le résultat de l'usage de ce territoire; et un tel usage pour des desseins hostiles n'est pas permis.*

3. What is meant by the words "A base of naval operations."

The above passages supply the obvious and sufficient explanation of the words "base of naval operations." Neutral territory is not to be used "in order to carry on hostile operations from thence," or "as a shelter for making preparations for attack."—(Kent.) No act of hostility is to commence or originate there. "Captures made by armed vessels stationed in a river of a neutral Power, or in the mouth of his rivers, or in harbours, *for the purpose of exercising the rights of war from that river or harbour*, are invalid."—(Phillimore.) It is not to be made a place "d'où les bâtiments de guerre surveillent les navires ennemis pour les poursuivre et les combattre et les capturer, lorsqu'ils sont parvenus au delà de la mer territoriale."—(Ortolan.)

It is not to "servir de station aux bâtiments des Puissances belligérantes."—(Heffter.) It is not to "servir à tendre des embûches à l'un des belligérants."—(Hautefeuille.) Belligerent vessels are not to station themselves or to cruize within it, in order to look out for enemies' ships, "encore qu'ils sortent de leur retraite pour aller les attaquer hors les limites de la juridiction neutre."—(Ibid., and Pistoye et Duverdy.)

The phrase now in question is a short expression of the principle, that neutral territory is not to be used as a place from which operations of naval warfare are to be carried into effect; whether by single ships, or by ships combined in expeditions. It expresses an accepted rule of international law. Any jurist who might have been asked, whether neutral ports or waters might be used as a base for naval operations, would have replied that they might not; and he would have understood the words in the sense stated above.

4. What is not meant by those words.

The above citations and references furnish, at the same time, the necessary limitations under which the phrase is to be understood. None of these writers question—no writer of authority has ever questioned—that a belligerent cruizer might lawfully enter a neutral port, remain there, supply herself with provisions and other necessaries, repair damages sustained from wear and tear, or in battle, replace (if a sailing ship) her sails and rigging, renew (if a steamer) her stock of fuel, or repair her engines, repair both her steaming and her sailing power, if capable (as almost all ships of war now are) of navigating under sail and under steam, and then issue forth to continue her cruise, or (like the Alabama at Cherbourg) to attack an enemy. "Ils y sont admis à s'y procurer les vivres nécessaires et à y faire les réparations indispensables pour reprendre la mer *et se livrer de nouveau aux opérations de la guerre*."—(Ortolan; Heffter.) "Puis sortir librement pour aller livrer de nouveaux combats."—(Hautefeuille.) The connection between the act done within the neutral territory, and the hostile operation which is actually performed out of it, must (to be within the prohibition) be "proximate"; that is, they must be connected directly and immediately with one another. In a case where a cruizer uses a neutral port to lie in wait for an enemy, or as a station from whence she may seize upon passing ships, the connection is proximate. But where a cruizer has obtained provisions, sail-cloth, fuel, a new mast, or a new boiler-plate, in the neutral port, the connection between this and any subsequent capture she may make, is not "proximate," but (in the words of Lord Stowell, quoted by Kent, Wheaton, and other writers) "remote." The latter transaction is "universally tolerated;" the other universally forbidden.

* See also Heffter (Bergson), pp. 275, 276, 279; and Hautefeuille, vol. ii. p. 82; Calvo, "Derecho Internacional," ii; Pistoye et Duverdy, vol. i, p. 108.

It is evident that if this phrase, "base of operations," were to be taken in the wide and loose sense now contended for by the United States, it might be made to comprehend almost every possible case in which a belligerent cruizer had taken advantage of the ordinary hospitalities of a neutral port. It would be in the power of any belligerent to extend it almost indefinitely, so as to fasten unexpected liabilities on the neutral.

5. Consequences of a lax use of the phrase "base of operations."

Does it, then, make any difference that, in the second Rule of the Treaty of Washington, the prohibition of the use of neutral ports or waters as "the base of naval operations," by one belligerent against the other, is combined with the further prohibition of "the renewal or augmentation of military supplies or arms?" So far from this, the context only makes the meaning of the former part of the Rule more clear. There can be no reasonable doubt as to what is meant by the words "renewal or augmentation of military supplies or arms."

6. Effect of the addition of the words "renewal or augmentation of military supplies or arms."

At page 122 of his Commentaries (vol. i), Chancellor Kent says:—

7. Doctrine of Chancellor Kent.

"The Government of the United States was warranted by the law and practice of nations, in the declarations made in 1793 of the rules of neutrality, which were particularly recognized as necessary to be observed by the belligerent Powers in their intercourse with this country. These rules were, that the original arming or equipping of vessels in our ports by any of the Powers at war for military service was unlawful, and no such vessel was entitled to an asylum in our ports. The equipment by them of Government vessels of war in matters which, if done to other vessels, would be applicable equally to commerce or war, was lawful. The equipment by them of vessels fitted for merchandize and war, and applicable to either, was lawful; but, if it were of a nature solely applicable to war, was unlawful."

The Rules of President Washington (August 4, 1793) speak for themselves. Some of them (as the 6th) clearly exceeded any obligation previously incumbent upon the United States by international law.

8. President Washington's Rules of 1793, and other authorities.

They were as follows:—

"1. The *original arming and equipping* of vessels in the ports of the United States by any of the belligerent parties for military service, offensive or defensive, is deemed unlawful.

"2. Equipments of merchant-vessels by either of the belligerent parties in the ports of the United States, purely for the accommodation of them as such, is deemed lawful.

"3. *Equipments in the ports of the United States of vessels of war in the immediate service of the Government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful;* except those which shall have made prize of the subjects, people, or property of France, coming with their prizes into the ports of the United States, pursuant to the XVIIth Article of our Treaty of Commerce with France.

"4. *Equipments in the ports of the United States,* by any of the parties at war with France, *of vessels fitted for merchandize and war, whether with or without commissions, which are doubtful in their nature as being applicable either to commerce or war, are deemed lawful,* except those which shall have made prize, &c. (as before).

"5. *Equipments of any of the vessels of France,* in the ports of the United States, *which are doubtful in their nature as being applicable to commerce or war, are deemed lawful.*

"6. Equipments of every kind in the ports of the United States of privateers of the Powers at war with France are deemed unlawful.

"7. *Equipments of vessels in the ports of the United States which are of a nature solely adapted to war, are deemed unlawful,* except those stranded or wrecked, as mentioned in the XVIIIth Article of our Treaty with France, the XVIth of our Treaty with the United Netherlands, the XVIIIth of our Treaty with Prussia.

"8. Vessels of either of the parties not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist their own subjects or citizens, not being inhabitants of the United States, except privateers of the Powers at war with France, and except those vessels which have made prizes, &c."

(Appendix to Report of Neutrality Laws Commission, page 23; British Appendix, vol. iii.)

There can be no question that, under these principles and Rules, any amount whatever of coaling by a war-steamer of a belligerent Power in a neutral port was perfectly lawful.

Similar principles will be found in all the best authorities of international law, applicable to the asylum and hospitality which the ships of war of a belligerent may receive in neutral ports without a violation of neutrality. Some of those authorities are referred to in the note at foot of this page.*

* Ortolan, "Règles Internationales et Diplomatie de la Mer" (4th edition), vol. ii, p. 286; Heffter, "Droit International" (Bergson's translation), § 149, and note (2) on p. 276; Pando, "Elem. del Derecho Internacional," § 192; Kent, "Commentaries," vol. i, p 118; Wheaton's "Elements" (Lawrence), p. 720; Hautefeuille, "Droits et Devoirs des Nations neutres," vol. i, p. 347; Calvo, "Derecho Internacional," § 634; Twiss, "Law of Nations," vol. ii, p. 452.

9. Acts of Congress of 1794 and 1818.

In accordance with these principles, the Acts of Congress of 1794 and 1818 prohibited, in section 4 of the former, and section 5 of the latter Act, the "increase or augmentation of the force of any ship of war, cruizer, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, cruizer, or armed vessel in the service of any foreign Prince, &c., *by adding to the number of the guns of such vessel, or by changing those on board of her for guns of larger calibre, or by the addition thereto of any equipment solely applicable to war.*"

10. British Foreign Enlistment Act of 1819.

In like manner the British Foreign Enlistment Act of 1819, by section 8, prohibited the "increase or augmentation of the warlike force of any ship or vessel of war, or cruizer, or other armed vessel, which, at the time of her arrival in any part of the United Kingdom or any of Her Majesty's dominions, was a ship of war, cruizer, or armed vessel in the service of any foreign Prince," &c., "*by adding to the number of the guns of such vessel or by changing those on board for other guns, or by the addition of any equipment for war.*"

11. Universal understanding and practice.

No person in either country ever imagined that these prohibitions would be infringed by allowing foreign belligerent steam-vessels to coal *ad libitum* in ports of Great Britain or of the United States. It is no more true that such vessels are specially enabled to continue their cruizes and warlike operations, by means of supplies of coal so received (however great in quantity), than that sailing ships of war are enabled to continue their cruizes and warlike operations by substantial and extensive repairs in neutral ports to their hulls, masts, sails, and rigging, when damaged or disabled, or by unlimited supplies of water and other necessary provisions for their crews.

It was not by Great Britain only, but equally by France, Brazil, and other countries, that this view as to supplies of coal to Confederate vessels in neutral ports was acted upon throughout the war. In the letter already quoted of the Brazilian Minister, Señor Taques, to Mr. Webb, on the subject of the Sumter (9th December, 1861), he wrote:—

> "The hospitality, then, extended to the steamer Sumter at Maranham, in the terms in which it was presently afterwards given to the frigate Powhatan, involves no irregularity, reveals no dispositions offensive to the United States. It remains to know whether, in the exercise of this hospitality, the rights which restrict the commerce of neutrals with either belligerent were transgressed. This point involves the whole question, because Mr. Webb bases his argumentation and his complaints on the construction which he gives of contraband of war as to pit coal. He insists strongly, as did his Consul at Maranham and Commodore Porter, on the idea that without coal the Sumter could not have continued her cruise. If this were a reason for forbidding the purchase of coal in the market, the States called Confederate would have the right to make the same complaint against the like permission presently afterwards given to the Powhatan; and if this reason could be brought forward in respect of coal, it could also be urged in respect of drinking water and provisions, because without these none of these vessels could pursue their service." (British Appendix, vol. vi, p. 14.)

And he proceeded to show that coal was not, *jure gentium*, contraband of war.

12. Intention of the Second Rule of the Treaty on this point.

When, therefore, the Second Rule of the Treaty of Washington speaks of a neutral Government being bound "not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the *renewal or augmentation of military supplies or arms*, or the recruitment of men," it is no more intended to take away or limit the right of a neutral State to permit the coaling of steamers belonging to the war service of a belligerent within neutral waters, than to take away the right to permit them to receive provisions, or any other ordinary supplies, previously allowable under the known rules of international law.

13. British Regulations of January 31, 1862.

With respect to the Regulations made by the Queen of Great Britain on the 31st January, 1862, it is enough to say, that those Regulations were voluntarily made by Her Majesty, in the exercise of her own undoubted right and discretion, as an independent neutral Sovereign, and not by virtue of any antecedent international obligation; that no belligerent Power could claim, under those rules, any greater benefit against the other belligerent, than that the rules themselves should be acted upon without partiality towards either of the contending parties; that the limitation of the quantity of coal to be supplied to the ships of war of the belligerents, in British ports, by these rules, was not absolute and unqualified, but was subject to the exercise of a power given to the Executive Authorities of the various British possessions to enlarge that limit by special permission, when they should, in the exercise of a *bonâ fide* discretion, see cause to do so; and that these rules were, in fact, honestly and impartially acted upon by the British Government throughout the war, without any connivance or sanction whatever, with or to any violation or evasion of them, even if such violation or evasion could have been shown (which it clearly could not) to be the direct or proximate cause of any belligerent operation, resulting in loss to the Government or citizens of the United States.

Chapter IV.—Principles of Construction applicable to the Rules of the Treaty.

1. Importance of the second and third questions, as to the principles of construction applicable to the three Rules.

The two questions last considered (that of the supposed obligation of Great Britain, under the First Rule, to seize or detain such vessels as the Alabama or the Florida, when they came into British ports as duly commissioned public ships of war of the Confederate States—and as to her supposed obligation, under the Second Rule, either not to permit at all, or by an exact supervision to limit, the coaling of Confederate steam-vessels of war in British ports) involve points of such grave importance as to the principles of construction to be applied to those Rules for the purpose of the present controversy, that some further general observations on that subject seem to be imperatively called for.

2. Rules for the interpretation of public Conventions and Treaties.

Among the rules for the interpretation of Treaties, laid down by Vattel (Articles 262-310), are found the following:—

"(1.) Since the lawful interpretation of a contract ought to tend only to the discovery of the thoughts of the author or authors of that contract, as soon as we meet with any obscurity, we should seek for what was probably in the thoughts of those who drew it up, and interpret it accordingly. This is the general rule of all interpretations. It particularly serves to fix the sense of certain expressions, the signification of which is not sufficiently determined. In virtue of this rule, we should take those expressions in the most extensive sense, when it is probable that he who speaks has had in his view everything pointed out in this extensive sense; and, on the contrary, we ought to confine the signification, if it appears that the author has bounded his thoughts by what is comprehended in the more limited sense." (Art. 270.)

"(2.) In the interpretation of Treaties, pacts, and promises, we ought not to deviate from the common use of the language; at least, if we have not very strong reasons for it. In all human affairs, where there is a want of certainty, we ought to follow probability. It is commonly very probable that they have spoken according to custom; this always forms a very strong presumption, which cannot be surmounted, but by a contrary presumption that is still stronger." (Art. 271.)

"(3.) Words are only designed to express the thoughts; thus the true signification of an expression, in common use, is the idea which custom has affixed to that expression. It is then a gross quibble to affix a particular sense to a word, in order to elude the true sense of the entire expression."

"(4.) When we manifestly see what is the sense that agrees with the intention of the Contracting Powers, it is not permitted to turn their words to a contrary meaning. The intention, sufficiently known, furnishes the true matter of the Convention, of what is perceived and accepted, demanded, and granted. To violate the Treaty, is to go contrary to the intention sufficiently manifested, rather than against the terms in which it is conceived; for the terms are nothing, without the intention that ought to dictate them." (Art. 274.)

"(5.) We ought always to give to expressions the sense most suitable to the subject, or to the matter to which they relate. For we endeavour, by a true interpretation, to discover the thoughts of those who speak, or of the Contracting Powers in a Treaty. Now it ought to be presumed, that he, who has employed a word capable of many different significations, has taken it in that which agrees with the subject. In proportion as he employs himself on the matter in question, the terms proper to express his thoughts present themselves to his mind; this equivocal word could then only offer itself in the sense proper to express the thought of him who makes use of it, that is, in the sense agreeable to the subject." (Art. 280.)

"(6.) Every interpretation that leads to an absurdity ought to be rejected; or, in other words, we should not give to any piece a sense, from which follows anything absurd; but interpret it in such a manner, as to avoid absurdity. As it cannot be presumed that any one desires what is absurd, it cannot be supposed, that he who speaks has intended that his words should be understood in a sense, from which that absurdity follows. Neither is it allowable to presume that he sports with a serious act; for what is shameful and unlawful is not to be presumed. We call absurd not only that which is physically impossible, but what is morally so; that is, what is so contrary to right reason, that it cannot be attributed to a man in his right senses. . . . The rule we have just mentioned is absolutely necessary, and ought to be followed, even when there is neither obscurity nor anything equivocal in the text of the law, or the Treaty itself. For it must be observed, that the uncertainty of the sense, that ought to be given to a law or a Treaty, does not merely proceed from the obscurity, or any other fault in the expression: but also from the narrow limits of the human mind, which cannot foresee all cases and circumstances, nor include all consequences of what is appointed or promised; in short, from the impossibility of entering into this immense detail. We can only make laws or Treaties in a general manner; and the interpretation ought to apply them to particular cases, conformably to the intention of the legislature, or of the Contracting Powers. Now it cannot be presumed that, in any case, they would lead to anything absurd; when, therefore, their expressions, if taken in their proper and ordinary sense, lead to it, it is necessary to turn them from that sense, just so far as is sufficient to avoid absurdity." (Article 282.)

"(7.) If he, who has expressed himself in an obscure or equivocal manner, has spoken elsewhere more clearly on the same subject, he is the best interpreter of himself. We ought to interpret his obscure or vague expressions in such a manner, that they may agree with those terms that are clear and without ambiguity, which he has used elsewhere, either in the same Treaty or in some other of the like kind. In fact, while we have no proof that a man has changed his mind, or manner of thinking, it is presumed that his thoughts have been the same on the same occasions; so that, if he has anywhere

clearly shown his intention, with respect to anything, we ought to give the same sense to what he has elsewhere said obscurely on the same affair." (Art. 284.)

"(8.) Frequently, in order to abridge, people express imperfectly, and with some obscurity, what they suppose is sufficiently elucidated by the things which preceded it, or even what they propose to explain afterwards; and besides, the expressions have a force, and sometimes even an entirely different signification, according to the occasion, their connection, and their relation to other words. The connection and train of the discourse is also another source of interpretation. We ought to consider the whole discourse together, in order perfectly to conceive the sense of it, and to give to each expression, not so much the signification it may receive in itself, as that it ought to have from the thread and spirit of the discourse." (Art. 285.)

"(9.) The reason of the law, or the Treaty, that is the motive which led to the making of it, and the view there proposed, is one of the most certain means of establishing the true sense; and great attention ought to be paid it, whenever it is required to explain an obscure, equivocal, and undetermined point, either of law or of a Treaty, or to make an application of them to a particular case." (Art. 287.)

"(10.) We use the restrictive interpretation to avoid falling into an absurdity. . . . . The same method of interpretation takes place, when a case is presented, in which the law or Treaty, according to the rigour of the terms, leads to something unlawful. This exception must then be made; since nobody can promise to ordain what is unlawful." (Art. 293.)

(11.) "When a case arises, in which it would be too prejudicial to any one to take a law or promise according to the rigour of the terms, a restrictive interpretation is also then used; and we except the case, agreeably to the intention of the legislature, or of him who made the promise. For the legislature requires only what is just and equitable; and in contracts no one can engage in favour of another, in such a manner as to be essentially wanting to himself. It is then presumed, with reason, that neither the legislature, nor the Contracting Powers, have intended to extend their regulation to cases of this nature; and that they themselves would have excepted them, had these cases presented themselves. (Art. 294.)

3. Applications of these principles to the interpretation of the three Rules, as to the points in controversy.

Let us apply these principles to the interpretation of the Rules of the present Treaty. The British interpretation of the latter part of the first Rule, which makes it applicable only to the prevention of the departure from British jurisdiction of vessels over which British jurisdiction had never ceased or been displaced, and whose warlike character rests only in an (as yet) unexecuted intention or purpose, is agreeable to the 5th, 6th, 8th, 9th, and 10th of the foregoing principles. The American interpretation, which would extend it to vessels coming, as public ships of war of the Confederates, into British waters, without any notice beforehand that they would be either excluded or detained, is opposed to the same principles in the most marked manner, and especially it is opposed to those numbered 6 and 10; which are, perhaps, the most cogent and undeniable of them all.

The British interpretation of the first part of the second Rule, which applies the phrase "base of naval operations" in the same sense in which it has always been used by the leading authorities on international law, and particularly by those of Great Britain and the United States, (*e.g.*, by Lord Stowell and Chancellor Kent), is in accordance with the 2nd, 3rd, and 7th of these principles; while the American interpretation, which would extend it to every combination of circumstances, which those words, in their most lax, popular, and unscientific acceptation, could possibly be made to embrace, offends against the same, and also against the 10th principle.

The British interpretation of the words "the renewal or augmentation of military supplies or arms," in the latter part of the second Rule, which applies them to augmentations of the warlike force of belligerent vessels, the same, or *ejusdem generis*, with those which were forbidden by President Washington's Rules, and by the British and American Foreign Enlistment Acts, is in harmony with the 2nd, 3rd, 5th, 7th, 8th, and 9th of the foregoing principles. The American interpretation, which would extend them to supplies of articles, such as coals, which according to the doctrine and practice of asylum and hospitality hitherto recognized and acted upon by all civilized nations (notably by Great Britain and the United States) were never yet deemed unlawful, and from the supply of which, in neutral ports, it would be highly prejudicial to two great maritime Powers, such as the two Contracting Parties, to debar themselves in case of their being engaged in war, in the present days of steam navigation, offends against the same principles, and also against that numbered 11.

4. Influence on the construction, of the retrospective terms of the agreement.

The force of these objections to the American interpretation of the three Rules is greatly increased, when it is borne in mind, first, that Great Britain agreed to their being retrospectively applied to the decision of "the questions between the two countries arising out of the claims mentioned in Article I" of the Treaty, those being the claims "growing out of acts committed by the several vessels which had given rise to the claims generically known as the Alabama Claims."

Down to the date of the Treaty no claim had ever been made against Great Britain, on the specific ground of supplies of coal to Confederate vessels; every claim for captures, of which any intelligible notice had been given, was in respect of captures by ships, said to

have been equipped and fitted out in British ports, or to have received their armaments by means directly supplied from Great Britain. The British Government, therefore, was warranted in believing, as it did believe, that the controversy between itself and the Government of the United States was confined to claims growing out of acts committed by ships of this description only; and, in agreeing to the terms of the Rule, it could not be supposed to have had any claims in view which were grounded only on supplies of coal to Confederate vessels. A retrospective engagement of this sort cannot, without a complete departure from all the principles of justice, be enlarged by any uncertain or unnecessary implication.

5. The admitted intention of both the parties as to the Second Rule.

The United States have expressly declared, in their Case, that they consider *all* the Rules—of course, therefore, the second—to be coincident with, and not to exceed, the previously known rules of international law. Great Britain, though taking a different view of the other Rules, has also expressly declared, in her Counter-Case, that she too regards the second Rule as in no way enlarging the previously known prohibitions of international law, on the subject to which it relates. The practice of the United States, by habitually receiving supplies of coal in British ports during the war, was in accordance with the views of international law, applicable to this subject, which had been previously announced and acted upon by all the highest political and judicial authorities of that country. Thus it is made quite apparent that the construction now sought to be placed by the United States upon this second Rule, is at variance with the real intention and meaning of both the Contracting Parties; and therefore with the 1st and 4th of the principles extracted from Vattel, as well as with the others already specified.

6. Influence upon the construction, of the agreement to propose the Three Rules for general adoption to other maritime nations.

But further: not only did Great Britain consent to the retrospective application of those Rules, upon the footing formerly explained, to the determination of what she understood as "the claims generically known as the Alabama Claims," growing out of acts committed by particular vessels which had historically given rise to that designation,—and of no other kind of claims;—not only did the two Contracting Parties "agree to observe these Rules as between themselves in future;"—but they also agreed to "bring them to the knowledge of other maritime Powers, and to invite them to accede to them."

They did not attempt to make a general code of all the rules of international law connected with the subject: they were not careful, and did not attempt, to express the explanation or qualifications of any expressions used in these particular Rules, which a sound acquaintance with the rules and usages of international law would supply. Rules of this nature, which could rationally be supposed proper to be proposed for general acceptance to all the maritime Powers of the civilized world, must evidently have been meant to be interpreted in a simple and reasonable sense, conformable to, and not largely transcending, the views of international maritime law and policy which would be likely to commend themselves to the general interests and intelligence of that portion of mankind. They must have been meant to be definitely, candidly, and fairly interpreted; not to be strained to every unforeseen and novel consequence, which perverse latitude of construction might be capable of deducing from the generality of their expressions. They must have been understood by their framers, and intended to be understood by other States, as assuring the continuance, and involving in their true interpretation the recognition of all those principles, rules, and practical distinctions, established by international law and usage, a departure from which was not required by the natural and necessary meaning of the words in which they were expressed; they cannot have been meant to involve large and important changes, upon subjects not expressly mentioned or adverted to by mere implication; nor to lay a series of traps and pitfalls, in future contingences and cases, for all nations which might accede to them. Great Britain certainly, for her own part, agreed to them, in the full belief that the Tribunal of Arbitration, before which these claims would come, might be relied upon to reject every strained application of their phraseology, which could wrest them to purposes not clearly within the contemplation of both the Contracting Parties, and calculated to make them rather a danger to be avoided than a light to be followed by other nations.

ROUNDELL PALMER.

No. 12.

Lord Tenterden to Earl Granville.—(*Received August* 5.)

My Lord, *Geneva, July* 30, 1872.

AT the close of the meeting of the Tribunal to-day, Count Sclopis and Baron Itajubá told Mr. Bancroft Davis and myself that they were of opinion that it would be very useful, with a view to a possible discussion of the question of the amount of claims, that a tabular statement should be drawn up showing a comparison between the claims, as stated in the list of claims furnished by the American Government, and the assessment or valuation of the claims made by the Board of Trade Committee.

I pointed out that a comparative table of this description, so far as the general sum of the captures by the several cruizers was concerned, had already been given by the British Government; but said that I should be very happy to furnish any further information which might be required.

Baron Itajubá remarked that the comparative table of claims which was now wanted was a table showing the claims in the case of each prize, and the deductions made from them by the British accountants; and that, if Mr. Davis and I could agree upon such a comparative statement, it might greatly facilitate the future course of the business of the arbitration.

Mr. Bancroft Davis said that he was prepared to name Mr. Beaman to represent him in the matter, if I would name some one to meet Mr. Beaman, and draw up the table with him.

I replied that I could not name any one now at Geneva, as the Secretaries attached to Her Majesty's Agency were already fully occupied; but that I would lose no time in requesting that some one competent to undertake the duty should be sent out from England.

Count Sclopis begged me to do so at once; and Baron Itajubá suggested that it should, if possible, be some one already conversant with the figures.

I have accordingly to recommend that, as it is of great importance that the work should be executed by a skilled accountant, Mr. Cohen and Mr. Young, the gentlemen who drew up the Report of the Committee for the Board of Trade on these claims given in the VIIth Volume of the Appendix to the British Case, should be invited at once to come to Geneva to meet Mr. Beaman. Mr. Beaman is, I believe, the solicitor of the claimants, or some of them, and has a special knowledge of the details of the claims.

Mr. Cohen's services might also be very useful in assisting in the preparation of any argument on the principles of money compensation which may be called for by the Arbitrators.

I informed your Lordship of the substance of this despatch by telegraph.

I am, &c.

(Signed) TENTERDEN.

No. 13.

Earl Granville to Lord Tenterden.

(Extract.) *Foreign Office, July* 31, 1872.

IN consequence of your telegram of yesterday, I have arranged with the Board of Trade that Mr. Cohen should proceed to Geneva to-morrow morning accompanied by Mr. James Jennings, a clerk recommended by Mr. Young for accountant's work; Mr. Young himself being unable to leave England.

Mr. Cohen will place himself in communication with you and act under your directions.

No. 14.

Lord Tenterden to Earl Granville.—(Received August 9.)

My Lord,

Geneva, August 5, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal on the 30th ultimo, as approved and signed at the meeting this day.

I have, &c.

(Signed) TENTERDEN.

Inclosure in No. 14.

Protocol No. XVI.—Record of the Proceedings of the Tribunal of Arbitration at the Sixteenth Conference, held at Geneva, in Switzerland, on the 30th of July, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The Tribunal then proceeded with the cases of the vessels the Tuscaloosa, the Tallahassee, and the Retribution.

The Tribunal also decided to devote the next Conference to receiving the written or oral statement or argument of the Counsel of the United States, in reply to the Argument presented at the last Conference by the Counsel of Her Britannic Majesty.

The Conference was then adjourned until Monday the 5th August, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statements of Mr. Adams on the Cases of the Tuscaloosa and Tallahassee; of Baron d'Itajubá on the Cases of the Tallahassee and Retribution; and of M. Staempfli on the Case of the Retribution, discussed at the Meeting of the 30th July.

Statement of Mr. Adams.

THE TUSCALOOSA.

IN the series of papers which it has been my duty to prepare upon the vessels successively brought to the attention of the Tribunal, I have proceeded so far as to deduce from the evidence submitted one general rule, which I believe to be sound. This is, that the assumption of a belligerency on the ocean founded exclusively upon violence and fraud can at no later period have any issue different in its nature from that of its origin.

This rule must receive another illustration from the case of the Tuscaloosa now before us. This was a merchant-ship belonging to the United States, originally having the name of the Conrad, which was captured by the Alabama on the 21st of June, 1863, on the coast of Brazil. Of the case of that vessel, of its fraudulent origin, and of the unfortunate recognition afterwards made of its character as a legitimate vessel on the ocean by the Government of the nation whose laws it had so impudently set at defiance, I have already submitted my judgment in a preceding paper. That Government was now destined to go through another crucial experiment, the necessary and legitimate consequence of its primal error.

It should here be observed that, in the order of events naturally following what has ever seemed to me the great original mistake of the recognition of this false maritime belligerent, sprang up a necessity of immediately considering the question of the recognition of any prizes which it might take and send in under the established law of nations to any of the ports of Her Majesty's Kingdom, there to await a regular condemnation in the Courts at home. Unless some action were at once taken to prevent it, the practical result would clearly be that the whole commerce of the United States would be in danger of sacrifice to one belligerent in British ports without a single chance of corresponding advantage to the other. For the fact that the insurgents had no commerce of their own whatever had become quite notorious.

In order to guard against this danger Her Majesty's Government promptly resorted to a precautionary measure entirely within its power to take under the law of nations, the prohibition of the use of its ports to either party for the admission of prizes. The same policy having been adopted by all other naval Powers, it became evident to the false belligerent that nothing positive was to be gained to itself from its assumption of a place on the ocean. The only motive left for trying to keep it was the possibility of injuring its opponent. Hence, a resort to the barbarous practice of destroying the property it could not convert into plunder.

But this practice seems at times to have become unpleasant and wearisome to its perpetrators. Hence, it was natural that their attention should be drawn to some manner of evading it. The Commander of the Alabama having made it the occupation of some of his leisure hours to study the best known treatises on the law of nations, seems to have hit upon a passage which he considered exactly to fit his purpose. This was an extract from Wheaton's well-known work, to the effect that a legitimate authority might convert a captured merchant-vessel, without condemnation, into a ship of war, to such an extent at least as to secure the recognition of it by neutral nations.

It was probably from this source that Captain Semmes contrived his scheme of turning the United States' merchantman Conrad, laden with a cargo of wool from a distant market, into the Confederate States' ship Tuscaloosa, tender to the Alabama, having two 12-pound rifle guns, and ten men; and bringing her into Her Majesty's port of Simon's Bay, Cape of Good Hope, to test the disposition of the local authorities to recognize the proceeding.

As usually happened in the course of these transactions, the naval officer in command in the harbour at once penetrated the fraud. Rear-Admiral Sir B. Walker, on the 8th August, addressed a letter to Sir P. Wodehouse, in which he used this language:—

"The admission of this vessel into port will, I fear, open the door for numbers of vessels captured under similar circumstances, being denominated tenders, with a view to avoid the prohibition contained in the Queen's instructions; and I would observe, that the vessel Sea Bride captured by the Alabama off Table Bay a few days since, or all other prizes, might be in like manner styled tenders, making the prohibition entirely null and void.

"I apprehend, that to bring a captured vessel under the denomination of a vessel of war, she must be fitted for warlike purposes, and not merely have a few men and two small guns put on board her (in fact nothing but a prize crew), in order to disguise her real character as a prize.

"Now, this vessel has her original cargo of wool still on board, which cannot be required for warlike purposes; and her armament, and the number of her crew, are quite insufficient for any services other than those of slight defence."

But this sound judgment of the gallant naval officer met with little response from the higher authorities of the Cape.

As usual, the Governor had consulted his Attorney-General, and, as usual, the Attorney-General gave an opinion, giving five reasons why what was a captured merchantman to the eye of everybody else should be regarded by the Government as a legitimate ship of war of a recognized belligerent. He also relied on the extract from the work of Wheaton, having reference to a very different state of things. This was on the 7th August, 1863.

The Governor sent these papers in the regular channel to the authorities at home, and in due course of time they found their way to Earl Russell. He appears to have been so little satisfied with the singular result that had been reached at Cape Town as to desire a reconsideration of the question by the Law Officers of the Crown. This was dated on the 30th September.

The consequence was an opinion, not delivered until nineteen days afterwards and bearing marks of careful consideration, signed by all three of the legal officers, the import of which was a disavowal of the fiction of law based upon a misconception of the doctrine of Wheaton; and a distinct expression of a proposition so important in connection with all the events submitted to our consideration that I deem it necessary to quote the very language:—

"We think it right to observe that the third reason alleged by the Colonial Attorney-General for his opinion assumes (though the fact had not been made the subject of any inquiry) that 'no means existed for determining whether the ship had or had not been judicially condemned in a Court competent of jurisdiction; and the proposition that, admitting her to have been captured by a ship of war of the Confederate States, she was entitled to refer Her Majesty's Government, in case of dispute, to the Court of her States in order to satisfy it as to her real character,' appears to us to be at variance with Her Majesty's undoubted right to determine, within her own territory, whether her orders, made in vindication of her own neutrality, have been violated or not."

The opinion then went on to declare what the proper course should have been. The allegations of the United States' Consul should at once have been brought to the knowledge of Captain Semmes, while the Tuscaloosa was there; and he should have been obliged to admit or deny their truth. If the result were, in that case, the proof that the Tuscaloosa was an uncondemned prize brought into British waters in violation of Her Majesty's orders for maintaining her neutrality, it would deserve serious consideration whether the most proper course consistent with Her Majesty's dignity would not be to take from the captors, at once, all further control over the Tuscaloosa, and retain it until properly reclaimed by her original owners.

This opinion, so far as I have had occasion to observe, contains the very first indication of a disposition manifested on the part of Her Majesty's Advisers to resent the frauds and insults which had been so continually practised upon her from the outset of this struggle by these insurgent agents. Had it been duly manifested from the beginning, it can hardly be doubted that she would have been materially relieved from the responsibility subsequently incurred.

On the 4th of November the Duke of Newcastle addressed a note to the Governor of Cape Town, communicating the decision of the Law Officers as to what ought to have been done.

On the 19th of December the Governor addressed a note to the Duke of Newcastle, defending himself in regard to the action which had been disapproved, and praying for further directions what to do. The Tuscaloosa had meantime left Simon's Bay on a cruize, from which she did not return until the 26th December, when she put in for supplies. But on the 5th of January Rear-Admiral Sir B. Walker addressed a note to the Secretary of the Admiralty, announcing that, by the request of the Governor, he had taken the necessary steps to ascertain from the insurgent officer then in command the fact that she was an uncondemned prize captured by the Alabama, and thereupon he had taken possession of her for violation of Her Majesty's Orders, to be held until reclaimed by her proper owners.

It was in vain that the insurgent entered a protest against this decided proceeding. The Governor contented himself with a brief answer to the effect that he was acting by orders.

There were at the moment no agents for the proper owners to whom the vessel could be transferred, so that it remained in the hands of the British authorities, until a new letter was received from the Duke of Newcastle, dated the 10th March, rescinding the instructions given in the preceding one, and directing the vessel to be handed over once more to some person having authority from Captain Semmes, of the Alabama, or from the Government of the Confederate States.

Thus it appears to me that Her Majesty's Government, from an oversensibility to the peculiar circumstances of the return of the vessel after once leaving her port, lost all the advantages to which it had entitled itself for maintaining the dignity of the Crown against an unworthy experiment upon her patience. The fact was that it was only making the port of Simon's Bay a base of operations, an additional insult.

The time had gone by, however, when this vessel could be made of any further use by the insurgent Commander of the Alabama. He had succeeded in executing a fraudulent sale of the cargo of that as well as of another prize, the Sea Bride, and was bound on another cruize, which proved to be his last on the ocean.

Taking into consideration all the circumstances attending this singular narrative, I have arrived at the conclusion that as a prize captured by the Alabama, and turned into a tender, she comes distinctly within the scope of damages awarded by the judgment passed upon the course of Her Majesty's Government respecting that vessel. And if in her own brief career it should appear that she has herself committed any injury to the people of the United States, I am clearly of opinion that Her Majesty's Government has made itself distinctly responsible for the neglect to prevent it under the rules. It is alleged in the Argument on behalf of the United States that she had captured and released one vessel on a ransom bond, before reaching Cape Town; and on the 13th of September, after her visit, she captured and destroyed one more. But I have failed to discover the presence of any distinct claim in damages. Should such be made visible, I hold the claim to be valid.

The Tallahassee.

This is one of the number of vessels constructed in Great Britain, of which the Chickamauga, whose case has been already considered, is another example. About the

first week of April 1864 she left London under the name of the Atlanta. On the 20th she arrived in Bermuda. Here she seems to have remained until the 24th of May, when she started to run the blockade at Wilmington, in which she appears to have succeeded. For the next month she was running in the same business between Bermuda and Wilmington.

Being found swift and strong, it appears to have been decided at Wilmington to make an experiment of turning this vessel into a cruizer. The equipment and manning were all done there, and on the 6th of August, the commander, Wood, succeeded in running the blockade and entered upon his career of depredation.

In this case it is fortunate that we have before us the whole story of this short cruize narrated by the commander himself, under circumstances which render the truth of it probable. Commander Wood, in a letter purporting to be official, reports these facts:—1. That he sailed five days to the northward without finding any vessels not European. 2. That on the 11th, having approached New York, as he pursued the line of the coast northward, until the 20th, he captured thirty-three vessels, twenty-six of which he destroyed. Most of them were of small size. By this time he had reached the British Provinces, and had consumed nearly all his coal. So he decided to put into Halifax on the 18th, and try his luck for new supplies.

It appears very clearly from his confession that Sir James Hope, the Admiral then in command at the station, like most of the officers in Her Majesty's naval service, had no fancy for this fraudulent species of belligerency, and no disposition to be blind to the tricks by which it was carried on. The Lieutenant-Governor also gave no hopes of any relaxation of the rules laid down by the Government, whether in regard to his stay or his supplies. After all, he boasts that he did succeed in cheating him a little, but it was not enough to do any good; so he was compelled to abandon his cruize for want of coals and make the best of his way back to his starting-point. He succeeded in forcing the blockade at Wilmington on the 26th. This made a cruize of twenty days.

There is some evidence to show that this vessel issued forth once more as a cruizer from Wilmington in the early part of November and made a few captures. If so it was under another name, that of the Olustee. Like other rogues, after having once more exhausted her reputation, she changed her name a third time, laid down her armament, and presented herself at Bermuda as a merchantman, with a cargo of cotton, which she had run out of Wilmington. She was now called, not inappropriately, the Chameleon. But when on the 9th April, 1865, all American ports being finally closed, she reached Liverpool, she was reported at that place as the Amelia, consigned to Messrs. Fraser, Trenholm, and Co., the sole remaining representatives of an extinguished fraudulent belligerent.

The conclusion to which I have come is, that there is no evidence adduced in this case to show that Her Majesty's Government has failed to observe the rules laid down for the regulation of neutrals, as prescribed by the Treaty of Washington.

Statement of Baron d'Itajubá.

LES NAVIRES LE RETRIBUTION ET LE TALLAHASSEE OU L'OLUSTEE.

LE Soussigné, après examen consciencieux de tous les documents soumis au Tribunal d'Arbitrage par les Gouvernements des Etats Unis et de la Grande Bretagne, relatifs aux croiseurs Confédérés,

Le Retribution,
Le Tallahassee ou l'Olustee,—

Est d'avis,

Que la Grande Bretagne n'a pas manqué aux devoirs prescrits dans les règles établies par l'Article VI du Traité de Washington, et qu'elle n'est pas responsable des faits imputés à ces navires.

(Translation.)

THE VESSELS THE RETRIBUTION AND THE TALLAHASSEE OR OLUSTEE.

THE Undersigned, after a conscientious examination of all the documents submitted to the Tribunal of Arbitration by the Governments of the United States and Great Britain relative to the Confederate cruizers,

The Retribution,
The Tallahassee or Olustee,—

Is of opinion,

That Great Britain has not failed in the duties prescribed by the rules laid down in Article VI of the Treaty of Washington, and that she is not responsible for the acts imputed to these vessels.

Statement of M. Staempfli.

LE RETRIBUTION.

(A.)—FAITS.

1. Ce vaisseau était dans l'origine le vapeur à hélice l'Uncle Ben, des Etats Unis, et avait été construit à Buffalo, en 1856.

Peu de temps avant l'attaque du Fort Sumter, il avait été envoyé sur les côtes méridionales des Etats Unis. Le mauvais temps l'obligea à entrer dans le fleuve du Cap Fear. Là, les insurgés s'en emparèrent et le transformèrent en schooner. Il reprit la mer sous le nom de Retribution et croisa dans le voisinage des Bahamas.

2. Au mois de Décembre 1862, il captura le schooner Américain le Hanover, et amena sa prise à l'île Fortune ou Long Cay (l'une des Bahamas).

Le capitaine de la Retribution, nommé Locke, *alias* Parker, se présenta avec les papiers du navire le Hanover aux autorités du port, se fit passer pour le patron de ce navire sous le nom de Washington Case, et rapporta qu'il avait fait naufrage à l'une des îles voisines et qu'il était en détresse; qu'il avait été destiné de Boston à la Havane avec faculté de chercher un autre marché; que ses instructions l'autorisaient à disposer de la cargaison, et à en employer le produit à faire un chargement de sel et à traverser le blocus avec ce chargement.

Les papiers du navire furent examinés et trouvés conformes aux déclarations; ils étaient en effet au nom du patron Washington Case, et ce fut sous ce nom que Locke fut admis au port avec le Hanover et que la cargaison du navire fut changée contre une de sel.

3. Plus tard, à la suite de dénonciations faites par un agent Américain, Locke fut poursuivi en justice à Nassau, à cause de ce fait; la première fois, il fut relâché sous caution, et réussit à se soustraire à la procédure en prenant la fuite et abandonnant son cautionnement (Octobre 1863). La seconde fois, ayant refait le même voyage, il fut acquitté par le Tribunal, faute de preuves constatant son identité (Février 1865).

4. Antérieurement à ces procédés judiciaires, le Retribution avait aussi capturé dans le voisinage de Castle Island le brick Américain Emily Fisher, portant une cargaison de sucre. Le patron de ce dernier vaisseau, nommé Staples, raconte ce qui s'est passé de la manière suivante:—

La prise faite, le capteur était entré en relation avec quelques *wreckers* et avait ensuite fait échouer le navire; après quoi les *wreckers* s'en étaient emparés; ensuite il avait été ramené à Long Cay sous la conduite du Retribution.

Lui, patron de l'Emily Fisher, n'avait été en état de reprendre possession de son vaisseau qu'il n'eût payé aux *wreckers* 50 pour cent du prix de la cargaison, et $33\frac{1}{3}$ pour cent de la valeur du vaisseau. Lorsqu'il eut déposé ce paiement, il avait été remis en possession par le collecteur; les autorités avaient déclaré que les lois ne permettraient pas au croiseur de toucher au brick, mais que, quand même elles le voudraient, elles n'auraient aucun moyen de l'empêcher; et, se trouvant sous les canons du croiseur, il avait mieux aimé payer ce qu'on lui demandait.

Dans le Contre-Mémoire Britannique, on reconnaît que cet exposé peut être vrai, qu'il y avait eu complot entre le capitaine du Retribution et les *wreckers* en vue d'extorquer de l'argent au brick, dont il n'aurait sans cela rien pu retirer comme prise; mais qu'il n'y avait pas eu de plainte portée contre les autorités Coloniales, et que, depuis lors, neuf ans s'étaient écoulés.

5. Là-dessus, le Retribution se rendit dans la baie de Nassau, y fut vendu le 10 Avril, 1863, y changea son nom en celui de Etta, et l'un et l'autre de ces actes furent enregistrés par les autorités de Nassau. Lors de son premier voyage à New York, en

qualité de transport, il y fut reconnu comme l'ancien Retribution, et fut séquestré par les autorités et vendu.

(B.) Considérants.

(A.) *Ce qui se passa concernant le Hanover.*

Les autorités Britanniques n'en sont pas responsables, puisqu'elles furent trompées quant à l'entrée et à la vente de la prise à Long Cay, et que, de la manière dont cette tromperie fut commise, il ne peut leur être rapproché de négligence coupable.

Il n'y a pas non plus de motif de responsabilité dans l'acquittement subséquent, pour ce fait, du Capitaine Locke par les Tribunaux de Nassau, puisqu'il n'est pas établi qu'il y ait eu des défauts évidents dans la procédure et le jugement.

(B.) *Ce qui se passa concernant l'Emily Fisher.*

Il paraît constaté que dans la juridiction Britannique, au moyen d'un complot formé entre le capitaine du croiseur et quelques hommes d'équipage de bâteaux de sauvetage, il fut commis des exactions contre ce vaisseau, après qu'il eut été capturé et amené dans les eaux et le port de Long Cay; et que les autorités du port en avaient connaissance, les choses s'étant, pour ainsi dire, passées sous leurs yeux; que, nonobstant cela, ces autorités n'avaient pas fait une seule démarche, ni eu vue d'accorder protection effective, ni en vue d'entamer des poursuites judiciaires, ni en faisant rapport aux autorités supérieures de ce qui se passait; que, bien plus, et en suite de ces faits, le 10 Avril, 1863, sept semaines après les événements qui avaient eu lieu, la vente et le changement du nom de Retribution s'effectuèrent et que ces actes furent enregistrés par les autorités à Nassau.

(c.) Les objections que présente la Grande Bretagne:—que ce n'est que neuf ans après les faits accomplis que l'on réclame au sujet de l'Emily Fisher, et que Long Cay est un port peu fréquenté et écarté,—n'ont pas d'importance, parce que la nature du délit commis à Long Cay faisait aux autorités un devoir d'intervenir d'office ou de faire rapport aux autorités supérieures, et que quand même, au moment de la commission du délit, l'on n'avait pas sur place la force de l'empêcher, les autorités avaient, cependant, le devoir de faire immédiatement après toutes les démarches pour y remédier et même celui d'insister pour qu'il fût pris des mesures contre le belligérant, commettant du croiseur.

Jugement.

La Grande Bretagne n'a pas manqué à ses obligations de neutralité relativement aux faits qui concernent le Hanover; par contre, pour ce qui concerne l'Emily Fisher, elle n'a pas satisfait à ses devoirs de neutralité, et elle est responsable de ce chef.

(Translation.)

The Retribution.

(A.)—Facts.

1. This vessel was originally a United States' screw steam-ship, the Uncle Ben, and was built at Buffalo in 1856.

Shortly before the attack on Fort Sumter, she had been sent to the south coast of the United States. Stress of weather obliged her to put into the Cape Fear River. There the insurgents took possession of her, and turned her into a schooner. She went to sea again under the name of the Retribution, and cruized in the neighbourhood of the Bahamas.

2. In the month of December 1862, she captured the American schooner Hanover, and took her prize to Fortune Island or Long Cay (one of the Bahamas).

The Captain of the Retribution, one Locke, *alias* Parker, went before the Authorities of the port with the papers of the Hanover, represented himself as the master of that vessel under the name of Washington Case, and stated that he had been shipwrecked on one of the neighbouring islands, and that he was in distress; that he had been bound from Boston to Havana, with liberty to seek another market; that his

instructions authorized him to dispose of his cargo, and to make use of the proceeds to take in a cargo of salt, and to run the blockade with it.

The ship's papers were examined and found to be in conformity with his declarations; they were indeed made out in the name of the master, Washington Case, and it was under this name that Locke was admitted into the port with the Hanover, and that the ship's cargo was exchanged for one of salt.

3. Later, on account of remonstrances made by an American agent, Locke was prosecuted at Nassau, on account of this act; the first time he was released on bail, and succeeded in escaping trial by taking flight and forfeiting his bail (October 1863). The second time, having made the same voyage again, he was acquitted by the Court for want of evidence to prove his identity (February 1865).

4. Previous to these judicial proceedings, the Retribution had also captured in the neighbourhood of Castle Island the American brig Emily Fisher, carrying a cargo of sugar. The master of this latter vessel, named Staples, relates what happened in the following manner:—

The prize having been made, the captor made an arrangement with some wreckers and then stranded the vessel, after which the wreckers took possession of her; and she was then brought back to Long Cay accompanied by the Retribution.

The master of the Emily Fisher was not allowed to take possession of his ship again until he had payed 50 per cent. of the price of the cargo and 33⅓ per cent. of the value of the vessel to the wreckers. When he had made this payment he was replaced in possession by the Collector; the authorities declared that the law would not allow the cruizer to touch the brig, but that, even if they wished, they had no means of preventing it; and, finding himself under the guns of the cruizer, he had preferred paying what was asked of him.

In the British Counter-Case it is admitted that this statement may be true, that there had been a conspiracy between the Captain of the Retribution and the wreckers, with a view to extorting money from the brig, from which, as a prize, he would otherwise have been able to obtain nothing; but that no complaint was made against the Authorities of the Colony, and that, since then, nine years had elapsed.

5. The Retribution thereupon went to Nassau Bay, was sold there on the 10th of April, 1863, there changed her name to that of the Etta, and both these transactions were registered by the Authorities at Nassau. On her first voyage to New York as a transport, she was recognized as the former Retribution, and was seized by the Authorities and sold.

(B.)—Considerations.

(A.) *What took place respecting the Hanover.*

The British Authorities are not responsible in this matter, since they were deceived in regard to the entry and sale of the prize at Long Cay, and since from the manner in which this fraud was committed, they cannot be accused of culpable negligence.

Nor can any responsibility be attached to the subsequent acquittal, for this act, of Captain Locke by the courts at Nassau, inasmuch as it is not shown that there were any evident defects in the proceedings or the judgment.

(B.) *What took place respecting the Emily Fisher.*

It appears to be proved that in British jurisdiction, by means of a conspiracy between the captain of the cruizer and some of the crew of the wrecking vessels, exactions were practised on this vessel after she had been captured and brought into the waters and port of Long Cay; and that the Authorities of the port were aware of it, the affair having, so to speak, taken place before their eyes; that, notwithstanding, these Authorities did not take any steps, either with a view of affording efficient protection, or with a view of instituting judicial proceedings, nor by reporting to their superiors what was taking place; that, moreover, and as a sequel to these acts, on the 10th of April, 1863, seven weeks after the events which had taken place, the sale and change of name of the Retribution took place, and that these transactions were registered by the Authorities at Nassau.

(c.) The objections made by Great Britain:—that it was not until nine years after these acts took place that a claim is made with respect to the Emily Fisher, and that Long Cay is a port distant and little frequented,—are immaterial, because the nature of

the offence committed at Long Cay made it the duty of the Authorities to interfere officially, or to report to their superiors, and because, even if at the time of the commision of the offence there was not on the spot a force to prevent it, it was, nevertheless, the duty of the Authorities immediately afterwards to take every step to repair it, even that of insisting that measures should be taken against the belligerent by whom the cruizer was commissioned.

JUDGMENT.

Great Britain did not fail to observe her duties as a neutral with respect to the facts which concern the Hanover; on the other hand, in regard to the Emily Fisher, she did not fulfil her duties as a neutral, and is responsible on this head.

[For M. Staempfli's and Count Sclopis' statements as to the Tuscaloosa, see above (pages 44, 51) under the Alabama.

The statements of Sir A. Cockburn on the Cases of the Tuscaloosa, Tallahassee, and Retribution, will be found embodied in his "Reasons for dissenting from the Award of the Tribunal" in Part II. of the present series of papers (North America, No. 2, pp. 201, 247, 248).]

No. 15.

Lord Tenterden to Earl Granville.—(Received August 11.)

My Lord, *Geneva, August 6, 1872.*

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 5th instant, as approved and signed at the meeting on the following day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 15.

Protocol No. XVII.—Record of the Proceedings of the Tribunal of Arbitration at the Seventeenth Conference, held at Geneva, in Switzerland, on the 5th of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The Tribunal proceeded with the hearing of the oral argument by Mr. Evarts, Counsel of the United States, in reply to the Argument presented by Sir Roundell Palmer, Counsel of Her Britannic Majesty, at the XVth Conference.

The Tribunal then adjourned until Tuesday, the 6th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Argument of Mr. Evarts, one of the Counsel of the United States, addressed to the Tribunal of Arbitration at Geneva, on the 5th and 6th August, 1872, in reply to the Special Argument of the Counsel of Her Britannic Majesty.

AT the Conference held on the 5th day of August, Mr. Evarts addressed the Tribunal as follows:—

In the course of the deliberations of the Tribunal, it has seemed good to the Arbitrators, in pursuance of the provision of the Vth Article of the Treaty of Washington, to intimate that on certain specific points they would desire a further discussion on the

part of the Counsel of Her Britannic Majesty, for the elucidation of those points in the consideration of the Tribunal. Under that invitation, the eminent Counsel for the British Government has presented an Argument which distributes itself, as it seems to us, while dealing with the three points suggested, over a very general examination of the Argument which has already been presented on the part of the United States.

In availing ourselves of the right, under the Treaty, of replying to this special Argument upon the points named by the Tribunal, it has been a matter of some embarrassment to determine exactly how far this discussion on our part might properly go. In one sense, our deliberate judgment is, that this new discussion has really added but little to the views or the Argument which had already been presented on behalf of the British Government, and that it has not disturbed the positions which had been insisted upon, on the part of the United States, in answer to the previous discussions on the part of the British Government, contained in its Case, Counter-Case, and Argument.

But to have treated the matter in this way, and left our previous Argument to be itself such an answer as we were satisfied to rely upon to the new developments of contrary views that were presented in this special argument of the British Government, would have seemed to assume too confidently in favour of our Argument, that it was an adequate response in itself, and would have been not altogether respectful to the very able, very comprehensive, and very thorough criticism upon the main points of that Argument, which the eminent Counsel of Her Majesty has now presented. Nevertheless, it seems quite foreign from our duty, and quite unnecessary for any great service to the Tribunal, to pursue in detail every point and suggestion, however pertinent and however skilfully applied, that is raised in this new Argument of the eminent Counsel. We shall endeavour, therefore, to present such views as seem to us useful and valuable, and as tend in their general bearing to dispose of the difficulties and counter-propositions opposed to our views in the learned Counsel's present criticism upon them.

The American Argument, presented on the 15th of June, as bearing upon these three points now under discussion, had distributed the subject under the general heads of the measure of international duties; of the means which Great Britain possessed for the performance of those duties; of the true scope and meaning of the phrase "due diligence," as used in the Treaty; of the particular application of the duties of the Treaty to the case of cruizers on their subsequent visits to British ports; and then, of the faults, or failures, or shortcomings of Great Britain in its actual conduct of the transactions under review in reference to these measures of duty, and this exaction of due diligence.

The special topic now raised for discussion, in the matter of "due diligence" generally considered, has been regarded by the Counsel of the British Government as involving a consideration, not only of the measure of diligence required for the discharge of ascertained duties, but also the discussion of what the measure of those duties was; and then, of the exaction of due diligence as applicable to the different instances or occasions for the discharge of that duty, which the actual transactions in controversy between the parties disclosed. That treatment of the points is, of course, suitable enough if, in the judgment of the learned Counsel, necessary for properly meeting the question specifically under consideration, because all those elements do bear upon the question of "due diligence" as relative to the time, and place, and circumstances that called for its exercise. Nevertheless, the general question, thus largely construed, is really the equivalent to the main controversy submitted to the disposition of this Tribunal by the Treaty, to wit, whether the required due diligence has been applied in the actual conduct of affairs by Great Britain to the different situations for and in which it was exacted.

The reach and effort of this special argument in behalf of the British Government, seems to us to aim at the reduction of the duties incumbent on Great Britain, the reduction of the obligation to perform those duties, in its source and in its authority, and to the calling back of the cause to the position assumed and insisted upon in the previous Argument in behalf of the British Government, that this was a matter, not of international obligation, and not to be judged of in the court of nations as a duty done by one nation, Great Britain, to another nation, the United States, but only as a question of its duty to itself, in the maintenance of its neutrality, and to its own laws and its own people, in exerting the means placed at the service of the Government by the Foreign Enlistment Act for controlling any efforts against the peace and dignity of the nation.

We had supposed, and have so in our Argument insisted, that all that long debate was concluded by what had been settled by definitive convention between the two nations as the law of this Tribunal, upon which the conduct and duty of Great Britain, and the claims and rights of the United States, were to be adjudged, and had been distinctly expressed, and authoritatively and finally established, in the three Rules of the Treaty.

Before undertaking to meet the more particular inquiries that are to be disposed of in

this Argument, it is proper that, at the outset, we should take notice of an attempt to disparage the efficacy of those Rules, the source of their authority, and the nature of their obligation upon Great Britain. The first five sections of the Special Argument are devoted to this consideration. It is said that the only way that these Rules come to be important in passing judgment upon the conduct of Great Britain, in the matter of the claims of the United States, is by the consent of Her Majesty that, in deciding the questions between the two countries arising out of these claims, the Arbitrators should assume that, during the course of these transactions, Her Majesty's Government had undertaken to act upon the principles set forth in these Rules and in them announced. That requires, it is said, as a principal consideration, that the Tribunal should determine what the law of nations on these subjects would have been if these Rules had not been thus adopted. Then it is argued that, as to the propositions of duty covered by the *first* Rule, the law of nations did not impose them, and that the obligation of Great Britain, therefore, in respect to the performance of the duties assigned in *that* Rule, was not derived from the law of nations, was not, therefore, a duty between it and the United States, nor a duty the breach of which called for the resentments or the indemnities that belong to a violation of the law of nations. Then, it is argued that the whole duty and responsibility and obligation in that regard, on the part of Great Britain, arose under the provisions of its domestic legislation, under the provisions of the Foreign Enlistment Act, under a general obligation by which a nation, having assigned a rule of conduct for itself, is amenable for its proper and equal performance as between and towards the two belligerents. Then, it is argued that this assent of the British Government, that the Tribunal shall regard that Government as held to the performance of the duties assigned in those Rules, in so far as those Rules were not of antecedent obligation in the law of nations, is not a consent that Great Britain shall be held under an international obligation to perform the Rules in that regard, but simply as an agreement that they had undertaken to discharge, as a municipal obligation, under the provisions of their Foreign Enlistment Act, duties which were equivalent, in their construction of the Act, to what is now assigned as an international duty; and this argument thus concludes:

> "When, therefore, Her Majesty's Government, by the VIth Article of the Treaty of Washington, agreed that the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the three Rules (though declining to assent to them as a statement of principles of international law which were in force at the time when the claims arose), the effect of that agreement was not to make it the duty of the Arbitrators to judge retrospectively of the conduct of Her Majesty's Government according to any false hypothesis of law or fact, but to acknowledge, as a rule of judgment for the purposes of the Treaty, the undertaking which the British Government had actually and repeatedly given to the Government of the United States, to act upon the construction which they themselves placed upon the prohibitions of their own municipal law, according to which it was coincident in substance with those Rules." (British Special Argument, sec. 5.)

Now, we may very briefly, as we think, dispose of this suggestion, and of all the influences that it is appealed to to exert throughout the course of the discussion in aid of the views insisted upon by the learned Counsel. In the first place, it is not a correct statement of the Treaty to say that the obligation of these Rules, and the responsibility on the part of Great Britain to have its conduct judged according to those Rules, arise from the assent of Her Majesty thus expressed. On the contrary, that assent comes in only subsequently to the authoritative statement of the Rules, and simply as a qualification attendant upon a reservation on the part of Her Majesty, that the previous declaration shall not be esteemed as an assent *on the part of the British Government*, that those were in fact the principles of the law of nations at the time the transactions occurred.

The VIth Article of the Treaty thus determines the authority and the obligation of these Rules. I read from the very commencement of the Article:—

"In deciding the matters submitted to the Arbitrators, they shall be governed by the following three Rules, which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith;" and then the Rules are stated.

Now, there had been a debate between the Diplomatic Representatives of the two Governments whether the duties expressed in those Rules were wholly of international obligation antecedent to this agreement of the parties. The United States had from the beginning insisted that they were; Great Britain had insisted that, in regard to the outfit and equipment of an *unarmed* ship from its ports, there was only an obligation of municipal law and not of international law; that its duty concerning such outfit was wholly limited to the execution of its Foreign Enlistment Act; that the discharge of that duty and its responsibility for any default therein could not be claimed by the United States as matter

of international law, nor upon any judgment otherwise than of the general duty of a neutral to execute its laws, whatever they might be, with impartiality between the belligerents.

To close that debate, and in advance of the submission of any question to this Tribunal, the law on that subject was settled by the Treaty, and settled in terms which, so far as the obligation of the law goes, seem to us to admit of no debate, and to be exposed to not the least uncertainty or doubt. But in order that it might not be an imputation upon the Government of Great Britain, that while it presently agreed that the duties of a neutral were as these Rules express them, and that these Rules were applicable to this case, that a neutral nation was bound to conform to them, and that they should govern this Tribunal in its decision,—in order that from all this there might not arise an imputation that the conduct of Great Britain, at the time of the transaction (if it should be found in the judgment of this Tribunal to have been at variance with these Rules), would be subject to the charge of a variance with an acknowledgment of the Rules then presently admitted as binding, a reservation was made. What was the reservation?

"Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing Rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of these claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these Rules."

Thus, while this saving clause in respect to the past conduct of Great Britain was allowed on the declaration of Her Majesty, yet that declaration was admitted into the Treaty only upon the express proviso that it should have no import of any kind in disparaging the obligation of the Rules, their significance, their binding force, or the principles upon which this Tribunal should judge concerning them.

Shall it be said that when the whole office of this clause, thus referred to, is of that nature and extent only, and when it ends in the determination that that reservation shall have *no effect* upon *your decision*, shall it, I say, be claimed that this reservation shall have an effect upon the Argument? How shall it be pretended, before a Tribunal like this, that what is to be *assumed* in the decision is not to be assumed in the Argument!

But what does this mean? Does it mean that these three Rules, in their future application to the conduct of the United States,—nay, in their future application to the conduct of Great Britain,—mean something different from what they mean in their application to the past? What becomes, then, of the purchasing consideration of these Rules for the future, to wit, that, waiving debate, they shall be applied to the past?

We must therefore insist that, upon the plain declarations of this Treaty, there is nothing whatever in this proposition of the first five sections of the new special Argument. If there were anything in it, it would go to the rupture, almost, of the Treaty; for the language is plain, the motive is declared, the force in future is not in dispute, and, for the consideration of that force in the future, the same force is to be applied in the judgment of this Tribunal upon the past. Now, it is said that this declaration of the binding authority of these Rules is to read in the sense of this very complicated, somewhat unintelligible, proposition of the learned Counsel. Compare his words with the declaration of the binding authority of these Rules, as rules of international law, actually found in the Treaty, and judge for yourselves whether the two forms of expression are equivalent and interchangeable.

Can any one imagine that the United States would have agreed that the construction, in its application to the past, was to be of this modified, uncertain, optional character, while, in the future, the Rules were to be authoritative, binding rules of the law of nations? When the United States had given an assent, by convention, to the law that was to govern this Tribunal, was it intended that that law should be construed, as to the past, differently from what it was to be construed in reference to the future?

I apprehend that this learned Tribunal will at once dismiss this consideration, with all its important influence upon the whole subsequent Argument of the eminent Counsel, which an attentive examination of that Argument will disclose.

With this proposition falls the farther proposition, already met in our former Argument, that it is material to go into the region of debate as to what the law of nations upon these subjects, now under review, was or is. So far as it falls within the range covered by these Rules of the Treaty, their provisions have concluded the controversy. To what purpose, then, pursue an inquiry and a course of argument which, whatever way in the balance of your conclusions it may be determined, cannot affect your judgment or your award? If these Rules are found to be conformed to the law of nations in the principles which it held antecedent to their adoption, the Rules cannot have for that

reason any greater force than by their own simple, unconfirmed authority. If they differ from, if they exceed, if they transgress the requirements of the law of nations, as it stood antecedent to the Treaty, by so much the greater force does the convention of the parties require that, for this trial and for this judgment, these Rules are to be the law of this Tribunal. This argument is hinted at in the Counter-Case of the British Government; it has been the subject of some public discussion in the press of Great Britain. But the most authoritative expression of opinion upon this point from the press of that country has not failed to stigmatize this suggestion as bringing the obligation of the Rules of this Treaty down to "the vanishing point."*

At the close of the special Argument we find a general presentation of canons for the construction of Treaties, and some general observations as to the light or the controlling reason under which these Rules of the Treaty should be construed. These suggestions may be briefly dismissed.

It certainly would be a very great reproach to these nations, which had deliberately fixed upon three propositions as expressive of the law of nations, in their judgment, for the purposes of this trial, that a resort to general instructions, for the purpose of interpretation, was necessary. Eleven canons of interpretation drawn from Vattel are presented in order, and then several of them, as the case suits, are applied as valuable in elucidating this or that point of the Rules. But the learned Counsel has omitted to bring to your notice the first and most general rule of Vattel, which, being once understood, would, as we think, dispense with any consideration of these subordinate canons which Vattel has introduced to be used only in case his first general rule does not apply. This first proposition is, that "it is not allowable to interpret what has no need of interpretation."

Now these Rules of the Treaty are the deliberate and careful expression of the will of the two nations in establishing the LAW for the government of this Tribunal, which the Treaty calls into existence. These Rules need no interpretation in any general sense. Undoubtedly there may be phrases which may receive some illustration or elucidation from the history and from the principles of the law of nations; and to that we have no objection. Instances of very proper application to that resort occur in the Argument to which I am now replying. But there can be no possible need to resort to any general rules, such as those most favoured and insisted upon by the learned Counsel, viz., the sixth proposition of Vattel, that you never should accept an interpretation that leads to an absurdity; or the tenth, that you never should accept an interpretation that leads to a crime. Nor do we need to recur to Vattel for what is certainly a most sensible proposition that the reason of the Treaty—that is to say, the motive which led to the making of it and the object in contemplation at the time—is a most certain clue to lead us to the discovery of its true meaning.

But the inference drawn from that proposition, in its application to this case, by the learned Counsel, seems very wide from what to us appears natural and sensible. The aid which he seeks under the guidance of this rule, is from the abstract propositions of publicists on cognate subjects, or the illustrative instances given by legal commentators.

Our view of the matter is, that as this Treaty is applied to the past, as it is applied to an actual situation between the two nations, and as it is applied to settle the doubts and disputes which existed between them as to obligation, and to the performance of obligations, these considerations furnish the resort, if any is needed, whereby this Tribunal should seek to determine what the true meaning of the High Contracting Parties is.

Now, as bearing upon all these three topics, of due diligence, of treatment of offending cruizers in their subsequent visits to British ports, and of their supply, as from a base of operations, with the means of continuing the war, these Rules are to be treated in reference to the controversy as it had arisen and as it was in progress between the two nations when the Treaty was formed. What was that? Here was a nation prosecuting a war against a portion of its population and territory in revolt. Against the Sovereign thus prosecuting his war there was raised a maritime warfare. The belligerent itself thus prosecuting this maritime warfare against its Sovereign, confessedly had no ports and no waters that could serve as the base of its naval operations. It had no ship-yards, it had no foundries, it had no means or resources by which it could maintain or keep on foot that war. A project and a purpose of war was all that could have origin from within its territory, and the pecuniary resources by which it could derive its supply from neutral nations was all that it could furnish towards this maritime war.

Now, that war having in fact been kept on foot and having resulted in great injuries to the sovereign belligerent, gave occasion to a controversy between that Sovereign and the neutral nation of Great Britain as to whether these actual supplies, these actual bases of maritime war from and in neutral jurisdiction, were conformable to the law of nations, or

* London "Times," February 1872.

in violation of its principles. Of course, the mere fact that this war had thus been kept on foot did not of itself carry the neutral responsibility. But it did bring into controversy the opposing positions of the two nations. Great Britain contended during the course of the transactions, and after their close, and now here contends, that, however much to be regretted, these transactions did not place any responsibility upon the neutral, because they had been effected only by such communication of the resources of the people of Great Britain as under international law was innocent and protected; that commercial communication and the resort for asylum or hospitality in the ports was the entire measure, comprehension, and character of all that had occurred within the neutral jurisdiction of Great Britain. The United States contended to the contrary.

What then was the solution of the matter which settles amicably this great dispute? Why, first, that the principles of the law of nations should be settled by convention, as they have been, and that they should furnish the guide and the control of your decision; second, that all the facts of the transactions as they occurred should be submitted to your final and satisfactory determination; and, third, that the application of these principles of law settled by convention between the parties to these facts as ascertained by yourselves should be made by yourselves, and should, in the end, close the controversy, and be accepted as satisfactory to both parties.

In this view we must insist that there is no occasion to go into any very considerable discussion as to the meaning of these Rules, unless in the very subordinate sense of the explanation of a phrase, such as "base of operations," or "military supplies," or "recruitment of men," or some similar matter.

I now ask your attention to the part of the discussion which relates to the effect of a "commission," which, though made the subject of the second topic named by the Tribunal, and taken in that order by the learned Counsel, I propose first to consider.

It is said that the claims of the United States in this behalf, as made in their Argument, rest upon an exaggerated construction of the second clause of the first Rule. On his point I have first to say, that the construction which we put upon that clause is not exaggerated; and, in the second place, that these claims in regard to the duty of Great Britain in respect to the commissioned cruizers that have had their origin in an illegal outfit in violation of the law of nations, as settled in the first Rule, do not rest exclusively upon the second clause of the first Rule. They undoubtedly, in one construction of that clause, find an adequate support in its proposition; but, if that construction should fail, nevertheless, the duty of Great Britain in dealing with these offending cruizers in their subsequent resort to its ports and waters, would rest upon principles quite independent of this construction of the second clause.

The second clause of that Rule is this: "And also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted in whole or in part within such jurisdiction to warlike use."

It is said that this second clause of the first Rule manifestly applies only to the *original* departure of such a vessel from the British jurisdiction, while its purposes of unlawful hostility still remain in intention merely, and have not been evidenced by execution.

If this means that a vessel that had made its first evasion from a British port, under circumstances which did not inculpate Great Britain for failing to arrest her, and then had come within British ports a second time, and the evidence, as then developed, would have required Great Britain to arrest her, and would have inculpated that nation for failure so to do, is not within the operation of this Rule, I am at a loss to understand upon what principle of reason this pretension rests. If the meaning is that this second clause only applies to such offending vessels while they remain in the predicament of not having acquired the protection of a "commission," that pretension is a begging of the question under consideration, to wit, what the effect of a "commission" is, under the circumstances proposed.

I do not understand exactly whether these two cases are meant to be covered by this criticism of the learned Counsel. But let us look at it. Supposing that the escape of the Florida from Liverpool, in the first instance, was not under circumstances which made it an injurious violation of neutrality for which Great Britain was responsible to the United States, that is to say, that there was no such fault from inattention to evidence, or from delay or inefficiency of action, as made Great Britain responsible for her escape; and supposing when she entered Liverpool again, as the matter then stood in the knowledge of the Government, the evidence was clear and the duty was clear, if it were an original case; is it to be said that the duty is not as strong, that it is not as clear, and that a failure to

perform it is not as clear a case for inculpation, as if in the original outset the same circumstances of failure and of fault had been apparent? Certainly the proposition cannot mean this. Certainly the conduct of Great Britain in regard to the vessel at Nassau, a British port into which she went after her escape from Liverpool, does not conform to this suggestion. But if the proposition does not come to this, then it comes back to the pretension that the commission intervening terminates the obligation, defeats the duty, and exposes the suffering belligerent to all the consequences of this naval war, illegal in its origin, illegal in its character, and, on the part of the offending belligerent, an outrage upon the neutral that has suffered it.

Now that is the very question to be determined. Unquestionably, we submit that while the first clause or the first Rule is, by its terms, limited to an original equipment or outfit of an offending vessel, the second clause was intended to lay down the obligation of detaining in port, and of preventing the departure, of every such vessel whenever it should come within British jurisdiction. I omit from this present statement, of course, the element of the effect of the "commission," that being the immediate point in dispute.

I start in the debate of that question with this view of the scope and efficacy of the Rule itself.

It is said, however, that the second clause of the first Rule is to be qualified in its apparent signification and application by the supplying a phrase used in the first clause, which, it is said, must be communicated to the second. That qualifying phrase is "any vessel *which it has reasonable ground to believe* is intended," &c.

Now, this qualification is in the first clause, and it is not in the second. Of course this element of having "reasonable ground to believe" that the offence which a neutral nation is required to prevent is about to be committed, is an element of the question of *due diligence* always fairly to be considered, always suitably to be considered, in judging either of the conduct of Great Britain in these matters, or of the conduct of the United States in the past, or of the duty of both nations in the future. As an element of due diligence, it finds its place in the second clause of the first Rule, but only as an element of due diligence.

Now, upon what motive does this distinction between the purview of the first clause and of the second clause rest? Why, the duty in regard to these vessels embraced in the *first* clause applies to the inchoate and progressing enterprise at every stage of fitting out, arming, or equipping, and while that enterprise is or may be, in respect to evidence of its character, involved in obscurity, ambiguity, and doubt. It is, therefore, provided that, in regard to *that* duty, only such vessels are thus subjected to interruption in the progress of construction at the responsibility of the neutral, as the neutral has "reasonable ground to believe" are intended for an unlawful purpose, which purpose the vessel itself does not necessarily disclose either in regard to its own character or of its intended use. But after the vessel has reached *its form* and completed its structure, why then it is a sufficient limitation of the obligation and sufficient protection against undue responsibility, that "due diligence to prevent" the assigned offence is alone required. Due diligence to accomplish the required duty is all that is demanded, and accordingly that distinction is preserved. It is made the clear and absolute duty of a nation to use due diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war against a Power with which it is at peace, such vessel *having been* specially adapted in whole or in part within such jurisdiction to warlike use. That is, when a vessel has become ready to take the seas, having its character of warlike adaptation thus determined and thus evidenced, so upon its subsequent visit to the neutral's port, as to such a vessel, the duty to arrest her departure is limited only by the——

Chief Justice Cockburn.—What should you think, Mr. Evarts, of such a case as this? Suppose a vessel had escaped from Great Britain with or without due diligence being observed—take the case of the Florida or the Shenandoah—take either case. She puts into a port belonging to the British Crown. You contend, if I understand your argument, that she ought to be seized. But suppose the authorities at the port into which she puts are not aware of the circumstances under which the vessel originally left the shores of Great Britain. Is there an obligation to seize that vessel?

Mr. Evarts.—That, like everything else, is left as matter of fact.

The Chief Justice.—But suppose the people at the place are perfectly unaware from whence this vessel——

Mr. Evarts.—I understand the question. We are not calling in judgment the authorities at this or that place. We are calling into judgment the British nation, and if the ignorance and want of knowledge in the subordinate officials at such a port can be brought to the fault of the Home Government in not advising or keeping them informed,

that is exactly the condition from which the responsibility arises. It is a question of "due diligence," or not, of the *nation* in all its conduct in providing, or not providing, for the situation, and in preparing, or not preparing, its officials to act upon suitable knowledge.

We find nothing of any limitation of this second clause of the first Rule that prevents our considering its proper application to the case of a vessel, which, for the purpose of the present argument, it must be conceded ought to be arrested under it, and detained in port if the "commission" does not interpose an obstacle.

We have laid down at pages from 331 to 333 in our Argument, what we consider the rules of law in regard to the effect of the "commission" of a sovereign nation, or of a belligerent not recognized as a Sovereign, in the circumstances involved in this inquiry. They are very simple. I find nothing in the Argument of my learned friend, careful and intelligent as it is, that disturbs these rules as rules of law. The public ship of a nation, received into the waters or ports of another nation, is, by the practice of nations, as a concession to the Sovereign's dignity, exempt from the jurisdiction of the Courts and all judicial process of the nation whose waters it visits. This is a concession mutual, reciprocal, between nations having this kind of intercourse, and resting upon the best and surest principles of international comity. But there is no concession of extra-territoriality to the effect or extent that the *Sovereign* visited is *predominated* over by the Sovereign receiving hospitality to its public vessels. The principle simply is, that the treatment of the vessel rests upon considerations between the nations as sovereign, and in their political capacities, as matter to be dealt with directly between them, under reciprocal responsibility for offence on either side, and under the duty of preserving relations of peace and good will if you please, but, nevertheless, to be controlled by reasons of State.

Any construction of the Rule that would allow the visiting vessel to impose its own sovereignty upon the Sovereign visited, would be to push the rule to an extreme that would defeat its purpose. It is the equality of Sovereigns that requires that the process and the jurisdiction of Courts should not be extended to public vessels.

But all other qualifications as to how the Sovereign visited shall deal with public vessels, rest in the discretion of the Sovereign. If offence is committed by such vessels, or any duty arises in respect to them, he, at his discretion and under international responsibility, makes it the subject of remonstrance, makes it the subject of resentment, makes it the subject of reprisal, or makes it the subject of an immediate exercise of force, if the circumstances seem to exact it.

What, then, is the tenor of the authorities, in respect to a public vessel not of a Sovereign, but of a belligerent who has not been recognized as a Sovereign? The Courts of the country, when the question arises as a judicial one, turn to the political authority and ask how that has determined the question of the public character of such vessels; and if that question (which is a political one) has been determined in recognition of the belligerency, then the vessel of the belligerent is treated as exempt from judicial process and from the jurisdiction of the Courts. But that vessel remains subject to the control, subject to the dominion of the Sovereign whose ports it has visited, and it remains there under the character of a limited recognition, and not in the public character of a representative of recognized sovereignty.

We understand the motives by which belligerency is recognized while sovereignty is refused. They are the motives of humanity: they are the motives of fair play: they are the motives of neutral recognition of the actual features of the strife of violence that is in progress. But it is in vain to recognize belligerency and deny sovereignty, if you are going to attract one by one all the traits of sovereignty, in the relations with a Power merely recognized as a belligerent and to whom sovereignty has been denied.

What is the difference of predicament? Why, the neutral nation, when it has occasion to take offence or exercise its rights with reference to a belligerent vessel not representing a Sovereign, finds no Sovereign behind that vessel to which it can appeal, to which it can remonstrate, by which through diplomacy, by which through reprisals, by which in resentments, it can make itself felt, its dominion respected, and its authority obeyed. It then deals with these belligerent vessels, not unjustly, not capriciously, for injustice and caprice are wrong toward whomsoever they are exercised, but, nevertheless, upon the responsibility that its dealing must reach the conduct, and that the vessel and its conduct are the only existing power and force to which it can apply itself.

I apprehend that there is no authority from any book that disturbs in the least this proposition, or carries the respect to belligerent vessels beyond the exemption from jurisdiction of Courts and judicial process. The rule of law being of this nature, the question, then, of how a neutral shall deal with one of these cruizers that owes its existence to a violation of its neutral rights, and then presents itself for hospitality in a

port of the neutral, is a question for the neutral to determine according to its duty to itself, in respect to its violated neutrality and its duty to the sovereign belligerent, who will lay to its charge the consequences and the responsibility for this offending belligerent.

Now, I find in the propositions of the eminent Counsel, a clear recognition of these principles of power on the part of the Sovereign, and of right on the part of the Sovereign, requiring only that the power should be exercised suitably, and under circumstances which will prevent it from working oppression or unnecessary injury. That makes it a question, therefore, as to the dealing of the Sovereign, for which the law of nations applies no absolute rule. It then becomes a question for the Tribunal, whether (under these circumstances of cruizers that owe their origin or their power to commit these injuries to their violation of neutrality) Great Britain is responsible to the injured Sovereign, the United States, for this breach of neutrality, for this unlawful birth, for this unlawful support of these offending cruizers. As to what the duty of a neutral nation is in these circumstances and in these relations, when the offending cruizer is again placed within its power, I find really no objection made to the peremptory course we insist upon, except that seizing such a vessel, *without previous notice*, would be impolite, would be a violation of comity, would be a violation of the decorous practice of nations, and would be so far a wrong.

Well, let us not discuss these questions in the abstract merely; let us apply the inquiry to the actual conduct of Great Britain in the actual circumstances of the career of these cruizers. If Great Britain claimed exemption from liability to the United States by saying that, when these cruizers had, confessedly, in fact escaped in violation of neutrality, and confessedly were on the seas propagating those enormous injuries to the property and commerce of a friendly nation, it had promptly given notice that no one of them should ever after enter its ports, and that, if it did enter its ports, it would be seized and detained, then this charge that the conduct of Great Britain towards these cruizers, in their subsequent visits to its ports, was such as to make it responsible for their original escape or for their subsequent career, would be met by this palliation or this defence. But no such case arises upon the proofs. You have then, on the one hand, a clear duty towards the offended belligerent, and, on the other, only the supposed obligation of courtesy or comity towards the offending belligerent. This courtesy, this comity, it is conceded, can be terminated at any time at the will of the neutral Sovereign. But this comity or this courtesy has not been withdrawn by any notice, or by any act of Great Britain, during the entire career of these vessels.

We say then, in the first place, that there is no actual situation which calls for a consideration of this palliative defence; because the circumstances do not raise it for consideration. On the contrary, the facts as recorded show the most absolute indifference, on the part of Great Britain, to the protracted continuance of the ravages of the Alabama and of the Florida, whose escape is admitted to be a scandal and a reproach to Great Britain, until the very end of the war.

And yet, a subtraction of comity, a withdrawal of courtesy, was all that was necessary to have determined their careers.

But, further, let us look a little carefully at this idea that a cruizer, illegally at sea by violation of the neutrality of the nation which has given it birth, is in a condition, on its first visit to the ports of the offended neutral, after the commission of the offence, to claim the allowance of courtesy or comity. Can it claim courtesy or comity, by reason of anything that has proceeded from the neutral nation to encourage that expectation? On the contrary, so far from its being a cruizer that has a right to be upon the sea, and to be a claimant of hospitality, it is a cruizer, on the principles of international law (by reason of its guilty origin, and of the necessary consequences of this guilt to be visited upon the offended neutral) for whose hostile ravages the British Government is responsible. What courtesy, then, does that Government owe to a belligerent cruizer that thus practised fraud and violence upon its neutrality and exposed it to this odious responsibility? Why does the offending cruizer need notice that it will receive the treatment appropriate to its misconduct and to the interests and duty of the offended neutral? It is certainly aware of the defects of its origin, of the injury done to the neutral, and of the responsibility entailed upon the neutral for the injury to the other belligerent. We apprehend that this objection of courtesy to the guilty cruizer, that is set up as the only obstacle to the exercise of an admitted power, that this objection which maintains that a power just in itself, if executed without notice, thereby becomes an imposition and a fraud upon the offender, because no denial of hospitality has been previously announced, is an objection which leaves the ravages of such a cruizer entirely at the responsibility of the neutral which has failed to intercept it.

It is said in the special Argument of the learned Counsel that no authority can be found

for this exercise of direct sovereignty on the part of an offended neutral towards a cruizer of either a recognized or an unrecognized sovereignty. But this after all comes only to this, that such an exercise of direct control over a cruizer, on the part of an offended neutral, without notice, is not according to the common course of hospitality for public vessels, whether of a recognized Sovereign or of a recognized belligerent. As to the right to exercise direct authority on the part of the displeased neutral to secure itself against insult or intrusion on the part of a cruizer that has once offended its neutrality, there is no doubt.

The argument that this direct control may be exercised by the displeased neutral without the intervention of notice, when the gravity and nature of the offence against neutrality on the part of the belligerent justify this measure of resentment and resistance, needs no instance and no authority for its support. In its nature, it is a question wholly dependent upon circumstances.

Our proposition is, that all of these cruizers drew their origin out of the violated neutrality of Great Britain, exposing that nation to accountability to the United States for their hostilities. Now, to say that a nation thus situated is required by any principles of comity to extend a notice before exercising control over the offenders brought within its power, seems to us to make justice and right, in the gravest responsibilities, yield to mere ceremonial politeness.

To meet, however, this claim on our part, it is insisted, in this special Argument, that the equipment and outfit of a cruizer in a neutral port, if it goes out *unarmed* (though capable of becoming an instrument of offensive or defensive war by the mere addition of an armament) may be an *illegal* act as an offence against municipal law, but is not a violation of neutrality in the sense of being a *hostile* act, and does not place the offending cruizer in the position of having violated neutrality. That is but a recurrence to the subtle doctrine that the obligations of Great Britain in respect to the first Rule of the Treaty, are not, by the terms of the Treaty, made *international* obligations, for the observance of which she is responsible under the law of nations, and for the permissive violation of which she is liable, as having allowed, in the sense of the law of nations, a hostile act to be perpetrated on her territory.

This distinction between a merely illegal act and a hostile act, which is a violation of neutrality is made, of course, and depends wholly upon the distinction of the evasion of an *unarmed* ship of war being prohibited only by municipal law, and not by the law of nations, while the evasion of an *armed* ship is prohibited by the law of nations. This is a renewal of the debate between the two nations as to what the rule of the law of nations in this respect was. But this debate was finally closed by the Treaty. And, confessedly, on every principle of reason, the moment you stamp an act as a violation of neutrality you include it in the list of acts which, by the law of nations, are deemed *hostile* acts. There is no act that the law of nations prohibits within the neutral jurisdiction, that is not in the nature of a *hostile* act, that is not in the nature of an *act of war*, that is not in the nature of *an application by the offending belligerent of the neutral territory to the purposes of his war against the other belligerent*. The law of nations prohibits it, the law of nations punishes it, the law of nations exacts indemnity for it, only because it is a *hostile* act.

Now, suppose it were debateable before the Tribunal whether the emission of a warship, without the addition of her armament, was a violation of the law of nations, on the same reason, and only on that reason, it would be debateable whether it were a hostile act. If it were a hostile act, it was a violation of the law of nations; if it were not a violation of the law of nations, it was not so, only because it was not a hostile act. When, therefore, the Rules of the Treaty settle that debate in favour of the construction claimed by the United States in its antecedent history and conduct, and determine that such an act *is* a violation of the law of nations, they determine that it is a hostile act. There is no escape from the general proposition that the law of nations condemns nothing done in a neutral territory unless it is done in the nature of a hostile act. And when you debate the question whether any given act within neutral jurisdiction is or is not forbidden by the law of nations, you debate the question whether it is a hostile act or not.

Now, it is said that this outfit without the addition of an armament is not a *hostile* act under the law of nations, *antecedent* to this Treaty. That is immaterial within the premises of the controversy before this Tribunal.

It is a hostile act against Great Britain, which Great Britain——

Sir Alexander Cockburn.—Do I understand you, Mr. Evarts, to say that such an act is a hostile act against Great Britain?

Mr. Evarts.—Yes, a hostile violation of the neutrality of Great Britain, which, if not repelled with due diligence, makes Great Britain responsible for it as a hostile act within its territory against the United States.

This Argument of the eminent Counsel concedes that if an Armament is added to a

vessel within the neutral territory, it is a hostile act within that territory, it is a hostile expedition set forth from that territory. It is therefore a violation of the law of nations, and if due diligence is not used to prevent it, it is an act for which Great Britain is responsible. If due diligence to prevent it, be or be not, used, it is an offence against the neutral nation by the belligerent which has consummated the act.

A neutral nation, against the rights of which such an act has been committed, to wit, the illegally fitting out a war-ship without armament (condemned by the law of nations as settled by this Treaty), is under no obligation whatever of courtesy or comity to that cruizer. If, under such circumstances, Great Britain prefers courtesy and comity to the offending cruizer and its sponsors, rather than justice and duty to the United States, she does it upon motives which satisfy her to continue her responsibility for that cruizer rather than terminate it. Great Britain has no authority to exercise comity and courtesy to these cruizers at the expense of the offended belligerent, the United States, whatever her motives may be. Undoubtedly the authorities conducting the rebellion would not have looked with equal favour upon Great Britain, if she had terminated the career of these cruizers by seizing them or excluding them from her ports. That is a question between Great Britain and the belligerent that has violated her neutrality. Having the powers, having the right, the question of courtesy in giving notice was to be determined at the cost of Great Britain and not at the expense of the United States. But it ceases to be a question of courtesy when the notice has not been given at all, and when the choice has thus been made that these cruizers shall be permitted to continue their career unchecked.

Now on this question, whether the building of a vessel of this kind without the addition of armament is proscribed by the law of nations, and proscribed as a hostile act and as a violation of neutral territory (outside of the Rules of the Treaty), which is so much debated in this special Argument, I ask attention to a few citations, most of which have been already referred to in the American Case.

Hautefeuille, as cited upon page 170, says:

"Le fait de construire un bâtiment de guerre pour le compte d'un belligérant ou de l'armer dans les Etats-neutres est une violation du territoire. . . . . Il peut également réclamer le désarmement du bâtiment illégalement armé sur son territoire et même le détenir, s'il entre dans quelque lieu soumis à sa souveraineté jusqu'à ce qu'il ait été désarmé."

Ortolan, as quoted on page 182 of the same Case, passes upon this situation, which we are now discussing, as follows:

"Nous nous rattacherons pour résoudre en droit des gens les difficultés que presente cette nouvelle situation, à un principe universellement établi, qui se formule en ce peu de mots 'inviolabilité du territoire neutre.' Cette inviolabilité est un droit pour l'Etat neutre, dont le territoire ne doit pas être atteint par les faits de guerre, mais elle impose aussi à ce même Etat neutre une étroite obligation, celle de ne pas permettre, celle d'empêcher, activement au besoin, l'emploi de ce territoire par une des parties ou au profit de l'une des parties belligérantes dans un but hostile à l'autre partie."

And this very question, the distinction between an armed vessel and an unarmed vessel, was met by Lord Westbury, in observations made by him, and which are quoted in the American Case at page 185. He said:—

"There was one rule of conduct which undoubtedly civilized nations had agreed to observe, and it was that the territory of a neutral should not be the base of military operations by one of two belligerents against the other. In speaking of the base of operations, he must, to a certain degree, differ from the noble Earl (Earl Russell). It was not a question whether armed ships had actually left our shores, but it was a question whether ships, with a view to war, had been built in our ports by one of two belligerents. They need not have been armed; but, if they had been laid down and built with a view to warlike operations by one of two belligerents, and this was knowingly permitted to be done by a neutral Power, it was unquestionably a breach of neutrality."

Chancellor Kent, in a passage cited by the learned Counsel with approval, speaking of the action of the United States as shown in the Rules of President Washington's Administration (which Rules are also subsequently quoted with approval in this Argument), says (vol. i, page 122):—

"The Government of the United States was warranted by the law and practice of nations, in the Declaration made in 1793 of the Rules of Neutrality, which were particularly recognized as necessary to be observed by the belligerent Powers, in their intercourse with this country. These rules were that *the original arming or equipping of vessels in our ports, by any of the Powers at war, for military service, was unlawful; and no such vessel was entitled to an asylum in our ports.*"

No vessel thus equipped was entitled to an asylum in the ports of the nation whose neutrality had been violated. The Tribunal will not fail to observe that these principles were applied by President Washington to cruizers even of an independent nation, recog-

nized as a Sovereign. It was the cruizers of France that were under consideration. But the propositions of this special Argument, and the course actually pursued by Great Britain, in according its homage to their flag, placed these insurgent cruizers on a much higher and more inviolable position than it is possible to concede to cruizers of a recognized Sovereign. In truth, such treatment accorded to such cruizers all the irresponsibility of pirates, and all the sanctity of public ships of a recognized sovereignty. It accorded the irresponsibility of pirates, because *they* were exempted from all control, and there was no Government behind them to be made responsible for them, to be resorted to for their correction or restraint, and to meet the resentments of the offended neutrals in the shape of non-intercourse, of reprisals, or of war.

The action of Great Britain, under this doctrine of comity and notice as applied to the cruizers of this belligerency, really exempted them, from the beginning to the end of their careers on the ocean, from all responsibility whatever. How long could such conduct toward Great Britain—in violation of her neutrality, as was practised by this belligerent—how long could such violations of the neutrality of Great Britain have been exercised by belligerent France without remonstrance, and if that remonstrance were unheeded, without reprisals, followed finally by war? Why was not such recourse taken in respect to these cruizers, to the Power behind them? There was no Power behind them.

I ask, also, in this connection, attention to 1 Phillimore, pp. 399 to 404, and, especially, to a passage extracted from the case of the Santissima Trinidad, commenting upon the case of the Exchange, which last case is cited at considerable length in the Argument of the eminent Counsel. Now the Exchange settles nothing, except that when the political authority of a Government has recognized belligerency, the Courts will not exercise jurisdiction over the vessels, although sovereignty has not been conceded as well.

The only case in the history of our country in which the political authority was called upon to deal with a cruizer that had derived its origin in violation of our neutrality, was the case of a public ship of France, the Cassius, originally Les Jumeaux. The legal report of this case is copied in full in the Appendix of the British Case. It never came to any other determination than that France, the recognized Government of France, was the sponsor for the Cassius, and it was on the respect shown to a Sovereign as well as a public belligerent that the disposition of the case, exempting the vessel from judicial process, was made.

Sir Roundell Palmer.—The vessel was restored.

Mr. Evarts.—But it was only after her character as a war vessel had ceased.

Sir Roundell Palmer.—It was the Government of the United States, by its executive power, that directed the ship to be restored.

Mr. Evarts.—A detailed history of this case, legal and political, will be found in vol. vii of the American Appendix, pp. 18 to 23, in Mr. Dana's valuable note.

It will there be seen that the occasion for our Government to determine its political or executive action never arose until after the determination of the judicial proceedings, and until after the vessel had been thrown up by the French Minister, who abandoned her to the United States' Government, nor until after she was a worthless hulk.

Sir Roundell Palmer.—Am I not right in saying that the President of the Executive Government of the United States gave notice to the French Minister that the ship was at his disposal?

Mr. Evarts.—After it had been abandoned, after it had ceased to be a cruizer capable of hostilities, and after the opportunity for its further hostilities had ceased.

Lord Tenterden.—But the war still continued.

Mr. Evarts.—But I mean after the hostilities of that vessel came to an end.

And permit me to say that this condition of things between the United States and France, during the administration of the first President Adams, came substantially to a war between the two countries.*

* A passage from Mr. Dana's note already referred to puts this matter in a very clear light:—"As the Cassius was taken into judicial custody within twenty-four hours of her arrival, and remained in that custody until after she had been disarmed and dismantled by the French Minister, and formally abandoned by him to the United States' Government with a reclamation for damages, the political department of the United States' Government never had practically before it the question what it would do with an armed foreign vessel of war within its control, which had, on a previous voyage, before it became a vessel of war, and while it was a private vessel of French citizens, added warlike equipments to itself within our ports, in violation of our statutes for the preservation of our neutrality. When it came out of judicial custody, it was a stripped, deteriorated, and abandoned hulk, and was sold as such by public auction. The only political action of our Government consisted in this:—It refused to interfere to take the vessel from the custody of the judiciary, but instructed its Attorney to see that the fact of its being a *bond fide* vessel of war be proved and brought to the attention of the Court, with a motion for its discharge from arrest on the ground of its exemption as a public ship, if it turned out to be so. What course the Executive would have taken as to the vessel, if it had passed out of judicial custody before it was abandoned and dismantled, does not, of course, appear. And that is the only question of interest to international law."—American Appendix, vol. vii, p. 23; "Choix de Pièces," &c., t. ii, p. 726.

Now, it is said that the application of this second clause of the first Rule of the Treaty, and this demand that detention or exclusion shall be exercised in respect to cruizers on their subsequent visits to ports, do not apply either to the Georgia or Shenandoah, because neither the Georgia nor the Shenandoah received their original outfit by violation of the territory of Great Britain, not even in the view of what would be such a violation taken by the United States. I understand that to be the position. I will not discuss the facts of the Georgia and Shenandoah any more than of any other vessel in this regard. If the Shenandoah and Georgia, in the conclusions that you shall arrive at upon the facts concerning their outfit, shall be pronounced in their original evasion not to involve culpability on the part of Great Britain, and not to involve violation of Great Britain's territory on the part of either of these cruisers——

Sir Alexander Cockburn.—Suppose, Mr. Evarts, that the departure was of such a nature as not to involve Great Britain in any culpability for want of due diligence, still there certainly is a violation of territory.

Mr. Evarts.—That is the point I was coming to, and of that I entertain no doubt.

You must find upon the facts that there was no evasion from the ports of Great Britain by either of those vessels under circumstances amounting to a violation of the neutrality of Great Britain (on the part of the vessels and on the part of those who sent them forth), before you bring them into the situation where the resentment for a violation of neutrality, which I have insisted upon, was not required to be exhibited.

I am not, however, here to discuss the questions of facts.

I will take up what is made the subject of the third chapter of the Special Argument, which has reference to coaling and "the base of naval operations" and "military supplies," as prohibited by the second Rule of the Treaty.

The question of "coaling" is one question considered simply under the law of *hospitality* or *asylum* to belligerent vessels in neutral ports, and quite another considered, under given facts and circumstances, as an element in the proscribed use of neutral ports as "*a base of naval operations.*"

At the outset of the discussion of this subject it is said that the British Government dealt fairly and impartially in this matter of coaling with the vessels of the two belligerents, and that the real complaint on the part of the United States is of the *neutrality* which Great Britain had chosen to assume for such impartial dealing between the two belligerents. If that were our complaint, it is certainly out of place in this controversy, for we are dealing with the conduct of Great Britain in the situation produced by the Queen's Proclamation, and there is here no room for discussion of any grievance on the part of the United States from the public act of Great Britain in issuing that Proclamation. But nothing in the conduct of the Argument on our part justifies this suggestion of the eminent Counsel.

On the subject of "*coaling,*" it is said that it is not of itself a supply of contraband of war or of military aid. *Not of itself.* The grounds and occasions on which we complain of coaling, and the question of fact, whether it has been fairly dealt out as between the belligerents, connect themselves with the larger subject (which is so fully discussed under this head by the eminent Counsel), a topic of discussion of which coaling is merely a branch, that is to say, the use of neutral ports and waters for coaling, victualling, repairs, supplies of sails, recruitment of men for navigation, &c. These may or may not be obnoxious to censure under the law of nations, according as they have relation or not with facts and acts which collectively make up the use of the neutral ports and waters as "the bases of naval operations" by belligerents. Accordingly, the Argument of the eminent Counsel does not stop with so easy a disposition of the subject of coaling, but proceeds to discuss the whole question of base of operations—what it means, what it does not mean, the inconvenience of a loose extension of its meaning; the habit of the United States in dealing with the question both in acts of Government and the practice of its cruizers; the understanding of other nations, giving the instances arising on the correspondence with Brazil on the subject of the Sumter, and produces as a result of this inquiry the conclusion that it was not the intention of the second Rule of the Treaty *to limit the right of asylum.*

In regard to the special treatment of this subject of coaling provided by the regulations established by the British Government in 1862, it is urged that they were *voluntary* regulations, that the essence of them was that they should be fairly administered between the parties, and that the rights of asylum or hospitality in this regard should not be exceeded. Now, this brings up the whole question—the use of neutral ports or waters as a "base of naval operations," which is proscribed by the second Rule of the Treaty.

You will observe that while the first Rule applies itself wholly to the particular subject of the illegal outfit of a *vessel* which the neutral had reasonable ground to believe was to be employed to cruise, &c., or to the detention in port of a *vessel* that was in whole or in part

adapted for war—while the injunction and duty of the first Rule are thus limited, and the violation of it, and the responsibility consequent upon such violation, are restricted to those narrow subjects, the proscription of the second Rule is as extensive as the general subject, under the law of nations, of the use of ports and waters of the neutral as the basis of naval operations, or for the renewal or augmentation of military supplies, or the recruitment of men.

What, then, is the doctrine of hospitality or asylum, and what is the doctrine which prohibits the use (under cover of asylum, under cover of hospitality, or otherwise) of neutral ports and waters as bases of naval operations? It all rests upon the principle that, while a certain degree of protection or refuge, and a certain peaceful and innocent aid, under the stress to which maritime voyages are exposed, are not to be denied, and are not to be impeached as unlawful, yet anything that under its circumstances and in its character is the use of a port or of waters for naval operations, is proscribed, although it may take the guise, much more if it be an abuse, of the privilege of asylum or hospitality.

There is no difference in principle, in morality, or in duty, between neutrality on land and neutrality at sea. What, then, are the familiar rules of neutrality within the territory of a neutral, in respect to land warfare?

Whenever stress of the enemy, or misfortune, or cowardice, or seeking an advantage of refreshment, carries or drives one of the belligerents or any part of his forces over the frontier into the neutral territory, what is the duty of the neutral? It is to *disarm* the forces and send them into the interior till the war is over. There is to be no *practising* with this question of neutral territory. The refugees are not compelled by the neutral to face their enemy; they are not delivered up as prisoners of war; they are not surrendered to the immediate stress of war from which they sought refuge. But from the moment that they come within neutral territory they are to become non-combatants, and they are to end their relations to the war. There are familiar examples of this in the recent history of Europe.

What is the doctrine of the law of nations in regard to *asylum*, or *refuge*, or *hospitality*, in reference to belligerents at sea during war? The words themselves sufficiently indicate it. The French equivalent of "*relâche forcée*" equally describes the only situation in which a neutral recognizes the right of asylum and refuge; not in the sense of shipwreck, I agree, but in the sense in which the circumstances of ordinary navigable capacity to keep the seas, for the purpose of the voyage and the maintenance of the cruise, render the resort of vessels to a port or ports suitable to, and convenient for, their navigation, under actual and *bond fide* circumstances requiring refuge and asylum.

There is another topic which needs to be adverted to before I apply the argument. I mean the distinction between *commercial* dealing in the uncombined materials of war, and the contribution of such uncombined materials of war, in the service of a belligerent, in making up military and naval operations, by the use of neutral territory as the base of those contributions. What are really commercial transactions in contraband of war, are allowed by the practice of the United States and of England equally, and are not understood to be proscribed, *as hostile acts*, by the law of nations, and it is agreed between the two countries that the second Rule is not to be extended to embrace, by any largeness of construction, mere commercial transactions in contraband of war.

Sir Alexander Cockburn.—Then I understand you to concede that the private subject may deal commercially in what is contraband of war?

Mr. Evarts.—I will even go further than that, and say that commercial dealings or transactions are not proscribed by the law of nations, *as violations of neutral territory*, because they are in contraband of war. Therefore I do not need to seek any aid, in my present purpose of exhibiting the transactions under the second Rule by these cruizers, as using Great Britain as the base for these naval operations, from any construction of that Rule which would proscribe a mere commercial dealing in what is understood to be contraband of war. Such is not the true sense of the Article, nor does the law of nations proscribe this commercial dealing as a hostile act. But whenever the neutral ports, places, and markets, are really used as the bases of naval operations, when the circumstances show that resort and that relation, and that direct and efficient contribution, and that complicity and that origin and authorship, which exhibit the belligerent himself, drawing military supplies for the purpose of his naval operations from neutral ports, *that* is a use by a belligerent of neutral ports and waters as a base of his naval operations, and is prohibited by the second Rule of the Treaty. Undoubtedly the inculpation of a neutral for permitting this use, turns upon the question whether due diligence has been used to prevent it.

The argument upon the other side is, that the meaning of the "base of operations," as it has been understood in authorities relied upon by both nations, does not permit the

resort to such neutral ports and waters for the purpose of specific hostile acts, but proceeds no further. The illustrative instances given by Lord Stowell, or by Chancellor Kent, in support of the Rule, are adduced as being the measure of the Rule. These examples are of this nature: A vessel cannot make an ambush for itself in neutral waters, cannot lie at the mouth of a neutral river to sally out to seize its prey; cannot lie within neutral waters and send its boats to make captures outside their limits. All these things are proscribed. But they are given as instances, not of *flagrant*, but of *incidental* and *limited* use. They are the cases that the commentators cite to show that even casual, temporary, and limited experiments of this kind are not allowed, and that they are followed by all the definite consequences of an offence to neutrality and of displeasure to a neutral, to wit, the resort by such neutral Power to the necessary methods to punish and redress these violations of neutral territory.

Now, let us see how we may, by examples, contrast the asylum or hospitality in matter of coal or similar contributions in aid of navigable capacity, with the use of neutral ports as a base of naval operations.

I will not trespass upon a discussion of questions of fact. The facts are wholly within your judgment and are not embraced in the present argument. But take the coaling of the Nashville. The Nashville left Charleston under circumstances not in dispute, and I am not now considering whether Great Britain is or is not responsible in reference to that ship in any other matter than that of coaling, which I will immediately introduce to your attention.

The Nashville having a project of a voyage from Charleston, her home port, to Great Britain, in the course of which she proposed to make such captures as might be, intended originally to carry out Mason and Slidell, but abandoned this last intention before sailing, as exposing these Commissioners to unfavourable hazard from the blockading squadron. This was the project of her voyage, those the naval operations which she proposed to herself. How did she prepare within her own territory to execute that project of naval warfare? She relied substantially upon steam, and in order to be sure of going over the bar, under circumstances which might give the best chance of eluding the vigilance of the blockaders, she took only two days supply of coal, which would carry her to Bermuda. The coal was exhausted when she got there: she there took in 600 tons.

Sir Alexander Cockburn.—I believe, Mr. Evarts, that the figure six afterwards came down to five.

Mr. Evarts.—For the purpose of my present argument it is quite immaterial.

Mr. Waite.—It was subsequently proved to be 450 tons.

Mr. Evarts.—Very well. She had no coal and she took 450 tons or more on board to execute the naval operation which she projected when she left Charleston and did not take the means to accomplish, but relied upon getting them in a neutral port to enable her to pursue her cruize. Now, the doctrine of *relâche forcée*, or of refuge, or of asylum, or of hospitality, has nothing to do with a transaction of that kind. The vessel comes out of a port of safety, at home, with a supply from the resources of the belligerent that will only carry it to a neutral port, to take in *there* the means of accomplishing its projected naval operations. And no system of relief in distress or of allowing supply of the means of taking the seas for a voyage interrupted by the exhaustion of the resources originally provided, have anything to do with a case of this kind. It was a deliberate plan, when the naval operation was meditated and concluded upon, *to use the neutral port as a base of naval operations*, which plan was carried out by the actual use of neutral territory as proposed.

Now we say, that if this Tribunal, upon the facts of that case, shall find that this neutral port of Bermuda was planned and used as the base of the naval operations, projected at the start of the vessel from Charleston, that *that* is the use of a neutral port as a base for naval operations. On what principle is it not? Is it true that the distance of the projected naval operation, or its continuance, makes a difference *in principle*, as to the resort to establish a base in neutral territory or to obtain supplies from such a base? Why, certainly not. Why, that would be to proscribe the slight and comparatively harmless abuses of neutral territory, and to permit the bold, impudent, and permanent application of neutral territory to belligerent operations. I will not delay any further upon this illustration.

Let us take next the case of the Shenandoah, separating it from any inquiries as to culpable escape or evasion from the original port of Liverpool. The project of the Shenandoah's voyage is known. It was formed within the Confederate territory. It was that the vessel should be armed and supplied: that she should make a circuit, passing round Cape Horn or the Cape of Good Hope; that she should put herself, on reaching the proper longitude, in a position to pursue her cruise to the Arctic Ocean, there to make a prey of the whaling fleet of the United States. To break up these whaling operations and

destroy the fleet, was planned under motives and for advantages which seemed to that belligerent to justify the expense, and risk, and perils of the undertaking. That is the naval operation, and all that was done *inside the belligerent territory* was to form the project of the naval operation and to communicate authority to execute it to the officers who were outside of that territory.

Now, either the Shenandoah, if she was to be obtained, prepared, armed, furnished, and coaled for that extensive naval operation, was to have no base for it at all, or it was to find a base for it in neutral ports. It is not a phantom ship, and it must have a base. Accordingly, as matter of fact, all that went to make up the execution of that operation of maritime war was derived from the neutral ports of Great Britain. The ship was thence delivered and sallied forth—

Sir Alexander Cockburn.—But that was not known to the Government.

Mr. Evarts.—I am now only showing that this occurred as *matter of fact*. The question whether it was known to or permitted by the Government of Great Britain, as the Chief Justice suggests, is of an entirely different aspect, involving the considerations of due diligence to prevent.

The ship, then, was furnished from neutral ports and waters. It resorted to Madeira to await the arrival of the Laurel which, by concert and employment in advance of the sailing of the Shenandoah, was to take the armament, munitions of war, officers and a part of the crew to complete the Shenandoah's fitness to take the seas as a ship of war to execute the naval project on which she originally sailed, and which were transferred from ship to ship at sea. The Island of Madeira served only as a rendezvous for the two vessels, and if there had been occasion, as in fact there was not, might have furnished shelter from storms. Thus made a fighting ship from these neutral ports, as a base, and furnished from the same base with the complete material for the naval operation projected, the Shenandoah made captures, as without interruption of her main project she might, rounded the Cape of Good Hope, and came to Melbourne, another British port, whence she was to take her last departure for her distant field of operations—the waters of the whaling fleet of the United States in the Arctic Ocean.

Sir Roundell Palmer.—I did not, Mr. Evarts, enter upon a treatment of each of the vessels.

Mr. Evarts.—I am only showing that this ship did use your ports for the purposes of its operations.

Sir Roundell Palmer.—But, Mr. Evarts, I only mentioned these vessels.

Mr. Evarts.—You discussed the question of base of naval operations.

There she obtained as a matter of fact 450 tons of coal, or something of that kind, and forty men, and without both of these, as well as important repairs of her machinery, she could not have carried out the naval project on which she had started. The coal taken at Melbourne was sent by appointment from Liverpool, and was there to complete her refitment. The naval operation would have failed if the vessel had not received the replenishment of power and resources at Melbourne as a base. Now, this Shenandoah was able to sail sixteen knots an hour.

Sir Alexander Cockburn.—Do you mean to say sixteen knots an hour? That is faster than any vessel I have ever heard of.

Mr. Evarts.—Well, we will not dispute about the facts. There is no doubt, however, that it is so; she sailed on one occasion over 320 miles in twenty-four hours.

Lord Tenterden.—But that is not sixteen knots an hour.

Mr. Evarts.—I have not said that she had sailed twenty-four consecutive hours at the rate of sixteen knots. But she *could* sail sixteen knots an hour, and she could only steam ten knots an hour. I have not invented this. Her remarkable qualities are stated in the proofs. Her steam power was not necessary to her navigation or her speed, however, except to provide against calms, and give assurance of constancy of progress in adverse weather. Her great advantage, however, was in being one of the fastest sailing ships ever built. The great importance of her having abundance of coal at the contemplated scene of her naval operations was, that she might capture these poor whalers, who understood those perilous seas, and if they could only get up steerage way, would be able to elude her.

Sir Alexander Cockburn.—What! if she sailed sixteen knots an hour?

Mr. Evarts.—If the Chief Justice will mark the circumstances of Arctic navigation, he will understand that by means of their knowledge of the ice, and the region generally, they could seek shelter by interposing barriers between themselves and their pursuer. They did, however, become her prey; but it was only when she found them becalmed. Now, this case of the Shenandoah illustrates, by its career, on a large scale, the project of a belligerent in maritime war, which sets forth a vessel and furnishes it complete for war,

plans its naval operations and executes them, and all this *from neutral ports and waters, as the only base, and as a sufficient base.* Melbourne was the only port from which the Shenandoah received anything after its first supply from the home ports of Great Britain, and it finally accomplished the main operation of its naval warfare by means of the *coaling*, and other refitment at Melbourne. Whether it could rely for the origin of its naval power, and for the means of accomplishing its naval warfare, upon the use of neutral ports and waters, under the cover of commercial dealings in contraband of war, and under the cover of the privilege of asylum, was the question which it proposed to itself and which it answered for itself. It is under the application of these principles that the case of the Shenandoah is supposed to be protected from being a violation of the law of nations, which prohibits the use of ports and waters of a neutral as a base of naval operations. I do not propose to argue upon the facts of the case of the Shenandoah, but only to submit the *principles* on which they are to be considered.

Sir Alexander Cockburn.—I would like to ask you, Mr. Evarts, whether your proposition involves this: that every time a belligerent steam-vessel puts into a neutral port for the purpose of getting coal, and then goes forward upon her further object of war, that there is a violation of neutral territory. I just want to draw your attention to this point. What I want to understand is, what difference there is between the ships of one nation and the ships of another nation, as regards this matter of coal. Would the principle of your argument apply to the vessels of other belligerents?

Mr. Evarts.—Of course, it is to be applied to all belligerents, and when the case arises for complaint it is to be judged in view of all the facts and circumstances, whether it falls within the license of hospitality, or whether it is a resort as to a base of operations, that is to say, whether the whole transaction, in all its features amounts to a concerted and planned use.

Sir Alexander Cockburn.—Planned by whom?

Mr. Evarts.—Why, planned by the belligerent.

Sir Alexander Cockburn.—A ship goes into a neutral port without intimating its purpose or disclosing whether it belongs to one belligerent or another.

Mr. Evarts.—Take the case of the Nashville.

Lord Tenterden.—Take the VanderLilt.

Sir Alexander Cockburn.—Well, let us take that case. She goes into a neutral port and wants coal for the purpose of going forth again on her mission of war. No question is asked. The ship, I grant you, comes with the object of getting coal for the purpose of going out on her errand of war, and, in one sense, uses neutral territory as a base. But the neutral knows nothing about the course of the vessel, or its destination, except he takes it for granted it is a ship of war. How can he be said to *allow* the territory to be made a base of operations, except so far as it applies to the ships of a belligerent.

Mr. Evarts.—It does apply; but I have not said that this alone rendered the *neutral responsible.* I have merely laid down the facts. The magnitude of the operations and the completeness of their relations to the base of supplies, do not alter the application of principles. After all, there is left, of course, the question of whether *you have suffered or allowed* these things, or *have used due diligence to prevent* them, and upon the discussion of that subject I shall not trespass.

Sir Alexander Cockburn.—But that is the very question.

Mr. Evarts.—But *that* question could not arise until it was determined whether the belligerent had, *as matter of fact*, made the neutral port a base of operations. All that I have said has been intended to show that what was done by these cruizers did make the neutral ports a base, just as much as if a shallop was stationed at the mouth of a neutral river, and sent out a boat to commit hostilities. In either case, the neutral is not responsible, unless it has failed to exercise due diligence. But there is this further consequence carrying responsibility, that when the neutral does not know of such an act until after it has been committed, it is its duty to resent it and to prevent its repetition, and to deny hospitality to the vessels that have consummated it. Now, these questions can certainly be kept distinct. If the fact is not known, and if there is no want of due diligence, then the neutral is not at fault. If the facts are afterwards known, then the cruizer that has committed the violation of neutrality is to be proscribed, to be denied hospitality, to be detained in port, or excluded from port, after notice, or without notice, as the case may be.

The question then arises whether a nation, thus dealt with by a belligerent, and having the power to stop the course of naval operations thus based, if it purposely omits so to do, does not make itself responsible for their continuance. I do not desire to be be drawn into a discussion upon the facts which is not included in the range of the present argument. I, now, am simply endeavouring to show that the *illustrations* of Kent and

Stowell taken from navigation, and maritime war then prevailing, do not furnish the *rule* or the *limit* of the responsibility of neutrals in respect of allowing such use of naval bases, nor of the circumstances which make up the prohibited uses of neutral ports for such bases.

I proceed to another branch of the subject.*

It is said that the concerted setting forth of the Laurel from the neutral port, to carry the armament and the munitions of war, and the officers and the crew to be combined outside the neutral jurisdiction with the Shenandoah, already issued from another port of the same neutral, is only *a dealing in contraband of war*. I deny that such a transaction has any connection with dealing in contraband of war. It is a direct obtaining, by a projected cruizer, of its supply of armament, munitions, and men and officers from a neutral port.

There may be no fault on the part of the neutral in not preventing it. That will depend on the question of "due diligence to prevent," "reasonable ground to believe," &c. But the principle of contraband of war does not protect such a transaction, and *that* is the only principle that has been appealed to by the British Government in the discussions of this matter to justify it. The facts of this vessel going out were known——

Sir Alexander Cockburn.—Not until afterwards.

Mr. Evarts.—The law of nations was violated, your territory had been used, as matter of fact, we claim, as the base of naval operations, and it was not a dealing in contraband of war. It was not a commercial transaction. It was a direct furnishing of a cruizer with armament from your port. It might as well have been accomplished within three miles of your coast. Yet, it is said, this is no offence against your law.

Sir Alexander Cockburn.—I do not say that.

Mr. Evarts.—Unfortunately for the United States, through the whole war we had quite other doctrine from those who laid down the law for Great Britain in these matters. Fortunately, we have better doctrine here and now. But according to the law as administered in England such combinations of the materials of naval war could be made outside of her ports, by the direct action of the belligerent Government, deriving all the materials from her ports and planning thus to combine them outside.

Sir Alexander Cockburn.—If that had been shown.

Mr. Evarts.—The proofs do show it, and that the doctrine was that it was lawful and should not be interfered with.

I disclaim any desire or purpose of arguing upon the facts of particular vessels. I am merely laying down principles applicable to supposed facts. If the principles were conceded, I would have no occasion to deal with questions of fact at all.

The learned Chief Justice has, very satisfactorily, certainly, to us, presently expressed certain legal opinions on this subject; but I must say that they were not entertained by the Government of Great Britain, and did not control its action.

I think that the proofs before the Tribunal can be easily referred to, to confirm the position I have taken, as to the legal doctrine held in England in reference to this subject of the base of operations. In contradiction of that doctrine, we now insist, as our Government all through the war insisted, this is not dealing in contraband of war; it *is* using neutral territory as a base of operations. Whether there was, or should be, no responsibility for it, because it was not known or could not be prevented, is an entirely different question. But I undertake to say, as matter of fact, that the doctrine of the English law, during all those proceedings, was that such projects and their execution as a contributory concurrence with the outfit of the principal cruizers for naval operations (such cases as those of the Laurel, the Alar, the Agrippina, the Bahama, and similar vessels) were *lawful* and could not and should not be prevented.

Sir Alexander Cockburn.—I would be very much obliged if you will refer me to some authority for that.

Mr. Evarts.—I will. One of the Arbitrators (Mr. Adams) from his knowledge of the course of the correspondence, knows that I do not deceive myself in that respect. It is this contributory furnishing of armament, and munitions, and men, which rendered the principal cruizers efficient instruments of all the mischief, and without which their

* In connection with this discussion, I ask attention to the course taken by the Government of Brazil in resentment and punishment for the incidental violation of its neutrality by the Florida (within the neutral waters) and by the Shenandoah, by her commander violating the Consular seal of Brazil on board one of the Shenandoah's prizes. In both instances the offending cruizers were perpetually excluded from ports of the Empire; and the exclusion embraced any other cruizer that should be commanded by the captain of the Shenandoah.

The treatment of the Rappahannock by the French Government, which detained her in port till the close of the war, is well worthy of attention. The transaction is detailed in the Appendix to American Counter-Case, pp. 917–946.

evasions from port were of little consequence, and without the expectation of which they never would have been planned.

I now refer to a paper that will show that I have been right in my proposition as to the construction of English law as held during the occurrence of these transactions.

In Vol. iii of American Appendix (p. 53), in a Report to the Board of Trade by the Commissioners of Customs, occurs this passage:

"*Custom-house, September* 25, 1862.

"Your Lordships having, by Mr. Arbuthnot's letter of the 16th instant, transmitted to us, with reference to Mr. Hammond's letter of the 2nd ultimo, the inclosed communication from the Foreign Office, with copies of a further letter and its inclosures from the United States' Minister at this Court, respecting the supply of cannon and munitions of war to the gunboat No. 290, recently built at Liverpool, and now in the service of the so-called Confederate States of America; and your Lordships having desired that we would take such steps as might seem to be required in view of the facts therein represented, and report the result to your Lordships, we have now to report:

"That, assuming the statement set forth in the affidavit of Redden (who sailed from Liverpool in the vessel) which accompanied Mr. Adams' letter to Earl Russell, to be correct, the furnishing of arms, &c., to the gun-boat does not appear to have taken place in any part of the United Kingdom or of Her Majesty's dominions, but in or near Angra Bay, part of the Azores, part of the Portuguese dominions. No offence, therefore, cognizable by the laws of this country, appears to have been committed by the parties engaged in the transaction alluded to in the affidavit."

From Lord Russell's communication of this Report to the American Minister it will be seen that the accepted opinion of the Government was that such operations could not be interfered with, and therefore would not be interfered with. That may be a correct view of the Foreign Enlistment Act of Great Britain, and hence the importance of reducing the obligations of a neutral nation to prevent violations of international law to some settled meaning.

This was done by convention between the High Contracting Parties and appears in the Rules of the Treaty. Under these Rules is to be maintained the inculpation which we bring against Great Britain, and which I have now discussed, because the subject is treated in the special Argument to which I am replying. The instances of neutral default announced under the second Rule are made penal by the law of nations. They are proscribed by the second Rule. They are not protected as dealings in contraband of war. They are not protected under the right of asylum. They are uses of neutral ports and waters as bases of naval operations, and if not prohibited by the Foreign Enlistment Act, and if the British Executive Government could not and would not prevent them, and that was the limit of their duty under their Foreign Enlistment Act, still we come *here* for judgment, whether a nation is not responsible that deals thus in the contribution of military supplies, that suffers ship after ship to go on these errands, makes no effort to stop them, but, on the contrary, announces, as the result of the deliberation of the Law Officers, to the subordinate officials, to the Minister of the United States, to all the world, that these things are *not* prohibited by the law of Great Britain, and cannot be prohibited by the Executive Government, and therefore cannot and will not be stopped. That this was the doctrine of the English Government will be seen from a letter dated the 2nd of April, 1863, of Lord Russell, found in part, in Vol. ii, American Appendix, p. 404; and in part, in Vol. i, ibid., p. 590:—

"But the question really is, has there been any act done in England both contrary to the obligations of neutrality as recognized by Great Britain and the United States, *and capable of being made the subject of a criminal prosecution?* I can only repeat that, in the opinion of Her Majesty's Government, no such act is specified in the papers which you have submitted to me."

* * * * * *

"I, however, willingly assure you that, in view of the statements contained in the intercepted correspondence, Her Majesty's Government have *renewed* the instructions already given to the Custom-house authorities of the several British ports where ships of war may be constructed, and by the Secretary of State for the Home Department to various authorities with whom he is in communication to endeavour to discover and obtain legal evidence of any violation of the Foreign Enlistment Act, with a view to the strict enforcement of that Statute whenever it can really be shewn to be infringed."

* * * * * *

"It seems clear, on the principle enunciated in these authorities, that, except on the ground of any proved violation of the Foreign Enlistment Act, Her Majesty's Government cannot interfere with commercial dealings between British subjects and the so-styled Confederate States, whether the subject of those dealings be money or contraband goods, or even ships adapted for warlike purposes."

These were instances in which complaints were made of these transactions, and in which it was answered that the British Government charged itself with no duty of due

diligence, with no duty of remonstrance, with no duty of prevention or denunciation, but imply with municipal prosecutions for crimes against the Foreign Enlistment Act.

What I have said of the Shenandoah, distinguished her from the Florida, and the Alabama, and the Georgia, only in the fact that, from the beginning to the end of the Shenandoah's career, she had no port of any kind, and had *no* base of any kind, except the ports of the single nation of Great Britain. But as to the Florida and the Alabama, one (the Alabama) was supplied by a tug, or steamer, that took out her armament to Angra Bay, the place of her first resort; the other (the Florida) was supplied by a vessel sent out to Nassau to meet her, carrying all her armament and munitions of war, and which she took out in tow, transshipping her freight of war material outside the line of neutral waters.

That is called dealing in contraband, not proscribed by the law of nations, not proscribed by any municipal law, and not involving any duty of Great Britain to intercept, to discourage, or denounce it. This is confounding substance with form. But let me use the language of an Attorney-General of England, employed in the Parliamentary discussions which attended the enactment of the Foreign Enlistment Act of 1819.

From this debate in Parliament, it will be seen what the principal Law Adviser of the Crown *then* thought of carrying on war by "*commercial transactions*:"

"Such an enactment," he said, "was required by every principle of justice; for when the State says 'We will have nothing to do with the war waged between two separate Powers,' and the subjects in opposition to it say, 'We will, however, interfere in it,' surely the House would see the necessity of enacting some penal statutes to prevent them from doing so; unless, indeed, it was to be contended, that the State and the subjects who composed that State, might take distinct and opposite sides in the quarrel. He should now allude to the petitions which had that evening been presented to the House against the Bill; and here he could not but observe, that they had either totally misunderstood or else totally misrepresented its intended object. They had stated that it was calculated to check the commercial transactions and to injure the commercial interests of this country. If by the words 'commercial interests and commercial transactions' were meant 'warlike adventures,' he allowed that it would; but if it were intended to argue that it would diminish a fair and legal and pacific commerce, he must enter his protest against any such doctrines. Now, he maintained, *that as war was actually carried on against Spain by what the petitioners called 'commercial transactions,' it was the duty of the House to check and injure them as speedily as possible.*"—(Note B, American Argument, p. 508; Fr. tr. Appendice, p. 488.)

War against the United States, maritime war, was carried on under cover of what was called right of asylum and commercial transactions in contraband of war. We are now under the law of nations, by virtue of this second Rule, which says that the use of "ports and waters as the base of naval operations, or for the purpose of the renewal or augmentation of military supplies or arms or the recruitment of men" shall not be allowed, and if the *facts* of such dealing shall be found, and the proof of due diligence to prevent them shall not appear in the proofs, under that second Rule all four of these cruizers must be condemned by the Tribunal.

I do not pass, nor venture to pass, in the present argument, upon the question whether there has been in this matter a lack of due diligence. In the discussion of my learned friend every one of these instances is regarded as a case not within the second Rule, and as a simple dealing in contraband of war.

Sir Roundell Palmer.—I must be permitted to say that I have not felt myself at liberty to go into a discussion of individual cases.

Mr. Evarts.—The vessels are treated in the Argument of the learned Counsel.

Sir Roundell Palmer.—There may be passages in reference to some of the principal topics which have been mentioned, but I have avoided entering upon any elaborate consideration of each particular vessel. There is no distinct enumeration of the vessels.

Mr. Evarts.—There is, so distinct as this; it is expressly stated that under the law neither the Georgia nor the Shenandoah, nor the subsidiary vessels that carried their armaments to the Georgia and Shenandoah, and to the Florida and Alabama, had, in so doing, committed a breach of neutrality.

I am arguing now under the second Rule. I have not felt that I was transcending the proper limits of this debate, because, in answer to the special Argument of the eminent Counsel, I have argued in this way. My own view as to the extension of the Argument of the learned Counsel in his discussion of what is called "due diligence," as a doctrine of the law of nations, would not have inclined me to expect so large a field of discussion as he covered. But, as I have admitted in my introductory remarks, the question of due diligence connects itself with the measure of duty and the manner in which it was performed, and I felt no difficulty in thinking that the line could not be very distinctly drawn.

I have undertaken to argue this question under a state of facts, which shows that a whole naval project is supplied, from the first outfit of the cruizer to the final end of the cruize, by means of this sort of connection with neutral ports and waters as a base of naval operations; and I have insisted that such naval operations are not excluded from the proscription of the second Rule, by what is claimed in the Argument of the learned Counsel, as the doctrine of contraband of war and the doctrine of asylum.

No. 16.

Lord Tenterden to Earl Granville.—(Received August 11.)

My Lord, *Geneva, August 8, 1872.*

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 6th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 16.

Protocol No. XVIII.—Record of the Proceedings of the Tribunal of Arbitration at the Eighteenth Conference, held at Geneva, in Switzerland, on the 6th of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Mr. Evarts concluded the oral argument on the part of the Counsel of the United States in reply to the Argument on the part of the Counsel of Her Britannic Majesty.

Mr. Cushing delivered to the Tribunal a written Argument on the part of the Counsel of the United States in reply to a portion of the Argument presented by the Counsel of Her Britannic Majesty.

The Tribunal then adjourned until Thursday, the 8th instant, at half past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Continuation of Mr. Evart's Argument.

AT the Conference of the Tribunal, held on the 6th day of August, Mr. Evarts continued as follows:—

I was upon the point of the doctrine of the British Government, and its action under that doctrine, as bearing upon the outfit of the contributory provisions of armament, munitions, and men, set forth in such vessels as the Bahama, the Alar, and the Laurel. The correspondence is full of evidence that I was correct in my statement of the doctrine of the British Government, and of its action from beginning to end being controlled by that doctrine; and all the remonstrances of the United States were met by the answer that the law of nations, the Foreign Enlistment Act, the duty of neutrality, had nothing whatever to do with that subject, as it was simply dealing in contraband of war. The importance of this view, of course, and its immense influence in producing the present controversy between the two nations, are obvious. The whole mischief was wrought by the co-operating force of the two legal propositions: (1) That the *unarmed* cruizer was not itself a weapon of war, an instrument of war, and, therefore, was not to be intercepted as committing a violation of the law of nations; and (2) That the contributory provision by means of her supply ships, of her armament, munitions, and men, to make her a complete instrument of naval hostilities, was also not a violation of the law of nations, but simply a commercial dealing in contraband. It was only under those combined doctrines that the

cruizer ever came to be in the position of an instrument of offensive and defensive war, and to be able to assume the "commission" prepared for her, and which was *thenceforth* to protect her from interference on the doctrine of comity to sovereignty.

So, too, it will be found, when we come to consider the observations of the eminent Counsel on the subject of due diligence, to which I shall have occasion soon to reply, that the question whether these were *hostile acts*, under the law of nations, was the turning point in the doctrine of the Government of Great Britain, and of its action, as to whether it would intercept these enterprises by the exercise of executive power, as a neutral government would intercept anything in the nature of a hostile act under the law of nations. The doctrine was that these were not hostile acts *separately*, and that no hostile act arose unless these separate contributions were combined in the ports of Great Britain; that there was no footing otherwise for the obligation of the law of nations to establish itself upon; that there was no remissness of duty on the part of the neutral in respect of them; and finally that these operations were not violations of the Foreign Enlistment Act. All this is shown by the whole correspondence, and by the decisions of the municipal courts of England, in regard to the only question passed upon at all, that of *unarmed* vessels, so far as they ever passed even upon that question.

It has seemed to be intimated by observations which the learned Counsel has done me the honour to make during my present consideration of this topic, that my argument has transcended the proper limit of reply to the special Argument which the eminent Counsel himself has made on the same topic. A reference to the text of that Argument will, I think, set this question at rest.

In the fifteenth section of the first chapter of his Argument, he does us the honour to quote certain observations in our principal Argument, to which he proposes to reply. He quotes, at page 17 of his Argument, as follows:—

"(2). The next great failure of Great Britain 'to use due diligence to prevent' the violation of its neutrality, in the matters within the jurisdiction of the Tribunal, is shown in its entire omission to exert the direct executive authority, lodged in the Royal Prerogative, to intercept the preparations and outfits of the offending vessels, and the contributory provisions, of armament, munitions, and men, which were emitted from various ports of the United Kingdom. We do not find in the British Case or Counter-Case any serious contention, but that such powers as pertain to the Prerogative, in the maintenance of international relations, and are exercised as such by other great Powers, would have prevented the escape of every one of the offending vessels emitted from British ports, and precluded the subsidiary aids of warlike equipment and supplies which set them forth, and kept them on foot, for the maritime hostilities which they maintained."*

The comment of the learned Counsel upon this passage is found on the same page (17) of his Argument, as follows:—

"With respect to the second passage, it is to be observed, that it not only imputes, as a want of due diligence, the abstinence from the use of arbitrary power to supply a supposed deficiency of legal powers, but it assumes that the United States had a right by international law, to request Great Britain to prevent the exportation from her territory of what it describes as 'contributory provisions,' arms, munitions, and 'subsidiary aids of warlike equipment and supplies,' though such elements of armament were uncombined, and were not destined to be combined, within British jurisdiction, but were exported from that territory under the conditions of ordinary exports of articles contraband of war. For such a pretention no warrant can be found, either in international law, or in any municipal law of Great Britain, or in any one of the three Rules contained in the VIth Article of the Treaty of Washington."

I respectfully submit therefore that, in the observations I have had the honour to make upon this subject, I can hardly be said to have exceeded the due limits of an argument in reply. I fail to find in what the eminent Counsel here advances in behalf of his Government, any answer to my assertion that, during the whole course of the war (a period when he, as Solicitor-General or as Attorney-General of England, was one of the law advisers of the Government), the action of Great Britain was governed by the doctrine which I have stated. This was publicly announced and it was so understood by the rebel agents, by the interests involved in these maritime hostilities, by the United States' Minister, by the officials of the British Government, by everybody who had to act, or ask for action, in the premises.

The first instance arising was of the vessel that carried out the armament and munitions for the Alabama, and the answer was as I read from the Report of the Commissioners of Customs to the Board of Trade. This official paper stated that the Commissioners found nothing in that affair that touched the obligations of Great Britain.

* An error has occurred in the French translation of this passage of the American Argument. In the 15th and 16th lines of page 343, the words "l'armement de navires hostiles et les fournitures de vivres," should read, "l'équipement de navires hostiles, et les fournitures subsidiaires."

This was communicated to Mr. Adams, and that, thenceforth, was the doctrine and action of the Government of Great Britain.

The view of an eminent publicist on this point, as a question of international law, may be seen from an extract found at page 177 of the Case of the United States. M. Rolin-Jaquemyns says:—

"Il nous semble que l'adoption d'une pareille proposition équivaudrait à l'inclination d'un moyen facile d'éluder la règle qui déclare incompatible avec la neutralité d'un pays l'organisation, sur son territoire, d'expéditions militaires au service d'un des belligérants. Il suffira, s'il s'agit d'une entreprise maritime, de faire partir en deux ou trois fois les éléments qui la constituent; d'abord le vaisseau, puis les hommes, puis les armes, et si tous ces éléments ne se rejoignent que hors des eaux de la puissance neutre qui les a laissés partir, la neutralité sera intacte. Nous pensons que cette interprétation de la loi internationale n'est ni raisonnable, ni équitable."

It will be, then, for the Tribunal to decide what the law of nations is on this subject. If the Tribunal shall assent to the principles which I have insisted upon, and shall find them to be embraced within the provisions of the three Rules of this Treaty, and that the facts in the case require the application of these principles, it stands admitted that Great Britain has not used and has refused to use any means whatever for the interruption of these contributory provisions of armament and munitions to the offending cruizers.

It is not for me to dispute the ruling of the eminent lawyers of Great Britain upon their Foreign Enlistment Act; but, for the life of me, I cannot see why the Alar and the Bahama and the Laurel, when they sailed from the ports of England with no cargo whatever except the armament and munitions of war of one of these cruizers, and with no errand and no employment except that of the rebel Government, through its agents, to transport these armaments and munitions to the cruizers which awaited them, were not "transports" in the service of one of the belligerents, within the meaning of the Foreign Enlistment Act of Great Britain. That, however is a question of municipal law. It is with international law that we are dealing now and here. The whole argument to escape the consequences which international law visits upon the neutral for its infractions, has been, that whatever was blameworthy was so only as an infraction of the municipal law of Great Britain. And when you come to transactions of the kind I am now discussing, as they were not deemed violations of the Foreign Enlistment Act nor of international law, and as the powers of the Government by force to intercept, though the exercise of prerogative, or otherwise, did not come into play, the argument is that there were *no consequences whatever* to result from these transactions. They were merely considered as commercial transactions in contraband of war.

But the moment it is held that these things *were* forbidden by the law of nations, then of course it is no answer to say, you cannot indict anybody for them under the law of Great Britain. Nor does the law of nations, having laid down a duty and established its violation as a crime, furnish no means of redressing the injury, or of correcting or punishing the evil. What course does it sanction when neutral territory is violated by taking prizes within it? When the prize comes within the jurisdiction of the neutral, he is authorized to take it from the offending belligerent by force, and release it. What course does it sanction when a cruizer has been armed within neutral territory? When the vessel comes within the jurisdiction of the neutral, he is authorized to disarm it.

Now, our proposition is, that these cruizers, thus deriving their force for war by these outfits of tenders, with their armament and munitions and men, when brought within the British jurisdiction, should have been *disarmed*, because they had been armed, in the sense of the law of nations, by using as a base of their maritime hostilities, or their maritime fitting for hostilities, the ports and waters of this neutral State.

Why, what would be thought of a cruizer of the United States lying off the Port of Liverpool, or the Port of Ushant, in France, and awaiting there the arrival of a tender coming from Liverpool, or from Southampton, by pre-arrangement, with an augmentation of her battery and the supply of her fighting crew? Would it, because the vessel had not entered the Port of Southampton or the Port of Liverpool, be less a violation of the law of nations which prohibited the augmentation of the force of a fighting vessel of any belligerent from the contributions of the ports of a neutral?

The fourth chapter of this special Argument is occupied, as I have already suggested, with the consideration of the true interpretation of the Rules of the Treaty, under general canons of criticism, and under the light which should be thrown upon their interpretation by the doctrines and practices of nations. I respectfully submit, however, that the only really useful instruction that should be sought, or can be applied, in aid of your interpretation of these Rules, if their interpretation needs any aid, is to be drawn from the situation of the parties, and the elements of the controversy between them, for the

settlement and composition of which these Rules were framed, and this Tribunal was created to investigate the facts, and to apply the Rules to them in its award.

The whole ground of this controversy is expressed in the firmest and most distinct manner by the statesmen, on both sides, who had charge of the negotiations between the two countries, and who could not misunderstand what were the situation and the field of debate, for application to which the High Contracting Parties framed these Rules. And what were they? Why, primarily, it was this very question of the various forms of contributory aid from the neutral ports and waters of Great Britain, by which the Confederate navy had been made, by which it was armed, by which it was supplied, by which it was kept on foot, by which, without any base within the belligerent territory, it maintained a maritime war.

Anterior to the negotiation which produced the Treaty, there is this public declaration made by Mr. Gladstone, and cited on page 215 of the Case of the United States:—"There is no doubt that Jefferson Davis and other leaders of the South have made an army; *they are making*, it appears, *a navy*."

There is the speech of Lord Russell, on the 26th of April, 1864, also cited on the same page:—"It has been usual for a Power carrying on war upon the seas, to possess ports of its own, in which vessels are built, equipped, and fitted, and from which they issue, to which they bring their prizes, and in which those prizes, when brought before a Court, are either condemned or restored. But it so happens that, in this conflict, the Confederate States have no ports except those of the Mersey and of the Clyde, from which they fit out ships to cruize against the Federals; and having no ports to which to bring their prizes, they are obliged to burn them on the high seas." There is, furthermore, the declaration of Mr. Fish, made as Secretary of State, in his celebrated despatch of the 25th of September, 1869, in which he distinctly proposes to the British Government, in regard to the claim of the United States in this controversy, that the rebel counsels have made Great Britain "the arsenal, the navy yard, and the treasury of the insurgent Confederates."

That was the controversy between the two countries, for the solution of which the Rules of this Treaty, and the deliberations of this Tribunal were to be called into action; and they are intended to cover, and do cover, *all the forms* in which this use of Great Britain, for the means and the opportunities of keeping on foot these maritime hostilities, was practised. The first Rule covers all questions of the outfit of the cruizers themselves; the second Rule covers all the means by which the neutral ports and waters of Great Britain were used as bases for the rebel maritime operations of these cruizers, and for the provision, the renewal or the augmentation of their force of armament, munitions, and men. Both nations so agreed. The eminent Counsel for the British Government, in the special argument to which I am now replying, also agrees that the *second* Rule, under which the present discussion arises, is conformed to the pre-existing law of nations.

We find, however, in this chapter of the special Argument, another introduction of the *retroactive effect*, as it is called, of these Rules, as a reason why their interpretation should be different from what might otherwise be insisted upon. This is but a re appearance of what I have already exposed as a vice in the Argument, viz., that these Rules, in respect to the very subject for which they were framed, do not mean the same thing as they are to mean hereafter, when new situations arise for their application. Special methods of criticism, artificial limits of application are resorted to, to disparage or distort them, as binding and authoritative rules, in regard to the past conduct of Great Britain. Why, you might as well tear the Treaty in pieces as to introduce and insist upon any proposition, whether of interpretation or of application, which results in the demand that the very controversy for which they were framed is not really to be governed by the Rules of the Treaty.

The concluding observations of this chapter, that the invitation to other Powers to adopt these Rules as binding upon them, contained in the Treaty, should discourage a forced and exaggerated construction of them, I assent to; not so much upon the motive suggested, as upon the principle that a forced and exaggerated construction should not be resorted to, upon either side, upon any motive whatever.

I now come to the more general chapter in the Argument of the learned Counsel, the *first* chapter, which presents, under forty-three sections, a very extensive and very comprehensive—and certainly a very able—criticism upon the main Argument of the United States upon "due diligence," and upon the duties in regard to which due diligence was required, and in regard to the means for the performance of those duties and the application of this due diligence possessed by Great Britain. Certainly these form a very material portion of the Argument of the United States, and that Argument, as I have said, has been subjected to a very extensive criticism. Referring the Tribunal to our Argument itself, as furnishing

at least what we suppose to be a clear and intelligible view of our propositions of the grounds upon which they rest, of the reasoning which supports them, of the authorities which sustain them, of their applicability and of the result which they lead to—the inculpation of Great Britain in the matters now under judgment—we shall yet think it right to pass under review a few of the general topics which are considered in this discussion of "due diligence."

The sections from 7 to 16 (the earlier sections having been already considered) are occupied with a discussion of what are supposed to be the views of the American Argument on the subject of prerogative or executive power, as distinguished from the ordinary administration of authority through the instrumentality of courts of justice and their procedure. Although we may not pretend to have as accurate views of constitutional questions pertaining to the nation of Great Britain, or to the general principles of her common law, or of the effect of her statutory regulations and of her judicial decisions as the eminent Counsel of her Britannic Majesty, yet I think it will be found that the criticisms upon our Argument in these respects are not by any means sound. It is of course, a matter of the least possible consequence to us, in any position which we occupy, either as a nation before this Tribunal or as lawyers in our Argument, whether or not the sum of the obligations of Great Britain in this behalf under the law of nations was referred for its execution to this or that authority under its constitution, or to this or that official action under its administration. One object of our Argument has been to show that, if the sum of these obligations was not performed, it was a matter of but little importance to us or to this Tribunal, *where*, in the distribution of administrative duty, or *where*, in the constitutional disposition of authority, the defect, either of power or in the due exercise of power, was found to be the guilty cause of the result; yet, strangely enough, when, in a certain section of our Argument, *that* is laid down as one proposition, we are accused by the learned Counsel of a *petitio principii*, of begging the question, that the sum of her obligations was not performed by Great Britain.

With regard to *prerogative*, the learned Counsel seems to think that the existence of the supposed executive powers under the British Constitution, and which our Argument has assigned to the prerogative of the Crown, savours of arbitrary or despotic power. We have no occasion to go into the history of the prerogative of the British Crown, or to consider through what modifications it has reached its present condition. When a free nation like Great Britain assigns certain functions to be executed by the Crown, there does not seem to be any danger to its liberties from that distribution of authority, when we remember that Parliament has full power to arrange, modify, or curtail the prerogative at its pleasure, and when every instrument of the Crown, in the exercise of the prerogative, is subject to impeachment for its abuse.

The prerogative is trusted under the British Constitution with all the international intercourse of peace and war, with all the duties and responsibilities of changing peace to war, or war to peace, and also in regard to all the international obligations and responsibilities which grow out of a declared or actual situation of neutrality when hostilities are pending between other nations. Of that general proposition there seems to be no dispute. But it is alleged that there is a strange confusion of ideas in our minds and in our Argument, in not drawing the distinction between what is thus properly ascribable to extra-territoriality or *ad extra* administration, what deals with outward relations and what has to do with persons and property within the kingdom. This prerogative, it is insisted, gives no power over persons and property within the kingdom of Great Britain, and it is further insisted that the Foreign Enlistment Act was the whole measure of the authority of the Government, and the whole measure therefore of its duty, *within the kingdom*. It is said the Government had no power by prerogative to make that a crime in the kingdom which is not a crime by the law, or of punishing a crime in any other manner than through the Courts of Justice. This of course is sound, as well as familiar, law. But the interesting question is, whether the *nation* is supplied with adequate legislation, if that is to furnish the only means for the exercise of international duty. If it is not so supplied, that is a fault as between the two nations; if it is so supplied, and the powers are not properly exercised, that is equally a fault as between the two nations. The course of the American Argument is to show that, either on the one or the other of the horns of this dilemma, the actual conduct of the British Government must be impaled.

We are instructed in this special Argument as to what, in the opinion of the eminent Counsel, belongs to prerogative, and what to judicial action under the statute; but we find no limitation of what is in the power of Parliament, or in the power of administration, if adequate parliamentary provision be made for its exercise. But all this course of argument, ingenious, subtle, and intricate as it is, finally brings the eminent Counsel around to this point, that by the common law of England *within the realm*, there *is* power in the Crown to use all

the executive authority of the nation, civil and military, to prevent a *hostile act* towards another nation within that territory. That is but another name for prerogative, there is no statute on that subject, and no writ from any Court can issue to accomplish that object.

If this is undoubtedly part of the common law of England, as the learned Counsel states, the Argument here turns upon nothing else but the old controversy between us, whether these acts were in the nature of *hostile acts*, under the condemnation of the law of nations as such, that ought to have been intercepted by the exercise of prerogative, or by the power of the Crown at common law, whichever you choose to call it. The object of all the discussion of the learned Counsel is continually to bring it back to the point that within the kingdom of Great Britain, the Foreign Enlistment Act was the sole authority for action and prevention, and if these vessels were reasonably proceeded against, under the requirements of administrative duty in enforcing the Foreign Enlistment Act, as against persons and property for confiscation or for punishment, that was all that was nesessary or proper.

Sir Alexander Cockburn.—Am I to understand you as a lawyer to say that it was competent for the authorities at the port whence such a vessel escaped to order out troops and command them to fire?

Mr. Evarts.—That will depend upon the question whether that was the only way to compel her to an observance.

Sir Alexander Cockburn.—I put the question to you in the concrete.

Mr. Evarts.—That would draw me to another subject, viz., a discussion of the facts. But I will say that it depends upon whether the act she is engaged in committing comes within the category of *hostile acts*.

Sir Alexander Cockburn.—But taking this case, and laying aside the question of due diligence. The vessel is going out of the Mersey. Do you say as a lawyer that she should be fired upon?

Mr. Evarts.—Under proper circumstances, yes.

Sir Alexander Cockburn.—But I put the circumstances.

Mr. Evarts.—You must give me the attending circumstances that show such an act of force is necessary to secure the execution of the public authority. You do not put in the element that that is the only way to bring such a vessel to. If you add that element, then I say yes.

Sir Alexander Cockburn.—She is going out of the port. They know she is trying to escape from the port. Do you, I again ask, do you as a lawyer say that it would be competent for the authorities without a warrant, simply because this is a violation of the law, to fire on that vessel?

Mr. Evarts.—Certainly, after the usual preliminaries of hailing her and firing across her bows, to bring her to. Finally, if she insists on proceeding on her way, and thus raises the issue of escape from the Government or forcible arrest by the Government, you are to fire into her. It becomes a question whether the Government is to surrender to the ship, or the ship to the Government. Of course, the *lawfulness* of this action depends upon the question whether the act committed is, under the law of nations, *a violation of the neutrality of the territory and a hostile act*, as it is conceded throughout this Argument the evasion of an *armed* ship would be.

In section 16 of this Argument you will find the statement of the learned Counsel on this subject of the executive powers of the British Government on this behalf:—

"It is impossible too pointedly to deny the truth of this assumption or too pointedly to state that, if any military or naval expeditions, or any other acts or operations of war against the United States, in the true and proper sense of these words, had been attempted within British territory, it would not have been necessary for the British Government, either to suspend the Habeas Corpus Act, or to rely on the Foreign Enlistment Act in order to enable it to intercept and prevent by force such expeditions or such acts or operations of war. The whole civil police and the whole naval and military forces of the British Crown would have been lawfully available to the Executive Government, *by the common law of the realm*, for the prevention of such proceedings."

This is the law of England as understood by the eminent Counsel who has presented this Argument. Given the facts that make the evasion from the port of Liverpool of the vessel proposed, a violation of the law of nations,—because it is a hostile act against the United States, and exposes Great Britain to responsibility for the violation of neutrality,—then the situation has arisen, in the failure of civil means, the failure of remonstrance, of arrest and of bringing to, for firing into the vessel. For certainly, if we have authority to stop, we are not to have that authority met and frustrated by the persistence of violent resistance to it.

It certainly makes very little difference to us whether this authority of the executive

to use all its forces for the actual prevention of the occurrence of these hostile transactions within the realm, is lodged in what he calls the common law of Great Britain, or is found, as we suppose, in the prerogative of the Crown. Nor do I understand this Argument, throughout, to quarrel with the proposition that an *armed* ship that should undertake to proceed out of the port of Liverpool would be exposed to the exercise of that power; and, of course, if the proper circumstances arose, even to the extent to which it has been pushed in answer to the questions put to me by one of the members of the Tribunal. For, if the Queen is to use all her power to prevent a hostile act, and if an armed vessel is, in its evasion of a port, committing a hostile act, that power can be exerted to the point of firing into such vessel, if necessary, as well as of merely exerting the slightest touch, if that proves sufficient to accomplish the object.*

Sections 17 to 25 are occupied with a discussion concerning the *preventive* powers and *punitive* powers under the legislation of Great Britain as compared with that of the United States. While there is here a denial that the British Government ever put itself upon a necessary confinement to the *punitive* powers of that Act, or that that Act contains no *preventive* power, or that it contains not so much as the Act of the United States, still, after all, I find no progress made beyond this: that the preventive powers, thus relied upon and thus asserted, as having origin under, and by virtue of, the act, are confined to the prevention that springs out of the *ability to punish*, or out of the *mode* in which the power to punish is exercised.

Nor will the text of the Foreign Enlistment Act furnish any evidence that it provides any power for the *prevention* by law of the evasion of such a vessel, except in the form of prosecution for *confiscation*, which is one of the modes of punishment. And when this Foreign Enlistment Act was passed in 1819, it was thus left unaccompanied by any executive power of interception and prevention, for the reason, as shown in the debates, that this interceptive and preventive power resided in the prerogative of the Crown, and could be exercised by it. This will be seen from the debates which we have appended in Note B to our Argument.

In comparing that law with the preceding Act passed in 1818 by the American Government, the debates in Parliament gave as the reason for the lodgment of this preventive power in the Executive of the United States, by the Act of Congress, and for its not being necessary to lodge a similar preventive power in the British Crown, that there was no prerogative in America, while there was in Great Britain.

To be sure, when one of the punishments provided by law is a proceeding *in rem* for confiscation of the vessel, if you serve your process at a time and under circumstances to prevent a departure of the vessel on its illegal errand, you do effect a detention. But that is all. The trouble with that detention is, that it is only a detention of process, to bring to issue and trial a question of private right, a confiscation of the ship, which is to be governed by all the rules of law and evidence, which are attendant upon the exercise of authority by the Crown, in taking away the property of the subject.

It never was of any practical importance to the United States, whether the British Government confiscated a ship or imprisoned the malefactors, except so far as this might indicate the feelings and sympathy of that nation. All we wished was, that the Government should *prevent* these vessels from going out. It was not a question with us, whether they punished this or that man, or insisted upon this or that confiscation, *provided* the interception of the cruizers was effected. When, therefore, we claimed under the Foreign Enlistment Act or otherwise, that these vessels should be seized and detained, one of the

* It would seem to be quite in accordance with the ordinary course of Governments in dealing with armed (or merchant) ships, that refuse obedience to a peaceful summons of sovereignty to submit to its authority, to enforce that summons by firing into the contumacious ship.

In "Phillimore," vol. iii, pp. 231–234, will be found the orders of the British Government in the matter of the "Terceira Expedition," and an account of their execution. Captain Walpole "fired two shots to bring them to, but they continued their course. The vessel, on board of which was Saldanha, although now within point blank range of the Ranger's guns, seemed determined to push in at all hazards. *To prevent him from effecting his object*, Captain Walpole was under the necessity of firing a shot at the vessel, which killed one man and wounded another." Page 232.

The 8th Article of the Brazilian Circular of June 23, 1863, provides for the necessary exhibition of force, as follows:—

"8. Finally, force shall be used (and, in the absence or insufficiency of this, a solemn and earnest protest shall be made) against a belligerent who, on being notified and warned, *does not desist from the violation of the neutrality of the Empire*. Forts and vessels of war shall be ordered to fire on a belligerent, who shall," &c.—American Appendix, vol. vii, p. 113.

Indeed, there is no alternative, unless the solution of the difficulty laid down by Dogberry is preferred:

"*Dogberry*. You are to bid any man stand in the Prince's name.

"*Watch*. How if he will not stand?

"*Dogberry*. Why, then, take no note of him, but let him go; and presently call the rest of the watch together, and thank God you are rid of a knave.—"—Shakespeare, "Much Ado about Nothing," Act iii, Sc. 3.

forms of punitive recourse under that Act would have operated a detention, *if applied at the proper time and under the proper circumstances. Confiscation* had its place whenever the vessel was in the power of the Government; but it was only by interception of the *enterprise* that we were to be benefited. That interception, by some means or other, we had a right to; and if your law, if your constitution, had so arranged matters that it could not be had, except upon the ordinary process, the ordinary motives, the ordinary evidence, and the ordinary duty by which confiscation of private property was obtained, and that provision was not adequate to our rights, then our argument is that your law needed improvement.

But it is said that nothing in the conduct of Great Britain, of practical importance to the United States, turned upon the question whether the British law, the Foreign Enlistment Act, was applicable only to an *armed* vessel, or was applicable to a vessel that should go out merely prepared to take its armament. How is it that nothing turned upon that question? It is so said because, as the learned Counsel contends, the Government adopted the construction that the statute did embrace the case of a vessel unarmed. But take the case of the Alabama or the Florida for an illustration, and see how this pretension is justified by the facts. What occasioned the debates of administrative officers? What raised the difficulties and doubts of Custom-house and other officials, except that the vessel was *not* armed, when as regards both of these vessels the Executive Government had given orders that they should be watched? Watched! Watched, indeed! as they were until they went out. They were put under the eye of a watching supervision, to have it known whether an armament went on board, in order that *then* they might be reported, and, it may be, intercepted. The whole administrative question of the practical application of authority by the British Government, in our aid, for the *interception* of these vessels, turned upon the circumstance of whether the vessel was armed or was not armed. Under the administration of that question they went out without armaments, not wishing to be stopped, and by pre-arrangement, took their armaments from tenders that subsequently brought them, which, also, could not be stopped.

Certain observations of Baron Bramwell are quoted by the learned Counsel in this connection, which are useful to us as illustrating the turning-point in the question as to armed and unarmed vessels. They are to this effect, and exhibit the British doctrine:—

A vessel fitted to receive her armament *and* armed, is a vessel that should be stopped under an international duty. This amounts to an act of proximate hostility, which a neutral is bound to arrest. Baron Bramwell held that the emission of a vessel *armed* is, undoubtedly, a hostile expedition within the meaning of the law of nations. But a vessel fitted to receive her armament in the neutral port, and sent out of that port by the belligerent only in that condition, he held, is not an enterprise in violation of the law of nations, and is not a hostile expedition in the sense of that law. By consequence, Baron Bramwell argued, nothing in such an enterprise of a belligerent from a neutral port calls for the exercise of authority on the part of the neutral, either by law or by executive interference, and, until the armament gets on board, there is nothing to bring the case within the province of *international* proscription and of *international* responsibility. It was then, he argues, only a question for Great Britain whether the provisions of the Foreign Enlistment Act can touch such a vessel, and the only question for the British Government was, as towards the United States, have they done their duty to themselves in the enforcement of the municipal law, which involves a question of international responsibility to the United States? We insist, therefore, that so far from nothing practical turning upon this distinction, all the doubts and difficulties turn upon it, especially in connection with the ancillary proposition that these vessels could be provided, by means of their tenders, with armaments, without any accountability for the complete hostile expedition.*

It is said that we can draw no argument as to the deficiency of their old Act, from the improved provisions of the new Act of 1870. Why not? When we say that your Act of 1819 was not adequate to the situation, and that, if you had no prerogative to supply its defects, you should have supplied them by Act of Parliament—that you should have furnished by legislation the means for the performance of a duty which required you to prevent the commission of the acts which we complain of—it is certainly competent for us to resort to the fact that, when our war was over, from *thenceforth*, movements were

* Mr. Theodore Ortolan, in a late edition of his "Diplomatie de la Mer," tome ii, says:—

"Nous nous rattacherons, pour résoudre en droit des gens les difficultés que présente cette nouvelle situation, à un principe universellement établi, qui se formule en ce peu de mots: 'Inviolabilité du territoire neutre.' Cette inviolabilité est un droit pour l'état neutre, dont le territoire ne doit pas être atteint par les faits de guerre, mais elle impose aussi à ce même état neutre une étroite obligation, celle de ne pas permettre, celle d'empêcher, activement au besoin, l'emploi de ce territoire par l'une des parties ou au profit de l'une des parties belligérantes, dans un but hostile à l'autre partie."—Case of the United States, p. 182.

made towards the amendment of your law, and that, when the late war on the continent of Europe opened, your new Act was immediately passed, containing all the present provisions of practical executive interception of such illegal enterprises—it is, I say, competent for us to refer to all this as a strong, as well as fair argument, to show that, even in the opinion of the British Parliament, the old Act was not adequate to the performance of the *international* duties of Great Britain to the United States.

Sections 27 to 30 of the special Argument are occupied with a discussion of that part of our Argument which alleges, as want of due diligence, the entire failure of Great Britain to have an active, effective, and spontaneous investigation, scrutiny, report, and intercepti\e prevention of enterprises of this kind. Well, the comments upon this are of two kinds: first, concerning the question, under a somewhat prolonged discussion of facts, whether the Government did or did not do this, that, or the other thing:* and, then, concerning the more general question as to whether the Rules of this Treaty call upon this Tribunal to inquire into any such deficiency of diligence which was not applicable to the case of a vessel respecting which the British Government "had reasonable ground to believe" that a violation of the law was meditated.

Our answer to this latter question is, that the Rules together, in their true construction, require the application of due diligence (particularly under the special emphasis of the third Rule) "to prevent" the occurrence of any of the infractions of the law of nations proscribed by the Rules.

There are two propositions in these Rules. Certain things are assigned as violations of the law of nations, and as involving a duty on the part of a neutral Government to prevent them; and, besides, in and towards preventing them, it is its duty to use due diligence. In regard to every class of alleged infractions of these Rules, there comes to be an inquiry, first, whether in the circumstances and facts which are assigned, the alleged infractions are a violation of any of the *duties* under the law of nations as prescribed by those Rules. If not, they are dismissed from your consideration. But if they are so found, then these Rules, by their own vigour, become applicable to the situation, and then comes the inquiry whether Great Britain did, in fact, use due diligence to prevent the proscribed infractions. It is under the sections now under review, that the learned Counsel suggests whether it is supposed that this general requirement of the use of due diligence by Great Britain is intended to cover the cases of vessels like the Shenandoah and the Georgia (which it is alleged the British Government had no reasonable ground to believe were meditating or preparing an evasion of the laws or a violation of the duties of Great Britain); or the cases of these tenders, that supplied the Georgia, and the Shenandoah, and the Florida, and the Alabama, with their armaments and munitions of war—it is under these sections that this discussion arises. The answer on our part to this suggestion is, that the general means of diligence to keep the Government informed of facts, and enable it to judge whether there was "reasonable ground to believe" in any given case, and thus enable it *to be prepared* to intercept the illegal enterprise, are required in cases that the Rules proscribe as infractions of neutrality.

I will agree that under the first clause of the first Rule the duty is applied to a vessel concerning which the Government "shall have reasonable ground to believe," &c. Under the second clause of the first Rule this phrase is omitted, and the question of "reasonable ground to believe" forms only an element in the more general question of "due diligence." Under the second Rule also the whole subject of the use of the neutral ports and waters as a base of naval operations is open; and, if there has been a defect of diligence in providing the officers of Great Britain with the means of knowledge and the means of action to prevent such use of its ports and waters as a base of operations, why, *then* Great Britain is at fault in not having used due diligence to prevent such use of its ports and waters. That is our argument; and it seems to us it is a sound argument. It is very strange if it is not, and if the duty of a Government to use due diligence to prevent its ports and waters from being used as a base of naval operations, does not include the use of due diligence to ascertain whether they were being, or were to be, so used.

It was a fault not to use due diligence to prevent the ports and waters of Great Britain from being used as a base of naval operations, or for the augmentation of force, or the

* It does not seem profitable to go into a minute examination of the proofs before the Tribunal to establish the propositions of our Argument specially controverted in Sections 29 and 30 of the present Argument of the eminent Counsel. Although the letter of Earl Russell, quoted by the learned Counsel, does incidentally refer to certain instructions having been given to subordinate officials, yet we look in vain, through the proofs of the British Government, for the text, or date, or circulation of these instructions. As for the rest, we find nothing in the instances cited, in which specific information happened to be given in regard to this or that vessel or enterprise, which contravenes our general propositions of fact, in this behalf, or the inference of want of due diligence on the part of the British Government, which we have drawn from those facts.

recruitment of men. And to admit that it was a fault, in any case, not to act where the Government had cause to believe that there was to be a violation of law, and yet to claim that it was no fault for the Government to be guilty of negligence in not procuring intelligence and information which might give a reasonable ground to believe, seems to me absurd.

This, indeed, would be to stamp the *lesser* negligence of not applying due diligence in a particular case when there was "reasonable ground to believe," as a *fault*, entailing responsibility upon a neutral Government, and to excuse the same Government for the systematic want of due diligence, which, through indifference to duty and voluntary ignorance, did not allow itself to be placed in a position to judge whether the ground of belief was reasonable, or whether there was any ground at all for its action. The lesser fault infers that the same or greater responsibility is imputable to the greater fault.

The sections of the Special Argument of the learned Counsel, which are occupied with a comparison between the practical efficiency of the American and of the English Acts, and in which the propositions of our Argument, in this regard, are questioned and commented upon, will be replied to by my learned associate, Mr. Cushing, in an Argument which he will present to the Tribunal. It is enough for me to repeat here the observation of our Argument that the true measure of the vigour of an Act is its judicial interpretation and its practical execution. We do not intend to allow ourselves to be involved in discussions as to the *propriety* of this or that construction of the English Act which reduced its power. The question with us is, what were the practical interpretation and exercise of the powers of the Neutrality Act of the United States?

The propositions of our Argument seem to us untouched by any of the criticisms which the learned Counsel has applied to them. We, rightly or wrongly, have interpreted our Act, from its first enactment to the present time, as giving authority to the Executive of the United States, to intercept by direct exercise of power all these prohibited enterprises at any stage at which he can lay his hands upon them, for the purpose of *their prevention*. The correspondence produced in our proofs, showing the action of the Executive Government on all the occasions in which this statute has been required to be enforced, will indicate that, whether it has been successful or not in the execution of the duty, the Government has recognized the duty, the Executive has undertaken it, and all the subordinates have had their attention called to it, in the sense and to the end of *prevention*. All subordinates have, as well, always been stimulated to the duty of keeping the Executive, from time to time, fully and promptly supplied with information to secure the efficient execution of the law. And it is not improper, perhaps, for me here to observe that my learned associate, Mr. Cushing, and myself, having been called upon to execute this statute in the office of Attorney-General of the United States, we can bear testimony to its vigour and its efficiency in the every-day action of the Government. It is submitted to and not questioned, and produces its effect. Whether the Government of the United States, possessing that power under and by authority of the statute, has always been successful or not, or has always used due diligence in its exercise, and whether it is accountable to this or that nation for a faulty execution of its duties of neutrality, are questions which this Tribunal cannot dispose of, and they are only remotely collateral to any discussions properly before the Arbitrators.

Sir Alexander Cockburn.—If you are arguing now upon that point, Mr. Evarts, explain this to me. By the last English Act of 1870, the Secretary of State has power, under certain circumstances, to order a vessel to be seized, and then it is provided that the owner of such vessel may make claim, &c., which the Court shall as soon as possible consider. I want to ask you what, under your Act of 1818, which gives power to the President to seize, under similar circumstances, would be the course of proceedings in such a case? How would the owner be able to know whether his vessel was one liable to seizure and confiscation? How would he get his vessel back again according to your form of procedure?

Mr. Evarts.—I take it for granted that the detention which the President might authorize, or cause to be made, would not be an indefinite detention. By the terms of the Act, however, that exercise of the Executive power is not necessarily terminated by a judicial appeal of any kind.

Sir Alexander Cockburn.—Do you mean to say that the ship shall remain in the hands of the Government?

Mr. Evarts.—If the party chooses so to leave it without satisfactory explanation. The President interposes in the discharge of a public duty, to prevent the commission of an act in violation of neutrality, which he believes to be illegal. On representation to him by the aggrieved party he will release the vessel, if he finds reason. If he does not

so release, then the vessel remains subject to the continued exercise of Executive control, under the same motives that first induced it.

Sir Alexander Cockburn.—Would not the President, in the ordinary practice of things, direct that the matter should be submitted to judicial determination?

Mr. Evarts.—This executive interception carries no confiscation. It merely detains the vessel, and the owner can apply for its release, giving an explanation of the matter. But the Executive may say, "I am not satisfied with your explanation; if you have nothing else to say, I will keep your vessel;" or he may send it to the Courts to enforce its confiscation.

Sir Alexander Cockburn.—Which does he practically do?

Mr. Evarts.—He practically, when not satisfied to release it, usually sends it to the Court, because the situation admits of that disposition of it. Under the Act of the United States, there is the same actual interception by the Executive which your Act of 1870——

Sir Alexander Cockburn.—Under our Act the Executive has no discretion; it must send it to the Courts.

Mr. Evarts.—Under our Act, we trust the Executive for a proper exercise of the official authority entrusted to him.

In the American Case, some instances of the exercise of this power on a very considerable scale, will be found (page 126 of the French translation). The documents explaining these transactions are collected at length in the Appendix to the American Counter-Case.

Sections 38 to 41 of the special Argument call in question our position as to *onus probandi*. It is said, that we improperly undertake to shift, generally, the burden of proof, and require Great Britain to discharge itself from liability by affirmative proof, in all cases where we charge that the act done is within the obligation of the three Rules. This criticism is enforced by reference to a case arising in the public action of the United States under the Treaty of 1794 with Great Britain.

I will spend but few words here. The propositions of our Argument are easily understood upon that point. They come to this: that, whenever the United States, by its proofs, have brought the case in hand to this stage, that the acts which are complained of, the action and the result which have arisen from it, are violations of the requirements of the law of nations, as laid down in the three Rules, and this action has taken place within the jurisdiction of Great Britain (so that the principal fact of accountability within the nation is established), *then*, on the ordinary principle that the affirmative is to be taken up by that party which needs its exercise, the proof of "due diligence" is to be supplied by Great Britain. How is a foreigner, outside of the Government, uninformed of its conduct, having no access to its deliberations or the movements of the Government, to supply the proof of the *want* of due diligence? We repose, then, upon the ordinary principles of forensic and judicial reasoning. When the act complained of is at the fault of the *nation*, having been done within its jurisdiction, and is a violation of the law of nations, for which there is an accountability provided by these three Rules, the point of determination whether due diligence has been exercised by the authorities of the country to prevent it, or it has happened in spite of the exercise of due diligence—the burden of the proof of "due diligence" is upon the party charged with its exercise.

Let us look at the case of the Elizabeth, which is quoted in section 41. It is a long quotation, and I will read therefore, only the concluding part. It will be found on page 50 of the French translation of the special Argument. The question was as to the burden of proof under the obligation that had been assumed by the United States:—

> "The promise was conditional. We will restore in all those cases of complaint where it shall be established by sufficient testimony that the facts are true which form the basis of our promise—that is, that the property claimed belongs to British subjects; that it was taken either within the line of jurisdictional protection, or, if on the high seas, then by some vessel illegally armed in our ports; and that the property so taken has been brought within our ports. By whom were these facts to be proved? According to every principle of reason, justice, or equity, it belongs to him who claims the benefit of a promise to prove that he is the person in whose favour, or under the circumstances in which, the promise was intended to operate."

A careful perusal of this passage is sufficient to show that the *facts* here insisted upon, as necessary to be proved by the claimant, are precisely equivalent to the facts which the United States are called upon to prove in this case. These facts, as I have before stated, bring the circumstances of the claim to the point where it appears that the responsibility for the injury rests upon Great Britain, *unless* due diligence was used by the Government to prevent the mischievous conduct of the subjects or residents of that kingdom which has produced the injuries complained of. In the absence of this due diligence on the part of

that Government, the apparent responsibility rests undisturbed by the exculpation which the presence of due diligence will furnish. The party needing the benefit of this proof, upon every principle of sound reason, must furnish it. This is all we have insisted upon in the matter of the burden of proof.

In conclusion of the first chapter of this special Argument, the eminent Counsel, at section 43, takes up the "*Terceira affair*" and insists, that if Great Britain, in a particular situation for the exercise of duties of neutrality, took extraordinary measures, it does not prove that the Government were under obligation to take the same measures in every similar or comparable situation.

We referred to the Terceira affair for the purpose of showing that the Crown, by its prerogative *possessed* authority for the interception of enterprises originating within the kingdom for the violation of neutrality. The question whether the Executive will use it is at *its* discretion. The *power* we prove, and, in the discussions in both Houses of Parliament, it was not denied, in any quarter, that the power existed to the extent that *we call for its exercise within British jurisdiction.* The question in controversy then was (although a great majority of both Houses voted *against* the resolutions condemning the action of the Government) whether, in the waters of Portugal or upon the seas, the Government could, with strong hand, seize or punish vessels which had violated the neutrality of Great Britain by a hostile, though unarmed, expedition from its ports. The resolutions in both Houses of Parliament received the support of only a small minority. *Mr. Phillimore,* however, says the learned Counsel, expresses his opinion, in his valuable work, that the minority were right.

Sir Alexander Cockburn.—I confess I always thought so myself.

Mr. Evarts.—But the point now and here in discussion is, what were the powers of the Crown *within* the limits of British jurisdiction, and it is not necessary to consider who were right or who were wrong in the divisions in Parliament. What all agreed in was, that the fault charged upon the Government was the invasion of the territorial rights of another nation.

But we cited the Terceira affair for the additional purpose of showing the actual *exercise* of the power in question by the Crown in that case. This was important to us in our Argument; it justly gave support to the imputation that the powers of the Government were *not* diligently exercised during the American rebellion in our behalf. Where there is a will there is a way; and diligence means the use of all the faculties necessary and suitable to the accomplishment of the proposed end.

Now, in conclusion, it must be apparent that the great interest, both in regard to the important controversy between the High Contracting Parties, and in regard to the principles of the law of nations to be here established, turns upon your award. That award is to settle two great questions: whether the acts which form the subject of the accusation and the defence are shown to be acts that are proscribed by the law of nations, as expressed in the three Rules of the Treaty. You cannot alter the nature of the case between the two nations as shown by the proofs. The facts being indisputably established in the proofs, you are then to pass upon the question whether the outfit of these tenders, to carry forward the armament of the hostile expedition to be joined to it outside of Great Britain, is according to the law of nations, or not.

When you pass upon the question whether this is a violation of the second Rule, you pass upon the question, under the law of nations, whether an obligation of a neutral not to allow a hostile expedition to go forth from its ports, can be evaded by having it sent forth in parcels, and having the combination made outside its waters. You cannot so decide in this case, and between these parties, without establishing by your award, as a general proposition, that the law of nations proscribing such hostile expeditions may be wholly evaded, wholly set at naught, by this equivocation and fraud practised upon it; that this can be done, not by surprise,—for anything can be done by surprise,—but that it can be done *openly and of right.* These methods of combination outside of the neutral territory may be resorted to for the violation of the obligations of neutrality, and yet the neutral nation, knowingly suffering and permitting it, is free from responsibility. This certainly is a great question.

If, as we must anticipate, you decide that these things are proscribed by the law of nations, the next question is, was "due diligence" used by Great Britain to prevent them.

The measure of diligence actually used by Great Britain, the ill consequences to the United States from a failure on the part of Great Britain to use a greater and better measure of diligence, are evident to all the world. Your judgment, then, upon the second question is to pronounce whether that measure of diligence which was used and is known to have been used, and which produced no other result than the maintenance, for four

years, of a maritime war, upon no other base than that furnished from the ports and waters of a neutral territory, *is* the measure of "due diligence," to prevent such use of neutral territory, which is required by the three Rules of the Treaty of Washington for the exculpation of Great Britain.

No. 17.

Plaidoyer de Mr. Cushing, Conseil des Etats Unis, devant le Tribunal Arbitral de Genève, en réponse à l'Argument du Conseil de Sa Majesté Britannique.—(*Presented August 6.*)

Monsieur le Président et Messieurs du Tribunal,

NOUS approchons, je l'espère du moins, de la fin de ces longs débats.

Les deux Gouvernements avaient présenté leurs Mémoires et leurs Contre-Mémoires, appuyés sur des documents volumineux. Ils avaient aussi présenté leurs Plaidoyers respectifs, le tout conformément aux stipulations du Traité de Washington (Arts. IV et V).

Ainsi ont été clos les débats réguliers prescrits par le Traité.

Maintenant, sur la demande d'un des honorables Arbitres, le Tribunal a requis de l'Angleterre, comme il en avait le droit, des explications sur certains points déterminés, à savoir :—

1. La question des dues diligences traitée d'un manière générale.
2. La question spéciale de savoir quel a été l'effet des commissions possédées par les vaisseaux de guerre Confédérés qui sont entrés dans les ports Britanniques.
3. La question spéciale des approvisionnements de charbon accordés aux vaisseaux Confédérés dans les ports Britanniques.

Le Conseil de la Grande Bretagne a usé de cette occasion pour discuter les points posés, et, à propos de cela, pour commenter le Plaidoyer des Etats Unis.

Je ne me plains pas de ceci; mais je constate le fait.

Nous, Conseils des Etats Unis, acceptons la situation, telle qu'elle nous est faite; car nous n'avions nul désir d'occuper davantage l'attention du Tribunal.

Mes deux collègues viennent de discuter amplement le second et le troisième points. C'est à peine s'ils m'ont laissé quelque chose à dire à l'égard du premier point.

En effet, ce n'est que la charge de résumer la question et d'ajouter quelques observations spéciales qui m'est dévolue.

J'ose m'adresser au Tribunal en Français afin d'économiser son temps précieux, et d'arriver au plus tôt à la clôture des débats. Dans ce but je sacrifie volontiers toute prétention oratoire; j'essaie de me faire comprendre; c'est tout ce que j'ambitionne.

La Question des Dues Diligences.

Maintenant il s'agit de la question des dues diligences traitée d'une manière générale.

Que veut dire cette phrase? Est-ce que le Tribunal demande un leçon théorique de professeur sur les dues diligences? Je ne le crois pas. Une telle discussion serait parfaitement oiseuse pour les raisons suivantes :—

1. On a déjà discuté a satiété cette question théorique. La Grande Bretagne l'a discutée trois fois, dans ses Mémoires et son Plaidoyer, et elle s'est donnée douze mois entiers pour y réfléchir et accumuler des arguments et des citations pour l'instruction du Tribunal. Nous, au nom des Etats Unis, nous n'avons pas dépensé tant de paroles, mais nous avons dit tout ce qu'il était dans notre désir et notre volonté de faire savoir aux honorables Arbitres.

2. Les deux parties étaient d'accord que la question théorique ne méritait plus leur attention.

"Le Gouvernement de Sa Majesté," dit le Contre-Mémoire Britannique, p. 24, "ne s'est pas imposé une tâche qui a déjoué, à ce qu'il croit, l'habileté des jurisconsultes de tous les temps et de tous les pays: il n'a pas cherché à définer avec une précision approximative, en dehors des circonstances spéciales à un cas particulier, la mesure de ce qu'on devra reconnaître comme la due diligence ou le soin raisonnable."

Et le Contre-Mémoire adopte en citant ce qui suit (page 24, note) :—

"Du reste," a dit un jurisconsulte éminent de France qui examine la question au point de vue de droit privé, "du reste, soit qu'il s'agisse d'une obligation de donner ou de faire, la prestation des fautes est, dans la pratique, à peine une question de droit. Le point de faite y est toujours dominant, quand il n'y est pas tout." (Larombière, "Théorie et pratique des Obligations," tome i, p. 417.)

Les Conseils des Etats Unis ont répondu, en acceptant la doctrine de la Grande Bretagne, comme suit :—

"Nous sommes d'accord avec les considérations qui terminent le Contre-Mémoire Britannique sur cette question de la diligence suffisante, pour laisser les Arbitres juger les faits qui leur sont soumis, d'après les lumières de la raison et de la justice, aidées par la connaissance des pouvoirs et des devoirs généraux de l'administration que leur a donnée leur longue pratique des affairs publiques." (Contre-Mémoire Britannique, p. 151, texte Français; Plaidoyer des Etats Unis, p. 328.)

Nous restons de cet avis; nous refusons de revenir sur nos pas et de discuter de nouveau des questions depuis longtemps déjà complètement épuisées, et même reconnues inopportunes par les deux parties.

3. Je ne reconnais pas d'autres diligences que les diligences du Traité. Le Conseil de la Grande Bretagne paraît s'efforcer d'établir des règles des diligences dues en dehors du Traité. Il est trop tard pour entrer dans cette voie. Après les pas en avant que le Tribunal a déjà faits dans ses travaux, il ne vaut plus la peine de nous rembarquer sur la vague, ou le *vague* du droit des gens en dehors du Traité. Nous nous appuyons sur les paroles explicites du Traité, qui subordonne le droit des gens général au pacte des trois Règles—qui est rétronetif—et qui applique expressément les diligences dues aux cas et aux objets spéciaux de ces Règles.

Pour cette dernière considération je refuse de suivre le Conseil de la Grande Bretagne dans sa discussion sur la question de la différence qui existe d'après le droit des gens, s'il en existe une, entre le devoir des neutres à l'égard des navires armés en guerre, et leur devoir à l'égard des navires équipés pour la guerre et pas encore armés.

Le Traité tranche absolument cette question. Il suffit d'appeler l'attention sur la première Règle.

"Un Gouvernement neutre est obligé :—

"1. A faire toutes les diligences nécessaires pour s'opposer dans les limites de sa juridiction à ce qu'un vaisseau soit mis en mesure de prendre la mer, à ce qu'il soit armé ou équipé, quand ce Gouvernement a des motifs suffisants pour penser que ce vaisseau est destiné à croiser ou à faire des actes de guerre contre une Puissance avec laquelle il est lui-même en paix. Ce Gouvernement doit faire également toutes les diligences nécessaires pour s'opposer à ce qu'un vaisseau destiné à croiser ou à faire des actes de guerre, comme il est dit ci-dessus, quitte les limites de la juridiction territoriale dans le cas où il y aurait été spécialement adapté, soit en totalité, soit en partie, à des usages belligérants."

Notons les trois premières conditions très claires de la Règle,—"à ce qu'un vaisseau soit mis en mesure de prendre la mer" (ce qui est omis, sans raison suffisante, dans la traduction Anglaise) —"à ce qu'il soit armé,"—"ou équipé."

Notons aussi, les deux conditions suivantes également claires, "un vaisseau destiné à croiser ou à faire des actes de guerre," ou "un vaisseau spécialement adapté soit en totalité, *soit en partie*, à des usages belligérants."

En voyant ces conditions, si définies et si nettes, auxquelles les diligences du Traité doivent être appliquées, et en considérant l'inutilité manifeste de toute discussion en dehors des trois Règles, on pourrait bien soupçonner que le Conseil de la Grande Bretagne, en s'écartant ainsi du Traité, avait pour objet de faire une préface convenable aux observations qui suivent, destinées à atténuer, s'il eût été possible, la force des paroles de Sir Robert Phillimore et de Sir Roundell Palmer, citées dans le Plaidoyer des Etats Unis.

Sir Robert Phillimore.

Nous avons cité des Commentaires du Droit International de Sir Robert Phillimore, les passages suivants :—

"Il reste une question de la plus grande importance, à savoir, la *responsabilité d'un Etat* par rapport *aux actes* de ses citoyens, laquelle implique le devoir d'un neutre d'empêcher que des armaments et des vaisseaux de guerre sortent de ses ports pour le service d'un belligérant, quoique ces armements aient

été fournis, et les navires construits, équipés et expédiés à l'insu et contre les ordres de son Gouvernement. . . . . C'est une maxime de droit général qu'en ce qui concerne les Etats étrangers, la volonté du sujet doit être considérée comme liée à celle de son Souverain.

"C'est aussi une maxime que chaque Etat a le droit d'attendre d'un autre l'accomplissement des obligations internationales, sans égard à ce que peuvent être les moyens municipaux qu'il possède pour les faire observer."

"L'acte d'un simple citoyen ou d'un petit nombre de citoyens ne doit pas être imputé sans preuves évidentes au Gouvernement dont ils sont sujets.

"Un Gouvernement peut, par *connaissance* et *tolérance* aussi bien que par *permission* directe, devenir responsable des actes de ses sujets, qu'il n'empêche pas de commettre des dommages à un Etat étranger.

"Un Gouvernement est présumé pouvoir empêcher ses sujets, dans les limites de son territoire, de contrevenir aux obligations de la neutralité qui lient l'Etat. . . . . Un Etat est *primâ facie* responsable de tout ce qui se fait dans l'étendue de sa juridiction; car il doit être *présumé* capable d'empêcher ou de punir les offenses commises en deçà de ses frontières. Un corps politique est par conséquent responsable des actes d'individus qui sont des actes d'hostilité effective ou préméditée contre une nation avec laquelle le Gouvernement de ces individus déclare entretenir des relations d'amitié ou de neutralité."

Maintenant le Conseil de la Grande Bretagne prétend que toutes ces expressions de Sir Robert Phillimore sont censées devoir être bornées au cas d'un vaisseau *armé* en guerre ou d'une *expédition militaire* et *non* navale.

Je nie la possibilité de cette distinction. Elle n'a aucun fondement dans les paroles de l'auteur. Je m'en rapporte à l'appréciation des honorables Arbitres.

Mais, en supposant que cette distinction soit bien fondée, elle ne justifierait pas les conclusions du Conseil de la Grande Bretagne, parceque les principes énoncés par Sir Robert Phillimore sont d'une application générale, et comprennent tous les cas possibles. Prenons un devoir des dues diligences quelconques à remplir de la part d'un Gouvernement neutre envers un Gouvernement belligérant, et alors, dans ce cas, Sir Robert Phillimore nous apprend de quelle manière, et conformément à quels principes, le Gouvernement neutre doit agir. Il doit remplir ses obligations internationales, "sans avoir égard à ce que peuvent être les moyens municipaux qu'il possède pour les faire observer." De plus, "un Gouvernement peut, par *connaissance* et *tolérance*, aussi bien que par *permission directe*, devenir responsable de ses sujets qu'il n'empêche pas de commettre des dommages à un Etat étranger."

Telle est la thèse, au sujet des dues diligences *traitées d'une manière générale*, que les Conseils des Etats Unis ont constamment soutenue, et que la Grande Bretagne a constamment combattue, dans ses Mémoires et son Plaidoyer.

Maintenant, le devoir qui incombe à la Grande Bretagne est défini par les trois Règles; et nous avons le droit de considérer les maximes générales de Sir Robert Phillimore à la lumière de ces Règles. C'est là ce que nous avons fait dans notre Plaidoyer.

Les Laird Rams.

Mais nous avons hâte de voir ce que le Conseil de la Grande Bretagne veut dire concernant la citation que nous avons faite d'un discours de Sir Roundell Palmer à propos des "Laird rams."

J'appelle l'attention du Tribunal sur les mots mêmes de ce discours:—

"Je n'hésite pas," dit Sir Roundell Palmer, "à dire hardiment et à la face du pays que le Gouvernement, *sous sa propre responsabilité*, les a détenus. On poursuivait une enquête qui, quoiqu'imparfaite, laissait dans l'esprit du Gouvernement de fortes raisons de croire qu'on parviendrait à constater que ces navires étaient destinés à un but illégal, et que, s'ils quittaient le pays, la loi serait violée et un grand préjudice causé à une Puissance amie. *Le Gouvernement n'a pas saisi les navires; il n'a rien fait pour s'en emparer ou pour les arrêter*, mais sous sa responsabilité, il a prévenu les parties intéressées que la loi ne serait pas éludée jusqu'à ce que l'enquête commencée fût terminée, et jusqu'à ce que le Gouvernement sût si l'enquête réussirait à établir des raisons suffisantes pour autoriser oui ou non la sortie des navires.

"Si tout autre grand crime ou méfait était en train de se commettre, pourrait-on douter que le Gouvernement ne fût justifié à prendre des mesures pour empêcher d'échapper à la justice toute personne dont la conduite serait sous le coup d'une enquête, jusqu'à ce que cette enquête fût terminée? Dans une cause criminelle, nous savons que la marche ordinaire consiste à aller devant un Magistrat; on procède à une information d'un caractère fort imparfait pour justifier l'envoi de l'accusé en prison en attendant son jugement. Dans l'intervalle, le prisonnier est amené à différentes reprises devant le Juge Instructeur. Mais cette marche ne peut pas être suivie dans les cas de saisie de vaisseaux de cette espèce. La loi ne nous en donne pas les moyens. Et c'est ainsi, par conséquent, que le Gouvernement, sous sa propre responsabilité, a dû agir et a agi en décidant que ce qui avait eu lieu relativement à l'Alabama ne se renouvellerait pas par rapport à ces navires, et qu'ils ne sortiraient pas de la Mersey

pour aller rejoindre la marine des Puissances belligérantes, contrairement à nos lois, s'ils en avaient l'intention, tant que l'enquête pendante n'aurait pas abouti à une conclusion propre à mettre le Gouvernement en mesure de juger si ces bâtiments étaient réellement destinés à un but inoffensif.

" Le Gouvernement est décidé à pousser jusqu'à une conclusion légitime l'enquête qu'il fait faire, afin que l'on puisse voir si ces investigations aboutissent à prouver, oui ou non, si ces vaisseaux sont destinés aux Confédérés; en attendant, il n'a pas voulu permettre qu'on déjouât les fins de la justice en éloignant subitement les navires des eaux du fleuve.

" Il est impossible de porter la cause du Gouvernement devant la Chambre; mais le Gouvernement a agi sous l'empire d'un sentiment sérieux de ses devoirs envers lui-même, envers Sa Majesté, *envers les Etats Unis, nos alliés, envers toute autre nation avec qui Sa Majesté est en relations d'amitié et d'alliance, et avec qui des questions de ce genre peuvent par la suite s'élever.*

" Le sentiment de son devoir lui a fait voir que ce n'est là ni une question à traiter légèrement, ni une question sans importance. Si l'on avait réellement l'intention d'éluder la loi du Royaume, c'était le devoir du Gouvernement de se servir de tous les moyens possibles pour constater la vérité et pour empêcher l'évasion de vaisseaux destinés à attaquer une Puissance amie."

Les sentiments exprimés dans ce discours font honneur à l'homme, et à l'homme d'Etat. Ici, enfin, on reconnaît le langage d'une conscience éclairée, et d'un jurisconsulte à la hauteur de ses grands devoirs, au lieu des excuses et des faiblesses qui remplissent la correspondance de Lord Russell. Chaque mot de ce mémorable discours est digne de considération.

Ici, c'est le Gouvernement qui a agi sous sa propre responsabilité, et qui a détenu les vaisseaux suspects. C'est le Gouvernement qui a prévenu les parties intéressées que la loi ne serait pas éludée et que les navires ne sortiraient de la Mersey qu'après que l'enquête commencée aurait abouti à prouver si, oui ou non, ces vaisseaux étaient destinés aux Confédérés. C'est le Gouvernement qui a dû agir en décidant que ce qui avait eu lieu relativement à l'Alabama (et j'ajoute, par parenthèse, relativement à la Florida), ne se renouvellerait pas par rapport à ces navires. Et le Gouvernement a agi sous l'empire d'un sentiment sérieux de ses devoirs envers lui-même, envers Sa Majesté, envers les Etats Unis, et envers toute autre nation avec laquelle Sa Majesté a des relations d'amitié et d'alliance comme avec les Etats Unis.

Souvenons-nous que conformément aux conseils de Sir Roundell Palmer, le Gouvernement avait déjà intenté des poursuites judiciaires en règle contre l'Alexandra et le Pampero.

Et c'est le Gouvernement qui agissait, poussé par le sentiment de ses devoirs envers les Etats Unis. Quel contraste avec ce que le Gouvernement ne faisait pas relativement à l'Alabama et à la Florida!

Le Gouvernement avait rejeté sur Mr. Adams et sur Mr. Dudley tous soins relatifs à l'Alabama et à la Florida; refusant d'agir sous sa responsabilité, il avait dédaigneusement invité les Etats Unis à agir sous leur responsabilité. Il est resté les bras croisés, tandis que des eserocs sans foi et sans honte le trompaient indignement au sujet de la propriété et de la destination de ces navires. Nulle enquête provisoire, nulle initiative de la part du Gouvernement; refus absolu d'agir autrement que par une poursuite judiciaire, et celle-ci due à l'initiative des Etats Unis.

Or, qu'a fait le Gouvernement, agissant de lui-même et sous sa propre responsabilité dans le cas des "rams?" A-t-il provoqué une poursuite judiciaire? A-t-il saisi les navires? Les a-t-il arrêtés? A-t-on agi sur des témoignages suffisants pour justifier la saisie, et pareils à ceux qu'on avait réclamés de Mr. Adams et de Mr. Dudley à l'égard de la Florida et de l'Alabama? Non, aucune de ces précautions n'a été prise. Mais le Gouvernement a ordonné une enquête semblable à celle que Mr. Adams l'avait prié de faire pour la Florida et à détenu les "rams," en attendant le résultat de l'enquête, "afin de se servir de tous les moyens possibles pour constater la vérité et pour empêcher l'évasion de vaisseaux destinés à attaquer une Puissance amie."

Voici les dues diligences des Règles du Traité: "Se servir de tous les moyens possibles pour constater la vérité et pour empêcher l'évasion des vaisseaux."

Donc, pour établir jusqu'à l'évidence la plus absolue, que le Gouvernement Anglais n'avait pas employé les dues diligences, dans le cas de la Florida et dans celui de l'Alabama, il suffit de noter ce que le Gouvernement a obstinément refusé ou certainement négligé de faire relativement à ces vaisseaux, et ce qu'il a fait activement et de sa propre initiative relativement aux "rams." La comparaison amène forcément une conclusion qui est à la charge de la Grande Bretagne. Et Sir Hugh Cairns avait pleinement raison de dire à cette occasion:—"Ou le Gouvernement doit soutenir que ce qu'il a fait dans l'affaire des "rams," n'était pas constitutionnel, ou il aurait dû agir de même à l'égard de l'Alabama (et j'ajoute de la Florida), et il est responsable."

Reste à savoir exactement, ce que le Gouvernement a fait à l'égard des "rams."

Sir Roundell Palmer affirme catégoriquement que ces navires n'avaient pas été saisis, mais qu'ils avaient été détenus. Il réitère cette déclaration.

Dans un autre discours, il est vrai, en parlant de l'Alexandra, il dit que le Gouvernement croyait de son devoir de saisir ce navire ou bâtiment, selon la procédure imposée par les lois de la Douane. (Argument, page 15.)

Mais telle n'était pas la procédure suivie à l'égard des "rams," car ils n'étaient pas saisis du tout ; ils étaient simplement détenus. Mais détenus, comment ? Le contexte implique clairement qu'ils étaient détenus, au moyen d'une notification de la part du Gouvernment, aux constructeurs, et aux prétendus propriétaires, sans doute avec des ordres correspondants adressés aux officiers de la Douane.

Le Conseil de la Grande Bretagne affirme, hautement et positivement, que les moyens adoptés sous la responsabilité du Gouvernment, c'est-à-dire, par le mouvement spontané des Ministres dépositaires du pouvoir exécutif de la Couronne, étaient parfaitement légaux et constitutionnels. Nous, Conseils des Etats Unis, nous sommes heureux d'être, sous ce rapport, du même avis que le Conseil de la Grande Bretagne.

Mais alors, on n'a pas pratiqué les dues diligences au sujet de la Florida et de l'Alabama. La conséquence est inévitable.

Dans l'extrait du discours de Sir Roundell Palmer, au sujet de l'Alexandra, je trouve une phrase qui me frappe. Il dit : "Vous ne pouvez pas l'arrêter en allant chez un Magistrat ; il faut que cela se passe sous la responsabilité du Gouvernement."

Comment ? *il faut* que cela se passe sous la responsabilité du Gouvernement ! Alors les officiers de la Douane se sont moqués de Mr. Dudley ; ou bien, ils l'ont sciemment trompé, quand ils lui ont recommandé de commencer des poursuites judiciaires sous sa propre responsabilité, à lui, Dudley. Alors aussi quand Lord Russell a demandé des preuves à Mr. Adams, celui-ci avait mille fois raison de répondre qu'il n'avait ni le pouvoir, ni les moyens d'intenter des poursuites judiciaires en Angleterre. Alors, aussi, le Gouvernement a totalement failli à son devoir des dues diligences relativement à la Florida et à l'Alabama.

Des Pouvoirs de la Couronne d'Angleterre.

Le Conseil de la Grande Bretagne essaie de répondre aux arguments des Etats Unis, relativement aux pouvoirs de la Couronne, en poussant les hauts cris, en parlant d'arbitraire, et de violation des lois et de la constitution d'Angleterre.

Entendons-nous. Ou bien l'Angleterre possède les moyens d'empêcher dans sa juridiction territoriale les entreprises belligérantes d'individus non autorisés ; ou bien, elle ne les possède pas. On ne peut pas échapper à ce dilemme.

Si elle possède ces moyens et ne les exerce pas, elle manque aux dues diligences du Traité.

Si elle ne les possède pas, à cause des entraves qu'elle a permis à ses légistes de lui imposer, et si elle en est arrivée au point d'abdiquer toute véritable souveraineté nationale,—elle manque encore aux dues diligences du Traité.

Comme le dit bien Vattel :—"Si un Souverain qui pourrait retenir ses sujets dans les règles de la justice et de la paix, souffre qu'ils maltraitent une nation, ou dans son corps ou dans ses membres, il ne fait pas moins de tort à toute la nation que s'il la maltraitait lui-même."

Comme le dit Phillimore :—"Chaque Etat a le droit d'attendre d'un autre l'accomplissement des obligations internationales sans égard à ce que peuvent être les moyens municipaux qu'il possède pour les faire observer."

Comme le dit Dana, à propos des lois des Etats Unis :—

"Notre obligation naît du droit des gens et non de nos propres Statuts, et c'est du droit des gens qu'elle reçoit sa mesure. Nos Statuts ne sont qu'un moyen de nous mettre en état de remplir notre devoir international, et non les limites affirmatives de ce devoir. Nous sommes autant responsables de l'insuffisance d'une machine, quand nous connaissons les moyens et avons l'occasion d'y porter remède, que de tout autre genre de négligence. Certes, on peut dire qu'une nation est plus responsable d'une négligence ou d'un refus qui est un acte souverain, continu, et ayant un caractère de généralité dans sa consommation, que d'une négligence dans un cas particulier qui peut provenir de la faute de subordonnés."

Tel est le droit des gens reconnu. Le Conseil de la Grande-Bretagne l'admet. Alors, à quoi bon disserter sur l'arbitraire ?

Le Conseil paraît prétendre que ce qui est fait par un Gouvernement quelconque en dehors des prévisions d'*une loi écrite* est l'arbitraire.

Je comprends cette idée quand on parle d'un Gouvernement *véritablement*

constitutionnel, comme l'Italie, comme le Brésil, comme la Suisse, comme les Etats Unis. Dans ces pays, les fonctionnaires exécutifs, Roi, Empereur, Président, n'importe le titre, et les fonctionnaires législatifs, ont chacun leurs devoirs et leurs pouvoirs tracés d'avance par un pacte national écrit. Là, quand le *Gouvernement*, c'est-à-dire, la totalité des pouvoirs nationaux, agit, il agit conformément au pacte, à la Constitution, et par l'intermédiaire des fonctionnaires spécialement désignés d'après la Constitution. Mais où trouver la Constitution de l'Angleterre? Personne n'ignore que ce qu'en Angleterre on appelle "la Constitution" n'est que l'ensemble des actes législatifs, des coutumes, des usages, et des traditions reconnues, et de l'opinion publique du Royaume. Pour l'administration exécutive, il y a la Couronne représentée par ses Ministres responsables, qui dans ces derniers temps se sont arrogé le titre de "Gouvernement;" il y a le Parlement, qui fait des lois et qui contrôle les Ministres, et par eux, la Couronne; il y a les Tribunaux, qui interprètent les lois écrites et qui interprètent aussi les coutumes, les usages, les traditions ayant force de lois; et pour l'opinion, il y a, ma foi, les journaux de Londres.

Maintenant, les Ministres en leur qualité de fondés de pouvoir de la Couronne et du Parlement, déclarent la guerre, constatent la belligérance étrangère, concluent des Traités, reconnaissent des Etats nouveaux, enfin, surveillent et dirigent les rélations extérieures du Royaume

Est-ce là de *l'arbitraire*? Je le nie. C'est *la loi*, qui s'est établie par tradition, précisément comme s'y sont établis l'existence du Parlement, le droit de primogéniture, les priviléges de la Pairie.

Mais l'acte d'une déclaration de guerre par la Couronne, ou la conclusion d'un Traité quelconque, trouble profondément les intérêts particuliers. Parmi les moindres de ses effets, serait celui d'imposer des entraves à la sortie des vaisseaux marchands des ports du royaume. Cependant, dans cette controverse, on nous invite à croire qu'il serait *arbitraire* de faire détenir provisoirement un vaisseau marchand pour les fins d'une simple enquête motivée par des soupçons sur la légalité de son équipement et de sa destination.

Le pouvoir du Parlement, voilà l'arbitaire. Un Parlement censé omnipotent, qui peut chasser et même juger un Roi, introduire une dynastie nouvelle, abolir l'hérédité et tous ses priviléges législatifs et judiciaires, changer la religion de l'Etat, confisquer les biens de l'Eglise, enlever à la Couronne l'administration des relations internationales du pays,—n'est-ce pas le règne de l'arbitraire?

Mais jusqu'à présent, le Parlement n'a pas enlevé à la Couronne, c'est-à-dire, aux Ministres, la direction des affaires étrangères. Il peut s'arroger une partie de cette direction, comme il l'a fait dans d'autres pays constitutionnels; mais quant à se l'arroger entièrement, ce serait difficile dans l'état actuel de l'Europe.

J'honore l'Angleterre. Le fond et même la forme des institutions des Etats Unis sont empruntés à la mère-patrie. Nous sommes ce que nous sommes, d'abord parce que nous sommes de race, de langue, de religion, de génie, d'éducation et de caractère Britanniques. J'ai étudié l'Angleterre chez elle, dans ses Colonies, dans ses établissements d'outre-mer, et surtout dans son magnifique Empire des Indes. Elle est riche, grande, puissante, comme Etat, non, selon moi, à cause de la sujétion de ses Ministres à la critique méticuleuse et journalière de la Chambre des Communes, mais en dépit de cela, comme je me souviens de l'avoir entendu dire par feu Lord Palmerston. Ce n'est pas le côté fort, c'est plutôt le côté faible de son Gouvernement; on le voit du reste dans cette controverse. Il ne vaut donc pas la peine de refuser à la Couronne des pouvoirs exécutifs nécessaires à la paix du royaume, ni dans le cas actuel de crier à l'arbitraire, en présence de l'omnipotence reconnue, c'est-à-dire, de l'arbitraire absolu du Parlement, dont la force réelle tend chaque jour à se concentrer de plus en plus dans la seule Chambre des Communes.

Une telle constitution, aussi indéterminée, continue de fonctionner, grâce surtout au bon sens pratique du peuple Anglais, à son respect salutaire des traditions, à son génie gouvernemental particulier, à sa louable fierté nationale, et à l'élasticité de ses formes politiques, élasticité qui permet de recevoir et de placer dans la *classe gouvernante* tout ce qui, n'importe où, dans les limites de l'empire, se met en relief par des qualités éminentes.

Ainsi se trouvent conciliés la liberté et l'ordre. Mais la liberté autant que l'ordre demande que la paix publique ne soit pas troublée par les intrigues et les intérêts mercenaires des individus, faute d'un peu de pouvoir répressif confié aux mains de la Couronne.

Le Parlement dans son omnipotence aurait bien pu remédier aux défauts de la loi municipale, s'il l'avait voulu. Il l'a fait, depuis lors. Mais il ne l'a pas fait en

temps utile, et c'est là ce qui constitue un manquement aux dues diligences du Traité

L'Amérique, au contraire, l'a fait plusieurs fois en temps utile, dans l'intérêt de ses relations amicales avec la Grande Bretagne.

Les Vaisseaux Russes.

Le Conseil cite et approuve l'opinion des Juges Anglais dans les Rapports de Forteseue. Ils furent d'avis " que la Couronne n'avait pas le pouvoir, selon les lois, de défendre la construction des navires de guerre, ou des navires d'une grande force, pour le compte des étrangers dans un des Etats de Sa Majesté (p. 16).

Deux Juges avaient émis cet avis en 1713; d'autres Juges (on ne dit pas combien) émirent le même avis en 1721. On construisit les vaisseaux pour la Russie, et en opposition aux remontrances de la Suède.

En 1713, il y avait guerre ouverte entre la Russie et la Suède, C'était quatre ans après la bataille de Pultava. Charles XII s'était réfugié en Turquie, et le Sultan s'efforçait en vain de lui persuader qu'il devait retourner dans ses propres Etats.

L'Electeur de Hanovre, devenu Roi d'Angleterre, venait de prendre sa part dans les dépouilles de Charles XII. La Russie avait conquis la Finlande.

En 1714, les Russes brûlèrent et détruisirent la flotte Suédoise devant l'Ile d'Aland. S'il est vrai que le Czar avait fait construire des vaisseaux de guerre en Angleterre, il est hors de doute que ces vaisseaux contribuèrent à la victoire d'Aland.

Conclusion: en 1713 les intérêts de l'Electeur de Hanovre le portaient à favoriser, ou tout au moins à ne pas entraver la politique du Czar; et l'avis des deux Juges d'alors étaient des avis officieux sans valeur aucune.

Quant à l'avis de 1723, le vent avait alors tourné; l'Angleterre favorisait la Suède; la paix de Neustadt venait d'être conclue; et la construction des vaisseaux de guerre pour le service du Czar n'était plus en conflit avec le droit des gens de l'Europe.

Revenons à la question du pouvoir de la Couronne. Etaient-ce des vaisseaux armés en guerre ou des vaisseaux non armés en guerre qu'on construisit pour le Czar? L'histoire n'est pas explicite sur ce point. Dans le premier cas, il y aurait eu, en 1713, violation manifeste du droit des gens. Donc, il y a lieu de croire que ces vaisseaux n'étaient pas armés en guerre.

La Rapport parle "*des Etats de Sa Majesté.*" Quels Etats? L'Angleterre? J'en doute.

Or, supposons que depuis 1713 jusqu'à la loi de 1819, il n'y ait eu en Angleterre aucune loi, aucun pouvoir coërcitif, capables d'empêcher dans ses ports la construction, l'équipement, l'armement, et l'expédition des vaisseaux de guerre destinées à combattre contre un Etat ami et allié de l'Angleterre.

Alors, durant ce grand dix-huitième siècle, et durant on ne sait combien de siècles antérieurs, l'Angleterre aurait vécu dans un état de complète impuissance à defendre sa propre souveraineté et à protéger ses amis contre les attentats des étrangers, qui faisaient de son territoire la base de leurs opérations belligérantes.

Je ne crois pas, je ne croirai jamais, que telle ait été l'impuissance nationale de l'Angleterre, et je ne comprends pas qu'on veuille pousser l'exagération de la liberté privée jusqu'au point d'annihiler toute souveraineté nationale, et de faire de l'Angleterre la complice involontaire de toutes les guerres maritimes de l'Europe.

Par conséquent, j'écarte de la question les opinions rapportées par Forteseue. Je n'ai pas à pénétrer ce mystère; mais assurément il y a un mystère; et je prie les Arbitres de vouloir bien consulter les nombreux avis contraires rassemblés dans la note (B) annexée au Plaidoyer des Etats Unis.

Des lois des Pays Etrangers.

Le Mémoire de la Grande Bretagne avait affirmé que les Etats Unis et la Grande Bretagne sont les deux seuls pays qui aient des lois municipales propres à assurer l'observation de la neutralité. En réponse à cette assertion, nous avons cité et commenté les lois de divers pays étrangers et les observations des juristes de ces pays; et ces citations démontrent que de telles lois existent partout en Europe et en Amérique.

Le Conseil conteste cette proposition en se fondant sur la *brièveté* de la plupart de ces lois étrangères, et sur l'appréciation imparfaite d'un homme d'Etat Néerlandais, sans examiner de près le texte de ces lois, ainsi que les commentaires de juristes nationaux qui en établissent la véritable nature.

En ceci, le Conseil se méprend sur la qualité caractéristique de toutes les lois de

ces pays, je veux dire leur brièveté comparativement aux lois de la Grande-Bretagne et de ses imitateurs les Etats Unis.

Dans toutes les lois dites "de neutralité," dans quelque pays que ce soit, il y a deux objets capitaux, premièrement, défendre le territoire national contre tout empiètement de la part des étrangers; et secondement, empêcher des individus, nationaux ou étrangers, de commettre de leur propre autorité des actes d'hostilité étrangère sur le territoire national, pouvant exposer l'Etat à une déclaration de guerre, ou à des représailles de la part d'un autre Etat.

Telles sont les prévisions de plusieurs codes, comme, par exemple, ceux de France, d'Italie, des Pays-Bas, de Portugal, d'Espagne, et de Belgique.

Il saute aux yeux que ces prévisions, des codes pénaux des divers pays de l'Europe, embrassent le même sujet et ont les mêmes objets que la loi Anglaise et que la loi Américaine, en omettant toutefois les détails de procédure. Mais, en France, en Italie, et ailleurs, on trouve les règles de procédure dans les codes de procédure, et il devient inopportun et inutile de répéter ces règles à propos de chaque article du code pénal.

Le Ministre Néerlandais, dans la dépêche citée, signale la loi de neutralité de son pays, aprés avoir dit inconsidérément qu'il n'existait pas de loi pareille. Ce n'est que sur une équivoque de mots que le Conseil fonde les inductions extravagantes auxquelles cette dépêche a donné lieu. Mais la loi Néerlandaise est copiée sur le code pénal Français. Il est impossible de se méprendre sur sa teneur et sa signification.

De plus, cette loi est longuement commentée par des écrivains Français d'une autorité incontesté, Dalloz, Chauveau et Hélie, Bourguignon, Carnot, et autres, qui tous abondent dans la sense de notre Plaidoyer. Tout cela se trouve dans les pièces justificatives annexées à notre Contre-Mémoire. Et nous y avons ajouté une consultation de feu M. Berryer, qui démontre que ces articles du code Français s'appliquent à certaines menées des Confédérés en France au sujet de l'équipement des bâtiments de guerre, menées en toute identiqus à celles que ont eu lieu en Angleterre (Contre-Mémoire des Etats Unis, tr. Française, p. 490).

A l'appui de cette conclusion nous avons cité des décisions des Tribunaux Français.

Il en est de même pour l'Italie: nous avons cité des commentateurs Italiens à l'appui de notre proposition, et ces commentateurs, en expliquant leur propre loi, adoptent les conclusions des commentateurs Français.

On retrouve les mêmes idées dans les commentateurs Espagnols et Portugais au sujet de prévisions semblables de leurs codes. Nous citons Silva Ferrao, pour le Portugal, et Pacheco et Gomez de la Serna, pour l'Espagne (*ubi supra*, pp. 553, 576). Ces commentateurs raisonnent aussi bien que nous, ce me semble, au sujet des expéditions militaires, et des corsaires. Je ne conçois pas ces allures dédaigneuses au sujet des lois étrangères. Il ne faut pas croire que tout savoir juridique, que toute moralité des idées législatives soient l'apanage exclusif et absolu de l'Angleterre et des Etats Unis.

Le Conseil glisse très-légèrement sur les lois de la Suisse et du Brésil.

En étudiant les lois du Brésil on y trouve que les définitions des crimes de cette catégorie sont plus compréhensives et plus complètes que celles des lois d'Angleterre (*ubi supra*, p. 594).

Parmi les pièces annexées au Mémoire Britannique, il y a deux lettres qui donnent à réfléchir.

Sir A. Paget, Ministre Anglais en Portugal, en accusant réception d'une dépêche du Ministre d'Etat Portugais, ajoute:

"Il y a néanmoins un point sur lequel le Gouvernement de Sa Majesté désire beaucoup avoir des renseignements, et auquel la note de votre Excellence et les pièces qu'elle renferme n'ont pas trait, c'est à savoir, quelles lois ou quels règlements, ou quels autres moyens sont à la disposition du Gouvernement Portugais pour empêcher sur son territoire les actes qui seraient en violation avec (*sic*) les lois de la neutralité Portugaises, comme il est contenu dans les déclarations que votre Excellence m'a transmises."

Et M. Cazal Ribeiro répond comme suit:

"En réponse, il est de mon devoir d'informer votre Excellence que les lois et les règlements sur cette matière sont ceux qui étaient contenus dans ma note du 25 de ce mois ou mentionnés dans ces documents; et les moyens d'exécution, dans le cas d'une violation de neutralité, sont des procédures criminelles, l'emploi de la force, les plaintes adressées aux Gouvernements étrangers ou d'autres moyens pouvant amener quelque circonstances particulières."

Je le crois bien. Là où la volonté se trouve, les moyens ne manquent pas.

Le Conseil se trompe quand il soutint que les Etats Unis ne comprennent pas ces lois commentées si clairement par des écrivains cités, et appliquées par des Tribunaux et des jurisconsultes, du moins aussi savamment que les lois correspondantes de l'Angleterre.

Pour la Suisse, nous avons rassemblé dans nos pièces justificatives des documents précieux, qui démontrent le zèle et la bonne volonté que cette République apporte au maintien de sa neutralité au milieu des grandes guerres Européennes.

Je cite aussi l'explication des lois de la Suisse donnée par le Conseil Fédéral à propos de l'affaire Concini, pour démontrer que le Conseil de la Grande Bretagne se méprend du tout au tout dans son appréciation de ces lois, aussi bien que dans l'appréciation de celles de l'Italie et du Brésil (Droit Public Suisse, tom. i, p. 459).

Maintenant, je me rapporte aux honorables Arbitres: qu'ils jugent et décident qui a raison, au sujet de ces lois, de la Grande Bretagne se fondant sur un mot équivoque dans une dépêche diplomatique, ou des Etats Unis, se fondant sur le texte même des lois et les commentaires des meilleurs jurisconsultes de la France, de l'Italie, de l'Espagne, du Portugal, et du Brésil.

Je m'en réfère surtout aux honorables Arbitres pour savoir si les institutions de l'Angleterre sont vraiment plus constitutionnelles que celles de l'Italie, du Brésil, de la Suisse. D'après l'opinion du Conseil de la Grande Bretagne, ces pays ne possèdent pas des lois de neutralité. Mais ils observent les devoirs de la neutralité et ils les observent sans porter atteinte à leur Constitution. Qui donc se trompe à leur égard? Est-ce l'Angleterre? Est-ce l'Amérique?

Les Lois des Etats Unis.

Le Conseil de la Grande Bretagne consacre beaucoup d'espace à la discussion des lois des Etats Unis. Il me faudra, je crois, moins de temps pour répondre à son argumentation.

Le Conseil s'efforce de prouver que la loi des Etats Unis, en tant ce qui regarde la question, est limitée au cas d'un vaisseau armé en guerre.

A cet effet, il cite les expressions du 3me article de la loi, qui frappe de certaines peines "toute personne qui dans les frontières des Etats Unis équipe et arme *en guerre*, ou tâche d'équiper et *armer en guerre*, ou prend une part intelligente à l'*approvisionnement*, *l'équipement*, ou l'armement en guerre d'aucun navire ou bâtiment," dans le but d'employer ce navire ou bâtiment au service d'une Puissance belligérante étrangère.

Appuyé sur ces expressions de la loi, il croit que pour constituer le crime il faut que le navire ait été armé en guerre, ou qu'on ait tenté de l'armer en guerre.

Mais, en matière de jurisprudence, cette interprétation de la loi est parfaitement erronée. Il est établi aux Etats Unis que ce n'est pas le caractère des preparatifs qui constitue le crime, mais l'intention qui préside aux actes. La doctrine est exposée par Dana, comme suit:

"Quant à la préparation de navires dans notre juridiction pour des actes d'hostilité ultérieurs, le critérium que nous invoquons n'est pas l'étendue et le caractère des préparatifs, mais l'intention qui préside aux actes particuliers. Si une personne accomplit ou tente d'accomplir un acte tendant à ces préparatifs dans l'intention que le navire soit employé à des actes d'hostilité, cette personne est coupable, sans qu'on ait égard à l'achèvement des préparatifs ou au degré auquel ils peuvent avoir été poussés, et quoique sa tentative n'ait en rien fait avancer l'achèvement de ces préparatifs. Fournir des matériaux dont il doit être fait usage, en connaisance de cause et avec intention, constitue un délit. C'est pourquoi il n'est pas nécessaire de démontrer que le navire était armé, ou était, jusqu'à un certain point, ou à n'importe quelle époque avant ou après l'acte incriminé, en état de commettre des actes d'hostilité.

"On n'a point soulevé de litiges relativement à la réunion des matériaux qui, pris isolément, ne peuvent servir à des actes d'hostilité, mais qui, réunis, constituent des instruments d'hostilité; car l'intention couvre tous les cas et fournit le critérium de la culpabilité. Peu importe où la réunion doit avoir lieu, dans tel endroit ou dans tel autre, si les actes commis sur notre territoire,—qu'il s'agisse de construction, d'équipement, d'armement, ou de fourniture de matériaux pour ces actes,—font partie d'un plan par suite duquel un navire doit être expédié dans le but d'être employé en croisière." (Plaidoyer des Etats Unis, pp. 349-50.)

Ces extraits de Dana font autorité dans la matière. La véritable interprétation de la loi a été établie par une décision de la Cour Suprême des Etats Unis. La Cour a déterminé "qu'il n'est pas nécessaire que le vaisseau soit armé ou dans une condition qui lui permette de commettre des hostilités au moment de son départ des Etats Unis." (United States *v.* Quiney, Peters' Reports, vol. vi, p. 445; *vide* Opinions, vol. iii, pp. 738, 741.)

Telle est la loi comme on l'entend et comme on la pratique en Amérique. Deux

des Conseils des Etats Unis, M. Evarts et moi-même, avons administré le Département de la Justice, et nous avons de cette loi une connaissance si personnelle que nous aussi pouvons en parler d'autorité. J'affirme que l'interprétation de cette loi émise par le Conseil est absolument contraire à l'interprétation reconnue aux Etats Unis.

J'appelle l'attention sur les expressions de la loi temporaire de 1838, rapportée par moi-même au Congrès des Etats-Unis. Cette loi permet la saisie "de tout vaisseau ou *véhicule*," armé ou non armé, quand il y a des circonstances quelconques qui permettent de croire que ce "vaisseau ou véhicule" est destiné à des opérations militaires contre un Etat étranger (United States Statutes, vol. v, p. 213.)

Cette loi avait été rédigée selon l'interprétation reçue de la loi permanente.

Il s'ensuit que tout l'échafaudage de critique que le Conseil construit au sujet des pouvoirs préventifs du Président des Etats Unis s'écroule. Il suppose que ce pouvoir est limité au cas d'un vaisseau armé en guerre, parce qu'il suppose que les clauses pénales n'ont que cette étendue. Il se trompe sur chaque point. Le pouvoir préventif du Président s'applique à tous les cas de la loi, à "toutes les prohibitions et pénalités de la loi." Or la loi n'exige pas que le vaisseau soit armé en guerre; il suffit que son propriétaire ait l'intention de l'employer dans des actes d'hostilité contre un Etat ami des Etats Unis.

Le cas de Gelston *v.* Hoyt, cité par le Conseil, ne touche que la manière d'exercer les pouvoirs préventifs de la loi, et il n'affecte en rien les pouvoirs eux-mêmes.

Dans les pièces justificatives annexées au Contre-Mémoire des Etats Unis se trouvent de nombreux exemples de l'exercice de ce pouvoir préventif par le Président. Le fait d'être armé ou non n'est qu'une circonstance qui pèse avec plus ou moins de poids sur la vraie question, la question des intentions du propriétaire du vaisseau.

Le Conseil énumère les cas de dates diverses où des aventuriers se sont soustraits à la loi Américaine.

Nous avons protesté dans notre Plaidoyer, et nous persistons à protester, contre l'opportunité de tels arguments. L'Angleterre est devant le Tribunal, accusée d'avoir manqué aux dues diligences des Règles conventionnelles du Traité de Washington. Si l'Amérique a failli ou non à ses devoirs de neutralité d'après le droit des gens, là n'est pas la question soumise au Tribunal. L'Amérique répond en temps et lieu de ses actes à ceux à qui ils ont pu nuire.

Le Conseil a cité des extraits de la correspondance des officiers des Etats Unis, ayant rapport aux questions légales, qui surgissent de temps en temps dans l'application de la loi. Ces questions sont, sans doute, analogues aux questions qui se présentent en Angleterre. Malheureusement la loi Américaine, quoique antérieure à la loi Anglaise, sorte d'une école de législation commune aux deux pays, ce qui donne beaucoup à faire aux jurisconsultes et aux tribunaux.

Nous avons discuté ces questions dans notre Plaidoyer. Mais nous ne pouvons discuter en détail tous ces faits laborieusement amassés par le Conseil, sans une plus longue préparation: ce que nous ne voulons pas demander au Tribunal.

La question capitale est celle des pouvoirs du Président. La matière est élucidée par Dana. Il dit:—

> "Quant aux peines et aux réparations à infliger, les coupables sont passibles d'amende et d'emprisonnement, et le navire, son équipement et ses meubles, ainsi que tous les matériaux fournis pour son équipement, sont confisqués. En cas de soupçon, les employés des Douanes peuvent détenir les navires, et l'on peut exiger que les parties intéressées fournissent caution pour répondre qu'elles ne l'emploieront point à des actes d'hostilité; et le Président a la faculté d'employer l'armée et la marine, ou la milice, ainsi que les forces civiles, pour saisir les navires, ou pour contraindre les navires coupables qui ne sont pas sujets à la saisie à sortir de nos ports. Il est laissé à la discrétion de l'Exécutif de juger quels sont les navires dont on doit exiger le départ." (Plaidoyer Américain, p. 350.)

Un seul exemple suffit pour donner une idée de l'étendue reconnue des pouvoirs du Président.

L'Espagne faisait construire dans les chantiers de New York trente canonnières destinées à opérer contre les insurgés de l'Ile de Cuba. C'étaient des vaisseaux impropres à de longues courses. Ils n'étaient pas armés, et n'avaient à bord ni canons, ni affûts, ni aucun autre engin de combat. La guerre existait de droit, sinon de fait, entre l'Espagne et le Pérou. Le Ministre du Pérou aux Etats Unis porta plainte au sujet de ces canonnières. Il ne prétendit pas qu'elles fussent destinées à opérer contre le Pérou, attendu qu'elles ne pouvaient pas passer le Cap Horn. Mais il prétendit qu'appliquées à la garde des côtes de Cuba, elles libéreraient de ce service d'autres vaisseaux, qui pourraient ainsi attaquer le Pérou.

Le Président se rendit à ces raisons et ordonna la détention en bloc, de ces trente

vaisseaux, jusqu'à ce que l'Espagne et le Pérou eussent réglé leurs différends, grâce à la médiation des Etats Unis.

Juridiction du Tribunal.

Une question des diligences se présente au sujet d'un décret erroné d'une Cour d'Amirauté.

Je pose en principe que le Gouvernement qui intente des poursuites judiciaires et qui se soumet, sans appeler, à un décret erroné, n'a pas le droit d'alléguer ce décret, pour excuser des torts ultérieurs appartenant à la même classe de faits. C'est, je crois, faillir doublement aux dues diligences prescrites par les Règles du Traité. Je m'abstiens de discuter cette question.

Mais j'affirme que le décret erroné ne lie en aucune manière. Cela, du reste, est évident. De plus, j'affirme surtout que le décret ne lie d'aucune manière un Tribunal international.

Le principe se trouve énoncé et suffisamment discuté dans les Instituts de Rutherforth, ouvrage Anglais de mérite et d'autorité.

Wheaton, et d'autres écrivains d'autorité eux aussi, adoptent les vues de Rutherforth.

La question a été soulevée par les Commissaires Anglais et Américains, nommés pour statuer sur des stipulations du Traité dit de Jay. La circonstance suivante est rapportée dans les Mémoires de M. Trumbull, l'un des Secrétaires de cette Commission. Il paraît que dans le doute, les Commissaires ont consulté le Comte de Loughborough, grand Chancelier d'Angleterre. Celui-ci décida, que les Commissaires en leur qualité de tribunal international possédaient une juridiction complète, pour réviser les décrets d'un tribunal municipal quelconque, et de faire droit au Gouvernement lésé dans ses intérêts ou dans ceux de ses sujets. Les Commissaires ont agi en conséquence.

J'estime que telle est la juridiction reconnue, dans le cas de réclamations particulières, par de nombreuses commissions internationales, qui ont siégé depuis lors en Angleterre et en Amérique.

Conclusion.

Je viens de traiter quelques-unes des questions posées par le Conseil de la Grande Bretagne, uniquement pour l'acquit de ma conscience. Je ne crois pas qu'elles soient de nature à exercer une influence prépondérante sur les conclusions des Arbitres. Les Règles du Traité sont décisives dans toutes les questions soulevées par les Etats Unis. Si ces Règles sont l'expression vraie du droit des gens, comme j'en suis convaincu, c'est bien : si elles dépassent le droit des gens, elles constituent forcément le droit conventionnel du Tribunal.

Peu importe l'interprétation de la loi municipale d'Angleterre. L'interprétation de la loi des Etats Unis importe moins encore. Les lois des autres Etats de l'Europe n'importent en rien. La conduite des Etats Unis envers l'Espagne ou le Mexique, ou même envers la Grande Bretagne, n'est pas ici en cause. Il n'y a qu'une seule question, et la voici : L'Angleterre a-t-elle failli, oui ou non, aux dues diligences requises par le Traité de Washington ?

Les Etats Unis soutiennent ici des principes qui sont, à leur avis, d'une haute importance pour toutes les nations maritimes, et surtout pour la Grande Bretagne, plus encore que pour les Etats Unis. En conséquence, nous attendons avec respect et avec soumission, mais aussi sans inquiétude, le jugement de cet auguste Tribunal.

C. CUSHING.

NOTE.

Dans le cas où les Arbitres penseraient qu'il vaut la peine d'étudier attentivement le sujet, nous les renvoyons aux documents suivants, qui démontrent jusqu'à l'évidence l'activité spontanée que l'Exécutif a mise de tout temps à prévenir des équipements et des expéditions contraires au droit des gens, essayés dans les ports des Etats Unis :—

I.—*Contre-Mémoire des Etats-Unis et pièces justificatives.*

II.—*Correspondance relative aux affaires de Cuba dans le supplément en Anglais au Contre-Mémoire des Etats Unis.*

(Translation.)

Argument of Mr. Cushing, Counsel of the United States, before the Tribunal of Arbitration at Geneva, in reply to the Argument of Her Britannic Majesty's Counsel.

Mr. President and Gentlemen of the Tribunal,—

We are approaching, at least I hope so, the close of this lengthy discussion.

The two Governments had presented their Cases and Counter-Cases, supported by voluminous documents. They had also presented their respective Arguments, the whole in conformity with the stipulations of the Treaty of Washington (Articles IV and V).

Thus the regular arguments prescribed by the Treaty have been closed.

Now, at the request of one of the honourable Arbitrators, the Tribunal has requested from England, as it had the right to do, explanations on certain definite points, namely:—

1. The question of due diligence, generally considered.

2. The special question as to the effect of the commissions of Confederate ships of war entering British ports.

3. The special question as to supplies of coal in British ports to Confederate ships.

The Counsel of Great Britain has taken advantage of this opportunity to discuss the points laid down, and in reference to them to comment on the Argument of the United States.

I do not complain of this, but I state the fact.

We, the Counsel of the United States, accept the situation as prepared for us: for we had no desire further to occupy the attention of the Tribunal.

My two colleagues have discussed fully the second and third points. Scarcely have they left me a few words to say on the subject of the first point.

In fact, the task which has devolved on me is merely that of summing up the question, and adding some special observations.

I venture to address the Tribunal in French, in order to economize its precious time, and to reach the close of the discussion as soon as possible. For this object I willingly sacrifice all oratorical pretensions; I endeavour to make myself understood; that is all I aspire to.

The Question of Due Diligence.

We have now to discuss the question of due diligence generally considered.

What does this expression mean? Does the Tribunal require a theoretical and professorial lecture on due diligence. I do not think so. Such a discussion would be perfectly idle, for the following reasons:—

1. This theoretical question has already been discussed to satiety. Great Britain has discussed it three times in her Case, Counter-Case, and Argument, and she has allowed herself twelve whole months to reflect on it, and accumulate arguments and quotations for the instruction of the Tribunal. We, in the name of the United States, have not expended so many words, but we have said all we wished and desired to bring before the honourable Arbitrators.

2. The two Parties were agreed that the theoretical question no longer deserved their attention.

"Her Majesty's Government," says the British Counter-Case (page 22), "has not attempted a task which has baffled, as it believes, the ingenuity of jurists of all times and countries—that of defining with any approach to precision, apart from the circumstances of any particular case, what shall be deemed due diligence or reasonable care."

And the Counter-Case quotes and adopts the following passage (page 22, note):—

"'For the rest,' says a distinguished French jurist, treating of this subject in connection with private law, 'for the rest, whether the obligation in question is for a thing to be given, or for one to be done, the imputation of default is, in practice, hardly a question of law. The question of fact is always the dominant point, even if it is not the sole one.'—(Larombière 'Theorique et Pratique des Obligations,' vol. i, p. 417.)"

The Counsel of the United States, accepting the doctrine laid down by England, have replied as follows:—

"We concur in the final considerations of the British Counter-Case, on this subject of due diligence, in leaving 'the Arbitrators to judge of the facts presented to them only by the light of reason and justice, aided by the knowledge of the general powers and duties of administration which they possess, as persons long conversant with public affairs.'"—(British Counter-Case, p. 125. Argument of the United States, p. 342.)

We remain of this opinion: we refuse to retrace our steps and to discuss afresh

questions completely exhausted long ago, and which have been even admitted to be inopportune by both parties.

3. I recognize no diligence but the diligence prescribed by the Treaty. The Counsel of Great Britain appears to endeavour to establish rules of due diligence outside of the Treaty. It is too late to enter on this path. After the progress which the Tribunal has already made in its labours, it is no longer worth while to re-embark on the open sea, the vague* region of international law outside of the Treaty. We take our stand on the explicit words of the Treaty, which subordinates general international law to the compact of the three Rules—which is retrospective—and which expressly applies due diligence to the special cases and objects contemplated by those Rules.

For this last reason I refuse to follow the Counsel of Great Britain in his discussion on the question of the difference, if any, according to international law, between the duty of neutrals with regard to armed vessels and their duty with regard to vessels equipped for war but not yet armed.

The Treaty cuts this question short. It is sufficient to call attention to the first Rule:—

"A neutral Government is bound—

"First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use."

Note the three first conditions clearly laid down by the Rule—"the fitting out" (which has been omitted, without sufficient reason, in the English translation), "arming," "or equipping."

Note also the two following conditions, which are equally clear, "any vessel intended to cruize or carry on war," or "any vessel having been specially adapted in whole or *in part* to warlike use."

Looking to these conditions, so precise and definite, to which the diligence of the Treaty is to be applied, and considering the manifest uselessness of any discussion outside of these three Rules, it may well be suspected that the object of the Counsel of Great Britain in thus digressing from the Treaty, was to make a fitting preface to the observations which follow, designed to weaken, if possible, the force of the words of Sir Robert Phillimore and Sir Roundell Palmer quoted in the Argument of the United States.

Sir Robert Phillimore.

We have quoted from Sir Robert Phillimore's Commentaries on International Law the following passages:—

"There remains one question of the gravest importance, namely, the *responsibility of a State for the acts of her citizens*, involving the duty of a neutral to prevent armaments and ships of war issuing from her shores for the service of a belligerent, though such armaments were furnished and ships were equipped, built, and sent without the knowledge and contrary to the orders of her Government.

* * * * * * *

"It is a maxim of general law, that so far as foreign States are concerned, the will of the subject must be considered as bound up in that of his Sovereign.

"It is also a maxim that each State has a right to expect from another the observance of international observations, without regard to what may be the municipal means which it possesses for enforcing this observance.

"The act of an individual citizen, or of a small number of citizens, is not to be imputed without clear proof to the Government of which they are subjects.

"A Government may by *knowledge* and *sufferance*, as well as by direct *permission*, become responsible for the acts of subjects whom it does not prevent from the commission of an injury to a foreign State.

"A Government is presumed to be able to restrain the subject within its territory from contravening the obligations of neutrality to which the State is bound."

* * * * * * *

"A State is *primâ facie* responsible for whatever is done within its jurisdiction; for it must be *presumed* to be capable of preventing or punishing offences committed within its boundaries. A body politic is therefore responsible for the acts of individuals, which are acts of actual or meditated hostility towards a nation with which the Government of these subjects professes to maintain relations of friendship or neutrality."

The Counsel of Great Britain now affirms that all these expressions of Sir Robert Phillimore must be considered as limited to the case of an *armed* vessel, or of a *military*, and not a *naval expedition*.

* There is a play on the words "la vague" and "le vague" in the original which cannot be translated.

I deny the possibility of such a distinction. It has no foundation in the words of the author. I appeal to the decision of the honourable Arbitrators.

But, supposing that this distinction were well founded, it would not justify the conclusions of the Counsel of Great Britain, because the principles laid down by Sir Robert Phillimore are of general application, and comprise all possible cases. Take any duty of due diligence to be fulfilled on the part of a neutral Government towards a belligerent Government, and then, in that case, Sir Robert Phillimore tells us in what manner and according to what principles the neutral Government should act. It must fulfil its international obligations "without regard to what may be the municipal means which it possesses for enforcing them." Moreover, "a Government may by *knowledge* and *sufferance*, as well as by *direct permission*, become responsible for the acts of subjects whom it does not prevent from the commission of an injury to a foreign State."

Such is the thesis, on the subject of due diligence *generally considered*, which the Counsel of the United States have constantly maintained, and which Great Britain has constantly contested in her Case, Counter-Case, and Argument.

Now, the duty which is incumbent on Great Britain is defined by the three Rules, and we have the right to consider the general maxims of Sir Robert Phillimore by the light of these Rules. This is what we have done in our Argument.

The Laird Rams.

But let us proceed at once to see what the Counsel of Great Britain has to say concerning the quotation we have taken from a speech of Sir Roundell Palmer on the subject of the "Laird Rams."

I beg to call the attention of the Tribunal to the words of the speech itself:

"I do not hesitate," says Sir Roundell Palmer "to say boldly, and in the face of the country, that the Government, *on their own responsibility*, detained them. They were presenting inquiries which, though imperfect, left on the mind of the Government strong reasons for believing that the result might prove to be that these ships were intended for an illegal purpose, and that if they left the country, the law would be violated, and a great injury done to a friendly Power. *The Government did not seize the ships; they did not by any act take possession of or interfere with them*; but, on their own responsibility, they gave notice to the parties interested that the law should not be evaded until the pending inquiry should be brought to a conclusion, when the Government would know whether the inquiry would result in affording conclusive grounds for seizing the ships, or not.

"If any other great crime or mischief were in progress, could it be doubted that the Government would be justified in taking steps to prevent the evasion from justice of the person whose conduct was under investigation until the completion of the inquiry? In a criminal case, we know that it is an ordinary course to go before a magistrate, and some information is taken, of a most imperfect character, to justify the accused's committal to prison for trial, the prisoner being remanded from time to time. That course cannot be adopted in cases of seizures of vessels of this description. The law gives no means for that, and therefore it is that the Government, on their own responsibility, must act, and have acted, in determining that what had taken place with regard to the Alabama should not take place with respect to these ships; that they should not slip out of the Mersey, and join the navy of the belligerent Power, contrary to our law, if that were the intention, until the inquiry in progress should be so far brought to a conclusion as to enable the Government to judge whether the ships were really intended for innocent purposes, or not.

"The Government were determined that the inquiries which they were making should be brought to a legitimate conclusion, that it might be seen whether those inquiries resulted in evidence, or not, of the vessels being intended for the Confederates, and that, in the meantime, they would not permit the ends of justice to be baffled, by the sudden removal of the ships from the river.

"It is impossible that the case of the Government can now be brought before the House; but the Government have acted under a serious sense of their duty to themselves, to Her Majesty, *to our allies in the United States, and to every other nation with whom Her Majesty is in friendship and alliance, and with whom questions of this kind may be liable hereafter to arise.*

"Under a sense of that duty, they have felt that this is not a question to be treated lightly, or as one of no great importance. If an evasion of the statute law of the land was really about to take place, it was the duty of the Government to use all possible means to ascertain the truth, and to prevent the escape of vessels of this kind, to be used against a friendly Power.

The sentiments expressed in this speech do honour to the man and the statesman. Here, at last, we recognize the language of an enlightened conscience, and of a lawyer equal to his high duties, instead of the excuses and weaknesses with which Lord Russell's correspondence is filled. Every word of this memorable speech is worthy of consideration.

Here it was the Government which acted on its own responsibility, and which detained the suspected vessels. It was the Government which gave notice to the parties interested that the law should not be evaded, and that the vessels should not leave the Mersey until the pending inquiry should result in proving whether or not these vessels

were intended for the Confederates. It was the Government which must act in determining that what had taken place with regard to the Alabama (and I may add, in parenthesis, with regard to the Florida) should not be repeated with respect to these ships. And the Government acted under a serious sense of its duty to itself, to Her Majesty, to the United States, and to every other nation with which Her Majesty has the same relations of peace and alliance as with the United States.

It must be remembered that, in conformity with the advice of Sir Roundell Palmer, the Government had already instituted regular judicial proceedings against the Alexandra and Pampero.

And it was the Government which acted, actuated by a sense of its duty towards the United States. What a contrast to what the Government did not do with regard to the Alabama and Florida!

The Goverment had thrown on Mr. Adams and on Mr. Dudley all the responsibility with regard to the Alabama and Florida; refusing to act on its own responsibility, it had disdainfully invited the United States to act on theirs. It remained with its arms folded, whilst rogues devoid of honesty or shame were unworthily deceiving it on the subject of the ownership and destination of these vessels. There was neither provisional investigation nor initiative on the part of the Government, but an absolute refusal to act otherwise than by legal proceedings, and those to be originated by the United States.

Now, what did the Government do, acting of its own accord and on its own responsibility, in the case of the "rams"? Did it institute judicial proceedings? Did it seize the vessels? Did it arrest them? Was action taken on evidence sufficient to justify the seizure, and such as had been required from Mr. Adams and Mr. Dudley with regard to the Florida and the Alabama? No, none of these precautions were taken. But the Government ordered an inquiry similar to that which Mr. Adams had begged it to make in the case of the Florida, and detained the "rams" pending the result of the inquiry, "in order to use all possible means to ascertain the truth, and to prevent the escape of vessels intended to be used against a friendly Power."

This is the due diligence of the Treaty:—"To use all possible means to ascertain the truth and prevent the escape of the vessels."

In order, then, to prove in the most convincing manner that the British Government did not employ due diligence in the case of the Florida and in that of the Alabama, it is sufficient to notice what the Government obstinately refused or certainly neglected to do with respect to those vessels, and what it did actively and on its own initiative with regard to the "rams." The comparison necessarily leads to a conclusion adverse to Great Britain. And Sir Hugh Cairns was perfectly right in saying on that occasion—"Either the Government must contend that what they did in the affair of the 'rams' was unconstitutional, or they ought to have done the same with regard to the Alabama" (and I add with regard to the Florida), "and they are liable."

It remains to be seen exactly what the Government did with regard to the "rams." Sir Roundell Palmer categorically affirms that these vessels had not been seized, but that they had been detained. He repeats this declaration.

In another speech, it is true, he says, speaking of the Alexandra, that the Government thought it its duty to seize the ship or vessel, according to the form of proceeding under the Customs Acts (Argument, p. 15*).

But such was not the course followed with regard to the rams, for they were not seized at all, they were simply detained. But how detained? The context clearly implies that they were detained by means of a notification on the part of the Government to the builders and to the pretended owners, no doubt accompanied by corresponding orders addressed to the Customs officials.

The Counsel of Great Britain loudly and positively affirms that the means adopted on the responsibility of the Government, that is to say, by the spontaneous action of the Ministers entrusted with the executive power of the Crown, were perfectly legal and constitutional. We, the Counsel of the United States, are happy to be, on this point, of the same opinion as the Counsel of Great Britain.

But in that case due diligence was not exercised with regard to the Florida and the Alabama. The consequence is inevitable.

In the extract from Sir Roundell Palmer's speech on the subject of the Alexandra, I find an expression which strikes me. He says: "You cannot stop the ship by going before a magistrate; it must be done upon the responsibility of the Government."

How? It *must* be done upon the responsibility of the Government. Then the Customs officers were laughing at Mr. Dudley, or else they wilfully deceived him, when they recommended him to begin legal proceedings on his own (Dudley's) responsibility.

* Page [illegible] *supra*

Then, moreover, when Lord Russell asked Mr. Adams for evidence, the latter was entirely right in replying that he had neither the power, nor the means, of instituting legal proceedings in England. Then, too, the Government totally failed in its duty of due diligence with regard to the Florida and Alabama.

Of the powers of the Crown in England.

The Counsel of Great Britain endeavours to reply to the arguments of the United States with regard to the powers of the Crown, by raising loud cries of arbitrary power, and violation of the laws and constitution of England.

Let us understand one another. Either England possesses the means of preventing, within her territorial jurisdiction, the belligerent enterprises of unauthorized individuals; or else she does not possess them. There is no escape from this dilemma.

If she possesses those means and does not exercise them, she is wanting in the due diligence of the Treaty.

If she does not possess them, in consequence of the impediments she has allowed her jurists to impose on her, and if she has gone so far as to abdicate all real national sovereignty, she is still wanting in the due diligence of the Treaty.

As is well said by Vattel: "If a sovereign who could retain his subjects in the rules of justice and peace, suffers them to ill-treat a nation, either in its body or members, he does no less harm to the whole nation than if he ill-treated it himself."

As Phillimore says: "Each State has a right to expect from another the observance of international obligations, without regard to what may be the municipal means which it possesses for enforcing this observance."

As says Dana, on the subject of the law of the United States:—

"Our obligation arises from the law of nations, and not from our own statutes, and is measured by the law of nations. Our statutes are only means for enabling us to perform our international duty, and not the affirmative limits of that duty. We are as much responsible for insufficient machinery, when there is knowledge and opportunity for remedying it, as for any other form of neglect. Indeed, a nation may be said to be more responsible for a neglect or refusal which is an imperial, continuous act, and general in its operation, than for neglect in a special case, which may be a fault of subordinates."

Such is the recognized law of nations. The Counsel of Great Britain admits it. Then what is the use of a dissertation on arbitrary power?

The Counsel appears to assert that what is done by any Government beyond the provisions of *a written law* is arbitrary.

I understand this notion when speaking of a *really* constitutional Government, like Italy, Brazil, Switzerland, or the United States. In those countries the executive functionaries, King, Emperor, President, no matter what the title, and the legislative functionaries, have each their duties and their powers traced beforehand by a written national compact. There, when the *Government*, that is to say, the totality of the national powers, acts, it acts in conformity with the compact, with the Constitution, and by means of the functionaries specially designated according to the Constitution. But where is one to find the Constitution of England? No one is ignorant that what in England is called "the Constitution" is but the combination of the legislative acts, of the recognized customs, usages, and traditions, and of the public opinion of the Kingdom. For the executive administration there is the Crown, represented by its responsible Ministers, who, in these latter times, have arrogated to themselves the title of "Government;" there is the Parliament, which makes laws and controls the Ministers, and, through them, the Crown: there are the Courts, which interpret the written laws, and which also interpret the customs, usages, and traditions having the force of law; and for public opinion, why, there are the London newspapers.

Now, the Ministers, as holding power from the Crown and Parliament, declare war, acknowledge foreign belligerency, conclude treaties, recognize new States, in a word supervise and direct the foreign relations of the kingdom.

Is that *arbitrary power?* I deny it. It is the *law,* which has been established by tradition, just as the existence of Parliament, the right of primogeniture, the privileges of the peerage, have been established.

But the act of a declaration of war by the Crown, or the conclusion of any Treaty, profoundly affects private interests. Among the least of its effects would be that of imposing obstacles to the departure of merchant-vessels from the ports of the kingdom. Nevertheless, in this controversy, we are asked to believe that it would be *arbitrary* to detain provisionally a merchant-vessel for the object of a simple inquiry caused by suspicions as to the legality of its equipment and destination.

Look at the power of Parliament—there you have arbitrary power. A Parliament held to be omnipotent, which can banish and even try a King, introduce a new dynasty,

abolish hereditary succession and all its legislative and judicial privileges, change the State religion, confiscate the goods of the Church, take from the Crown the administration of the international relations of the country—is not this the reign of despotism?

But, up to the present time, Parliament has not taken from the Crown, that is say from the Ministers, the direction of foreign affairs. It may arrogate to itself a part of that direction, as it has done in other constitutional countries; but as to assuming it entirely, that would be difficult in the present state of Europe.

I honour England. The substance, and even the forms, of the institutions of the United States are borrowed from the mother-country. We are what we are, first of all, because we are of British race, language, religion, genius, education, and character. I have studied England at home, in her colonies, in her establishments beyond the seas, and, above all, in her magnificent Indian Empire. She is rich, great, and powerful, as a State; not, in my opinion, because of the subjection of her Ministers to the scrupulous and daily criticism of the House of Commons, but in spite of it, as I remember to have heard said by the late Lord Palmerston. It is not the strong, but rather the weak side of her Government, as one sees, moreover, in the present controversy. It is not worth while, therefore, to deny to the Crown executive powers necessary for the peace of the kingdom; nor, in the present case, to raise cries of arbitrary power in the face of the admitted omnipotence, that is to say, of the absolute despotic power, of Parliament, whose real power tends every day to concentrate itself more and more in the House of Commons alone.

Such a Constitution so undefined, continues to work, thanks above all to the practical good sense of the English people, to their wholesome respect for traditions, to their special talent for government, to their praiseworthy national pride, and to the elasticity of their political forms, which allows of everything being received and placed in the *governing class*, which, no matter where within the limits of the empire, is distinguished by its eminent qualities.

Thus liberty and order are reconciled. But liberty and order equally require that the public peace should not be disturbed by the intrigues and mercenary interests of individuals for want of a little repressive power placed in the hands of the Crown.

Parliament in its omnipotence might easily have remedied the defects of the municipal law, if it had chosen. It has since done so. But it did not do it in time, and this it is which constitutes a failure in the due diligence of the Treaty.

America, on the contrary, has several times done this at the right moment, in the interests of her friendly relations with Great Britain.

The Russian Ships.

The British Counsel quotes and approves the opinion of the English Judges given in Fortescue's Reports. They were of opinion "that the Crown had no power, by law, to prohibit the building of ships of war, or of great force, for foreigners, in any of His Majesty's dominions." (p. 18.)

Two Judges had given this opinion in 1713; other Judges (it is not said how many) gave the same opinion in 1721. The vessels were built for Russia, and contrary to the remonstrances of Sweden.

In 1713 there was open war between Russia and Sweden. It was four years after the battle of Pultowa. Charles XII had taken refuge in Turkey, and the Sultan in vain endeavoured to persuade him that he ought to return to his own States.

The Elector of Hanover, who had become King of England, had just taken part in the spoliation of Charles XII. Russia had conquered Finland.

In 1714 the Russians burned and destroyed the Swedish fleet off the Island of Aland. If it is true that the Czar had had vessels of war built in England, there is no doubt that these vessels contributed to the victory of Aland.

Conclusion—that in 1713 the interests of the Elector of Hanover induced him to favour, or at least not to oppose, the policy of the Czar; and the opinion of the two Judges at that period were unofficial opinions of no value.

As to the opinion of 1723, the wind then blew the other way—England was in favour of Sweden; the peace of Neustadt had just been concluded; and the construction of vessels of war for the service of the Czar was no longer contrary to European international law.

To return to the question of the power of the Crown. Were they armed or unarmed vessels which were being built for the Czar? History is not explicit on this point. In the former case, there would have been, in 1713, an open violation of international law. There is, then, reason to believe that these vessels were not armed.

The Report speaks of "*His Majesty's dominions.*" What dominions? England? I doubt it.

Now suppose that from 1713 till the Act of 1819, there was in England no law, no power of coercion, capable of preventing the building, equipping, arming, and sending forth of vessels of war intended to fight against a State, the friend and ally of England!

Then, during this great eighteenth century, and during no one can tell how many centuries previous, England has been entirely powerless to defend her own sovereignty, and to protect her friends against the crimes of foreigners making her territory the base of their belligerent operations.

I do not believe, I will never believe, that such was the national impotence of England, and I cannot understand how any one can attempt to push the exaggeration of private liberty so far as to annihilate all national sovereignty, and to make England the involuntary accomplice of all the maritime wars of Europe.

Consequently, I leave out of the question the opinions reported by Fortescue. It is not my business to fathom this mystery, but assuredly a mystery there is; and I beg the Arbitrators to be so good as to consult the numerous contrary opinions collected in Note (B) annexed to the Argument for the United States.

Laws of Foreign Countries.

The British Case has affirmed that the United States and Great Britain were the only two countries which had municipal laws fitted to secure the observance of neutrality. In reply to this assertion we have quoted and commented on the laws of various foreign countries, and the observations of jurists of those countries; and these quotations prove that such laws exist everywhere throughout Europe and America.

The British Counsel disputes this proposition on the ground of the *brevity* of most of these foreign laws, and of the imperfect judgment of a Netherland statesman, without closely examining the text of these laws, or the commentaries of native jurists which establish their true nature.

In this the British Counsel mistakes the characteristic quality of all the laws of these countries, I mean their brevity, when compared with the laws of Great Britain, and of her imitators, the United States.

In all the laws called "neutrality laws," of whatever country, there are two principal objects: first, to defend the national territory against any encroachment on the part of foreigners; and, secondly, to prevent individuals, whether natives or foreigners, from committing on their own authority acts of hostility to foreigners on the national territory, which might expose the State to a declaration of war, or to reprisals on the part of another State.

Such are the provisions of several codes; as, for example, those of France, Italy, the Netherlands, Portugal, Spain and Belgium.

It is obvious that these provisions of the Penal Codes of the different countries of Europe comprise the same subject, and have the same objects as the English and American law; omitting, however, the details of procedure. But in France, in Italy and elsewhere, the rules of procedure are to be found in the codes of procedure, and it becomes useless and inexpedient to repeat these rules with regard to each Article of the Penal Code.

The Netherland Minister, in the despatch referred to, points out the neutrality law of his country after having inconsiderately said that no such law existed. It is only on a quibble of words that the British Counsel bases the extravagant inferences to which this despatch has given rise. But the Netherland law is copied from the French Penal Code. It is impossible to mistake its tenor and signification.

Moreover, this law is commented on at length by French writers of undisputed authority, Dalloz, Chauveau and Hélie, Bourguignon, Carnot, and others, who all express themselves entirely in the sense of our Argument. All this will be found in the documents annexed to our Counter-Case. And we have added an opinion by the late M. Berryer, which shows that these articles of the French code apply to certain proceedings of the Confederates in France with regard to the equipment of vessels of war, proceedings entirely identical with those which took place in England (Counter-Case of the United States, French translation, p. 490).

In support of this conclusion we have cited decisions of the French Courts.

It is the same with Italy: we have quoted Italian commentators in support of our proposition, and these commentators, in explaining their own law, adopt the conclusions of the French commentators.

The same ideas are found in the Spanish and Portuguese commentators on the subject of the similar provisions of their codes. We cite Silva Ferrao, for Portugal, and Pacheco and Gomez de la Serna, for Spain (*ubi supra*, pp. 553, 576). These commentators reason as well as us, it seems to me, on the subject of military expeditions and privateers.

I do not understand this contemptuous tone on the subject of foreign laws. It cannot be believed that all juridical knowledge, all morality of thought in legislative matters are the exclusive and absolute property of England and the United States.

The British Counsel passes very lightly over the laws of Switzerland and Brazil.

On a study of the laws of Brazil it is found that the definitions of crimes of this category are more comprehensive and more complete than those of the laws of England (*ubi supra*, p. 594).

Among the documents annexed to the British Case are two letters which furnish matter for reflection.

Sir A. Paget, British Minister in Portugal, acknowledging the receipt of a despatch from the Portuguese Minister of State, adds:—

"There is one point, however, upon which Her Majesty's Government are most desirous of information, to which your Excellency's note and the inclosures it contains, do not refer, namely, what laws or regulations, or any other means, are at the disposal of the Portuguese Government for preventing within its territory any acts which would be violations of the Portuguese neutrality laws, as contained in the declarations of neutrality which your Excellency has transmitted to me."

And M. Cazal Ribiero replies as follows:—

"In reply, it is my duty to state to your Excellency that the laws and regulations in the matter are those which were enclosed in my note of the 25th of that month, or were mentioned in those documents, and the means of execution, in the case of any violation of neutrality, are criminal proceedings, the use of force, complaints addressed to foreign Governments, or any other means, in order to meet some particular occurrence."

I can well believe it. Where there is a will the means are not wanting.

The British Counsel is mistaken when he maintains that the United States do not understand these laws, so clearly commented on by the writers referred to, and applied by Courts of Law and jurists with at least as much learning as the corresponding laws of England.

As for Switzerland, we have collected in our evidence valuable documents showing the zeal and goodwill with which that Republic maintains its neutrality in the midst of the great wars of Europe.

I beg also to refer to the explanations of the law of Switzerland by the Federal Council, on the occasion of the Concini affair, to show that the Counsel of Great Britain is entirely in error in his apprehension of these laws, as well as of those of Italy and Brazil ("Droit Public Suisse," vol. i, p. 459).

Now, I appeal to the honourable Arbitrators: let them judge and decide which is right with regard to these laws,—Great Britain relying upon an equivocal expression in a diplomatic despatch, or the United States, who rely upon the text of these laws and on the commentaries of the best jurists of France, Italy, Spain, Portugal, and Brazil.

I refer particularly to the honorable Arbitrators on the question whether the institutions of England are in reality more constitutional than those of Italy, Brazil, and Switzerland. According to the opinion of the British Counsel, these countries possess no neutrality laws. But they observe the duties of neutrality, and they observe them without infringing their Constitution. Which then is mistaken with regard to them? England or America.

The Laws of the United States.

The Counsel of Great Britain devotes much space to the discussion of the laws of the United States. I shall, I think, require less time to reply to his Argument.

The Counsel endeavours to prove that the law of the United States, in so far as it relates to this question, is limited to the case of an armed vessel.

With this object, he quotes expressions from the third Section of the law, which enacts certain penalties against "any person who shall, within the limits of the United States, fit out and *arm*, or attempt to fit out and *arm*, or shall knowingly be concerned in the *furnishing*, *fitting out*, or arming of any ship or vessel," with intent that such ship or vessel should be employed in the service of a belligerent foreign Power.

Arguing from these expressions in the law, he believes that to constitute an offence the vessel must have been armed, or an attempt must have been made to arm her.

But, as a question of jurisprudence, this interpretation of the law is entirely erroneous. It is established in the United States that it is not the nature of the preparations which constitutes the offence, but the intention which dictates the acts. The doctrine is thus stated by Dana:—

"As to the preparing of vessels within our jurisdiction for subsequent hostile operations, the test we have applied has not been the extent and character of the preparations, but the intent with which

the particular acts are done. If any person does any act, or attempts to do any act, towards such preparation, with the intent that the vessel shall be employed in hostile operations, he is guilty, without reference to the completion of the preparations, or the extent to which they may have gone, and although his attempt may have resulted in no definite progress towards the completion of the preparations. The procuring of materials to be used, knowingly, and with the intent, &c., is an offence. Accordingly, it is not necessary to show that the vessel was armed, or was in any way, or at any time, before or after the act charged, in a condition to commit acts of hostility.

"No cases have arisen as to the combination of materials which, separated, cannot do acts of hostility, but united, constitute a hostile instrumentality; for the intent covers all cases, and furnishes the test. It must be immaterial where the combination is to take place, whether here or elsewhere, if the acts done in our territory—whether acts of building, fitting, arming, or of procuring materials for these acts—be done as part of a plan by which a vessel is to be sent out with intent that she shall be employed to cruise." (Argument of the United States, pp. 363, 364.)

These extracts from Dana are authoritative on the question. The true interpretation of the law has been laid down in a decision of the Supreme Court of the United States. The Court determined "that it is not necessary that the vessel should be armed, or in a condition to commit hostilities, on leaving the United States." (United States *v.* Quincy, Peters' Reports, vol. vi, p. 445; *vide* Opinions, vol. iii, pp. 738, 741.)

Such is the law as understood and practised in America. Two of the Counsel of the United States, Mr. Evarts and myself, have administered the Department of Justice, and we have so personal a knowledge of that law that we also can speak authoritatively on the subject. I affirm that the interpretation of this law propounded by the British Counsel is absolutely contrary to the interpretation recognized in the United States.

I beg to call attention to the expressions of the temporary Act of 1838, reported by myself to the Congress of the United States. That Act allows the seizure "of any vessel or *vehicle*," armed or unarmed, when there are any circumstances which give probable cause to believe that such "vessel or vehicle" is intended for military operations against a foreign State. (United States' Statutes, vol. v, p. 213.)

This Act had been drawn up according to the received interpretation of the permanent Act.

It follows that the whole structure of criticism, which is built up by the Counsel on the subject of the preventive powers of the President of the United States, falls to the ground. He supposes that that power is limited to the case of an armed vessel, because he supposes that the penal clauses have only that extent. He is mistaken on both points. The preventive powers of the President apply to all cases within the Act, to "all the prohibitions and penalties of the Act." Now the Act does not require that the vessel should be armed; it is sufficient that its owner should have an intention of employing it in acts of hostility against a Power friendly to the United States.

The case of Gelston *v.* Hoyt, cited by the British Counsel, relates only to the manner of exercising the preventive powers of the law, and in no way affects the powers themselves.

In the documents annexed to the Counter-Case of the United States will be found numerous examples of the exercise of this preventive power by the President. The fact of being armed or not is only a circumstance which bears with more or less weight on the real question—that of the intentions of the owner of the vessel.

The British Counsel enumerates the cases in which adventurers have at different dates evaded the American law.

We have protested in our Argument, and we continue to protest, against the applicability of such arguments. England is before the Tribunal, charged with having been wanting in the due diligence required by the Conventional Rules of the Treaty of Washington. Whether America has failed or not in her neutral duties according to the law of nations, is not the question submitted to the Tribunal. America will answer for her acts at the proper time to those whom they may have injured.

The Counsel has quoted extracts from the correspondence of officers of the United States having reference to legal questions, which arise from time to time in the application of the law. These questions are, doubtless, similar to questions which arise in England Unfortunately, the American law, though anterior to the English one, originates in a school of legislation common to both countries, which gives much work both to the lawyers and to the Courts.

We have discussed these questions in our Argument. But we cannot discuss in detail all these facts laboriously amassed by the British Counsel without longer preparation, which we do not wish to ask of the Tribunal.

The capital question is that of the powers of the President. The matter is elucidated by Dana. He says:—

"As to penalties and remedies, parties guilty are liable to fine and imprisonment; and the vessel, her apparel and furniture, and all materials procured for the purpose of equipping, are forfeit. In cases of suspicion revenue officers may detain vessels, and parties may be required to give security against the hostile employment; and the President is allowed to use the army and navy or militia, as well as civil force, to seize vessels, or to compel offending vessels, not subject to seizure, to depart from our ports. What vessels shall be required to depart is left to the judgment of the executive." (Argument of the United States, p. 364.)

A single example is sufficient to give an idea of the admitted extent of the powers of the President.

Spain was having built in the ship-yards at New York thirty gun-boats intended to operate against the insurgents of the island of Cuba. They were vessels unfitted for long voyages. They were not armed, and had on board neither cannon, nor gun-carriages, nor any other engine of warfare. War existed *de jure*, if not *de facto*, between Spain and Peru. The Minister of Peru in the United States lodged a complaint on the subject of these gun-boats. He did not pretend that they were intended to operate against Peru, since they could not round Cape Horn. But he asserted that if used to guard the coasts of Cuba, they would free from that service other vessels, which might thus attack Peru.

The President admitted this argument, and ordered the detention of the whole thirty vessels, until Spain and Peru had settled their differences through the mediation of the United States.

Jurisdiction of the Tribunal.

A question of diligence presents itself with regard to an erroneous decree of a Court of Admiralty.

I lay down as a principle that the Government which institutes legal proceedings, and submits, without appeal, to an erroneous decree, has not the right of pleading this decree as an excuse for subsequent wrongs belonging to the same class of facts. It is, in my opinion, a double failure in the due diligence prescribed by the Rules of the Treaty. I abstain from discussing this question.

But I affirm that the erroneous decree is in no way binding. This, indeed, is evident. Furthermore, and above all, I affirm that the decree is in no way binding on an international Tribunal.

The principle is laid down and sufficiently discussed in Rutherforth's Institutes, an English work of merit and authority.

Wheaton and other writers adopt also the views of Rutherforth.

The question was raised by the English and American Commissioners nominated to carry out the stipulations of Jay's Treaty. The following circumstance is reported in the memoirs of Mr. Trumbull, one of the Secretaries of that Commission. It appears that, being in doubt, the Commissioners consulted the Earl of Loughborough, then Lord Chancellor. The latter decided that the Commissioners, in their capacity of an international Tribunal, possessed complete jurisdiction to revise the decrees of any municipal Tribunal, and to decree compensation to the Government injured in its interests or in those of its subjects. The Commissioners acted accordingly.

I conceive that such is the jurisdiction recognized in the case of private claims by numerous international Commissions which have since sat in England and America.

Conclusion.

I have now treated some of the questions argued by the Counsel of Great Britain, solely to relieve my conscience. I do not think they are of a nature to exercise a preponderating influence on the conclusions of the Arbitrators. The Rules of the Treaty are decisive in all the questions raised by the United States. If those Rules are the true expression of the law of nations, as I am convinced they are, well and good; if they exceed the law of nations, they necessarily constitute the conventional law of the Tribunal.

The interpretation of the municipal law of England is of little moment. Of still less moment is the interpretation of the law of the United States. The laws of other European States are of no importance whatever. The conduct of the United States towards Spain or Mexico, or even towards Great Britain, is not here in question. There is but one single question, and it is this:—Has England failed or not in the due diligence required by the Treaty of Washington?

The United States are here maintaining principles which are, in their opinion, of great importance to all maritime nations, and especially to Great Britain, still more so than to the

United States. In consequence, we await, with respect and submission, but also without anxiety, the judgment of this august Tribunal.

C. CUSHING.

NOTE.

In case the Arbitrators should think it worth while to study the subject attentively, we refer them to the following documents, which clearly prove the spontaneous activity of the Executive at all times to prevent equipments and expeditions in contravention of the law of nations, attempted in the ports of the United States:—

I.—*Counter-Case of the United States and Appendix.* (*French Translation.*)

II.—*Correspondence relative to the Affairs of Cuba in the English Supplement to the Counter-Case of the United States.*

No. 18.

Lord Tenterden to Earl Granville.—(Received August 17.)

My Lord, *Geneva, August 14, 1872.*

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 8th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 18.

Protocol No. XIX.—Record of the Proceedings of the Tribunal of Arbitration at the Nineteenth Conference, held at Geneva, in Switzerland, on the 8th of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The Tribunal concluded the examination of the case of the Retribution.

Mr. Waite delivered to the Tribunal a written argument on the part of the Counsel of the United States in reply to a portion of the argument presented by the Counsel of Her Britannic Majesty.

The Tribunal then adjourned until Wednesday the 14th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statement of Mr. Adams on the case of the Retribution, discussed at the Meeting of the 8th August.

THE RETRIBUTION.

OF all the spots made memorable in Her Majesty's dominions by the extent of fraudulent transactions of every description connected with navigation, during the struggle in the United States, the little island of Nassau appears from the papers before us to have earned a right to bear away the palm.

The most flagrant instance seems to be now presented to our consideration in the case of this vessel, the Retribution. So thoroughly is the truth interwoven with and covered up in a web as well of simulation as of dissimulation, that I confess it to be a labour of extreme difficulty even to reach any statement of the facts which I can rely upon as absolutely correct.

It may, however, be assumed as true that in the year 1856 a steam-propeller was constructed at Buffalo, in the State of New York, which was taken to New York and employed for several years as a tug in that port.

In the month of April 1861, being the precise period of the breaking out of the conflict in America, this tug appears to have been sent by the proprietors to the southern coast. No reason for this proceeding is given, and no port of destination is mentioned. Perhaps the object might have been to find a market. If so, the owners must have been disappointed. The tug was driven by stress of weather into Cape Fear River, where it was seized, after the fashion of that day in that region, without the trouble of paying anything, and her crew were made prisoners.

Her machinery seems to have been transferred to some other purpose, for the next thing we learn is that she had become a sailing-vessel, and her name was the Retribution.

Meanwhile one year and a half had elapsed. On the 21st of November, 1862, only, she re-appears at Charleston in South Carolina, and is there registered as the private property of one Thomas B. Power, a citizen of that place. Here it is recorded that a man named John Parker is the master. He was neither a citizen of South Carolina, nor of any of the insurgent States.

It is thus made quite plain that this Mr. Parker, whom we shall soon find under several other names, was at that time known only as the master of a private vessel belonging to a citizen of Charleston. There was no pretence of a public commission

either of the vessel or of its commander. I can nowhere discover that anything of the sort was ever produced throughout all the subsequent proceedings.

Nevertheless it is reasonable to believe that this vessel was armed, equipped, and manned at Charleston for the purpose of carrying on a system of depredation. Her first appearance in this capacity on the high sea was on the 28th of January, 1863, when she pounced upon the schooner Hanover belonging to Provincetown, a small fishing town on the coast of Massachusetts, and well on its way to its destination of Aux Cayes in the Island of St. Domingo.

The captain of the Retribution now laid down his name of Parker. On reaching the Hanover he at once recognized the master, Washington Case, as a person he had seen at Provincetown, when he was there engaged in a fishing voyage from that port a few years before. He now announced himself as Vernon Locke, belonging to the British Province of Nova Scotia.

If this be admitted, it follows that a citizen of one of Her Majesty's dependencies, acting as an officer of a vessel pretending to a belligerent commission, took possession of the Hanover as his lawful prize, turned adrift the true captain and his crew in an open boat to make their way to the nearest land as they best could, and then bore off with his prey towards the Island of Long Cay.

A question naturally arises here, whether this Nova Scotia man Locke in coming to this region had been moved to it by any previous familiarity with its facilities for such enterprizes as he was about. The evidence on this point is not conclusive. Thomas Sampson, a person sent out as a detective by the United States' Government to watch what was going on at Nassau, affirms that he knew by good report that Locke had been clerk for Adderley and Co., which fact, if it were true, would go far to explain the cause of the success of all his operations. But it will not explain how he, a Nova Scotia man, should have been recognized as a legitimate commander of a belligerent vessel of the Insurgent States by the authorities of Nassau. But of this I shall have more to say presently.

On the 5th of February, 1863, that is, eight days after the capture of the Hanover, this vessel arrived at Long Cay. But there came at the same time another vessel in company, called the Two Brothers, which Captain Locke had succeeded in the interval in hunting up, as well as her owner, a person of the name of Farrington, apparently not unaccustomed to the business of buying up shipwrecked property. But it was not as Locke that the captain now appeared. This time he had the assurance to personate Washington Case, the true master of the Hanover, whom he had sent off with his crew several days before. He told a story that the vessel had been ashore and consequently sprang a leak, which would make transhipment necessary. The end of it all was that he desired to sell more or less of the cargo. Farrington doubted the truth of this account from the first, but he did not see why that should prevent his buying the cargo. So the two proceeded to the office of the Collector in order to get the necessary permit to land. That officer examined the papers offered in the usual manner, asked the customary questions, and, being satisfied, gave the requisite authority.

Thus every part of Locke's scheme had completely succeeded. He received his money. Farrington sold the goods doubtless at a good profit. The captured vessel was sent to Nassau, there loaded with salt and provisions to go to one of the insurgent ports, after which there is no further trace of her.

It should, however, be particularly noted that the manifests of the cargo presented to the Collector, upon which the transfer of the property was authorized, were two. They bore dates on different days, the 5th and 6th February, and both purported to have been signed by the true captain, Washington Case. But inasmuch as he had been sent on his way over the sea on the 25th of January, it is clear that the dates were appended by Locke. Moreover, the two manifests were not identical either in regard to the articles of the cargo nor to the quantities of each. Furthermore, the signatures were by no means in the same handwriting. It is not unlikely that one of them may have been genuine, and found on board of the vessel after it was taken. But the other was so signed that no one at sight of it could avoid seeing it was not by the same hand.

Mr. John Burnside, the resident magistrate of Inagua, subsequently reported to the Governor the facts which he happened to witness. He affirms that both Farrington and he doubted the truth of Locke's story at the time. A day or two afterwards, by reason of some words dropped from an intoxicated sailor in the Hanover, the Collector was led to suspect some falsehood, which induced them all to examine the papers more closely. The truth became apparent on inspection that a palpable forgery had been committed, and an individual falsely personated.

Here were the Collector, the resident Magistrate of the district, and one other

person, all of them convinced that a grave offence had been committed against the law —an offence, too, involving a question of property, which it would seem to have been the duty of the officers, at least, to mention officially to the authorities at Nassau. It was for them to lead the way, in warning them in season of an abuse which might possibly, and even probably, come to their notice in connection with both these vessels at Nassau. In point of fact both of them, as well as a part of the cargo, went to Nassau and remained some time.

Three weeks elapsed, and so far as appears by the papers, not a whisper regarding this extraordinary transaction seems to have been communicated to the Governor or anybody in authority at Nassau. The Retribution was there and the Hanover was there. Nassau is a very small place, where every event of this kind naturally would attract some attention. The officers of the Retribution, including Locke himself, had come there. A single line from the Collector would have served to point attention to the subject, and to fix the eyes of the authorities on the vessels, at least, if not on the men. It is not unreasonable to infer from the character of the place that the substantial facts attending the capture were more or less known to many persons, from the moment of the arrival of the vessels and the men. The Collector was dumb. The resident Magistrate was dumb. As to Farrington, nothing could be expected from him, as he had become more or less a party in interest in concealing the fraud, which he could not doubt had been committed.

Neither is it at all likely that anything more would have ever been disclosed by these parties, had it not been that the agent of the underwriters of the vessel, having learned something of the case, on the 20th of April addressed to the Governor a remonstrance against the unlawful proceeding, and a desire for an investigation. The allegations were distinctly made—

"That the American schooner Hanover was taken to Fortune Island by a person calling himself the master, who communicated to R. W. Farrington, of the above island, his desire to dispose of the cargo of said schooner, and to purchase a cargo of salt;

"That the cargo of the Hanover was transferred to the Brothers, owned by the said Farrington; and all, or a part thereof, conveyed to the port of Nassau, and there placed in charge of James I. Farrington, also one of the magistrates of Fortune Island;

"That the Hanover was loaded with salt, and sailed for one of the southern ports of the United States;

"That the party who represented himself as Washington Case, master of the Hanover, proved to be the first officer of the armed schooner Retribution;

"That the Retribution was then at Nassau, as were also the officers."

The Retribution was then at Nassau, and had been there received as a vessel of war of the insurgent States, without a word of remonstrance or even of notice by the authorities.

But on the 31st of January, 1862, the Duke of Newcastle had despatched to the Governor of Nassau a paper of instructions to guide his course in regard to such vessels; one of which was to this effect:—

"During the continuance of the present hostilities between the Government of the United States and the States calling themselves the Confederate States of America, or until Her Majesty shall otherwise order, no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, or roadstead, or water of the Bahama Islands, except by special leave of the Lieutenant-Governor of the Bahama Islands, or in case of stress of weather."

On the 11th of March following, Governor Bayley appears to have issued a proclamation to the people of the Bahama Islands, communicating these instructions and directing obedience to this provision.

The Governor of Nassau had not taken any action whatever, so far as it appears, in prohibiting the entrance or remaining of the Retribution in the port of Nassau, though he must have known she was there.

On receiving the letter of Mr. Jackson he contented himself with a reference to the Attorney-General in these words, "I wish to know what steps ought to be taken. It is suggested that a Confederate officer has made Fortune Island a depôt for prizes."

Such was the only point of view in which the Governor thought fit to consider the statement of Mr. Jackson, communicating to him other facts of which it might have been supposed it his duty to take notice.

The Retribution had been received in Nassau as a Confederate vessel of war, contrary to the terms of his own proclamation.

The Hanover had been received in Nassau as a prize, and had been fitted out from there to go to the Southern States of America.

The officers of the vessel were at the time stopping at Nassau, enjoying the fruits of their violation of the waters of the Bahamas.

Nobody residing in so small a place, where events of this peculiar kind were passing before their eyes, could long remain ignorant of these facts.

Yet the Governor confines his inquiry of the Attorney-General to the mere fact that Fortune Island had been made a depôt for prizes by a Confederate officer!

The Attorney-General was Mr. G. C. Anderson, with whom we have already been made acquainted in the transactions connected with the steamer Oreto, *alias* the Florida, which took place in Nassau just one year before. This gentleman does not appear to have been roused into more activity in the interval. The opinion which he gave in answer to the Governor is in these words:—

"I have given my best consideration to the accompanying letter of Mr. Jackson, in the hope of being able to advise his Excellency to some course of proceeding which would lead to a judicial investigation into the circumstances complained of, but I regret to say that I have been unable to arrive at any other conclusion tending to such a result.

"The conveying of the Hanover into the Port of Long Cay, and there transhipping the cargo, assuming her to have been a prize of war, was a violation of Her Majesty's interdict on the subject of prizes, and the Collector of Revenue, if he had any cause to suspect the character of the vessel and cargo, should at once have arrested both; but as this was not done, and the vessel has left the Colony, and the cargo been disposed of, no proceeding *in rem* can now be instituted.

"The next question is, whether any parties connected with the transaction have rendered themselves criminally liable; and on this point I am clearly of opinion in the negative.

"I, however, think that the charge is one which calls for some investigation, and I therefore recommend that the magistrate of the district be directed on his next visit to Long Cay, to institute inquiries with the view of ascertaining the exact facts of the case, and that the Collector of Revenue be instructed to be vigilant in preventing any occurrence of similar acts."

In the first place it should be noted that this opinion at once condemns the course of the Collector of Revenue, who is proved to have had cause to suspect the character of the vessel and cargo. He says that it was his positive duty not merely to notify the Government of the facts, but to arrest both vessel and cargo. In point of fact, he did neither, and gave no notice whatever at the time to the authorities at Nassau.

Yet I do not perceive in the course of these papers the smallest attempt to have been subsequently made to call the Collector to any responsibility. Not a word was said to him of his failure to perform this positive duty.

In the second place, the Attorney-General gives it as his deliberate opinion that none of the parties to this transaction had rendered themselves criminally liable.

It would have been perhaps desirable had that officer given a single reason for giving such an opinion prior to any attempt to investigate the facts attending the case. There was plenty of evidence to be found at Nassau if there were real energy present to seek it. If he had sought it, it seems impossible that the Attorney-General's statement could have been made in good faith. As a clear proof to the contrary, in point of fact, he himself was the party employed in prosecuting at a later period an indictment against the principal engaged in these transactions both for conspiracy and forgery.

It is impossible for me to explain this singular action of the Attorney-General in any other way than this. He meant to say that in a population so entirely in sympathy with the insurgent cause at that moment, there was no chance, in his opinion, of procuring a verdict against any one engaged in it. And in this he was probably right.

But this view of the subject does not relieve Her Majesty's Government from the obligations towards the innocent and injured party, incurred by the neglect of her servants to use due diligence in their vocation to protect it from wrong.

But I must now go back in my relation of the operations of this man, named Captain Parker, *alias* Case, *alias* Locke, to the point where I left him, having accomplished his end at Long Cay of converting into money the plunder he had obtained from the cargo of the Hanover.

He seems to have left Long Cay in the vessel called the Two Brothers, into which that part of the cargo was transferred which was destined to be sold at Nassau. But this was done only to evade observation. He stopped at a place called Rum Cay, where he landed, and not long after the Retribution appeared and took him off.

This must have been about the middle of February. Locke then resumed his cruize, and on the 19th, being somewhere in the neighbourhood of a place called Castle Island, he came across an American brig called the Emily Fisher, on a voyage from the Island of Cuba to New York, laden with sugar. Whether intentionally or otherwise is not absolutely clear, five or six British wrecking-schooners were lying at anchor under the land, whilst the master of another one, called the Emily Adderley,

which was cruizing about, bethought himself of boarding the Emily Fisher, and entering into some conversation with the captain touching the safety of the navigation, &c. This being over, a signal appears to have been given from the Adderley, the effect of which was at once visible by the approach of another vessel. The result was that the Emily Fisher was seized as a prize by the Confederate schooner Retribution.

And now Captain Locke seems to have really put into execution the scheme which he had only pretended in the case of the Hanover. He consulted with the captains of the five British wreckers, the effect of which was that they took the brig, and at about 5 P.M. ran her clean on shore. The next day the wreckers had so far unloaded the brig of her sugar that she was again afloat. The master of the brig who, with his crew, had been put ashore close by, seeing these operations going on, made some effort to reclaim the property. He applied to the authorities for assistance, but they declined to give him any prior to his securing a release from the claims of the wreckers for salvage. The consequence was that, by paying one-half of the value of the cargo, and one-third of that of the vessel, she was finally returned, divested of almost everything moveable on and under deck. All this time the brig was lying under the guns of the Retribution, and the authorities to whom he appealed declared themselves wholly unable to protect him.

From this narrative it seems tolerably plain that the master of the Retribution, after seizing this vessel, entered into an agreement with these wreckers to cause her to be driven ashore, and then to divide the proceeds which might be collected in one way or another from false claims of salvage; and inasmuch as the master offered more money than they could reasonably expect to realize by any other disposition they could make of it, with less trouble to themselves, they accepted the terms. The authorities at Long Cay, fully aware of the transaction, the nature of which they could not misconceive, gave it their sanction. Neither does the Collector appear to have ever given any report of the transaction.

A more thorough prostitution of the powers of the Government to the most flagrant purposes of plunder, under pretences which could deceive no one, it has not been my lot to witness, even in the long record of frauds submitted in the volumes before us.

It may be alleged, on the part of Her Majesty's Government, that these were the results of the offences of irresponsible parties, for which it is not the custom of Governments to be held liable to other nations.

The answer to this is that when the Retribution made her appearance in the port of Nassau, after having executed the outrages described, the Collector declares that she did not enter as a trader; she was treated as a Confederate vessel of war.

On the 3rd of March this vessel had been dismantled, and her hull was sold at public auction by Messrs. Adderley and Co. She brought the sum of 250*l*. But it nowhere appears to whom the proceeds were credited. Messrs. Adderley and Co., who probably knew the whole story of this vessel from its origin to its sale, were never called upon to disclose it. Neither does it appear that the Governor took the smallest notice of so material a transaction.

Nor yet is it likely that any more inquiries would have been made in any quarter had it not been for a reminder which the authorities were not at liberty to neglect. On the 4th of April Mr. Seward, the Secretary of State of the United States, addressed a note to Lord Lyons, then the British Minister at Washington, stating the facts attending the capture of the Hanover in British waters, and demanding reparation. Lord Lyons sent a copy of this note not only to Earl Russell but directly to the Governor of Nassau.

The Governor on receipt of this despatch addressed a reply directly to Lord Lyons, transmitting the report received from Mr. Burnside when expressly called upon the 20th April previous, which is found among the papers before us and concluding with the following paragraph:—

> "Whatever the character of the Retribution, or whoever the ostensible master may have been, I am convinced that no suspicions of either were entertained by any officials of this Government, until it was too late to act on them.
>
> "I have directed further inquiries to be made."

I cannot suppress my surprise at the calmness of such an affirmation, when the report which he sent and to which he alludes seems to my eyes distinctly to admit the fact that all three persons, the Collector, Mr. Farrington, and himself, entertained so great doubts of the truth of the statements made to them by Locke that it seems to me to have been a positive duty in the two officers, at least, to have pursued an investigation certainly so far as to penetrate the reasons for the falsehood, the fraud, and the forgery by which the business was accompanied.

The unsatisfactory nature of this report was plainly intimated by Mr. Seward

when he received it, and was also signified to the Governor by the Duke of Newcastle, on behalf of the Government at home. This stimulated the authorities to efforts to seize and to prosecute the chief offenders still hanging about the place. It was clear they were British subjects guilty of something very like piracy, as well as of forgery and fraud. Of the judicial proceedings that followed, I desire to speak with the moderation due to the Courts of a foreign nation. But I could only repeat the remarks which I made in regard to this matter in my review of the case of the Florida. The Arbitrators appear to me at least to have a duty to the parties before the Tribunal to state their convictions of the exact truth, without fear or favour. In the performance of my share of it, I cannot omit to point out—(1), the evasion of the important witnesses when they were wanted, and their reappearance in perfect security afterwards; (2), the refusal of the Collector at Long Cay, the most important and responsible agent of the Government in the transaction, to appear at first; and (3), the absence of all testimony as to the facts within his knowledge when he actually appeared; (4), the avoidance of all testimony of the same kind on the part of Burnside, the Magistrate of Inagua, whose first report made to the Governor, showing his knowledge of them, is among the papers before us; (5), the straw bail required of the principal culprit by the Court, and his ready forfeiture of it when he pleased; (6), the intimation of Governor Rawson, that if it had been 1,000*l.* instead of 100*l.*, it would have been equally supplied to him, if required to save him; and lastly, the acquittal of the criminal by reason of the disappearance of the most important witness for his condemnation; all together present a more melancholy and scandalous spectacle of the paralysis of a judicial Tribunal than has ever before been met with, at least in my experience.

The fact is too plain that the population of Nassau and its vicinity had become so completely demoralized by familiarity with the fraudulent transactions constantly passing before their eyes, as well as the unusual profits accruing therefrom to themselves, that they were neither in a condition nor in a disposition to visit with harshness any crime, however flagrant, that could be associated, however remotely, with the operations of the insurgents in their waters.

It appears to me to be clear that the Collector of the port of Long Cay failed in due diligence when he omitted to give any report whatever to the Governor of the flagrant acts committed by Locke in forging the signature and attempting to represent the person of another man, as well as in conspiring in defiance of the authorities to obtain false salvage, by force of arms, of an innocent party.

It appears to me that the Magistrate of Inagua failed in due diligence when he omitted to give immediate notice to the Governor of the facts which he only reported when specially called upon by him three weeks afterwards.

It appears to me that the Governor failed in due diligence when he omitted to take notice of the presence of a vessel of the insurgents in the port, which was expressly prohibited to enter it by the instructions of the Government at home.

By reason of that failure he further failed in due diligence in informing himself of the reasons which had brought that vessel as well as its prize the Hanover into the port, facts which could not have failed to become known to him had he instituted a faithful investigation.

It appears to me that the Attorney-General failed in due diligence when he gave his first opinion declining to act against the men whom he had reason to believe criminals, as well as in all the subsequent proceedings which he instituted against them in the court.

For these acts of omission and commission the nation injured can look for reparation only to the Government holding the supreme authority over the territory wherein they happened. It clearly appears that no energy existed in any official quarter to maintain neutrality.

Hence my conclusion is that a liability is clearly imposed upon Her Majesty's Government, in the case of the Retribution, under the terms of the Treaty of Washington.

No. 19.

Reply of Mr. Waite, Counsel of the United States, to the Argument of the Counsel of Great Britain upon the Special Question as to Supplies of Coal in British Ports to Confederate Ships.—(*Presented August* 8.)

THE "*special question as to supplies of coal in British ports to Confederate ships*," necessarily involves an examination of the facts and circumstances under which permission to take such supplies was granted.

It is not contended by the Counsel of the United States, that all supplies of coal in

neutral ports to the ships of war of belligerents are necessarily violations of neutrality, and, therefore, unlawful. It will be sufficient for the purposes of this controversy, if it shall be found that Great Britain *permitted* or *suffered* the insurgents "to make use of its ports or waters as the base of naval operations against the United States," and that the supplies of coal were obtained at such ports to facilitate belligerent operations.

1. All naval warfare must, of necessity, have upon land a "base of operations." To deprive a belligerent of that, is equivalent to depriving him of the power to carry on such a warfare successfully for any great length of time. Without it he cannot maintain his ships upon the ocean.

2. A "base of operations" for naval warfare is not alone, as seems to be contended by the distinguished Counsel of Great Britain (sec. 3, chap. iii, of his Argument), "a place from which operations of naval warfare are to be carried into effect." It is not, of necessity, the place where the belligerent watches for, and from which he moves against, the enemy; but it is any place at which the necessary preparations for the warfare are made; any place from which ships, arms, ammunition, stores, equipment, or men are furnished, and to which the ships of the navy look for warlike supplies and for the means of effecting the necessary repairs. It is, in short, what its name implies,—the support, the foundation, which upholds and sustains the operations of a naval war.

This was the doctrine recognized by Earl Russell on the 25th of March, 1862, three days after the Florida got out from the port of Liverpool, and while the correspondence in reference to her construction and outfit was fresh in his mind. In writing to Mr. Adams, at that time, in reference to complaints made of the treatment of the United States' vessel of war Flambeau at Nassau, in the month of December previous, he used this language:—

"On the other hand, the Flambeau was avowedly an armed vessel in the service of the Federal Government. She had entered the port of Nassau, and had remained there for some days, without any apparent necessity for doing so, and the authorities had not been informed of the object of her visit. To supply her with coal might, therefore, *be to facilitate her* belligerent operations, and this would constitute an infraction of the neutrality prescribed by the Queen's Proclamation of the 13th May last." (American Appendix, vol. i, p. 348.)

3. This "base of operations" must be within the territory of the belligerent or of his ally. A neutral which supplies it, violates his neutrality, and may be treated as an ally. A belligerent using without permission the territory of a neutral for such a purpose, commits an offence against the laws of neutrality, and subjects himself to the forcible expulsion of his ships of war, and to all other means of punishment and redress which may be requisite for the vindication of the offended neutral Sovereign.

4. After the end of the summer of 1861, the insurgents never had any available base of operations for naval warfare within the limits of their own territory. From that time forward until the end of the contest, the United States maintained a blockade of all the insurgent ports, which was recognized by all neutral nations as lawful, and was so far effective as to prevent any vessel of war (unless the Tallahasse and Chickamauga, with perhaps some other small vessels, should be excepted) from using these ports as a base for hostile operations upon the sea. No supplies for such operations were ever obtained there, nor were any repairs effected.

It is true the Nashville escaped through the blockade from the port of Charleston, but when she escaped she was in no condition for war, and within three days was at Bermuda in want of coal. After there taking on board a full supply, she was enabled to make her voyage of eighteen days to Southampton. The Florida ran the blockade inwards, and reached Mobile, where she was detained more than four months by the naval forces of the United States. At the end of that time she effected an escape, but with only a short supply of coal, for within ten days after her escape she appeared at Nassau "in distress for want of coal." After having been fairly set upon her cruise from Nassau, she not unfrequently remained at sea two months and more without renewing her supply.

5. This was at all times known to the British Government. The blockade was the subject of frequent correspondence between Mr. Adams and Earl Russell, and was acknowledged to be sufficiently effective to bind neutrals.

6. By depriving the insurgents of the use of their base of naval operations at home, the United States obtained a decided and important advantage in the progress of the war. It was a war, on the part of the United States, for the suppression of a wide-spread rebellion against the authority of the Government. At the outset, the power of the insurgents appeared so great, and their organization was so complete, that, in the opinion of the British Government, it was proper they should stand before the world, and be recognized as belligerents. The territory which they claimed as their own and sought to control, embraced a large extent of sea coast, well supplied with ports and harbours, available for all the purposes of commerce and naval warfare. In fact, it embraced

two out of the five navy-yards of the United States, and a port at which extensive preparations had been made for the establishment of a sixth.

The people of the States not in rebellion, but remaining loyal to the Government, were a commercial people and largely engaged in navigation. At the commencement of hostilities, the insurgents proclaimed their intention of making war upon this commerce. To prevent this, and to keep such ports as were in the possession of the insurgents from being used as bases for the operations of such a war, the United States at once determined to establish and effect their blockade. With the superior power and resources under the control of the Government, it was able to accomplish this work; and before the insurgents could supply themselves with ships of war, their ports were closed against all effective operations from their own territory as a base.

This advantage was one the United States had the right to retain if within their power so to do. No neutral nation could interfere to prevent it.

7. The loss which the insurgents had thus sustained at home, they endeavoured to repair by the use of the ports and territorial waters of neutral nations; and, in point of fact, they did carry on substantially their entire naval warfare against the commerce of the United States from a base of operations outside their own territory. This fact is not denied. It is entirely separate and distinct from that of "permission" or "sufferance," which only becomes important when it is sought to charge the neutral, whose territory is used, with the consequences of the use.

8. Toleration by a neutral of the use of its ports and waters by the ships of war of a belligerent to facilitate the operations of his naval warfare, is equivalent to a permission to use such ports and waters as a base of naval operations.

This principle was recognized by the Emperor of Brazil in his instructions to the Presidents of his Provinces on the 23rd of June 1863 (British Appendix, vol. i, p. 292.) It was adopted by Earl Russell on the 12th of June 1862, after the original escape of the Florida from Liverpool, and before the commencement of the correspondence in reference to the construction and out of the Alabama, when, in a letter addressed to Mr. Adams, he said:—

"Attempts on the part of the subjects of a neutral Government to take part in a war, or to make use of the neutral territory as an arsenal or barrack for the preparation and inception of direct and immediate hostilities against a State with which their Government is at peace, as by enlisting soldiers or fitting out ships of war, and so converting, as it were, neutral territory into a hostile depôt or post, in order to carry on hostilities therefrom, have an obvious tendency to involve in the war the neutral Government which *tolerates* such proceedings. Such attempts, if *unchecked*, might imply at least an indirect participation in hostile acts, and they are therefore consistently treated by the Government of the neutral State as offences against its public policy and safety, which may thereby be implicated." (American Appendix, vol. i, p. 665.)

If such proceedings by *subjects*, when "tolerated" or "unchecked," may imply an indirect participation by the neutral in the hostile acts of a belligerent, how much stronger is the implication when the proceedings are those of the *belligerent* himself.

9. It will not be denied that "toleration," "permission," or "sufferance," by a neutral, in this connection, implies a knowledge of the act or thing tolerated, permitted, or suffered; or, that which is equivalent, a culpable neglect in employing the means of obtaining such knowledge.

10. As early as the escape of the Florida from Liverpool, on the 22nd of March, 1862, the British Government had knowledge, or, to say the least, had "reasonable grounds to believe," that an effort was being made by the insurgents to supply, in part, the loss of their own ports, for all the purposes of war upon the ocean, by the use of those of Great Britain. From that time forward it knew that the insurgents relied *entirely* upon the ports and waters of neutral nations for the success of their naval warfare. This fact was so notorious, and so well understood in Great Britain, that it was made the subject of special comment by Earl Russell in the House of Commons during the progress of the war. (American Appendix, vol. v, p. 535.)

11. All the really effective vessels of war, ever used by the insurgents, were obtained from Great Britain. This is an undisputed fact. Two, certainly, the Florida and the Alabama, were constructed and specially adapted for warlike use in Great Britain, under contracts for that purpose made directly with the insurgent authorities. All this was known by the British Government, long before either of these vessels, after completing their armament and receiving their commissions, appeared at any of the ports of the kingdom, asking permission to coal or to repair; in fact, it was known before they had appeared in the ports of any nation.

For the purposes of this argument, it matters not whether Great Britain did or did not use due diligence to prevent the construction or escape of these vessels. The fact that the insurgents, in procuring them, committed an offence against the neutrality laws of the

realm, and subjected themselves to punishment therefor, remains undisputed. The individual agents, who, within British jurisdiction, committed this crime against British municipal law, made themselves subject to the penalties of that law. The authorities of the insurgents, who promoted the crime, subjected themselves to such measures as Great Britain might see fit to adopt in order to resent the wrongs inflicted on her, and to cause her sovereignty to be respected.

12. When these vessels were upon the sea, armed and fitted for war, the insurgents had advanced one step towards providing themselves with the means of prosecuting a war against the commerce of the United States; but they needed one thing more to make any war they might wage successful, and that was a base of operations. Without this, the United States would still, to a limited extent, have remained in the possession of the advantages they had gained by a successful blockade. The great difficulty to be overcome was the supply of coals. To no nation could this fact be more apparent than to Great Britain, the flag of whose magnificent navy was at that time almost constantly afloat in all the principal seas of the world.

13. Great Britain had the undoubted right, upon the discovery of these offences committed by the insurgents against her municipal laws, and of their violations in her territory of the laws of nations, to exclude by force, if necessary, the vessels, in this manner placed upon the seas, from all the hospitalities usually accorded to naval belligerents in the ports and waters of the kingdom.

This was the prompt decree of Brazil, when her hospitality was abused by one of these vessels (British Appendix, vol. i, p. 293). The Counsel of Great Britain does not deny the power of the British Government to make the same orders.

14. In this way Great Britain might, to a great extent, have prevented the consequences of the original crime committed within her own jurisdiction. It was her duty to use due diligence in her own ports and waters, and, as to all persons within her jurisdiction, to prevent the departure of such a vessel from her territory. If, notwithstanding her diligence, such a vessel was constructed within, and departed from, her jurisdiction, then good faith towards a nation with which she was at peace required that she should, as far as possible, curtail the injurious consequences of the unlawful act which she had been unable to prevent. She owed no comity to a nation that had abused her hospitality. She was under no obligations to open her ports to a belligerent that had violated her neutrality. No belligerent had the right to *demand* the use of her ports for the accommodation of his ships of war. It was a privilege she could grant or not as she pleased, and if in this respect she treated both belligerents alike, neither had the right to complain. An order which excluded all guilty of the same offence would have operated alike on all who were guilty, but would not have included the innocent.

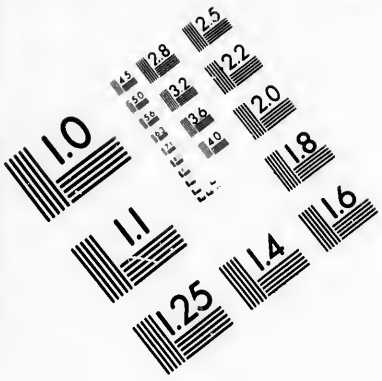
15. The United States had the right, as they did, to demand of Great Britain, that she should use all means within her power to avoid the consequence of her failure to prevent the use of her territory for these unlawful purposes. As has been seen, the insurgents commenced in Great Britain their violations of these particular laws of neutrality. They were flagrant acts. They were accomplished in spite of the United States. They were high offences against the authority and dignity of the Government of Great Britain, and, as Earl Russell afterwards said, "totally unjustifiable and manifestly offensive to the British Crown" (American Appendix vol. i, p. 631). To permit them to pass unrebuked, was to excuse them, and was to encourage future transgressions.

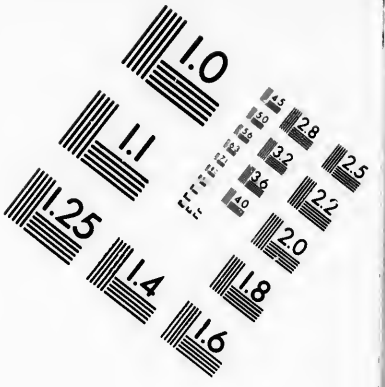
As was subsequently, on the 27th of March, 1863, said by Mr. Adams, in a conversation with Earl Russell upon this subject:—

> "What was much needed in America was not solely evidence of action to prevent these armaments. It was the moral power that might be extended by the Ministry in signifying its utter disapproval of all the machinations of the conspirators against the public peace. Hitherto the impression was quite general, as well in America as in this country, that the Ministry held no common sentiment, and were quite disposed to be tolerant of all the labours of these people, if not indifferent to them. Here they were absolutely sustaining the rebels in the prosecution of the war by the advance of money, of ships, and of all the necessaries with which to carry it on as well by sea as on the land; and upon such notorious offences Ministers had never yet given out any other than an uncertain sound. *The effect of this must be obvious. It encouraged the operations of British instigators of the trouble on this side, who believed that they were connived at, and so believing, carried on their schemes with new vigour.*" (American Appendix, vol. iii, p. 125.)

Nothing can add to the force of these words. Omission by the British Government to act under such circumstances, was nothing less than toleration of the abuses complained of. It was, in short, an implied permission to continue the unlawful practices.

16. Great Britain not only neglected during the whole war to take any measures by which any of the offending vessels of the insurgents would be excluded from the hospitali-





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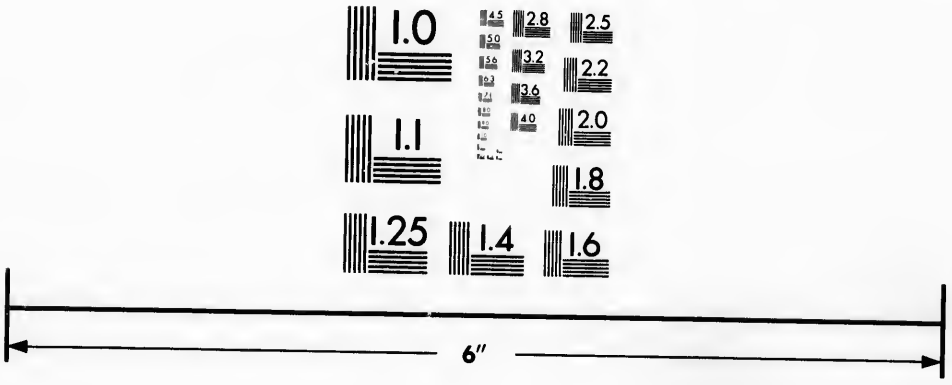

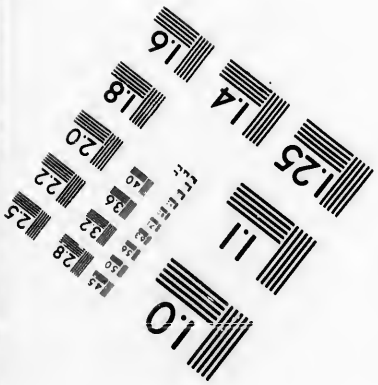

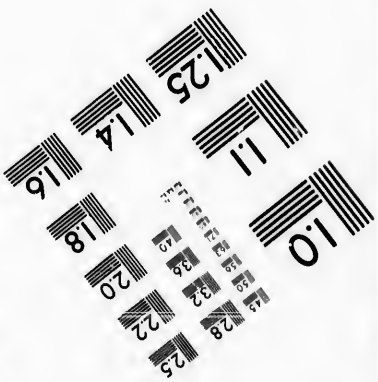

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ties of her ports, and their agents prevented from using her territory for facilitating their belligerent operations, but she in effect refused so to do. She did not even send remonstrances to the Government of the insurgents, or to any of its agents residing and conducting its affairs within her own jurisdiction.

On the 4th of September, 1862, Mr. Adams, in a communication to Earl Russell, called attention to the fact that the Agrippina, the barque which had taken part of the armament to the Alabama, was preparing to take out another cargo of coal to her, and asked that something might be done which would prevent the accomplishment of this object (British Appendix, vol. i, p. 209). This communication, in due course of business, was referred to the Commissioners of Customs, who, on the 25th of the same month, reported, "There would be great difficulty in ascertaining the intention of any parties making such a shipment, and we do not apprehend that our officers would have any power of interfering with it, were the coals cleared outward for some foreign port in compliance with the law" (British Appendix, vol. i, p. 213). Thus the matter ended.

If there was no power in the officers of the Customs to interfere with the shipment of the coals, there certainly was ample power in the Government to prohibit any offending belligerent vessel from coming into the ports of Great Britain to receive them. That, if it would not have stopped the offending vessels entirely, might to some extent have embarrassed their operations.

Again, on the 7th of December, 1863, Mr. Adams submitted to Earl Russell evidence of the existence of a regular office in the port of Liverpool for the enlistment and payment of British subjects, for the purpose of carrying on war against the Government and people of the United States (British Appendix, vol. i, p. 428). This communication was referred by Earl Russell to the Law Officers of the Crown, who, on the 12th of the same month, reported: "We have to observe that the facts disclosed in the depositions furnish additional grounds to those already existing, for strong remonstrance to the Confederate Government, on account of the systematic violation of our neutrality by their agents in this country" (British Appendix, vol. i, p. 440). There is no evidence tending to prove that any such remonstrance was then sent. In fact, the first action of that kind which appears in the proof, was taken on the 13th day of February, 1865, less than sixty days before the close of the war.

17. The conduct of Great Britain, from the commencement, was such as to encourage the insurgents, rather than discourage them, as to the use of her ports and waters for necessary repairs, and for obtaining provisions and coal.

The Alabama first appeared in a British port, at Jamaica, on the 20th of January, 1863, nearly six months after her escape from Liverpool, and after a lapse of much more time than was sufficient to notify the most distant Colonies of the offence which had been committed by her, and of any restrictions which the Government at home had seen fit to place upon her use of the hospitalities of ports of the Kingdom. No such notice was ever given, nor was any such restriction ever ordered.

The Alabama went to Jamaica for the reason that, in an engagement with the Hatteras, a United States' naval vessel, she had received such injuries as to make extensive repairs necessary. This engagement took place only 25 miles from a home port; but, instead of attempting to enter it, and make her repairs there, she sailed more than 1,500 miles to reach this port of Great Britain. In doing this, she had sailed far enough, and spent time enough, to have enabled her to reach any of the ports of the insurgents; but the blockade prevented her entering them, and she was compelled to rely upon the hospitalities of neutral waters. At Jamaica she was permitted, without objection, to make her repairs, and to take in such coal and other supplies as she required for her cruise. She was treated, as Commodore Dunlop said, as any United States' man-of-war would have been treated by him.

On the 25th of the same month (January 1863), the Florida appeared at Nassau short of coal, although she was only ten days from a home port. She was permitted to supply herself with coal and other necessaries. On the 24th of the next month she again appeared at Barbadoes, "bound for distant waters," but she was in distress, and unless permitted to repair, the captain said he would be compelled to land his men and strip his ship. Notwithstanding her past offences, permission to repair and take on supplies was granted.

These were the first visits of any of the offending cruizers to British waters. They were substantially the first visits to any ports of a neutral nation. The Florida stopped for a short time at Havana, on her way from Mobile to Nassau, and the Alabama was for a few hours at Martinique. But at neither of these places did they take on any coal or make any repairs.

Thus the nation, whose authority and dignity had been so grossly offended in the

construction and outfit of these vessels was the first to grant them neutral hospitalities. From that time her ports were never closed to any insurgent vessel of war, and permission to coal, provision, and repair was never refused.

It is said in the British Counter-Case, p. 118. that during the course of the war ten insurgent cruizers visited British ports. The total number of their visits was twenty-five, eleven of which were made for the purpose of effecting repairs. Coal was taken at sixteen of these visits. The total amount of coal taken was twenty-eight hundred tons.

The number of visits made by these cruizers to all the ports of all other neutral nations during the war did not exceed twenty. So it appears that the hospitalities extended by Great Britain in this form to the insurgents were greater than those of all the world beside; and yet more serious offences had been committed against her than any other neutral nation.

They required repairs at about one-half their visits, and coal at about two-thirds.

The average supply of coal to vessels of the insurgents was one hundred and seventy-five tons.

Because, therefore, the insurgents did make use of the ports of Great Britain as a base for their naval operations, and the British Government did not use due diligence to prevent, but on the contrary suffered and permitted it, all supplies of coal in those ports to Confederate ships were in violation of the neutrality of Great Britain, and rendered her responsible therefor to the United States.

M. R. WAITE.

No. 20.

Lord Tenterden to Earl Granville.—(*Received August* 19.)

My Lord, *Geneva, August* 15, 1872.

I TRANSMIT to your Lordship herewith a copy of a Memorandum by Sir Roundell Palmer, respecting the delay occasioned in the case of the Alabama, by the illness of the Queen's Advocate, which I have this day circulated to the Arbitrators.

I had previously informed Mr. Bancroft Davis, in a letter of which I inclose a copy, that it was my intention to circulate this paper, and been informed by him verbally that he did not object to my doing so.

I am, &c.
(Signed) TENTERDEN.

Inclosure 1 in No. 20.

Memorandum as to the Delay caused in the Case of the Alabama by Sir J. Harding's Illness.

SIR JOHN HARDING was ill from the latter part of June 1862, and did not after that time attend to Government business.

It was not, however, known, till some weeks afterwards, that he was unlikely to recover; nor did the disorder undergo, till the end of July, such a development as to make the Government aware that the case was one of permanent mental alienation.

Although, when a Law Officer was ill, he would not be troubled with ordinary business, it was quite consistent with probability and experience that, in a case of more than usual importance, it would be desired, if possible, to obtain the benefit of his opinion.

Under such circumstances, the papers would naturally be sent to his private house; and, if this was done, and if he was unable to attend to them, some delay would necessarily take place before the impossibility of his attending to them was known.

Lord Russell told Mr. Adams (July 31, 1862) that some delay had, in fact, occurred with respect to the Alabama, in consequence of Sir John Harding's illness. He could not have made the statement if the fact were not really so; because whatever the fact was, it must have been, at the time, known to him. The very circumstance that Sir J. Harding had not already advised upon the case in its earlier stage might be a reason why it should be wished to obtain his opinion.

Sir J. Harding and his wife are both (some years since) dead; so are Sir W. Atherton (the then Attorney-General) and his wife; no information therefore as to the circumstances which may have caused delay with respect to the delivery at their private houses, or the transmission and consideration of any papers on this subject, can now be obtained from them.

The then Solicitor-General was Sir R. Palmer, who is able to state positively that the first time he saw or heard of the papers sent to the "Law Officers" (*i.e.*, all three Law Officers) on the 23rd and 25th or 26th of July was on the evening of Monday the 28th of July, when he was summoned by the Attorney-General, Sir W. Atherton, to

consider them in consultation, and when the advice to be given to the Government was agreed upon. Sir R. Palmer thinks it his duty to add, that no Government ever had a more diligent, conscientious, and laborious servant than Sir W. Atherton; and that it is in the last degree unlikely that he would have been guilty of any negligence or unnecessary delay in the consideration of papers of such importance.

Inclosure 2 in No. 20.

Lord Tenterden to Mr. Davis.

My dear Davis, *Hotel des Bergues, July 26, 1872.*

I INCLOSE a statement by Sir R. Palmer respecting the Queen's Advocate's illness, a subject upon which he would be glad to give a personal explanation, and which, if you see no objection, I will circulate to the Arbitrators.

Yours, &c.
(Signed) TENTERDEN.

No. 21.

Lord Tenterden to Earl Granville.—(Received August 19.)

My Lord, *Geneva, August 15, 1872.*

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 14th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 21.

Protocol No. XX.—Record of the Proceedings of the Tribunal of Arbitration at the Twentieth Conference, held at Geneva, in Switzerland, on the 14th of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Mr. Bancroft Davis, in reply to an inquiry from t Sclopis on behalf of the Tribunal stated as follows:—

"The claims for losses growing out of the acts of the Sallie, the Jeff. Davis, the Music, the Boston, and the V. H. Joy, are respectfully submitted for the determination of the Tribunal.

"The Agent of the United States has no instructions regarding them, except what appears in the list of claims presented on the 15th of December last, and in the revised list of claims presented on the 15th of April last."

The Tribunal directed this statement to be recorded, and passed on to the discussion of the question of "due diligence," generally considered.

The Conference was adjourned until Thursday, the 15th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statements of Mr. Adams, Baron d'Itajubá, M. Staempfli, and Count Sclopis, on the question of Due Diligence, discussed at the Meeting of the 14th August.

Statement of Mr. Adams.

DUE DILIGENCE.

THESE words, which are found in the first and third of the Rules prescribed by the Treaty of Washington, for the government of the Arbitrators in making up their judgment, have given rise to much discussion in the preparatory arguments of the opposing parties.

On the side of Great Britain, an explanation of them is given in the 9th, 10th, and 11th propositions, laid down on the 24th and 25th pages of the Case.

The subject is again considered in pages 21 and 22 of the volume called the Counter-Case.

It is again referred to in the 8th and 9th pages of the volume called the Argument or Summary.

Lastly, it is treated in a more general way in the Argument presented by Sir Roundell Palmer, Counsel on behalf of Her Britannic Majesty, on the 25th of July last.

On the side of the United States, an explanation is presented in pages 150 to 158 of the volume called the Case.

It is again referred to in the sixth page of the Counter-Case.

The subject is again treated in pages 316 to 322 of the Argument or Summary.

Lastly, it is discussed in a more general way in the Argument submitted by the Counsel on behalf of the United States on the 5th and 6th of August.

The objection which I am constrained to admit as existing in my mind to the British discussion is, that it appears to address itself for the most part to the establishment of limitations to the meaning of the words rather than to the explanation of the obligations which they imply.

The objection which I am constrained to find to the American definition is, that I do not find the word "due" used in the sense attributed to it in any dictionary of established authority.

Yet it does not appear to me so difficult to find a suitable meaning for these words. Perhaps it may have been overlooked from the very fact of its simplicity.

I understand the word diligence to signify not merely work, but to use a familiar phrase, work with a will.

The force of the qualifying epithet "due" can be best obtained by tracing it to its origin. All lexicographers derive it from the Latin verb "debere," which itself is a compound of two words "de" and "habere," which means "quasi de alio habere," that is, in English, *to have of or from another.*

Assuming this to be the primary meaning, I now come to the second step. The first having implied something received by one person from another, the second implies equally an obligation incurred thereby. "Debere," in Latin, 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 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 differences 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."

Statement of M. Staempfli.

Opinions de M. Staempfli sur les questions de droit sur lesquelles le Tribunal d'Arbitrage, dans sa séance du 25 Juillet, 1872, *a demandé des éclaircissements aux Conseils des Hautes Parties présentes à la barre.*

M. Staempfli déclare qu'il ne trouve pas très-opportun de se perdre, pour les trois questions des *dues diligences,* de *l'effet de commissions,* et des *approvisionnements de charbon,* dans de longues discussions et interprétations théoriques. Il développe oralement et sommairement ses vues y relatives, en se réservant de motiver de plus près leur application dans chaque cas spécial, et se borne pour le moment à poser les seuls principes suivants, qui lui serviront de direction générale.

Principes généraux de droit.

(Programme inséré dans le Protocole X, Art. litt. A, No. III.)

Dans ses considérants juridiques, le Tribunal doit se guider par les principes suivants :—

1. En premier lieu, par les trois Règles posées dans l'Article VI du Traité, lequel porte que—

"Dans la décision des matières à eux soumises, les Arbitres seront guidés par les trois Règles

uivantes, que les Hautes Parties Contractantes sont convenues de regarder comme des règles à prendre comme applicables à la cause, et par tels principes du droit des gens qui, sans être en désaccord avec ces Règles, auront été reconnus par les Arbitres comme ayant été applicables dans l'espèce :—

"RÈGLES.

"UN Gouvernement neutre est tenu,—

"1. De faire les dues diligences pour prévenir la mise en état, l'armement en guerre ou l'équipement (*fitting out, arming, or equipping*), dans sa juridiction, de tout vaisseau qu'il est raisonnablement fondé à croire destiné à croiser ou à faire la guerre contre une Puissance avec laquelle ce Gouvernement est en paix ; et de faire aussi même diligence pour empêcher le départ hors de sa juridiction de tout navire destiné à croiser ou à faire la guerre comme il est dit ci-dessus, ce navire ayant été spécialement adapté, en tout ou en partie, dans les limites de sa dite juridiction, à des usages belligérants.

"2. De ne permettre ni souffrir que l'un des belligérants fasse usage de ses ports ou de ses eaux comme d'une base d'opérations navales contre l'autre, ni pour renouveler ou augmenter ses munitions militaires ou son armement, ou s'y procurer des recrues.

"3. D'exercer les dues diligences dans ses propres ports et eaux, et à l'égard de toutes personnes dans les limites de sa juridiction, afin d'empêcher toute violation des obligations et devoirs précédents."

D'après le Traité, ces trois Règles prévalent sur les principes que l'on pourrait déduire du droit des gens historique et de la science.

2. Le droit des gens historique, ou bien la pratique du droit des gens, ainsi que la science et les autorités scientifiques, peuvent être considérés comme droit subsidiaire, en tant que les principes à appliquer sont généralement reconnus et ne sont point sujets à controverse, ni en désaccord avec les trois Règles ci-dessus. Si l'une ou l'autre de ces conditions vient à manquer, c'est au Tribunal d'y suppléer en interprétant et appliquant les trois Règles de son mieux et en toute conscience.

3. Les lois sur la neutralité, propres à un Etat, ne constituent pas un élément du droit des gens dans le sens qu'elles ne peuvent être, en tout temps, changées, modifiées ou complétées sans la coopération ou le consentement d'autres Etats, le droit des gens lui-même étant absolument indépendant de ces lois municipales ; cependant, tant que dans un Etat il subsiste des lois pareilles et qu'elles n'ont pas été abrogées, des Etats belligérants ont le droit d'en réclamer l'observation loyale, puisque sans cela il pourrait se commettre des fraudes ou des erreurs au détriment de l'un ou de l'autre des belligérants ; comme, par exemple, quand subsiste publiquement, bien qu'on ne l'observe pas, l'ordonnance qui défend à un navire belligérant de séjourner plus de vingt-quatre heures dans un port, ou d'embarquer plus de charbon qu'il ne lui en faut pour regagner le port de son pays le plus rapproché, ou de s'approvisionner de nouveau au même port avant que trois mois se soient écoulés.

Ce principe implique en même temps que le manque de toutes lois municipales ou le manque de lois suffisantes sur la matière ne déroge en rien au droit des gens, soit aux obligations et aux droits internationaux.

En outre, sont admis encore les principes suivants, que l'on cite ici afin d'en éviter la répétition dans le jugement à porter sur chacun des vaisseaux :—

4. Les "dues diligences" à exercer comprennent implicitement la *propre* vigilance et la *propre* initiative dans le but de découvrir et d'empêcher toute violation de la propre neutralité ; un Etat belligérant n'a ni le devoir ni le droit d'exercer la surveillance, ni de faire la police dans un Etat neutre à la place des autorités du pays.

5. Le fait qu'un vaisseau, construit contrairement aux lois de la neutralité, s'échappe et gagne la mer, ne décharge pas ce vaisseau de la responsabilité qu'il a encourue pour avoir violé la neutralité ; il peut donc être poursuivi s'il rentre dans la juridiction de l'Etat lésé. Que ce navire ait été cédé ou commissionné dans l'intervalle, ce fait ne détruit pas la violation commise, à moins que la cession ou le commissionnement, selon le cas, n'ait eu lieu *bonâ fide*.

M. Staempfli, donnant suite au programme inséré au Protocole X, fait à cette occasion imprimer aussi ses propositions relatives à l'Article litt. A, Nos. I et II, du dit programme :—

(A.) INDICATIONS GÉNÉRALES.

I.—*Question à décider.*

La question à décider par le Tribunal est précisée de la manière suivante dans l'Article VII du Traité :—

"Le dit Tribunal commencera par déterminer, pour chaque navire séparément, si la Grande Bretagne a manqué, par une action ou une omission, à remplir des devoirs énoncés dans les trois précédentes Règles, ou reconnus par les principes du droit des gens qui ne sont pas en désaccord avec ces Règles, et il certifiera ce fait à l'égard de chacun des navires susdits."

En outre, le Tribunal est chargé éventuellement de procéder, s'il le juge convenable, à l'adjudication d'une somme en bloc pour toutes les réclamations.

II.—*Délimitation des faits.*

Les Mémoires et pièces produits par les deux parties contiennent une foule de faits qui n'entrent pas en considération dans le jugement à rendre par le Tribunal. Tels sont notamment :—

1. La reconnaissance par le Gouvernement Britannique des Etats insurgés comme Puissance belligérante ;

2. Les expressions de sympathie ou d'antipathie durant la guerre, les discours individuels au sein ou en dehors des parlements ou autres corps officiels, l'attitude de la presse, &c ;

3. La permission du commerce des armes et de la sortie des ports de navires destinés à traverser le blocus,—en tant qu'il n'y a rien, dans la permission de l'un ou de l'autre de ces actes, qui soit en désaccord avec la défense d'armer ou d'équiper des vaisseaux de guerre et des croiseurs ;

4. Les précédents historiques de violation ou d'inégal maintien des lois de la neutralité et les arrêts judiciaires, en tant qu'il n'en découle point des principes du droit des gens, non sujets à controverse.

Les faits que le Tribunal doit prendre en considération ne sont que les actions et les omissions de la Grande Bretagne à l'égard de chacun des vaisseaux qui forment l'objet d'une plainte de la part des Etats Unis.

Proposition de M. Staempfli à l'Article litt. A., "Décisions Préliminaires," du programme inséré au Protocole X.

(B.) Décision relative à chacun des Croiseurs.

Decisions Préliminaires.

Il est admissible que les Etats Unis étendent leurs réclamations à d'autres vaisseaux que les quatre mentionnés dans le Mémoire Britannique, à savoir, le Florida, l'Alabama, le Georgia, et le Shenandoah. Le Contre-Mémoire Britannique ne maintient d'ailleurs plus l'objection faite à cet égard.

Par contre, et dès le principe, l'on ne prendra point en considération les demandes d'indemnité pour destructions causées par des vaisseaux qui ne sont point mentionnés dans les Mémoires des Etats Unis, et à l'égard desquels, par conséquence, l'on n'avance ni ne prouve aucun acte ni aucune omission contraires à la neutralité, à la charge de la Grande Bretagne. Ceci a trait aux croiseurs qui ne sont indiqués que dans les listes de réclamations pour pertes, c'est-à-dire, le Boston, le Jeff. Davis, le Sallie, le V. H. Joy, et le Music.

D'après ces directions posées, les navires restant en discussion sont les suivants :—

1. Le Sumter.
2. Le Nashville.
3. Le Florida avec ses tenders.
4. L'Alabama avec son tender.
5. Le Retribution.
6. Le Georgia.
7. Le Tallahassee.
8. Le Chickamauga.
9. Le Shenandoah.

En traitant de chacun des vaisseaux, l'on adopte l'ordre suivi par le Mémoire Américain, coincidant avec celui qui vient d'être tracé.

Proposition de M. Staempfli sur la Formule d'Introduction de l'Acte du Jugement.

Le Tribunal d'Arbitrage dans la question de l'Alabama, institué en vertu du Traité de Washington, du 8 Mai, 1871, après avoir pris connaissance de ce Traité et des Mémoire, répliques et plaidoyers, ainsi que de tous les appendices et des pièces à l'appui, présentés par les deux Gouvernements intéressés, a trouvé et arrêté ce qui est consigné dans le présent acte du jugement.

(Translation.)

Opinions of M. Staempfli on the questions of Law as to which the Tribunal of Arbitration, at its Sitting of July 25, 1872, requested elucidations from the Counsel of the High Parties present at the Bar.

M. Staempfli states that he sees no great advantage in wandering into long descriptions and theoretical interpretations on the questions of *due diligence, the effect of*

commissioning, and *the supply of coal*. He sets forth orally and succinctly his views on these heads, reserving to himself the right of giving more precise reasons for their application in each particular case, and confines himself for the present to laying down the following principles only, which will serve him for his general guidance.

General Principles of Law.

(Programme inserted in Protocol X, Article A, No. III.)

In its decision on points of law, the Tribunal should be guided by the following principles:—

1. In the first place, by the three Rules laid down in Article VI of the Treaty, which provides that—

"In deciding the matters submitted to the Arbitrators they shall be governed by the following three Rules, which are agreed upon by the High Contracting Parties, as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

"Rules.

"A neutral Government is bound—

"First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly. To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

According to the Treaty, these three Rules take precedence of the principles which might be drawn from the history and science of the law of nations.

2. Historical international law or the practice of the law of nations, as well as science and scientific authorities, may be considered as subsidiary law, in so far as the principles to be applied are generally recognized, and are not liable to controversy, nor at variance with the three Rules quoted above. If any of these conditions fail, it is for the Tribunal to supply what is wanting by interpreting and applying the three Rules to the best of its power and conscientiously.

3. The laws of a State touching neutrality do not constitute an element of the law of nations in the sense that they cannot, at any time, be altered, modified, or added to without the co-operation or consent of other States, the law of nations itself being absolutely independent of these municipal laws; yet, so long as there exist such laws in a State, and they have not been abrogated, belligerent States have the right to require their loyal observance, as otherwise frauds or errors might be committed, to the detriment of one or other of the belligerents; as, for instance, when there is known to exist (although no attention may be paid to it) a decree forbidding a belligerent vessel of war to remain in a port for more than twenty-four hours, or to take on board more coal than is necessary for her to reach the nearest port of her country, or to obtain fresh supplies in the same port within three months.

This principle, at the same time, implies that the absence of all municipal laws, or the want of sufficient laws on the subject, does not, in any way, detract from the law of nations, either as regards international obligations or rights.

Moreover, the following further principles are admitted, which are cited here to avoid a repetition of them in the judgment to be given respecting each of the vessels.

4. The "due diligence" to be exercised implicitly comprises vigilance and initiative *on the part of the neutral itself*, with the object of discovering and preventing any violation of its own neutrality. A belligerent State is neither bound, nor has it the right to exercise surveillance or to perform police duties in a neutral State in lieu of the local authorities.

5. The fact that a vessel, built in contravention of the laws of neutrality, escapes and gets out to sea, does not free that vessel from the responsibility she has incurred by her violation of neutrality; she may, therefore, be proceeded against if she returns within the jurisdiction of the injured State. The fact of her having been transferred or commissioned in the meanwhile does not annul the violation committed, unless the transfer or commissioning, as the case may be, was a *bonâ fide* transaction.

M. Staempfli, following the programme inserted in Protocol X, takes this opportunity of causing his propositions relative to Article A, Nos. I and II of the said programme, to be also printed:—

(A.) General Indications.

I.—*Question to be decided.*

The question to be decided by the Tribunal is laid down in the following words in Article VII of the Treaty:—

"The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three Rules, or recognized by the principles of international law not inconsistent with such Rules, and shall certify such fact as to each of the said vessels."

Moreover, the Tribunal is authorized, if it think proper, to proceed eventually to award a sum in gross in payment of all claims.

II.—*Definition of facts.*

The Cases and documents put in by the two Powers contain a quantity of facts which should not be taken into consideration in the Judgment to be pronounced by the Tribunal. Notably:—

1. The recognition of the Insurgent States as a belligerent Power by the British Government;

2. Expressions of sympathy or antipathy during the war, individual speeches in or out of Parliament or other official assemblies, the attitude of the press, &c.;

3. The permission granted for the trade in arms, and for the departure from port of ships intended to run the blockade,—in so far as there is nothing in the toleration of either of these acts which is at variance with the prohibition to arm or equip vessels of war and cruizers;

4. The historical precedents of the violation or unequal execution of neutrality laws and of judicial decrees, in so far as these do not furnish the means of deducing principles of the law of nations, not open to controversy.

The facts to be taken into consideration by the Tribunal are only the acts and omissions of Great Britain with regard to each of the vessels which form the subject of a complaint on the part of the United States.

Proposal of M. Staempfli under Article A, "Preliminary Decisions," of the programme inserted in Protocol X.

(B.) Decision with regard to each of the Cruisers.

Preliminary Decisions.

It is admissible that the United States should extend their claims to other vessels besides the four mentioned in the British Case, viz.: the Florida, Alabama, Georgia, and Shenandoah. Moreover, the British Counter-Case does not insist on the objection made on this head.

On the other hand, and from the very nature of things, no account can be taken of the claims for indemnity for losses caused by vessels not mentioned in the pleadings of the United States, and with regard to which, consequently, no act or omission in violation of neutrality is advanced or proved against Great Britain. This has reference to the cruizers named only in the lists of claims for losses, viz.: the Boston, Jeff. Davis, Sallie, V. H. Joy, and Music.

According to the rules thus laid down, the vessels remaining for discussion are the following:—

1. The Sumter.
2. The Nashville.
3. The Florida and her tenders.
4. The Alabama and her tender.
5. The Retribution.
6. The Georgia.
7. The Tallahassee.
8. The Chickamauga.
9. The Shenandoah.

In discussing each of these vessels the order followed by the American Case, coinciding with the above list, will be adhered to.

Proposal of M. Stæmpfli as to the Form of Introduction to the Judgment.

The Tribunal of Arbitration on the Alabama question, constituted by virtue of the Treaty of Washington of May 8, 1871, having taken cognizance of that Treaty and of the Cases, Counter-Cases, and Arguments, as well as of all the appendices and documents in evidence presented by the two Governments concerned, has found and determined what is recorded in the present Judgment.

Statement of Count Sclopis.

DANS la séance du 25 Juillet, 1872, sur la proposition de M. le Vicomte d'Itajubá, l'un des Arbitres, le Tribunal décida de demander au Conseil de la Grande Bretagne une exposition ou argumentation, écrite ou imprimée, sur les trois questions de droit suivantes:—

1. La question des dues diligences, traité d'une manière générale;—
2. La question spéciale de savoir quel a été l'effet des commissions possédés par les vaisseaux de guerre Confédérés qui sont entrés dans des ports Britanniques;
3. La question spéciale des approvisionnements de charbon accordés aux vaisseaux Confédérés dans les ports Britanniques;

Tout en réservant à la Partie adverse le droit de répondre, soit oralement, soit par écrit, selon le cas; le tout aux termes de l'Article V du Traité de Washingon.

Les questions se réfèrent à l'Article VI du Traité de Washington, ainsi conçu:—

"Article VI.—Dans la décision des matières à eux soumises, les Arbitres seront guidés par les trois Règles suivantes, dont les Hautes Parties Contractantes conviennent de faire une application spéciale à cette question, et par les principes du droit des gens qui, sans être en desaccord avec ces Règles, auront été reconnus par les Arbitres comme ayant été applicables dans l'espèce:

"RÈGLES.

"Un Gouvernement neutre est tenu—

"1. De faire les dues diligences pour prévenir l'armement en guerre ou l'équipement dans les limites où s'exerce sa juridiction, de tout vaisseau qu'il peut raisonnablement soupçonner être destiné à croiser ou faire la guerre, contre une Puissance avec laquelle ce Gouvernement est en paix; de faire même diligence pour empêcher le départ hors des limites de sa juridiction de tout navire destiné à croiser ou faire la guerre, comme il est dit ci dessus, quand ce navire aura été spécialement adapté en tout ou, en partie, dans les limites de sa dite juridiction, à des usages belligérants.

"2. De ne permettre ni souffrir que l'un des belligérants fasse usage de ses ports ni de ses eaux comme d'une base d'opérations navales contre l'autre belligérant, ni pour renouveler ou augmenter ses munitions militaires et son armement, ou s'y procurer ses recrues.

"3. D'exercer les dues diligences dans ces eaux, et d'empêcher qu'aucune personne, dans l'enceinte de sa juridiction, ne viole les obligations et les devoirs précédents.

"Sa Majesté Britannique a chargé ses Hauts Commissaires et Plénipotentiaires de déclarer que le Gouvernement de Sa Majesté ne saurait donner son assentiment aux Règles précédentes comme à un exposé de principes du droit des gens en vigueur au moment où se sont élevées les réclamations mentionnées à l'Article I; mais, pour donner un témoignage de son désir de fortifier les relations amicales entre les deux pays et de prendre en vue de l'avenir des précautions satisfaisantes, le Gouvernement da Sa Majesté consent à ce qu'en décidant les questions qui naissent de ces réclamations entre les deux pays, les Arbitres tiennent pour accordé que le Gouvernement de Sa Majesté a voulu agir en conformité avec les principes énoncés dans ces règles. Les Hautes Parties Contractantes s'engagent à observer ces Règles dans leurs rapports mutuels à l'avenir, et à les porter à la connaissance des autres Puissances maritimes, en les invitant à y adhérer."

Ont été entendus, dans leurs plaidoyers respectifs, Sir Roundell Palmer, ci-devant Attorney-General, pour la Grande Bretagne, MM. le Général C. Cushing, Evarts et Waite, pour les Etats Unis.

I.—"Due Diligence."

Nous allons aborder les questions de principes; la première qui s'offre à nos yeux, celle qui nous servira comme de boussole morale dans les appréciations qu'ils nous faudra faire, parcourant les différents cas pratiques qui attendent notre décision, c'est la véritable signification à attribuer aux mots "due diligence" qui ont été employés dans la première des trois Règles établies par l'Article VI du Traité de Washington. Une longue discussion s'est établie entre les deux Puissances sur le plus ou le moins d'étendue qu'il fallait donner à la signification de ces mots. On ne peut pas dire assurément qu'il y ait défaut d'éclaircissements sur cette matière. Dans le premier "Case" Américain, on nous a donné tout un long passage des Pandectes d'Ayliffe, de copieuses citations des ouvrages de Story et de Jones, ainsi que des indications de la jurisprudence suivie dans la matière par la Cour Suprême des Etats Unis et par les Cours Ecossaises; de plus, onze simples citations d'auteurs.

Le premier "Case" Anglais parle de la "due diligence" et il en donne une définition (page 24, texte Anglais) qui n'est point absolue, et qui s'en rapporte aux faits historiques. Dans le "Counter-Case" le Gouvernement Britannique entre dans de plus amples explications à cet égard (page 21, texte Anglais), et il s'accorde avec celui des Etats Unis à considérer que ces mots *les dues diligences* ne créent aucune obligation nouvelle ou supplémentaire. Ils exigent du neutre, dans l'accomplissement des devoirs qui lui sont imposés, cette mesure de soin (et pas d'autre) qui est requise en vertu des principes ordinaires de la jurisprudence internationale, soin dont l'absence constitue la négligence, et, pour appuyer sa doctrine, le "Counter-Case" Anglais produit un long passage du livre de Reddie, "Recherches sur le Droit Maritime et International." Sir Roundell Palmer prend ces mots dans le sens qu'un neutre doit employer tous les moyens légitimes en son pouvoir en donnant à ces mots une portée raisonnable. Les États Unis étendent le cas de responsabilité et ils soutiennent que le belligérant a le droit de demander au neutre de mettre à exécution ses lois d'ordre intérieur ainsi que les proclamations de son pouvoir exécutif; ils prétendent de plus que le belligérant a le droit de demander que les pouvoirs dont le neutre est armé soient augmentés par mesure législative.

De grandes explications ont été fournies de part et d'autre par les Puissances en désaccord.

Il me paraît que la voie la plus simple pour arriver à fixer légalement nos idées sur la matière est de se fixer sur les idées suivantes:—

Les mots *diligence due* contiennent nécessairement l'idée d'un rapport du devoir à la chose; il est impossible de définir *à priori* abstraitement un devoir absolu de diligence. C'est la chose à laquelle cette diligence se rapporte qui en détermine le degré. Prenons l'échelle des imputabilités selon le droit Romain, en partant du *dolus* pour descendre par la *culpa lata* et la *culpa levis* jusqu'à la *culpa levissima*, et nous trouverons que les applicabilités se modifient d'après les objets auxquels elles se réfèrent. Je passe sur la responsabilité du tuteur, du dépositaire, et sur plusieurs autres cas spécifiés dans les lois, pour ne citer que l'exemple des cas où la responsabilité est encourue par la *culpa levis* ou même par la *levissima*. Telle est celle, par exemple, qui frappe celui qui est chargé de garder des matières explosibles, ou qui doit veiller à la sûreté des digues dans le temps des inondations, celui qui garde un dépôt de papiers d'une importance exceptionnelle. Toutes ces personnes, par le seul fait qu'elles ont accepté ces fonctions, sont tenues d'exercer une diligence déterminée par l'objet spécial de ces mêmes fonctions.

En se portant sur le terrain politique, la plus grande étendue que l'on puisse attribuer aux devoirs de diligence d'un neutre sera de lui imposer d'en agir à l'égard du belligérant comme il agirait pour son propre intérêt dans des cas analogues.

Il est juste sans doute de tenir des exigences d'un belligérant à l'égard d'un neutre, mais il ne faut point les pousser au point de gêner le neutre dans l'action normale de ses droits, dans l'organisme de ses fonctions gouvernantes.

J'admets volontiers, d'autre part, que les devoirs du neutre ne puissent pas être déterminés par les lois que cette puissance se serait faites dans son propre intérêt. Il y aurait là un moyen facile de se soustraire à des responsabilités positives que l'équité reconnaît et que le droit des gens impose. Les nations ont entre elles un droit commun, ou si on aime mieux un lien commun, formé par l'équité et sanctionné par le respect des intérêts réciproques; ce droit commun se développe surtout en s'appliquant aux faits qui se passent sur la mer, là où les confins ne sont point tracés, où la liberté doit être d'autant plus assurée par un droit commun sans lequel il serait impossible de se mettre à couvert des plus flagrantes injustices par des garanties positives. C'est ce

commissioning, and *the supply of coal*. He sets forth orally and succinctly his views on these heads, reserving to himself the right of giving more precise reasons for their application in each particular case, and confines himself for the present to laying down the following principles only, which will serve him for his general guidance.

General Principles of Law.

(Programme inserted in Protocol X, Article A, No. III.)

In its decision on points of law, the Tribunal should be guided by the following principles:—

1. In the first place, by the three Rules laid down in Article VI of the Treaty, which provides that—

"In deciding the matters submitted to the Arbitrators they shall be governed by the following three Rules, which are agreed upon by the High Contracting Parties, as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

"RULES.

"A neutral Government is bound—

"First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly. To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

According to the Treaty, these three Rules take precedence of the principles which might be drawn from the history and science of the law of nations.

2. Historical international law or the practice of the law of nations, as well as science and scientific authorities, may be considered as subsidiary law, in so far as the principles to be applied are generally recognized, and are not liable to controversy, nor at variance with the three Rules quoted above. If any of these conditions fail, it is for the Tribunal to supply what is wanting by interpreting and applying the three Rules to the best of its power and conscientiously.

3. The laws of a State touching neutrality do not constitute an element of the law of nations in the sense that they cannot, at any time, be altered, modified, or added to without the co-operation or consent of other States, the law of nations itself being absolutely independent of these municipal laws; yet, so long as there exist such laws in a State, and they have not been abrogated, belligerent States have the right to require their loyal observance, as otherwise frauds or errors might be committed, to the detriment of one or other of the belligerents; as, for instance, when there is known to exist (although no attention may be paid to it) a decree forbidding a belligerent vessel of war to remain in a port for more than twenty-four hours, or to take on board more coal than is necessary for her to reach the nearest port of her country, or to obtain fresh supplies in the same port within three months.

This principle, at the same time, implies that the absence of all municipal laws, or the want of sufficient laws on the subject, does not, in any way, detract from the law of nations, either as regards international obligations or rights.

Moreover, the following further principles are admitted, which are cited here to avoid a repetition of them in the judgment to be given respecting each of the vessels.

4. The "due diligence" to be exercised implicitly comprises vigilance and initiative *on the part of the neutral itself*, with the object of discovering and preventing any violation of its own neutrality. A belligerent State is neither bound, nor has it the right to exercise surveillance or to perform police duties in a neutral State in lieu of the local authorities.

5. The fact that a vessel, built in contravention of the laws of neutrality, escapes and gets out to sea, does not free that vessel from the responsibility she has incurred by her violation of neutrality; she may, therefore, be proceeded against if she returns within the jurisdiction of the injured State. The fact of her having been transferred or commissioned in the meanwhile does not annul the violation committed, unless the transfer or commissioning, as the case may be, was a *bonâ fide* transaction.

M. Staempfli, following the programme inserted in Protocol X, takes this opportunity of causing his propositions relative to Article A, Nos. I and II of the said programme, to be also printed:—

(A.) General Indications.

I.—*Question to be decided.*

The question to be decided by the Tribunal is laid down in the following words in Article VII of the Treaty:—

"The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three Rules, or recognized by the principles of international law not inconsistent with such Rules, and shall certify such fact as to each of the said vessels."

Moreover, the Tribunal is authorized, if it think proper, to proceed eventually to award a sum in gross in payment of all claims.

II.—*Definition of facts.*

The Cases and documents put in by the two Powers contain a quantity of facts which should not be taken into consideration in the Judgment to be pronounced by the Tribunal. Notably:—

1. The recognition of the Insurgent States as a belligerent Power by the British Government;
2. Expressions of sympathy or antipathy during the war, individual speeches in or out of Parliament or other official assemblies, the attitude of the press, &c.;
3. The permission granted for the trade in arms, and for the departure from port of ships intended to run the blockade,—in so far as there is nothing in the toleration of either of these acts which is at variance with the prohibition to arm or equip vessels of war and cruizers;
4. The historical precedents of the violation or unequal execution of neutrality laws and of judicial decrees, in so far as these do not furnish the means of deducing principles of the law of nations, not open to controversy.

The facts to be taken into consideration by the Tribunal are only the acts and omissions of Great Britain with regard to each of the vessels which form the subject of a complaint on the part of the United States.

Proposal of M. Staempfli under Article A, "Preliminary Decisions," of the programme inserted in Protocol X.

(B.) Decision with regard to each of the Cruisers.

Preliminary Decisions.

It is admissible that the United States should extend their claims to other vessels besides the four mentioned in the British Case, viz.: the Florida, Alabama, Georgia, and Shenandoah. Moreover, the British Counter-Case does not insist on the objection made on this head.

On the other hand, and from the very nature of things, no account can be taken of the claims for indemnity for losses caused by vessels not mentioned in the pleadings of the United States, and with regard to which, consequently, no act or omission in violation of neutrality is advanced or proved against Great Britain. This has reference to the cruizers named only in the lists of claims for losses, viz.: the Boston, Jeff. Davis, Sallie, V. H. Joy, and Music.

According to the rules thus laid down, the vessels remaining for discussion are the following:—

1. The Sumter.
2. The Nashville.
3. The Florida and her tenders.
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6. The Georgia.
7. The Tallahassee.
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In discussing each of these vessels the order followed by the American Case, coinciding with the above list, will be adhered to.

Proposal of M. Staempfli as to the Form of Introduction to the Judgment.

The Tribunal of Arbitration on the Alabama question, constituted by virtue of the Treaty of Washington of May 8, 1871, having taken cognizance of that Treaty and of the Cases, Counter-Cases, and Arguments, as well as of all the appendices and documents in evidence presented by the two Governments concerned, has found and determined what is recorded in the present Judgment.

Statement of Count Sclopis.

DANS la séance du 25 Juillet, 1872, sur la proposition de M. le Vicomte d'Itajubá, l'un des Arbitres, le Tribunal décida de demander au Conseil de la Grande Bretagne une exposition ou argumentation, écrite ou imprimée, sur les trois questions de droit suivantes:—

1. La question des dues diligences, traité d'une manière générale;—

2. La question spéciale de savoir quel a été l'effet des commissions possédés par les vaisseaux de guerre Confédérés qui sont entrés dans des ports Britanniques;

3. La question spéciale des approvisionnements de charbon accordés aux vaisseaux Confédérés dans les ports Britanniques;

Tout en réservant à la Partie adverse le droit de répondre, soit oralement, soit par écrit, selon le cas; le tout aux termes de l'Article V du Traité de Washingon.

Les questions se réfèrent à l'Article VI du Traité de Washington, ainsi conçu:—

"Article VI.—Dans la décision des matières à eux soumises, les Arbitres seront guidés par les trois Règles suivantes, dont les Hautes Parties Contractantes conviennent de faire une application spéciale à cette question, et par les principes du droit des gens qui, sans être en désaccord avec ces Règles, auront été reconnus par les Arbitres comme ayant été applicables dans l'espèce:

"RÈGLES.

"Un Gouvernement neutre est tenu—

"1. De faire les dues diligences pour prévenir l'armement en guerre ou l'équipement dans les limites où s'exerce sa juridiction, de tout vaisseau qu'il peut raisonnablement soupçonner être destiné à croiser ou faire la guerre, contre une Puissance avec laquelle ce Gouvernement est en paix; de faire même diligence pour empêcher le départ hors des limites de sa juridiction de tout navire destiné à croiser ou faire la guerre, comme il est dit ci dessus, quand ce navire aura été spécialement adapté en tout ou en partie, dans les limites de sa dite juridiction, à des usages belligérants.

"2. De ne permettre ni souffrir que l'un des belligérants fasse usage de ses ports ni de ses eaux comme d'une base d'opérations navales contre l'autre belligérant, ni pour renouveler ou augmenter ses munitions militaires et son armement, ou s'y procurer ses recrues.

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"Sa Majesté Britannique a chargé ses Hauts Commissaires et Plénipotentiaires de déclarer que le Gouvernement de Sa Majesté ne saurait donner son assentiment aux Règles précédentes comme à un exposé de principes du droit des gens en vigueur au moment où se sont élevées les réclamations mentionnées à l'Article I; mais, pour donner un témoignage de son désir de fortifier les relations amicales entre les deux pays et de prendre en vue de l'avenir des précautions satisfaisantes, le Gouvernement da Sa Majesté consent à ce qu'en décidant les questions qui naissent de ces réclamations entre les deux pays, les Arbitres tiennent pour accordé que le Gouvernement de Sa Majesté a voulu agir en conformité avec les principes énoncés dans ces règles. Les Hautes Parties Contractantes s'engagent à observer ces Règles dans leurs rapports mutuels à l'avenir, et à les porter à la connaissance des autres Puissances maritimes, en les invitant à y adhérer."

Ont été entendus, dans leurs plaidoyers respectifs, Sir Roundell Palmer, ci-devant Attorney-General, pour la Grande Bretagne, MM. le Général C. Cushing, Evarts et Waite, pour les Etats Unis.

I.—"Due Diligence."

Nous allons aborder les questions de principes; la première qui s'offre à nos yeux, celle qui nous servira comme de boussole morale dans les appréciations qu'ils nous faudra faire, parcourant les différents cas pratiques qui attendent notre décision, c'est la véritable signification à attribuer aux mots "due diligence" qui ont été employés dans la première des trois Règles établies par l'Article VI du Traité de Washington. Une longue discussion s'est établie entre les deux Puissances sur le plus ou le moins d'étendue qu'il fallait donner à la signification de ces mots. On ne peut pas dire assurément qu'il y ait défaut d'éclaircissements sur cette matière. Dans le premier "Case" Américain, on nous a donné tout un long passage des Pandectes d'Ayliffe, de copieuses citations des ouvrages de Story et de Jones, ainsi que les indications de la jurisprudence suivie dans la matière par la Cour Suprême des Etats Unis et par les Cours Ecossaises; de plus, onze simples citations d'auteurs.

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De grandes explications ont été fournies de part et d'autre par les Puissances en désaccord.

Il me paraît que la voie la plus simple pour arriver à fixer légalement nos idées sur la matière est de se fixer sur les idées suivantes:—

Les mots *diligence due* contiennent nécessairement l'idée d'un rapport du devoir à la chose; il est impossible de définir *à priori* abstraitement un devoir absolu de diligence. C'est la chose à laquelle cette diligence se rapporte qui en détermine le degré. Prenons l'échelle des imputabilités selon le droit Romain, en partant du *dolus* pour descendre par la *culpa lata* et la *culpa levis* jusqu'à la *culpa levissima*, et nous trouverons que les applicabilités se modifient d'après les objets auxquels elles se réfèrent. Je passe sur la responsabilité du tuteur, du dépositaire, et sur plusieurs autres cas spécifiés dans les lois, pour ne citer que l'exemple des cas où la responsabilité est encourue par la *culpa levis* ou même par la *levissima*. Telle est celle, par exemple, qui frappe celui qui est chargé de garder des matières explosibles, ou qui doit veiller à la sûreté des digues dans le temps des inondations, celui qui garde un dépôt de papiers d'une importance exceptionnelle. Toutes ces personnes, par le seul fait qu'elles ont accepté ces fonctions, sont tenues d'exercer une diligence déterminée par l'objet spécial de ces mêmes fonctions.

En se portant sur le terrain politique, la plus grande étendue que l'on puisse attribuer aux devoirs de diligence d'un neutre sera de lui imposer d'en agir à l'égard du belligérant comme il agirait pour son propre intérêt dans des cas analogues.

Il est juste sans doute de tenir des exigences d'un belligérant à l'égard d'un neutre, mais il ne faut point les pousser au point de gêner le neutre dans l'action normale de ses droits, dans l'organisme de ses fonctions gouvernantes.

J'admets volontiers, d'autre part, que les devoirs du neutre ne puissent pas être déterminés par les lois que cette puissance se serait faites dans son propre intérêt. Il y aurait là un moyen facile de se soustraire à des responsabilités positives que l'équité reconnaît et que le droit des gens impose. Les nations ont entre elles un droit commun, ou si on aime mieux un lien commun, formé par l'équité et sanctionné par le respect des intérêts réciproques; ce droit commun se développe surtout en s'appliquant aux faits qui se passent sur la mer, là où les confins ne sont point tracés, où la liberté doit être d'autant plus assurée par un droit commun sans lequel il serait impossible de se mettre à couvert des plus flagrantes injustices par des garanties positives. C'est ce

qui [illegible] dire à cet ancien, nourri dans les habitudes du servilisme: "L'Empereur est le maître de la terre, mais la loi est la maîtresse de la mer."* J'accorde donc, au belligérant, d'exiger que le neutre ne mette point à couvert sa responsabillité sous des règles qu'il se serait fixées dans des vues de son seul intérêt, et j'entre pleinement dans les vues de l'Article VI du Traité de Washington, qui ne fait que donner la préférence aux règles de l'équité générale sur les dispositions d'une législation particulière quelle qu'elle puisse être.

Il ne me paraît pas cependant admissible qu'un belligérant puisse exiger du neutre que, pour remplir ses devoirs de neutralité, il augmente son pied militaire, son système ordinaire de défense. Il y aurait là une infraction à l'indépendance de chaque État, qui, pour se trouver involontairement dans une position spéciale à l'égard du belligérant, n'est pas tenu d'abdiquer une portion de sa souveraineté matérielle. On peut demander au neutre de mettre en pleine activité les ressorts de son Gouvernement pour maintenir sa neutralité; on ne peut pas raisonnablement attendre de lui qu'il modifie l'organisation de sa machine gouvernementale, pour servir les intérêts qu'une autre puissance.

Il faut bien se garder de rendre la condition des neutres par trop difficile et presque impossible. On parle toujours de l'importance de circonscrire la guerre, et si on accable les neutres d'un fardeau de précautions et d'une responsabilité qui dépasse l'intérêt qu'ils ont à rester dans la neutralité, on les forcera à prendre une part active à la guerre; au lieu d'une convenable inaction on aura une augmentation d'hostilités. Il n'y aura plus de *medii* entre les combattants; les désastres de la guerre se multiplieront, et le rôle de médiateurs, que les neutres ont souvent entrepris et conduit à bonne fin, sera effacé à jamais.

Plaçons-nous donc à ce point de vue qui puisse engager les neutres et les belligérants à se respecter mutuellement. Prenons pour base les deux conditions de neutralité telles qu'elles sont posées par le Docteur L. Gessner,† c'est-à-dire que—

Les conditions de la neutralite sont:

1. Qu'on ne prenne absolument aucune part à la guerre et qu'on s'abstienne de tout ce qui pourrait procurer un avantage à l'une des parties belligérantes.

2. Qu'on ne tolère sur le territoire neutre aucune hostilité immédiate d'une partie contre l'autre.

Quant à la mesure de l'activité dans l'accomplissement des devoirs du neutre je crois qu'il serait à propos d'établir la formule suivante:

Qu'elle doit être en raison directe des dangers réels que le belligérant peut courir par le fait ou la tolérance du neutre, et en raison inverse des moyens directs que le belligérant peut avoir d'éviter ces dangers.

Cette formule nous conduit à résoudre la question, si souvent débattue dans les documents produits, de l'initiative à prendre par le neutre au profit du belligérant pour sauvegarder sa neutralité.

Là où les conditions ordinaires du pays, ou des circonstances particulières survenues sur le territoire du neutre, constituent un danger spécial pour le belligérant qui ne peut avoir des moyens directs de s'y soustraire, le neutre est tenu d'employer son initiative afin que l'état de neutralité se maintienne à l'égard des deux belligérants.

Cette initiative peut être mise en mouvement soit par un cas flagrant de quelque entreprise de l'un des belligérants contre l'autre, soit sur l'instance du belligérant qui dénonce un fait ou une série de faits qui violeraient à son égard les règles de la neutralité, c'est-à-dire qui rendraient meilleure la position d'un belligérant au détriment de celle de l'autre.

Il ne paraît pas que le neutre puisse, dans pareil cas, se décharger de sa responsabilité en exigeant du belligérant qu'il lui fournisse les preuves suffisantes pour instituer une procédure régulière devant les Tribunaux. Ce serait réduire le belligérant à la condition d'un simple sujet du Gouvernement du pays. Le droit des gens ne se contente pas de ces étroites mesures de précautions, il lui faut plus de largeur d'assistance; ce n'est pas seulement la *comitas inter gentes* qui la réclame, c'est le besoin réel qu'ont les nations de se prêter réciproquement aide et protection pour maintenir leur indépendance et garantir leur sécurité.

Plus donc il y aura pour le belligérant de dangers réels sur le territoire du neutre, plus celui-ci sera tenu de veiller sur sa neutralité en empêchant qu'elle ne soit violée au profit de l'un ou de l'autre des belligérants.

La chose se présente un peu différemment lorsque le belligérant peut, à lui seul,

* Dix, lib. i, de Lege Rhodia.

† "Le Droit des Neutres sur Mer," Berlin, 1865, p. 22.

par l'emploi de ses forces, tenir en échec son ennemi, même sur le territoire neutre. Ce cas se présente surtout lorsque la position géographique d'un Etat suffit d'elle-même à assurer les moyens de réprimer promptement toute entreprise préparée sur le territoire neutre. Dans ces circonstances le neutre ne serait plus tenu de prendre une initiative qui serait sans objet. Il ne pourra pas cependant tolérer par respect pour lui-même qu'on viole sa neutralité, et il sera tenu de déférer à toute juste demande qu'on lui adresserait d'éviter toute espèce de connivence avec l'un ou l'autre des belligérants.

Si des principes abstraits nous passons à la considération des faits particuliers sur lesquels les Etats Unis croient que la responsabilité de l'Angleterre est engagée, nous devons d'abord parler de la construction des navires et des circonstances au milieu desquelles ces constructions eurent lieu. Le fait, en effet, de la construction des vaisseaux, de leur armement et équipement, de l'exportation des armes de guerre, prend un aspect différent, selon les circonstances des temps, des personnes et des lieux où il s'accomplit. Si le Gouvernement sur le territoire duquel le fait se passe a connaissance d'un état de choses permanent, auquel vienne se rattacher une probabilité marquée que de semblables constructions, armements et exportations se fassent dans le but de servir aux projets d'un belligérant, le devoir de surveillance de la part de ce Gouvernement devient plus étendu et plus pressant.

Le Gouvernement Britannique était pleinement informé que les Confédérés Américains du Sud avaient établi en Angleterre comme une succursale de leurs moyens d'attaque et de défense vis-à-vis des Etats Unis. Un comité de représentants du Gouvernement de Richmond avait été établi à Londres, et il s'était mis en rapport avec le Gouvernement Anglais. Lord Russell avait reçu les délégués des Confédérés, mais sans caractère officiel. La première visite avait eu lieu le 11 Mai, 1861, c'est-à-dire, trois jours avant la proclamation de neutralité de la Reine et quatre jours avant l'arrivée de M. Adams à Londres en qualité de Ministre des Etats Unis. Le Gouvernement Anglais ne pouvait pas ignorer non plus que de fortes maisons de commerce soignaient les intérêts des Confédérés à Liverpool, ville très-prononcée dès lors en faveur de l'Amérique du Sud. Il ne tarda pas à se prononcer en plein Parlement une opinion tout à fait favorable aux insurgés du Sud. Les Ministres de Sa Majesté la Reine, eux-mêmes, ne dissimulèrent point que dans leur manière de voir il était très-difficile que l'Union Américaine pût se rétablir telle qu'elle était auparavant. Alors, chose étrange, on vit des membres les plus influents de la Chambre des Communes se détacher, sur cette question, du Ministère dont ils avaient été de puissants auxiliaires. La voix de M. Cobden et celle de M. Bright se firent entendre en faveur des Etats Unis. Les Americains du Nord ne pouvaient avoir d'avocats plus dévoués à leur cause, et ils ne manquèrent pas de se prévaloir de leur autorité. Ces grands mouvements de l'opinion publique dans des sens opposés l'un à l'autre formaient comme une atmosphère d'agitation qui devait tenir éveillé le Ministère Britannique, afin de pouvoir se maintenir dans des rapports parfaitement égaux avec les deux parties belligérantes.

Passons maintenant de ces remarques sur les faits à des considérations sur ce droit spécial. Dans la première des Règles posées à l'Article VI du Traité de Washington, il est parlé de la due diligence à empêcher les constructions, équipements et armements de vaisseaux qu'un Gouvernement est tenu de déployer quand il a un "*reasonable ground*" de croire que ces constructions, armements et équipements ont pour objet d'aider, pour l'usage de la guerre, un des belligérants.

Les mêmes mots se retrouvent dans la troisième Règle; ils manquent dans la seconde. "Pourquoi cela?" demandait Lord Cairns dans la discussion sur le Traité susdit qui eut lieu dans la Chambre de Pairs, le 12 Juin de l'année dernière. Il me semble qu'on pourrait répondre; c'est parce que dans les cas de la première et de la troisième Règle il y a lieu à des investigations de personnes et de choses pour certifier les faits incriminés, au lieu que la seconde se rapporte à une série de faits évidents sur lesquels il n'y a pas de recherches à faire en matière de crédibilité.

"Quel est donc l'étalon," poursuivait à dire le noble Lord, "d'après lequel vous pouvez mesurer la due diligence? Due diligence à elle seule ne signifie rien. Ce qui est due diligence avec tel homme et tel Gouvernement ne l'est plus avec tel autre homme, tel autre Gouvernement plus puissant."

La due diligence se détermine donc, à mon avis, ainsi que je l'ai déjà dit, par le rapport des choses avec l'obligation imposée par le droit. Mais quelle est la mesure de la *raison suffisante?* Ce sont les principes du droit des gens et la qualité des circonstances qui nous la donneront. Et ici, pour ne pas rester dans le vague, j'examinerai quelques-unes des propositions contenues dans l'Argument du Conseil de Sa Majesté Britannique sur le premier des points indiqués par le Tribunal dans son

Arrêté du 24 Juillet. Je ne me laisserai guider que par mes propres vues, tout en rendant pleine et entière justice à la finesse des observations et à la richesse de la doctrine de l'illustre jurisconsulte rédacteur de cette pièce digne d'être mise sur une même ligne avec les autres également remarquables sorties de la plume des Conseils du Gouvernement Américain.

Je lis, à la page 4 de cet Argument,* que le cas d'un navire qui quitte le pays neutre sans armement est tout à fait différent du cas d'un navire qui, armé en guerre vendu à un belligérant sur le territoire neutre et en état d'attaquer et de se défendre, quitte ce territoire sous l'autorité de l'acheteur belligérant; que son départ n'est en aucune façon une opération de guerre; qu'il n'est coupable d'aucune violation du territoire neutre, ni d'aucun acte hostile.

Il me paraît que lorsqu'un vaisseau a été construit et préparé pour la guerre, qu'il y a de fortes raisons de croire qu'il est acheté pour le compte d'un belligérant et qu'il va soudain prendre la mer, il y a bien des motifs de supposer qu'à peu de distance des eaux territoriales on apportera à ce vaisseau des armes et des munitions, des vêtements à sa taille. C'est bien le cas de se servir d'une phrase de Sir Roundell Palmer—"*to act upon suspicion, or upon moral belief going beyond suspicion,*" qu'on lit dans son discours à la Chambre des Communes, le 13 Mai, 1864. La fraude est trop facile pour qu'elle ne doive pas être présumée. Il suffira de charger sur un vaisseau, strictement de commerce, des armes et des engins de guerre de toute sorte, et que ce vaisseau rejoigne le premier en haute mer ou dans des eaux neutres différentes de celles du territoire primitif d'où il est parti, pour que le tour soit fait. C'est l'histoire du Prince Alfred, du Laurel, de l'Alar, de l'Agrippine, et du Bahama, de toutes ces combinaisons qui ne pourraient, à mon avis, diminuer en rien la responsabilité qu'auraient encourue l'Alabama, le Florida, le Shenandoah, le Georgia, &c.

Ces évasions par fragments, cette complication de formes d'action différentes, dans un intérêt identique, ne doivent point fourvoyer l'esprit du juge. Un vaisseau tout préparé pour la guerre quitte, sans recevoir son armement, les plages sur lesquelles il a été construit; un vaisseau tout simplement de commerce se charge de transporter l'armement; le lieu du rendez-vous est fixé, là se complète l'armement en guerre du vaisseau. Le tour est fait. Mais la raison et la conscience du juge ne peuvent se laisser prendre à ces ruses. Bien au contraire, ce manége ne servira qu'à mieux faire ressortir la culpabilité des deux vaisseaux.

J'en reviens donc à ce que disait Sir Robert Peel dans un mémorable discours prononcé à la Chambre des Communes, le 28 Avril, 1830:—"Si les troupes étaient sur un vaisseau et les armes sur un autre, cela faisait-il une différence?" et je n'hésite point à dire—si le vaisseau était appareillé pour la guerre et prêt à recevoir l'armement et les armes étaient sur un autre navire, cela ne faisait aucune différence.

J'avoue que je ne me rends pas bien compte de la véritable portée de ce que je lis à la page 6;†—"*Pour ce qui concerne ces trois Règles*" (celles établies par l'Article VI du Traité de Washington), "*il est important de remarquer qu'aucune d'elles ne prétend qu'il soit du devoir d'un Gouvernement neutre d'empêcher, dans tous les cas, les actes contre lesquels elles sont rédigées.*" Si tel n'est pas le devoir d'un Gouvernement, on aurait dû spécifier les cas où il était nécessaire de les observer, et ceux où il ne l'était pas. L'intention de généraliser l'observance de ces règles me paraît formelle. Les mots solennels—"*a neutral Government is bound*"—et la clause finale de cet Article, non moins solennelle, que les Hautes Parties Contractantes s'engagent non-seulement à observer ces Règles entre elles dans l'avenir, mais encore à les porter à la connaissance des autres Puissances maritimes et à les inviter à y accéder, le prouvent à l'évidence.

Comment donc pourrions-nous supposer qu'il existe des circonstances prévues et avouées par les Hautes Parties Contractantes où ces Règles n'obligent pas, sans qu'on en ait fait mention expresse?

Certes, il faut que le cas d'application de ces Règles soit déterminé régulièrement et avec une raison suffisante; mais, cela posé, les Règles doivent opérer de plein droit et sans aucune restriction.

Ces Règles, de la façon dont elles sont établies, constituent une obligation fondée sur le droit des gens général; et ce serait en changer la nature, en détruire complétement l'effet que d'admettre, ainsi que le voudrait l'*argument* du Conseil de Sa Majesté Britannique, que la mesure des dues diligences à employer, il faut la dériver des Règles et des principes de la législation propre à chacune des Parties Contractantes; c'est-à-dire, que la généralité et la grandeur de la Règle pourront être soumises à des limitations par la loi municipale.

Non, pour sûr, telle n'a pu être l'intention des Hautes Parties Contractantes en

* Page 64, *supra*.

† Page 66.

rédigeant l'Article VI. L'Angleterre a déclaré, il est vrai, qu'elle n'entendait point admettre que les Règles précitées eussent le caractère de principes de droit international en vigueur à l'époque où les réclamations énoncées à l'Article I du Traité prirent naissance; c'est là une simple question rétrospective d'intelligence et d'interprétation de droit. Mais du moment que l'Angleterre, en vue de raffermir les rapports d'amitié entre les deux nations et de pourvoir d'une manière satisfaisante aux exigences de l'avenir, consent à ce que ces Règles fassent autorité même pour le passé, elle doit les considérer comme des dispositions de droit des gens général, conventionnel si l'on veut, mais supérieur à toute disposition de droit municipal. Ce n'est pas, à mon avis, *outrer* la nature du droit des gens que d'exiger qu'il soit appliqué sans mélange d'intérêts politiques par les Puissances qui l'ont accepté. Je suis d'accord qu'on ne puisse pas demander qu'on exécute des choses *naturellement impossibles;* c'est le cas de la force majeure; *ad impossibile nemo tenetur.* Mais je me refuse à reconnaître l'*impossibilité politique* invoquée dans l'*Argument* du Conseil de Sa Majesté Britannique. Rien n'est plus élastique que ces mots; ce serait livrer l'exécution de cette partie vitale du Traité aux courants des intérêts temporaires, des accidents du moment. On dirait: Oui, j'ai consenti à poser la règle, mais les moyens d'y satisfaire me manquent; tant pis pour la règle.

J'ajoute, pour en finir, qu'il n'y a pas à craindre que l'application de ces Règles puisse arriver au point de violer les principes sur lesquels reposent les Gouvernements nationaux. La nature de l'engagement ne va pas jusque là. Il est très-possible que cette application gêne quelquefois les Gouvernements dans leur conduite politique, mais elle empêchera plus souvent des désordres capables de produire des malheurs qu'on ne saurait assez déplorer.

Les Règles de l'Article VI du Traité de Washington sont destinées à devenir des principes de droit commun pour la garantie de la neutralité. La texte même le dit, et M. Gladstone et Lord Granville ont toujours, et avec raison, insisté sur cette prévision d'un bienfait acquis à la civilisation. Pour que cela se réalise, il faudra que les différents Gouvernements prennent de mesures afin d'avoir les moyens convenables pour exécuter la loi. Pour le passé, il y avait de grandes variétés en cette matière dans la législation des différents peuples. Les Etats Unis avec leurs *Attorneys* de district, leurs maréchaux, officiers de police organisée, étaient mieux assisté que l'Angleterre avec ses seuls employés de la douane et de l'accise. Je ne doute point que l'on n'entre dans ces vues, si l'exécution du Traité de Washington doit être chose sérieuse; et ce serait un grand malheur s'il ne l'était pas.

Je pense qu'il n'est point absolument nécessaire pour notre étude de discuter les observations qu'on a faites touchant différentes citations du livre de Sir Robert Phillimore, ni de nous arrêter sur l'étude des législations comparées d'Amérique et d'Angleterre en fait de neutralité. Cela pourra mieux servir quand on travaillera aux règlements à faire dépendamment de l'Article VI du Traité.

Il est à espérer que cette rectification ou ce supplément de précautions à prendre pour assurer l'exécution du Traité dans toute son étendue ne se fera point attendre.

Nous avons vu la sollicitude de l'Angleterre à modifier ses lois sur la neutralité à l'ouverture de la guerre en 1870, entre la France et l'Allemagne.

Pourquoi ne pas espérer qu'on sera empressé aujourd'hui à se conformer à la lettre et à l'esprit des stipulations de Washington?

J'en viens à l'application des considérations que j'ai faites. Il résulte à mes yeux que le Gouvernement Anglais s'est trouvé, pendant les premières années de la guerre de la sécession, au milieu de circonstances qui n'ont pu qu'avoir une influence, si ce n'est directement sur lui, du moins sur une partie des populations soumises à la couronne d'Angleterre. Nul Gouvernement n'est à l'abri de certaines secousses de l'opinion publique qu'il n'est pas libre de maîtriser à son gré. Je suis loin de penser que l'*animus* du Gouvernement Anglais ait été hostile pendant cette guerre au Gouvernement Fédéral.

Cependant, il existait de graves dangers en Angleterre et dans ses colonies pour les Etats Unis, qui n'avaient aucun moyen direct de les conjurer. Il faillait donc que l'Angleterre mît, à garder les devoirs de la neutralité, une diligence correspondante à la gravité de ces dangers. Il me suffit de rappeler ici un passage d'une consultation des Conseillers Légaux de Sa Majesté Britannique, émise sur l'invitation de Lord Russell, le 12 Décembre, 1863. Parlant au sujet du *Georgia*, ces Conseilleurs observaient que les faits résultant de dépositions reçues, "*fournissaient des raisons à ajouter à celles qui existaient déjà pour adresser de vives remontrances au Gouvernement Confédéré, à propos de la violation systématique de la neutralité Anglaise, commise par ses agents sur le territoire Britannique*" (Appendice Britannique, vol. i, p. 440.)

On ne saurait nier toutefois qu'il y eut des moments où la rigueur de surveillance parut faiblir. De là des défaillances dans certaines parties du service public, qui ont tourné au grand désavantage des Etats Unis, et la conséquence de ces défaillances ne peut être autre qu'une réparation de dommages soufferts. Le Comte Russell écrit à Lord Lyons dans une lettre du 27 Mars, 1863, qu'il "avait dit à M. Adams que le Cabinet était d'opinion que la loi suffisait, mais qu'on n'avait pas pu toujours apporter des preuves légales; que le Gouvernement de la Grande Bretagne avait fait tout ce qui était en son pouvoir pour exécuter la loi; mais qu'il reconnaissait que les cas de l'Alabama et de l'Oreto avaient été un *scandale* et *en quelque degré un reproche* aux lois Anglaises."

Plus tard, au moment même où il faisait la motion de supplier la Reine de refuser la ratification du Traité de Washington, le Comte Russell avouait loyalement que la proclamation de la Reine, du 13 Mai, 1861, enjoignant la neutralité dans la malheureuse guerre civile de l'Amérique du Nord, avait été plusieurs fois pratiquement réduite à néant sur le territoire Anglais, par le fait des partis.

Les obstacles qui, au moment où la lettre que je viens de citer fut écrite, entravaient l'action du Gouvernement Britannique n'existent plus, grâce aux principes libéraux imposés par l'Article VI du Traité de Washington; mais les conséquences des faits, que le Comte Russell réprouvait si loyalement et si énergiquement, subsistent encore, et c'est à réparer ces dommages dans une juste mesure et toujours avec l'appui d'une raison suffisante que doivent tendre les décisions du Tribunal d'Arbitrage.

Je n'irai pas plus loin sur ce terrain. Quant à l'esprit de prévoyance qui doit prévaloir à l'avenir, il suffit que je cite le *Foreign Enlistment Act* de la Grande Bretagne, voté le 9 Août, 1870. Cet acte nous montre quels progrès on a fait quant aux moyens de maintenir la neutralité.

Les trois Règles posées à l'Article VI du Traité ont paru au Ministère Anglais moins gênantes pour le Gouvernement que l'acte que je viens de citer. "Il n'y a pas une seule de ces Règles," disait Lord Granville à la Chambre des Lords, le 12 Juin, 1871, "qui ne soit comprise dans cet acte, qui va même beaucoup au-delà." La rétroactivité de ces Règles en forme le caractère spécial, qui domine toute la matière soumise au jugement des Arbitres.

(Translation.)

IN its sitting of the 25th July, 1872, on the proposal of Viscount d'Itajubá, one of the Arbitrators, the Tribunal decided to require a written or printed statement or argument from the Counsel of Great Britain upon the following questions of law:—

1. The question of due diligence generally considered.

2. The special question as to the effect of the commissions of Confederate ships of war entering British ports.

3. The special question as to supplies of coal in British ports to Confederate ships;

With the right to the other Party to reply either orally or in writing, as the case may be; the whole under the terms of Article V of the Treaty of Washington.

The questions refer to Article VI of the Treaty of Washington, which is as follows:—

"Article VI.—In deciding the matters submitted to the Arbitrators they shall be governed by the following three Rules, which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

"RULES.

"A neutral Government is bound—

"1. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"2. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"3. To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

"Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing Rules as a statement of principles of

international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these Rules. And the High Contracting Parties agree to observe these Rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them."

Sir Roundell Palmer, formerly Attorney-General, on behalf of Great Britain, General C. Cushing, Messrs. Evarts and Waite, on behalf of the United States, have been heard by means of their respective arguments.

I.—Due Diligence.

We are about to enter on the discussion of questions of principle. The first which presents itself, that which will serve as a moral pole-star in the opinions we shall have to form, as we come to the different practical cases which await our decision, is the true signification to be attached to the words "*due diligence*" which have been employed in the first of the three Rules laid down in Article VI of the Treaty of Washington. A lengthy discussion has taken place between the two Powers as to the greater or less scope to be given to the signification of these words. It assuredly cannot be said that there has been any want of explanations on this point. In the original American Case we have been given the whole of a long passage from the Pandects of Ayliffe, with copious quotations from the works of Story and Jones, as well as statements of the practice followed on this point by the Supreme Court of the United States and by the Scotch Courts; moreover eleven simple quotations from different authors.

The original British Case mentions "*due diligence*," and gives a definition of it (page 24 of the English text), which is not absolute, and which refers to historical facts. In its Counter-Case the British Government enters into fuller explanations on the subject (page 21 of the English text), and it agrees with that of the United States in considering that the words *due diligence* do not create any new or additional obligation. They exact from the neutral, in the discharge of the duties imposed on him, that measure of care, and no other, which is required by the ordinary principles of international jurisprudence, and the absence of which constitutes negligence; and to support this doctrine, the British Counter-Case cites a long passage from Reddie's work "Researches in Maritime and International Law." Sir Roundell Palmer takes these words in the sense that a neutral should employ all the legitimate means in his power, attaching to these words a reasonable construction. The United States seek to increase the measure of responsibility, and they maintain that the belligerent has a right to require the neutral to enforce its municipal laws, and also the proclamations of its Executive. They assert, moreover, that the belligerent has the right to require that the powers with which the neutral is armed should be augmented by legislative measures.

Copious explanations have been furnished on either side by the Parties in dispute.

It seems to me that the most simple method of arriving at a definitive opinion upon the legal bearing of the question is to keep steadily in view the following ideas:—

The words *due diligence* necessarily contain the idea of a relation between the duty and its object: it is impossible to define *à priori* and abstractedly an absolute duty of diligence. It is the matter to which this duty relates which determines its degree. Taking the scale of degrees of default according to the Roman law, descending from the *dolus* by the *culpa lata* and *culpa levis* to the *culpa levissima*, we find that their applicability changes according to the objects to which they refer. I pass over the responsibility of the guardian, of the trustee, and several other cases specified in the law, and will only cite as examples cases in which responsibility is incurred by the *culpa levis* and even *levissima*. Such is that, for instance, which attaches to persons charged with the care of explosive substances, or with looking after the safety of dams in time of inundation, or under whose charge are deposited papers of exceptional importance. All these persons, from the fact alone of their having accepted these duties, are bound to exercise an amount of diligence determined by the special object of these same functions.

In treating of political questions, the greatest scope which can be given to the duties of diligence incumbent on a neutral would be to require that he should act with regard to the belligerent as he would act in similar circumstances in his own interest.

It is undoubtedly right to take into account the requirements of a belligerent with regard to a neutral, but these must not be pushed to such a point as to embarrass the neutral in the normal exercise of his rights, or in the organization of his administrative functions.

I willingly admit, on the other hand, that the duties of the neutral Power cannot be determined by the laws which that Power may have made in its own interest. This would be an easy means of eluding positive responsibilities which are recognized by equity and imposed by the law of nations. There exists between nations a general law, or, if it is preferred, a general tie, framed by equity and sanctioned by respect for reciprocal interests; this general law receives especial development in its application to acts which take place at sea, where no frontiers are marked out, and where there is the greater necessity that liberty should be secured by a common law, without which it would be impossible to obtain security by positive guarantees from the most flagrant acts of injustice. This is what prompted the ancient, brought up in habits of servility, to say, "The Emperor is master of the earth, but the law is the mistress of the sea."* I grant then the right of the belligerent to require that the neutral should not cover his responsibility under rules made by himself in his own interest, and I enter fully into the views of Article VI of the Treaty of Washington, which only gives the preference to rules of general equity over the provisions of any particular system of legislature, whatever it may be.

It does not, however, seem to me to be admissible that a belligerent can require of a neutral that, in order to fulfil his neutral duties, he should increase his military establishments or his ordinary system of defence. This would be an encroachment on the independence of each State, which, because it finds itself involuntarily in a special position with regard to the belligerent, is not therefore bound to abdicate a portion of its material sovereignty. The neutral may be asked to put into full activity the powers of action of his Government in order to maintain his neutrality; he cannot reasonably be expected to modify the organization of his administrative machine to serve the interests of another Power.

We must beware of rendering the condition of neutrals too difficult and almost impossible. The importance of circumscribing war is a matter of continual remark, and if neutrals are to be overwhelmed with a burden of precautions and a weight of responsibility which is in excess of the interest they have to remain neutral, they will be forced to take an active part in the war; instead of a proper inaction we should have an increase of hostilities. There will no longer be any *medii* between combatants; the disasters of war will be multiplied, and the part of mediators, which neutrals have often undertaken and brought to a successful conclusion, will for ever disappear.

Let us then take a view which will induce neutrals and belligerents mutually to respect one another. Let us take as a basis the two conditions of neutrality as laid down by Dr. L. Gessner:† that is to say, that—

The conditions of neutrality are:

1. To take absolutely no part in the war, and to abstain from all that might give an advantage to one of the belligerent parties.

2. Not to permit on the neutral territory any immediate hostility of one party against the other.

As to the measure of activity in the fulfilment of the duties of the neutral, I think the following rule should be laid down:—

That it should be in the direct ratio of the real danger which the belligerent may run from the act or permission of the neutral, and in the inverse ratio of the direct means which the belligerent may have to avoid those dangers.

This rule leads us to a solution of the question, so often discussed in the documents presented, as to the initiative to be taken by the neutral in order to preserve his neutrality to the profit of the belligerent.

Where the ordinary conditions of the country or particular circumstances which have occurred on the territory of the neutral, constitute a special danger for the belligerent, who has no direct means of protecting himself from them, the neutral is bound himself to take the initiative in order that the state of neutrality should be maintained in regard to the two belligerents.

This initiative may be put in motion, either by a flagrant case of some enterprise of one of the belligerents against the other, or on the application of the belligerent denouncing a fact or a series of facts which would constitute a violation of neutrality

* Dix, lib. i, de Lege Rhodia.

† "The Law of Neutrality at Sea," Berlin, 1865, p. 22.

in regard to him, *i.e.*, which would improve the position of one belligerent to the detriment of the other.

It does not appear that the neutral could in such case release himself from responsibility by requiring of the neutral to furnish him with evidence sufficient to institute regular proceedings before the Courts. This would be to reduce the belligerent to the condition of a mere subject of the Government of the country. The law of nations is not contented with these narrow measures of precaution, it calls for assistance on a more ample scale; the claim is not founded merely on the *comitas inter gentes*, but on the real necessity which nations are under for reciprocal aid and protection from one another in order to the maintenance of their independence and security.

The greater, then, the actual danger to the belligerent on the territory of the neutral, the more is the latter bound to watch over his neutrality and to prevent its being violated to the profit of either of the belligerents.

The matter appears under a somewhat different light when the belligerent can, of himself, by the employment of his forces, hold his enemy in check, even on the neutral territory. This case presents itself in particular when the geographical position of a State is sufficient of itself to secure the means of promptly repressing any enterprise prepared on the neutral territory. In these circumstances the neutral would no longer be bound to assume an initiative which would be without object. He could not, however, from considerations of self-respect, allow his neutrality to be violated, and he would be bound to comply with any just demand which might be addressed to him, in order to avoid any kind of connivance with one or other of the belligerents.

If from abstract principles we pass to the consideration of the particular facts for which the United States hold that Great Britain is responsible, we must commence by discussing the construction of ships, and the circumstances under which such construction took place. In truth, the fact of the construction of the vessels, of their armament and equipment, and of the export of arms, assumes a different aspect according to the circumstances of the time, the persons, and the localities in which these acts occur. If the Government on whose territory the acts take place is aware of a permanent state of affairs, leading to a decided probability that such construction, armaments, and exports will be effected with the object of assisting the designs of a belligerent, the duty of vigilance on the part of the Government becomes more pressing, and exists to a greater extent.

The British Government was fully informed that the American Confederates of the South had established in England as it were a supplementary branch of their means of attack and defence against the United States. A Committee of Representatives of the Government of Richmond had been established in London, and had placed itself in relations with the English Government. Lord Russell had received the Confederate delegates, but unofficially. The first visit took place on the 11th May, 1861, that is to say three days before the Queen's Proclamation of neutrality, and four days before the arrival of Mr. Adams in London in the capacity of Minister of the United States. Nor could the English Government be unaware that great commercial houses were managing the interests of the Confederates at Liverpool, a town which was at the time very decidedly in favour of the South. It was not long before an opinion entirely favourable to the South was expressed in open Parliament. The Queen's Ministers themselves did not conceal that, in their opinion, it would be very difficult for the American Union to re-establish itself such as it had formerly existed. Then, strange to say, the most influential members of the House of Commons were seen to detach themselves, on this question, from the Ministry of which they had been the powerful supporters. The voice of Mr. Cobden and that of Mr. Bright were raised in favour of the United States. The Americans of the North could have no advocates more devoted to their cause, and they did not fail to take advantage of their authority. These great movements of public opinion in contrary directions formed as it were an atmosphere of agitation which ought to have kept the British Ministry on its guard, in order to succeed in maintaining perfectly equal relations with the two belligerent parties.

Let us now turn from these remarks on the facts to the consideration of the special law of the question. In the first of the Rules laid down in Article VI of the Treaty of Washington, mention is made of due diligence to prevent the building, equipment, and arming of vessels which a Government is bound to exercise when it has *reasonable ground* to believe that this building, arming, and equipping is with the object of aiding one of the belligerents for warlike purposes.

The same words occur again in the third Rule, while they are wanting in the

second. "Why so?" asked Lord Cairns in the debate on the Treaty which took place in the House of Peers on the 12th June of last year. It seems to me that it might be answered: because, in the case of the first and third Rule, there is occasion for investigations of persons and circumstances to ascertain the facts denounced, whereas the second relates to a series of evident facts on which no inquiry need be made as regards credibility.

"What," continued the noble Lord, "is the standard by which you can measure due diligence? Due diligence, by itself, means nothing. What is due diligence with one man, with one Power, is not due diligence with another man, with a greater Power."

Due diligence, then, is determined, in my opinion, as I have already said, by the relation of the matter to the obligation imposed by law. But what is the measure of the *sufficient reason*? It will be furnished by the principles of the law of nations, and the character of the circumstances. And here, not to leave the question in ambiguity, I will examine some of the propositions contained in the Argument of Her Britannic Majesty's Counsel on the first of the points mentioned by the Tribunal in its resolution of the 24th July. I will be guided by my own views only, while rendering full justice to the subtlety of reasoning and to the wealth of learning displayed by the illustrious advocate who has drawn up this document, worthy of being placed in the same rank with the equally remarkable papers which have emanated from the pen of the Counsel of the American Government.

I read, at page 4 of this Argument,* that the case of a vessel which leaves the neutral country unarmed is entirely different from that of an armed vessel, sold to a belligerent within neutral territory, which leaves that territory, fully capable of offence and defence, under the control of the belligerent purchaser; that the departure of the former vessel is no operation of war; that she is guilty of no violation of territory, nor of any hostile act.

It seems to me that, when a vessel has been built and fitted out for war, there are strong reasons for believing that it has been purchased for the service of a belligerent, and that it will suddenly go to sea. There are strong grounds for supposing that, at a short distance from the territorial waters, arms and munitions will be brought to that vessel, clothes made to its measure. It is exactly the case, to use an expression of Sir Roundell Palmer, as reported in his speech in the House of Commons on the 13th May, 1864, *to act upon suspicion, or upon moral belief going beyond suspicion.* The fraud is too easy not to be open to presumption. All that is necessary to complete the manœuvre is to ship on board a vessel, strictly mercantile, arms and engines of war of every kind, and that this vessel should meet the other on the high seas, or in neutral waters different from those of the territory from which she originally started. It is the story of the Prince Alfred, the Laurel, the Alar, the Agrippina, and the Bahama, of all those combinations which cannot, in my opinion, in any way diminish the responsibility incurred by the Alabama, the Florida, the Shenandoah, the Georgia, &c.

These evasions by fragments, this complication of different forms of action, with one identical object, should not mislead the mind of the judge. A vessel thoroughly fitted out for war, leaves the shores upon which it has been built without receiving its armament; a simple merchant-vessel is charged with the transport of its armament; the place of meeting is fixed, and there the arming of the vessel is completed. The trick is done. But the judge cannot allow his reason and conscience to be led astray by such stratagems. On the contrary, the manœuvre will only demonstrate more clearly the criminality of both vessels.

I return, then, to what was said by Sir Robert Peel in a memorable speech delivered in the House of Commons on the 28th April, 1830. "If the troops were on board one vessel and their arms in another, did that make any difference?" and I do not hesitate to say that if the vessel was fitted out for war and ready to receive her armament, and her arms were on board another vessel, it made no difference.

I confess that I do not quite understand the true meaning of what I read at page 6.† "*With respect to the three Rules,*" (those laid down by Article VI of the Treaty of Washington) "*it is important to observe that none of them purports to represent it as the duty of a neutral Government to prevent, under all circumstances whatever, the acts against which they are directed.*" If such is not the duty of a Government, the cases in which it was necessary to observe them and those in which it was not so, should have been specified. The intention of making general the observance of these rules seems to me to be explicit. The solemn words "*a neutral Government is bound,*" and the final clause of this Article, not less solemn, that the High Contracting Parties engage not only to observe these Rules as between themselves, for the future, but also to bring them to the

* Page 64, *supra.*

† Page 66.

knowledge of other maritime Powers, and to invite them to accede to them, prove this incontrovertibly.

How, then, can we suppose that there exist circumstances foreseen and admitted by the High Contracting Parties in which these Rules are not obligatory, without express mention of them having been made?

Undoubtedly it is necessary that a case for the application of these Rules should be made out regularly, and based on sufficient grounds; but when this is established, the Rules must have full and unrestricted operation.

These Rules, according to the manner in which they are laid down, constitute an obligation based on the general law of nations, and it would be to change their nature, to destroy their effect completely, to admit, as is contended in the Argument of Her Britannic Majesty's Counsel, that the measure of due diligence to be exercised must be drawn from the rules and principles of legislation peculiar to each of the Contracting Parties: that is to say, that the generality and breadth of the rule may be subjected to limitation by the municipal law.

No, assuredly, such could not have been the intention of the High Contracting Parties in framing the VIth Article. England has declared, it is true, that she could not assent to the foregoing Rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I arose; this is a simple retrospective question of the sense and interpretation of the law. But from the moment when England, with the view of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, consents that these Rules should be binding for the past also, she must consider them as provisions of the general law of nations, conventional, if you please, but superior to any provision of municipal law. It is not, in my opinion, to *strain* the nature of international law, to require that it should be applied without any admixture of political interests by the Powers who have accepted it. I agree that one cannot require the execution of what is physically impossible, and this is a question of paramount necessity; *ad impossibile nema tenetur*. But I refuse to recognize the *political impossibility* appealed to in the Argument of Her Britannic Majesty's Counsel. Nothing can be more elastic than these words; it would be to relinquish this vital part of the Treaty to the currents of temporary interests, of the accidents of the moment. It would be said: Yes, I consented to lay down the Rule, but I have not the means of carrying it out; so much the worse for the Rule.

I add, in conclusion, that there is no ground to fear that the application of these Rules can reach the point of violating the principles on which national Governments rest. The nature of the engagement does not reach so far as that. It is very possible that their application should sometimes embarrass Governments in their political conduct, but it will more often prevent disorders capable of leading to misfortunes which could not be sufficiently deplored.

The Rules of the VIth Article of the Treaty of Washington are destined to become principles of general law for the maintenance of neutrality. The very text of the Treaty says so, and Mr. Gladstone and Lord Granville have always, and with reason, insisted on looking forward to this benefit conferred on civilization. In order that this may be realized, the several Governments must take measures to obtain fitting powers for the execution of the law. As regards the past, there were great discrepancies on this point in the legislation of different nations. The United States, with their District Attorneys, their Marshals, and organized police officers, were better assisted than England was, with its Customs and Excise officers only. I do not doubt that these views will be received, if the Treaty of Washington is to be carried out in earnest, and it would be a great misfortune if it were not.

I do not think it is absolutely necessary for our purpose to discuss the observations which have been made respecting different quotations from the work of Sir Robert Phillimore, nor to dwell on the comparative study of the legislation of America and England in matters of neutrality. This might be of more utility when framing regulations to be made in pursuance of Article VI of the Treaty.

It is to be hoped that this process of rectifying or supplementing the precautions to be taken in order to insure the execution of the Treaty to its full extent will not be delayed.

We have witnessed the anxiety of England to modify her neutrality laws on the breaking out of war in 1870, between France and Germany.

Why should we not hope for equal anxiety now to conform to the letter and spirit of the Treaty of Washington?

I come to the application of the considerations I have put forward. It results,

according to my views, that the English Government found itself, during the first years of the war of secession, in the midst of circumstances which could not but have an influence, if not directly upon itself, at least on a part of the population subject to the British Crown. No Government is free from certain shocks of public opinion which it is not at liberty to suppress at will. I am far from thinking that the animus of the English Government was hostile to the Federal Government during the war.

Still, there existed in England and her Colonies serious dangers for the United States, who had no direct means of meeting them. England therefore was bound to employ, for the fulfilment of her neutral duties, a diligence corresponding to the gravity of those dangers. I need only here repeat a passage from a report of the Law Officers of Her Britannic Majesty, given in reply to a request of Lord Russell, on the 12th December, 1863. Speaking on the subject of the Georgia, the Law Officers observe that the facts resulting from the depositions received *furnish additional grounds to those already existing for strong remonstrance to the Confederate Government on account of the systematic violation of British neutrality by their agents in British territory.* (British Appendix, vol. i, p. 440.)

It cannot, however, be denied that there were moments when the strictness of supervision seemed to fail. Hence shortcomings in certain branches of the public service which resulted in great detriment to the United States, and the consequences of these shortcomings can be no other than a reparation for the damages suffered. Earl Russell writes to Lord Lyons in a letter of the 27th March, 1868, that "he had said to Mr. Adams that the Cabinet were of opinion that the law was sufficient; but that legal evidence could not always be procured. That the British Government had done everything in its power to execute the law; but that he admitted that the cases of the Alabama and Oreto were a *scandal*, and *in some degree a reproach*, to the British laws."

Subsequently, at the very moment when he made the motion for praying the Queen to refuse the ratification of the Treaty of Washington, Earl Russell candidly admitted that the Queen's Proclamation of May 13, 1861, enjoining neutrality in the unfortunate civil war in North America had several times been practically set at naught on British territory by the acts of parties.

The obstacles which, at the moment when the letter I have just quoted was written, fettered the action of the British Government, no longer exist, thanks to the liberal principles imposed by Article VI of the Treaty of Washington; but the consequences of the acts which Earl Russell so candidly and so energetically condemned, still exist; and it is to the reparation of these damages in a just measure, and based always on sufficient grounds, that the decisions of the Tribunal of Arbitration should tend.

I will dilate no further on this point. As to the disposition which should prevail to make provision for the future, I need only cite the British Foreign Enlistment Act, passed on the 9th August, 1870. This Act shows what progress has been made in the means for preserving neutrality.

The three Rules laid down in Article VI of the Treaty appeared to the English Ministry less embarrassing for the Government than the Act I have just alluded to. "There is not one of these Rules," said Lord Granville in the House of Lords on the 12th June, 1871, "which is not completely covered by that Act, and it even goes further than they do." The retrospective character of these Rules forms their especial character, which governs the whole question submitted to the decision of the Arbitrators.

[N.B.—The statement of Sir A. Cockburn on the question of "Due Diligence" will be found embodied in his "Reasons for dissenting from the Award of the Tribunal" in Part II of the present series (North America, No. 2, p. 31).]

No. 22.

Lord Tenterden to Earl Granville.—(Received August 19.)

My Lord, *Geneva, August 16, 1872.*

I HAVE the honour to transmit to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 15th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 22.

Protocol No. XXI.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-first Conference, held at Geneva, in Switzerland, on the 15th of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The Tribunal proceeded to consider the effects of the commissions of Confederate ships of war entering British ports, and the supplies of coal in British ports to Confederate ships.

Lord Tenterden, as Agent of Her Britannic Majesty, submitted the following statement:—

"As the Tribunal is now approaching the consideration of the case of the Georgia, I beg respectfully to submit that in the Argument of the United States, with respect to that vessel (pages 224, 225) it is (for the first time) suggested that the British Government ought to have informed themselves by inquiry what ships were being built in February 1863, for the Emperor of China; and certain inferences appear to be drawn from the (assumed) fact that they omitted to do so.

"In consequence of this unforeseen suggestion, documents have become material which did not appear to be so when the Appendices to the British Case and Counter-Case were prepared, and which were, therefore, not included in those Appendices. To elucidate this point, I have now in my possession, and am desirous of delivering to the Arbitrators, copies of four letters:—

"No. 1. From Mr. Hammond to Mr. Lay, the Agent of the Emperor of China, dated 28th February, 1863 (in which the inquiry, which the United States suggest as proper to have been made, was actually made, by Earl Russell's direction).

"No. 2. From Mr. Lay to Mr. Hammond, dated 2nd March, 1863 (communicating the information desired).

"No. 3. From Earl Russell to Mr. Adams, dated 5th March, 1863 (communicating to Mr. Adams the information so obtained from Mr. Lay).

"And No. 4. From Mr. Adams to Earl Russell, dated 11th March, 1863 (acknowledging the receipt of No. 3)."

Mr. Bancroft Davis, as Agent of the United States, stated in reply:—

"I have examined the letters which Lord Tenterden wishes to present. They appear to contain nothing which we regard as important in themselves; but we can find no authority in the Treaty authorizing the Tribunal either to call for or to admit new evidence from either party at this stage of the proceedings. I must leave the Tribunal to act upon the application as in its judgment it may see fit."

The Tribunal decided to receive the letters from Lord Tenterden, who thereupon presented them.

The Tribunal also decided to consider the case of the Georgia at the next meeting.

The Conference was then adjourned until Friday, the 16th instant, at 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statements of Mr. Adams, Viscount d'Itajubá, and Count Sclopis on the questions of Commissions of Ships of War, and Supply of Coal in Neutral Ports, discussed at the Meeting of the 15th August.

Statement of Mr. Adams.

THE EFFECT OF COMMISSIONS.

THIS question has been discussed, more or less extensively, in the papers and arguments before us.

On behalf of Great Britain, it is claimed that the rule is perfectly established that a vessel belonging to any Power, recognized as sovereign or as a belligerent, has, in virtue

of its commission, a right to claim a reception, and the privilege of extra-territoriality without regard to its antecedents, in the ports of every neutral Power.

The authorities quoted to sustain this position sustain it as an established general rule. I see no reason to question it.

But the question that has been raised in the present controversy is an exceptional one, which is not touched by these decisions.

The reception of vessels having an origin exclusively or even partially American, and bearing on their front no evidence of fraud or violence, does not seem to have been brought into question in this controversy. Such vessels were the Sumter, the Nashville, the Tallahassee, the Chickamauga, &c.

The case is different in regard to that class of vessels which derive their origin exclusively from a systematic and fraudulent abuse of the amity of a neutral Power, setting at defiance its laws within its own jurisdiction, and taking advantage of its forbearance in the hope of involving it the more with its opponent in a responsibility for tolerating its own misdeeds.

It admits of no question, in my mind, that the outfit and equipment of the Florida, the Alabama, the Georgia, and the Shenandoah, were each and all made in defiance of the laws of Great Britain and the injunction of the Queen's Proclamation of neutrality. By this conduct, the perpetrators had not only clearly forfeited all right to consideration, but had subjected themselves to the penalties of malefactors if they ever returned within the jurisdiction which they had insulted. The right to exclude vessels from British ports on these grounds, without regard to their commissions, is distinctly affirmed by Sir Roundell Palmer, one of the lawyers of the Crown during the whole period in question, and seems to be indubitable. To deny it would place every sovereign Power at the mercy of any adventurous pirate on the ocean who might manage to cover himself with the threadbare mantle of the minutest belligerent.

It is a perfectly well understood principle of law that no citizen of a foreign nation, excepting perhaps, in certain cases, a representative clothed with diplomatic privileges, is free from the obligation of conforming himself to the laws of the country in which he is residing. If he wilfully violates them, he is subject to the same penalties which are imposed upon native citizens. Even though not a citizen, he is subject in Great Britain to be tried for *quasi* treason. If, instead of conspiring against the Queen, he enters into combinations which involve the kingdom in complications with foreign Powers with which it is at peace, he surely cannot come forward and plead the possession of a commission from the authorities of his own country in his justification. Neither is the commander of a ship of a foreign Power which comes within the harbour of another, free from the same general obligation. If he violates any of the regulations prescribed for his government, he is liable to pay the penalty by a withdrawal of his privileges or by an immediate order of exclusion from the port.

For myself, therefore, I cannot see any reason why the existence of a commission should have stood in the way of a clear expression by Great Britain of its sense of the indignities heaped upon Her Majesty's Government by the violation of her laws within her various dominions, continuously persisted in during the existence of this belligerent. In my opinion it would have justified the seizure and detention of the offending vessels wherever found within the jurisdiction. But if that were considered inconsistent with a clear impartiality, it certainly demanded an entire exclusion from Her Majesty's ports. The right to decide such a point rests exclusively with every sovereign Power. But an opportunity was lost for establishing a sound principle of international maritime intercourse which may not soon occur again.

On the Supply of Provisions, and especially of Coals.

This question of coals was little considered by writers on the Law of Nations, and by sovereign Powers, until the present century. It has become one of the first importance, now that the motive power of all vessels is so greatly enhanced by it.

The effect of this application of steam power has changed the character of war on the ocean, and invested with a greatly preponderant force those nations which possess most largely the best material for it within their own territories, and the greatest number of maritime places over the globe, where deposits may be conveniently provided for their use.

It is needless to point out the superiority in this respect of the position of Great Britain. There seems no way of discussing the question other than through this example.

Just in proportion to these advantages is the responsibility of that country when holding the situation of a neutral in time of war.

The safest course in any critical emergency would be to deny altogether to supply the vessels of any of the belligerents, except perhaps when in positive distress.

But such a policy would not fail to be regarded as selfish, illiberal, and unkind by all belligerents. It would inevitably lead to the acquisition and establishment of similar positions for themselves by other maritime Powers, to be guarded with equal exclusiveness, and entailing upon them enormous and continual expenses to provide against rare emergencies.

It is not therefore either just or in the interest of other Powers, by exacting severe responsibilities of Great Britain in time of war, to force her either to deny all supplies or as a lighter risk to engage herself in war.

It is in this sense that I approach the arguments that have been presented in regard to the supply of coals given by Great Britain to the insurgent American steamers as forming a base of operations.

It must be noted that, throughout the war of four years, supplies of coal were furnished liberally at first, and more scantily afterwards, but still indiscriminately, to both belligerents.

The difficulty is obvious how to distinguish those cases of coals given to either of the parties as helping them impartially to other ports, from those furnished as a base of hostile operations.

Unquestionably, Commodore Wilkes, in the Vanderbilt, was very much aided in continuing his cruise at sea by the supplies obtained from British sources. Is this to be construed as getting a base of operations?

It is plain that a line must be drawn somewhere, or else no neutral Power will consent to furnish supplies to any belligerent whatever in time of war.

So far as I am able to find my way out of this dilemma, it is in this wise:—

The supply of coals to a belligerent involves no responsibility to the neutral, when it is made in response to a demand presented in good faith, with a single object of satisfying a legitimate purpose openly assigned.

On the other hand, the same supply does involve a responsibility if it shall in any way be made to appear that the concession was made, either tacitly or by agreement, with a view to promote or complete the execution of a hostile act.

Hence I perceive no other way to determine the degree of the responsibility of a neutral in these cases, than by an examination of the evidence to show the *intent* of the grant in any specific case. Fraud or falsehood in such a case poisons everything it touches. Even indifference may degenerate into wilful negligence, and that will impose a burden of proof to excuse it before responsibility can be relieved.

This is the rule I have endeavoured to apply in judging the nature of the cases complained of in the course of this Arbitration.

Opinions de M. le Vicomte d'Itajubá sur la question spéciale de savoir quel a été l'effet des Commissions possédées par les Navires de Guerre Confédérés qui sont entrés dans les Ports Britanniques.

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 cet Etat d'être traité dans ses ports de la même manière que tout autre navire de guerre appartenant à des Etats belligérants, et régulièrement construit.

La position de la question en ces termes porte sa réponse en elle-même.

En effet, le neutre qui veut garantir sa neutralité doit s'abstenir d'aider aucune des parties belligérantes dans leurs opérations de guerre; il est obligé de veiller fidèlement à ce que, sur son territoire, on ne construise ni n'arme des navires de guerre destiné à l'une des parties belligérantes; et selon la dernière partie de la Première Régle de l'Article VI du Traité de Washington, il est obligé "d'employer également les

dues diligences pour empêcher le départ hors de sa juridiction de tout navire destiné à croiser ou à faire la guerre comme il est dit ci-dessus, un tel navire ayant été adapté spécialement, en tout ou en partie, dans les limites de sa juridiction, à un emploi guerrier."

Si tels sont les devoirs d'un neutre, il a par contre le droit d'exiger des belligérants qu'ils respectent son territoire; et il est du devoir des belligérants de ne point commettre, sur le territoire de l'Etat neutre, des actes contraires à cette neutralité. Ce n'est qu'en observant scrupuleusement ce devoir que les belligérants acquièrent le droit incontestable d'exiger du neutre une parfaite impartialité.

Si donc un navire, construit pour le compte d'un belligérant sur le territoire d'un neutre, par fraude et à l'insu du neutre, se présente dans les limites de la juridiction du Souverain dont il a violé la neutralité, il doit être saisi ou détenu, car il n'est pas possible d'accorder à un tel navire les mêmes droits d'exterritorialité que l'on accorde aux autres navires de guerre belligérants, construits régulièrement et en dehors de toute infraction à la neutralité. La commission dont un tel navire est pourvu ne suffit pas pour le couvrir vis-à-vis du neutre dont il a violé la neutralité.

Et comment le belligérant se plaindrait-il de l'application de ce principe? En saisissant ou détenant le navire, le neutre ne fait qu'empêcher le belligérant de tirer profit de la fraude commise sur son territoire par ce même belligérant; tandis que, en ne procédant point contre le navire coupable, le neutre s'expose justement à ce que l'autre belligérant suspecte sa bonne foi.

Ce principe de saisie, de détention, ou tout au moins d'avis préalable qu'un navire, dans de telles conditions, ne sera pas reçu dans les ports du neutre dont il a violé la neutralité, est équitable et salutaire en ce qu'il évite les complications entre les neutres et les belligérants, et contribue à dégager la responsabilité des neutres en prouvant leur bonne foi vis-à-vis d'une fraude commise sur leur territoire.

Le principe contraire froisse la conscience, car ce serait permettre au fraudeur de retirer bénéfice de sa fraude.

Les règles établies par l'Empire du Brésil consacrent le principe que nous venons d'exposer, car dans ses règlements sur la neutralité il est ordonné :—

"§ 6. De ne pas admettre dans les ports de l'Empire le belligérant qui aura une fois violé la neutralité," et—

"§ 7. De faire sortir immédiatement du territoire maritime de l'Empire, sans leur fournir la moindre chose, les navires qui tenteraient de violer la neutralité."

En résumé :—

La commission dont un navire de guerre se trouve pourvu n'a pas pour effet de le couvrir vis-à-vis du neutre dont il a précédemment violé la neutralité.

(Translation.)

Opinions of Viscount Itajubá on the special question as to the effect of the Commissions held by the Confederate Vessels of War which entered British Ports.

The object of the special question submitted for the decision of the Tribunal of Arbitration is, to determine the extent of the effect which can be attributed to the commission with which a vessel of war may be provided; whether that effect is the same in the case of a vessel built in conformity with the laws of neutrality, as in that of a vessel built in violation of those laws; that is to say, whether the fact of holding such a commission gives to a vessel built in violation of the laws of a neutral State the right of requiring of such State that it should be treated in its ports in the same manner as any other vessel of war belonging to a belligerent State, and built according to law.

The question, put in this form, answers itself.

In fact, a neutral, wishing to preserve his neutrality, is bound to abstain from assisting either of the belligerent parties in their warlike operations; he is bound faithfully to guard against vessels of war, destined for the use of one of the belligerents, being built or equipped within his territory; and, according to the latter part of the First Rule of Article VI of the Treaty of Washington, he is bound "also to use due diligence to prevent the departure from his jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use."

Such being the duties of a neutral, he has *per contra* the right to require the

belligerents to respect his territory; and it is the duty of the belligerents not to commit within the territory of the neutral State, acts contrary to that neutrality. It is only by a scrupulous observance of this duty that belligerents acquire the indisputable right of exacting from the neutral perfect impartiality.

If then a vessel, built on neutral territory for the use of a belligerent fraudulently and without the knowledge of the neutral, appears within the limits of the jurisdiction of the Sovereign whose neutrality she has violated, she ought to be seized and detained; for it is impossible to allow to such vessel the same exterritorial rights as are allowed to other belligerent vessels of war, built in accordance with law and without any infraction of neutrality. The commission with which such a vessel is provided is insufficient to protect her as against the neutral whose neutrality she has violated.

And how can the belligerent complain of the application of this principle? By seizing or detaining the vessel the neutral only prevents the belligerent from deriving profit from the fraud committed within his territory by this same belligerent; whereas, by not taking proceedings against the guilty vessel, the neutral justly exposes himself to suspicion of his good faith on the part of the other belligerent.

This principle of seizure, of detention, or at any rate of preliminary notice that a vessel, under such circumstances, will not be received in the ports of the neutral whose neutrality she has violated, is fair and salutary, inasmuch as it is calculated to prevent complications between neutrals and belligerents, and to contribute towards freeing neutrals from responsibility by proving their good faith in the case of a fraud perpetrated within their territory.

The converse of this principle is repugnant to the moral sense, for it would be allowing the fraudulent party to derive benefit from his fraud.

The rules established by the Empire of Brazil confirm the principle which we have just laid down, for in its regulations respecting neutrality, directions are given:—

"§ 6. Not to admit into the ports of the Empire a belligerent who has once violated the neutrality; and—

"§ 7. To compel vessels which may attempt to violate the neutrality to leave the maritime territory of the Empire immediately, without supplying them with anything whatever."

In short,—

The commission with which a vessel of war may be provided has not the power of protecting her as against the neutral whose neutrality she has previously violated.

Statement of Count Sclopis.

VAISSEAUX DEVENUS NAVIRES COMMISSIONNÉS.

SI nous consultons les auteurs les plus accrédités de droit public international, et particulièrement deux écrivains d'un grand mérite, dont l'autorité ne sera désavouée ni par l'Amérique ni par l'Angleterre, tels que Story et Phillimore, nous trouvons que le privilége, généralement accordé aux bâtiments de guerre, d'être considérés comme une fraction de l'État dont ils portent le pavillon, et par là exempts de toute autre juridiction, n'a été originairement qu'une concession faite par courtoisie.* Comme cette concession ne dérive que de l'usage des nations, elle peut être révoquée à quelque époque que ce soit, sans que cela puisse être considéré comme une offense.

L'opinion de Story, énoncée dans le cas de l'Exchange et rapportée par Phillimore, me paraît décisive:—

"On peut," dit-il, "établir avec justice comme proposition générale, que toute personne et toute propriété, dans la juridiction territoriale d'un Souverain, sont soumises à la juridiction de ce Souverain ou de ses cours de justice; et qu'il n'y a d'exceptions, à cette règle, que celles uniquement qui sont admises par l'usage commun et par la politique publique, dans le but de maintenir la paix et l'harmonie entre les nations, et de régler leurs rapports de la façon la mieux d'accord avec leur dignité et leurs droits. Il serait, en vérité, fort étrange qu'une autorisation, que le droit a tacitement déduite de la pratique générale des nations, dans des vues favorables à la paix, pût être interprétée comme une

* Phillimore, "Commentaries upon International Law," vol. i, p. 399, et suivantes. Seconde Edition, 1871.

autorisation de faire du mal à ces mêmes nations, et comme justification de l'infraction de ces devoirs, que la bonne foi et l'amitié, provenant de la même source, imposent à ceux qui cherchent un asile dans nos ports."*

En partant de la généralité de ces principes, et surtout des règles de l'éternel bon sens, et des inspirations de la bonne foi, est-il possible d'admettre qu'un navire, qui a été frauduleusement construite sur le territoire d'un Souverain, en pleine contravention aux devoirs de neutralité que ce Souverain est tenu de remplir, et dans le but de se livrer à la course dans l'intérêt d'un des belligérants, puisse, par le seul fait de ce belligérant, en vue de se soustraire à des chances malheureuses, être transformé en vaisseau commissionné, et braver par là impunément cette même souveraineté qu'il avait à son début si gravement offensée? Non, en vérité: ces changements à vue, comme s'il s'agissait des décors d'un théâtre, ces transformations, opérées avec autant d'audace que de facilité, ne peuvent point être prises au sérieux. La contravention dont ce navire s'était rendu coupable au commencement de sa carrière, envers le Souverain du lieu où il a été construit, ne s'efface point par l'effet d'une ruse indécente. Toutes les maximes de la raison écrite s'élèvent contre de semblables supercheries; *dolus nemini patrocinari debet.* Il faut regarder le fond de la chose et faire bonne justice de la simulation; *plus valet quod agitur quam quod simulate concipitur.* Le vice inhérent au vaisseau ne disparaîtra point quand même il aura reçu une patente, un commandant, et un pavillon de la puissance qui ne tend qu'à profiter de la fraude en contradiction ouverte à tous les droits de neutralité.

On cite ordinairement, à propos de la question qu'on a soulevée devant nous, l'imposante autorité de Story (que j'ai moi-même invoquée), dans le cas de la Santissima Trinidad. Mais j'observe que la doctrine de Story, sur le respect dû à la commission dont un Gouvernement a revêtu un navire, n'est qu'une thèse générale sur laquelle tout le monde est d'accord; elle ne touche pas directement à la question du vice d'origine, contracté par un navire avant qu'il soit commissionné; vice d'origine qui ne peut s'effacer sans troubler tous les principes qui gouvernent les devoirs de la neutralité.

Après tout, quand même on pourrait citer des précédents contraires à l'opinion que je soutiens, je répondrai que la lettre et l'esprit des trois Règles, posées à l'Article VI du Traité de Washington, ne nous permettent plus de suivre l'ancienne jurisprudence.

Il faut se mettre bien dans l'esprit que c'est un droit nouveau, tout imbu d'équité et de prévoyance, que nous devons suivre maintenant.

Il est vrai que, selon les idées généralement reçues, un Souverain qui ne veut plus accorder le privilége d'exterritorialité aux navires commissionnés des autres Puissances, doit en donner préalablement avis, afin que les marines étrangères, averties, prennent leurs sûretés à cet égard. Mais cela ne veut pas dire qu'il ne puisse y avoir d'exception dérivant d'un certain ordre de faits spéciaux et non du simple caprice du Souverain et de son Gouvernement. Or, c'est sur la nature de ces faits spéciaux que la première Règle posée à l'Article VI du Traité de Washington s'appuie précisément. La disposition de cette Règle serait parfaitement illusoire si on ne l'appliquait pas aux cas de vaisseaux postérieurement commissionnés. On veut empêcher la construction, l'armement, et l'équipement d'un vaisseau, en empêcher la sortie quand il y a raison suffisante de croire que ce vaisseau est destiné à faire la guerre au profit d'un des belligérants, et quand les probabilités auront fait lieu à la certitude, la Règle ne sera plus applicable dans les conséquences directes et palpables qu'elle voulait d'abord empêcher. Cet acte de revendication d'un droit, qui a été évidemment violé au commencement, pourrait-il être envisagé comme une violation de la foi publique ainsi que du droit des gens envers l'un des belligérants? Je ne saurais voir violation de la foi publique là où il n'y a qu'un abus flagrant, une contradiction manifeste aux principes des devoirs du neutre sanctionnées par la Règle précitée.

L'honorable Attorney-General, dans le mémorable discours qu'il a prononcé dans la séance de la Chambre des Communes, le 13 Mai, 1864, en réponse à celui de M. Baring, a formellement déclaré "n'y avoir le moindre doute que l'Angleterre a le droit d'exclure de ses ports, si elle le croit convenable, tout vaisseau ou toute classe de vaisseaux, si elle croit que ces vaisseaux ont violé la neutralité; mais que ce droit est tout simplement discrétionnaire et doit s'exercer eu égard à toutes les circonstances du cas." (Documents produits par les Etats Unis, vol. v, p. 583.) Pourquoi donc n'a-t-on

* L. C., p. 401. Lampredi n'admet pas qu'un vaisseau, sur la haute mer, puisse être considéré par les étrangers comme une partie du territoire de l'Etat dont il porte le pavillon; il ne reconnait cette présomption de territorialité qu'en ce qui regarde la direction intérieure du vaisseau et les rapports civils et politiques de ceux qui se trouvent à bord.

pas au moins usé de ce droit à l'égard des vaisseaux qui étaient en contravention flagrante aux devoirs de la neutralité?

Je ne suivrai pas le Plaidoyer des Etats Unis dans la distinction qu'il propose entre les navires publics des nations reconnues et souveraines d'avec les navires appartenant à une puissance belligérante qui n'est pas une souveraineté reconnue. L'état de belligérant ayant été reconnu des deux côtés des populations Américaines, il n'est point nécessaire d'insister sur cette question; je dirai avec le Juge Américain Grier: "Les nations étrangères reconnaissent qu'il y a guerre par une proclamation de neutralité."*

La circonstance qu'un vaisseau, devenu commissionné, ait été reçu comme vaisseau de guerre dans des ports des différentes Puissances avant que d'entrer dans des ports de la Puissance dont il avait d'abord violé la neutralité, ne me paraît point devoir influer sur la reconnaissance du caractère de ce navire. Là où ce vaisseau n'avait aucune comptabilité à régler, c'était naturel qu'il fût admis comme bâtiment de guerre; mais la chose change totalement, dès que ce vaisseau entre dans les eaux territoriales du Souverain envers lequel il s'est rendu coupable, du Souverain qu'il a compromis vis-à-vis de l'autre belligérant. Ici on ne peut lui faire remise de sa pénalité; il peut être saisi et condamné.

Je pense qu'il est de l'intérêt de toutes les nations maritimes de s'en tenir aux principes que l'on vient d'énoncer. Il y aura d'autant moins de constructions frauduleuses sur un territoire neutre de navires destinés à la course en faveur de belligérants, qu'il y aura plus de sévérité envers ceux-ci, lors même qu'ils se présenteraient sous de prétendues garanties qu'ils ne méritent pas.

Les Puissances signataires du Traité de Washington expriment, dans ce même Article VI, le désir et l'espoir que les trois Règles qu'elles y ont établies soient adoptées par les autres Puissances maritimes. Il faut en conclure que les Puissances signataires ont envisagé ces Règles comme claires, précises, et applicables aux différents cas qui y sont contemplés. S'il fallait supposer au contraire que l'intention des Parties Contractantes à Washington était d'admettre des explications et des réserves sur ces mêmes Règles dans le sens "de ne pas dépasser de beaucoup les idées de loi et politique maritime internationale qui avaient le plus de chances de se faire agréer des intérêts généraux et de cette partie de l'humanité,"† l'avantage de l'exemple donné serait entièrement perdu. L'interprétation flottante empiéterait toujours sur la fermeté de la Règle.

Approvisionnement de Charbon.

Quant à la question de l'approvisionnement et du chargement de charbon, je ne saurais la traiter que sous le point de vue d'un cas connexe avec l'usage d'une base d'opérations navales dirigées contre l'un des belligérants, ou d'un cas flagrant de contrebande de guerre.

Je ne dirai pas que le simple fait d'avoir alloué une quantité de charbon plus forte que celle nécessaire aux vaisseaux pour regagner le port de leur pays le plus voisin, constitue à lui seul un grief suffisant pour donner lieu à une indemnité. Ainsi que le disait le Chancelier d'Angleterre, le 12 Juin, 1871, à la Chambre des Lords, l'Angleterre et les Etats Unis se tiennent également attachés au principe pratique qu'il n'y a pas violation du droit des gens en fournissant des armes aux belligérants. Mais si cet excédant de proportion dans l'approvisionnement de charbon vient se joindre à d'autres circonstances qui marquent qu'on s'en est servi comme d'une véritable *res hostilis*,‡ alors il y a infraction à la deuxième Règle de l'Article VI du Traité. C'est dans ce sens aussi que le même Lord Chancelier expliquait dans le discours précité la portée de la dernière partie de la dite Règle. Ainsi, lorsque je vois, par exemple, le Florida et le Shenandoah choisir pour leur champ d'action, l'un, l'espace de mer qui est entre l'Archipel des Iles Bahamas et les Bermudes, pour y croiser à son aise, l'autre Melbourne et la Baie de Hobson, avec le dessein, exécuté immédiatement après, de se rendre dans

* Dans l'affaire récente du Hiawatha, prise Britannique, capturée par les Etats Unis au commencement de la guerre de sécession.

† Argument du Conseil de Sa Majesté Britannique sur les points indiqués par l'Arrêté des Arbitres du 20 Juillet, 1872, p. 70.

‡ Le savant Lampredi, parlant de la contrebande de guerre, dit:—"Due circostanze bisogna che concorrano perchè queste merci prendano il carrattere di contrabbando:

"1. Che sieno passate di fatto in proprietà del nemico, o almeno sieno dirette in modo che vi possano passare.

"2. Che sieno uscite fuori del territorio sottoposto a Sovrano pacifico e neutrale. Allora diventano *res hostiles*; prendono il carattere di merci di contrabbando, &c." (G. M. Lampredi, "Del Commercio dei Popoli Neutrali in tempo di guerra.")

les mers Arctiques, pour y attaquer les baleiniers, je ne puis m'empêcher de considérer les chargements de charbon en quantité analogue au besoin de ces expéditions comme des infractions à la deuxième Règle de l'Article VI.

(Translation.)

VESSELS WHICH HAVE RECEIVED COMMISSIONS.

IF we consult the most esteemed authors on public international law, and especially two writers of great weight, whose authority will be denied neither by America nor by England, namely, Story and Phillimore, we find that the privilege, usually accorded to ships of war, of being considered as a portion of the State whose flag they carry, and being thus exempt from all other jurisdiction, was in its origin a privilege only granted by courtesy.* As this privilege is only derived from the usage of nations, it can be cancelled at any moment without cause for offence being given.

The opinion of Story, delivered in the case of the Exchange, and quoted by Phillimore, appears to me decisive :—

"It may," he says, "be justly laid down, as a general proposition, that all persons and property within the territorial jurisdiction of a Sovereign are amenable to the jurisdiction, to himself, or his Court; and that the exceptions to this rule are such only as by common usage and public policy have been allowed, in order to preserve the peace and harmony of nations, and to regulate their intercourse in a manner best suited to their dignity and rights. It would, indeed, be strange if a license implied by law from the general practice of nations for the purposes of peace should be construed as a license to do wrong to the nation itself, and justify the breach of all those obligations which good faith and friendship by the same implication impose upon those who seek an asylum in our ports."†

Taking these general principles, and above all the eternal rules of good sense and the dictates of good faith, as our point of departure, is it possible to admit that a vessel, which has been fraudulently built on the territory of a Sovereign in open contravention of the duties of neutrality which that Sovereign is bound to fulfil, and with the object of privateering on behalf of one of the belligerents, can, by the simple act of such belligerent, with a view to escape disasters, be transferred into a commissioned vessel, and thus, with impunity, defy that same sovereignty against which she had at the outset so gravely offended? No, assuredly; these changes to the eye, like the shifting of a scene, these transformations, effected with equal audacity and ease, cannot be taken as serious. The contravention of which the ship was guilty at the commencement of her career, in regard to the Sovereign of the place where she was built, is not effaced by the operation of an indecent stratagem. All the written maxims of reason revolt against such trickery: *dolus nemini patrocinari debet*. We must look to the bottom of the matter, and deal out full justice on the fraud; *plus valet quod agitur quam quod simulate concipitur*. The guilt inherent to the vessel will not be purged even when she has received a commission, a commander, and a flag from the Power who can only profit by the fraud in open contravention to all the rights of neutrality.

The weighty authority of Story, in the case of the Santissima Trinidad, is generally quoted, with regard to the question now raised before us (and I have myself quoted him). But I observe that Story's doctrine, on the respect due to the commission given to a ship by a Government, is only a general thesis on which everybody agrees; it does not directly touch on the question of the original guilt, incurred by a vessel before her commissioning, and which cannot be blotted out without a disturbance of all the principles which govern the duties of neutrality.

After all, even if precedents could be quoted contrary to the opinion which I maintain, I should reply that the letter and spirit of the three Rules laid down in the VIth Article of the Treaty of Washington, do not allow us to follow the old ruling.

It must be steadily borne in mind that it is a new law, full of equity and foresight, which we are now to follow.

It is true that, according to generally accepted ideas, a Sovereign who is no longer willing to grant the privilege of exterritoriality to the commissioned ships of other Powers, must previously give notice to that effect, so that foreign navies, forewarned,

* Phillimore, "Commentaries upon International Law," vol. i, p. 399, *et seq.* Second Edition, 1871.

† Ibid, p. 401. Lampredi does not admit that a vessel on the high seas can be considered by other nations to be a part of the territory of the State whose flag she carries; he recognizes this assumption of territoriality only in respect to the internal management of the ship, and the civil and political relations of those on board of her.

may take their precautions in this respect. But this does not mean that there may not be exceptions arising from a certain special train of circumstances, and not from the simple caprice of the Sovereign and his Government. Now, it is on the nature of these special circumstances that the first Rule, laid down in Article VI of the Treaty of Washington, is specifically based. The provisions of this rule would be perfectly illusory if not applied to the case of vessels subsequently commissioned. The object in view is to prevent the building, arming, and equipping of a vessel, and to prevent her departure when there is sufficient ground for believing that she is intended to make war on behalf of one of the belligerents; and when probability has become certainty, is the rule to be no longer applicable to the direct and palpable consequences which its original object was to prevent? Can this act in vindication of a right which has at the first been obviously violated, be looked upon as a violation of public good faith and of the law of nations in regard to one of the belligerents? I can see no violation of public good faith where there is only a flagrant abuse, a manifest contravention of the principles of neutral duties sanctioned by the foregoing Rule.

The honourable Attorney-General, in the memorable speech which he made in the House of Commons on the 13th of May, 1864, in reply to Mr. Baring, formally declared "that he had not the least doubt that England had the right, if she thought fit, to exclude from her ports any particular ship, or class of ships, if she considered that they had violated her neutrality; but that such power is simply discretionary, and should be exercised with a due regard to all the circumstances of the case." (United States Documents, vol. v, p. 583.) Why was not, then, at least this right exercised with respect to the vessels which had flagrantly violated the duties of neutrality?

I will not follow the Argument of the United States in the distinction it seeks to draw between public ships of recognized and sovereign nations and the ships belonging to a belligerent Power whose sovereignty is not recognized. The status of belligerents having been admitted to both parties in America, it is not necessary to dwell on this question. I will say, with the American Judge, Grier, "foreign nations recognize that there is war by a proclamation of neutrality."*

The fact that a vessel, having been commissioned, has been received as a ship of war in the ports of different Powers before her entrance into the ports of the Power whose neutrality she had originally violated, should not, in my opinion, influence the recognition of the character of such vessel. Where the vessel had no liability to answer for, it was natural that she should be admitted as a ship of war; but the matter changes entirely as soon as the vessel enters the territorial waters of the Sovereign towards whom she is guilty, of the Sovereign whom she has compromised as regards the other belligerent. Here her guilty character cannot be overlooked; she may be seized and condemned.

I think that it is for the interest of all maritime nations that they should hold to the principles which have just been propounded. The number of vessels, fraudulently built on neutral territory with the intention of privateering on behalf of belligerents, will decrease in proportion as increased severity is shown towards them even when they present themselves under the protection of false immunities which they do not deserve.

The Powers which signed the Treaty of Washington express, in this same Article VI, the desire and hope that the three Rules which they have there laid down will be adopted by the other maritime Powers. It must then be inferred that the signing Powers considered these Rules as clear, precise, and applicable to the various cases which are therein contemplated. If, on the contrary, it is to be supposed that the intention of the Contracting Parties at Washington was to admit explanations and reservations on these same Rules in the sense "of not largely transcending the views of international maritime law and policy which would be likely to commend themselves to the general interests and intelligence of that portion of mankind,"† the advantage of the example given would be entirely lost. The uncertainty of its interpretation would always endanger the stability of the Rule.

Supplies of Coal.

As to the question of the supply and shipment of coal, I can only treat it from the point of view of a case connected with the use of a base of naval operations directed against one of the belligerents, or of a flagrant case of contraband of war.

* In the recent case of the Hiawatha, British prize, captured by the United States at the commencement of the civil war.

† Argument of Her Britannic Majesty's Counsel on the points mentioned in the Resolution of the Arbitrators of July 20, 1872, p. 70 (p. 105, *supra*).

I will not say that the simple fact of having allowed a greater amount of coal than was necessary for the vessels to reach their nearest port in itself constitutes a sufficient grievance to call for an indemnity. As the Lord Chancellor of England said on the 12th of June, 1871, in the House of Lords, England and the United States equally hold the principle that, in practice, there is no violation of international law in supplying arms to belligerents. But if this disproportionate excess in the supply of coal is connected with other circumstances which show that it was used as a real *res hostilis*,* then there is an infringement of the second Rule of Article VI of the Treaty. It is in this sense also that the same Lord Chancellor, in the speech before-mentioned, explained the intention of the latter part of the said Rule. Thus, when I see, for example, the Florida and the Shenandoah choose for their field of action, one, the sketch of sea between the Bahama, Archipelago, and Bermuda, to cruize at her ease, the other, Melbourne and Hobson's Bay, for the purpose, effected immediately afterwards, of going to the Arctic seas, there to attack the whaling-vessels, I cannot help considering the shipments of coal in quantities sufficient for these expeditions as infringements of the second Rule of the VIth Article.

[For M. Staempfli's statement see above, p. 182.

The statements of Sir A. Cockburn on the questions of "Commissions of Ships of War," and the "Supply of Coals," will be found embodied in his "Reasons for dissenting from the Award of the Tribunal" in Part II of the present series of papers (North America, No. 2, pp. 149, 156).]

No. 23.

Papers respecting Vessels purchased in England by Mr. Lay, for the service of the Emperor of China.—(Presented to the Tribunal by the British Agent, August 15, 1873.)

(No. 1.)

Mr. Hammond to Mr. Lay.

Sir, *Foreign Office, February 25, 1863.*

I AM directed by Earl Russell to request that you will inform his Lordship of the number of vessels which have been constructed, or purchased in this country, for the service of the Emperor of China, and also their names and force, and where built or building.

I am, &c.
(Signed) E. HAMMOND.

(No. 2.)

Mr. Lay to Earl Russell.

Chinese Government Agency, 6, Little George Street, Westminster, March 2, 1863.

My Lord,

I HAVE the honour to state, for your Lordship's information, the particulars of the vessels ordered by me on behalf of the Emperor of China, as requested in Mr. Hammond's letter of the 25th ultimo:—

1. The Pekin, late the Mohawk, 6 guns and 110 men. Purchased from the Lords Commissioners of the Admiralty.

2. The China, late the Africa, 6 guns and 110 men. Purchased from the Lords Commissioners of the Admiralty.

* The learned Lampredi, speaking of contraband of war, says:—"Two concurrent circumstances are necessary in order that these articles should assume the character of contraband:

"1. They must have actually become the property of the enemy, or, at least, be disposed in manner that they may so become.

"2. They must have been sent out of the territory subject to the neutral and pacific Sovereign. They then become *res hostiles*; they assume the character of contraband goods, &c." (G. M. Lampredi, "Of the Commerce of Neutral Nations in time of War.)

3. The Amoy, late the Jaspar, 4 guns and 64 men. Purchased from the Lords Commissioners of the Admiralty.

4. The Keangsoo, 6 guns and 110 men. Being constructed by Mr. White of Cowes.

5. The Kwantung, 4 guns and 82 men. Being constructed by Messrs. Laird and Co. of Birkenhead.

6. The Tien-tsin, 4 guns and 65 men. Being constructed by Messrs. Laird and Co. of Birkenhead.

I have, &c.
(Signed) H. N. LAY.

(No. 3.)

Earl Russell to Mr. Adams.

Sir, *Foreign Office, March* 5, 1863.

I HAVE the honour to state to you that, in reply to an inquiry which I addressed to Mr. Lay, that gentleman has informed me that the vessels purchased by him in this country on behalf of the Emperor of China are the following:—

[See list in Mr. Lay's letter of March 2, quoted above].

I have, &c.
(Signed) RUSSELL.

(No. 4.)

Mr. Adams to Earl Russell.

Legation of the United States,
My Lord, *London, March* 11, 1863.

I HAVE the honour to acknowledge the reception of your note of the 5th instant, supplying me with authentic information of the number and character of the vessels purchased or constructed for the use of the Emperor of China, in this country. Thanking your Lordship for this courtesy, I pray your Lordship to accept, &c.

(Signed) CHARLES FRANCIS ADAMS.

No. 24.

Lord Tenterden to Earl Granville.—(Received August 23.)

My Lord, *Geneva, August* 19, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 16th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 24.

Protocol No. XXII.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-second Conference, held at Geneva, in Switzerland, on the 16th of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The Tribunal considered the case of the Georgia.

The Tribunal decided to proceed with the consideration of the case of the Shenandoah at the next meeting.

The Conference was adjourned until Monday, the 19th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statements of Mr. Adams and Viscount d'Itajubá on the case of the Georgia, discussed at the Meeting of the 16th August.

Statement of Mr. Adams.

THE GEORGIA.

THIS vessel was built at Dumbarton on the Clyde during the winter of 1862-63. She was constructed in a manner to excite very little suspicion of the purpose for which she was intended. Indeed, her frame proved so weak after a few months' trial as to render her unsafe with an armament, and she was laid aside.

When she was launched, on the 16th of January, a person known to be in the insurgent service, by the name of North, was reported in the public journals to have been present with his daughter, and she was said to have given to the vessel the name of *the Virginia*.

It was, however, known by the means of an intercepted letter received by Mr. Adams from his Government, that this officer had incurred the censure of his employers at Richmond to such an extent as to prompt his recall. The name thus given was not adhered to.

On the 17th of January, that is, the day after her launch, she was reported by the measuring surveyor as the *steamer Japan*, and intended for commercial purposes, her framework and plating being of the ordinary sizes for vessels of her class.

On the 20th of March she was registered in the name of Thomas Bold, a British subject resident in Liverpool, as the owner.

On the 27th of March she left for Greenock without exciting observations, and without clearance.

On the 30th of March a large number of men who had been shipped at Liverpool by Jones and Co., a firm of which Mr. Bold was a member, for a voyage to Singapore and Hong Kong, and after arrival there to be employed in trading to and from ports in the China and Indian Seas, the voyage to be completed within two years by arrival at some port of discharge in the United Kingdom, left Liverpool to get on board the vessel at Greenock.

On the 3rd of April she left the British waters.

On the 6th, the Collector of the Customs at Newhaven addressed a letter to the Commissioners of Customs in the following terms:—

"The steam-ship Alar, of London, 85 tons, owned by H. P. Maples, sailed on Sunday morning 5th instant, at 2 A.M., bound, according to the ship's papers, for Alderney and St. Malo. On Saturday, at midnight, thirty men, twenty of whom appeared to be British sailors, ten mechanics, arrived by train. Three gentlemen accompanied them, Mr. Lewis of Alderney, Mr. Ward, and Mr. Jones. The men appeared to be ignorant of their precise destination; some said they were to get 20*l.* each for their trip. A man, rather lame, superintended them. Shortly after midnight, a man arrived from Brighton, on horseback, with a telegram, which, for purposes of secresy, had been sent there and not to Newhaven, it is suspected. Mr. Staniforth, the agent, replied to my inquiries this morning, that the Alar had munitions of war on board, and that they were consigned by to a Mr. Lewis, of Alderney. His answer was brief and with reserve, leaving no doubt on my mind nor on the minds of any here that the thirty men and munitions of war are destined for transfer at sea to some second Alabama. The telegram to Brighton intimated very probably, having been reserved for the last hour, where that vessel would be found. Whether the shipment of the men, who all appeared to be British subjects, can, if it should be hereafter found that they have been transferred to a Federal or Confederate vessel, be held an infringement of the Foreign Enlistment Act, and whether the clearance of the Alar, if hereafter found to be untrue, can render the master amenable under the Customs Consolidation Act, is for your consideration respectfully submitted.

(Signed) "R. J. DOLAN, *Collector.*"

On contrasting the substance of this letter with any or all of those communicated from a similar source at Liverpool in the cases of the Oreto or the Alabama, the difference cannot fail to be apparent to the most ordinary apprehension. There is no equivocation or reservation to be suspected here. The officer seems to me to have faithfully performed his duty, and completely relieved himself from responsibility.

This letter appears to have been received by the Commissioner of Customs on the 7th April, and they on that same day made a report to the Home Office in the following terms:—

"I am desired to transmit, for the information of the Lords Commissioners of Her Majesty's Treasury, and for any directions their Lordships may see fit to give thereon, copy of a Report of the Collector of this Revenue at Newhaven, relative to the clearance of the vessel Alar, having on board a number of sailors and munitions of war, ostensibly for Alderney and St. Malo, but suspected by the Collector to be intended for transfer to some other vessel belonging to one of the belligerents in America; and I am to state that the Board having conferred with their Solicitor on the subject, that officer is of opinion that there is no evidence to call for any interference on the part of the Crown."

It thus appears very clearly that whatever may have been the opinions of the law expressed in this letter, the fact is certain that at that date none of the officers of the Government had received any information of the direction to which it could truly look for the destination of these vessels. The whole operation had been conducted, it must be admitted, with great skill and address. Nobody had ever guessed at the result down to the time in which it was in process of execution within the jurisdiction of another Power.

Meanwhile, let us now turn our attention to the position in which the Representatives and Agents of the United States, the party the most deeply interested in preventing this undertaking if possible, were occupying.

This may most readily be gathered from the testimony of the most vigilant officer they had in that kingdom, a man who spared no pains and no expense to secure all the information that could be had, not simply within his own district, but everywhere in the kingdom where sea-going vessels were in process of construction outside of the capital.

On the 3rd of April Mr. Dudley writes the following letter to Mr. Seward at Washington:—

"Mr. Underwood, our Consul at Glasgow, has no doubt informed you about the steamer now called the Japan, formerly the Virginia, which is about to clear from that port to the East Indies. Some seventy or eighty men, twice the number that would be required for any legitimate voyage, were shipped at Liverpool for this vessel, and sent to Greenock on Monday evening. They are shipped for a voyage of three years. My belief is that she belongs to the Confederates, and is to be converted into a privateer; quite likely to cruize in the East Indies, as Mr. Young, the paymaster of the Alabama, tells me it has always been a favourite idea of Mr. Mallory, the Secretary of the Confederate Navy, to send a privateer in these waters. I sent a man from here to Glasgow to accompany these men, to endeavour to find out the destination of the vessel, &c. He has not been successful as yet in his efforts. He has been on board, and writes that she has no armament, and he is still there watching her, &c."

At the date of this letter the Japan was actually gone to sea; and the vigilant Consul had not even then obtained any testimony whatever upon which to establish the truth of his very just conclusion as to the purpose, though not just as to the destination of the vessel.

Let me now observe what the case was with Mr. Adams, the Minister of the United States at London. It appears, by a letter of his addressed to Mr. Seward on the 9th of April, that "he had been long in the possession of information about the construction and outfit of this vessel on the Clyde;" and upon this part of the paragraph of his letter, singularly enough, I perceive in the Counter-Case presented to us on the part of Her Majesty's Government an attempt made to throw upon him the responsibility for the escape of the vessel. The language is this:—

"If recourse had been had to the Navy, it is probable," the Arbitrators are told, "that the complaints of the United States might not have been necessary. They might not have been necessary if Mr. Adams had communicated in good time such information as he possessed, instead of keeping it undisclosed until six days after the sailing of the Georgia, and more than three days after the departure of the Alar, and if that information had intended to form an actual or contemplated violation of the law."

Now, it should be observed that this passage begins by assuming that the information to which Mr. Adams alludes in his letter of the 9th of April, as having long been in his possession, was the same which he communicated to Earl Russell in his note addressed to him on the 8th. If such had really been the case, the insinuation might have appeared with some shadow of justice. But if the context of the passage quoted had been given entire, it would show that at the period to which he referred, "nothing

had ever been furnished him of a nature to base proceedings upon;" whereas, on the reception of what appeared more distinct evidence of facts just then taking place, he lost not a moment in submitting them to the consideration of Her Majesty's Government, in his note to Earl Russell of the 8th of April. For the rest, it is probable Mr. Adams had had too long an experience of the result attending the transmission of insufficient evidence to be particularly desirous of drawing upon himself the customary replies. If Her Majesty's Government is to be justified at all in the course of the transactions now under consideration, it must be done by assuming the entire responsibility for her action, or failure to act, rather than by attempting to share it with other parties, in whom it could not possibly suspect any motive for indifference or neglect.

It thus appears that it was not until the 8th of April, that is, six days after the escape of the Japan, and three days after the evasion of the Alar, that Mr. Adams appears to have had within his control the requisite means for making a remonstrance. He then addressed to Earl Russell the following note:—

"From information received at this Legation, which appears entitled to credit, I am compelled to the painful conclusion that a steam-vessel has just departed from the Clyde with the intent to depredate on the commerce of the people of the United States. She passed there under the name of the Japan, but is since believed to have assumed the name of the Virginia. Her immediate destination is the Island of Alderney, where it is supposed she may yet be at this moment.

"A small steamer called the Alar, belonging to Newhaven, and commanded by Henry P. Maples, has been loaded with a supply of guns, shells, shot, powder, &c., intended for the equipment of the Virginia, and is either on the way or has arrived there. It is further alleged that a considerable number of British subjects have been enlisted at Liverpool and sent to serve on board this cruizer.

"Should it be yet in the power of Her Majesty's Government to institute some inquiry into the nature of these proceedings in season to establish their character if innocent, or to put a stop to them if criminal, I feel sure that it would be removing a heavy burden of anxiety from the minds of my countrymen in the United States."

The difficulty of the situation in writing so long after the execution of the chief portions of the operation objected to is here frankly conceded. Everything known thus far gave no clear indication towards the unknown, and the only important affirmation of fact made in the letter turned out not to be correct.

On the same day this letter was written and sent, Earl Russell made his reply. After repeating the substance of the complaint, it proceeds as follows:—

"I have to state to you that copies of your letter were sent without loss of time to the Home Department and to the Board of Treasury, with a request that an immediate inquiry might be made into the circumstances stated in it, and that if the result should prove your suspicions to be well founded, the most effectual measures might be taken which the law admits of for defeating any such attempts to fit out a belligerent vessel from British ports."

It is due to the Government of Her Majesty to add that all it could do under the peculiar circumstances it tried to do. Mr. Adams had pointed out the Island of Alderney as the place of destination for the meeting of the Japan and the Alar. This had been to a certain extent confirmed by the report of the Collector of Customs at Newhaven, the only correct information which seems to have been at first obtained. Alderney and St. Malo was the destination specified in the ship's papers.

Misled by this information, Lord Russell took a step extraordinary, and thus far exceptional in the prosecution of preventive measures. He caused a ship of war to be ordered from Guernsey to Alderney with a view to prevent any attempt that might be made to execute the project of armament within that British jurisdiction. Unfortunately the practical consequence of having been put on this false scent was to furnish the time lost there as a means of more completely carrying into effect the projected scheme elsewhere. Even had Her Majesty's Government attempted to go further, it could have been of no use. The object had been completely gained within the jurisdiction of another sovereignty—the Empire of France.

In the Case presented on the part of the United States, it is urged that Her Majesty's Government might have gone so far as to seize the vessel within the French jurisdiction, and the case of the Terceira expedition is cited as a precedent. But it seems to me that the Government of the United States would scarcely be ready to concede the right of a foreign Power to settle questions of justice within its jurisdiction without its knowledge or consent.

It may be urged that the opinions of the officers of the Customs that no violation of law had been committed in the expedition of the Alar, was equivalent to a neglect of due diligence.

Upon which it may be remarked that whether right or wrong, at the date it was

given, and with the information then in possession of the Government, there is no reasonable probability that the Alar could have been seized excepting perhaps in the waters of France.

On the 15th of April, Mr. Adams addressed a note to Earl Russell covering certain papers which went to prove the manner in which men had been enlisted in violation of the laws of the kingdom by parties in Liverpool in co-operation with the Insurgent Agents.

In consequence of these and other papers which followed them, Her Majesty's Government were enabled to take the requisite steps to bring the chief offender at Liverpool into the Courts of Justice. The reports of the trials carried on in the Court over which our distinguished colleague presides, are among the papers before us, and they satisfy my mind entirely in regard to the justice and impartiality with which the proceedings were conducted. The parties were all convicted, and though the penalties inflicted were much too light, they appear to have been thought sufficient to establish the efficiency of the law.

It was in connection with such proceedings as these that Mr. Dudley, in one of his letters to Mr. Seward, wrote that "the prosecution of these parties, if conducted vigorously with the view of convicting them, will do more to break up these expeditions and fitting out of vessels in this country than anything else."

Upon a careful review of these facts as they appear before me, I cannot perceive that Her Majesty's Government has made itself in any way liable for the failure to use diligence in this case under the first rule prescribed in the Treaty of Washington.

The Japan had now changed her name and become the Georgia. The fraud had been most successfully perpetrated. An Insurgent officer, by the name of Maury, had taken the command of her, and the next thing we learn is of her depredations on the commerce of the United States.

It is not essential to the present purpose to go into any details of her cruize outside of the possible limits of liability on the part of Her Majesty's Government.

In a report made by Rear-Admiral Sir Baldwin Walker to the Secretary of the Admiralty dated 19th August, 1863, appears the following paragraph:—

"On the 16th instant, the Confederate States' steamer Georgia, Commander Maury, anchored in this (Simon's) Bay. She requires coals, provisions, and caulking."

In a letter addressed by the Governor at Cape Town to the Duke of Newcastle bearing the same date is the following paragraph:—

"On the 16th at noon, the Georgia, another Confederate war steamer, arrived at Simon's Bay in need of repairs, and is still there."

It may perhaps be my fault, but after a careful search I have been unable to discover any official Report other than these as to the arrival, the time of stay, and the treatment of the Georgia during this visit. Inasmuch as this event was cotemporaneous with the arrival of the Alabama and her tender the Tuscaloosa, both of which were engrossing the attention of the authorities of the place, it is possible that the customary detailed Report in regard to her may have been omitted.

The fact is at any rate certain that, notwithstanding her fraudulent escape in defiance of the laws of Great Britain, this vessel was duly recognized at Capetown as a legitimate vessel belonging to a recognized belligerent.

In the cases of the Florida and of the Alabama I have already expressed my deep regret that this mode of proceeding should have been adopted in regard to vessels which had been guilty of a flagrant violation of the laws of the kingdom. The right to exclude them is distinctly recognized by Sir Roundell Palmer in a speech made by him in the House of Commons on the 13th of May, 1864,* whilst he assigned as a chief reason for not exercising it the danger that such a decision might have an effect of appearing to favour too strongly one side in the contest. The fear of doing a thing demanded by what appears to be a paramount duty of upholding the majesty of their laws because it might possibly appear to lean too much against one party and in favour of the other, seems to have been the guiding motive to the policy actually adopted. But the question immediately arises whether that party had, in its extraordinary course of conduct within Her Majesty's dominions, earned any right to such consideration.

Be this as it may, Her Majesty's Government decided otherwise, and admitted the Georgia into the port of Simon's Bay, where she appears to have remained a fortnight,

* American Appendix, vol. v, p. 583.

repairing her decks and receiving supplies and provisions on the footing of a recognized belligerent. It has been argued that in thus deciding, Her Majesty's Government made itself liable under the second rule, as permitting one of its ports to be made a base of operations against the United States by a vessel which had issued from the kingdom in defiance of its laws as a hostile cruizer.

I have given to this view of the matter the most careful consideration; but I regret that I cannot bring myself to concur in it. The vessel escaped from the kingdom under circumstances which have already been detailed in this paper, involving no neglect or failure of duty on behalf of the Government. If on arriving at an English port furnished with a regular commission as a vessel of a recognized belligerent, Her Majesty's Government determines to recognize her in that character, however much I may regret it, I cannot call in question her right to do so on her responsibility as a sovereign Power. This is a right I should not consent to have drawn into question in any case so decided by the United States. It appears to me on the same footing with the original recognition of belligerency, the primal cause of all these unpleasant questions,—a step which I always regretted to have been taken, but which I never doubted the right of Her Majesty's Government to take whenever it should think proper.

The Georgia, after leaving Simon's Bay, had but a short career. She proved utterly unsuitable to the service into which she had been forced, and finally returned to Liverpool, where she was sold, and turned into a merchant-ship. A question has been raised as to the course of Her Majesty's Government in permitting this to be done within her harbours. I cannot myself perceive the importance of the question, provided that she recognized the right of the belligerent to dispute the validity of such operations. That she did so is certain; for the Georgia, after her transfer into private hands, was taken on the high seas by the United States' steamer Ni _ ra, and sent to America as a prize to be disposed of in regular course of law. A reclamation attempted by the owner, in a note addressed to Earl Russell, was met by a reply decisive of the merits of the case.

In view of all the facts attending this case, and of the considerations attending them, I am brought to the conclusion that it does not show any such course on the part of Her Majesty's Government as will suffice to impose any responsibility for damages under the terms of the three rules prescribed by the Treaty of Washington.

Statement of Viscount d'Itajubá.

LE NAVIRE LE GEORGIA.

LE Soussigné, après examen consciencieux de tous les documents soumis au Tribunal d'Arbitrage par les Gouvernements des Etats Unis et de la Grande Bretagne, relatifs au croiseur Confédéré,

Le Georgia,—

Est d'avis,

Que la Grande Bretagne n'a pas manqué aux devoirs prescrits dans les règles établies par l'Article VI du Traité de Washington, et qu'elle n'est pas responsable des faits imputés à ce navire.

(Translation.)

THE VESSEL THE GEORGIA.

THE Undersigned, after a conscientious examination of all the documents submitted to the Tribunal of Arbitration by the Governments of the United States and of Great Britain, relating to the Confederate cruiser,

The Georgia,—

Is of opinion,

That Great Britain has not failed to fulfil the duties prescribed in the Rules laid

down by Article VI of the Treaty of Washington, and that she is not responsible for the acts imputed to this vessel.

[The statement of Sir A. Cockburn on the Case of the Georgia will be found embodied in his "Reasons for dissenting from the Award of the Tribunal" in Part II of the present series of papers (North America, No. 2, p. 205).]

No. 25.

Lord Tenterden to Earl Granville.—(Received August 24.)

My Lord, *Geneva, August* 21, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 19th instant, as approved and signed at the meeting at this day.

Your Lordship will observe that there is an alteration from the form of Protocol as drawn up at the conclusion of the previous meeting.

Count Selopis, having expressed himself in doubt ("dans l'obscurité") as to the recruitment of men at Melbourne, I requested, as appeared in the draft Protocol, to be allowed to offer some explanations upon the point, and, on Count Selopis stating his desire that they might be furnished, the Tribunal acceded to my doing so.

At the meeting to-day, however, Mr. Adams objected to this request appearing in the Protocol, as he held that under the provisions of the Vth Article of the Treaty, the Agents had no right to offer explanations, and that the initiative must be taken by the Arbitrators in calling for statements or arguments upon points upon which they might desire elucidation.

The Protocol was consequently altered to the form in which it now stands.

I have, &c.

(Signed) TENTERDEN.

Inclosure 1 in No. 25.

Protocol No. XXIII.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-third Conference, held at Geneva, in Switzerland, on the 19th of August,* 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The Tribunal considered the case of the Shenandoah.

At the close of the proceedings Lord Tenterden said:—

"As Agent of Her Britannic Majesty's Government I beg leave respectfully to ask permission to afford some explanations upon the point of recruiting, upon which Count Selopis, says that he is in doubt, and upon which he founds the opinion he has now delivered."

The Tribunal decided to hear these explanations at the next Conference.

In compliance with a request of the Tribunal, Lord Tenterden, as Agent of Her Britannic Majesty, and Mr. J. C. Bancroft Davis, as Agent of the United States, respectively, presented to the Tribunal tables of figures relating to the losses for which compensation is claimed by the United States, with explanatory statements and observations.

The Conference was adjourned until Wednesday, the 21st instant, at half-past 12

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* As it stood previously to being altered at the meeting of the 31st of August

Inclosure 2 in No. 25.

Protocol No. XXIII.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-third Conference, held at Geneva, in Switzerland, on the 19th of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

The Tribunal considered the case of the Shenandoah.

Count Sclopis having expressed some doubts concerning the chief point of this discussion, requested the Tribunal to permit the Counsel to afford further elucidation with regard to that point.

The Tribunal decided to hear these elucidations at the next Conference.

In compliance with a request of the Tribunal, Lord Tenterden, as Agent of Her Britannic Majesty, and Mr. J. C. Bancroft Davis, as Agent of the United States, respectively, presented to the Tribunal tables of figures relating to the losses for which compensation is claimed by the United States, with explanatory statements and observations.

The Conference was adjourned until Wednesday, the 21st instant, at half-past 12 o'clock.

(Signed) FREDERICK SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Statements of Mr. Adams, Viscount d'Itajubá, M. Staempfli, and First Statement of Count Sclopis, on the Case of the Shenandoah, discussed at the Meeting of the 19th August.

Statement of Mr. Adams.

THE SHENANDOAH.

WE have now reached the last vessel, in the order of events, which is presented to this Tribunal for its consideration.

It appears clearly, from the papers before us, that the steadily growing energy manifested by Her Majesty's Government in preventing the departure of vessels obviously intended to carry on war had not been without its effect upon the parties engaged in procuring them. The seizure of the iron-clad steam-rams, built by Messrs. Laird, seems to have dispelled all further idea of attempting open operations of that description.

Efforts were now directed to the prosecution of schemes that would elude observation. In the execution of this policy, swift vessels, constructed for commercial purposes, were looked up. And when found reasonably adapted for conversion into privateers, measures were taken to procure the control of them so suddenly as to effect their escape from the British jurisdiction before any means of prevention could be put into operation.

A skilful combination of the means of supplying an armament and a crew at some prearranged point on the high seas far beyond the British jurisdiction, in a vessel so quickly and secretly pushed out of a British port as to baffle pursuit, completed the adventure.

This plan had been attended with complete success in the case of the Georgia. It was now resorted to with a few variations in the case of the Shenandoah.

The British steamer Sea King had been built for a merchant-vessel and employed in the China trade, during which period she had gained much reputation for her speed and her sailing qualities. In the year 1864 she appears to have attracted the attention of the insurgent agents in England, and they proceeded through their customary British affiliations to get her into their hands. On the 20th of September the purchase and transfer were effected in the port of London. A person by the name of Wright a British subject, appeared as the owner. On the 8th of October this vessel cleared from that port in the usual way for Bombay, without exciting observation. The crew had been hired for that voyage.

Simultaneously with this movement, a screw-steamer called the Laurel issued from the port of Liverpool, having a considerable number of passengers on board, and a cargo composed of an armament and ammunition suitable for a vessel of war. Her nominal destination was Matamoras viâ Nassau.

The true destination of both ships was the vicinity of the Island of Madeira. There they actually met, on or about the 21st of October; and there the process of transfer of the armament and the men was effected on the high sea.

This operation had been conducted with a degree of success exceeding that of the Georgia. Even the vigilance of the Consul of the United States at Liverpool had resulted only in the formation of conjectures, reasonable in themselves, and partially well founded in fact, but unsustained by any positive evidence. That was not obtained until the return of many of the crew of the Sea King, who had refused to take the new departure, when it was disclosed to them by the true commander of the vessel now called the Shenandoah.

Thus far I have only to repeat the observations I made in the case of the Georgia. Placing myself in the position of any neutral Power possessing an extensive commercial marine and a large number of ports, it seems to me that no ordinary degree of diligence could be likely to avail to prevent the execution of such skilfully contrived enterprises.

Her Majesty's Consul at the port of Teneriffe appears to have done all that it was in his power to do in the premises. On the arrival of the Laurel at that place, and learning the state of the facts as given to him by the parties on board, he prepared a careful report of the same, and addressed it to Earl Russell. He also assumed the responsibility of seizing the master of the Sea King, P. J. Corbett, and sending him home for trial as having, even though at sea, violated the provisions of the Foreign Enlistment Act.

On the 26th of January, 1865, Commander King, of Her Majesty's ship Bombay, writes to Commodore Sir W. Wiseman.

I copy the essential parts of his letter:—

1. I conceive it to be my duty to report to you that a vessel of war of the Confederate States of America arrived and anchored in Hobson's Bay yesterday the 25th instant.

3. Her name is the Shenandoah, a screw-vessel, &c.

4. Her armament consists of eight guns, viz., four 8-inch (English), two 32-pounders (Whitworth), and two 12-pounders, intended more especially for boat service.

5. The crew at present consists only of 70 men, though her proper complement is 140; the men almost entirely are stated to be either English or Irish.

8. The ship appears to be in good order, her officers a gentlemanly set of men, in a uniform of grey and gold; but, from the paucity of her crew at present, she cannot be very efficient for fighting purposes.

9. Leave had been asked by the Commander for permission to coal and repair machinery, &c.

It is to be noted here that, from the statements made by this officer, it appears he had an opinion clearly formed that, in the condition this vessel was in at the time she arrived in port, and with such a limited crew, she could not be efficient as a fighting ship.

The application made by the master of the Shenandoah to the Governor of the Colony, Sir C. H. Darling, was in these words:—

"I have the honour to announce to your Excellency the arrival of the Confederate States' steamer Shenandoah, under my command, in Port Philip this afternoon, and also to communicate that the steamer's machinery requires repairs, and that I am in want of coals.

"I desire your Excellency to grant permission that I may make the necessary repairs and supply of coals, to enable me to get to sea as quickly as possible."

It is to be noted that the object here mentioned was to get to sea, without the specification of any port of destination.

On the 26th of January, Mr. Francis, Commissioner of Trade and Customs, by direction of the Governor, Sir Charles Darling, addressed a letter to the Commander, Waddell, of which the essential part is as follows:—

"In reply, I have received the instructions of Sir Charles Darling to state that he is willing to allow the necessary repairs to the Shenandoah, and the coaling of the vessel being at once proceeded with, and that the necessary directions have been given accordingly."

At the same time Mr. Francis communicated to this officer a copy of the general

orders of the Duke of Newcastle, in regard to what is called the twenty-four hours rule, and likewise those embraced in a letter of Earl Russell to the Duke of Newcastle, of the 31st January, 1862, covering regulations applicable to all questions ordinarily arising out of the arrival of similar vessels.

On the 26th, the 27th, and 28th of January, Mr. Blanchard, the Consul of the United States, at Melbourne, addressed to Sir Charles Darling three successive letters, protesting against the recognition of this vessel as belonging to a belligerent, on the ground of her origin, her conversion at sea, and her actual condition.

On the 30th of January, his Excellency states to the Council of the Colony:—

"That he had replied to the United States' Consul to the effect that, having given an attentive consideration to his letter, and having consulted with the Law Officers of the Crown, he had come to the decision that the Government of this Colony were bound to treat the Shenandoah as a ship of war belonging to a belligerent Power.

"His Excellency then consults the Council on the only point upon which he thought any doubt could arise, viz., whether it would be expedient to call upon the Lieutenant commanding the Shenandoah to show his commission from the Government of the Confederate States, authorizing him to take command of that vessel for warlike purposes.

"After a brief consultation, a majority of his advisers tender their opinion that it would not be expedient to do so."

I do not find, on the part of Her Majesty's Government, any notice of this decision among the papers before us. Thus, it appears that once more it had been determined to sanction a proceeding known to have been executed in defiance of the laws of Great Britain, and of the pledges of the Government to maintain a strict neutrality in the contest. The principle that success sanctions a fraud had again been ratified, under circumstances which could not fail, and did not fail, to entail upon its supporters the heaviest kind of responsibilities.

For, in the series of consequences that happened at Melbourne, it was no more than natural to expect that the parties guilty of the first offence should be likely to resort to others of the same nature whenever there should appear that any advantages were to be gained by it. The authorities at Melbourne seem at first to have acted as if the baptism of the vessel into a new name had, in their eyes, washed it white of all its past sins. They were destined to learn a different lesson, but nobody seems to have repented, with the exception perhaps of the Governor himself, whose latest significant declaration on that subject I shall have occasion to notice hereafter.*

The application of the insurgent officer Waddell for leave to make repairs and get supplies was made on the 25th of January. Five days passed and he had just discovered, from an examination made by a diver, that repairs were necessary under the water line, which would require that the vessel should be placed on the Government slip, there to continue not more than ten days. Meanwhile he had not yet bethought himself to give to the authorities, who had requested it, any report as to the quantity and the nature of the supplies which he desired.

Thus delays were interposed, for one reason or other, until the 18th of February, when the vessel sailed.

The Commander had in this way managed to secure a period of twenty-three days, during which time he could set in operation the means of starting on his projected expedition in an effective manner.

It should here be observed that, in all his movements, he was much favoured by the almost universal sympathy of the residents at Melbourne and the colony. Whatever he could ask that was permissible they would enthusiastically furnish. Whatever he dared to do that was not, they were indisposed to perceive or to disclose.

Under these circumstances, there cannot be a doubt that, during all this interval of time, he was constantly busy in secretly obtaining additions to his crew. This was indispensable to his ulterior operations.

Had the matter depended on the energy of the authorities and population of Melbourne alone to prevent this, he would have had all he wanted without a word of notice. Unluckily for him, he found the Consul of the United States, Mr. Blanchard, on the watch to check and expose his proceedings by all the means in his power. On the 10th of February, that officer addressed a letter to the Governor inclosing the deposition of John Williams. In it, this witness affirmed that, on the Monday previous, there had been fifteen or twenty men concealed in different parts of the ship, who had gone on board since her arrival sixteen days before.

This statement it is material to connect with a part of the report made by Captain

* British Appendix, vol. i, p. 722.

Payne to the authorities on that same day. He had been instructed to make a careful examination of the vessel. In his report he has this passage:—

"There appears to be a mystery about her fore hold, for the foreman of the patent slip, when asked to go down to that spot to measure her for the cradle, was informed he could not get to the skin at that place. The hatches were always kept on, and the foreman states that he was informed they had all their stuff there."*

Another witness, obtained by Mr. Blanchard, named Walter J. Madden, testified that, when he left the vessel on the 7th of February, "there were men hid in the forecastle of the ship and two working in the galley, all of whom came on board of said vessel since her arrival in that port; that the officers pretend they do not know that said men are so hid."

On the 14th of February Mr. Blanchard sent another deposition, of a man named Herman Wicke, specifically naming one person as having come on board. These are his words:—

"The rations in Hobson's Bay are sent out by the master-at-arms, who gives them to Quarter-Master Vickings, and this latter brings them to the galley to be cooked, by cook known by the name of Charley; that said cook Charley was not on board the Shenandoah on her arrival in the bay; he went on board since her arrival, and he told me he would join the ship as cook; that he dared not to do it in port, but that he would do it when proceeding outwards; that I also saw said cook take rations to a number of men concealed in the forecastle, who went on board since her arrival in Hobson's Bay."

This testimony was laid before the Law Officers, who deemed the first deposition by itself sufficient evidence to lay informations against the man enlisted, and this appears to have prompted the Council, not to take any proceedings against the Commander, but to direct an inquiry to be made when he would be ready to go away.†

It was the tempted on which indignation was to be expended. The true cause of the violation of law was to go his way in peace.

On the heels of this information came a report from the Police Department that twenty men had been discharged from the vessel since her arrival in port.

If this report was correct, then her crew, according to the report of Captain Payne, must have been reduced to fifty men.

On such a basis she could scarcely have ventured on any hostile cruize. It seems tolerably plain that the object of supplying this deficiency was kept in view from the first.

The detective proceeded to state that the captain intended to ship forty hands, to be taken on during the night, and to sign articles when outside the Heads. He wanted foreign seamen only; but, if English were to be taken, they must assume a foreign name.

Further information from other sources given on the same day raised the number of men actually engaged to sixty.

It thus appears that the authorities at Melbourne were, as early as the 13th, fully apprised of what was the movement of the Commander, and in a situation to adopt energetic measures of prevention, if they should think proper.

The only measure which appears actually to have been taken was to issue a warrant against the man Charley.

The officer charged with the warrant proceeded to the steamer in which the man was supposed to be. The Commander was not on board. The officer next in charge at once refused to give him any assistance, and forbid his going over the ship.

The next day he returned, and applied to the Commander himself. That officer is reported to have used these words: "I pledge you my word of honour, as an officer and a gentleman, that I have not any one on board, nor have I engaged any one, nor will I while I am here."

How is this evidence to be reconciled to all the previous testimony, and the suspicious circumstance mentioned by Captain Payne?

The rest of the evidence of the boarding officer is quite important, though not essential to transfer to this paper. The whole is accessible in the first volume of the Appendix to the British Case. The issue of the application was, that the commander absolutely refused to let the officer look over the ship for himself. On a second demand of a more pressing kind he again refused, and added that "he would fight his ship rather than allow it,"—a threat as absurd in his then situation as it was offensive to the authorities of the Colony.

* British Appendix, vol. i, p. 557.

† Ibid., p. 521.

The Governor in Council, on receiving the news of this open defiance of all recognized authority, at once took notice of it by issuing a prohibition to all the subjects of the Colony of giving further aid or assistance to the vessel then on the slip, which practically exemplified in an instant the folly of the insurgent officer's proceeding.

Had the authorities persevered in this course, it is altogether likely that the commander Waddell would have ultimately been compelled to abandon all his schemes of illegal outfit, and with it perhaps the enterprise he was meditating.

Unfortunately, they listened to weaker counsels. They appealed to the officer to reconsider his determination. The letter containing this appeal was delivered to him on the evening of the 14th. He answered it, protesting against the obstruction thus put in his way. The first sentence is all that is material in this connection. It is in these words :—

"I have to inform his Excellency the Governor that the execution of the warrant was not refused, as no such person as the one therein specified was on board."

There were two falsehoods in this sentence. The reason assigned could not explain the fact of the refusal. Scarcely was the letter placed in the hands of the messenger, when the attention of the water police was attracted to the fact that four men were leaving the Shenandoah in a boat pulled by two watermen. They were headed off and arrested. And then it was discovered that the man Charley so positively alleged not to have been on board was one of the four.

Yet, strange as it may seem, the fact of this discovery of a clear violation of the Foreign Enlistment Act was communicated to the perpetrator in a letter which, by way of compensation, announced to him that the injunction upon British subjects to withhold all aid to his vessel was thenceforth taken off.

The reason assigned for this change of policy was that, in the situation of the vessel on the slip, a sudden storm might endanger its safety, and in that event the authorities would be made responsible for the consequences of their order.

It was a suggestion skilfully made to attain its purpose, and it alarmed the Governor enough to induce him to withdraw his prohibition.

The reply of the Commander is at once fawning, insolent, and untruthful. He thanks the Governor for his observance of the rights of belligerents, to which he had done everything to forfeit a claim. He disavows a knowledge of the fact that the men were there, though it is clearly to my mind the true reason accounting for his absurd threat to fight rather than to show the interior of the ship; and, lastly, he vapors about the disrespectful and insulting tone used towards him, which he should take an early opportunity of bringing to the notice of the Richmond Government.

Simultaneously with the dispatch of this letter, this officer addresses to the Attorney-General of the Colony the following inquiry :—

"Be pleased to inform me if the Crown claims the sea to be British waters three miles from the Port Philip Head lights, or from a straight line drawn from Point Lonsdale and Schanch."

The audacity of this application to that particular officer is its most marked characteristic. The purpose of it could scarcely fail to have been penetrated. It could only have had reference to the possibility of taking on board of his ship at the nearest point outside of British waters such men as he had already engaged to enlist with him. Yet the Attorney-General seems not to have been stimulated by it to take any new precautions. He contented himself with sending an evasive answer that yet clearly betrays his own sense of the nature of the inquiry.

At this moment the Captain of the Shenandoah had forfeited all possible right to respect from the authorities, whether as an officer or as a man. They were fully informed of the fraud which had entered into the origin of his undertaking. They were enlightened in regard to his continuous efforts to violate Her Majesty's laws in their port, and they were warned that detection in one instance had not availed to deter him from meditating more. Yet, so far as the papers before us are concerned, these considerations do not seem to have produced any other effect than a desire to get rid of him as soon as possible by supplying him with all he asked.

The consequences were no other than could have naturally been expected. No vigilance had been exercised in preventing the Commander's operations, and the boats which took out the people who had been enlisted beforehand had it all their own way. There is not a reasonable doubt that he carried away from Melbourne at least twenty-eight of these men.

An attempt has been made to draw a parallel between this enlistment and that supposed to have been made by the Commander of the Kearsarge at Cork. But it

appears to fail in many respects, the most important of which is this, that Captain Winslow, after he got out of British waters, discovered the men, and took the trouble to bring them back to Cork. The other never thought of reparation for his offence.

His vessel was one of the swiftest in sailing known in the records of seamanship, and therefore stood in little need of coal. The supply she had brought unexhausted to the port was large. Yet she obtained as much more as she could carry. No questions seem to have been asked as to the nearest port of destination. So far as I can gather from the evidence, it appears that this vessel was completely supplied at Melbourne with all she wanted for a cruise of depredation continued for many months. And, worst of all, she obtained at this port a complement of her crew, without which she could have done nothing.

An attempt has been made to weaken the force of the testimony given by Temple on this matter. It does not seem to have materially shaken the belief in it of Sir C. H. Darling, the Governor, whose only fault, so far as I have been able to observe, was that of listening too much to the weak counsels of parties sympathizing more than was becoming with the cause of these malefactors. When the deposition was submitted by Her Majesty's Government to his consideration in 1866, he explained some of the incidents referred to, without contesting the truth of any. But his most significant comment was the last, which is in these words:—

"Having expressed to you in my despatches, to which you refer, my belief that Captain Waddell had, notwithstanding his honourable protestations, flagrantly violated the neutrality he was bound to observe in respect to the shipment of British citizens to serve on board his vessel, I have read without surprise, though with deep regret, the long list of names furnished by Mr. Temple, which completely proves that this belief was justly founded."

The despatches referred to in this extract I have not been able to discover among the papers presented to us on the part of Great Britain. They are not necessary, however, to prove how utterly fruitless were the attempts, steadily persevered in to the last, to bolster up the character of the insurgent commander for veracity. On the other hand, the effort was great, and successful at the time, to destroy the credit of Temple's deposition. Yet, on a calm comparison of the evidence of the two, with testimony received from without, I am convinced that Temple was far the most worthy of belief.

In truth, Her Majesty's Government had entered upon a wrong path at the outset in recognizing the original fraud, and their adherence to it only complicated the obstacles to extrication. For the depredations on the hardy and innocent seamen earning an honest living in the most hazardous of all enterprises on the ocean, continued long after the last spark of belligerent pretensions had been extinguished in America.

It seems to me that Her Majesty's Government and their authorities of Melbourne are clearly to be held responsible. No such cruise could have been made without the assistance derived from Melbourne as a base of operations. Instead of attempting to counteract the strong current of popular sympathy prevailing in all classes in that settlement, the authorities either weakly yielded to it, or themselves co-operated with it, at least, so far as could be done by sluggish indifference.

Hence it is my conclusion that, from the time of the departure of the Shenandoah from Melbourne, the Government of Great Britain having failed to fulfil the obligation of the second Rule specified for the government of the Arbitrators under the provisions of the VIth Article of the Treaty of Washington, has rendered itself liable for all the damages to the United States subsequently incurred thereby.

Statement of Viscount d'Itajubá.

Le Shenandoah.

LE Soussigné, après examen consciencieux de tous les documents soumis au Tribunal d'Arbitrage par les Gouvernements des Etats Unis et de la Grande Bretagne, relatifs au croiseur Confédéré le Shenandoah,—

Considérant,

Que de tous les faits relatifs au départ de Londres du navire marchand le Sea

King,* au départ de Liverpool du Laurel, à la rencontre de ces deux navires près de l'île de Madère, au transbordement de l'armement et de l'équipage de l'un de ces navires sur l'autre, et à la transformation du Sea King en croiseur Confédéré sous le nom de Shenandoah ressort clairement que l'on ne saurait accuser le Gouvernement de Sa Majesté Britannique d'avoir négligé d'employer les dues diligences pour le maintien des devoirs de sa neutralité;

Considérant,

Que, si d'un côté, de tous les faits relatifs au séjour du Shenandoah dans le port de Melbourne, il ressort qu'il y a eu quelques irrégularités commises, telles surtout que l'augmentation de l'équipage,—d'un autre côté, il n'est pas prouvé que ces irrégularités puissent être mises à la charge du Gouvernement de Sa Majesté Britannique et imputées à la négligence des autorités Anglaises, mais qu'elles ont été la conséquence de la violation de la parole d'honneur donnée par le Commandant Waddell, et des difficultés exceptionnelles de surveillance que présentait la conformation du port;

Considérant en outre,

Que le Gouverneur de la Colonie, ayant appris après le départ du Shenandoah la violation de neutralité dont ce navire s'était rendu coupable, décida de refuser dorénavant l'hospitalité au Lieutenant Waddell et aux autres officiers du Shenandoah et écrivit dans ce sens aux autorités navales et civiles de l'Australie en les priant d'agir de même, ce qui contribue à dégager la responsabilité du Gouvernement de Sa Majesté Britannique;—

Est d'avis,

Que la Grande Bretagne n'a pas manqué aux devoirs prescrits dans les règles établies par l'Article VI du Traité de Washington, et que par conséquent elle n'est pas responsable des faits imputés au croiseur Confédéré le Shenandoah.

(Translation).

THE SHENANDOAH.

THE Undersigned, after a conscientious examination of all the documents submitted to the Tribunal of Arbitration by the Governments of the United States and of Great Britain, relating to the Confederate cruizer the Shenandoah,—

Considering,

That it results clearly from all the facts relating to the departure from London of the merchant-vessel Sea King,† to the departure from Liverpool of the Laurel, to the meeting of these two vessels near the Island of Madeira, to the transfer of the armament and crew from one of these vessels to the other, and to the transformation of the Sea King into a Confederate cruizer under the name of the Shenandoah, that the Government of Her Britannic Majesty cannot be accused of having neglected to use due diligence for the fulfilment of its duties as a neutral;

Considering,

That while, on the one hand, it results from all the facts relating to the stay of the Shenandoah in the port of Melbourne that some few irregularities occurred, such, in particular, as the augmentation of her crew,—on the other hand, there is no proof that these irregularities can be laid to the charge of the Government of Her Britannic Majesty or imputed to the negligence of the English Authorities, but that they were the consequence of the violation by Commander Waddell of his word of honour, and of the exceptional difficulties of surveillance which the conformation of the port presented;

Considering moreover,

That the Governor of the Colony having, after the departure of the Shenandoah, become aware of the violation of neutrality of which this vessel had been guilty, resolved thenceforth to refuse hospitality to Lieutenant Waddell and the other officers of the Shenandoah, and wrote in this sense to the naval and civil Authorities of Australia, requesting them to act in the same way, a fact which contributes towards releasing the Government of Her Britannic Majesty from any responsibility;—

* Premier nom du Shenandoah.

† First name of the Shenandoah.

Is of opinion,

That Great Britain did not fail to fulfil the duties prescribed in the Rules laid down in Article VI of the Treaty of Washington, and that she is consequently not responsible for the acts imputed to the Confederate cruizer Shenandoah.

Statement of M. Stæmpfli.

LE SHENANDOAH.

(A.)—FAITS.

I.—*Ce qui se passa depuis son départ jusqu'à son armement et équipement dans les eaux de Madère.*

1. Ce navire était originairement le Sea King, vaisseau marchand appartenant à une maison de Bombay; il était employé dans le commerce des Indes Orientales et avait été construit à Glasgow, en 1863. C'était un vaisseau long, à mâture inclinée, d'une capacité de 1,790 tonneaux, avec machines auxiliaires de 220 chevaux (Robertson and Cie., vendeurs, disent seulement 150 chevaux et non 220), faisant dix nœuds à l'heure; il avait fait 320 milles en vingt-quatre heures; il avait été construit par de célèbres constructeurs des bords de la Clyde.

2. Il partit, en Novembre 1863, pour la Nouvelle Zelande et pour les mers de la Chine et revint à Londres avec une cargaison de thé. Avant son voyage à la Nouvelle Zélande, Dudley le vit à Glasgow et le signala à ses supérieurs comme un steamer probablement destiné à faire la course.

3. Le 20 Septembre, 1864, il fut vendu à Londres à Richard Wright de Liverpool, sujet Anglais et beau-père de Prioleau, ce dernier le principal associé de Fraser, Trenholm et Cie. La vente fut enregistrée le même jour.

4. Le 7 Octobre, 1864, Wright donna procuration à un nommé Corbett, sujet Anglais (impliqué dans des faits relatifs à des vaisseaux qui forçaient le blocus), de vendre le navire quand il le pourrait, dans le délai de six mois au prix *minimum* de 45,000 livres sterling.

5. Le 8 Octobre, 1864, il s'acquitta en douane pour Bombay, partit de Londres avec quarante-sept hommes d'équipage, après avoir auparavant embarqué du charbon et des provisions pour douze mois. Il avait à bord deux canons montés, de 18 livres (de 12 livres, d'après le Contre-Mémoire Britannique, p. 103). Le même soir, le départ en fut annoncé par télégraphe à l'agent du Sud à Liverpool.

6. Le 8 Octobre, 1864, le même soir encore, le Laurel, vapeur à hélice, presque neuf et supérieurement construit, partit de Liverpool emportant une vingtaine de citoyens des Etats du Sud et des caisses, désignées comme "machines," lesquelles contenaient des canons et des affûts, tels que ceux employés à bord des vaisseaux de guerre. Le Laurel et le Sea King s'étaient donné rendez-vous dans la baie de Funchal, île de Madère.

7. Le 19 Octobre, le Sea King arriva devant Funchal: le Laurel l'y avait précédé de deux jours. Les deux vaisseaux se réjoignent et effectuent le transbordement des canons et des accessoires (six grandes pièces, deux petites, affûts, munitions, poudre, fusils, &c.); il suffit pour cela de trente-six heures. Corbett alors se présenta, annonça la vente du Sea King et chercha à engager l'équipage à rester. De quatre-vingt matelots, il n'en resta cependant que vingt-trois. Les officiers et les hommes que le Sea King retint comptaient en tout quarante-deux, et ne formaient guère que la moitié de ce qu'il lui fallait, ce qui l'obligea à se servir de ses machines.

Il prit le nom de Shenandoah, et continua sa route sous le pavillon des insurgés.

II.—*Démarches du Consul Anglais à Ténériffe et leurs suites.*

8. Le 12 Novembre, 1864, Lord Russell reçut du Consul Anglais à Ténériffe un rapport détaillé, daté du 30 Octobre, sur ce qui s'était passé dans les eaux de Madère.

Le Consul envoyait également Corbett, capitaine du Sea King, prisonnier en Angleterre. Le rapport du Consul Anglais dit entr'autres: Le Laurel arriva le 21 Octobre au port de Ténériffe pour faire du charbon; le patron Ramsey se présenta

au Consulat et exprima le désir de débarquer quarante-trois passagers qui désiraient retourner en Angleterre par la première occasion; ils venaient du steamer Britannique le Sea King de Londres, qui avait fait naufrage auprès des îles Desertas.

Le 23 Octobre, le Laurel se remit en voyage. Cependant le patron du Sea King ne se présentait pas pour faire prendre les déclarations d'usage et demander assistance; les informations que fit prendre le Consul établirent que le Sea King n'avait pas fait naufrage du tout, mais qu'il avait déjà été vendu à Londres et devait être livré en pleine mer.

Le Consul entendit les dépositions faites sous serment de quatre matelots que l'on avait débarqués. Ces dépositions constataient que le Laurel était parti de Liverpool avec la destination de Nassau; qu'il emportait vingt-six officiers et soixante-deux marins, outre son propre équipage, soixante-cinq obus, cinq tonnes de poudre à canon, et diverses autres munitions; qu'il embarqua à Madère 300 tonnes de charbon; que le transbordement à bord du Sea King s'était fait sur un point des Desertas par un mer calme; que les marins furent armés de sabres et de révolvers.

L'officier-commandant prit possession du Sea King au nom des Etats insurgés.

9. Le 1 Novembre, 1864, les Jurisconsultes de la Couronne Britanniques donnèrent leur préavis sur le rapport du Consul de Ténériffe et sur l'envoi de Corbett comme prisonnier en Angleterre; ils y disent entr'autres: "Nous ne sommes pas d'avis qu'un vaisseau hors des eaux Britanniques est soumis à la juridiction Britannique pour ce qui se passe sur son tillac." (Mémoire Anglais, p. 153.)

10. Enquête complémentaire à Londres; audition de marins retournés.

11. Le 1 Décembre, 1864. Deuxième rapport des Jurisconsultes: dans ce deuxième rapport les mêmes Jurisconsultes déclarent que "après une plus mûre délibération, si le Sea King doit être considéré comme ayant toujours conservé la nationalité Britannique au moment où le capitaine Corbett a essayé de décider les hommes à son bord à accepter le service Confédéré, on peut se demander si le pont de ce navire n'était pas alors un lieu dans la sujétion ou au pouvoir de Sa Majesté, et c'est une question sérieuse que l'accusation devra également soulever. Dans notre précédent rapport, nous avons formulé l'opinion qu'un vaisseau de commerce Britannique ne rentrait pas dans les domaines de Sa Majesté Britannique, selon le sens de l'Acte; mais la deuxième clause renferme d'autre part des termes plus larges que nous venons de signaler, que nous n'avions point alors en vue et qui seraient peut-être susceptibles de recevoir une interprétation plus étendue." (Mémoire Britannique, p. 155.)

12. Le 8 Décembre, 1864, Lord Russell communique à Lord Lyons le rapport du Consul de Ténériffe, et il ajoute qu'au retour des matelots l'on entamera une enquête, que sur le préavis des Jurisconsultes de la Couronne l'enquête était déjà entamée contre Corbett.

13. Résultat de cette dernière enquête: acquittement de Corbett par le jury.

III.—*Ce que fit le Shenandoah à Melbourne.*

14. Le 25 Janvier, 1865, le Shenandoah arriva à Port-Philippe, colonie Victoria, et jeta l'ancre dans la baie de Hobson.

Vers la mi-Novembre 1864, le courrier partit d'Europe et arriva vers la mi-Janvier à Melbourne, apportant les nouvelles concernant le Sea King et sa transformation en Shenandoah.

15. Le 25 Janvier, 1865, le Consul Américain protesta contre l'admission de ce navire et en *demanda la saisie* au Gouverneur. Les conseillers légaux furent entendus; le Gouverneur répondit, le 30, par un refus.

Le Conseil décide le même jour qu'il ne sera pas demandé au capitaine du Shenandoah la commission de son Gouvernement.

16. Février 10. Le Consul Américain au Gouverneur: réclamation contre des enrôlements;

Février 13. Les Conseillers légaux trouvent les preuves suffisantes;

Février 13. Le Gouverneur décide d'entendre le bureau de police avant de donner suite.

Février 14. Le Commissaire en chef de la police rapporte: Waddell refuse de laisser faire des recherches sur son vaisseau, disant *qu'il opposerait la force à la force;*

Février 14. Décision du Conseil de *faire prier* Waddell de revenir sur sa résolution de s'opposer par la force. Suspension de la permission de faire les réparations. Réponse du Capitaine Waddell. L'ordre de suspension est révoqué.

Les Jurisconsultes de la Couronne, consultés plus tard quant au refus du Capitaine

Waddell, déclarèrent à Lord Russell dans leur préavis du 21 Avril, 1865, que "le droit d'exécuter un mandat sur un vaisseau des belligérants par la force n'existait pas, mais que la sommation de quitter le port tout de suite en résulterait."

17. Démarches ultérieures du Consul Américain concernant les enrôlements.

Le 17 Février le Consul se rend d'abord au bureau du chef de la police, qu'il ne trouve pas chez lui; puis va trouver l'Attorney-Général au Parlement; celui-ci demande une déposition écrite faite sous serment. De là, il se rend au bureau de la police secrète: on lui répond que l'on ne peut agir sans mandat. Le juge d'instruction déclara ne pouvoir prendre sur lui de donner un mandat d'arrêt sur les dépositions d'un seul témoin, et le renvoie chez M. Call, à Williamstown, lequel pourrait avoir des témoignages de la police du port.

Il était environ 7 heures du soir; voyant le peu d'empressement des fonctionnaires, le Consul se décida à recevoir lui-même la déposition. Copie en fut apportée le même soir, à 9 heures, à l'Attorney-Général, mais il ne se trouvait plus à la Chambre.

18. Le Shenandoah partit le 18 Février, dans la matinée.

19. Il fut constaté, et le Gouverneur de Melbourne le constate lui-même dans une circulaire du 27 Février, 1865, *qu'un nombre considérable de marins destinés à renforcer l'équipage avaient été reçus à bord du Shenandoah* avant qu'il ne quittât le port, le 18 Février. (Mémoire Britannique, p. 168.)

20. Il n'est pas contesté non plus qu'il prit 300 tonnes de charbon, ce qui, ajouté aux 100 qui se trouvaient déjà à son bord, faisait 400 tonnes. (Voyez citation complémentaire dans le Considérant No. III, *litt. d*, ci-après.)

Les experts officiels délégués pour les réparations du navire constatèrent seulement que le Shenandoah n'était pas capable de prendre la mer comme *navire à vapeur*.

IV.—*Croisière et sort final du Shenandoah.*

21. Au sortir de Melbourne, le Shenandoah se rendit dans l'Océan Pacifique et de là, par le détroit de Behring, dans l'Océan Arctique, où il détruisit les baleiniers Américains qu'il y rencontra. On prétend qu'il y brûla encore quinze vaisseaux après que le Capitaine Waddell eut eu connaissance de la fin de l'insurrection. Il resta enregistré comme vaisseau Anglais jusqu'au 17 Octobre, 1865.

Le 6 Novembre, 1865, Waddell ramena le vaisseau à Liverpool, où il fut remis aux Etats Unis. Waddell déclara avoir appris la capitulation de Lee, le 28 Juin, mais n'avoir encore rien su de la cessation du Gouvernement des insurgés, qu'il n'apprit que le 2 Août.

(B.)—Considérants.

I.—*Conduite des Autorités Britanniques jusqu'au moment de la sortie du Sea King et du Laurel, le 8 Octobre*, 1864.

(*a.*) Les actes précédents du Florida, de l'Alabama et du Georgia devaient susciter plus de vigueur de la part des Autorités Britanniques, afin d'empêcher la répétition d'actes de la même nature;

(*b.*) Et pourtant il ne se fit rien, ni pour renforcer la vigilance, ni en vue de prendre une meilleure initiative dans le but de découvrir et de poursuivre, ni pour compléter les lois municipales où il pouvait être nécessaire qu'elles le fussent;

(*c.*) La transcription du Sea King au nom de Wright de Liverpool, qui était en relation intime avec un associé principal de la maison Fraser, Trenholm, et Cie., (le 20 Septembre, 1864), jointe au chargement de caisses contenant des canons et des armes à bord du Laurel, aurait fourni assez de motifs d'intervenir, s'il y avait eu de l'initiative;

(*d.*) L'objection souvent répétée que les lois Anglaises et la procédure Anglaise ne permettent pas une pareille initiative n'est pas soutenable, d'après les trois Règles et la règle générale de droit citée plus haut;

(*e.*) Cependant, l'on pourrait hésiter à voir dans ces premiers actes seuls des motifs suffisants de violation de neutralité de la part de la Grande Bretagne, si l'on n'examinait en même temps la suite des aventures du Shenandoah.

II.—*Conduite des Autorités Britanniques depuis la sortie du Sea King et du Laurel jusqu'aux faits arrivés à Melbourne.*

(*a.*) Les communications envoyées le 12 Novembre, 1864, par le Consul Britannique de Ténériffe à Lord Russell, et les dépositions faites sous serment le 14 Novembre,

1864, par deux matelots revenus de Madère, constataient d'une manière convaincante que le Sea King et le Laurel avaient été préparés dans des ports Anglais avec tout ce qui était nécessaire, en fait d'armement, d'appareil et d'équipement, pour fournir au Sea King les moyens de se transformer, en pleine mer ou dans des eaux quelconques sous juridiction d'Etat, en vaisseau de guerre ou en corsaire contre les Etats Unis;

(*b.*) Les Autorités Britanniques reconnurent en cela, il est vrai, une violation de leur neutralité, mais elles ne cherchèrent à y remédier que d'une manière défectueuse à un double point de vue:

(*a. a.*) En Angleterre il n'y eut de poursuite judiciaire ordonnée que contre Corbett, ancien patron du Sea King, et encore ne le fut-elle que sous le chef d'enrôlement; l'on omit de diriger des poursuites contre le patron du Laurel et les affréteurs de ce navire, ainsi que contre Wright, propriétaire, au moins de nom, du Sea King. Il va sans dire que l'acquittement de Corbett ne modifie point la question du droit des gens.

(*b. b.*) Les Autorités Britanniques ne dirigèrent leurs mesures que contre les personnes et nullement contre les résultats de la violation de la loi. Elles omirent notamment d'informer toutes les autorités Coloniales de l'Empire de l'illégalité attachée au navire, connu dès lors sous le nom de Shenandoah, et de leur fournir des instructions en vue de saisir le vaisseau, le cas échéant.

III.—*Conduite des Autorités Britanniques à Melbourne.*

(*a.*) Il est constaté que les autorités de cette colonie ne reçurent de la métropole ni communications ni instructions concernant le Shenandoah; bien que depuis l'époque où les autorités de Londres connurent le caractère criminel du vaisseau (mi-Novembre, 1864), jusqu'au moment de l'entrée du vaisseau à Melbourne (25 Janvier, 1865), il y eût eu suffisamment de temps pour transmettre ces instructions. L'observation présentée par les mémoires Anglais, qu'il faut pardonner quelque chose à l'inexpérience des autorités de Melbourne, est par le fait même sans portée.

(*b.*) Les autorités de Melbourne se montrèrent, à plusieurs égards, négligentes dans le maintien de leur souveraineté comme pays neutre, vis-à-vis du Shenandoah;

(*a. a.*) Elles reconnurent à se faire exhiber la commission que le capitaine tenait des Etats [illegible]rgés (Mémoire Britannique, p. 161);

(*b. b.*) Elles se laissèrent refuser le droit de faire des perquisitions à bord du navire en vue d'y découvrir des sujets Anglais illégalement enrôlés, et elles acceptèrent la menace faite par le capitaine, de repousser la force par la force, sans prendre immédiatement des mesures sérieuses contre lui.

Le préavis des Jurisconsultes de la Couronne, portant que, contre une rénitence de ce genre, il n'y avait pas d'autre moyen à employer que celui de forcer le navire à quitter le port, n'est pas juste, d'après le droit des gens; parce que l'on pourrait se servir d'une pareille rénitence comme d'un moyen de compléter et de cacher impunément des violations de la neutralité dans des ports neutres.

(*c. c.*) La seule mesure que l'on prit contre cette rénitence consista à suspendre la permission qui avait été accordée de faire des réparations, mesure qui du reste fut retirée sur les simples représentations de Waddell.

(*d. d.*) La constatation des réparations réellement nécessaires au vaisseau, et la surveillance de leur exécution, ne se firent que d'une manière défectueuse. (Rapport du Captaine Payne; Mémoire Britannique, p. 169.)

(*c.*) Il est constaté que l'équipage du vaisseau fut renforcé, avant son départ de Melbourne, d'un nombre considérable de marins, malgré les dénonciations et les réclamations non interrompues du Consul Américain. (Circulaire du Gouverneur de Melbourne du 27 Février, 1865; Mémoire Britannique, p. 163.)

(*d.*) Il paraît aussi établi qu'il fut permis au vaisseau d'embarquer 300 tonnes de charbon, ce qui, ajouté aux 100 tonnes qu'il avait encore, en faisait 400. (C'est ce que dit le Consul Américain Blanchard au Gouverneur; Appendice Américain, tome vi, p. 698; et Mémoire Américain, p. 347.) "La Croisière du Shenandoah," par Hunt, dit par contre qu'il y eut 300 tonnes embarquées, ce qui, ajouté aux 100 qui s'y trouvaient encore, faisait une provision suffisante pour la croisière que l'on avait l'intention d'entreprendre. (Appendice Américain, tome vi, p. 698.)

Selon le rapport des experts officiels (Mémoire Britannique, p. 162), le Shenandoah, en tant que *vaisseau à vapeur* n'était pas capable de mettre en mer; d'où l'on peut conclure que, comme voilier, il pouvait tenir la mer. (Comparer le préavis sur les réparations pour le Florida à Bermude. Contre-Mémoire Britannique, p. 127.)

L'approvisionnement de charbon n'était donc pas une obligation de l'asile neutre,

et en lui fournissant une si forte quantité de charbon, on renforçait la capacité du vaisseau à faire la guerre tout aussi bien qu'en augmentant son équipage, comme on l'avait fait.

(C.)—JUGEMENT.

Dans les faits qui viennent d'être énumérés, il existe une violation, de la part de la Grande Bretagne, des obligations de neutralité déterminées par les trois Règles; en conséquence, la Grande Bretagne est responsable pour les navires Américains qui ont été détruits par le vaisseau en question.

(Translation.)

THE SHENANDOAH.

(A.)—FACTS.

I.—*What took place from the time of her departure to that of her armament and equipment in the waters of Madeira.*

1. This vessel was originally the Sea King, a merchant-vessel belonging to a firm in Bombay; she was employed in the East India trade, and was built at Glasgow in 1863. She was a long rakish vessel of 1,700 tons, with engines of 220-horse power (Robertson and Co., who sold her, say only 150-horse power, and not 220), making 10 knots an hour: she made 320 miles in twenty-four hours, and was built by celebrated shipbuilders on the Clyde.

2. She left, in November 1863, for New Zealand and for the China seas, and returned to London with a cargo of tea. Before her voyage to New Zealand, Dudley saw her at Glasgow, and pointed her out to his superiors as a steamer likely to be intended for a privateer.

3. On the 20th September, 1864, she was sold in London to Richard Wright, of Liverpool, a British subject, and father-in-law to Prioleau, head partner of Fraser Trenholm, and Co. The sale was registered the same day.

4. On the 7th October, 1864, Wright gave a power of attorney to a man named Corbett, a British subject (who was implicated in matters connected with vessels running the blockade), enabling him to sell the vessel whenever he could within six months, at a minimum price of 45,000*l.* sterling.

5. On the 8th October, 1864, she cleared out for Bombay, left London with a crew of forty-seven men, having first taken in coal and provisions for twelve months. She had on board two 18-pounder guns on carriages (12-pounders according to the British Counter-Case, p. 103). The same night the Southern Agent, at Liverpool, was informed of her departure by telegraph.

6. On the 8th October, 1864, the very same night, the Laurel, screw-steamer, nearly new and of first-class make, left Liverpool with about twenty citizens of the Southern States on board, and some cases marked "machinery," which contained guns and gun-carriages, such as are used on board ships of war. The Laurel and the Sea King had arranged to meet in the Bay of Funchal, in the Island of Madeira.

7. On the 19th of October the Sea King arrived off Funchal; the Laurel had preceded her by two days. The two ships met and effected the transhipment of the cannon, &c. (six large guns, two small, carriages, munitions, powder, muskets, &c.); for this thirty-six hours sufficed. Corbett then came forward, announced the sale of the Sea King, and tried to induce the crew to remain. Out of eighty sailors, however, only twenty-three remained. The officers and men retained in the Sea King numbered in all forty-two, and hardly formed half her proper complement, which forced her to use her engines.

She took the name of the Shenandoah, and continued on her way under the insurgent flag.

II.—*Steps taken by the English Consul at Teneriffe, and their result.*

8. On the 12th of November, 1864, Lord Russell received from the English Consul at Teneriffe, a detailed report, dated October 30, of what had taken place in the waters of Madeira.

The Consul also sent Corbett, Captain of the Sea King, as a prisoner to England.

Among other things the report of the English Consul says: the Laurel arrived at Teneriffe on the 21st October for the purpose of coaling; the master, Ramsay, came before the Consul and expressed a desire to land forty-three passengers who wished to return to England by the first opportunity; they were from the British steamer Sea King, of London, which had been wrecked near the Desertas Islands.

On the 23rd October, the Laurel proceeded on her voyage. The master of the Sea King however did not come forward to make the usual declarations and to ask for assistance; the inquiries made by the Consul proved that the Sea King had not been wrecked at all, but that she had been already sold in London and was to be handed over on the high seas.

The Consul took the depositions on oath of four sailors who had been landed. In these depositions it was stated that the Laurel had left Liverpool bound for Nassau; that she took off twenty-six officers and sixty-two sailors in addition to her proper crew, sixty-five shells, five tons of cannon powder, and various other munitions; that at Madeira she took in 300 tons of coal; that the transhipment to the Sea King was effected at a point of the Desertas during calm weather; that the sailors were armed with cutlasses and revolvers.

The officer in command took possession of the Sea King in the name of the insurgent States.

9. On the 1st November, 1864, the Law Officers of the Crown gave their opinion on the report of the Consul at Teneriffe and on the sending of Corbett as a prisoner to England. Among other things they say: "We are not of opinion that a vessel outside of British waters is subject to British jurisdiction with regard to what takes place on board her." (British Case, p. 153.)

10. Further inquiries in London; examination of sailors who returned.

11. December 1, 1864. Second report of the Law Officers: in this second report, the same Law Officers declare that, "On more deliberate consideration, if the Sea King ought to be deemed to have been still a British ship when Captain Corbett endeavoured to induce the men on board her to accept the Confederate service, the question whether her deck was not then 'a place belonging or subject to Her Majesty,' is a serious question which ought also to be raised by the indictment. In our former report, we stated that we did not think a British merchant-ship at sea was included within Her Britannic Majesty's dominions, in the sense of the Act; but, in the second clause, there are also the other and larger words above noticed, to which we did not then advert, and which might perhaps receive a more extensive construction." (British Case p. 155.)

12. On the 8th December, 1864, Lord Russell communicates to Lord Lyons the report of the Consul at Teneriffe, and adds that, on the return of the sailors, an inquiry will be instituted, that, on the advice of the Law Officers of the Crown, a prosecution had already been directed against Corbett.

13. Result of this last proceeding: acquittal of Corbett by the jury.

III.—*Conduct of the Shenandoah at Melbourne.*

14. On the 25th January, 1865, the Shenandoah arrived at Port Philip, in the Colony of Victoria, and anchored in Hobson's Bay.

Towards the middle of November 1864, the mail left Europe and reached Melbourne about the middle of January, bringing the news respecting the Sea King and her transformation into the Shenandoah.

15. On the 25th January, 1865, the American Consul protested against the admission of this vessel and *demanded her seizure* of the Governor. The Law Officers were consulted: the Governor answered, on the 30th, by a refusal.

It was decided on the same day by the Council that the captain of the Shenandoah should not be asked for the commission of his Government.

16. February 10. The American Consul to the Governor: protest against enlistments;

February 13. The Law Officers find the evidence sufficient.

February 13 The Governor determines to await the report of the police Authorities before taking action.

February 14. The Chief Commissioner of Police reports: Waddell refuses to allow his ship to be searched, saying *that he will oppose force by force.*

February 14. Decision of Council to *request* Waddell to reconsider his resolution of forcible opposition. Suspension of permission to make repairs. Reply of Captain Waddell. The order of suspension is revoked.

The Law Officers of the Crown, subsequently consulted as to the refusal of Captain

Waddell, stated to Lord Russell in their report of the 21st of April, 1865, that "the right of forcibly executing a warrant on a belligerent vessel did not exist, but that an order to leave the port at once should be the consequence."

17. Subsequent steps of the American Consul with respect to the enlistments.

On the 17th February, the Consul first goes to the office of the Chief Commissioner of Police, whom he does not find in; then goes to the Houses of Parliament to find the Attorney-General, who requires a written deposition made on oath. Thence he repairs to the office of the detective police, and there receives answer that no action can be taken without a warrant. The magistrate declared himself unable to take upon himself to issue a warrant on the deposition of a single witness, and refers him to Mr. Call at Williamstown, who might have evidence in his possession from the water police.

It was about 7 o'clock in the evening; seeing how little inclined the Authorities were to act, the Consul determined himself to take the deposition. A copy of it was brought, on the same night, to the Attorney-General, but he was no longer at the Houses of Parliament.

18. The Shenandoah left on the morning of the 18th of February.

19. It was stated, and the Governor of Melbourne himself states in a Circular, dated February 27, 1865, *that a considerable number of sailors, intended to reinforce her crew, had been taken on board the Shenandoah* before she left the port on the 18th of February. (British Case, p. 168.)

20. Nor is it denied that she took on board 300 tons of coal, which, added to the 100 she had already on board, made 400 tons. (See supplementary quotation in consideration No. 111, *letter d, post.*)

The committee of officers appointed to report as to the repairs of the vessel, only stated that the Shenandoah was not fit to proceed to sea as a *steam-ship*.

IV.—*Cruize and Final Fate of the Shenandoah.*

21. On leaving Melbourne, the Shenandoah went to the Pacific, and thence through Behring's Straits to the Arctic Ocean, where she destroyed the American whalers which she fell in with. It is asserted that the she burned fifteen vessels after Captain Waddell knew of the termination of the insurrection. She remained registered as an English vessel until the 17th October, 1865.

On the 6th November, 1865, Waddell brought the vessel back to Liverpool, where she was handed over to the United States. Waddell declared that he learned of the surrender of Lee on the 28th June, but that he still knew nothing of the insurgent Government having come to an end, of which he did not become aware until the 2nd of August.

(B.)—Considerations.

I.—*Conduct of the British Authorities up to the Moment of the Departure of the Sea King and Laurel on the 8th October,* 1864.

(*a.*) The previous acts of the Florida, Alabama, and Georgia should have rendered the British Authorities more active, with a view to preventing the repetition of similar acts.

(*b.*) And yet nothing was done either to secure an increase of vigilance, nor with the view of originating more effective measures of discovery and pursuit, or of supplementing the municipal law where necessary.

(*c.*) The transfer of the Sea King to the name of Wright of Liverpool, who was closely connected with one of the principal partners of the firm of Fraser, Trenholm, and Co. (September 20, 1864), coupled with the embarkation of cases containing cannon and arms on board the Laurel, would have furnished sufficient grounds for intervention, had there been any disposition to take the initiative.

(*d.*) The objection, often repeated, that English law and English legal proceedings do not admit of such an initiative being taken, cannot be sustained, according to the three Rules and the general rule of law quoted above.

(*e.*) Nevertheless, one might hesitate to consider these first facts, by themselves, as sufficient to establish a violation of neutrality on the part of Great Britain, without at the same time examining the subsequent career of the Shenandoah.

II.—*Conduct of the British Authorities from the departure of the Sea King and the Laurel to the events which took place at Melbourne.*

(*a.*) The communications sent on the 12th of November, 1864, by the British Consul at Teneriffe to Lord Russell, and the depositions made on oath on the 14th of November, 1864 by two sailors returned from Madeira, proved to conviction that the Sea King and the Laurel had been furnished, in English ports, with everything necessary in the way of armament, stores, and equipment, to enable the Sea King to be transformed, on the high seas or in any waters within the jurisdiction of a Scate, into a ship of war or into a privateer against the United States;

(*b.*) The British Authorities recognized in this, it is true, a violation of their neutrality; but they attempted only to remedy it in a manner defective in two ways:—

(*a a.*) In England, judicial proceedings were directed to be taken only against Corbett, the former master of the Sea King, and that again only on the score of recruitment; no proceedings were directed against the master of the Laurel, or those who freighted that vessel, nor against Wright, the owner, at least in name, of the Sea King. It is unnecessary to say that Corbett's acquittal does not modify the question of international law.

(*b b.*) The British Authorities took measures only against the perpetrators, and not against the results of the violation of the law. In particular, they omitted to inform all the Colonial Authorities of the Empire of the illegality which attached to the ship, thenceforward known as the Shenandoah, and to provide them with instructions to seize the vessel if an opportunity should occur.

III.—*Conduct of the British Authorities at Melbourne.*

(*a.*) It is certain that the Authorities of this colony received from London neither communications nor instructions concerning the Shenandoah; although, from the time when the Authorities in London knew of the criminal character of the vessel (in the middle of November 1864), to the moment of her entrance into Melbourne (January 25, 1865), there had elapsed sufficient time for the transmission of such instructions. The observation made in the British pleadings, that allowance must be made for the inexperience of the Authorities at Melbourne, thus loses its force.

(*b.*) The Authorities at Melbourne showed themselves, in several respects, negligent in the maintenance of their sovereignty as a neutral country in the case of the Shenandoah:

(*a a.*) They waived the production of the commission which the captain held from the insurgent States (British Case, p. 161).

(*b b.*) They suffered a refusal of their right to search the vessel for the purpose of discovering British subjects, illegally enlisted, on board of her; and they submitted to the threat used by the captain, that he would oppose force by force, without immediately taking serious measures against him

The report of the Law Officers of the Crown, which holds that, against a refusal of this kind, there was no other course open but to compel the vessel to leave the port, is not correct, according to international law, for use might be made of a similar refusal to carry out and conceal with impunity violations of neutrality in neutral ports.

(*c c.*) The only measure taken against this refusal consisted in the suspension of the permission to repair which had been granted, a measure which, however, was withdrawn on the mere representations of Waddell.

(*d d.*) The manner in which the amount of repairs necessary for the vessel was ascertained, and in which their execution was watched, was but imperfect. (Report of Captain Payne; British Case, p. 169.)

(*c.*) It is ascertained that the crew of the vessel was augmented, before her departure from Melbourne, by a considerable number of sailors, in spite of the constant remonstrances and complaints of the American Consul. (Circular of the Governor of Melbourne of the 27th February, 1865; British Case, p. 163.)

(*d.*) It appears also to be proved that the vessel was allowed to take on board 300 tons of coal, which, added to the 100 tons she already had, made 400. (So says the American Consul Blanchard to the Governor; American Appendix, vol. vi, p. 698, and American Case, p. 347.) In "The Cruize of the Shenandoah," by Hunt, it is moreover said that there were 300 tons taken in, which, with the 100 tons she already had on board, gave a sufficient supply for the cruize which was contemplated. (American Appendix, vol. vi, p. 698.)

According to the report of the official experts (British Case, p. 162) the Shenandoah was not fit to go to sea as a *steam-ship;* from which it may be inferred that, as a

sailing-vessel, she was fit to go to sea. (Compare the report on the repairs of the Florida at Bermuda; British Counter-Case, p. 127).

A supply of coal was not, therefore, a necessary condition of the neutral asylum, and in supplying her with so large a quantity of coal the capacity of the ship for making war was increased just as much as by the recruitment of her crew which took place.

(C.)—Judgment.

In the acts which have just been enumerated there exists a violation, on the part of Great Britain, of the obligations of neutrality laid down by the three Rules; consequently Great Britain is responsible for the American ships which were destroyed by the vessel in question.

Statement of Count Sclopis.

Le Shenandoah, alias Sea King ou Stonewall.

Première Partie.

LE premier reproche que les Etats Unis adressent au Gouvernement Anglais à propos de ce vaisseau construit sur les bords de la Clyde, c'est qu'il a été vendu à Richard Wright, de Liverpool, sujet Anglais et beau-père de M. Prioleau de la Caroline du Sud; ce dernier, associé principal de la maison Fraser, Trenholm et Cie., connue par ses relations intimes avec le Gouvernement des Confédérés.

Les Etats Unis soutiennent que vu les relations susdites qui ne pouvaient être ignorées par le Gouvernement Anglais, ce dernier aurait dû surveiller les transferts de cette catégorie de vaisseaux qui par leur construction accusaient des projets hostiles aux Etats Unis. M. Adams, appuyé de deux dépositions de matelots à bord de ce navire, dénonçait à Lord Russell la destination de ce vaisseau au Gouvernement des Confédérés.

Le Shenandoah prit ses papiers de bord pour Bombay, et du charbon et des approvisionnements pour une croisière de douze mois. A peine le Sea King avait-il levé l'ancre qu'un télégramme expédié à Liverpool annonçait son départ à l'agent Confédéré de ce port. Dans la même soirée un steamer à hélice, presque neuf, admirablement approprié à un armement de course, nommé le Laurel, monté par des hommes très-dévoués au parti Confédéré qui avaient servi à bord du Sumter, de l'Alabama et du Georgia, chargea des armes et se dirigea vers la baie de Funchal dans l'Ile de Madère, où il attendit le Sea King, qui arriva deux jours après lui.

Dans un coin désert de la baie de Madère il se fit un transbordement d'armes et de munitions du Laurel sur le Sea King. Un nommé Corbett, un Anglais qui avait reçu de Wright une procuration pour vendre le navire, se présenta à l'équipage, annonça la vente faite du vaisseau qui allait changer de nom et prendre celui de Shenandoah, et engagea les hommes de l'équipage à suivre ce vaisseau dans ses nouvelles destinées au service des Confédérés. Sur quatre-vingt matelots, vingt-trois seulement consentirent à rester sur ce nouveau vaisseau de guerre.

La conduite de Corbett parut si évidemment contraire au *Foreign Enlistment Act* que le Consul Anglais à Funchal l'envoya prisonnier en Angleterre. Le Capitaine Waddell lui succéda dans le commandement.

M. Adams ne manqua pas d'informer Lord Russell de tout ce qui s'était passé à propos de ces deux vaisseaux; il lui ajouta que parmi les officiers transférés sur le Shenandoah, la plupart étaient des sujets Anglais, qui avaient été sauvés par une intervention Anglaise au moment où ils se rendaient à bord de l'Alabama.

Le Shenandoah se porta de Madère sur Melbourne; dans le trajet, qui dura quatre-vingt-dix jours, il détruisit plusieurs vaisseaux de la marine marchande des Etats Unis, ainsi que leurs cargaisons, et finit par jeter l'ancre le 25 Janvier, 1865, à Sandridge, un petit village à deux milles de Melbourne.

Si l'on en croit une lettre adressée par M. Blanchard, Consul des Etats Unis à Melbourne, à M. Seward, Secrétaire d'Etat à Washington, la malle d'Europe arrivée quelques jours auparavant avait apporté la nouvelle que le Sea King avait quitté l'Angleterre avec l'intention de se transformer en vaisseau de guerre pour croiser contre le commerce des Etats Unis.

Le Consul des Etats Unis dans cette ville ne tarda pas à informer le Gouverneur de toutes les circonstances par lesquelles il croyait prouvé que le Shenandoah n'était point du tout un vaisseau de guerre d'un belligérant reconnu, mais bien plutôt un corsaire ayant toutes les marques de sa culpabilité.

On accuse les autorités Anglaises de Melbourne d'avoir été excessivement condescendantes envers le Commandant et l'équipage du Shenandoah; on prétend que ce Gouverneur avait rassuré officieusement le Commandant avant de lui accorder officiellement ce qu'il demandait.

Le Capitaine Waddell ne se pressa point pour faire connaître quelles étaient les réparations et les approvisionnements qu'il lui fallait, et le Gouverneur, au lieu de s'en tenir à la rigueur des instructions générales que le Gouvernement Anglais lui avait transmises, s'en rapporta plutôt à Waddell sur l'espace de temps à lui accorder. Pendant qu'on procédait lentement aux réparations, Waddell faisait des recrues dans la ville de Melbourne pour remplir les vides que laissait son équipage.

Dans l'Appendice Américain (vol. v, p. 660 et suivantes) on a inséré des rapports des actes de l'Assemblée Législative de Melbourne qui marquent que l'opinion de al majorité inclinait à ménager le Commandant du Shenandoah et à s'en remettre à l'avis du Gouvernement et des autorités coloniales.*

Pressé par les instances et les protestations du Consul des Etats Unis, le Gouverneur déféra la question aux Conseillers Légaux du Gouvernement Colonial, qui répondirent qu'il n'y avait aucune preuve de piraterie commise par qui que ce fût au bord du navire, et que l'on devait traiter celui-ci comme un bâtiment de guerre.

Les soupçons que l'on avait de l'embarquement clandestin de quelques personnes à bord du Shenandoah ne firent qu'augmenter. La permission accordée au capitaine de faire des approvisionnements et des réparations fut suspendue, et le Gouvernement publia une proclamation pour défendre aux sujets Britanniques de prêter aide et assistance au Shenandoah.

L'assertion du fait de l'embarquement clandestin de quelques hommes du Shenandoah fut maintenue, et le Commandant et les officiers de ce vaisseau durent donner des explications sur la parole qu'ils avaient donnée qu'aucun embarquement de ce genre n'avait eu lieu, et sur le fait qu'ils n'avaient malheureusement pas répondu à cet engagement de parole d'honneur.

Le "Case" Américain et le "Counter-Case" Anglais contiennent des détails sur la facilité que la situation topographique de Hobson's Bay et Port Philip prêtait à l'évasion d'hommes surveillés par la police dont les faibles moyens ne permettaient point d'exercer une surveillance sur tous les points, afin d'empêcher ces sorties de gens embauchés. Il est aussi permis de douter que les Conseillers Légaux du Gouverneur Colonial et ses officiers de police fussent des mieux disposés à seconder l'empressement des démarches du Consul des Etats Unis.

Je noterai deux circonstances qui me paraissent mériter une attention spéciale :—

1. Les instructions confidentielles d'après lesquelles les autorités de Melbourne avaient dit d'abord être obligées de se régler furent publiées à la page 125 du cinquième volume de l'Appendice au "Case" Anglais, et la dernière pièce qui s'y rattache trace exactement la ligne qui a été suivie par le Gouvernement en dernier lieu vis-à-vis du Capitaine Waddell.

2. Le *Post-Scriptum* d'une lettre de M. Adamson à M. Davis qui se lit à la page 637 des pièces annexées au "Counter-Case" Américain (traduction Française) révèle une pression morale produisant un cynique désaveu.

Le Shenandoah, en quittant les eaux de Melbourne, emportait avec lui 400 tonnes de charbon, si l'on en croit le Consul Américain, une mâture complète, s'en tenant plus à la voile qu'à la vapeur. Ce luxe d'approvisionnement fut dénoncé au Gouverneur, et les Etats Unis, en supputant les divers chargements de charbon faits par le Shenandoah, en déduisent qu'il projetait une nouvelle croisière en sortant de Melbourne, de sorte que ce port devenait pour les insurgés une base d'opérations navales.

La croisière du Shenandoah fournit la matière à une description toute particulière, et parmi les appréciations des faits qui concernent ce vaisseau il y en a une que je rapporte ici, celle de M. Mountague Bernard, qui dit qu'un nombre aussi grand de recrues qu'on peut croire qui ait été embarqué à son bord, n'aurait pu s'y rendre sans que le Capitaine Waddell en eût connaissance. Je vais revenir sur ce nombre de recrues évidemment exagéré.

On ne peut se refuser à croire que la tolérance des autorités de Melbourne a beaucoup aidé à mettre ce vaisseau en état de poursuivre sa carrière aventureuse dans les mers Arctiques, où il se rendit par le détroit de Behring.

* Voir le discours de Mr. O'Shanassy, p. 663 du volume cité.

Les destructions des baleiniers que le Shenandoah opéra dans ces eaux, dans un temps où le Gouvernement des Confédérés avait cessé d'exister, ferait monter la comptabilité dont les Etats Unis le chargent, à un chiffre de peu inférieur à celui dont on charge la responsabilité de l'Alabama.

Il n'est pas prouvé que le Shenandoah ait effectivement perdu son caractère primitif de vaisseau et d'équipage Britannique. Il est affirmé que ce vaisseau embarqua à Melbourne 300 tonnes de charbon qui lui avaient été expédiées de Liverpool. Le Gouvernement des Etats Unis ajoute que le nom du vaisseau qui apporta ce charbon était le John Fraser, et il prétend en déduire un argument de culpabilité.

Le Gouvernement Britannique dans son Contre-Mémoire (p. 110 de l'édition Française) dit qu'à cette heure, où le temps et la distance empêchent de reconnaître avec exactitude tous les détails accessoires, il n'y aurait aucune utilité réelle à suivre tous les détails d'une augmentation technique forgée largement sur des conjectures.

Le Gouvernement Américain ne se désiste pas de ses plaintes. Je crois qu'il est d'une extrême importance pour former un jugement sur la dernière période de la croisière du Shenandoah de s'arrêter sur les dépositions assermentées des deux patrons des navires baleiniers, Ebenezer Nye et Thomas Hathaway, que l'on trouve vers la fin de la deuxième partie du choix des pièces justificatives à l'appui du Mémoire des Etats Unis.

Le remplacement de la force d'un vaisseau dans une proportion égale à celle qu'il avait perdue n'est pas, à parler rigoureusement, une augmentation de force. Nous trouvons cette maxime consignée dans un jugement de la Cour Suprême des Etats Unis cité dans l'intéressant memorandum de M. Abbott (Lord Tenterden). Il faut donc établir une augmentation de force en sus de l'ordinaire, pour qu'il y ait présomption fondée de nouvelles entreprises contre les devoirs de neutralité. C'est sur les faits très-controversés, et à ce que je crois susceptibles d'une plus grande élucidation, que je prie mes honorables collègues de m'aider de leurs lumières. S'il est nécessaire je demanderai encore aux parties elles-mêmes des éclaircissements.

(Translation.)

THE SHENANDOAH, *alias* SEA KING OR STONEWALL.

First Part.

THE first charge which the United States bring against the British Government with regard to this vessel, which was built on the shores of the Clyde, is that she was sold to Richard Wright of Liverpool, a British subject and father-in-law of Mr. Prioleau of South Carolina; this latter being the head partner of the firm of Fraser, Trenholm, and Co., notorious for its intimate relations with the Confederate Government.

The United States maintain that in view of the above relations, which could not be unknown to the English Government, this latter ought to have watched the transfers of the class of vessels which from their build betrayed designs hostile to the United States. Mr. Adams, on the ground of two depositions of sailors on board this vessel, denounced her to Lord Russell as destined for the Confederate Government.

The Shenandoah took out a clearance for Bombay, and coal and supplies for a cruize of twelve months. Hardly had the Sea King weighed anchor, when a telegram sent to Liverpool announced her departure to the Confederate Agent at that port. The same evening a screw-steamer, nearly new, admirably adapted for equipment as a privateer, named the Laurel, manned by men thoroughly devoted to the Confederate cause, who had served on board the Sumter, Alabama, and Georgia, was laden with arms and steered for the Bay of Funchal, in the Island of Madeira, where she awaited the Sea King, which arrived two days after her.

In a desert corner of the Bay of Madeira the arms and ammunition were transshipped from the Laurel to the Sea King. A man named Corbett, an Englishman, who had received from Wright a power of attorney to sell the vessel, addressed the crew, announced the sale of the vessel, which was about to change her name and take that of the Shenandoah, and endeavoured to persuade the men of the crew to follow the vessel in her new career in the Confederate service. Of eighty sailors, twenty-three only consented to remain in the new vessel of war.

The conduct of Corbett appeared to be in such evident contravention of the Foreign Enlistment Act, that the British Consul at Funchal sent him home in custody to England. Captain Waddell succeeded him in command.

Mr. Adams did not fail to inform Lord Russell of all that had taken place with regard to these two vessels; he added that of the officers transferred to the Shenandoah the greater part were British subjects who had been saved by English intervention at the moment when they were surrendering on board the Alabama.

The Shenandoah went from Madeira to Melbourne; on the passage, which lasted ninety days, she destroyed several vessels of the merchant navy of the United States with their cargoes, and finished by anchoring on the 25th January, 1865, at Sandridge, a small village two miles from Melbourne.

If we are to believe a letter addressed by Mr. Blanchard, United States' Consul at Melbourne, to Mr. Seward, Secretary of State at Washington, the mail from Europe, which had arrived some days before, had brought news that the Sea King had left England with the intention of being transformed into a vessel of war to cruize against the commerce of the United States.

The United States' Consul at Melbourne informed the Government without loss of time of all the circumstances which he considered as proving that the Shenandoah was not a vessel of war of a recognized belligerent, but rather a privateer with all the traces of its guilt.

The British Authorities at Melbourne are accused of having been excessively indulgent towards the Commander and crew of the Shenandoah; it is asserted that the Governor had unofficially reassured her Commander before officially granting him what he requested.

Captain Waddell did not hurry himself to state what were the repairs and supplies which he needed, and the Governor, instead of adhering rigorously to the general instructions with which the British Government had furnished him, rather referred to Waddell as to the length of time to be granted him. Whilst the repairs were being slowly proceeded with, Waddell was making recruits in the town of Melbourne to fill up the gaps which were left in his crew.

In the American Appendix (vol. v, pp. 660 *et seq.*) are inserted the reports of the proceedings of the Legislative Assembly at Melbourne, which show that the opinion of the majority was in favour of treating the Commander of the Shenandoah with leniency, and leaving the matter to the decision of the Government and the Colonial Authorities.*

Pressed by the remonstrances and protests of the United States' Consul, the Governor referred the question to the Law Officers of the Colonial Government, who replied that there was no evidence of piracy having been committed by any one on board the vessel, and that she should be treated as a ship of war.

The suspicions which had been entertained of the clandestine shipment of some persons on board the Shenandoah continued to increase. The permission granted to the Captain to take in supplies and make repairs was suspended, and the Government published a Proclamation forbidding British subjects to give aid or assistance to the Shenandoah.

The assertion of the fact of the clandestine shipment of certain men on board the Shenandoah was borne out, and the Commander and officers of that vessel had to give explanations as to the assurance they had given that no shipment of this kind had taken place, and as to the fact that they had unfortunately not fulfilled this engagement on their word of honour.

The American Case and the British Counter-Case contain details as to the facilities which the topographical situation of Hobson's Bay and Port Philip afforded for the escape of men watched by the police, whose insufficient means did not allow of their exercising supervision at every point, in order to prevent the departure of the persons enlisted. It may also be doubted whether the legal advisers of the Colonial Governor and his police officers were over anxious to second the energetic efforts of the United States' Consul.

I will note two circumstances which appear to me to deserve special attention:—

1. The confidential instructions, according to which the Authorities at Melbourne had, from the first, said that they must be guided, are published at page 125 of the fifth volume of the Appendix to the British Case, and the last document contained in them traces exactly the line of conduct which was finally followed by the Government towards Captain Waddell.

2. The postscript of a letter from Mr. Adamson to Mr. Davis, which is to be found at page 637 of the documents annexed to the American Counter-Case (French Translation), reveals a moral pressure producing a cynical disavowal.

The Shenandoah, on leaving the port of Melbourne, took with her 400 tons of

* See the speech of Mr. O'Shanassy, p. 663 of the volume referred to.

coal, if the American Consul is to be believed, with full sailing rigging, trusting more to her sailing than to her steaming powers. This excess of supplies was denounced to the Governor, and the United States, reckoning up the several shipments of coal made by the Shenandoah, infer that she was meditating a fresh cruize on her departure from Melbourne, so that that port became a base of naval operations for the insurgents.

The cruize of the Shenandoah furnishes materials for a special description, and, among the reviews of the facts relating to this vessel, is one to which I will here refer—that of Mr. Mountague Bernard, who says that so large a number of recruits as may be believed to have been shipped by her, could not have come on board without Captain Waddell knowing of it. I shall return to this question of the number of recruits, which is evidently exaggerated.

One cannot resist the belief that the tolerance of the Authorities at Melbourne contributed greatly to enable the vessel to pursue her adventurous career in the Arctic Seas, whither she repaired by Behring's Straits.

The loss of whaling vessels which the Shenandoah destroyed in these waters, at a time when the Confederate Government had ceased to exist, raises the amount which the United States lay to her charge, to a sum little less than that for which the Alabama is held responsible.

It is not proved that the Shenandoah absolutely lost her original character of a British vessel manned by a British crew. It is affirmed that this vessel shipped at Melbourne 300 tons of coal, which had been sent to her from Liverpool. The Government of the United States adds that the name of the vessel which brought this coal was the John Fraser, and this occurrence it seeks to adduce as an incriminating circumstance.

The British Government, in its Counter Case (page 110 of the French Translation), says that, at the present day, when the distance of time and place prevent an exact knowledge of all the particular circumstances, it would serve no useful purpose to follow all the details of a technical argument which is founded largely on conjecture.

The American Government does not relinquish its complaints. I consider that, in order to form a judgment on the last period of the cruize of the Shenandoah, it is of the greatest importance to dwell on the sworn depositions of the two masters of whaling vessels, Ebenezer Nye and Thomas Hathaway, which are given at the end of the second part of the selections from the Appendix to the Case of the United States (French Translation).

To replace the force of a vessel in a proportion equal to that which it had lost, is not, strictly speaking, an augmentation of force. We find this maxim laid down in a judgment of the Supreme Court of the United States, quoted in the interesting memorandum of Mr. Abbott (Lord Tenterden). It is necessary, therefore, to prove an extraordinary augmentation of force in order to establish a solid presumption of fresh attempts against the duties of neutrality. It is on these much-disputed facts, which are, in my belief, capable of further elucidation, that I beg my honourable colleagues to assist me with their information. If necessary I will apply to the parties themselves for further explanations.

[N.B.—The statement of Sir A. Cockburn on the case of the Shenandoah will be found embodied in his "Reasons for dissenting from the Award of the Tribunal:" see Part II of the present series of papers (North America, No. 2, p. 211.)]

No. 26.

Tables presented by the British Agent, August 19, 1872.

Introductory Statement.

IN presenting to the Tribunal the accompanying Tables, as requested by the Arbitrators, the Agent of Her Britannic Majesty respectfully submits the following points amongst those deserving their consideration:—

I. That Great Britain ought not to be held liable to indemnify the United States to the extent of the whole amount of the losses occasioned by any cruizer in respect of which the Tribunal may be of opinion that there has been some failure of duty on the part of Great Britain.

II. That the following principles ought to be applied in estimating the amount of compensation:—

(A.) That all *double claims for single losses*, such as simultaneous claims by owners and insurance companies; simultaneous claims for loss of freight and loss of charter-party; and other like claims which are pointed out at pages 5 and 6 of the seventh volume of the British Appendix, and which amount to a very large sum indeed, ought to be rejected.

(B.) That the claims for *gross* prospective earnings of the whalers must, for reasons stated at pp. 7 and 8, 17 and 18 of the seventh volume of the Appendix, be rejected. In fact these claims are not attempted to be supported in the Argument on behalf of the United States, and must therefore be considered as virtually abandoned.

(C.) That, for the reasons stated at p. 8 of the same volume, the claims for *gross* secured earnings, without any of the necessary deductions, cannot be admitted.

(D.) That, for the reasons fully stated at pp. 8, 9, 10, 11 of the same volume, the claims for the *gross* freights of the merchant-vessels must be rejected. It will be found that these claims are not attempted to be supported in the Argument on behalf of the United States, and must be considered therefore as virtually abandoned.

(E.) That, for the reasons stated at p. 11 of the same volume, the contingent profits expected to be realized upon the goods on their arrival at the ports of destination are not a proper subject-matter of compensation.

(F.) That, for the reasons fully stated at the afore-mentioned pages of the same volume of the British Appendix, in accordance with well-established principles of jurisprudence recognized by the Courts of the United States, England, and other countries, the proper mode of compensating the claimants for the loss of the vessels, outfits, earnings, and freights, is to allow them the full original values of those vessels and outfits at the commencement of their voyages, and to make an additional percentage on such values, together with a sum for wages from the commencement of the voyages up to the time of capture, in the manner pointed out at pp. 8-11, 17-20 of the seventh volume of the Appendix.

(G.) That the proper mode of compensating the claimants for the loss of goods and expected profits is to allow the value of those goods at the port of shipment, together with interest on such value from the commencement of the voyage until the date of capture.

III. That, for reasons stated at page 11 of the before-mentioned volume, it is impossible to place reliance on the value given to their property by the claimants themselves, and that, after the above principles have been applied, a proper deduction should be made from the claims, in order that they may be approximately reduced to such an amount as they would be reduced to if sent to assessors, or as they will be reduced to by the United States' Government should that Government, on a gross sum being awarded by the Tribunal, have to distribute it amongst the claimants.

IV. That the necessity for this further reduction is established by the following considerations:—

(A.) It is now admitted by the United States' Government that these claims have never been audited. It need scarcely be said that this admission is one of the utmost importance.

(B.) The claims are clearly proved to be exaggerated, and the statement of claims has been shown to contain important mis-calculations.

(C.) The revised statement of claims does not afford sufficient information to enable the value of the property claimed for to be ascertained with reasonable certainty.

(D.) There is a complete absence of all the ordinary documents evidencing the value of goods and freights, such as bills of lading, manifests of cargoes, policies of insurance, &c., and although these are stated to have been filed at Washington, they have never been compared with the claims by the United States' Government.

V. That as the claims are in almost all cases made in *currency or paper dollars*, and as under Article VII of the Treaty compensation is to be awarded in gold, it is essential that the value of the paper dollar at the time the claims were originally advanced, as compared with the gold dollar, should be fixed. It is clear from the comparative values alleged in one or two of the claims that this is a matter of very considerable importance.

Table I gives a list of those double claims which are confessedly and expressly made on the face of the statement.

Table II gives a list of all the claims for *gross* prospective earnings and *gross* freights in the case of the Alabama.

Table III contains an analysis of the claims in respect of the whalers captured by the Alabama, and there is subjoined to it a note explaining the Table.

Table IV contains an analysis of the claims in respect of the merchant-vessels captured by the Alabama.

Table V contains a summary of the claims and provisional allowances in respect of the Alabama, and is accompanied by a short explanation of those allowances.

Table VI contains an analysis of the claims in respect of the vessels captured by the Florida.

Table VII contains a summary of the claims and provisional allowances in respect of the Florida, and is accompanied by a short explanation of those allowances.

Table I.

The following cases are those in which "double claims," or other unjust claims have been *openly* and *expressly* made in the Statement. *In almost every case double claims are advanced tacitly or by implication.* Some of these latter claims will be investigated and enumerated elsewhere.

Page of the Revised Statement.	Name of Vessel.	Dollars.	
60	Levi Starbuck ..	23,350	*It is admitted* that this sum ought to be deducted for insurance received, but it has not been deducted.
81	Sea-Lark ..	1,000	Amount which Ossgood and Co. admit having received, but which they do not place to the credit of the account.
82	Sea-Lark ..	2,150	Sum equivalent to 1,565 dollars *in gold*, which Mr. Rollins admits having received, but which he does not place to the credit of the account.
68	Ocean Rover ..	49,420	That is twice 24,710 dollars, a sum which it is admitted should be deducted, but which has been added instead.
80	Sea-Lark ..	51,500	Claim simply advanced twice by the same owners.
74	Rockingham ..	50,000	Double claim explained at pages 23, 24 of our first Report.
76	Sea Bride ..	37,000	Rufus, Greene, and Co. refuse to credit the account with sums received for insurance.
94	Talisman ..	16,000	The owners admit having received this sum, but it is not placed to the credit of the account.
114	Union Jack ..	8,000	The owners claim the entire value, without taking account of sums received for insurance, and the insurance companies also claim it.
115	Virginia ..	13,550	Ditto.
253	Martha ..	34,200	Ditto.
227	Brunswick ..	24,200	Ditto.
237	Edward ..	19,875	Ditto.
238	Euphrates ..	9,750	Ditto.
240	Favorite ..	50,000	Ditto.
243	Gipsey ..	24,000	The necessity of deducting this sum is admitted, but it is not deducted.
244	Hector ..	31,875	Double claim as above.
247	Howland ..	69,500	Ditto.
248	Isabella ..	22,650	Ditto.
255	Nassau ..	72,500	Ditto.
258	Nimrod ..	28,000	Ditto.
260	S. Thornton ..	27,050	Ditto.
263	Waverley ..	31,250	Ditto.
264	W. Thompson ..	54,500	Ditto.
241	G. Williams ..	89,346	Here 44,673 dollars have been added instead of being deducted.
175	Golconda ..	25,734	Double claim as above.
	Total ..	869,400	

Table II.

Claims for Gross Freights and for Prospective Earnings in the case of the Alabama.

Page of the Revised Statement.	Name of Vessel.	Description of Claim in the Revised Statement.	Dollars.	Observations.
5	Alert	Loss by interruption of voyage	30,000	
		Loss of prospective catch ..	141,868	New claim presented in the revised statement.
6	Altamaha ..	Ditto	19,940	
7	Amanda ..	Loss of freight, say . ..	33,000	The value of the freight is not distinguished from that of the vessel.
8	Amazonian ..	Loss on charter-party ..	11,000	
13	Anna Schmidt ..	Loss of freight	6,300	10,000 dollars are also claimed as advances for the owners of the vessel.
		Insurance on charter-party ..	20,000	
25	Benjamin Tucker	Loss of prospective profits ..	100,800	See original list, page 134.
26	Brilliant ..	Loss of freight	16,541	
			18,000	
27	Charles Hill ..	Ditto	11,733	
29	Contest ..	Ditto	61,500	See first statement. This is a new claim presented in the revised statement.

TABLE III.
CLAIMS in Respect of the Whalers destroyed by the Alabama.

Page of the Revised Statement	Name of Vessel.	Description of Claim in the Revised Statement.	Dollars.	Observations.
30	Courser ..	Loss by interruption of voyage	19,845	This is a new claim presented in the revised statement.
31	Crenshaw ..	Loss of freight	6,721	
32	Dorcas Prince ..	Ditto	15,000	
34	Dunkirk ..	Loss of freight	3,936	Claim increased in the revised statement.
35	E. Dunbar ..	Loss by interruption of voyage	88,200	
37	Emma Jane ..	Loss on charter-party ..	26,438	
		Loss of commission on charter-party	1,324	
38	Express ..	Loss of freight (at least) ..	31,129	The value of the freight is not distinguished from that of the vessel.
40	Golden Eagle ..	Ditto	30,000	Ditto.
41	Golden Rule ..	Loss of freight	8,207	Ditto.
46	Highlander ..	Ditto	68,402	Vessel in ballast. See first report, page 9.
47	Jabez Snow ..	Ditto	9,408	
		Loss of charter-party half concluded	54,000	
49	John A. Parks ..	Loss on charter-party ..	42,306	
51	Kate Cory ..	Loss of prospective catch ..	79,294	
53	Kingfisher ..	Ditto	12,600	
54	Lafayette ..	Loss of freight	18,978	
55	Lafayette 2nd ..	Loss of prospective catch ..	49,896	
57	Lamplighter ..	Loss of freight	8,780	
58	Lauretta ..	Ditto	3,000	
59	Levi Starbuck ..	Loss of prospective catch ..	189,312	
61	Louisa Hatch ..	Loss of freight	15,000	
62	Manchester ..	Ditto	15,000	
65	Nora	Ditto	15,000	The value of the freight is not distinguished from that of the vessel.
65	Nye	Loss of prospective catch ..	30,342	
68	Ocean Rover ..	Ditto	37,800	
70	Oemulgee ..	Ditto	165,510	
71	Olive Jane ..	Loss of freight	15,000	
73	Parker Cook ..	Ditto	1,625	
74	Rockingham ..	Ditto	78,128	See first report, pages 23 and 24.
76	Sea Bride ..	Ditto	21,000	The value of the freight is not distinguished from that of the vessel.
78	Sea Lark ..	Ditto	23,500	
89	Sonora ..	Loss of charter-party ..	33,244	
90	Starlight ..	Charter-party	1,720	
91	Talisman ..	Loss of freight	38,579	
95	T. B. Wales ..	Ditto	15,165	
99	Tycoon ..	Ditto	33,739	
110	Union Jack ..	Ditto	6,000	
115	Virginia ..	Loss of prospective catch ..	103,950	
116	Wave Crest ..	Loss of freight	4,772	
117	Weathergage ..	Loss by abandonment of voyage	18,900	New claim presented in the revised statement.
118	Winged Racer ..	Loss of freight .. .	24,000	The value of the freight is not distinguished from that of the vessel.
		Total	1,878,422	

This total is much more than a quarter of the whole amount of the claims advanced in respect of the Alabama.

The claims for prospective earnings amount, for the 13 whalers, to $980,975, or more than an eighth of the total claim advanced in respect of the Alabama.

Table III.

Claims in Respect of the Whalers destroyed by the Alabama.

See NOTE.

Page	Name of Vessel.	Tonnage.	Days Out.	Claim for Vessel.	Claim for Prospective Earnings.	Claim for Secured Earnings.	Claim for Personal Effects.	Claim for Damages and Sundries.	Total.
				$	$	$	$	$	$
5	Alert	400	20	27,858	174,868	.	..	..	202,726
6	Altamaha	120	122	12,000	19,940	..	816	..	32,756
	Benj. Tucker ..	350	129	52,000	100,800	25,200	1,835	..	179,835
				Double claim .. 7,000					
				45,000					
31	Courser	125	189	12,312	19,845	..	150	..	32,307
36	Elisha Dunbar ..	260	23	57,375	88,200	4,095	1,225	..	150,895
				Double claim .. 21,375					
				36,000					
52	Kate Cory	135	245	28,212	19,294	8,268	700	..	56,474
				Double claim .. 8,212					
				20,000					
53	Kingfisher	120	184	16,700	12,600	2,652	..	..	31,952
				Double claim .. 4,700		Double claim .. 324			
				12,000		2,328			
59	Levi Starbuck ..	380	5	63,350	189,312	..	860	16,000	269,522
				Double claim .. 23,350					
				40,000					
66	Nye	215	273	37,660	30,342	36,934	2,023	..	106,959
				Double claim .. 7,660	Double claim .. 11,442	Double claim .. 5,750			
				30,000	18,900	31,184			
68	Ocean Rover ..	315	1,220	103,025	37,800	50,825	2,016	..	193,666
				Double claim .. 53,025		Double claim .. 2,000			
				50,000		48,825			

Page	Name of Vessel.	Tonnage.	Days Out.	Claim for Vessel.		Claim for Prospective Earnings.		Claim for Secured Earnings.		Claim for Personal Effects.		Claim for Damages and Sundries.		Total.
					$		$		$		$		$	$
70	Ocmulgee	460	215		40,000		165,510		77,572		1,903		135,000	419,985
115	Virginia	350	22		63,550		103,950		..		..		..	167,500
				Double claim ..	13,550									
					50,000									
55	Lafayette 2nd ..	310	330		40,775		49,896		48,359		2,326		..	141,856
				Double claim ..	11,775		..	Double claim ..	5,068	Double claim ..	1,050		500	
					24,000				43,191		1,276			
118	Westhergage ..	110	36		10,053		18,900		..		692		800	30,445
				Gross claims ..	564,870		1,031,257		253,905		14,546		152,300	2,016,878
				Double claims ..	155,647		11,442		13,142		350		700	181,281
	Gross tonnage ..	3,650	..	Net claims ..	409,223		1,019,815		240,763		14,196		151,600	1,835,597

NOTE.—The *first* column to the left states the page of the Revised Statement where the claim is to be found.
In the *second* column is stated the name of the vessel in respect of which the claim arises.
In the *third* column the tonnage of the vessel is stated.
In the *fourth* column is stated the number of days during which the vessel had been on her voyage before capture.
In the *fifth* column the amount of claim for the vessel, her outfit and stores, including insurances, is stated.
In the *sixth* column is stated the claim for gross prospective earnings, as well as insurances on the same.
In the *seventh* column there is stated the claim for secured earnings, as well as insurances on the same.
In the *eighth* column is stated the claim for personal effects by the master or mate.
In the *ninth* column is stated the amount claimed for wages and certain damages and losses, not being losses of property, and also the claims advanced in a few cases for losses of passengers' effects.
In the *last* column is stated the total claim advanced for each vessel.
In cases where it is clear that *double claims* have been advanced, those double claims have been stated, and what are called at the end of the Table the *net claims*, are *the difference between the gross claims and those double claims*.

TABLE IV.

ANALYSIS of CLAIMS in respect of Merchant Vessels captured by the Alabama.

TABLE IV.

ANALYSIS of CLAIMS in respect of Merchant Vessels captured by the Alabama.

See NOTE.

Page in Statement.	Name of Vessel.	Tons.	Days out.	Claim for Vessel.	$	Claim for Freight.	$	Claim for Cargo.	$	Claim for Personal Effects.	$	Claim for Damages and Sundries.	$	Total. $
7	Amanda	600	49		35,000		33,000		..		1,833		..	69,853
8	Amazonian.. ..	480	41		68,544		11,000		53,758		2,601		..	135,903
				Double claim ..	36,544									
					32,000									
13	Anna Schmidt ..	785	166		50,000		26,300		216,479		1,875		..	294,654
				Double claim ..	5,000				38,078					
					45,000				178,401					
23	Ariel S. S...		6						10,000		..		423	10,423
26	Brilliant	840	20		84,245		34,531		5,187		1.250		..	125,213
				Double claim ..	9,245	Double claim ..	16,351							
					75,000		18,000							
27	Charles Hill ..	700	41		32,000		11,733		..		1,543		..	45,276
28	Chastelaine . ..	295	5		10,414		..		1,157		100		..	11,671
28	Conrad	350	12		10,000		..		84,241		..		..	94,241
								Double claim ..	23,669					
									60,572					
29	Contest	1,100	28		45,000		61,500		30,522		4,638		1,206	142,866
31	Crenshaw	280	4		20,000		6,721		753		..		..	27,474
32	Dorcas Prince ..	700	44		27,000		15,000		13,776		3,439		600	59,815
34	Dunkirk	295	8		25,467		3,936		19,508		2,374		..	51,285
				Double claim ..	8,000	Double claim ..	2,350							
					17,467		1,586							
37	Emma Jane ..	1,100	8		51,039		27,762		..		5,556		2,200	86,557
										Double claim ..	1,200			
											4,356			

Page in Statement.	Name of Vessel.	Tons.	Days out.	Claim for Vessel.		Claim for Freight.		Claim for Cargo.		Claim for Personal Effects.		Claim for Damages and Sundries.		Total.
					$		$		$		$		$	$
38	Express	1,075	123		50,000		31,129		..		980		..	82,109
40	Golden Eagle ..	1,120	90		56,000		30,000		27,522		1,165		..	114,689
41	Golden Rule ..	255	9		10,000		8,207		68,913		1,060		..	88,180
46	Highlander . ..	1,050	9		114,000		68,402		..		8,769		..	191,171
				Double claim ..	30,000	Double claim ..	6,000							
					84,000		62,402							
47	Jabez Snow ..	1,075	43		76,200		63,408		..		3,500		3,100	146,208
				Double claim ..	6,200									
					70,000									
49	John A. Parks ..	1,050	19		56,501		42,306		25,700		1,933		360	126,800
51	Justina	..	..		..		..		..		..		7,000	7,000
54	Lafayette 1st ..	945	3		80,000		18,978		21,537		1,280		..	121,795
57	Lamplighter ..	365	2		13,875		8,780		3,450		1,845		..	27,950
59	Lauretta	285	3		15,140		3,000		12,200		..		..	30,340
61	Louisa Hatch ..	855	29		67,250		15,000		..		3,130		..	85,380
62	Manchester ..	1,065	7	Probable claim ..	111,660		15,000		27,316		1,075		6,105	161,156
				Double claim ..	47,500									
					64,160									
63	Martaban	710	12		35,600		..		15,000		2,322		..	52,922
64	Morning Star ..	..	..		..		..		..		..		5,614	5,614
24	Baron de Castine ..	..	..		..		..		..		..		1,500	1,500
65	Nora	920	40		65,000		15,000		..		1,700		1,800	83,500
				Double claim ..	15,000	Double claim ..	5,000							
					50,000		10,000							
71	Olive Jane.. ..	360	27		35,000		15,000		17,529		2,000		1,000	70,529

65	Nora	920	40	Double claim ..	65,000 15,000 50,000	Double claim ..	15,000 5,000 10,000	..	1,700		1,800	83,500
71	Olive Jane.. ..	360	27		35,000		15,000	17,529	2,000		1,000	70,529

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Page in Statement.	Name of Vessel.	Tons.	Days out.	Claim for Vessel.		Claim for Freight.		Claim for Cargo.		Claim for Personal Effects.	Claim for Damages and Sundries.		Total.
					$		$		$	$		$	$
73	Palmetto	175	10		100,000		..		12,400	433		..	22,833
73	Parker Cook ..	140	17		9,493		1,625		14,281	665		..	26,064
74	Rockingham ..	980	58	Double claim ..	148,573 90,000 58,573		78,128		..	8,755		..	235,456
76	Sea Bride	450	79	Double claim ..	39,500 9,500 30,000	Double claim ..	21,000 10,500 10,500	Double claim ..	82,445 37,000 45,445	3,393		..	146,338
78	Sea Lark	975	36	Double claim ..	125,500 74,500 51,000		23,500		215,197	1,250		..	365,447
88	S. Gildersleeve ..	850	65		35,000		..		..	..		..	35,000
89	Sonora	710	30		55,800		33,244		..	2,535		2,875	94,514
90	Starlight	100	31		4,220		1,720		..	580		..	6,520
91	Talisman	1,240	35	Double claim ..	101,950 33,025 68,925		38,579 22,488 16,091		90,371	2,455		..	233,355
95	T. B. Whales ..	600	143		20,000		15,165	Double claim ..	190,870 3,000 187,870	2,946		..	228,981
99	Tycoon	720	39	Double claim ..	67,375 3,375 64,000	Double claim ..	33,740 1,680 32,060		333,763	1,471		11,050	447,399
110	Union Jack ..	485	36	Double claim ..	53,000 18,000 35,000		5,000 .	Double claim ..	89,886 32,014 57,872	2,400		20,888	172,174

Page in Statement.	Name of Vessel.	Tons.	Days out.	Claim for Vessel.		Claim for Freight.		Claim for Cargo.		Claim for Personal Effects.		Claim for Damages and Sundries.		Total.
					$		$		$		$		$	$
116	Wave Crest ..	410	8		29,000		4,772		24,09[illegible]		550		850	59,264
118	Winged Racer ..	1,770	33		56,833		24,600		276,9[illegible]		7,952		..	365,768
								Double claim ..	20,000					
									256,983					
				Claims in gross ..	2,001,179		847,166		1,984,836		91,433		66,571	4,991,185
				Double claims ..	385,889		64,549		153,761		1,200		..	605,399
	Gross tonnage ..	28,260		Net claims ..	1,615,290		782,617		1,831,075		90,233		66,571	4,385,786

NOTE.—The *first* column on the left states the page of the Revised Statement where the claim is to be found.
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In the *third* column the tonnage of the vessel is stated.
In the *fourth* column is stated the number of days during which the vessel had been on her voyage before capture.
In the *fifth* column the amount of claim for the vessel, her outfits and stores, including insurances, is stated.
In the *sixth* column is stated the claim for gross freight and loss of charter-party, as well as for insurances on the same.
In the *seventh* column there is stated the amount of claim for cargo, profits, and insurances, as well as commissions on the same and damages, for non-arrival at port of destination.
In the *eighth* column is stated the claim for personal effects by master or mate.
In the *ninth* column is stated the amount claimed for wages, and certain damages and losses, not being losses of property, and also the claims advanced in a few cases for losses of passengers' effects.
In the *last* column is stated the total claim advanced for each vessel.
In cases where it is clear that *double claims* have been advanced, those double claims have been stated, and what are called at the end of the Table the *net claims*, are the *difference between the gross claims and those double claims.*

TABLE V.

TABLE of Claims and Provisional Allowances in respect of the Vessels captured by the Alabama.

Vessels Claimed for.	Subject.	Claims.					Allowances.
The 14 whalers destroyed, viz.—							
Alert ...	Vessels and outfits	Double claims	564,870 155,467		409,403		
Altamaha ...							
Benjamin Tucker ...							
Courser ...	Earnings, prospective	Double claims	1,031,257 11,442	1,019,815		1,869,811	For vessels, outfits, secured and prospective earnings 365,000 + 93,538 = 458,538 gold dollars.
Elisha Dunbar							
Kate Cory	Secured	Double claims	253,905 13,142				
Kingfisher							
Levi Starbuck	Personal effects	Double claims	14,546 1,050	240,763	1,266,578		
Nye ...							
Ocean River							
Ocmulgee				13,496			
Virginia ...							
Lafayette 2nd							
Weathergage	Damages, &c.			152,300		165,796	For personal effects and damages, &c., 13,996 paper dollars.
Tonnage, 3,560							
The 44 merchant vessels, viz.—							
Amanda ...							
Amazonian							
Anna Schmidt							
Ariel S S.							
Brilliant ...							
Chastelaine							
Conrad ...							
Contest ...							
Crenshaw							
Dorcas Prince							
Dunkirk ...							
Emma Jane							
Express ...							
Golden Eagle							
Golden Rule							
Highlander	Vessels, &c.	Double claims	2,001,179 385,889	1,615,290			
Jabez Snow							
John A. Parks							
Justina ...							
Lafayette.	Freights	Double claims	847,166 64,549	782,617	...	2,397,907	For vessels, outfits, and freights, 1,130,400 + 41,069 = 1,171,469 gold dollars.
Lamplighter							
Laureita ...							
Louisa Hatch	Cargoes'	Double claims	1,984,836 153,761	...	...	1,831,075	For cargoes, 1,626,043 paper dollars.
Manchester							
Martaban							
Morning Star							
Baron de Castine ...							
Nora ...	Personal effects	Double claims	91,433 1,200	90,233	...	156,804	For personal effects, damages, &c., 77,803 paper dollars.
Olive Jane							
Palmetto...							
Parker Cook	Damages		...	68,571			
Rockingham							
Sea Bride .							
Sea Lark .							
S. Gildersleeve							
Senora ...							
Starlight...							
Talisman...							
T. B. Wales							
Tycoon ...							
Union Jack							
Wave Crest							
Winged Racer							
Charles Hill							
Tonnage, 28,260							

The gross total claim, including the inadmissible double claims, claims for *gross* prospective earnings, *gross* freights, *gross* secured earnings, profits, &c., amounts to 7,009,429 paper dollars.

The total provisional estimated allowance amounts to 1,630,007 *gold* dollars for vessels, outfits, earnings, and freights, and 1,717,842 *paper* dollars for the other claims.

EXPLANATION OF TABLE V.

I.—*As regards the fourteen Whaling Vessels.*

The Table shows that a sum of 564,870 paper dollars is claimed for the vessels and outfits, but from this sum 155,467 dollars must be deducted as being double claims, which leaves a total of 409,403 paper dollars.

There is claimed besides, for prospective *gross* earnings, a sum of 1,031,257 paper dollars, from which 11,442 dollars must be deducted as double claims, leaving a total of 1,019,815 paper dollars.

For *gross* secured earnings, 253,905 paper dollars are claimed, from which must be deducted, as double claims, 13,142 dollars, leaving a total of 240,763 paper dollars.

The claims for vessels, outfits, and gross prospective and secured earnings, amount, consequently, after deducting the double claims, to 1,669,811 paper dollars.

We estimate the losses in respect of which this claim is made at 458,538 *gold* dollars, of which 365,000 dollars represent the value of the vessels and outfits at the commencement of their voyages, and 93,358 dollars represent profit at the rate of 25 per cent. per annum, and wages from the commencement of the voyage to the time of capture.

The Table shows also that there is a claim for personal effects of the masters (and in one or two cases for those of the mates of vessels), which amount, after deducting double claims, to 13,496 dollars, and for damages amounting to 152,300 dollars in paper.

As regards the claims for personal effects, we have allowed the whole of them.

As regards the claim for damages, it is almost entirely composed of the following items:—9,000 dollars, which the mate of the Levi Starbuck claims for the first time in April last, for loss of time; 7,000 dollars claimed by a harpooner, for personal injuries; but this claim, which is only based on a letter addressed to the Secretary of the Navy, is not supported by any affidavit, and is advanced without any explanation. The other item is a claim of 135,000 dollars, in the case of the Ocmulgee, which is stated to be for loss of *merchandize on board and profits*. We are prepared to show that these claims must be rejected.

II.—*As regards the forty-four Merchant Vessels.*

The Table shows the following facts:—

There is claimed for the vessels, outfits, and stores, after deducting the double claims, a sum of 1,615,290 paper dollars.

For the gross freights is claimed, after deducting the double claims, the sum of 782,617 paper dollars, making a total of 2,397,907 paper dollars for the vessels and freights.

We estimate the losses in respect of which this claim is made at 1,171,469 gold dollars, of which 1,130,400 represent the value of the vessels and outfits at the commencement of the voyage, and 41,069 the interest on this value, and the wages from the commencement of the voyage to the time of capture.

For the cargoes and earnings, insurances and commissions on these same cargoes, as well as for damages resulting from non-arrival at the port of destination, the sum of 1,831,076 paper dollars is claimed, after deduction of the double claims, which can clearly be pointed out *at the present time*. We have reduced this claim to 1,626,043 paper dollars, and we are prepared to prove that, in all probability, this reduction is far from being sufficient.

The Table shows also that for personal effects of the masters (and in one or two cases for those of the mates also) the sum of 90,233 paper dollars is claimed, and 66,571 paper dollars for damages and sundry losses.

As regards the personal effects of the master or crew we have passed them in every case but five; we are prepared to show that, in these five cases, the claims are evidently exaggerated, and we have in consequence reduced them.

In regard to the claim for damages, &c., the greater part is composed of extravagant demands advanced by the masters of vessels for wages or for loss of time for about twelve months; of a claim of 10,000 dollars made by a passenger on account of delay, and of another claim of 10,000 dollars also made by a passenger for the loss of his employment as Consul; and of other claims evidently inadmissable.

The estimated allowance for loss of personal effects for damages, &c., is 77,803 paper dollars.

So that the total provisional estimated allowance in respect of the vessels captured by the Alabama is 1,630,007 *gold* dollars for the vessels, outfits, freights, and earnings, and 1,717,842 *paper* dollars for the other claims.

TABLE VI.
ANALYSIS of Claims in Respect of the "Florida."

Table VI.

Analysis of Claims in Respect of the "Florida."

See NOTE.

Page in Statement.	Name of Vessel.	Tons.	Days Out.	Claim for Vessel.	Claim for Freight.	Claim for Cargo.	Claim for Personal Effects.	Claim for Damages and Sundries.	Total.
				$	$	$	$	$	$
125	Aldebaran	190	19	20,500	..	476	4,037	..	25,033
126	Anglo-Saxon ..	870	4	35,500	1,711	5,500	..	..	42,711
127	Avon	950	116	67,000	40,000	45,701	3,709	..	156,461
129	B. F. Hoxie ..	1,390	80	72,000	26,000	..	..	..	98,000
130	Clarence	255	19	8,000	..	11,400	..	..	19,400
130	Commonwealth ..	1,275	29	55,000	24,250	370,704	2,088	..	452,042
147	Corris Aon ..	570	13	20,000	1,000	4,400	..	..	25,400
148	Crown Point ..	1,100	39	58,200	10,100	324,771	4,842	20,000	417,913
						Double claim .. 16,044			
						308,727			
162	Electric	810	1	166,000	..	283,229	..	..	449,229
						40,000			
						243,229			
171	Estelle	300	6	18,000	..	..	..	..	18,000
173	George Latimer ..	200	20	12,034	683	27,000	..	..	39,717
179	Henrietta	440	36	25,000	7,140	32,131	1,536	..	65,807
180	Jacob Bell	1,385	96	50,000	22,783	308,290	2,333	20,280	403,686
184	Lapwing	590	19	30,000	15,000	30,000	..	..	75,000
185	M. J. Colcord ..	375	1	24,624	10,000	65,867	..	..	100,491
187	Moodamin	390	11	18,129	3,800	5,000	..	1,143	28,072
188	Oneida	420	90	21,802	1,294	433,588	4,500	4,942	466,126
						Double claim .. 17,017			
						415,571			

Page in State-ment.	Name of Vessel.	Tons.	Days Out.	Claim for Vessel.	Claim for Freight.	Claim for Cargo.	Claim for Personal Effects.	Claim for Damages and Sundries.	Total.
				$	$	$	$	$	$
192	Redgauntlet ..	1,040	23	60,851	15,188	32,678	5,059	25,000	138,776
195	Southern Cross ..	940	77	55,000	10,000	..	450	..	65,450
				Double claim .. 25,000					
				30,000					
197	Star of Peace ..	945	88	88,000	41,884	368,176	550	..	493,610
				Double claim .. 32,000	Double claim .. 17,500	Double claim .. 33,815			
				56,000	24,384	334,361			
202	W. B. Nash ..	300	5	9,950	..	51,850	..	..	61,800
						Double claim .. 10,000			
						41,850			
204	W. C. Clark ..	340	14	5,000	..	..	..	..	5,000
204	Windward	200	160	12,000	..	3,953	500	..	16,453
205	Zelinda	560	26	36,000	..	..	..	..	36,000
205	Mary Alvina ..	260	8	11,000	3,216	..	304	..	14,520
206	Tacony	295	10	25,350	..	..	772	13,500	39,622
208	Byzantium	1,050	38	45,000	5,787	2,548	..	..	53,335
211	Umpire	295	11	6,100	2,200	21,155	150	..	29,605
		17,735		1,056,040	242,036	2,428,417	30,841	84,865	3,842,199
				Double claim .. 57,000	Double claim .. 17,500	Double claim .. 116,876			
				999,040	224,536	2,311,541			
185	Margaret Davis ..	..	..	16,100	..	..	904	..	17,004
178	Harriet Stevens ..	..	..	..	1,000	9,500	..	..	10,500
209	Goodspeed	..	..	35,000	..	1,293	..	..	36,293
172	Genl. Berry ..	..	..	Vessel, &c. .. 31,576	..	..	1,267	..	32,843
178	Greenland	550	2	6,500	7,200	1,600	1,065	360	16,725
									113,365

172	Genl. Berry	..	..	..	Vessel, &c. ..	31,576	..	..	1,293	..	..	..	36,293
178	Greenland	550	2		6,500	7,200	1,600	1,065	360	16,725
										113,365

Page in Statement.	Name of Vessel.	Tons.	Days Out.	Claim for Vessel.	Claim for Freight.	Claim for Cargo.	Claim for Personal Effects.	Claim for Damages and Sundries.	Total.
				$	$	$	$	$	$
207	Ada	..	..	..	..	..	..	..	5,300
210	Marengo	..	..	..	..	..	..	..	7,296
212	Wanderer	..	..	..	..	..	..	..	7,839
208	Elizabeth Ann ..	..	..	..	..	..	..	..	8,100
210	Rufus Choate ..	..	..	..	..	..	..	..	8,325
207	Archer	..	..	..	..	..	..	..	4,300
210	Ripple	..	..	..	..	..	..	..	8,805
									49,965
175	Golconda	330	85	38,000	4,536	118,865	680	..	162,081
195	Rienzie	75	37	7,700	..	787	..	..	8,487
									170,568

Total claims, 4,176,097 dollars.

NOTE I.—As regards the first 28 merchant vessels :—
The *first* column states the page of the Revised Statement where the claim is to be found.
In the *second* column is stated the name of the vessel in respect of which the claim arises.
In the *third* column the tonnage of the vessel is stated.
In the *fourth* column is stated the number of days during which the vessel had been on her voyage before capture.
In the *fifth* column the amount of claim for the vessel, her outfit and stores, including insurances, is stated.
In the *sixth* column is stated the claim for gross freight and loss of charter-party as well as insurances on the same.
In the *seventh* column there is stated the amount of claim for cargo, profits and insurances, as well as commissions on the same, and damages for non-arrival at port of destination.
In the *eighth* column is stated the claim for personal effects by master, mate, or crew.
In the *ninth* column is stated the amount claimed for wages and certain damages and losses not being losses of property, and also the claims advanced in a few cases for losses of passengers' effects.
In the *last* column is stated the total claim advanced for each vessel.
In cases where it is clear that *double claims* have been advanced, those double claims have been stated, and what are called at the end of the table the *net claims* are the *difference between the gross claims and those double claims.*

II. As regards the five following merchant vessels :—
The columns represent similar particulars.

III. As regards the seven fishing vessels :—
The particulars are not given because the claims have been allowed in full.

IV. As regards the Rienzie the claim has been allowed in full, and as regards the Golconda the particulars are similar to those mentioned above.

Table VII.

Table of Claims and Provisional Allowances in respect of the Vessels captured by the "Florida."

Vessels Claimed for	Subject.	Claims.					Allowances.
28 Merchant vessels, viz.—							
Alabama	Vessel, &c.		1,056,040				
Anglo-Saxon		Double claim	57,000	999,040			
Avon							
B. F. Hoxie							
Clarence							
Commonwealth							
Corrine Ann							
Crown Point	Freights		242,086		...	1,223,576	For vessels, outfits, and freights, 709,400 + 24,986 = 734,386 gold dollars.
Electric Spark							
Estelle		Double c[laim]	17,500	224,536			
George Latimer							
Henrietta							
Lapwing							
M. J. Colcord							
Mondamin	Cargoes		2,438,417				
Oneida		Double claim	116,876	...	...	2,311,541	For cargoes, 2,034,156 paper dollars
Redgauntlet							
Southern Cross							
Star of Peace							
W. B. Nash							
W. C. Clark							
Windward	Personal effects		...	30,841			
Zelinda					...	115,706	For personal effects and damages, &c. 22,710 paper dollars.
Mary Alvina							
Tacony	Damages		...	84,865			
Byzantium							
Empire							
Jacob Bell							
Gross tonnage, 17,735.							
5 Other merchant vessels, viz.—							Paper dollars.
Margaret Davis	...	...	...	...	...	17,004	—
Harriet Stevens	...	...	...	...	...	10,500	10,000
Goodspeed	...	...	...	...	...	36,292	22,000
General Berry	...	...	...	...	...	32,843	17,267
Greenland	...	...	...	...	...	16,735	10,000
7 Fishing vessels, viz.—							
Ada	...	...	...	...	...		
Marengo	...	...	...	...	...		
Elizabeth Ann	...	...	...	...	...		
Rufus Choate	...	...	...	...	...	49,965	49,965
Archer	...	...	...	...	...		
Ripple	...	...	...	...	...		
Wanderer	...	...	...	...	...		
2 Whaling vessels, viz.—							
Golconda	...	...	...	...	...	162,084	71,605 gold dollars
Ricaree	...	...	...	...	...	8,487	8,487 paper dollars.

The gross total claim, including the inadmissible double claims, claims for *gross* prospective earnings, *gross* freights, *gross* secured earnings, profits, &c., amounts to 4,176,097 paper dollars.

The provisional estimated allowance amounts to 805,391 *gold* dollars, for vessels, outfits, earnings, and freights, and 2,174,585 *paper* dollars for the remaining claims.

Explanation of Table VII.

1. *As regards the twenty-eight Merchant vessels.*

The table shows the [illegible] wi[illegible] facts:—

For the vessels, outfi[illegible] and [illegible]res there is claimed, after deducting double claims, the sum of 999,040 paper [illegible]ollars.

For gross freights, after deduction of double claims, the sum of 224,536 paper dollars is claimed, making a total of 1,223,576 paper dollars for vessels and freights.

We estimate the losses for which this claim is made at 734,386 gold dollars, of which 709,400 represent the value of vessels and outfits at the commencement of the voyage, and 24,986 dollars the interest on that value, together with the wages from the commencement of the voyage to the date of capture.

There is claimed for cargoes and profits, insurance and commission on these same cargoes, as well as for damages resulting from non-arrival at the port of destination, the sum of 2,311,541 paper dollars, after deduction of the double claims which can be clearly shown *at the present time*. We have reduced this claim to 2,034,156 paper dollars, and we are prepared to show that in all probability this reduction is far from being sufficient.

As to personal effects of the master and crew, we have passed them in all cases but four. We are prepared to show that in these four cases the claims are evidently exaggerated, and we have in consequence reduced them.

As regards the claims for damages, they are composed of the following items. There are two new claims advanced for the first time in March last by the first and second mates of the Crown Point for wages and damages: they amount to the extravagant sum of 20,000 dollars. There is a claim which is made by Martha Williams, a passenger, in respect of the Jacob Bell, for personal effects, and which amounts to 20,280 dollars; we are prepared to show that there are sufficient reasons for rejecting this claim. There is also a claim of 13,500 dollars made by the owners of the Tacony for losses in consequence of the interruption of their business: we are of opinion that it must be disallowed.

2. As regards the five other merchant vessels, we are prepared to show that there are special reasons which require the reduction of the claims to the sums inserted in the tables.

3. As regards the seven fishing vessels and the Rienzie, we have passed the whole of the claims.

4. With regard to the Golconda, we have reduced the claim of 162,081 paper dollars to 71,005 gold dollars, in the manner and for the reasons explained at page 27 of the seventh volume of the British Appendix.

So that the whole provisional estimated allowance in respect of vessels captured by the Florida is 805,391 *gold* dollars for the vessels, outfits, freights, and earnings, and 2,174,585 *paper* dollars for the other claims.

No. 27.

Tables presented by the Agent of the United States, August 19, 1872.

CONFORMEMENT aux instructions du Tribunal, l'Agent et les Conseils des Etats Unis ont fait rédiger des Tableaux d'après lesquels on peut voir la différence qui existe entre les exposés des réclamations pour pertes soumis au Tribunal de la part des Etats Unis, et les estimations fondées sur ces exposés présentées de la part de la Grande Bretagne.

Les réclamations que présentent les Etats Unis sont soutenues par des preuves assermentées présentées de la part de ceux qui possèdent les informations, et ils exhibent en détail les éléments qui contribuent à en former la somme totale, et les noms de ceux qui réclament la compensation, quelle qu'elle soit, que le Tribunal jugera à propos d'accorder.

Les réclamations ainsi computées, verifiées et soumises de la part des particuliers sont soutenues par toutes les garanties de leur bonne foi et de leur validité, tant pour le montant de la somme que pour le fait actuel de leur existence, que les gouvernements ont l'habitude d'exiger en pareils cas de leur part de leurs propres sujets. Selon les apparences ces computations fournissent l'exacte étendue des pertes de particuliers que les Etats Unis doivent être mis à même de réparer par suite de l'adjudication de ce Tribunal.

Dans certains cas il y a raison de croire que plus d'un réclamant se soit présenté pour le même dommage. En pareils cas, les Etats Unis ont présenté avec impartialité les exposés de tous les réclamants, avec l'intention, quand le moment serait propice, de chercher à constater, d'après toute l'evidence, quelle somme la Grande Bretagne devrait avec justice être tenue de payer, en fait de compensation pour les pertes réelles sans préjudice aux droits des réclamants entre eux. Nous avons fait de notre mieux pour préparer des Tableaux d'après lesquels il nous paraît que le Tribunal doit être à même de déterminer avec assez d'exactitude le montant de ces réclamations doubles, si toutefois il en existe.

Il n'est pas facile de se conformer à ces instructions du Tribunal qui exigent la rédaction de Tableaux qui puissent être comparés avec ceux de la Grande Bretagne. Tandis que l'exposé américain s'occupe de détails et fournit au Tribunal tous les moyens nécessaires pour en faire un examen minutieux, navire par navire, et réclamant par réclamant, l'exposé britannique est une généralisation, fondée sur certains faits qui sont pris pour accordés et qui existeraient, à l'avis des auteurs, dans le monde commerçant. Il ne nous est donc pas possible de présenter des vues comparées touchant les divers réclamants en détail, ou même touchant les divers navires détruits par les croiseurs.

Les auteurs de l'exposé britannique ont classifié nos réclamation d'une manière tellement arbitraire que nous sommes bornés à comparer les sommes totales que renferment leurs tableaux classifiés. De notre côté on parvient à connaître ces sommes totales en suivant pas à pas l'évidence, de leur côté par un procès de raisonnements. Les deux systèmes diffèrent tellement qu'une comparaison détaillée devient impossible. Tout ce qu'il nous reste à faire, c'est de prier le Tribunal de s'en référer à ce qu'on a déjà dit dans le plaidoyer américain relativement a ce sujet.—(Plaidoyer américain, note H.)

Nous sommes donc forcés de suivre l'arrangement britannique pour faire la comparaison des sommes totales, puisqu'il est impossible de faire la comparaison de nos vues en détail ou d'après une combinaison quelconque qui diffère de celle que suit leur arrangement. Nous donnons ci-après leur classification :—

" (A.) Réclamations provenant de la capture de vaisseaux qui étaient engagés dans des pêches à la baleine ou autres.

" (B.) Réclamations analogues provenant de navires chargés d'une nature de cargaison déterminée.

" (C.) Réclamations analogues provenant de navires chargés de cargaisons de divers.

" (D.) Réclamations analogues provenant de navires sur lest.

" (E.) et (F.) Diverses réclamations qui n'auraient pas pu être rangées convenablement dans l'une des catégories ci-dessus."

Avant d'en venir aux navires spéciaux nous voulons faire remarquer trois points de différence bien marquées entre les deux exposés.

(*a.*) Les Etats Unis demandent ici, comme ils l'ont fait déjà dans leur Mémoire et dans leur Plaidoyer, que le Tribunal leur accorde l'intérêt des sommes qu'ils ont resolu de considérer l'étendue des dommages originels, comme une partie nécessaire et indispensable de l'indemnité qui leur est due par suite de ces dommages. Cet intérêt devrait être conforme au taux ordinaire des Etats Unis où ces dommages furent soufferts et où les perdants doivent être indemnisés. L'intérêt doit être computé depuis le temps où les pertes eurent lieu jusqu'à l'époque fixée par le Tribunal pour le paiement.

(*b.*) Dans l'exposé americain, surtout dans les réclamations provenant de la destruction des baleiniers, des profits en expectative ou la " pêche perspective " entrent dans la computation des dommages.—(Voir le "Plaidoyer américain," note D, pp. .)

(*c.*) D'après l'assomption arbitraire de l'exposé britannique que le frêt réclamé par les Etats Unis au nom de leur marine marchande, constitue " frêt brut ;" cet exposé rejette toutes les réclamations pour " frêt ;" tandis que de notre côté, en l'absence de toute évidence au contraire, nous assumons que ces réclamations sont pour " frêt pur."

Ces trois classes forment dans la somme totale une grande partie des différences qui existent entre les deux exposés.

Conformément aux suggestions de quelques-uns parmi les arbitres, nous avons éliminé des tableaux les réclamations soumises de la part des baleiniers pour la " pêche prospective " dont le montant serait de 1,009,302·50 dollars, mais nous n'avons nullement l'intention de retirer ces réclamations ni de suggérer que nous ne les tenons pas pour justes. Sur ce sujet nous référons MM. les Arbitres à la note précitée qui suit le plaidoyer américain. Au cas où le Tribunal serait d'accord avec nous, nos réclamations pour intérêts relativement à ces navires devraient être diminuées proportionnellement. Au cas où il ne serait pas d'accord avec nous, nous demanderions, comme equivalent, qu'il nous donnât des intérêts à 25 pour cent sur la valeur du navire et de l'équipement.

Nous avons dû nous fier à des estimations arbitraires par rapport à deux sujets parce qu'il n'existe pas des preuves assermentées à leur égard, savoir :—(A.) Les gages des officiers et de l'équipage des navires capturées. (B.) La valeur de leurs effets personnels. Nous avons tout lieu de croire que les sommes totales que nous soumettons au Tribunal sont pour la plupart correctes en substance.

(A.) Nous comptons pour chaque navire de la Classe "A," dont le poids ne dépasserait pas 300 tonnes un commandant à 150 dollars par mois ; un premier officier à 100 dollars par mois ; un second officier à 75 dollars par mois ; un troisième officier à 60 dollars par mois ; un quatrième officier à 50 dollars par mois ; quatre timoniers à 30 dollars chacun par mois, et 40 hommes à 20 dollars chacun par mois ; et nous comptons un homme additionnel à 20 dollars par mois pour chaque poids de 15 tonnes au-dessus de 300 tonnes.

Dans les exposés relatifs aux navires désignés sous la lettre "A" il se trouve dans

les tableaux ci-joints une computation de gages qui dépasse la somme correcte de 125 dollars par mois pour chaque navire. L'erreur se trouve corrigée à la fin des colonnes respectives de chaque tableau et la somme totale est correcte dans le sommaire. L'erreur ne fut pas découverte en saison pour pouvoir la corriger dans les exposés détaillés sans faire encore subir au Tribunal l'inconvénient d'un délai.

Pour chaque navire des Classes B, C, D, E et F, dont le poids ne dépasserait pas 300 tonnes, nous comptons un commandant à 150 dollars par mois; un premier officier à 100 dollars par mois; un second officier à 75 dollars par mois, et dix hommes à 20 dollars chacun par mois. Pour chaque poids de 30 tonnes au-dessus de 300 tonnes on compte un homme additionnel à 20 dollars par mois.

Les gages sont computées excepté en certains cas spécifiés depuis le commencement du voyage jusqu'à la capture, et quand la capture s'est faite dans l'océan atlantique, ou quand la capture d'un navire dont le propriétaire demeure sur la côte de l'océan pacifique s'est faite dans l'océan pacifique, elles sont computées pour six mois additionnels; pour neuf mois additionnels quand le propriétaire demeure sur la côte atlantique et que la capture se fait dans l'océan pacifique. Cette somme additionnelle est pour faire les frais du retour après la capture et du temps passé en chemin.

(B.) En quelques cas, les officiers ou les hommes ont soumis des réclamations pour la valeur de leurs effets personnels. Nous n'avons soumis aucune réclamation pour ces dites personnes dans le tableau général sous le nom de chaque navire. Quand il ne se présente aucune réclamation spéciale. nous soumettons une réclamation générale d'après l'estimation ci-après, savoir:

Pour chaque commandant 1,000 dollars; pour chaque premier officier 750 dollars; pour chaque second officier 500 dollars; pour chaque troisième et chaque quatrième officier 250 dollars; et pour chaque timonier et chaque matelôt 100 dollars. Nous trouvons ces estimations modérées.

Il nous reste à expliquer les Tableaux ci-joints.

Les Tableaux détaillés contiennent six colonnes numérotées respectivement 1, 2, 3, 4, 5, et 6.

Colonne 1 exhibe les détails qui forment la somme totale du montant des réclamations sous le nom de chaque navire capturé.

Nous soumettons le nom de chaque navire capturé, son poids, les réclamations à son égard que nous avons présentées le 15 avril. Nous ajoutons un exposé des sommes qu'il faut soustraire de la somme totale et de celles qu'il faut y ajouter d'après les règles que nous avons établies.

Colonne 2 exhibe la dite somme totale sans la "pêche en perspective," les "profits en perspective," ou "l'anéantissement du voyage." Elle embrasse les sommes qui sont détaillées dans les colonnes 3, 4, et 5.

Colonne 3 exhibe les réclamations pour assurances lesquelles ne sont pas indubitablement des réclamations doubles.

Colonne 4 exhibe certaines réclamations pour assurance au sujet desquelles l'évidence se tait. Il est possible que quelques-unes de celles-ci devraient être soustraites de la somme totale de la Colonne 2; on ne saurait le déterminer qu'en faisant l'examen des faits en chaque cas.

Colonne 5 exhibe encore d'autres réclamations pour assurances selon lesquelles les propriétaires des propriétés assurées revendiquent en même temps une pleine indemnification pour leurs pertes sans égard aux assurances embrassées dans cette colonne. C'est au Tribunal à décider si ces réclamations doivent on ne doivent pas être soustraites de la Colonne 2.

Colonne 6 renferme des observations.

Les décisions rendues par le Tribunal relativement aux navires Georgia, Sumter. Chickamauga, Tallahassee, Retribution, &c., ont nécessité la modification des certificats du département de la marine des Etats Unis touchant les réclamations nationales, lesquels certificats avaient été produits selon les provisions du procès-verbal accompagnant le Traité de Washington.—(Mémoire américain, texte français, page 3.)

Dans les tableaux ci-joints cette modification a été faite en soustrayant de la somme totale soumise le 15 décembre 1871, les dépenses causées par suite des actes des navires pour les actes desquels le Tribunal a décidé qu'il ne pourrait pas tenir la Grande Bretagne responsable.

Le sommaire exhibe la somme totale des réclamations soumises actuellement de la part des Etats Unis, ci-incluse la pêche perspective et les sommes totales renfermées dans les estimations classifiées britanniques, soumises dans le contre-mémoire et dans le plaidoyer de la Grande Bretagne.

Réclamations des Etats Unis pour les Dépenses causées à leur Marine par suite des Actes du Florida, de l'Alabama, et du Shenandoah.

			$ c.
La somme totale des dites dépenses, d'après les tableaux présentés au Tome 7me de l'Appendice du Mémoire des Etats Unis, est de		..	7,080,478 70
Par suite de la décision rendue par le Tribunal, les dépenses sous citées, occasionnées par les actes de certains navires, en outre du Florida, de l'Alabama, et du Shenandoah, doivent être soustraites de la somme totale. Ces navires sont:—			
Le Chippewa	81,332 81		
„ Ella et Annie	6,171 50		
„ Susquehannah	47,468 20		
„ Yantic	26,453 38		
„ Tristram Shandy	1,272 18		
„ Eolus	1,310 53		
„ Aster	514 50		
„ Dumbarton	1,350 90		
„ Mocassin	595 67		
„ Florida	9,851 36		
„ Joseo	21,568 32		
„ Pontoosuc	23,362 36		
„ Massasoit	2,599 75		
Fraction de $690,172 représentant le charbon fourni par le Bureau d'équipement et de recrutement	21,564 75		
			245,416 21
Le restant donne le chiffre de la réclamation actuelle		..	6,735,062 49

Extrait des Tableaux suivants.

	Total des réclamations y compris celles des armateurs et des assureurs, mais à l'exception de celles pour les bénéfices purement en perspective, et des pertes provenant de l'interruption des voyages.	Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.
Alabama:—	$ c.	$ c.	$ c.	$ c.
Classe A	1,314,286 99	13,300 00	140,153 17	13,550 09
„ B	1,396,450 83	259,081 00	79,465 00	..
„ C	3,309,876 10	1,231,278 50	150,299 00	69,000 00
„ D	413,288 33	70,670 55	36,000 00	..
„ E and F	123,807 78	8,500 00	20,000 00	..
	6,557,690 03	1,585,830 05	425,917 17	82,550 00
Florida:—				
Classe A	228,941 92	57,010 00	6,385 00	10,000 00
„ B	539,179 10	192,050 00	..	..
„ C	3,339,410 02	1,785,612 33	90,270 46	..
„ D	138,929 17	35,155 00	..	..
„ E and F	278,618 62	12,100 00	6,400 00	..
„ G	91,225 10	..	..	..
	4,616,303 93	2,111,927 33	103,055 46	10,000 00
Shenandoah:—				
Classe A	3,007,675 55	115,319 20	97,368 80	460,350 00
„ B	118,554 43	3,500 00	..	..
„ C	149,635 06	106,185 00	..	..
„ D	107,075 00	..	9,000 00	..
„ A (supplement)	973,500 00	..	..	..
	4,356,440 04	225,334 20	106,368 80	460,350 00
Recapitulation:—				
Alabama	6,557,690 03	1,585,830 05	425,917 17	82,550 00
Florida	4,616,303 93	2,111,927 33	103,055 46	10,000 00
Shenandoah	4,356,440 04	225,334 20	106,368 80	460,350 00
	15,530,434 00	3,923,091 58	635,341 43	552,900 00

Totaux des Réclamations Comparés.

	Montants réclamés dans les tableaux suivants.	Montants accordés dans le rapport ajouté à l'argument anglais.
Alabama :—		
Classe A	$ c. 1,314,286 99	$ c. 460,893 00
„ B	1,396,480 83	618,538 00
„ C	3,309,876 10	2,004,376 00
„ D	413,288 33	136,021 00
„ E and F	123,807 78	47,850 00
	6,557,690 03	3,267,678 00
Florida (y compris le Clarence et le Tacony) .—		
Classe A	228,941 92	108,564 00
„ B	539,179 10	644,709 00
„ C	3,339,410 02	1,776,375 00
„ D	138,929 17	44,570 00
„ E and F	278,618 62	64,350 00
„ G	91,225 10	..
	4,616,303 93	2,635,568 00
Shenandoah :—		
Classe A et Supplément	3,981,175 55	1,171,464 00
„ B	118,554 43	29,630 00
„ C	149,635 06	99,582 00
„ D	107,075 00	37,560 00
	4,356,440 04	1,338,236 00
Récapitulation :—		
Alabama	6,557,690 03	3,267,678 00
Florida	4,616,303 93	2,635,568 00
Shenandoah	4,356,440 04	1,338,236 00
	15,530,434 00	7,241,482 00
Nous ajoutons ici toutes les réclamations provenant de l'interruption des voyages et des pertes de bénéfices en perspective	1,009,302 50	..
	19,539,736 50	7,241,482 00
Réclamations actuelles des Etats Unis pour les dépenses causées à leur marine par suite des actes du Florida, de l'Alabama, et du Shenandoah	6,735,062 49	940,460 24
	26,274,798 99	8,181,942 24

Les Etats Unis réclament les intérêts sur tout le montant à 7 pour cent l'an, jusqu'au jour du paiement, conformément aux termes du Traité.

(Translation.)

IN conformity with the instructions of the Tribunal, the Agent and Counsel of the United States have caused Tables to be drawn up, by which may be seen the difference which exists between the statements of claims for losses submitted to the Tribunal on the part of the United States, and the estimates founded on those statements, presented on the part of Great Britain.

The claims which the United States present are supported by evidence on oath, presented on the part of those who possess the information, and they show in detail the elements which contribute to form the sum total, and the names of those who claim the compensation, whatever it may be, which the Tribunal may think proper to award.

The claims thus computed, verified and submitted on the part of individuals, are supported by all the guarantees of their good faith and validity, whether as regards the amount of the sum or the actual fact of their existence, which Governments are in the habit of requiring on their part from their own subjects in such cases. According to appearances these calculations furnish the exact extent of the losses of individuals which the United States should be enabled to repair by means of the award of this Tribunal.

In certain cases there is reason to suppose that more than one claimant has presented himself for the same loss. In such cases, the United States have presented impartially the statements of all the claimants, with the intention, when a favourable moment arrived, to endeavour to ascertain, according to the whole of the evidence, what sum Great Britain should justly be held bound to pay as compensation for the

real losses, without prejudice to the rights of the claimants as against one another. We have done our best to prepare Tables, by which it appears to us that the Tribunal should be able to determine with sufficient precision the amount of these double claims, if any such exist.

It is not easy to comply with the instructions of the Tribunal to draw up Tables which may be compared with those of Great Britain. Whilst the American statement is occupied with details, and furnishes to the Tribunal all the means necessary to make a minute examination, vessel by vessel, and claimant by claimant, the British statement is a generalisation, founded on certain facts which are taken for granted, and which are said to exist, according to the opinion of the authors, in the commercial world. It is not possible, therefore, for us to present comparative views as to the several claimants in detail, or even as to the several vessels destroyed by the cruisers.

The authors of the British statement have classified our claims in a manner so arbitrary, that we are restricted to comparing the sums total which the classified Tables contain. On our side a knowledge of these sums total is arrived at by following the evidence step by step, on their side by a process of reasoning. The two systems differ so much that a detailed comparison becomes impossible. All that remains for us to do is to beg the Tribunal to refer to what has been already said on this subject in the American argument (American Argument, Note H).

We are therefore compelled to follow the British arrangement in order to make a comparison of the total sums, since it is impossible to make the comparison of our views in detail, or according to any combination which differs from that followed by their arrangement. We give their classification below:—

"(A.) Claims arising out of the capture of vessels which were engaged in whaling and fishing voyages.

"(B.) Similar claims in respect of vessels carrying a given specific description of cargo.

"(C.) Similar claims in respect of vessels loaded with general cargoes.

"(D.) Similar claims in respect of vessels in ballast.

"(E. and F.) Certain miscellaneous claims which could not be conveniently comprised in any of the above classes."

Before coming to the special vessels, we wish to observe three marked points of difference between the two statements.

(*a.*) The United States demand here, as they have already done in their Memorandum and Argument, that the Tribunal should award them the interest of the sums which they may resolve to consider the extent of the original damages, as a necessary and indispensable part of the indemnity which is due to them by reason of those damages. This interest ought to be in accordance with the usual rate in the United States, where these damages were sustained, and where the losses are to be indemnified. The interest should be computed from the time at which the losses took place, up to the date fixed by the Tribunal for the payment.

(*b.*) In the American statements, particularly in the claims growing out of the destruction of whalers, prospective profits, or "prospective catch," enter into the computation of the damages.—(See the American Argument, Note D, pp. 555-559.)

(*c.*) According to the arbitrary assumption of the British statement, that the freight claimed by the United States on behalf of their merchant navy constitutes "gross freight," that statement rejects all claims for freight; whilst on our side, in the absence of all evidence to the contrary, we assume that these claims are for "net freight."

These three classes form, in the sum total, a great part of the differences which exist between the two statements.

In accordance with the suggestions of some of the Arbitrators, we have eliminated from these Tables the claims submitted on the part of the whalers for "prospective catch," amounting to $\frac{1}{4}$4,009,302·50 dollars, but we do not intend to retire these claims, nor to suggest that we do not think them just. On this subject we refer the Arbitrators to the note above referred to, annexed to the American argument. In case the Tribunal should agree with us, our claims for interest with regard to these vessels should be diminished proportionately. In case it should not agree with us, we ask, as an equivalent, that it should allow us interest at 25 per cent. on the value of the vessel and outfit.

We have been obliged to trust to arbitrary estimates with regard to two subjects, because no sworn evidence exists on the subject, namely:—(A.) The wages of officers and crews of the captured vessels. (B.) The value of their personal effects. We have every reason to believe that the sums total which we submit to the Tribunal are for the most part substantially correct.

(A.) We reckon for each vessel of Class A, the tonnage of which does not exceed 300 tons, a master at 150 dollars a month; a first officer at 100 dollars a month; a second officer at 75 dollars a month; a third officer at 50 dollars a month; a fourth officer at 50 dollars a month; four helmsmen at 30 dollars each a month, and 40 men at 20 dollars each a month; and we reckon an additional man at 20 dollars a month for every amount of 15 tons above 300 tons.

In the statements relative to the ships designated under letter A, there will be found in the annexed Tables a calculation of wages which exceeds the correct sum of 120 dollars a month for each vessel. The error is corrected at the end of the respective columns of each Table, and the sum total is correct in the summary. The error was not discovered in time to allow of its correction in the detailed Tables without causing the Tribunal the inconvenience of further delay.

For each vessel of the Classes B, C, D, E and F, whose tonnage does not exceed 300 tons, we reckon a master at 150 dollars a month; a first officer at 100 dollars a month; a second officer at 75 dollars a month, and ten men at 20 dollars each a month. For each amount of 30 tons above 300 tons an additional man at 20 dollars a month is reckoned.

The wages are calculated, except in certain specified cases, from the commencement of the voyage up to the capture; and when the capture occurred in the Atlantic Ocean, or when the capture of a vessel whose owner lives on the coast of the Pacific Ocean was made in the Pacific Ocean, they are calculated for six months additional—for nine additional months when the owner lives on the Atlantic coast, and the capture was made in the Pacific Ocean. This additional sum is to cover the expenses of the return after the capture, and of the time passed on the way.

(B.) In some cases the officers or the men have presented claims for the value of their personal effects. We have not presented any claim for the said persons in the general Table under the name of each vessel. When no special claim is presented, we submit a general claim according to the following estimate, viz.:—

For every master, 1,000 dollars; for every first officer, 750 dollars; for every second officer, 500 dollars; for every third and every fourth officer, 250 dollars; and for each helmsman, and each sailor, 100 dollars. We consider these estimates to be moderate.

It remains to explain the annexed Tables.

The detailed Tables contain six columns, numbered respectively 1, 2, 3, 4, 5 and 6.

Column 1 shows the items which form the sum total of the amount of the claim under the name of each captured vessel.

We submit the name of each captured vessel, its tonnage, and the claims with regard to it which we presented on the 15th April. We add a statement of the sums which must be deducted from the sum total, and of those which must be added to it, according to the rules we have laid down.

Column 2 shows the said sum total without the "prospective catch," the "prospective profits" or the "breaking up of voyage." It comprises the sums which are detailed in Columns 3, 4 and 5.

Column 3 shows the claims for insurance which are undoubtedly not double claims.

Column 4 shows certain claims as to which the evidence is silent. It is possible that some of these ought to be deducted from the sum total in Column 2; this cannot be determined except by an examination of the facts of each case.

Column 5 shows other further claims for insurance, in which the owners of the insured property claim at the same time a full indemnity for their losses without regard to the insurances embraced in this column. It is for the Tribunal to decide if these claims ought or ought not to be deducted from Column 2.

Column 6 contains observations.

The decisions given by the Tribunal with regard to the vessels Georgia, Sumter, Chickamauga, Tallahassee, Retribution, &c., have necessitated the modification of the certificates of the Navy Department of the United States respecting the national claims, which certificates had been produced according to the provisions of the statement accompanying the Treaty of Washington. (American Case, page 11.)

In the annexed Tables this modification has been made by deducting from the sum total presented on the 15th December, 1871, the expenses caused by the acts of vessels for whose acts the Tribunal has decided that it could not hold Great Britain responsible.

The Summary shows the sum total of the claims actually submitted on the part of the United States, including "prospective catch," and the sums total contained in the

British classified estimates, submitted in the Counter-Case and Argument of Great Britain.

Claims of the United States for the Expenses caused to their Navy in consequence of the Acts of the Florida, Alabama, and Shenandoah.

	$	c.	$	c.
The sum total of the said expenses, according to the Tables presented in the Seventh Volume of the Appendix to the Case of the United States, is			7,080,478	70
In consequence of the decision given by the Tribunal, the expenses mentioned below, occasioned by the acts of certain vessels other than the Florida, Alabama and Shenandoah, should be deducted from the sum total. These vessels are:—				
The Chippewa	81,332	81		
,, Ella and Annie	6,171	50		
,, Susquehannah	17,468	20		
,, Yantic	26,453	58		
,, Tristram Shandy	1,272	18		
,, Eolus	1,310	53		
,, Aster	514	50		
,, Dumbarton	1,350	90		
,, Mocassim	595	67		
,, Florida	9,851	36		
,, Losco	21,568	32		
,, Pontoosic	23,362	36		
,, Messasoit	2,599	75		
Fraction of $690,172 representing the coal furnished by the Bureaux of Equipment and Recruitment ..	21,564	75		
			245,416	21
The remainder gives the amount of the actual claim			6,735,062	49

Extract from the Tables following:—

	Total of the claims, including those of the owners and insurers, but exclusive of those for purely prospective profits, and for losses arising from interruption of the voyages.	Claims relating to insurances of which the amounts are expressly mentioned in the claim, and which should be added to the loss of the owners, including the cases in which the owners make no claim for insurance.	Claims relating to insurances to be submitted to the decision of the Tribunal; whether they should or should not be considered as included in the claims of the owners.	Claims relating to insurances, in which the owners protest against any diminution of their claim on account of insurance.
	$ c.	$ c.	$ c.	$ c.
Alabama:—				
Class A	1,314,286 99	13,300 00	140,153 17	13,550 00
,, B	1,396,430 83	259,081 00	79,165 00	..
,, C	3,309,876 10	1,234,278 50	150,299 00	69,000 00
,, D	413,288 34	70,670 55	36,000 00	..
,, [illegible] and F	123,807 78	8,500 00	20,000 00	..
	6,557,690 03	1,585,830 05	425,917 17	82,550 00
Florida:—				
Class A	228,941 92	57,010 00	6,385 00	10,000 00
,, B	599,179 10	192,050 00	..	..
,, C	3,339,410 02	1,785,612 33	90,270 46	..
,, D	138,929 17	35,155 00	..	..
,, E and F	278,618 62	42,100 00	6,400 00	..
,, G	91,225 10	..	..	..
	4,646,303 93	2,111,927 33	103,055 46	10,000 00
Shenandoah:—				
Class A	[illegible]007,675 55	115,349 20	97,368 80	460,350 00
,, B	118,551 43	3,500 00	..	..
,, C	149,635 06	106,185 00	..	..
,, D	107,075 00	..	9,000 00	..
,, A (Supplement)	975,500 00	..	..	..
	[illegible]356,440 04	225,334 20	106,368 80	460,350 00
Recapitulation:—				
Alabama	[illegible]557,690 03	1,585,830 05	425,917 17	82,550 00
Florida	[illegible]646,303 93	2,111,927 33	103,055 46	10,000 00
Shenandoah	[illegible]356,440 04	225,334 20	106,368 80	460,350 00
	15,560,434 00	3,923,091 58	635,341 43	552,900 00

Totals of Claims Compared.

	Amounts claimed in the Tables which follow.	Amounts allowed in the Report annexed to the English Argument.
	$ c.	$ c.
Alabama:—		
Class A	1,314,286 99	460,893 00
„ B	1,396,430 83	618,538 00
„ C	3,309,876 10	2,004,376 00
„ D	413,288 33	136,021 00
„ E and F	123,807 78	47,850 00
	6,557,690 03	3,267,678 00
Florida (including the Clarence and the Tacony):—		
Class A	228,941 92	198,564 00
„ B	539,179 10	644,709 00
„ C	3,339,410 02	1,776,375 00
„ D	138,929 17	44,570 00
„ E and F	278,618 62	61,350 00
„ G	91,225 10	..
	4,616,303 93	2,635,568 00
Shenandoah:—		
Class A and Supplement	3,981,175 55	1,171,464 00
„ B	118,554 43	29,630 00
„ C	149,635 06	99,582 00
„ D	107,075 00	37,560 00
	4,356,440 04	1,338,236 00
Recapitulation:—		
Alabama	6,557,690 03	3,267,678 00
Florida	4,616,303 93	2,635,568 00
Shenandoah	4,356,440 04	1,338,236 00
	15,530,434 00	7,241,482 00
We add here all the claims arising out of interruption of voyage and losses of prospective profits	4,009,302 50	..
	19,539,736 50	7,241,482 00
Actual claims of the United States for the expenses caused to their Navy by reason of the acts of the Florida, Alabama, and Shenandoah	6,735,062 49	940,460 24
	26,274,798 99	8,181,942 24

The United States claim interest on the whole amount at 7 per cent. per annum, in conformity with the terms of the Treaty.

[Note.—It has not been considered necessary to translate the voluminous detailed Tables which follow.]

(Classe A.)—FLORIDA.

Page	1. Relevé détaillé.	$	c.	2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
175	Golconda, 330$\frac{66}{95}$ tonneaux		162,080 92	$ c. ..	$ c. ..	$ c. ..	$ c. ..	Dans ce cas, puisque le navire avait été saisi près de la côte des Etats Unis, au moment où son voyage était presque terminé, on a fait un calcul pour les gages de trois mois seulement.
	Nous ajoutons les gages pour 29 hommes durant 3 mois ..	3,465						
	Effets personnels non compris dans la réclamation	3,650						
			7,115 00					
				169,195 92	57,010 00	6,385 00	10,000 00	
195	Rienzie. (Le port non indiqué)		8,487 00	..	..	..	..	Dans ce cas, puisque le navire a été saisi près de la côte des Etats Unis, au moment où il n'avait pas terminé son voyage, on a fait un calcul pour les gages de quatre mois seulement. Point d'assurance.
	Le bâtiment n'est représenté que par $\frac{5}{8}$mes des iotéressés, et par conséqnent, nous ajoutons $\frac{3}{8}$mes pour compléter la réclamation		2,829 00					
	Nous ajoutons les gages pour 27 hommes durant 4 mois ..	4,460						
	Effets personnels	4,950						
			9,410 00					
				20,726 00				
207	Ada		5,300 00					
	Nous ajoutons pour les effets personnels	1,000	1,000 00					
				6,300 00				
208	Elizabeth Ann, 91 tonneaux		8,100 00					
	Nous déduisons—							
	Perte provenant de l'interruption du voyage		1,400 00					
			6,700 00					
	Nous ajoutons les gages pour 7 hommes durant 3 mois ..	950						
	Effets personnels	1,000						
			1,950 00					
				8,650 00				
210	Marengo, 82 tonneaux		7,296 00					
	Nous déduisons—							
	Perte provenant de l'interruption du voyage		1,500 00					

	Perte provenant de l'interruption du voyage		1,400 00					
			6,700 00					
	Nous ajoutons les gages pour 7 hommes durant 3 mois .. 950							
	Effets personnels 1,000							
			1,950 00	8,650 00				
210	Marengo, 82 tonneaux		7,296 00					
	Nous déduisons—							
	Perte provenant de l'interruption du voyage		1,500 00					
			5,796 00					
	Nous ajoutons les gages pour 7 hommes durant 3 mois .. 950							
	Effets personnels 1,000							
			1,950 00	7,746 00				
210	Rufus Choate, 90 tonneaux		8,325 00					
	Nous déduisons—							
	Perte provenant de l'interruption du voyage		1,500 00					
			6,825 00					
	Nous ajoutons les gages pour 7 hommes durant 3 mois .. 950							
	Effets personnels 1,000							
			1,950 00	8,775 00				
212	Wanderer, 94 tonneaux		7,839 00					
	Nous déduisons—							
	Perte provenant de l'interruption du voyage		1,400 00					
			6,439 00					
	Nous ajoutons les gages pour 7 hommes durant 3 mois .. 950							
	Effets personnels 1,000							
	Montant restié, $228,941 92 c.		1,950 00	8,389 00				
				229,781 92	57,010 00	6,385 00	10,000 00	

(Classe B.)—FLORIDA.

126	Anglo Saxon, 868 tonneaux		42,710 79					
	La réclamation des armateurs pour ce bâtiment n'est représentée que par ½; par conséquent, nous ajoutons ½ pour E. Mott Robinson pour compléter la réclamation		9,500 00					
	Nous ajoutons les gages pour 32 hommes durant 7 mois .. 6,335							
	Effets personnels " " .. 5,150							
			11,485 00					
				63,695 79	24,500 00			
127	Avon, 946 tonneaux		171,401 40	..	..	..	..	L'évaluation des effets personnels, et des gages du Capitaine, et des effets personnels du premier officier, n'est pas faite.
	Nous ajoutons les gages pour 35 hommes durant 10 mois, à l'exception de ceux du Capitaine 8,750							
	Effets personnels non compris dans la réclamation 3,700							
			12,450 00					
				183,851 40	72,000 00			

Page	1. Relevé détaillé.		2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
		$ c.	$ c.	$ c.	$ c.	$ c.	
129	B. F. Hoxie, 1,387 tonneaux	98,000 00	..	..	..	..	Point d'assurance. L'évaluation des effets personnels, et des gages du Capitaine, n'est pas faite.
	Nous ajoutons les gages pour 49 hommes durant 9 mois, à l'exception de ceux du Capitaine 10,305						
	Effets personnels de 49 hommes 6,850						
		17,155 00					
			115,155 00				
177	Greenband, 549$\frac{5}{95}$ tonneaux	16,725 00	..	..	..	..	L'évaluation des effets personnels, et des gages du Capitaine, n'est pas faite.
	Nous ajoutons le montant d'assurance payé par le Gouvernement des Etats Unis	23,500 00					
	Nous ajoutons les gages pour 21 hommes durant 7 mois, à l'exception de ceux du Capitaine 3,895						
	Effets personnels de 21 hommes 3,050						
		6,945 00					
			47,170 00	25,100 00			
195	Southern Cross, 93$\frac{8}{95}$ tonneaux	65,450 00					
	Nous ajoutons les gages pour 34 hommes durant 9 mois .. 8,505						
	Effets personnels 5,350						
		13,855 00					
			79,305 00	65,450 00			
204	William Clark, 338 tonneaux	23,391 00					
	Nous ajoutons les gages pour 14 hommes durant 7 mois .. 3,815						
	Effets personnels 3,350						
		7,165 00					
			29,556 91	5,000 00			
205	Réclamation concernant le Clarence, convoi du Florida— Mary Alvina, 260 tonneaux	14,520 00	..	..	..	..	Point d'assurance. L'évaluation des effets personnels du Capitaine n'est pas faite.
	Nous ajoutons les gages pour 13 hommes durant 7 mois 3,675						
	Effets personnels 2,250						
		5,925 00					
			20,445 00				
			539,179 10	192,050 00			

(Classe C.)—FLORIDA.

	Nous ajoutons les gages pour 13 hommes durant 7 mois	3,675						
	Effets personnels " "	2,250						
			5,925 00					
				20,445 00				
				539,179 10	192,050 00			

effets personnels du Capitaine n'est pas faite.

(Classe C.)—FLORIDA.

125	Aldebaran, 189$\frac{4}{95}$ tonneaux		25,032 91	..	..	..	..	Remarquez qu'il n'y a qu'une réclamation concernant la cargaison $47,606, mais vu que le bâtiment contenait une cargaison générale, nous avons à attendre d'autres réclamations encore. Aucune évaluation n'est faite des effets personnels du Capitaine.
	Nous ajoutons les gages pour 13 hommes durant 7 mois	3,675						
	Effets personnels non compris dans la réclamation ..	2,250						
			5,925 00					
				30,957 91				
130	Claresce, 253$\frac{12}{95}$ tonneaux .		20,252 50	..	..	..	..	Les armateurs de ce bâtiment n'ont pas encore présenté leur réclamation. Il n'est fait aucune évaluation des effets personnel d'un matelot.
	Nous ajoutons les gages pour 13 hommes durant 7 mois	3,675						
	Effets personnels " "	2,250						
			5,925 00					
				26,177 50	19,400 00			
130	Commonwealth, $\frac{4}{95}$ tonneaux		454,603 58	..	..	..	..	Remarquez la réclamation pour commission $204,470. Il n'est fait aucune évaluation des effets personnels d'un matelot.
	Nous ajoutons les gages pour 46 hommes durant 8 mois	9,480						
	Effets personnels " "	6,450						
			15,930 00					
				470,533 58	190,938 00			
148	Crown Point, 1,098$\frac{8}{95}$ tonneaux		423,963 00	..	..	..	..	Aucune évaluation n'est faite des effets personnels et des gages du premier et second officier.
	Nous ajoutons les gages pour 40 hommes durant 8 mois	7,470						
	Effets personnels " "	4,700						
			12,170 00					
				436,073 00	248,354 19			
160	Electric Spark, 810 tonneaux		457,361 83	..	..	..	..	Le tribunal décidera sur l'article $40,000 de l'assurance, si la réclamation n'est pas faite deux fois pour le même article.
	Nous ajoutons les gages pour 30 hommes durant 7 mois	6,055						
	Effets personnels " "	4,950						
			11,005 00					
				468,366 83	104,795 00			
179	Henrietta, 437$\frac{11}{95}$ tonneaux		65,806 94	..	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine.
	Nous ajoutons les gages pour 18 hommes durant 8 mois	5,000						
	Effets personnels " "	2,750						
			7,750 00					
				73,556 94	20,000 00			
180	Jacob Bell, 1,387$\frac{5}{95}$ tonneaux		403,686 40	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels du Capitaine.
	Nous ajoutons les gages pour 49 hommes durant 10 mois	12,150						
	Effets personnels " "	5,850						
			18,300 00					
				421,986 40	270,978 00			
184	Lapwing, 590 tonneaux		75,000 00					
	Nous ajoutons les gages pour 22 hommes durant 7 mois	4,935						
	Effets personnels " "	4,150						
			9,085 00					
				84,085 00	75,000 00			
185	M. J. Colcord, 374 tonneaux		100,491 21	..	..	..	..	Remarquez une réclamation de $32,933 09 c. pour bénéfices en perspective.
	Nous ajoutons les gages pour 15 hommes durant 7 mois	3,955						
	Effets personnels " "	3,450						
			7,405 00					
				107,896 21	33,500 00	500 00		

Page	1. Relevé détaillé.		2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
		$ c.	$ c.	$ c.	$ c.	$ c.	
192	Redgauntlet, 1,038 tonneaux	139,800 94	..	..	..	..	Aucune évaluation n'est faite des effets personnels et des gages du Capitaine, et du premier officier, après la prise du bâtiment.
	Nous déduisons perte provenant d'interruption de voyage	25,000 00					
		114,800 94			..		
	Nous ajoutons les gages pour 38 hommes durant 7 mois .. $ 5,675						
	Effets personnels „ „ .. 4,000						
		9,675 00					
			124,475 94	78,680 00			
197	Star of Peace, 941$\frac{33}{95}$ tonneaux	519,273 65	..	..	..	..	Le Tribunal décidera si la réclamation pour $33,815 d'assurance n'est pas faite deux fois pour le même article. Aucune évaluation n'est faite des effets personnels du Capitaine.
	Nous ajoutons les gages pour 34 hommes durant 9 mois .. 8,505						
	Effets personnels „ „ .. 4,350						
		12,855 00					
			532,128 65	350,387 03	48,000 00		
202	William B. Nash, 299 tonneaux	61,799 94	..	..	..	..	Le Tribunal décidera si sur un montant de $10,[illegible] réclamation d'assurance a eu lieu deux fois.
	Nous ajoutons les gages pour 13 hommes durant 7 mois .. 3,675						
	Effets personnels „ „ .. 3,250						
		6,925 00					
			68,724 94	60,349 75			
188	Oneida (le port n'est pas indiqué)	467,126 12	..	..	..	..	Remarquez la réclamation de $17,017 réassurance. L'évaluation des effets personnels et des gages du Capitaine n'est pas faite.
	Nous déduisons la prime d'assurance	1,802 00					
	Nous ajoutons les gages pour 13 hommes durant 9 mois, à l'exception de ceux du Capitaine 4,275	465,324 12					
	Effets personnels pour 13 hommes 2,250						
		6,525 00					
			471,849 12	329,276 46	41,770 46		
204	Windward, 199$\frac{33}{100}$ tonneaux	16,673 00	..	..	..	..	L'évaluation des effets personnels du Capitaine n'est pas faite.
	Nous ajoutons les gages pour 13 hommes durant 7 mois .. 3,675						
	Effets personnels „ „ .. 2,250						
		5,925 00					
			22,598 00	3,953 00			
			3,339,410 02	1,785,612 33	90,270 46		

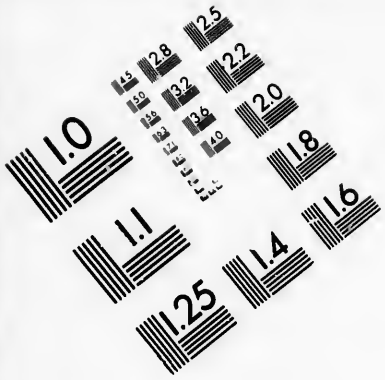
	Effets personnels " " .. 2,250	5,925 00						
			22,598 00	3,953 00				
			3,339,410 02	1,785,612 33	90,270 46			

(Classe D.)—FLORIDA.

171	Estelle, 298$\frac{23}{95}$ tonneaux		18,000 00					
	Nous ajoutons les gages pour 13 hommes durant 7 mois .. 3,675							
	Effets personnels non compris dans la réclamation 3,250		6,925 00					
205	Zelinda, 559$\frac{1}{95}$ tonneaux		36,000 00	24,925 00	4,000 00			
	Nous ajoutons les gages pour 13 hommes durant 7 mois .. 3,675							
	Effets personnels non compris dans la réclamation 3,250		6,925 00					
211	Umpire, 293 tonneaux		29,605 00	42,925 00	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine.
	Nous ajoutons les gages pour 13 hommes durant 7 mois .. 3,675							
	Effets personnels non compris dans la réclamation 2,250		5,925 00					
187	Mondamin, 390$\frac{23}{95}$ tonneaux		28,904 17	35,520 00	21,155 00			
	Nous ajoutons les gages pour 16 hommes durant 7 mois .. 4,095							
	Effets personnels non compris dans la réclamation 2,550		6,645 00					
				35,549 17	10,000 00			Aucune évaluation n'est faite pour les effets personnels du Capitaine. Remarquez que $487,053 d'assurance ont été reçus sans qu'une compagnie d'assurance fasse une réclamation.
				138,929 17	35,155 00			

(Classes E et F.)—FLORIDA.

147	Corriss Ann, 568 tonneaux		25,000 00					
	Nous ajoutons—							
	Erreur dans l'addition		400 00					
	Les gages pour 20 hommes durant 7 mois 4,935 00							
	Effets personnels " " 4,150 00		9,085 00					
	General Berry		32,843 48	34,485 00	..	5,400 00		
	Nous ajoutons les gages pour 13 hommes durant 3 mois seulement 1,575 00			..	..	..	..	Il n'a été fait aucune évaluation des effets personnels ni du Capitaine, ni du premier officier.
	Effets personnels non compris dans la réclamation .. 1,500 00		3,075 00					
				35,918 48				



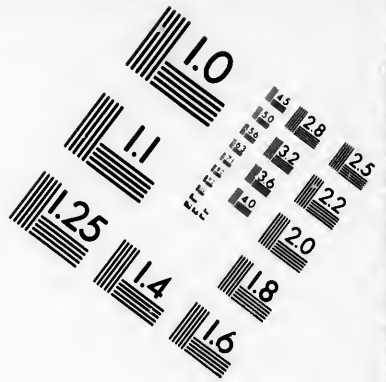
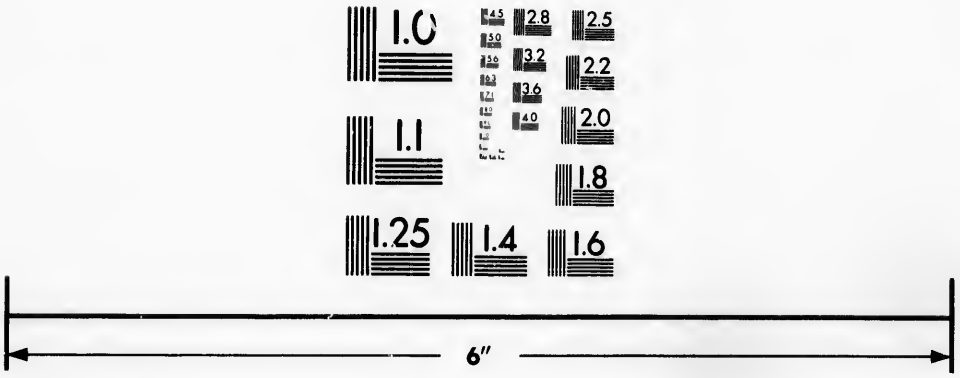
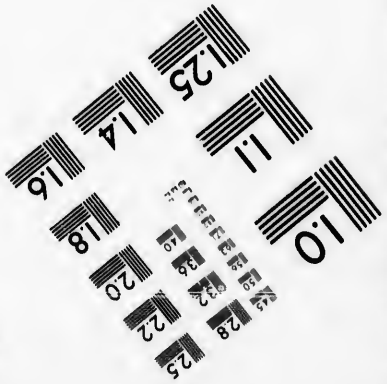


IMAGE EVALUATION TEST TARGET (MT-3)





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Page	1. Relevé détaillé.			2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal : si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
			$ c.	$ c.	$ c.	$ c.	$ c.	
173	George Latimer, 198 tonneaux		39,716 99	..	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine.
	Nous ajoutons pour un quart à la valeur, trois quarts seulement étant réclamés	4,189 34						
	Nous ajoutons les gages pour 13 hommes durant 7 mois ..	3,675 00						
	Effets personnels non compris dans la réclamation ..	2,250 00						
			10,114 34					
				49,831 33	32,600 00			
178	Harriet Stevens		45,000 00					
	Nous ajoutons les gages pour 13 hommes durant 7 mois ..	3,675 00						
	Effets personnels „ „ ..	3,250 00						
			6,925 00					
				51,925 00	9,500 00	1,000 00		
208	Byzantium, 1,048$\frac{3}{95}$ tonneaux		53,335 51					
	Nous ajoutons les gages pour 25 hommes durant 7 mois ..	5,455 00						
	Effets personnels „ „ ..	4,450 00						
			9,905 00					
				63,240 51				
209	Good Speed		36,293 30					
	Nous ajoutons les gages pour 13 hommes durant 7 mois ..	3,675 00						
	Effets personnels „ „ ..	3,250 00						
			6,925 00					
				43,218 30				
				278,618 62	42,100 00	6,400 00		

(Classe G.*)—FLORIDA.

Page	1. Relevé détaillé.		2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
		$ c.	$ c.	$ c.	$ c.	$ c.	
185	M. Y. Davis		17,004 00				
	Nous ajoutons les gages pour 10 hommes durant 4 mois	800					
	Effets personnels non compris dans la réclamation	800					
			1,600 00				
			18,604 00				
206	Tacony, 295$\frac{88}{95}$ tonneaux		39,622 00				
	Nous ajoutons les gages pour 13 hommes durant 4 mois ..	2,100					
	Effets personnels „ „	3,250					
			5,350 00				
			11,972 00				
345	Whistling Wind		12,594 10				
			12,594 10	..	..	..	Dans le présent cas il n'a été fait aucune évaluation des gages ni des effets personnels du Capitaine et de l'équipage.
207	Archer, 62$\frac{24}{100}$ tonneaux		4,300 00				
			4,300 00	..	..	..	
210	Ripple, 64 tonneaux		8,805 00				
	Nous ajoutons les gages pour 7 hommes durant 3 mois ..	950					Même observation qu'à l'article ci-dessus.
	Effets personnels „ „ ..	1,000					
			1,950 00				
			10,755 00				
			91,225 10				

* La Classe G contient, pour plusieurs bâtiments, des réclamations qui n'ont pas été présentées dans la première liste des réclamations et qui par conséquent n'étaient pas comprises dans la classification anglaise, mais se trouvaient parmi les Classes A, B, C, D, E, F, G, dans la classification ajoutée à l'argument anglais.

Page	1. Relevé détaillé.			2. Total des réclamations y compris celles des armateurs et des assureurs, mais à l'exception de celles pour les bénéfices purement en perspective, et des pertes provenant de l'interruption des voyages.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
		$ c.	$ c.	$ c.	$ c.	$ c.	$ c.	
5	Alert, 398$\frac{44}{95}$ tonneaux	..	202,726 11					
	Nous déduisons—							
	Perte proveuant de l'interruption du voyage . ..	30,000 00						
	,, des bénéfices en perspective ..	144,867 50						
			174,867 50					
	Nous ajoutons les gages pour— $							
	34 hommes durant 9 mois 11,295		27,858 91					
	,, effets personnels 5,650							
			16,945 00					
				44,803 91	13,300 00			
6	Altamaha, 119$\frac{37}{95}$ tonneaux	..	32,755 60	..	..	..	..	Point d'assurance.
	Nous déduisons—							
	Perte des bénéfices en perspective . ..	19,940 00	19,940 00					
	Nous ajoutons les gages pour 27 hommes durant 10 mois 11,150		12,815 60					
	Effets personnels, non compris dans la réclamation 3,200							
			14,350 60					
				27,165 60				
25	Benjamin Tucker, 346$\frac{68}{95}$ tonneaux	..	179,835 06					
	Nous déduisons—							
	Bénéfices en perspective	100,800 00	100,800 00					
	Les réclamations sur ce navire ne sont présentées que $\frac{79}{95}$mes, par conséquent nous ajoutons $\frac{8}{95}$mes de $70,200 pour completer la réclamation	..	79,035 06 16,200 00					
	Nous ajoutons les gages pour 30 hommes durant 25 mois 25,375		95,235 06					
	Effets personnels non compris de la réclamation 3,000		32,375 00					
				127,610 06	..	7,000 00		
30	Courser, 121 tonneaux	..	33,307 53	..	..	..	..	
	Nous déduisons—							
	Erreur dans l'addition							

	$70,200 pour compléter la réclamation	..	..	16,200 00					
	Nous ajoutons les gages pour 30 hommes durant 25 mois	25,375		95,235 06					
	Effets personnels non compris de la réclamation	3,000							
				32,375 00					
					127,610 06	..	7,000 00		

30	Courser, 121 tonneaux	..	..	33,307 53	..	..	..	..	Point d'assurance. Le Tribunal décidera sur l'article, $19,845 perte de cargaison et dommages.
	Nous déduisons—								
	Erreur dans l'addition	..	..	1,000 00					
	Montant rectifié	..	..	32,307 53					
	Nous ajoutons les gages pour 27 hommes durant 13 mois	14,195							
	Effets personnels non compris dans la réclation	3,950							
				18,445 00					
35					50,752 53				
	Elisa Dunbar, 257$\frac{19}{95}$ tonneaux	..	..	150,891 65					
	Nous déduisons —								
	Perte provenant de l'interruption du voyage . ..	..	88,200 00	88,200 00					
	Nous ajoutons les gages pour 27 hommes durant 7 mois	7,805		62,694 65					
	Effets personnels non compris dans la réclamation	3,700							
				11,505 00					
51					74,199 65	..	21,375 00		
	Kate Cory, 132$\frac{6}{95}$ tonneaux	..	..	56,474 00					
	Nous déduisons—								
	Pertes des bénéfices en perspective	..	19,293 75	19,293 75					
	Nous ajoutons les gages pour 27 hommes durant 12 mois	13,380		37,180 25					
	Effets personnels non compris dans la réclamation	3,200							
				16,580 00					
53					53,760 25	..	8,212 00		
	Kingfisher, 120$\frac{8}{95}$ tonneaux	..	..	31,952 17					
	Nous déduisons—								
	Bénéfices en perspective	..	12,600 00	12,600 00					
	Nous ajoutons les gages pour 27 hommes durant 26 mois	28,990		19,352 17					
	Effets personnels pour 27 hommes durant 26 mois	4,950							
				33,940 00					
55					53,292 17	..	5,024 17		
	Lafayette II. (Le port n'est pas indiqué)	..	..	141,855 48					
	Nous déduisons—								
	Perte des bénéfices en perspective	..	49,896 00						
	Réclamation, William Lewis, deux fois présentée ..	..	2,867 48						
	Nous ajoutons les gages pour 27 hommes durant 17 mois	18,955		52,763 48					
	Effets personnels non compris dans la réclamation	3,700		89,092 00					
				22,655 00					
					111,747 00	..	20,025 00		

Page	1. Relevé détaillé.			2. Total des réclamations y compris celles des armateurs et des assureurs, mais à l'exception de celles pour les bénéfices purement en perspective, et des pertes provenant de l'interruption des voyages.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal; si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution à leur réclamation à cause de l'assurance.	6. Observations.
		$ c.	$ c.	$ c.	$ c.	$ c.	$ c.	
59	Levi Starbuck, 376$\frac{71}{95}$ tonneaux	..	269,522 50	..	..	..	..	Le Tribunal décidera sur les articles, $7,500 cargaison; $9,000 réclamation Getchell; $7,000 réclamation Douds. L'assurance n'est probablement pas comprise dans la réclamation des armateurs.
	Nous déduisons—							
	Perte provenant de l'interruption du voyage . ..	114,312 50	114,312 50					
	Nous ajoutons les gages pour 32 hommes du 7 mois .. .. $ 8,505		155,210 00					
	Effets personnels non compris dans la réclamation 4,700		13,205 00					
65	Nye, 211 tonneaux	..	106,959 25	168,415 00	..	23,350 00		
	Nous déduisons—							
	Perte provenant de l'interruption du voyage ..	18,900 00	18,900 00					
	Nous ajoutons les gages pour 27 hommes durant 15 mois 16,725		88,059 25					
	Effets personnels non compris dans la réclamation 3,200		19,925 00					
68	Ocean Rover, 313$\frac{23}{95}$ tonneaux	..	193,866 03	107,974 25	..	21,852 00		
	Nous déduisons—			..	..	..	..	Les arbitres peuvent déterminer s'il existe une réclamation double de réassurance, jusqu'au montant de $1,605.
	Bénéfices en perspective	37,800 00						
	Erreur dans l'addition (assurance)	21,710 00						
			62,510 00					
	Nous ajoutons les gages pour 28 hommes durant 9 mois 10,215		131,356 03					
	Effets personnels non compris dans la réclamation 3,700		13,915 00					
				145,271 03	..	34,315 00		
70	Ocmulgee, 459 tonneaux	..	119,985 00	..	..	..	..	
	Nous déduisons—							
	Perte des bénéfices en perspective							

					13,915 00	£145,271 03	..	34,315 00		

70	Oemulgee, 459 tonneaux			..	119,985 00	..	..	..	..	
	Nous déduisons—									
	Perte des bénéfices en perspective		165,510 00		165,510 00					Le Tribunal décidera sur l'article $135,000 perte sur marchandise.
	Nous ajoutons les gages pour 32 hommes durant 8 mois	10,680			284,175 00					
	Effets personnels non compris dans la réclamation	4,350								
					15,030 00					
						269,595 00				
115	Virginia, $346\frac{33}{95}$ tonneaux			..	167,500 00					
	Nous déduisons—									
	Perte des bénéfices en perspective		103,950 00		103,950 00					
	Nous ajoutons les gages pour 30 hommes durant 7 mois	8,225			63,550 00					
	Effets personnels	5,250								
					13,475 00					
						77,025 00	..	..	13,550 00	
117	Weather Gage, $106\frac{14}{95}$ tonneaux			..	30,415 54	..	..	..	..	
	Nous déduisons—									
	Perte provenant de l'interruption du voyage .	..	18,900 00							Point d'assurance.
	Réclamation, Atkins	..	800 00							
	Nous ajoutons les gages pour 27 hommes durant 8 mois	8,920			19,700 00					
	Effets personnels non compris dans la réclamation	3,850			10,745 54					
					12,770 00					
						23,515 54				
						1,335,046 99				
						20,760 00				
						1,314,286 99	13,300 00	140,153 17	13,550 00	

Après déduction de $20,760 de gages que nous avons comptés de trop par erreur, le total des réclamations se monte à $1,314,286 99 c.

Page	1. Relevé détaillé.			2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
		$	$ c.	$ c.	$ c.	$ c.	$ c.	
26	Brilliant, 830$\frac{1}{95}$ tonneaux		125,212 83	..	..	..	..	
	Nous ajoutons les gages pour 31 hommes durant 7 mois ..	6,195						L'évaluation des effets personnels du Capitaine n'est pas faite.
	Effets personnels non compris dans la réclamation	4,050						
			10,245 00					
27	Charles Hill, 699 tonneaux		46,631 93	135,457 83	1,975 00	27,245 00		
	Nous ajoutons les gages pour 26 hommes durant 8 mois ..	6,280		..	..	..	..	Point d'assurance. L'évaluation des effets personnels du Capitaine n'est pas faite.
	Effets personnels non compris dans la réclamation	3,550						
			9,830 00					
28	Conrad, 347$\frac{59}{95}$ tonneaux		94,241 00	56,464 93				
	Nous ajoutons les gages pour 15 hommes durant 7 mois ..	3,955		..	..	..	..	Remarquez la réclamation de la Columbian Insurance Compagnie pour réassurance, $17,205.
	Effets personnels „ „ ..	3,450						
			7,405 00					
31	Crenshaw, 278$\frac{40}{95}$ tonneaux		27,474 49	101,646 00	47,205 00	6,570 00		
	Nous ajoutons les gages pour 13 hommes durant 7 mois ..	3,675		..	..	..	..	Point d'assurance.
	Effets personnels „ „ ..	3,250						
			6,925 00					
38	Express, 1,072 tonneaux		88,870 00	34,399 49				
	Nous ajoutons les gages pour 39 hommes durant 10 mois, à l'exception de ceux des 6 mois du premier officier .	9,850		..	..	..	..	L'évaluation des effets personnels du premier officier ainsi que de ses gages n'est pas faite.
	Effets personnels non compris dans la réclamation	5,100						
			14,950 00					
40	Golden Eagle, 1,120$\frac{93}{95}$ tonneaux		114,687 50	103,820 00	..	39,000 00		
	Nous ajoutons les gages pour 40 hommes durant 9 mois ..	9,585		..	..	..	..	Point d'assurance. L'évaluation des effets personnels et des gages du Capitaine n'est pas faite.
	Effets personnels non compris dans la réclamation	4,950						
			14,535 00					
				129,222 50				

47	Jabez Snow, 1,073$\frac{33}{95}$ tonneaux		146,208 00	..	..	..	..	
	Nous déduisons perte sur charte-partie, conclue en partie		54,000 00					

			14,950 00				gages n'est pas faite.
40	Golden Eagle, 1,120$\frac{33}{95}$ tonneaux			103,820 00	..	39,000 00	
	Nous ajoutons les gages pour 40 hommes durant 9 mois	9,585	114,687 50	..	..	..	..
	Effets personnels non compris dans la réclamation	4,950					Point d'assurance. L'évaluation des effets personnels et des gages du Capitaine n'est pas faite.
			14,535 00				
				129,222 50			

47	Jabez Snow, 1,073$\frac{33}{95}$ tonneaux		146,208 00	..	..	..	..
	Nous déduisons perte sur charte-partie, conclue en partie		54,000 00				L'évaluation des effets personnels et des gages du Capitaine n'est pas faite.
	Nous ajoutons les gages pour 39 hommes durant 8 mois, à l'exception de la moitié des 6 mois accordés du Capitaine.	7,460	92,208 00				
	Effets personnels non compris dans la réclamation	4,850					
			12,310 00				
49	John A. Parks, 1,046$\frac{44}{95}$ tonneaux			104,518 00	..	6,200 00	
	Nous ajoutons les gages pour 38 hommes durant 7 mois, à l'exception de la moitié des 6 mois accordés du premier officier et de 3 matelots	6,215	126,800 50	..	..	..	..
	Effets personnels non compris dans la réclamation	4,700					L'évaluation des effets personnels et des gages du premier officier et de trois matelots n'est pas faite.
			10,915 00				
54	Lafayette, 945 tonneaux			137,715 50	58,201 00		
	Nous ajoutons les gages pour 15 hommes durant 7 mois ..	6,755	121,795 10	..	..	..	..
	Effets personnels non compris dans la réclamation	3,700					Point d'assurance. L'évaluation des effets personnels du Capitaine et du premier officier n'est pas faite.
			10,455 00				
57	Lauplighter, 365 tonneaux			132,250 10			
	Nous ajoutons les gages pour 15 hommes durant 7 mois ..	3,955	27,950 00	..	..	..	..
	Effets personnels non compris dans la réclamation	2,950					L'évaluation des effets personnels de John Payne (deuxième officier?) n'est pas faite.
			6,905 00				
61	Louisa Hatch, 853$\frac{37}{95}$ tonneaux			34,855 00	8,000 00	450 00	
	Nous ajoutons les gages pour 31 hommes durant 7 mois ..	6,195	85,380 00	..	..	..	..
	Effets personnels non compris dans la réclamation	4,050					Point d'assurance. L'évaluation des effets personnels du Capitaine n'est pas faite.
			10,245 00				
73	Palmetto, 172 tonneaux			95,625 00			
	Nous ajoutons les gages pour 13 hommes durant 7 mois, à l'exception des 6 mois accordés du Capitaine	2,775	22,833 33	..	..	..	..
	Effets personnels	2,250					L'évaluation des gages et des effets personnels du Capitaine n'est pas faite.
			5,025 33				
74	Rockingham, 976 tonneaux			27,858 33	12,400 00		
	Nous déduisons la réclamation des armateurs pour assurance dans la Atlantic Mutual Insurance Compagnie, vu qu'elle est comprise dans la réclamation même		235,455 55	..	..	..	..
			50,000 00				Remarquez la réclamation du Capitaine pour sa part de commission sur la cargaison. Point de réclamation n'est faite pour l'assurance sur les effets personnels du Capitaine, $3,500. L'évaluation des gages et des effets personnels du Capitaine n'est pas faite.
	Nous déduisons en plus la prime d'assurance		185,455 55				
			7,031 50				
	Nous ajoutons les gages pour 36 hommes durant 8 mois, à l'exception de ceux du Capitaine	6,980	178,421 05				
	Effets personnels non compris dans la réclamation	4,550					
			11,530 00				
				189,951 05	73,500 00		

Page	1. Relevé détaillé.			2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs prntestent contre toute diminution réclamation à cause de l'assurance.	6. Observations.
		$	$ c.	$ c.	$ c.	$ c.	$ c.	
88	S. Gildersleeve, 147$\frac{2}{3}$ tonneaux		35,000 00					
	Nous ajoutons les gages pour 31 hommes durant 9 mois ..	7,965						
	Effets personnels " " ..	5,050						
			13,015 00					
				48,015 00	35,000 00			
116	Wave Crest, 408$\frac{53}{95}$ tonneaux		59,264 10	..	..	..	..	L'évaluation des effets personnels et des gages du Capitaine et du "steward" n'est pas faite.
	Nous ajoutons les gages pour 17 hommes durant 7 mois, à l'exception de ceux du Capitaine et du "steward" ..	3,215						
	Effets personnels non compris d ns la réclamstion	2,150						
			5,365 00					
				64,629 10	22,800 00			
				1,396,430 83	259,081 00	79,465 00	..	

(Classe C.)—ALABAMA.

		$	$ c.	$ c.	$ c.	$ c.	$ c.	
7	Amanda, 598$\frac{3}{95}$ tonneaux..		69,853 01	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels du Capitaine et de l'officier ni des gages du Capitaine.
	Nous ajoutons les gages pour 23 hommes durant 11 mois ..	6,325						
	Effets personnels non compris dans la réclamation	2,500						
			8,825 00					
				78,678 01	2,500 00			
8	Amazonian, 480 tonneaux		136,702 82	..	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine et de l'officier. Charte partie.
	Nous ajoutons les gages pour 19 hommes durant 8 mois ..	5,160						
	Effets personnels non compris dans la réclamation	1,750						
			6,910 00					
				143,612 82	50,883 00	36,544 00		
13	Anna F. Schmidt, 714 tonneaux		291,654 49	..	..	..	..	Remarquez la réclamation $20,000 pour réassurance. Aucune évaluation des effets personnels du Capitaine n'est faite.
	Nous ajoutons les gages pour 29 hommes durant 12 mois ..	10,140						
	Effets personnels non compris dans la réclamation	3,750						
			13,890 00					
				308,514 49	211,463 00			

29	Contest, 1,098 tonneaux		142,865 97	..	..	..	..	
	Nous ajoutons les gages pour 40 hommes durant 10 mois ..	10,650						

			6,910 00	143,612 82	50,883 00	36,544 00		
13	Anna F. Schmidt, 714 tonneaux		294,654 49	..	..	..	..	Remarquez la réclamation $20,000 pour réassurance. Aucune évaluation des effets personnels du Capitaine n'est faite.
	Nous ajoutons les gages pour 29 hommes durant 12 mois ..	10,140						
	Effets personnels non compris dans la réclamation	3,750						
			13,890 00					
				308,544 49	211,463 00			

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29	Contest, 1,098 tonneaux		142,865 97	..	..	..	..	Aucune évaluation des effets personnels du Capitaine n'est faite.
	Nous ajoutons les gages pour 40 hommes durant 10 mois ..	10,650						
	Effets personnels non compris dans la réclamation	4,950						
			15,600 00					
				158,465 97	100,000 00			
32	Doress Prince, 700 tonneaux		59,814 60	..	..	..	..	Aucune évaluation des effets personnels du Capitaine n'est faite.
	Nous ajoutons les gages pour 26 hommes durant 8 mois ..	6,280						
	Effets personnels non compris dans la réclamation	3,550						
			9,830 00					
				69,644 60	55,026 00			
34	Dunkirk, 293$\frac{3}{95}$ tonneaux		51,285 56	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels du Capitaine et du premier officier ni des gages du Capitaine.
	Nous ajoutons les gages pour 13 hommes durant 7 mois ..	2,625						
	Effets personnels non compris dans la réclamation	1,500						
			4,125 00					
				55,410 56	21,250 00	..	8,000 00	
41	Golden Rule, 254$\frac{70}{100}$ tonneaux		91,015 70	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels du Capitaine et de l'officier.
	Nous ajoutons les gages pour 13 hommes durant 7 mois ..	2,675						
	Effets personnels non compris dans la réclamation	2,150						
			5,825 00					
				96,840 70	34,794 00			
58	Lauretta, 284 tonneaux		30,339 61					
	Nous ajoutons les gages pour 13 hommes durant 7 mois ..	3,675						
	Effets personnels	3,250						
			6,925 00					
				37,264 61	12,200 00			
63	Martaban, 707$\frac{22}{100}$ tonneaux		57,962 75	..	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine.
	Nous ajoutons les gages pour 27 hommes durant 10 mois ..	8,050						
	Effets personnels non compris dans la réclamation	3,650						
			11,700 00					
				69,662 75				
71	Olive Jane, 359$\frac{30}{95}$ tonneaux		92,028 66	..	..	..	..	Aucune évaluation n'est faite pour les gages et les effets personnels du Capitaine.
	Nous ajoutons les gages pour 15 hommes durant 7 mois ..	2,905						
	Effets personnels non compris dans la réclamation	2,150						
			5,335 00					
				97,383 66	10,261 66			
73	Parker Cook, 136 tonneaux		23,064 66	..	..	..	..	Aucune évaluation n'est faite pour les gages du Capitaine après la prise du bâtiment.
	Nous ajoutons les gages pour 13 hommes durant 12 mois ..	2,775						
	Effets personnels non compris dans la réclamation	2,250						
			5,025 00					
				31,089 56	25,399 00			
76	Sea Bride, 447$\frac{3}{95}$ tonneaux		116,594 12	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels du Capitaine ni pour ses gages après la prise du bâtiment.
	Nous ajoutons les gages pour 18 hommes durant 12 mois ..	6,600						
	Effets personnels non compris dans la réclamation	2,750						
			9,350 00					
				155,941 12	..	20,000 00	37,000 00	

Page	1. Relevé détaillé.			2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
		$	$ c.	$ c.	$ c.	$ c.	$ c.	
91	Talisman, 1,237 tonneaux		233,355 00	..	..	..	..	
	Nous ajoutons les gages pour 44 hommes durant 8 mois ..	8,560						Aucune évaluation n'est faite pour les effets personnels et les gages du deuxième officier.
	Effets personnels non compris dans la réclamation	5,850						
			14,410 00					
				247,765 00	115,500 00	20,000 00	16,000 00	
78	Sea Lark, 973 tonneaux		366,055 14	..	..	..	..	
	Nous déduisons: erreur d'addition		54,500 00					Aucune évaluation n'est faite pour les effets personnels du Capitaine.
			311,555 14					
	Nous ajoutons les gages pour 35 hommes durant 8 mois ..	7,720						
	Effets personnels non compris dans la réclamation	4,450						
			12,170 00					
				323,725 14	120,899 00	21,000 00		
95	Thomas B. Wales, 599$\frac{43}{95}$ tonneaux..		230,786 24	..	..	..	..	
	Nous ajoutons les gages pour 23 hommes durant 11 mois ..	7,975						Aucune évaluation n'est faite pour les effets personnels du premier officier.
	Effets personnels non compris dans la réclamation	2,500						
			10,475 00					
				241,261 24	168,370 84	5,000 00		
99	Tycoon, 717$\frac{14}{95}$ tonneaux		447,399 38	..	..	..	..	
	Nous ajoutons les gages pour 27 hommes durant 8 mois ..	5,540						Remarquez la réclamation pour commission de $346,499, et celle de Wm. H. Battelle de $40,000 pour pertes, emprisonnement, &c. Aucune évaluation n'est faite des effets personnels du Capitaine ni de ses gages après la prise du bâtiment.
	Effets personnels non compris dans la réclamation	3,650						
			9,190 00					
				456,589 38	189,469 00	16,755 00		
110	Union Jack, 482$\frac{81}{95}$ tonneaux		172,234 63	..	..	..	..	
	Nous ajoutons les gages pour 19 hommes durant 8 mois ..	3,960						Aucune évaluation n'est faite pour les effets personnels et les gages du Capitaine.
	Effets personnels non compris dans la réclamation	2,850						
			6,810 00					
				179,044 63	53,763 00	10,000 00	4,000 00	
118	Winged Racer, 1,767$\frac{14}{95}$ tonneaux		365,767 91	..	..	..	..	
	Nous ajoutons les gages pour 62 hommes durant 10 mois ..	13,700						Aucune évaluation n'est faite pour les effets personnels du Capitaine et des officiers, ni pour les gages du Capitaine.
	Effets personnels non compris dans la réclamation	6,400						
			20,100 00					
				385,867 91	..	21,000 00		
62	Manchester, 1,062 tonneaux		161,155 92	..	..	..	..	
	Nous ajoutons les gages pour 38 hommes durant 7 mois ..	7,175						Aucune évaluation n'est faite des
	Effets personnels non compris dans la réclamation	4,750						
			11,925 00					

	Effets personnels non compris dans la réclamation	3,960						
		2,850						
			6,810 00					
118	Winged Racer, 1,767$\frac{14}{95}$ tonneaux		365,767 91	179,044 63	53,763 00	10,000 00	8,000 00	
	Nous ajoutons les gages pour 62 hommes durant 10 mois ..	13,700	..	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels du Capitaine et des officiers, ni pour les gages du Capitaine.
	Effets personnels non compris dans la réclamation	6,400						
			20,100 00					
				385,867 91	..	21,000 00		
62	Manchester, 1,062 tonneaux		161,155 92	..	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine.
	Nous ajoutons les gages pour 38 hommes durant 7 mois ..	7,175						
	Effets personnels non compris dans la réclamation	4,750						
			11,925 00					
				173,080 92	62,500 00			
				3,309,086 10	1,231,278 50	150,299 00	69,000 00	

(Classe D.)—ALABAMA.

		$	$ c.	$ c.	$ c.	$ c.	$ c.	
28	Chastelaine, 293 tonneaux		11,670 55	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels du Capitaine.
	Nous ajoutons pour gages de 13 hommes durant 7 mois ..	3,675						
	Effets personnels non compris dans la réclamation	2,250						
			5,925 00					
37	Roma Jane, 1,096$\frac{14}{95}$ tonneaux			17,595 55	11,670 55			
	Nous ajoutons pour gages de 40 hommes durant 10 mois ..		86,557 34	..	..	..	..	Dans le cas présent on n'a fait aucune estimation des gages des officiers ou de l'équipage. Remarquez la réclamation qui peut être double jusqu'au montant de $1,452 pour les effets personnels du Capitaine.
	Effets personnels non compris dans la réclamation							
				86,557 34	29,000 00			
46	Highlander, 1,049$\frac{55}{95}$ tonneaux		121,171 00	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels du Capitaine.
	Nous ajoutons pour gages de 38 hommes durant 10 mois ..	10,250						
	Effets personnels non compris dans la réclamation	4,750						
			15,000 00					
				206,171 00	..	36,000 00		
89	Sonora, 707$\frac{88}{95}$ tonneaux		94,511 41	..	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine et du premier officier, ni de leurs gages après la prise du bâtiment.
	Nous ajoutons pour gages de 27 hommes durant 10 mois ..	5,550						
	Effets personnels non compris dans la réclamation	2,900						
			8,450 00					
				102,964 41	30,000 00			
				413,288 35	70,670 55	36,000 00		

(Classes E et F.)—ALABAMA.

			$ c.	$ c.	$ c.	$ c.	$ c.	
21	Ariel (steamer)		10,423 38	..	..	..	..	
				10,423 38	8,500 00			Après qu'on eut retiré des biens de ce navire, il fut relâché sous promesse écrite de rançon.
51	Justina		7,000 00	..	..	..	..	
				7,000 00	..	..	..	Cette réclamation est pour saisie et empêchement de finir le voyage.
64	Morning Star		5,614 40	..	..	..	..	
				5,614 40	..	..	..	Pour dommages résultant de la promesse écrite de rançon que l'Alabama avait donnée après la saisie de Morning Star.

Page	1. Relevé détaillé.			2. Total des réclamations y compris les gages et les effets personnels de l'équipage.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal; si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
		$	$ c.	$ c.	$ c.	$ c.	$ c.	
65	Nora		83,500 00	..	..	..	..	Aucune évaluation n'est faite des effets personnels ou des gages du Capitaine.
	Nous ajoutons pour les gages de 12 hommes durant 7 mois ..	2,275						
	Effets personnels non compris dans la réclamation	2,250						
			4,525 00					
				88,025 00	..	20,000 00		
90	Star Light		6,520 00	..	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine, ni des gages de plus de cinq hommes en outre des officiers.
	Nous ajoutons pour les gages de 8 hommes durant 7 mois ..	2,975						
	Effets personnels non compris dans la réclamation	1,750						
			4,725 00					
				11,245 00				
24	Baron de Castine		1,500 00	.. 1,500 00	..	..	..	Ce navire fut relâché sous promesse écrite de rançon et employ comme cartel.
				123,807 78	85,000 00	20,000 00		

Page	1. Relevé détaillé.			2. Total des réclamations y compris celles des armateurs et des assureurs, mais à l'exception de celles pour les bénéfices purement en perspective, et des pertes provenant de l'interruption des voyages.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution à leur réclamation à cause de l'assurance.	6. Observations.
		$	$ c.	$ c.	$ c.	$ c.	$ c.	
225	Abigail, 309$\frac{73}{95}$ tonneaux		..	254,695 99	..	..	..	Point d'assurance.
	Nous déduisons—							
	Perte provenant de l'interruption du voyage . ..		..	169,849 20				
	Nous ajoutons les gages pour 26 hommes durant 11 mois	12,485		84,846 79				
	Effets personnels	3,200						
				15,685 00				
227	Brunswick, 295$\frac{5}{95}$ tonneaux		..	126,284 50	160,531 79			
	Nous déduisons—							
	Bénéfices en perspective..		..	38,625 00				
	Nous ajoutons les gages pour 27 hommes durant 11 mois	12,265		87,659 50				
	Effets personnels pour 27 hommes	3,950						
				16,215 00				
229	Catharine, 384$\frac{33}{95}$ tonneaux		..	272,108 32	103,874 50	..	24,200 00	
	Nous déduisons—				..	..	..	
	Bénéfices en perspective..				..	..	..	
	Id. id.		104,553 91					
	Id. id.		49,201 87					
	Id. id.		43,051 64					
				196,807 42				
	Nous ajoutons les gages pour 33 hommes durant 12 mois	14,820		75,300 90				
	Effets personnels pour 33 hommes	3,550						
				18,370 00				
					93,670 90	31,676 00		

Page	1. Relevé détaillé.			2. Total des réclamations y compris celles des armateors et des assureurs, mais à l'exception de celles pour les bénéfices purement en perspective, et des pertes provenant de l'interruption des voyages.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution à leur réclamation à cause de l'assurance.	6. Observations.
		$ c.	$ c.	$ c.	$ c.	$ c.	$ c.	
232	Congress, 376 tonneaux	..	184,902 00					
	Nous déduisons—							
	Bénéfices en perspective	..	53,075 00					
			131,827 00					
	Nous ajoutons les gages pour 32 hommes durant 34 mois	41,310 00						
	Effets personnels non compris dans la réclamation ..	4,450 00						
			45,760 00	177,587 00	..	41,000 00		
233	Covington, 350$\frac{21}{33}$ tonneaux	..	127,964 40					
	Nous déduisons—							
	Bénéfices en perspective..	..	61,506 90					
		$	66,457 50					
	Nous ajoutons les gages pour 30 hommes durant 17 mois, et déduisons ceux du Capitaine et d'un matelot	18,445						
	Effets personnels non compris dans la réclamation	3,900						
			22,345 00	88,802 50	15,000 00			
237	Edward, 274$\frac{1}{3}$ tonneaux	..	209,681 00					
	Nous déduisons—							
	Perte de l'interruption du voyage..	..	151,100 00					
			58,581 00					
	Nous ajoutons les gages pour 27 hommes durant 13 mois	14,495						
	Effets personnels pour 27 hommes	4,950						
			19,445 00	78,026 00	..	..	19,875 00	
238	Edward Carey, 353$\frac{43}{93}$ tonneaux							
	Nous déduisons—							
	Bénéfices en perspective..	..	121,382 70					
			66,600 00					

238	Edward Carey, 353$\frac{77}{94}$ tonneaux			121,382 70					
	Nous déduisons—								
	Bénéfices en perspective		66,600 00						
				54,782 70					
	Nous ajoutons les gages pour 31 hommes durant 12 mois, à l'exception de la moitié des gages du Capitaine Baker	13,665 00							Point d'assurance. Remarquez la réclamation du Capitaine pour dommages $10,000.
	Effets personnels non compris dans la réclamation	3,600 00							
			17,265 00						
238	Euphrates, 364$\frac{19}{94}$ tonneaux			72,047 70					
	Nous déduisons—								
	Perte provenant de l'interruption du voyage		181,651 50						
			100,875 00						
	Nous ajoutons les gages pour 31 hommes durant 11 mois, à l'exception de la moitié de ceux du Capitaine	12,470 00							Remarquez la réclamation du Capitaine pour perte sur la cargaison.
	Effets personnels	3,600 00							
			80,776 50						
			16,070 00						
240	Favorite (le port n'est pas indiqué)			96,846 50					
	Nous déduisons—		240,978 41						
	Perte provenant de l'interruption du voyage		87,250 00					9,750 00	
			153,728 44						
	Nous ajoutons les gages pour 27 hommes durant 11 mois	$ 12,265							Remarquez la réclamation du Capitaine pour perte de sa part d'huile $2,709 04c. et celle de Brian, troisième officier, pour sa part dans les prises imaginaires $433 65c.
	Effets personnels pour 27 hommes	3,700							
			15,965 00						
241	General Williams, 419$\frac{43}{95}$ tonneaux			169,693 44					
	Nous déduisons—								
	Bénéfices en perspective		466,934 75						
	Id. id.	196,807 50						50,000 00	
	Id. id.	20,000 00							
		10,000 00							
			226,807 50						
	Nous déduisons erreur dans l'addition		180,127 25						
			89,346 40						
	Nous ajoutons les gages pour 35 hommes durant 15 mois								
			90,780 85						
	Effets personnels pour 35 hommes	19,125							
		4,000							
			23,125 00						
243	Gipsey, 360$\frac{8}{95}$ tonneaux			113,905 85	44,673 20	4,118 80			
	Nous déduisons—								
	Bénéfices en perspective		152,772 75						
	Assurance parce que les armateurs ne réclament que la perte subie par dessus l'assurance	49,075 00							
		24,000 00							
			73,075 00						
	Nous ajoutons les gages pour 31 hommes durant 13 mois, à l'exception de ceux du deuxième officier Braley	12,160 00							
	Effets personnels	3,600 00							
			15,760 00						
				95,457 75	24,000 00				

Page	1. Relevé détaillé.			2. Total des réclamations y compris celles des armateurs et des assureurs, mais à l'exception de celles pour les bénéfices purement en perspective, et des pertes provenant de l'interruption des voyages.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas ou les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution de leur réclamation à cause de l'assurance.	6. Observations.
		$ c.	c.	$ c.	$ c.	$ c.	$ c.	
	Hector, 380$\frac{33}{95}$ tonneaux	..	203,910 80					
	Bénéfices en perspective à déduire	..	99,750 00					
	Nous ajoutons les gages pour 32 hommes durant 14 mois .. .. $ 17,010		104,160 80					
	Effets personnels 4,450		21,460 00	125,620 80	..	..	31,875 00	
245	Killman, 382$\frac{54}{95}$ tonneaux	..	158,176 75					
	Nous déduisons—							
	Bénéfices en perspective	54,675 00						
	Id. id.	545 25	55,220 25					
	Nous ajoutons les gages pour 33 hommes durant 41 mois, à l'exception de la moitié des 9 mois accordés du Capitaine	49,960 00	102,956 50					
	Effets personnels	4,450 00	54,410 00	157,366 50	..	31,250 00		
246	Isaac Howland, 399$\frac{33}{95}$ tonneaux	..	383,149 00	..	..	..	..	Remarquez la réclamation de deux compagnies d'assurance pour une même assurance de $14,000.
	Nous déduisons—							
	Bénéfices en perspective	..	196,158 00					
	Nous ajoutons les gages pour 34 hommes durant 12 mois	15,060 00	186,991 00					
	Effets personnels	3,900 00	18,960 00	205,951 00	..	..	55,500 00	
248	Isabella, 315$\frac{95}{95}$ tonneaux	..	297,237 00					
	Nous déduisons—							
	Bénéfices en perspective	..	174,600 00					
	Nous ajoutons les gages pour 28 hommes durant 30 mois .. .. $ 31,650		122,637 00					
	Effets personnels 5,360		37,350 00	159,987 00	..	1,000 00	21,650 00	
250	Jireh Swift, 454$\frac{75}{95}$ tonneaux	..	225,880 75					
	Nous déduisons—							
	Bénéfices en perspective							

248	Isabella, 315$\frac{4}{94}$ tonneaux			297,237 00						
	Nous déduisons—									
	Bénéfices en perspective			174,600 00						
				122,637 00						
	Nous ajoutons les gages pour 28 hommes durant 30 mois	s	31,650							
	Effets personnels		3,300							
				37,350 00						
					205,951 00	..	..	35,500 00		
					159,987 00	..	1,000 00	21,650 00		
250	Jireh Swift, 454$\frac{7}{95}$ tonneaux			225,880 75						
	Nous déduisons—									
	Bénéfices en perspective			138,087 50						
				87,793 25						
	Nous ajoutons les gages pour 37 hommes durant 12 mois		15,780							
	Effets personnels		3,700							
				19,480 00						
					107,273 25					
253	Martha, 359$\frac{2}{95}$ tonneaux									
	Perte provenant de l'interruption du voyage à déduire			303,858 98						
				192,062 50						
	La réclamation pour ce bâtiment n'est représentée que par $\frac{3}{95}$, nous ajoutons par conséquent $\frac{1}{32}$ de $69,906 25c. pour compléter la réclamation			111,796 48						
				2,255 04						
	Nous ajoutons les gages pour 31 hommes durant 12 mois, à l'exception de la moitié des 9 mois accordés du Capitaine et du premier et deuxième officiers		12,877 50	114,051 52						
	Effets personnels		2,850 00							
				15,727 50						
					129,779 02	..	..	31,200 00		
255	Nassan, 407$\frac{43}{95}$ tonneaux			241,574 50						
	Nous déduisons—									
	Perte provenant de l'interruption du voyage			78,750 00						
				162,821 50						
	Nous ajoutons les gages pour 34 hommes durant 11 mois		13,805							
	Effets personnels pour 34 hommes		4,650							
				18,455 00						
					181,279 50	..	..	72,500 00		
258	Nimrod, 340$\frac{47}{95}$ tonneaux			276,479 87						
	Nous déduisons—									
	Perte provenant de l'interruption du voyage . ..		154,500 00							
	Perte du premier officier sur des bénéfices en perspective		4,000 00							
				158,500 00						
				117,999 87						
	Nous ajoutons les gages pour 30 hommes durant 35 mois		41,125							
	Effets personnels pour 30 hommes		3,000							
				44,125 00						
					162,124 87	..	..	28,000 00		
260	Sophia Thornton, 426$\frac{50}{95}$ tonneaux			140,284 31						
	Nous déduisons bénéfices en perspective			51,100 00						
				89,184 31						
	Nous ajoutons les gages pour 35 hommes à l'exception de la moitié de 9 mois accordés du premier officier		13,575 00							
	Effets personnels pour 35 hommes		4,000 00							
				17,575 00						
					106,759 31	..	..	27,050 00		

Page	1. Relevé détaillé.			2. Total des réclamations y compris celles des armateurs et des assureurs, mais à l'exception de celles pour les bénéfices purement en perspective, et des pertes provenant de l'interruption des voyages.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	4. Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution à leur réclamation à cause de l'assurance.	6. Observations.
		$ c.	$ c.	$ c.	$ c.	$ c.	$ c.	
262	Susan Abigail, 159$\frac{9}{95}$ tonneaux	..	227,848 37					
	Nous déduisons—							
	Perte de bénéfices en perspective	95,975 00						
	„ bénéfice sur commerce manqué	87,750 00						
			184,725 00					
			43,123 37					
	Nous ajoutons les gages pour 27 hommes durant 8 mois	$ 8,920						
	Effets personnels..	4,950						
			13,870 00					
				56,993 37				
263	Waverly, 327$\frac{4}{95}$ tonneaux	..	228,513 25					
	Bénéfices en perspective à déduire	..	110,876 00					
			117,637 25					
	Nous ajoutons les gages pour 29 hommes durant 12 mois	$ 13,860						
	Effets personnels..	4,150						
			18,018 00					
				135,655 25	..	..	31,250 00	
264	William Thompson, 495$\frac{43}{95}$ tonneaux	..	290,843 75					
	Nous déduisons bénéfices en perspective	..	131,250 00					
			159,593 75					
	Nous ajoutons les gages pour 40 hommes durant 11 mois	15,125 00						
	Effets personnels..	6,250 00						
			21,375 00					
				180,968 75	..	..	54,500 00	
265	William C. Nye, 389$\frac{44}{95}$ tonneaux	..	305,837 50					
	Nous déduisons—							

	Effets personnels..		6,250 00	21,375 00	180,968 75	..	..	54,500 00	
265	William C. Nye, 389$\frac{34}{95}$ tonneaux			305,837 50					
	Nous déduisons—								
	Bénéfices en perspective..		218,125 00						
	Réclamation du Capitaine et interruption du voyage		5,000 00						
				223,125 00					
				82,712 50					
	Nous ajoutons les gages pour 33 hommes durant 9 mois	11,115							
	Effets personnels..	4,550							
				15,665 00					
259	Pearl, 195 tonneaux..		..	110,240 50	98,377 50	..	20,000 00		
	Nous déduisons—								
	Bénéfices en perspective..		60,890 00						
	Erreur dans l'addition		10,000 00						
				70,890 00					
				39,350 50					
	Nous ajoutons les gages pour 27 hommes durant 12 mois, à l'exception de 9 mois accordés du premier officier et d'un matelot		12,705 00				..		
	Effets personnels..		3,600 00						
					3,654,235 55				
					46,560 00				
					3,007,675 55	115,349 20	97,368 80	460,350 00	

Après déduction de $46,560 des gages que nous avons comptés de trop par erreur, le total des réclamations se monte à $3,007,675 55 c.

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(Classe B.)—SHENANDOAH.

		$ c.	$ c.	$ c.	$ c.	c.	
226	Alina, 573$\frac{64}{95}$ tonneaux		90,317 43	..	..	..	..	
	Nous ajoutons les gages pour 27 hommes durant 7 mois à l'exception de ceux du Capitaine	$ ..						L'évaluation des effets et des gages du Capitaine n'est pas faite.
	Effets personnels pour 27 hommes	4,035						
		3,150						
			7,185 00					
262	Susan, 134 tonneaux			97,502 43	3,500 00			
	Nous ajoutons les gages pour 13 hommes durant 8 mois à l'exception de ceux de l'officier		14,952 00	..	..	..	..	L'évaluation des effets et des gages du premier officier n'est pas faite.
	Effets personnels	3,600						
		2,500						
			6,100 00					
				21,052 00				
				118,554 43	3,500 00			

2 P 2

(Classe C.)—SHENANDOAH.

Page	1. Relevé détaillé.		2. Total des réclamations y compris celles des armateurs et des assureurs, mais à l'exception de celles pour les bénéfices purement en perspective, et des pertes provenant de l'interruption des voyages.	3. Réclamations concernant les assurances dont les montants sont expressément indiqués dans la réclamation, et qui doivent être ajoutés à la perte des armateurs, y compris les cas où les armateurs ne font aucune réclamation pour l'assurance.	Réclamations concernant les assurances pour être soumises à la décision du Tribunal: si elles doivent être considérées, oui ou non, comme étant comprises dans les réclamations des armateurs.	5. Réclamations concernant les assurances, où les armateurs protestent contre toute diminution à leur réclamation à cause de l'assurance.	6. Observations.
		$	$ c.	$ c.	$ c.	$ c.	
235	D. Godfrey, 299 tonneaux		70,988 00	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine, ni de ses gages après la prise du bâtiment.
	Nous déduisons perte sur vente du bâtiment	13,290					
	Prime d'assurance	460					
			13,750 00				
			57,238 00				
	Nous ajoutons les gages pour 13 hommes durant 8 mois ..	3,300					
	Effets personnels pour 13 hommes	2,250					
			5,550 00				
			62,788 00	47,085 00			
251	Lizzie M. Stacey, 140$\frac{23}{95}$ tonneaux		42,257 50	..	..	..	Aucune évaluation n'est faite des effets personnels du Capitaine et d'un matelot, ni des gages du Capitaine après la prise du bâtiment.
	Nous ajoutons les gages pour 13 hommes durant 8 mois ..	3,300					
	Effets personnels „ „ ..	2,150					
			5,450 00				
			47,707 50	28,000 00			
230	Charter Oak (le port n'est pas indiqué)		32,689 56	..	..	..	Selon toutes les apparences, toutes les réclamations concernant ce bâtiment ne sont pas encore présentées. Le Tribunal décidera si une double réclamation pour un même montant d'assurance $3,500 a eu lieu. Aucune évaluation n'est faite pour les effets personnels du Capitaine.
	Nous ajoutons les gages pour 13 hommes durant 8 mois ..	4,200					
	Effets personnels „ „ ..	2,250					
			6,450 00				
			39,139 56	31,400 00			
			149,635 06	106,485 00			

(Classe D.)—SHENANDOAH.

		$	$ c.	$ c.	$ c.	c.	$ c.	
234	Delphine, 705$\frac{23}{95}$ tonneaux		93,925 00	..	..	..	..	Aucune évaluation n'est faite pour les effets personnels et les gages du Capitaine et de l'officier ni pour leurs gages après la prise du bâtiment. Charte-partie.
	Nous ajoutons les gages pour 26 hommes durant 12 mois ..	10,350						
	Effets personnels „ „ ..	2,800						
			13,150 00					
				107,075 00		9,000 00		
				107,075 00		9,000 00		

Page			
266	Almira, 360 tonneaux ..	Nous estimons la valeur de chaque de ces 8 bâtiments à	$ 80,000
266	Europa, 360 tonneaux ..	Et ajoutons 25 pour cent perte pour interruption du voyage qui n'a pu être fini	20,000
241	General Pike, 313$\frac{3}{4}$ tonneaux	Nous estimons les gages de l'équipage conformément au port des bâtiments, le moins à	12,000
250	James Maury, 394$\frac{63}{95}$ tonneaux	Et ajoutons encore pour l'entretien de l'équipage capturé et frais de port	5,000
255	Milo, 401$\frac{5}{95}$ tonneaux ..		117,000
257	Nile, 360 tonneaux ..	Total pour ces 8 bâtiments	936,000
266	Richmond, port n'est pas indiqué	Perte à cause de vents forcés	22,500
266	Splendid, 360 tonneaux ..	Perte provenant de l'interruption du voyage	15,000
227	Australia		973,500
266	Louisiana		

No. 28.

Lord Tenterden to Earl Granville.—(*Received August* 24.)

My Lord,

Geneva, August 22, 1872.

I TRANSMIT to your Lordship herewith, a copy of a newspaper called the "Swiss Times," which is published in this city, containing abstracts of the Arguments recently presented to the Tribunal by the United States' Counsel.

I have been assured by Mr. Bancroft Davis and Mr. Evarts that copies of these Arguments were not furnished by them, or with their consent, to this newspaper.

I have, &c.

(Signed) TENTERDEN.

No. 29.

Lord Tenterden to Earl Granville.—(*Received August* 24.)

My Lord,

Geneva, August 23, 1872.

YOUR Lordship will have seen, from the Protocol of the proceedings of the Tribunal on the 19th instant, inclosed in my despatch of the 21st instant, that on that day the Tables of figures, with accompanying observations relating to the losses for which compensation is claimed by the United States, were presented to the Arbitrators by Mr. Bancroft Davis and myself in compliance with a request previously addressed to us.

I have the honour to transmit to your Lordship copies of these Tables, with the memoranda annexed to them.

Mr. Davis only presented the Tables and Memorandum on the part of the United States *pro formâ*, stating that they were drawn up in manuscript, and that there had not been time to complete copies for delivery, but that he hoped to be able to furnish them without delay.

As I did not receive copies that evening, I called upon him on the following morning to inquire when they would be ready, and he showed me the Tables in a rough state.

I noticed that certain additions were made for wages of crew and loss of personal effects, but without a closer examination than was afforded to me I could not appreciate their effect. I, however, mentioned this to Mr. Cohen on my return, and he agreed with me that they were probably new claims.

Late in the evening of the 21st I received from Mr. Davis the papers I now forward,* and it then appeared that three classes of new and conjectural or imaginary claims had been introduced. Mr. Cohen, who was with me at the time, took the paper with him to report upon, and same night gave his opinion that there could be no doubt of the fact that these claims had been introduced.

On the morning of the 22nd, I held a consultation with Sir Roundell Palmer, Mr. Bernard, and Mr. Cohen, when it was unanimously agreed that a demurrer must be entered to these claims as being introduced contrary to the Treaty at this period of

* No. 27.

(Classe D.)—SHENANDOAH.

234	Dolphine, 70$\frac{33}{95}$ tonneaux	.. ..	93,925 00	.. ..	.. ..	.. ..	Aucune évaluation n'est faite pour les effets personnels et les gages du Capitaine et de l'officier ni pour leurs gages après la prise du bâtiment. Charte-partie.
	Nous ajoutons les gages pour 26 hommes durant 12 mois	.. 10,350					
	Effets personnels "	.. 2,800	13,150 00				
				107,075 00			
				107,075 00			
						9,000 00	
						9,000 00	

the proceedings, and the Arbitrators requested to disallow the Tables and Memorandum relating to them; and a statement was accordingly drawn up, of which I inclose a copy, which I am to make to the Arbitrators at the meeting to be held this day.

I have, &c.
(Signed) TENTERDEN.

Inclosures 1 and 2 in No. 29.

Memorandum and Tables presented by the United States' Agent.

[See above, No. 27.]

Inclosure 3 in No. 29.

Statement to be made by the British Agent.

[See Protocol No. XXV, p. 310.]

No. 30.

Lord Tenterden to Earl Granville.—(Received August 29.)

My Lord, *Geneva, August 23, 1872.*

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 21st instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 30.

Protocol No. XXIV.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-fourth Conference, held at Geneva, in Switzerland, on the 21st of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal, and the Agents of the two Governments.

The Tribunal continued the consideration of the case of the Shenandoah, by hearing explanations from Sir Roundell Palmer and Mr. C. Cushing.

At the close of his remarks, Mr. C. Cushing requested to be informed by the Tribunal whether the questions outside of that of enlistment, on which the elucidation called for specially turned, remain open before the Tribunal.

After deliberation, a majority of four to one declared the Tribunal sufficiently enlightened.

Count Sclopis then concluded the statement of his opinions, which he had not completed at the meeting of the 19th instant.

Sir Alexander Cockburn, as one of the Arbitrators, then proposed to the Tribunal to require further elucidation by Counsel upon the following question:—

"The legal effect, if any, of the fact that the Florida, after leaving the Bahamas, did, before entering on her employment as a vessel of war, and taking any vessel of the United States, go into Mobile, a Confederate port, and after a delay of four months, proceed from thence on her cruize against the shipping of the United States, under the circumstances appearing in the evidence."

The Tribunal decided to adopt the proposal.

The Conference was then adjourned until Friday, the 23rd instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Argument of Her Britannic Majesty's Counsel on the Question of the Recruitment of Men for the Shenandoah at Melbourne, pursuant to the liberty given by the Resolution of the Tribunal of August 19, 1872.—(Read at the Meeting of the 21st August.)

HER Britannic Majesty's Counsel, being permitted to offer some further observations in explanation of the facts as to the recruitment of men by the Shenandoah at Melbourne, as to which there appeared to the President to be some obscurity in the evidence, takes the liberty to submit the following statement.

Before the Tribunal can hold Great Britain responsible, by reason of this recruitment of men, for the subsequent captures of the Shenandoah, it must be satisfied, (1) that the Government of Great Britain, by its Representatives in the Colony of Victoria, "permitted or suffered" the use of its ports or waters by the Shenandoah for this purpose, if not directly, at least by the want of due diligence to prevent such recruitment; and (2) that the recruitment so made was an augmentation of force necessary to enable the Shenandoah to effect the captures for which Great Britain is sought to be held responsible, and without which those captures could not have been made, and was in this way a direct and proximate cause of those captures.

It cannot be pretended, on the one hand, that Great Britain ought to be held responsible for a recruitment of men by a belligerent vessel which the local Government in no sense "permitted or suffered;" nor, on the other hand, that every act prohibited by the Second Rule of the Treaty of Washington can render the neutral Government responsible for all captures after such act, however remote, indirect, partial, or insignificant may have been the relation of that act, as a cause, to those captures as an effect.

The Shenandoah arrived at Melbourne on the 25th of January, 1865, and the next day she was visited by Captain King, Naval Agent on board of the Bombay, who found that her crew (it is presumed including officers and petty officers) then consisted of seventy men.* Of these seventy, about twenty-three appear to have soon afterwards deserted, having previously served on board of some of the ships which the Shenandoah had taken on her cruize between October 1864 and January 1865. Her force was thus reduced to about forty-seven men, being the same, or nearly the same, number with which her cruize from the Desertas originally commenced; and less by twenty-three men than her force was when she arrived at Melbourne.†

On the day of his entrance into Port Philip, Captain Waddell, when asking permission to make the repairs and obtain the supply of coals, necessary to enable him to get to sea as quickly as possible, and also to land his prisoners, gave a spontaneous promise to "observe" Her Majesty's "neutrality."‡

Care was taken to ascertain, by a proper survey, what repairs were necessary; and, while allowing them to be made, the Governor (3rd February, 1865) ordered a strict supervision, and daily reports, by the Customs authorities, directing every precaution in their power to be taken "against the possibility of the commander of that vessel in any degree extending its armament or rendering the present armament more effective." These orders were transmitted by the Head of the Customs Department to the Harbour Master (February 6, 1865), with a direction that "the proceedings on board the Shenandoah must be carefully observed and any apparent abuse of the permission granted to that vessel with respect to repairs at once reported."§ These orders were strictly acted upon.

On the 7th February leave to land "surplus stores" from the Shenandoah was refused, under the advice of the Attorney-General; and, on the same day, Captain Waddell was informed, that "the use of appliances, the property of the Government, could not be granted nor any assistance rendered by it, directly or indirectly, towards effecting the repairs of the Shenandoah."‖

So matters stood, the most scrupulous and anxious care being taken to prevent any breach of neutrality, till the 10th of February; when Consul Blanchard forwarded to the Governor an affidavit of one John Williams, a coloured man, who had joined the crew of the Shenandoah from the captured ship D. Godfrey, in which he stated that on Monday the 6th February, when he left the ship, "there were fifteen or twenty men concealed in different parts of the ship, who came on board since the Shenandoah arrived in Hobson's Bay, and who told him they came on board to join the ship; that he had cooked for these men; and that three others, who had also joined the Shenandoah in the port, were at the

* British Appendix, Vol. I, p. 499.
† Ibid., pp. 557, 523, and 571.
‡ Lieutenant Waddell to Governor Darling, January 25, 1865. (British Appendix, Vol. I, p. 500.)
§ British Appendix, Vol. I, p. 519. The same as to supplies: (British Appendix, Vol. I, p. 517.)
‖ British Appendix, Vol. V, pp. 76, 77.

some time working on board in the uniform of the crew of the Shenandoah." On the 13th another affidavit of one Madden, who had also belonged to the crew of the D. Godfrey, was added, in which Madden said, that "when he left the vessel on the 7th February, there were men hid in the forecastle of the ship, and two working in the galley, all of whom came on board the vessel since she arrived in the port; and that the officers pretended they did not know that these men were so hid."*

The letter of the 10th February was the first intimation which the Governor ever received of any attempt at a recruitment of men. On the next day, the 11th February, Detective Kennedy was directed to make inquiries on that subject; and he, on the 13th February, reported "that twenty men have been discharged from the Shenandoah since her arrival at this port. That Captain Waddell intends to ship forty hands here, who are to be taken on board during the night, and to sign articles when they are outside the Heads;" adding, "it is said that the captain wishes, if possible, to ship foreign seamen only, and all Englishmen shipped here are to assume a foreign name." He also mentioned certain persons, said to be engaged in getting the requisite number of men; and he named one man, who stated, "about a fortnight ago," that Captain Waddell had offered him 17*l.* to ship as carpenter; and another, as "either already enlisted, or about to be so." But, as to the persons so named, no evidence was then, or at any time afterwards before the departure of the ship, produced by any person in support of the information which had been so given to the detective officer.

To this Report Mr. Nicolson, the Superintendent of Detectives, made the following important addition on the same 13th of February:—

"Mr. Scott, resident clerk, has been informed—in fact, he overheard a person represented as an assistant-purser state—that about sixty men, engaged here, were to be shipped on board an old vessel, believed to be the Eli Whitney, together with a quantity of ammunition, &c., about two or three days before the Shenandoah sails. The former vessel is to be cleared out for Portland or Warrnambool, but is to wait outside the Heads for the Shenandoah, to whom her cargo and passengers are to be transported."†

This statement of Mr. Nicolson, while suggesting that the number of intended recruits might be even larger than that of which Detective Kennedy had received information, pointed to certain definite means, viz., transhipment from another vessel (the Eli Whitney being named), as those by which the recruitment was intended to be made.

The Governor in Council on the same day took these Reports, and also Consul Blanchard's letter of the 10th February, and Williams' affidavit, into consideration. The Law Officers of the Colonial Government had already directed informations to issue, and warrants to be obtained, against such persons as Williams could identify as being on board the Shenandoah for the purpose of enlistment; and it was resolved that the movements of the Eli Whitney (then lying in the bay) should be carefully watched by the Customs Department. This watch was successful in preventing the accomplishment of the suspected design by means of that vessel, if it had, in fact, been entertained.‡

A circumstance which occurred on the following day, the 14th of February, was calculated to confirm the impression that, if any such purpose really existed, its accomplishment was likely to be attempted by means of some auxiliary vessel lying outside the line of British jurisdiction. Captain Waddell on that day inquired by letter of the Attorney-General, in what precise way the line of British jurisdiction at Port Phillip was considered to be measured by the authorities. An answer to this inquiry, without explanation of the purpose with which it has been made, was most properly refused.§

A warrant having been issued for the apprehension of one of the men, said to be on board the Shenandoah and passing by the name of Charley, Mr. Lyttelton, Superintendent of Police, went on the 13th February on board the ship to execute it, but was met by the objection of the privileged character of the vessel as a public ship of war. Captain Waddell was then absent; but on the next day, the 14th, when Mr. Lyttelton returned, he repeated this objection, adding:—

"I pledge you *my word of honour, as an officer and a gentleman*, that I have not any one on board, nor have I engaged any one, nor will I while I am here."‖

The Governor then considered it right, since Captain Waddell refused to permit the execution of the warrant on board the ship, to suspend the permission which had been given for her repairs, and to take care that a sufficient force was in readiness to enforce that order of suspension. This was done, by a public notice, on the same day (14th February, 1865).¶ Captain Waddell thereupon remonstrated by letter of that date.**

* British Appendix, Vol. I, pp. 606, 608. † Ibid., p. 523. ‡ Ibid., p. 521.
§ Ibid., Vol. V, pp. 78, 79. ‖ Ibid., Vol. I, p. 524. ¶ Ibid., p. 525. ** Ibid., p. 644.

"The execution," he said, "of the warrant was not refused, as no such person as the one specified was on board; but permission to *search* the ship was refused." . . . . . "Our Shipping Articles have been shown to the Superintendent of Police. All strangers have been sent out of the ship, and *two commissioned officers were ordered to search if any such have been left on board. They have reported to me that, after making a thorough search, they could find no person on board except those who entered this port as part of the complement of men. I, therefore, as Commander of the ship, representing my Government in British waters, have to inform his Excellency that there are no persons on board this ship except those whose names are on my Shipping Articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port; nor have I, in any way, violated the neutrality of the port.*"

On the next day, however (the 15th), certain men, who had been on board, as described in Williams' and Madden's affidavits, left the Shenandoah, four of whom, being observed, were captured on landing; and among these was Charley, for whose apprehension the warrant had been issued. An officer of the Shenandoah was seen at the gangway of the ship, apparently directing the boatmen who took those four men on shore; and the men themselves stated to the Superintendent of Police "*that they had been on board a few days unknown to the Captain; and that, as soon as he found they were on board, he ordered them on shore.*"* Captain Waddell, when informed by the head of the Customs Department (15th February, 1865) of the arrest of these men, and reminded by him that they were thus proved to have been on board on the two previous days, when their presence was denied by the officer in charge, and by himself, "necessarily without having ascertained by a search that such men were not on board," answered thus:—

"The four men alluded to in your communication are no part of this vessel's complement of men; *they were detected by the ship's police, after all strangers were reported out of the vessel, and they were ordered and seen out of the vessel by the ship's police immediately on their discovery*, which was after my letter had been dispatched, informing his Excellency the Governor that there were no such persons on board. *These men were here without my knowledge, and I have no doubt can be properly called stowaways; and such they would have remained, but for the vigilance of the ship's police; inasmuch as they were detected after the third search;* but in no way can I be accused, in truth, of being cognizant of an evasion of the Foreign Enlistment Act."†

In the depositions of Williams and Madden, taken before the magistrate on the 16th February, it was stated that certain of the subordinate officers of the ship (not Captain Waddell) were cognizant of the presence of Charley in the forecastle of the ship; but these statements were not confirmed by the other witnesses; and no similar evidence was given as to the rest of the prisoners.‡ The particular officers of the Shenandoah, as to whom these statements were made by Williams and Madden, published on the same day in the "Argus," a Melbourne newspaper, declarations signed with their names, most positively denying all the statements affecting them; and one of them, Acting-Master Bullock, said that he had been often asked by persons on board if they could be shipped; and had invariably answered,—"*We can ship no man in this port, not even a Southern citizen.*"§

This was the position of matters when the 17th of February arrived: the reports of the detective officers had preceded, not followed, the investigations with respect to the men alleged to be actually on board for the purpose of enlistment, and the solemn and repeated declarations and promise of Captain Waddell, on the word of a gentleman and an officer, confirmed by the declarations of the other officers of the ship. The Eli Whitney had been strictly watched. No further definite information had reached the Government; who believed that all the men who had been secreted on board the Shenandoah had actually left the vessel.‖ Mr. McCulloch, the Chief Secretary of the Government, and Mr. Harvey, the Minister of Public Works, expressly so stated, in the Debates of the Legislative Council of the 15th and 16th February; the latter Minister saying (15th February),¶ "It was now known that several men who shipped in Hobson's Bay had escaped, in addition to the four who were captured." And although, on the 17th February, Consul Blanchard again requested attention to the statement contained in the affidavits originally sent (and in certain other affidavits of persons who were also produced as witnesses against the four prisoners), that there had been, at the dates when those witnesses left the vessel, ten or more persons on board under similar circumstances (the witnesses speaking with wide variations as to the number);** this was not inconsistent with the belief of the Government

* British Appendix, Vol. I, pp. 527, 542, 545, and 572.

† Ibid., pp. 645, 646.

‡ Ibid., pp. 537, 545.

§ British Appendix, Vol. I, p. 547, 548.—It appears from the depositions that there were at this time (and, indeed, until the vessel left the port) many men working on board; and it may be collected also from the depositions that the four prisoners came or remained on board of their own accord, being desirous of going to sea in her; although the fact that they were there may subsequently have come to the knowledge of some of the officers.

‖ See, also, Lord Canterbury's despatch of November 6, 1871. British Appendix, Vol. V, p. 61.

¶ British Appendix, Vol. I, p. 633, 636.

** Ibid., pp. 615, 606, 611.

that all such persons had afterwards left the ship; especially as, in the depositions of the same witnesses before the magistrate (except that of Williams in one case, on cross-examination), no mention whatever was made of any such other persons; which was also the case on the subsequent trial, in March following.* It is further to be remembered, that on the 17th February the prosecutions against these four men (who were not tried till the 17th March), were actually pending.

As matters then stood, however unsatisfactory some of the circumstances might have been, it would be very difficult for any candid mind to draw a sound distinction between the position of Captain Waddell with respect to the men alleged by him to be "stowaways," and that of Captain Winslow, of the United States' ship Kearsarge, with respect to the sixteen or seventeen men taken in that ship from Queenstown to the coast of France.† If Captain Winslow, as a man of honour, was properly exonerated upon his own solemn assurance, from responsibility for that act, in which some of his subordinates must have, to some extent, participated, and as to which his own conduct on the French coast, before he sent the men back, was certainly not free from indiscretion,—can it be imputed as a want of due diligence to the Government of Melbourne (whose good faith and vigilance had otherwise been so manifestly proved) that although not entirely satisfied with Captain Waddell's demeanour or conduct, they accepted the solemn assurances of not one, but several officers, of the same race and blood, and with the same claims to the character of gentlemen, as the officers of the United States?

In the Memorandum sent home by Lord Canterbury on the 6th of November, 1871, signed by the gentlemen who were the Chief Secretary, Commissioner of Customs, Minister of Justice, and Attorney-General of the Colony when the Shenandoah was at Melbourne, it is thus stated:—

"Whilst the Shenandoah was in port, there were many vague rumours in circulation that it was the intention of a number of men to sail in her; but *although the police authorities made every exertion to ascertain the truth of these rumours*, yet (with the exception of the four men above alluded to) nothing sufficiently definite to justify criminal proceedings could be ascertained; indeed, at the best, these rumours justified nothing more than suspicion, and *called only for that watchfulness which the Government exercised to the fullest extent in its power*. It was not until after the Shenandoah had left the waters of Victoria that the Government received information confirming in a manner the truth of these rumours."‡

In the report from the office of the Chief Commissioner of Police, dated October 26, 1871, it is also stated, that "on the 16th February representations were again made to the Government that the Foreign Enlistment Act was being violated; *and the police were instructed to use their utmost efforts to prevent this*; but, as no visitors were allowed on board the Shenandoah, under any pretence, for three days before she sailed, and in the absence of any of Her Majesty's ships in our waters at the time, the efforts of the water police were necessarily of little avail."§

Late in the afternoon (about 6 P.M.) of the 17th February, the United States' Consul received information from one Forbes, which was afterwards, on the same evening, reduced into the shape of an affidavit, and intrusted to a Mr. Lord, with a view to being placed in the hands of the water police; too late, however (in Mr. Lord's judgment), to be so acted upon. From the haste with which the Consul was obliged to act in this matter, and the inability of the Crown Solicitor to take the affidavit, some misunderstanding arose; which, however, ceases to be in any way material, when the substance of the information is regarded. What was that information? That five persons, named by Forbes, standing on the railway pier at Sandridge, at 4 o'clock P.M., on the 17th of February, admitted to him (by the statement of one of them, made in the presence of the rest) that they were "*going on board the Maria Ross, then lying in the bay ready for sea;*" and that "*when the Shenandoah got outside the Heads, the boats from the Maria Ross were to come to take them on board at 5 o'clock;*" adding, "*that there were many more, besides his party, going the same way.*"‖

This statement, so far as it may be considered to have reached any officer of the Government in time for action, directed their attention positively and exclusively to the Maria Ross, as the medium intended to be used for the apprehended recruitment. The Government did their duty vigilantly with respect to this ship, the Maria Ross. She was twice searched; once by the crew of the Customs boat, and once again at the Heads; and it was proved to the satisfaction of Detective Kennedy (nor is there any reason now to doubt the fact) that, when she sailed on the morning of the 18th February, there were no men on board her, except her crew.¶

* British Appendix, Vol. I, pp. 537, 545, 568, 571.

† See United States' Appendix, Vol. II. pp. 419–454; particularly pp. 429, 430, 434, and 448

‡ British Appendix, Vol. V, p. 62. § Ibid., p. 121. ‖ Ibid., Vol. I, p. 555. ¶ Ibid., Vol. V, pp. 120, 121.

The information which had thus been given as to the supposed intention to transfer men to the Shenandoah from the Maria Ross may perhaps supply an intelligible reason for the fact, that, on the night of the 17th, the police boat, instead of remaining off shore, pulled in the direction of that part of the bay in or near which the Shenandoah was lying.*

Of the shipment of men, which did undoubtedly take place on the night of the 17th February just before the Shenandoah left, whatever may have been its real amount, and of the means by which it was accomplished, the Government of Victoria had neither knowledge nor means of information. The best evidence of the facts relating to it is that which was collected shortly after the Shenandoah had sailed by the Government of Melbourne itself, and which was published at the time, without the least disguise, by Her Majesty's Government. The substance of that evidence shall here be concisely stated; and some remarks must afterwards be made on the affidavit of Temple, sworn at Liverpool in December 1865, and on that of Ebenezer Nye, sworn in the United States on the 22nd September, 1871.

The Melbourne newspapers of the 20th February, 1865, spoke of certain rumours (which were believed to be partially true, though exaggerated as to number) that the Shenandoah had taken away with her "about 80 men." These reports were at once ordered to be investigated by the police. It appeared that seven men of Williamstown, who had been employed in coaling the Shenandoah, went on board her on the morning of the 18th, just as she sailed, under pretence of getting paid for their work, and did not return. So far, inquiry seems to have been made as to the occasion for their going. They went by daylight, and the occasion alleged was credible and lawful. Other men were taken off in boats between 9 o'clock P.M. and midnight on the 17th, from the Sandridge Railway Pier: their numbers were variously reported. According to the information obtained by Detective Kennedy, chiefly from Robbins, there were five boats employed; according to that of Superintendent Lyttelton, about 40 men were in the *scrub* near the pier, and three other boats went off with *eighteen* men. There was (according to the boatmen) an officer of the Shenandoah standing on the pier. Constable Minto, who was on duty at the pier at 9 P.M. on that evening, "observed three watermen's boats leave the pier and pull towards the Shenandoah, each boat containing about six passengers;" and saw a person in plain clothes, whom he believed to be an officer of that ship, superintending the embarkation. He was succeeded on duty by another constable, named Knox, who, on Minto's return at midnight, told him that, "during the absence of the police boat (which had pulled off, as already stated, into the bay) three or four boats had left the pier for the Shenandoah, containing in all about twenty passengers."† Besides these, it appears that one officer (Blacker) joined the Shenandoah, from a ship called the Saxonia, under circumstances of which the Colonial Government could have had no notice whatever.

It is impossible to rely on the accuracy, as to numbers, of these estimates, which, if taken at their maximum, would appear to give about thirty eight or forty men, exclusive of the seven others from Williamstown, who went on the morning of the 18th February. But of these, again, it would be very hazardous to assume that all were recruits, whether British subjects or foreigners. Some (a very few only were identified by name) were undoubtedly both recruits and British subjects; and whether the number of them was greater or less, the offence of Captain Waddell was very justly regarded by Governor Darling as a serious one against Her Majesty's neutrality. But it is consistent with all probability and experience that some of the proper crew of the Shenandoah may have remained on shore (as sailors constantly do) to the last moment, and may have returned with or without baggage. Justice would hardly be done to the policemen, Minto and Knox, if this habit of sailors, and also the fact that they are often accompanied by their friends to the ship, when nothing wrong is intended, were not borne in mind. Those two policemen appear to have told their story without any sign of consciousness that the circumstances had made it their duty to interfere with the boats and persons in question. If, in this respect, they should be deemed to have misconceived or to have failed in their duty, it is surely out of the question to hold Great Britain responsible on that account.

It now becomes necessary to advert to the part taken by George Washington Robbins (whose affidavit, sworn on the 21st of September, 1871, is made part of their evidence by the United States) as to this transaction. Robbins was a stevedore at Melbourne; he gave information, at the time of the inquiry there, as to these events, to the Melbourne police and others. He stated to Detective Kennedy‡ that between 10 and 11 o'clock at night, on

† Ibid., pp. 550-553.

*. British Appendix, Vol. I, p. 551.

‡ Ibid., p. 550.

the 17th of February, he was himself in a boat alongside the Shenandoah, and saw Riley's boat (with twelve men), and four other boats, put men on board that vessel. He also stated to Superintendent Lyttleton* that "he passed across the bay on that night, with a message from the American Consul to the police, to the effect that the Shenandoah was shipping men on board; and, on his way, saw a boat pulled by Jack Riley and a man named Muir; they had about twelve men in the boat. On his return, Riley and Muir, being alone, pulled off from the Shenandoah."

Consul Blanchard (to Mr. Seward, February 23) says:—†

"During the night several persons endeavoured to find me, to give information of the shipment of men for said vessel. *One Robbins, a master stevedore, found me at* 11 *o'clock p.m.*, and informed me that boatloads of men with their luggage were leaving the wharf at Sandridge, and going directly on board said vessel; and that the ordinary police-boats were not to be seen in the bay. I informed said Robbins that Mr. Sturt, police magistrate, told me the water-police were the proper persons to lodge any information with; and that he, as a good subject, was bound to inform them of any violation of law that came under his notice, which he promised to do. . . . On the 18th of February the aforesaid Mr. Robbins called at the Consulate, and informed me that six boatloads of men left the wharf with their luggage during the previous night, and that they were taken on board said vessel through the propeller's hoist-hole. When asked to give his affidavit, he said, as the officials would take no notice, he would only injure his business by so doing, and he declined. He stated that about seventy men went on board said vessel on the night of the 17th February, and *that some of them took and used his boat to go in.* Captain Sears, of the American barque Mustang, was on the wharf watching; who informs me that he saw several boatloads of men with luggage go to said vessel while lying in the bay; and that he also saw Robbins go to the police."

It is manifest, from all the foregoing evidence, that Robbins did not go to the police till after midnight on the 17th February, when all the men in question had already been shipped. And, if the nature of what was being done was at the time clearly manifest, it might have been expected that some interference by the police would have been previously invited by the American Captain Sears, who witnessed the departure of so many boats full of men. Robbins, in his affidavit of the 21st September, 1871, does not undertake to say more as to the number of men who were shipped than this:—"I know that several men, residents of this port, went on board the Shenandoah in this port, as addition to her crew, and went away in her," naming two individuals who did so. He also there says: "I reported to the water police at Williamstown" (*i.e.*, on the opposite side of the bay, where their station was) "the shipping of the men, but they said they were powerless to interfere without directions from the head authorities in Melbourne."‡ At that time the recruitment of the night in question had been fully accomplished.

It is submitted, that nothing can more plainly establish the good faith and zeal, in this whole matter, of the Government of Victoria, than the resentment which they immediately manifested at the breach of Captain Waddell's honourable engagement and at the violation of Her Majesty's neutrality which had thus taken place. A resolution was at once passed to refuse all further hospitalities to the Shenandoah in the event of her return; and information was promptly given (February 27, 1865) to the Governors of all the neighbouring British Colonies that they might adopt a similar course.§

With respect to Temple's affidavit, its only bearing is upon the question what number of men were shipped by the Shenandoah at Melbourne, and whether those were, or were not, British subjects. Apart from any extrinsic confirmation which it may be considered to receive from more trustworthy quarters, no reliance can be placed upon the truth of any word spoken by this man. He is proved‖ to have offered, in the case of Captain Corbett, to give evidence then admitted by himself to be wilfully false; and in this very affidavit he states several flagrant falsehoods, which he must have well known to be such, as to entertainments alleged by him to have been given on board the Shenandoah, not only to other officers of the Colonial Government, but to the Governor of Victoria, Sir Charles Darling, himself; and also as to assistance in like manner alleged by him to have been given to Captain Waddell, in the repairs of the ship, by the Government Surveyor at Melbourne.¶

What Temple says is, that when the Shenandoah left Port Philip, she had on board "some fifty or sixty persons as stowaways, all British subjects." His means of knowledge as to who were, and who were not, really British subjects, do not appear, and cannot be assumed. In the list appended to his affidavit, the composition of the crew, when the ship arrived at Liverpool in the autumn of 1865, purports to be stated. By that list it is made to appear that she then had 24 officers, and 30 petty officers and men, who were on board

* British Appendix, Vol. I, p. 553. † Ibid., p. 587.
‡ Appendix to United States Counter-Case, p. 1185.
§ British Appendix, Vol. I, p. 565. ‖ Ibid., pp. 710, 711, and 723. ¶ Ibid., pp. 696, 721, and 722.

her at the time of her arrival at Melbourne:—1 officer (Blacker, in place of another who had left her there). and 43 petty officers and men (37 said to be British, and 6 American), who joined her at Melbourne;—and 38 men, obtained from the crews of vessels captured subsequently to her departure from Melbourne. "Some 50 or 60" thus become, even on his own showing, reduced to 44.

It is submitted that nothing is added to the credit or weight of Temple's evidence, on these points, by the remarks made upon it in Governor Darling's despatch to Mr. Cardwell of the 21st March, 1866:—*

> "Having expressed to you in my despatches, to which you refer, my belief that Captain Waddell had, notwithstanding his honourable protestations, flagrantly violated the neutrality he was bound to observe, in the shipment of British citizens to serve on board his vessel, I have read without surprise, but with deep regret, the long list of names furnished by Mr. Temple, *which completely proves that this belief was justly founded.*"

The Governor, without going into any exact computation, was content to take the statement of a man whom in other respects he proved in the same letter to have sworn to deliberate untruths, as sufficient to confirm his own general belief, previously formed and expressed. If Temple is not a trustworthy witness as to details, this cannot make him so; the original grounds of the Governor's own belief remain, as they were before, a far better source of information.

With respect to the affidavit of Ebenezer Nye, of the Abigail (United States' Appendix, Vol. VII, p. 93), he says nothing of his own knowledge, but simply reports information said to have been given to him, after May 1865, on board the Shenandoah, by Mr. Hunt, the master's mate of that ship. Even if there were nothing else by which to test the value of such miscalled evidence, it would plainly be of no value. Hunt is here represented as saying that "forty-two men joined the Shenandoah at Melbourne; that some of them came on board when she first arrived; that the United States' Consul protested against their joining, and the Governor finally attempted to stop them, and to search the ship; but that Captain Waddell would not allow the ship to be searched, though a number of recruits were then on board; that the Governor was then about to seize the vessel, but that Captain Waddell by his firmness, and threats to leave the ship upon the Governor's hands, and to return and report the matter to his Government, obtained her release."

The Tribunal knows, from the contemporaneous documents, what were the real facts, of which this is a garbled and inaccurate version. This same Mr. Hunt also wrote a pamphlet called "The Cruize of the Shenandoah," some extracts from which the United States have made part of their evidence.† In this narrative,‡ after speaking of the progress of the repairs of the Shenandoah at Melbourne, a story, in some respects similar, is told, but with the omission of all the particulars material to the present inquiry. Not one word is there said about recruits: on the contrary, there is an implied denial that, when the temporary suspension of the repairs took place, any recruitment had been attempted or was intended. "The work," he there says, "was nearly completed when an order came from the Governor to seize the ship, a rumour having been widely circulated and believed that he had a number of men on board, intending to take them to sea and enlist them *in violation of the well-established rules of International Law.*" Either Mr. Ebenezer Nye's memory after six years confounded things elsewhere read with Mr. Hunt's representations, or those representations must have had in them, as his "Cruize" itself has, a large element of "romance." Whatever view may be adopted, Mr. Nye's affidavit really adds nothing to the original evidence, from which alone the truth on this subject can be ascertained.

Let it, however, be supposed that the statements of Temple, and of Hunt, according to Nye, might be accepted as accurate; that, in all, forty-two, or even forty-four men, were taken on board the Shenandoah at or from Melbourne. The Shenandoah had lost, at Melbourne, one officer and twenty-three men out of those who constituted her crew when she arrived there (being the men, or the greater number of them, who had previously joined her from captured vessels). By this assumed addition, her number of officers, when she left, was the same, and her complement of men was greater by about twenty only, than when she arrived in the Colony. If such an addition (supposing it were deemed, contrary to the effect of the whole evidence, to have been improperly "suffered" by the Colonial Government) were deemed a sufficient ground for holding Great Britain responsible to the United States for all her subsequent captures, it seems impossible to escape from the conclusion that if the Kearsarge had gone to sea, and made captures with the sixteen or seventeen men on board whom she shipped from Queenstown, the Confederates

* British Appendix, Vol. I, p. 722.

† United States' Appendix, Vol. VI, pp. 694–698.

‡ Ibid., p. 696.

(had they been successful in the war) might have held Great Britain responsible for all the subsequent captures of the Kearsarge; nay, further, that France is, at this moment, *à fortiori*, responsible to the United States for all the captures made by the Florida, after she had been permitted to renovate her crew in that country.

On what ground is it to be assumed that the addition of this number of men was a direct or proximate cause of all or any of those captures, so as to make Great Britain responsible for them?

True it is, that when the Shenandoah came into Port Philip, on the 25th of January, with seventy hands on board, Captain King reported, that "from the paucity of her crew at present she could not be very efficient for fighting purposes."* But she never was meant, and she never was used, for fighting purposes. Her first cruise, after leaving Desertas, began with a complement of officers and men certainly not larger than that which remained in her at Melbourne, after all the desertions which took place there, and before any new enlistments. Yet, with that limited number, she began a series of captures; and, as she made these captures, she increased her crew successively from the vessels taken, the Alina, the D. Godfrey, the L. Stacey, the Edward, and the Susan. If she had left Melbourne without any recruitment whatever, she would have been in quite as good a condition for her subsequent cruise as she was for her original cruise, when she left Desertas. The whaling vessels, which she met with afterwards, could no more have offered resistance to her than the merchant and whaling ships which she had met before.

On the day of her leaving Port Philip (18th February), Consul Blanchard, who had then received all the information which Robbins and others could give him as to the number of men taken on board during the preceding night, wrote thus to Mr. McPherson, the American Vice-Consul at Hobart Town:—"My opinion is that she intends coming there, with a view to complete her equipment; she having much yet to do to make her formidable. She cannot fight the guns she has on board."† In point of fact, her subsequent cruize was conducted exactly as her previous cruize had been, and, on Temple's showing, she added to her crew, during the interval between her leaving Melbourne and her arrival at Liverpool, 38 more men, taken from subsequently-captured vessels—the Hector, Pearl, General Williams, Abigail, Gypsey, W. C. Nye, and Favourite. It is, therefore, perfectly apparent from the whole history of the ship and of both her cruizes, that she was not dependent for her power to make captures upon any addition to the strength of her crew which she received at Melbourne, and that her proceedings would, in all probability, have been exactly the same if she had never received that addition. Can the Tribunal possibly decide that, for the whole losses caused to American citizens by those subsequent proceedings, the nation, in one of whose colonies this recruitment of men (not shown to be a proximate cause of any loss whatever) took place, is to be held responsible?

Finally; it is right that, on the part of Great Britain, but in the interest not of Great Britain alone, but of civilized states in general, the attention of the Tribunal should be seriously directed to the general importance of the question on which it is now about to determine.

The facts, to which the discussion relates, occurred seven years ago in a remote colony distant several thousand leagues from Great Britain. The Governor, who then administered the affairs of the Colony, has long been dead. To hold personal communication with the officials, to obtain from them renewed explanations and interrogate them on points of detail, has been impossible. To expect that the British Government should be able to state with exactness every measure of precaution then adopted, and every order or instruction orally given by the police authorities of the Colony to their subordinates, and to account for and explain every circumstance as to which a doubt may be suggested, would be unreasonable in the highest degree. Nevertheless, the Government of Her Majesty has with an openness, fulness, and precision which it believes to be entirely without example in the history of international controversies, placed before the eyes of the Arbitrators every fact, every direction given to its officers, every act of the Governor of the Colony and his Council, which could be gathered from the records of the Colony or of the Home Government, or could be ascertained by a strict and careful inquiry. This narrative shows that, whatever might have been the feelings and sympathies of the people of the Colony (feelings which, in a free community, no Government attempts to control), there was, from first to last, on the part of the Colonial Government, a sincere and anxious desire to adhere strictly to the line of neutral duty. It is a narrative of renewed and continued precautions, renewed and continued from day to day during the whole time that the cruizer remained in the waters of the Colony. No reasonable person can doubt that any increase of the Shenandoah's armament, any augmentation of her crew, was a thing which the Colonial

* British Appendix, Vol. I, p. 499. † Ibid., p. 617.

Government was really desirous of preventing by all means within its power. No reasonable person can fail to see that prevention, in the latter case, was embarrassed by difficulties, which could only be fully understood by persons actually on the spot, and for which, in judging of the conduct of the local authorities, fair allowance ought to be made. On the night before the Shenandoah left Melbourne, a number of men, taking advantage of those difficulties, contrived to elude the vigilance of the authorities and to get on board the ship, some under cover of the darkness, others under a plausible pretext, which could not be known to be untrue.

Whether on these facts Great Britain is to be charged with a failure of international duty, rendering her liable for all captures subsequently made by the Shenandoah, is the question now before the Tribunal; and it is the duty of the Arbitrators to weigh deliberately the responsibility they would undertake by deciding this question in the affirmative.

They will not fail to observe, that the principle of such a decision is wholly independent of the three Rules. It is a decision on the nature of the proof, on the character of the facts, upon which a belligerent nation is entitled to found a claim against a neutral, and that claim a demand for indemnity against losses sustained in war in which the neutral has no part or concern. It is not confined to maritime wars. It extends, and may be applied, at the will of the belligerent, to any act which a neutral Government is under any recognized obligation to endeavour to prevent. Is it necessary to point out that such a decision will certainly prove a fertile precedent?

Throughout the whole of this controversy Great Britain has steadily maintained one thing,—that, before a heavy indemnity is exacted from a neutral nation for an alleged violation of neutrality, the facts charged should, at any rate, be proved. This is demanded alike by the plainest considerations of expediency and by the most elementary principles of justice. If this Tribunal decides that, in a case of doubt or obscurity,—a case, in other words, in which the proof is imperfect, the fact of negligence not clearly made out, and in which recourse must be had to vague presumptions and conjectures,—the culpability and burthen are to be thrown upon the neutral nation, it will have established a grave and most dangerous precedent,—a precedent of which, in the future, powerful States, under circumstances of irritation, will certainly not be slow to take advantage.

(Signed) ROUNDELL PALMER.

Observations adressées au Tribunal par Mr. Cushing, au nom du Conseil des Etats Unis, le 21 Août, 1872; et Memorandum sur les Enrôlements par le Shenandoah à Melbourne.

Monsieur le Président,
Messieurs du Tribunal,

LA discussion actuelle a son origine dans les doutes exprimés lors de la dernière séance, au sujet du *chiffre* des enrôlements que le Shenandoah a faits à Melbourne. Avant d'émettre ces doutes, tous les membres du Tribunal, l'un après l'autre, avaient annoncé leur opinion à l'égard des points compris dans la question générale de la responsabilité de la Grande Bretagne au sujet des prises faites par le Shenandoah après son départ de Melbourne.

Nous avons préparé un Mémoire, qui démontre jusqu'à l'évidence, l'exactitude des déclarations de Temple, le parfait accord entre ses déclarations et celles de Nye, et qui, à l'appui de ces mêmes déclarations, produit le témoignage de Hunt, officier du Shenandoah. Ce mémoire fait valoir aussi les déclarations d'autres témoins, qui confirment le témoignage de Temple, de Nye et de Hunt. En effet il est hors de doute:—

1. Que le Shenandoah a enrôlé au moins 43 hommes à Melbourne. Ce chiffre est admis aujourd'hui même par Sir Roundell Palmer.

2. Que le Shenandoah n'a licencié a Melbourne que 7 hommes de son équipage, quoique 13 autres l'aient quitté; mais que ces 13 étaient des prisonniers de guerre, qui ne faisaient point partie de l'équipage, et il y a lieu de croire que les 6 ou 7 autres que l'on prétend avoir licenciés à Melbourne, étaient aussi des prisonniers de guerre.

Il s'ensuit qu'il y eut une augmentation de 43 hommes dans l'effectif de l'équipage du Shenandoah.

3. Que le mot "*seamen*" employé par Nye, veut dire "*matelots*," en dehors desquels il y avait à bord du Shenandoah, d'après le récit de Nye lui-même, 60 ou 55 autres personnes, officiers, chauffeurs, *et cétéra*, conformément au récit de Temple et de Hunt.

4. Que sans le renfort apporté à son équipage au moyen de ces enrôlements à Melbourne, le Shenandoah n'aurait pu ni continuer sa croisière, ni par conséquent capturer les baleiniers Américains dans le haut Pacifique.

5. Que dans tout ceci, il y a eu une violation flagrante du droit des gens, et même de la loi municipale Britannique, de l'avis même du Gouverneur, Sir Charles Darling.

6. Qu'enfin, et surtout, il y a ici une violation manifeste de la part des autorités de la Grande Bretagne, de la seconde Règle du Traité, Règle ainsi conçue :—

"Un gouvernement neutre ne doit ni permettre ni tolérer que l'un des belligérants, se serve de ses ports ou de ses eaux comme d'une base d'opération navale contre un autre belligérant; il ne doit ni permettre ni tolérer non plus, que l'un des belligérants renouvelle ou augmente ses approvisionnements militaires, qu'il se procure des armes ou bien encore qu'il recrute des hommes."

Maintenant le Conseil de la Grande Bretagne vient d'adresser au Tribunal des observations non seulement à l'égard du *chiffre* des enrôlements à Melbourne, mais aussi au sujet des relations juridiques de la question de ces enrôlements, comme thèse du droit des gens ou du Traité.

Nous avouons franchement qu'une discussion aussi étendue n'entrait pas dans nos prévisions. Dès lors nous prions le Tribunal très-humblement de nous faire savoir si les questions nouvelles soulevées par Sir Roundell Palmer restent ouvertes devant le Tribunal.

C. CUSHING.

Memorandum sur les Enrôlements pour le Shenandoah à Melbourne.

Mr. Grattan, Consul Britannique à Ténériffe, rend compte le premier du nombre des hommes qui se trouvaient à bord du Shenandoah lorsque ce vaisseau quitta le Laurel. Il dit que le Laurel amena "dix-sept matelots, et vingt-quatre officiers supposés;" et "que quelques hommes de l'équipage du Laurel montèrent sur le Sea King." (British Appendix, vol. iv, § 477.)

Il ne dit pas s'il resta des hommes faisant partie de l'équipage du Sea King à bord de ce vaisseau; mais les dépositions de deux persons transmises par lui dans sa dépêche (Ellison, p. 478; Allen, p. 479; British Appendix, vol. i) montrent qu'un officier arriva de Londres sur le Sea King et que trois hommes de l'équipage restèrent a bord de ce vaisseau.

William A. Temple, matelot à bord du vaisseau, dans une déposition faite sous serment à Liverpool, le 6 Décembre, 1865, donne les noms de deux officiers qui arrivèrent de Londres sur le Sea King, de vingt-deux officers qui passèrent du Sea King à bord du Shenandoah, de quatre matelots et de deux mécaniciens-pompiers qui firent de même, et d'un matelot et deux mécaniciens-pompiers qui arrivèrent de Londres à bord du même vaisseau. Il paraît par l'*affidavit* de George Silvestre (American Appendix, vol. 6, p. 601) que ce dernier arriva aussi sur le Laurel comme matelot et qu'il quitta le Shenandoah à Melbourne; ce serait donc encore un nom à ajouter à la liste de Temple.

En supposant ce qui est évidemment le fait, que Mr. Grattan, sous le terme équipage, a compris les officiers subalternes, les matelots et les mécaniciens-pompiers, il n'existe aucune contradiction entre ces déclarations. M. Grattan donne vingt-quatre officiers au Shenandoah, Temple lui en donne vingt-quatre aussi, dont vingt-deux sont du Shenandoah. Mr. Grattan dit que des dix-sept matelots du Laurel, il y en eut qui n'entrèrent pas dans l'équipage du Shenandoah; Temple, en ajoutant à sa liste le nom de Sylvestre, donne les noms de seize officiers subalternes, matelots, et mécaniciens-pompiers qui quittèrent le Laurel pour s'embarquer sur le Shenandoah, et aussi de trois matelots et mécaniciens-pompiers, qui quittèrent le Sea King dans le même but. Quant au Sea King, ce compte est confirmé par *l'affidavit* de Sylvestre (vol. vi, American Appendix p. 607).

Un troisième récit de cet évènement se trouve dans un livre intitulé "Croisière du Shenandoah" écrit par Hunt, l'un de ses officiers, après la fin de sa croisière, et publié à Londres et à New York en 1867. Il dit que lorsqu'ils quittèrent le Laurel, il n'y avait en tout en fait d'officiers et de matelots que quarante-deux hommes, moins de la moitié de l'effectif régulier (Croisière du Shenandoah p. 24, cité dans le Cas Américain).

Le récit détaillé de Temple ainsi corrigé, donne les noms de quarante-trois personnes se trouvant à bord. Les souvenirs de trois témoins indépendants sont donc sur ce point presque absolument identiques.

Nous avons deux rapports quant au nombre des hommes enrôlés entre le départ du Laurel et l'arrivée du vaisseau à Melbourne; ils se trouvent exprimés comme suit dans le Cas de l'Amérique :—

"L'auteur de la Croisière du Shenandoah dit que quatorze hommes furent enrôlés de la manière suivante : dix furent tirés de l'Alina et du Godfrey, deux de la Susan, et deux du Stacer.

"Temple, dans son *affidavit*, donne les noms de trois hommes tirés de l'Alina, de cinq du Godfrey, d'un de la Susan, de deux du Stacer, et d'un de l'Edouard ;" en tout douze.

Ici encore, la petite différence confirme l'exactitude des souvenirs de chaque témoin.

Selon Hunt, le Shenandoah avait en arrivant à Melbourne cinquante-cinq hommes tout compris. Dans l'affidavit de Temple, en ajoutant Silvestre, nous trouvons les noms de cinquante-cinq hommes, soit vingt-cinq officiers et trente hommes.

D'autres témoignages corroborant ceux-ci, démontrent la vérité de ces déclarations. Dans le sixième volume de l'Appendice Américain, se trouvent plusieurs *affidavits* de personnes qui ont quitté le vaisseau à Melbourne. Brackett (p. 615) dit : "pendant tout le temps que j'ai passé au bord du vaisseau, des trente-cinq hommes environ composant l'équipage du dit vapeur, il y avait," &c. Il déclare aussi qu'avec quatre camarades dont il donne les noms, ils consentirent, pour éviter d'être punis, à servir comme matelots sur le navire. Bolin (p. 615), Ford (p. 612), Scandall (p. 615), Scott (p. 616), Landberg (p. 617), Wicke (p. 625), et Berucke (p. 626), disent la même chose, soit en tout douze personnes. Deux des noms mentionnés par Brackett se trouvent sur la liste de Temple. En ajoutant dix noms à la liste de Temple nous avons quarante, c'est-à-dire, cinq de plus que le nombre donné par Brackett composant à *peu près* l'équipage. En l'ajoutant à la liste de Hunt, nous avons quarante-un qui est le chiffre approximatif donné par le Consul des Etats Unis à Rio Janeiro, d'après les récits des maîtres de vaisseaux pris par le Shenandoah, qui en entrant chez eux avaient passé par cette ville. Le Consul dit :—"Le récit suivant quant au Shenandoah a été fait par des maîtres de vaisseaux qui ont été prisonniers à bord de ce vaisseau. . . . . Il a quarante-trois hommes, presque tous Anglais, outre les officiers." Ces récits furent donnés au Consul Munro par des personnes qui avaient quitté le Shenandoah, après qu'il eut augmenté son équipage, avant d'arriver à Melbourne.

Nous pouvons par conséquent supposer que les chiffres indiqués par Hunt et Temple représentent le nombre des hommes que le vaisseau avait à bord en arrivant à Melbourne.

Cherchons maintenant à savoir combien il en perdit dans cette ville.

L'officier de police, Kennedy de Melbourne, dans son rapport du 13 Février, déclare que vingt hommes ont été renvoyés du Shenandoah depuis son arrivée dans le port. (British Appendix, vol. v, p. 108.)

Temple nous donne les noms de deux hommes qui furent renvoyés, Williams et Bruce, et il ajoute : "quelques hommes quittèrent le vaisseau à Melbourne, mais j'ignore leurs noms." Silvestre dit qu'il quitta le vaisseau à Melbourne (American Appendix, vol. vi, p. 609). Brackett nous donne avec son nom ceux de Madden et de Flood, trois en tout ; Bolin, Scandall, Scott, Landberg, Wicke et Berucke font douze. Il paraît, d'après les affidavits de Bruce (American Appendix, vol. vi, page 505), et de Colby (ibid., p. 607), qu'eux aussi travaillèrent à bord du vaisseau comme membres de l'équipage et le quittèrent à Melbourne. Ainsi il paraît que des vingt hommes, treize étaient des prisonniers qui avaient été obligés de travailler et de servir sur le Shenandoah pour éviter une punition et qu'ils saisirent la première occasion de quitter ce service forcé.

Nous n'avons aucun moyen de savoir positivement dans quelles circonstances les autres s'enrôlèrent ; mais d'après les résultats identiques, tels qu'ils dérivent de plusieurs sources indépendantes, comme nous le verrons plus bas, nous croyons qu'ils ne faisaient pas partie de ceux indiqués par Hunt ou par Temple comme composant l'équipage permanent du vaisseau lorsqu'il arriva à Melbourne mais étaient comme les treize dont nous pouvons donner les noms, des prisonniers qui avaient été forcés de faire ce service contre leur gré.

Nous sommes parfaitement convaincus, qu'à part Silvester, personne ne fut renvoyé du Shenandoah, à Melbourne, excepté des hommes enrôlés contre leur gré dans des vaisseaux capturés.

Nous dirigerons maintenant nos recherches sur le nombre des enrôlements faits à Melbourne.

Le 27 Février, 1865, une semaine environ après le départ du Shenandoah de Melbourne, et alors que sa mémoire était encore fraîche, le Gouverneur, Sir Charles Darling, déclara que les rapports et lettres du Commissaire chef de police à "Victoria ne laissaient aucun doute que la neutralité eût été violée d'une manière flagrante par le

Commandant du Shenandoah qui . . . avait reçu à bord de son vaisseau avant de quitter le port le 18, un nombre considérable d'hommes destinés à augmenter son équipage." (British Appendix, vol. i, p. 565.)

Le rapport dont il est ici question, est probablement celui que l'on trouve à la page 117 du volume 5 de l'Appendice Britannique. Dans ce rapport le *detective* déclare que cinq bateaux remplis d'hommes ont été vus se dirigeant sur le Shenandoah pendant la nuit du 17; l'un d'eux avait à bord dix à douze hommes, dont deux seuls revinrent, et que sept hommes s'étaient embarqués, le 18 au matin. Il termine ainsi son rapport: "En préparant ce rapport le *detective* s'est borné aux faits; mais l'on dit qu'en tout soixante à soixante-dix hommes se sont embarqués sur ce vaisseau, dans ce port."

Les faits cités par le *detective* sont vrais et corroborés par d'autres preuves. Les bruits dont il parlait, étaient exagérés.

L'auteur de la *Croisière du Shenandoah* dit que "l'équipage avait reçu une augmentation mystérieuse de quarante-cinq hommes" (Page 113. Voy. *American Case*). Ce nombre semble être celui qui fut remarqué par ceux qui donnèrent ces informations au *detective*.

Temple donne les noms de 1 officier, 13 officiers subalternes, 19 matelots, 7 mécaniciens-pompiers et 3 soldats de marine, en tout 43 hommes recrutés à Melbourne. Ce récit s'accorde assez avec celui de Hunt et se trouve incidemment confirmé par l'*affidavit* de Forbes au sujet de Dunning, Evans et Green cité dans le cas de l'Amérique.

Selon les chiffres que l'on peut recueillir du récit de Hunt, dans différentes parties de ce récit, le Shenandoah avait alors, après les enrôlements à Melbourne, 101 officiers et matelots.

Selon le récit de Temple, il avait 25 officiers, 30 officiers subalternes, 26 matelots, 9 pompiers-mécaniciens et 3 soldats de marine, en tout 93 hommes.

La petite différence peut s'expliquer par le fait que Hunt, dans son récit rapide, ne fait aucune mention du renvoi des hommes à Melbourne.

Le 27 Mai, le Shenandoah prit et brûla le baleinier Abigail. Mr. Ebenezer F. Nye, le maître de l'Abigail, dans un *affidavit* du 7 Septembre, 1871, dit: "Le Shenandoah, à l'époque où je fus pris à bord, avait un nombre complet d'officiers, mais manquait passablement de matelots, car il n'en avait que quarante ou cinquante, pas la moitié de ce qu'il fallait. Les officiers m'ont dit que leur véritable effectif d'officiers et de matelots aurait dû être de 185, mais à cette époque, il avait tout compris, 105 hommes."

Il paraît, d'après l'*affidavit* de Temple, qu'après avoir quitté Melbourne, et avant la capture de l'Abigail, l'équipage fut augmenté par l'embauchage d'un officier subalterne et de sept matelots tirés de vaisseaux capturés, soit: Park, officier, et Welch, Morris, Adeis, Delombaz, Roderik, Stevenson et Rossel, matelots.

D'après les calculs tirés du récit de Hunt, le Shenandoah devait par conséquent avoir à cette époque, avec cette augmentation, 108 hommes tout compris.

D'après le récit de Temple, il avait 101 hommes, dont 57 officiers et officiers subalternes, et 44 matelots, soldats de marine et mécaniciens.

Ce résultat confirme l'exactitude de l'estimation et les souvenirs de Mr. Nye de la manière la plus frappante.

Après cette époque, Temple représente le Shenandoah comme recevant des enrôlements des vaisseaux capturés comme suit: 1 officier, 21 matelots, 1 mécanicien-pompier, et 9 soldats de marine, en tout 32 hommes. Il représente le vaisseau arrivant à Liverpool avec 133 hommes à bord.

Dans un rapport officiel écrit par le Capitaine Paynter au Contrôleur-Général des Gardes-Côtes Britanniques, daté du 7 Novembre, 1865 (British Appendix, vol. i, p. 675) il est déclaré, "que le Shenandoah a un effectif de 133 officiers et matelots."

Temple, dans son *affidavit* du 6 Décembre suivant, donne des chiffres identiques et ajoute les noms des officiers et des matelots.

Lorsque l'*affidavit* de Temple fut communiqué au Gouvernement Britannique, on chercha à mettre en doute sa véracité en montrant que son caractère n'inspirait pas de la confiance dans ses déclarations; mais on ne chercha nullement à montrer que la liste annexée à son *affidavit* était incorrecte—sans doute parce que les personnes à Liverpool qui connaissaient les faits, savaient que cette liste était vraie. Celui qui éleva ces doutes, fut le Capitaine Paynter, l'officier qui se chargea du Shenandoah, lorsqu'il fut abandonné par Waddell et conformément aux instructions duquel l'équipage fut renvoyé. Il savait par conséquent si ces faits étaient exacts—ou s'ils ne l'étaient pas, il savait où on pouvait trouver les personnes qui pouvaient démontrer leur inexactitude.

En renvoyant l'équipage, il avait sans doute tenu la liste de l'équipage. Si la liste de Temple avait différé de celle-là, il est évident que cette différence aurait été démontrée par un officier désireux de faire passer Temple comme indigne de foi.

La liste donnée par Temple est appuyée :—

1. Par sa véracité intrinsèque.
2. Par son accord avec le récit de Hunt.
3. Par les récits des maîtres des vaisseaux capturés, récits rapportés par le Conseil Munro à Rio Janeiro.
4. Par les *affidavits* de plusieurs matelots, prisonniers relâchés à Melbourne d'un service forcé sur le Shenandoah.
5. Par la lettre du Gouverneur, Sir Charles Darling.
6. Par le rapport du *Détective* Kennedy.
7. Par l'*affidavit* de Forbes.
8. Par l'*affidavit* de Nye, le commandant de l'Abigail.
9. Par le rapport du Capitaine Paynter, au Contrôleur-Général des Gardes-Côtes.
10. Par le fait que le Capitaine Paynter ne pût réussir à en contester l'exactitude, lorsqu'il avait les raisons et les moyens de le faire.

Si l'on doit croire ce récit, 43 personnes recrutées à Melbourne, en violation des devoirs de la Grande Bretagne comme Puissance neutre, s'embarquèrent sur le Shenandoah dans ce port : ce fut 1 officier, 13 officiers subalternes, 19 matelots, 7 mécaniciens-pompiers et trois soldats de marine, et, sans exception, personne dans ce port ne le quitta qui n'eût été d'abord fait prisonnier et obligé par force de faire le service à bord du vaisseau.

Les chiffres de cette écriture sont le résultat d'un examen critique des documents cités ; lorsqu'ils diffèrent de ceux présentés jusqu'ici, ils doivent être pris comme une révision de nos documents précédents.

Genève, le 21 Août, 1872.

(Translation.)

Observations addressed to the Tribunal by Mr. Cushing, in the name of the Counsel of the United States, on the 21st August, 1872; *and Memorandum as to Enlistments for the Shenandoah at Melbourne.*

Mr. President and Gentlemen of the Tribunal,

THE present discussion has its origin in the doubts expressed at the last meeting on the subject of the *number* of men enlisted for the Shenandoah at Melbourne. Previously to the expression of those doubts, all the Members of the Tribunal in succession had announced their opinion on the points involved in the general question of the responsibility of Great Britain with regard to the prizes made by the Shenandoah after her departure from Melbourne.

We have prepared a Memorandum, which proves conclusively the correctness of the statements of Temple, the perfect agreement between his statements and those of Nye, who, in support of these same statements, produces the evidence of Hunt, an officer of the Shenandoah. This Memorandum also adduces the declarations of other witnesses, which confirm the evidence of Temple, Nye, and Hunt. In fact, it is beyond doubt—

1. That the Shenandoah enlisted at least forty-three men at Melbourne. This number is indeed now admitted by Sir Roundell Palmer.
2. That the Shenandoah discharged at Melbourne only seven men of her crew, although thirteen others left her; but that these thirteen were prisoners of war, who did not form part of the crew, and there is reason to believe that the six or seven others who, it is asserted, were discharged at Melbourne, were also prisoners of war.

It follows that the strength of the crew of the Shenandoah was increased by forty-three men.

3. That the word "*seamen*" employed by Nye means "sailors," in addition to whom there were on board the Shenandoah, according to Nye's own account, sixty or fifty-five other persons, officers, firemen, &c., in conformity with the narrative of Temple and Hunt.
4. That without the reinforcement of her crew effected by means of these enlistments at Melbourne, the Shenandoah could neither have continued her cruize, nor consequently have captured the American whalers in the North Pacific.
5. That all this constituted a flagrant violation of international law, and even of British municipal law, in the opinion of the Governor, Sir Charles Darling, himself.
6. That finally, and above all, it constituted a manifest violation, on the part of the British authorities, of the second Rule of the Treaty, which runs thus :—

"A neutral Government is bound not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men."

The Counsel of Great Britain has just addressed to the Tribunal observations, not merely with regard to the *number* of men enlisted at Melbourne, but also on the subject of the legal bearing of the question of these enlistments as a thesis of the law of nations, or of that laid down by the Treaty.

We frankly confess that we did not contemplate so wide a discussion. We therefore respectfully beg the Tribunal to inform us if the new questions raised by Sir Roundell Palmer remain open before the Tribunal.

C. CUSHING.

Memorandum on the Enlistments for the Shenandoah at Melbourne.

Mr. Grattan, British Consul at Teneriffe, is the first who reports the number of men who were on board the Shenandoah when that vessel parted from the Laurel. He says that the Laurel brought "seventeen seamen and twenty-four supposed officers," and that "some of the crew of the Laurel joined the Sea King."—(British Appendix, Vol. 1, p. 477.)

He does not say if any of the crew of the Sea King remained on board that vessel; but the depositions of two persons forwarded by him in his despatch (Ellison, p. 478; Allen, p. 479; British Appendix, vol. 1) show that one officer came out from London in the Sea King, and that three of the crew remained on board that vessel.

William A. Temple, a seaman on board the ship, in a deposition made on oath at Liverpool, the 6th December, 1865, gives the names of two officers who came from London in the Sea King, of twenty-two officers who passed from the Sea King [? Laurel] on board the Shenandoah, of four sailors and two firemen who did the same, and of one sailor and two firemen who came out from London in the same vessel. It appears from the affidavit of George Silvester (American Appendix, vol. vi, p. 608) that the latter also came out in the Laurel as a seaman, and that he left the Shenandoah at Melbourne; this then would be one name more to add to Temple's list.

Supposing, what is evidently the fact, that Mr. Grattan, under the term crew, comprised the petty officers, seamen, and firemen, there is no contradiction between these statements. Mr. Grattan gives the Shenandoah twenty-four officers; Temple also gives her twenty-four, of whom twenty-two were from the Shenandoah [? Laurel]. Mr. Grattan says that of the seventeen seamen of the Laurel there were some who did not join the crew of the Shenandoah. Temple, if we add to his list the name of Sylvester, gives the names of sixteen petty officers, seamen, and firemen, who left the Laurel and joined the Shenandoah, and also of three seamen and firemen who left the Sea King for the same object. As to the Sea King, this account is confirmed by the affidavit of Sylvester. (American Appendix, vol. vi, p. 607.)

A third account of this occurrence is found in a book entitled "The Cruise of the Shenandoah," written by Hunt, one of her officers, after the termination of her cruize, and published at London and New York in 1867. He says that when they parted from the Laurel there were of officers and seamen in all but forty-two men, less than half the regular complement.—(Cruise of the Shenandoah, p. 24, quoted in the American Case.)

The detailed narrative of Temple thus corrected gives the names of forty-three persons on board. The recollections of three independent witnesses are therefore almost identical on this point.

We have two reports as to the number of men enlisted between the departure of the Laurel and the arrival of the vessel at Melbourne; they will be found expressed as follows in the American Case:—

"The author of 'The Cruize of the Shenandoah' says that fourteen were enlisted in this way—ten from the Alina and the Godfrey, two from the Susan, and two from the Stacey."

"Temple, in his affidavit, gives the names of three from the Alina, five from the Godfrey, one from the Susan, two from the Stacey, and one from the Edward;" in all, twelve.

Here, again, the slight difference confirms the correctness of the recollections of each witness.

According to Hunt, the Shenandoah had, on her arrival at Melbourne, 55 men in all. In Temple's affidavit, adding Sylvester, we find the names of 55 persons, namely 25 officers and 30 men.

Other corroborative evidence proves the truth of these declarations. In the sixth volume of the American Appendix are several affidavits of persons who left the vessel at Melbourne. Brackett (p. 615) says, "During the whole time I was on board, out of about thirty-five making the crew of the said steamer, there were, &c." He declares, also, that he and four companions, whose names he gives, consented, in order to avoid punishment, to serve as seamen on board the steamer. Bolin (p. 615), Ford (p. 612), Scandall (p. 615), Scott (p. 616), Landberg (p. 617), Wicke (p. 625), and Berucke (p. 626), say the same thing, making altogether twelve persons. Two of the names mentioned by Brackett are found in Temple's list. Adding ten names to Temple's list, we have forty, that is to say, five more than the number given by Brackett as being *about* the strength of the crew. Adding the same number to Hunt's list, we have forty-one, which is the approximate number given by the United States' Consul at Rio Janeiro, according to the accounts of the masters of vessels captured by the Shenandoah, who had passed through that town on their return home. The Consul says:—"The following statement in regard to the Shenandoah is made by shipmasters who have been prisoners on board of her. . . . . She has forty-three men, nearly all English, besides the officers." These accounts were given to Consul Munro by persons who had left the Shenandoah, after she had augmented her crew, before arriving at Melbourne.

We may, consequently, suppose that the figures given by Hunt and Temple represent the number of men which the vessel had on board on her arrival at Melbourne.

Let us now endeavour to ascertain how many she lost at that town.

Police-officer Kennedy, of Melbourne, in his Report of February 13, states that twenty men have been discharged from the Shenandoah since her arrival at the port (British Appendix, vol. v, p. 108).

Temple gives us the names of two men who were discharged, Williams and Bruce; and he adds:—"There were some men who left the ship at Melbourne, whose names I do not know." Silvester says he left the vessel at Melbourne (American Appendix, vol. vi, p. 609); Brackett gives us, besides his own name, those of Madden and Flood, three in all; Bolin, Scandall, Scott, Landberg, Wicke, and Berucke make twelve. It seems, according to the affidavits of Bruce (American Appendix, vol. vi, p. 505), and of Colby (ibid., p. 607), that they also worked on board the vessel as members of the crew, and left her at Melbourne, Thus it appears that of the twenty men, thirteen were prisoners who had been obliged to work and serve on board the Shenandoah to avoid punishment, and that they seized the first opportunity of leaving this compulsory service.

We have no means of ascertaining positively under what circumstances the others enlisted; but from the identical results, derived from several independent sources, as we shall see further on, we believe that they did not form part of those mentioned by Hunt or by Temple as composing the permanent crew of the vessel when she arrived at Melbourne, but were, like the thirteen whose names we have just given, prisoners who had been compelled to take service against their will.

We are perfectly convinced that, with the exception of Sylvester, no one was discharged from the Shenandoah at Melbourne, excepting men enlisted against their will from captured vessels.

Let us now direct our inquiry to the number of enlistments effected at Melbourne.

On the 27th February, 1865, about a week after the departure of the Shenandoah from Melbourne, and when his memory was still fresh, Governor Sir Charles Darling declared that the reports and letters of the Chief Commissioner of Police left no doubt that the neutrality had been flagrantly violated by the commander of the Shenandoah, who . . . had received on board his vessel before he left the port on the 18th a considerable number of men destined to augment the ship's company. (British Appendix vol. i, p. 565.)

The report which is here alluded to, is probably that which is found at page 117 of vol. v of the British Appendix. In this report, the detective declares that five boats filled with men were seen going off to the Shenandoah during the night of the 17th; one of them having on board from ten to twelve men, of whom only two returned, and that seven men had gone on board on the morning of the 18th. He thus concludes his report: "In preparing this report, the detective has confined himself to facts; but it is stated that, in all, between sixty and seventy hands were shipped at this port."

The facts stated by the detective were true, and are corroborated by other evidence. The reports of which he spoke were exaggerated.

The author of the Cruize of the Shenandoah says, that the "ship's company had received a mysterious addition of forty-five men." (Page 113. See American Case.) This number seems to be that which was remarked by those who gave the information to the detective.

Temple gives the names of one officer, thirteen petty officers, nineteen seamen, seven

firemen, and three marines, in all forty-three men recruited at Melbourne. This account agrees with that of Hunt, and is incidently confirmed by the affidavit of Forbes on the subject of Dunning, Evans, and Green, and quoted in the American Case.

According to the figures which may be gathered from the account of Hunt, in different parts of that narrative, the Shenandoah had at that time, after the enlistments at Melbourne, 101 officers and seamen.

According to the account of Temple, she had 25 officers, 30 petty officers, 26 seamen, 9 firemen, and 3 marines, in all 93 men.

The slight difference may be explained by the fact that Hunt, in his rapid narrative, makes no mention of the discharge of the men at Melbourne.

On the 27th May, the Shenandoah captured and burned the whaler Abigail. Mr. Ebenezer F. Nye, master of the Abigail, in an affidavit of the 7th September, 1871, says, "The Shenandoah, at the time I was taken on board, had a full complement of officers, but was very much in want of seamen, having only 45 or 50, not half the number she needed. The officers told me that her full complement of officers and crew was 185, but at that time she had only 105, all told."

It appears, from the affidavit of Temple, that after having left Melbourne, and before the capture of the Abigail, the crew was increased by the enlistment of a petty officer and seven seamen taken from captured vessels, viz., Park, officer; and Welch, Morris, Adeis, Delombaz, Roderick, Stevenson, and Rossel, sailors.

According to the calculations taken from Hunt's account, the Shenandoah should consequently have had at that time, with this addition, 108 men in all.

According to Temple's account, she had 101 men, of whom 57 officers and petty officers, and 44 seamen, marines, and firemen.

This result confirms in the most striking manner the correctness of the estimate and recollections of Mr. Nye.

After this period Temple represents the Shenandoah as receiving recruits from vessels as follows: 1 officer, 21 seamen, 1 fireman, and 9 marines, captured in all, 32 men. He represents the vessel as arriving at Liverpool with 133 men on board.

In an official Report, by Captain Paynter to the Controller-General of the British Coastguard (British Appendix, vol. i, p. 675), it is stated "that the Shenandoah has a complement of 133 officers and men."

Temple, in his affidavit of the 6th December following, gives similar figures, and adds the names of the officers and men.

When the affidavit of Temple was communicated to the British Government, attempts were made to throw doubts on his veracity by showing that his character did not warrant any confidence in his statements; but no attempt whatever was made to show that the list annexed to his affidavit was incorrect; doubtless, because the persons at Liverpool, who were acquainted with the facts, knew that this list was correct. The person who raised these doubts was Captain Paynter, the officer who took charge of the Shenandoah, when she was surrendered by Waddell, and according to whose instructions the crew were discharged. He, consequently, knew whether these facts were correct; or, if they were not, he knew where to find the persons who could prove them to be incorrect. In discharging the crew, he had, no doubt, kept the muster-roll. If Temple's list had differed from this, it is evident that this difference would have been pointed out by an officer desirous of making Temple appear unworthy of belief.

The list given by Temple is confirmed (1) by its intrinsic veracity; (2) by its agreement with Hunt's account; (3) by the accounts of the masters of other captured vessels, reported by Consul Munro at Rio Janeiro; (4) by the affidavits of several seamen made prisoners, and released at Melbourne from forced service on board the Shenandoah; (5) by the letter of Governor Sir Charles Darling; (6) by the report of Detective Kennedy; (7) by the affidavit of Forbes; (8) by the affidavit of Nye, the commander of the Abigail; (9) by the report of Captain Paynter to the Controller-General of the Coastguard; (10) by the fact that Captain Paynter did not succeed in disputing its correctness, when he had reasons for and means of doing so.

If we are to believe that account, 43 persons recruited at Melbourne in violation of the duties of Great Britain as a neutral Power, shipped on board the Shenandoah at that port; they consisted of 1 officer, 13 petty officers, 19 seamen, 7 firemen, and 3 marines; and, without exception, no one left her at that port who had not originally been made prisoner, and obliged by force to take service on board the vessel.

The figures of this paper are the result of a critical examination of the documents referred to; where they differ from those hitherto given, they must be taken as a revision of our previous documents.

Geneva, August 21, 1872.

Second Statement of Count Sclopis on the case of the Shenandoah, discussed at the Meeting of the 21st August.

Deuxième Partie.

DANS la séance d'avant-hier, placé dans la circonstance très-délicate de déterminer par mon vote la majorité pour la décision du cas aussi grave que compliqué du Shenandoah, je demandais à mes honorables collègues des éclaircissements propres à fixer mes idées agitées par le doute. On me pardonnera ces agitations produites par certaines contradictions apparentes des faits de la cause, et par le désir de ne pas me laisser entraîner par l'ensemble d'apparences qui, bien que rattachées à des motifs plausibles, pouvaient néanmoins être trompeuses.

Je vous demande maintenant, Messieurs, la permission de vous exposer mon opinion, chancelante avant-hier, arrêtée aujourd'hui par suite de la discussion que j'ai soulevée et que vous avez su rendre féconde et décisive par vos lumières.

Je dois d'abord répéter ce que j'ai déjà dit, qu'à mon avis il n'est pas absolument prouvé que le fait des réparations du Shenandoah à Melbourne constitue à lui seul un argument de violation de neutralité. Il est prouvé que ces réparations étaient nécessaires, et il n'est pas démontré que le remplacement de la force de ce vaisseau par suite de ces réparations ait dépassé la mesure de son état précédent.

Il faut donc voir si l'exubérance de l'approvisionnement de charbon et surtout le recrutement clandestin d'une partie de l'équipage, opéré à Melbourne prennent, ou non, le caractère de base d'opérations navales, telle qu'elle est prévue par la 2me règle de l'Article VI.

Le Shenandoah, à son départ d'Angleterre au mois d'Octobre 1864, avait un équipage, d'après les rapports Américains, de 47 hommes.*

Au moment où il quitta le Laurel le Shenandoah n'avait plus que 23 hommes à bord, y compris les officiers.†

Il paraît que dans le trajet de Madère à Melbourne il embarqua bien d'autres hommes, puisque le Gouverneur de Melbourne dit qu'à son arrivée dans l'Hobson's Bay l'équipage du vaisseau se montait à 98 hommes.‡ Il paraît aussi que bon nombre s'en dispersa après cette arrivée, ainsi que le déclare le Capitaine Waddell, puisqu'un officier de confiance du Gouverneur, chargé de prendre des informations confidentielles sur l'état de l'embarcation, ne porte le nombre de l'équipage qu'à 40 ou 50, tous gens grossiers et indisciplinés.§

Il est très difficile de savoir au juste le nombre des hommes qui se trouvaient à bord du Shenandoah quand il partit de Melbourne pour se rendre dans les mers Arctiques.

D'après un rapport de la police de Melbourne‖ le nombre d'hommes embarqués a Melbourne à bord du Shenandoah s'élèverait à 60 ou 70. D'après *l'affidavit* de William A. Temple, l'équipage du Shenandoah à son retour à Liverpool aurait été de 133, nombre qui comprend quelques hommes morts en mer.

Dans la déposition du Capitaine Ebenezer Nye, il est dit que, lorsqu'il passa à bord du Shenandoah le manque de matelots se faisait vivement sentir, puisqu'il n'y en avait que 45, la moitié du nombre voulu. Il y est dit aussi que M. Nye, en s'entretenant avec M. Hunt, second du Shenandoah, lui avait appris que 42 hommes furent enrôlés à Melbourne, que le Capitaine Waddell avait refusé au Gouverneur le droit de visite tandis que *un certain nombre de recrues étaient à bord.* De *l'affidavit* de Temple, il résulte certain détail des hommes qui seraient venus à bord du Shenandoah, sortant de plusieurs navires capturés dans les mers Arctiques. Leur nombre serait de 26, qui, se joignant aux 53, équipage présumé du Shenandoah quittant Melbourne, et en ajoutant les officiers au nombre de 57, donnerait un total de 133, correspondant au chiffre indiqué par Temple, sous la déduction de deux hommes morts en mer.

La personne du témoin a subi, à la vérité, de très-grands reproches, mais dans la lettre de M. Hull à M. Bateson,¶ on trouve nié formellement, au nom du Capitaine Waddell, plusieurs des assertions de Temple, sans qu'on y parle de la liste de l'équipage, qui méritait sans doute une attention spéciale, et qui, cependant, n'est point contestée. Lord Clarendon, lui-même, dans sa lettre à M. Adams du 19 Janvier, 1866, tandis qu'il examine la portée de quelques indications de la liste de Temple, ne fait aucune observation quant à l'exactitude des chiffres.

* Appendice Américain, vol. v, p. 560. † Ibid., p. 610.
‡ Appendix to the British Case, vol. i, p. 564. § Ibid., p. 557. ‖ Ibid., p. 551.
¶ Appendice Américain, vol. iii, pp. 501, 502.

Les officiers légaux de la Couronne, eux-mêmes, dans leur avis du 28 Mars, 1866, tout en refusant d'ajouter foi génériquement aux affirmations de Temple, n'infirment point spécialement sa liste. Ils paraissent croire qu'aucune des personnes à bord du Shenandoah ne s'est rendue coupable d'actions pouvant donner lieu à des poursuites judiciaires, et ils conseillent de laisser tomber l'affaire.

Je résume les documents principaux relatifs à la violation de neutralité.

A Melbourne les autorités crurent généralement que la neutralité avait été violée par le Capitaine Waddell. L'Attorney-General de la colonie, dans son avis du 14 Février, 1865,* avait émis un vote fort sensé, à mon avis, en déclarant que l'exemption dont Waddell prétendait jouir n'était point admissible.

Le Gouverneur s'était rallié à cette opinion en attendant les instructions de Londres.† Les Conseillers Légaux de la Couronne par leur avis du 21 Avril de la même année approuvèrent la conduite du Gouverneur de Melbourne. Ce haut fonctionnaire s'était en effet à la fin formé une idée juste de l'ensemble de l'affaire lorsqu'en s'adressant aux Gouverneurs des colonies de l'Australie et de la Nouvelle Zelande dans une dépêche du 27 Février, 1865,‡ il déclara n'y avoir point de doute, d'après les renseignements qu'il avait recueillis, *que la neutralité avait été notoirement violée par le Commandant du Shenandoah.*

Enfin presque au même jour où les Conseillers Légaux de la Couronne opinaient pour qu'on laissât tomber l'affaire du Shenandoah, le Gouverneur de Melbourne en s'adressant à M. Cardwell lui répétait qu'il croyait que la neutralité avait été *notoirement violée* par le Capitaine Waddell, et qu'il avait lu sans surprise, quoique avec douleur, la liste fournie par M. Temple, qu'il considérait comme une preuve à l'appui de son opinion.§

Enfin dans les observations que Sir Roundell Palmer, Conseil de Sa Majesté Britannique, soumit au tribunal dans la séance du 21 Août on lit: n'y avoir aucun doute qu'il s'opéra embarquement d'hommes dans la nuit du 17 Février au moment où le Shenandoah allait partir.

En présence d'une masse si imposante de déclarations émanées des Autorites Anglaises de Melbourne, en vue de calculs numériques qui, s'ils n'atteignent pas le dernier degré de précision, ne laissent cependant aucun doute que le Capitaine Waddell a effectivement racolé à Melbourne des hommes et les a ensuite embarqués au bord du Shenandoah, pour son expédition contre les baleiniers, je n'hésite plus à reconnaître que la responsabilité du Gouvernement Britannique est engagée envers le Gouvernement des Etats Unis.

Quant à l'approvisionnement de charbon dans une quantité aussi forte que celle qu'il reçut de Liverpool en augmentation de celui dont il était déjà fourni, on ne peut que l'envisager comme un préparatif pour des expéditions hostiles au commerce des Etats Unis, et cela tombe précisément sous la deuxième règle de l'Article VI du Traité.

(Translation.)

Second Part.

IN the sitting of the day before yesterday, being placed in the delicate position of having to determine, by my casting vote, the decision in the case, equally serious and complicated, of the Shenandoah, I applied to my honourable colleagues for elucidations of a nature to determine my opinions, which were affected by doubts. I may be excused this hesitation, caused by certain apparent contradictions in the facts of the case, and by the desire not to allow myself to be led away by a combination of appearances, which, though supported by plausible reasoning, might, nevertheless, be deceitful.

I now beg you, Gentlemen, to allow me to state to you my opinion, hesitating the day before yesterday, confirmed to-day by the results of the discussion which I have elicited, and which you have succeeded in rendering suggestive and decisive by your information.

I ought, in the first place, to repeat what I have already said, that, in my opinion, it is not absolutely proved that the fact of the repairs of the Shenandoah at Melbourne constitutes by itself ground for a charge of violation of neutrality. It is proved that these repairs were necessary, and it is not shown that the replacement of the force of this vessel, by means of these repairs, surpassed the measure of its former condition.

* Appendix to British Case, vol. i, p. 549.
† Ibid., p. 550. ‡ Ibid., p. 565. § Ibid., p. 722.

It remains to be seen, then, whether the excess in the supply of coal, and above all the clandestine recruitment of part of the crew, effected at Melbourne, assume, or not, the character of a base of naval operations, such as is contemplated in the second Rule of Article VI.

The Shenandoah, on her departure from England in the month of October 1864, had a crew, according to the American reports, of 47 men.*

At the time when she parted from the Laurel, the Shenandoah had no more than 23 men on board, including officers.†

It appears that, in the voyage from Madeira to Melbourne, she shipped many more men, since the Governor at Melbourne says that on her arrival at Hobson's Bay the crew of the vessel amounted to 90 men.‡ It appears also that a considerable number dispersed themselves after that arrival, as Captain Waddell declares, since an officer in the confidence of the Governor, instructed to make confidential inquiries as to the state of the vessel, estimates the number of the crew at no more than 40 or 50, all rough and undisciplined men.§

It is very difficult to ascertain exactly the number of men who were on board the Shenandoah when she left Melbourne on her way to the Arctic Seas.

According to a report of the Melbourne police,‖ the number of men shipped at Melbourne on board the Shenandoah was said to amount to 60 or 70. According to the affidavit of William A. Temple, the crew of the Shenandoah on her return to Liverpool amounted to 133, a number which includes some men who had died at sea.

In the deposition of Captain Ebenezer Nye, it is said that, when he came on board the Shenandoah, the want of sailors was much felt, as there were only 45, half the number required. It is said, also, that Mr. Nye, in conversation with Mr. Hunt, Lieutenant of the Shenandoah, learned from him that 42 men were enlisted at Melbourne; that Captain Waddell had refused the Governor the right to search the ship while *a number of recruits were on board*. From the affidavit of Temple may be gathered certain details as to the men who came on board the Shenandoah from several vessels captured in the Arctic Seas. They seem to have been 26 in number, which added to 50, the presumed crew of the Shenandoah on leaving Melbourne, and further adding the officers, 57 in number, would give a total of 133, corresponding to the number given by Temple, with the deduction of the two men who died at sea.

This witness has, no doubt, been much discredited, but in the letter from Mr. Hull to Mr. Bateson,¶ will be found a formal denial, in Captain Waddell's name, of several of the assertions of Temple, without any mention of the list of the crew, which, no doubt, deserved special attention, and which, notwithstanding, is not disputed. Lord Clarendon himself, in his letter to Mr. Adams, of January 19, 1866, while he examines the bearing of some of the remarks in Temple's list, makes no observation as to the correctness of the figures.

The Law Officers of the Crown themselves, in their opinion of the 28th March, 1866, while refusing to attach credence generally to Temple's statement, do not specially discredit the list. They seem to believe that none of the persons on board the Shenandoah had been guilty of acts on which legal proceedings could be founded; and they advise that the matter should be allowed to drop.

I will summarize the principal documents relative to the violation of neutrality.

At Melbourne, the Authorities believed generally that the neutrality had been violated by Captain Waddell. The Attorney-General of the Colony, in his report of the 14th February, 1865,** expressed, as I think, a very sensible opinion, in declaring that the exemption which Waddell claimed was inadmissible.

The Governor had adopted this opinion while awaiting instructions from London.†† The Legal Advisers of the Crown, in their opinion of the 21st April of the same year, approved the conduct of the Governor at Melbourne. That high officer had, in fact, finally formed a correct idea of the whole case, when, writing to the Governors of the colonies of Australia and New Zealand, in a despatch of the 27th February, 1865,‡‡ he declared that there was no doubt, from the information he had collected, *that the neutrality had been flagrantly violated by the commander of the Shenandoah*.

Finally, almost on the same day on which the Law Officers of the Crown reported that the case of the Shenandoah might be allowed to drop, the Governor at Melbourne, writing to Mr. Cardwell, repeated to him that he believed the neutrality had been

* American Appendix, vol. v, p. 560.
† Ibid., p. 610.
‡ Appendix to British Case, vol. i, p. 564.
§ Ibid., p. 557.
‖ Ibid., p. 557.
¶ American Appendix, vol. iii, pp. 501, 502.
** Appendix to the British Case, vol. i, p. 549.
†† Ibid., p. 550.
‡‡ British Appendix, vol. i, p. 565.

flagrantly violated by Captain Waddell; and that he had read without surprise, though with deep regret, the list furnished by Mr. Temple, which he looked upon as furnishing evidence in support of his opinion.*

Lastly, in the observations which Sir Roundell Palmer, Her Britannic Majesty's Counsel, submitted to the Tribunal, on the 21st August, I read that there is no doubt that a shipment of men was effected during the night of the 17th February, at the moment the Shenandoah was leaving.

In presence of so imposing a mass of declarations emanating from the British Authorities of Melbourne, in view of numerical calculations which, if they do not attain the last degree of precision, still leave no doubt but that Captain Waddell did actually enlist men at Melbourne, and afterwards ship them on board the Shenandoah, for his expedition against the whalers, I no longer hesitate to recognize the responsibility of Great Britain towards the Government of the United States.

As to the supply of coal in so large a quantity as that which the vessel received from Liverpool, in addition to that with which she was already furnished, it can only be regarded as a preparation for hostile expeditions against the commerce of the United States, and this falls precisely within the scope of the second Rule of Article VI of the Treaty.

No. 31.

Lord Tenterden to Earl Granville.—(Received August 29.)

My Lord, *Geneva, August 26, 1872.*

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 23rd instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 31.

Protocol No. XXV.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-fifth Conference, held at Geneva, in Switzerland, on the 23rd of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Lord Tenterden as Agent of Her Britannic Majesty read the following statement:—

"As Agent of Her Britannic Majesty, I have the honour respectfully to represent to the Tribunal that the Tables of Claims which were *pro formâ* presented to the Arbitrators by the Agent of the United States on Monday, 19th instant, but of which I was only furnished with copies on the night of the 21st instant, contain new and additional claims of the following description:—

"1. (*a*) Claims for wages of crews of captured vessels from time of capture.

"(*b*) Claims for loss of personal effects of officers and crew.

"There is no evidence as to the number of the crews, nor as to the long and varying periods for which their wages are calculated, nor as to any such personal effects having been in fact lost.

"In short, these claims are wholly conjectural in amount and unsupported by any evidence whatsoever.

"2. Additional claims for shares of vessels not claimed for up to the present time; *e.g.*, where an individual claimant has only claimed for four-fifths of the value of a vessel, an arbitrary claim is now advanced for the first time on the part of the United States' Government for the value of the remaining fifth.

"It is not alleged that the part owner who had not previously claimed has now given any authority for this claim to be advanced. The strong presumption indeed is that he may have already received the value of his share from English or other foreign

* British Appendix, vol. i, p. 722.

Insurance Companies, with whom it was insured and who are not entitled under the Treaty to advance any claim.

"3. Claims previously presented have been increased in amount without any ground appearing for such increase.

"The total amount of these three classes of claims, which are now for the first time advanced on the part of the United States' Government, appears in round numbers, to be at least 2,000,000 dol.

"Independently of the fact that these additional claims are unsupported by any evidence, it is my duty respectfully to submit to the Tribunal that the additional statement of any new claims whatever, in this stage of the Arbitration, for the purpose of influencing or affecting the Judgment of the Tribunal upon any matter within its authority, is contrary to the provisions of the Treaty.

"The Treaty contemplates that the statements of facts and evidence, constituting the whole Case of each party, should be brought before the Tribunal within the times and in the manner specified in Articles III, IV, and V, subject only to such further statements or arguments as under Article V, the Arbitrators may think fit to require or permit for the elucidation of any point contained in, or arising out of, the documents previously put in by either party.

"I have also to submit that the introduction of such additional claims is not authorized by the request made by the Arbitrators.

"This request was that comparative statements of the results in figures of the claims already made, as appearing in the papers previously presented, according to the views of the respective parties, should be prepared with explanatory observations, and laid before the Tribunal, and it could not have been intended to afford the opportunity for bringing forward new, or increasing former, claims.

"Under these circumstances, I respectfully request the Arbitrators to disallow, as unauthorized by them, and as contrary to the Treaty, the Tables containing such additional claims, presented by the Agent of the United States, and the Memorandum relating to them, without prejudice to his right to present other Tables, accompanied by any explanatory observations, which shall be limited to the particular claims already set forth in the Case and Counter-Case of the United States, and the Appendices thereto."

The Tribunal decided to adjourn the consideration of this matter until the next Conference.

Sir Roundell Palmer, as Counsel of Her Britannic Majesty, then read the Argument required by the Tribunal on Sir Alexander Cockburn's proposal, upon the question of law mentioned in Protocol XXIV, and Mr. Evarts, as Counsel of the United States, replied to it.

On the proposal of Viscount d'Itajubá, one of the Arbitrators, the Tribunal decided to adjourn until the next Conference the further discussion upon the Florida, and to proceed with the definitive vote on each vessel separately.

The Tribunal then decided that it had to consider only such vessels with regard to which claims were presented in the Case and Counter-Case of the United States; every other question being consequently understood as dismissed from consideration.

Count Sclopis, as President of the Tribunal, having read the Article VII of the Treaty of Washington, asked the Tribunal whether, as to the Sumter, Great Britain had, by any act or omission, failed to fulfil any of the duties set forth in the three Rules mentioned in Article VI of the Treaty, or recognized by the principles of international law not inconsistent with such Rules.

The Tribunal unanimously replied "No."

The same question was asked as to the Nashville, and the Tribunal unanimously replied "No."

The same question was renewed as to the Retribution.

Mr. Adams answered "Yes, for all the acts of this vessel."

Mr. Staempfli answered "Yes, as to the loss of the Emily Fisher."

Sir Alexander Cockburn, Viscount d'Itajuba, and Count Sclopis answered "No."

The same question was asked as to the Georgia, and the Tribunal unanimously answered "No."

The same question was repeated as to the Tallahassee and Chickamauga separately, and the Tribunal unanimously answered "No," for each of these vessels.

The same question having been repeated as to the Alabama, the Tribunal unanimously answered "Yes."

The same question was renewed as to the Shenandoah, and Mr. Adams, M. Staempfli, and Count Sclopis answered "Yes;" but only for the acts committed

by this vessel after her departure from Melbourne, on the 18th of February, 1865; Viscount d'Itajubá and Sir Alexander Cockburn answered "No."

The definitive vote on the Florida was adjourned until the next meeting.

The Conference was then adjourned until Monday, the 26th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Argument of Her Britannic Majesty's Counsel (presented in accordance with the Resolution of the Arbitrators of August 21, 1872,) on the Special Question as to the Legal Effect of the Entrance of the Florida into the Port of Mobile, on the responsibility, if any, of Great Britain for that Ship.—(Read at the Meeting of the 23rd August.)

IT is important to consider the principle applicable to the special case of the Florida, after she had entered the Confederate port of Mobile, and there remained several months and enlisted a new crew, before cruizing or committing hostilities against the shipping of the United States. If the antecedent circumstances, applicable to this vessel, are such as (in the view of the Tribunal) to justify the conclusion that any want of due diligence, in respect to her, can be imputed to Great Britain, the question arises, whether such want of due diligence involves, as its legitimate consequence, responsibility for her acts, in the view of the fact that she never cruized or committed any acts of hostility against the United States, until after she had been for a long interval of time in a Confederate port, and had thence issued as a duly commissioned Confederate cruizer, and in an altered condition as to her capacity for war.

The facts which occured as to this vessel are really not distinguishable, in principle, from the case of a ship of war transported from a neutral to a belligerent country by a breach of blockade, manned and made capable of cruizing for the first time in the belligerent country, and afterwards actually cruizing from thence. It is certain, that the crew, which was hired to sail with the Florida from England to Nassau, was not hired, and did not serve, for any purpose of war: it is equally certain that no sufficient crew for such purpose was obtained by her in the Bahamas, or elsewhere within any British possession.* She did not enter the port of Mobile simply *in transitu*, or as a point of immediate departure for a subsequent cruize, for which the necessary preparation had been already made within British territory; but she remained there more than four months, from the 4th of September, 1863, to the 15th of January, 1864.† She there engaged the crew which enabled her to go to sea, and to commit hostilities against the shipping of the United States.‡

On what principle would such a case as this have been dealt with by international law, if the question had not been one of national responsibility, sought to be cast upon Great Britain, but had arisen, under the well-established rules, applicable to neutral citizens concerned in breaches of blockade, and in the conveyance of contraband of war to an enemy? If the direct agents in conveying the Florida into Mobile, (supposing she had been brought in by and under the charge of another British ship) would not have been under any continuing responsibility by international law, after leaving her there and returning to their own country, how can it be said that such a continuing responsibility ought to attach upon the nation from whose territory she was sent out, merely for want of the use of due diligence to prevent that transaction? Professor Bluntschli, in his paper on the Alabama question ("Revue de Droit International," 1870,) says (page 473):—

"Il ne faut d'ailleurs pas perdre de vue que tous ces effets désastreux sont en premier lieu imputables, non pas au Gouvernement Anglais, mais aux croiseurs eux-mêmes. Personne n'accusera le Gouvernement Anglais d'avoir donné mission de détruire les navires de commerce Américains ou d'avoir, par ses agissements, entravé ou endommagé la marine Américaine. Ce que l'on peut lui reprocher à bon droit, en supposant que les faits cités plus haut doivent être considérés comme avoués ou prouvés, ce n'est pas un *fait*, mais une *omission contre le dro*. . Sa faute ne consiste pas à avoir équipé et appareillé les corsaires, mais à *n'avoir pas empêché* leur armement et leur sortie de son

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* United States' Appendix, vol. vi, pp. 307 and 331. † Ibid., p. 334.
‡ British Appendix, vol. i, pp. 117, 120–122.

territoire neutre. Mais cette *faute* n'a qu'un rapport *indirect*, et nullement un rapport *direct* avec les déprédations réellement commises par les corsaires."*

In the case of a breach of blockade the offence is deemed by international law to be "deposited," and the offence of the neutral vessel to be terminated when she has once completed her return voyage. "The penalty," says Chancellor Kent, "never travels on with the vessel further than to the end of the return voyage; and, if she is taken in any part of that voyage, she is taken *in delicto*." (Commentaries; vol. i, page 151.) As to contraband, the law is thus stated in Wheaton's "Elements" (Lawrence's Edition, page 809).

"The general rule as to contraband articles, as laid down by Sir W. Scott, is, that the articles must be taken *in delicto*, in the actual prosecution of the voyage to an enemy's port. Under the present understanding of the law of nations, you cannot generally take the proceeds in the return voyage. From the moment of quitting port on a hostile destination, indeed, the offence is complete, and it is not necessary to wait till the goods are actually endeavouring to enter the enemy's port; but beyond that, if the goods are not taken *in delicto*, and in the actual prosecution of such a voyage, the penalty is not now generally held to attach."

Mr. Wheaton adds, by way of qualification, that "the same learned judge applied a different rule in other cases of contraband, carried from Europe to the East Indies, with false papers and false destination, intended to conceal the real object of the expedition, where the return cargo, the proceeds of the outward cargo taken on the return voyage, was held liable to condemnation." These were the cases of the Rosalie and Betty and the Nancy; as to which, in a note, the learned author says:—

"The soundness of these last decisions may be well questioned; for, in order to sustain the penalty, there must be, on principle, a *delictum* at the moment of seizure. To subject the property to confiscation whilst the offence no longer continues, would be to extend it indefinitely, not only to the return voyage, but to all future cargoes of the vessel, which would thus never be purified from the contagion communicated by the contraband articles."

If the analogy of these cases is followed (and what nearer analogy can be suggested?), Great Britain cannot be held responsible for the cruizes of the Florida after her departure from Mobile in January 1864.

The case of the Gran Para (reported in the 7th volume of Mr. Wheaton's Decisions in the Supreme Court of the United States, page 471)† is certainly not an authority for any contrary principle or conclusion. The question there was, not whether any authority of the United States should seize or detain the ship Irresistible (then in the war service of General Artigas, as Chief of the so-called "Oriental Republic"), which was held to have been illegally fitted out in a port of the United States, in violation of the neutrality law of that country,—much less, whether the United States ought to be held responsible for any of her captures upon the high seas,—but solely, whether the cruize, on which she had taken a prize (the Gran Para), which was actually brought into a port of the United States, was so disconnected from her original illegal outfit, by the fact of her having been at Buenos Ayres during the interval, as to make it proper for the Courts of the United States to refuse to exercise jurisdiction for the purpose of restoring that prize to her original Portuguese owner? Upon the whole circumstances of the case, this question was determined in the negative. The material facts being that the Irresistible was built at Baltimore, in all respects for purposes of war; that she there enlisted a crew of about fifty men, and took in a sufficient armament for the purpose of the cruize in which she was afterwards engaged; that she went to Buenos Ayres, staid there only a few weeks, went through the form of discharging, but immediately afterwards re-enlisted, substantially, the same crew; obtained no new outfit or armament; took a commission from the Government of Buenos Ayres to cruize against Spain, *but sent back that commission on the very next day after leaving the port, when the officer in command produced a wholly different commission from General Artigas, as Chief of the "Oriental Republic," under which he proceeded actually to cruize.* It was with reference to this state of circumstances (so different from the facts relative to the Florida at Mobile), that Chief Justice Marshall held that this was a colourable, and not a real termination of the original cruize.

"The principle," he said, "is now finally settled, that prizes made by vessels which have violated the acts of Congress that have been enacted for the preservation of the neutrality of the United States, if brought within their territory, shall be restored. The only question therefore is, does this case come within the principle?

* * * * * *

* The italics in this quotation are in the original text of M. Bluntschli.
† See, also, British Appendix, vol. iii, p. 91.

"*This Court has never decided that the offence adheres to the vessel, whatever changes may have taken place, and cannot be deposited at the termination of the cruize in preparing for which it was committed*;" and, as the Irresistible made no prize on her passage from Baltimore to the River La Plata, it is contended that the offence was deposited there, and that the Court cannot connect her subsequent cruize with the transactions at Baltimore.

"If this were to be admitted *in such a case as this*, the laws for the preservation of our neutrality would be completely eluded, so far as this enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crew, to become perfectly legitimate cruizers, purified from every taint contracted *at the place where all their real force and capacity for annoyance was acquired*. This would indeed be a fraudulent neutrality, disgraceful to our own Government, and of which no nation would be the dupe. It is impossible for a moment to disguise the facts, that the arms and ammunition taken on board the Irresistible at Baltimore were taken for the purpose of being used on a cruize, and that the men there enlisted, though engaged in form as for a commercial voyage, were not so engaged in fact."

It is submitted, that there is nothing whatever, in the view thus taken by Chief Justice Marshall, which can have any tendency to establish the responsibility of Great Britain for captures of the Florida, made after she left Mobile, and never brought into any British port. The simple ground of the decision was that which the Chief Justice announced at the beginning of his judgment:—

"The principle is now firmly settled, that prizes made by vessels which have violated the Acts of Congress that have been enacted for the preservation of the neutrality of the United States, if brought within their territory, shall be restored. The only question, therefore, is, does this case come within the principle?"

And it was held to be within that principle, not because the offence was one which could never be "deposited," but because the "depositation" relied upon in that case was *not real* but only pretended.

That case, in fact, fell short of deciding so much even as this—that if a prize, taken by the Florida after her departure from Mobile had been brought into a British port, and if the same rule as to the restitution of prizes, which is the settled and known law of the United States, had also been the settled and known law of Great Britain—such a prize ought to have been restored to her original owners. This is the utmost extent to which the authority of the case of the Gran Para could ever be supposed to go. But the circumstances are, in all essential points so widely dissimilar, as to make it no authority, even for that limited purpose.

If, in such a case as that of the Florida, the neutral State were held liable for the captures made by her in her first cruize, after leaving Mobile, it seems unavoidably to follow (and this appears to be the conclusion, actually insisted on by the United States), that there must be unlimited liability for *all* her subsequent cruizes, and that the offence could never be "deposited."

But this is not only not a just inference from, it is in fact contradictory to the doctrine, to which Chief Justice Marshall has always been understood in the United States to have given the sanction of his authority in the Gran Para case. Part of the *Rubric*, or marginal note, prefixed by the reporter to that case, is in these words: "*A bond fide termination of the cruize, for which the illegal armament was here obtained, puts an end to the disability growing out of our neutrality laws, which does not attach indefinitely.*"

The Florida could not have cruized without a proper crew: it was in a port of her own country that she first obtained such a crew, and so acquired the capacity of cruizing. The equipment, which she had received before reaching Mobile, was therefore only partial and incomplete. Even assuming that she obtained this equipment under circumstances which involved some failure in the use of proper diligence on the part of Great Britain, on what principle can Great Britain be charged with all her subsequent captures? Would not such a principle involve the liability of a neutral State to be charged with all captures made by a vessel which had obtained, within its territory, through some want of due diligence on the part of its authorities, any kind or degree whatever of equipment, or augmentation of warlike force, however impossible it might be to prove that such equipment or augmentation of force was the proximate cause of any of her captures, and in however large a degree other causes may have evidently contributed to her means of offence? If what was done to the Florida at Mobile had been done in a Spanish port, by the permission or culpable neglect of the authorities; if, after lying for four months in a Spanish port, she had there, for the first time, obtained a fighting crew, and had been dispatched from thence to prey upon American commerce, would it still have been contended that Great Britain, and not Spain, was liable? Or would it have been contended that both Great Britain and Spain were liable, under such circumstances, and that the

liability of both was indefinite and unlimited till the conclusion of the war? Will the Tribunal give its sanction to such doctrines as these, not only without any aid from authority, but in opposition to all the light which is derivcable from the reason and analogy of the doctrines of international jurisprudence, and of the jurisprudence of the United States themselves, in other cases, which ought to be governed by similar principles?

The legitimate inference, from the analogy of the law as to breach of contraband, is, that any responsibility which Great Britain may have been under as the neutral State from which the Florida was introduced into Mobile, came to its natural end when (having previously committed no act of war) she was once at home in that port, and became *bonâ fide* incorporated, within their own territory, into the naval force of the Confederate States. The legitimate inference from the doctrine of Chief Justice Marshall, in the case of the Gran Para, is, that having been once *bonâ fide* received into Mobile, as her proper port, and having been there manned, and dispatched from thence, for her subsequent cruize, an effectual line of separation was drawn, for all legal and international purposes, between everything which had occurred before she entered into that port and everything which occurred afterwards; and that (no hostile cruizing against the United States having taken place during the interval between her leaving Liverpool and her entrance into Mobile), Great Britain had no just cause for afterwards refusing to her the ordinary immunities and privileges of a duly commissioned ship of war of a belligerent Power, and certainly was not under any obligation towards the United States to do so, even if a different rule would have been applicable to such a ship as the Alabama, which was not dispatched for her cruize from any Confederate port.

As between Great Britain and the Florida the case stood thus. Her acquittal at Nassau was conclusive, as a judgment *in rem*, so as to make it unjustifiable and impossible for any British authority afterwards to revive against her the causes of complaint which had occurred before that acquittal; and her subsequent reception of an armament at Green Cay, not being accompanied or preceded by the enlistment of any crew sufficient for hostilities, and not being followed by any warlike operations before her entrance into Mobile, though it was an infringement of British municipal law, was not such an offence by general international law, as to call for or justify war or reprisals against the Confederate States, nor such as to adhere to the ship through all subsequent circumstances. The responsibility of Great Britain to the United States, in respect of this ship, could not exceed the responsibility of the Confederate States, in respect of the same ship, to Great Britain.

ROUNDELL PALMER.

Reply of the Counsel of the United States to the Argument of Her Britannic Majesty's Counsel on the Special Question of the Legal Effect, if any, of the Entry of the Florida into the Port of Mobile, after leaving the Bahamas, and before making any Captures. —(*Read at the Meeting of the 21st August.*)

THE Florida, after her illegal outfit as a ship of war in the neutral territory of Great Britain, and the completion of her armament, warlike munitions and crew from the same neutral territory, took the seas under a Confederate commission, and after an unsuccessful attempt to add to her complement of men by violating the neutrality of Spain, slipped into Mobile by a fraudulent imposition upon the blockading vessels, which her British origin enabled her to practise. She was there imprisoned four months before she was able to elude the vigilance of the blockaders, and she obtain there, it is said, some addition to the force of the crew which she had when she entered that port. Her captures were made *after* she left Mobile, and a question of public law is now raised upon this state of facts, to this effect: "Is the responsibility of Great Britain to the United States for the depredations of the Florida relieved by this visit of that cruizer to a Confederate port under the circumstances in evidence?" The question assumes that, but for this visit, the neutral responsibility for the acts of this cruizer would exist, and seeks to arrive at the significance, if any, of this visit in relieving the neutral from such responsibility. The Counsel of Her Britannic Majesty has discussed this question, and we now offer a brief reply to his Argument.

I.

It is said that a limitation upon a neutral's responsibility for the acts of a cruizer, for which the neutral would otherwise continue to be responsible, may be found in the *principle* the rule by which neutral trade in contraband of war and belligerent right to prevent it

are regulated. This rule is understood to be, that the belligerent right to intercept or punish trade in contraband, carried on by a neutral, must be exercised *during the guilty voyage*, and that *its* termination ends the belligerent's redress and the neutral's exposure. The view which we take of this suggestion makes it unnecessary to consider whether the more strict or the more liberal measure of the duration of the guilty voyage is the proper one.

It seems to us that it needs but little attention to the nature of this struggle between neutral *right* to trade and belligerent *right* to restrict and defeat that trade, and to the solution of these conflicting and competing rights which the law of nations has furnished, to reject the analogy as valueless in the present discussion.

Neutral nations properly insist that their trade is not to be surrendered because of the war between the two belligerents. But they concede that the belligerent Powers, as against each other, may rightfully aim at the restriction or destruction of each other's commerce. How far the belligerent may press against his enemy's commerce, which, in turn, is also the neutral's commerce, and how much the neutral must acquiesce in *its* commerce being dealt with in its character of being also the enemy's commerce, is the problem to be solved in the interest of preserving peace with the neutrals, and restricting the war to the original belligerents.

The solution arrived at, and firmly and wisely established, covers the three grounds of (1), neutral trade with ports of the enemy under actual blockade; (2), visitation and search of neutral ships to verify the property, in ship and cargo, as being really neutral; (3), the intercception and condemation of contraband of war, though really of neutral ownership and though not bound to a blockaded port. It is with the last only that we have to deal.

There were but three modes in which the consent of nations could dispose of this question of contraband trade. First, It might have been proscribed as *hostile*, and, therefore, criminal, involving the nation suffering or permitting it, or not using due diligence to prevent it, in complicity with and responsibility for it. This has been contended for as the true principle by able publicists, but has not obtained the consent of nations. Second, It might have been pronounced as free from belligerent control as all other neutral commerce, submitting only to verification as really neutral in ownership, and to exclusion only from blockaded ports. This has been contended for, but has not been accepted.

The only other disposition of this conflict of rights and interests at all reasonable is that which has been actually accepted and now constitutes a rule of the law of nations. This limits the right of the belligerent, and the exposure of the neutral, to the *prevention* of the trade in contraband by warlike force for capture, and prize jurisdiction for forfeiture. Manifestly, the natural, perhaps the necessary, limit of this right and exposure, by the very terms of the rule itself, would be *flagrante delicto* or during the guilty voyage. To go beyond this would, in principle, depart from the reason of the actual rule and carry you to the ground of this trade being a *hostile act* in the sense in which the consent of nations has refused so to regard it. But, to adhere to the *principle* on which the rule stands and attempt to carry its *application* beyond the period of perpetration, would involve practical difficulties wholly insurmountable, and encroachments upon innocent neutral commerce wholly insupportable. How could you pursue the contraband merchandize itself in its subsequent passage, through the distributive processes of trade, into innocent neutral hands? But, while it remained in belligerent hands, it needs no other fact to expose it to belligerent operations, irrespective of its character or origin. Again, how can you affect the vessel which has been the guilty vehicle of the contraband merchandize in a former voyage, with a permanent exposure to belligerent force for the original delict, without subjecting general neutral trade to inflictions which are in the nature of *forcible punishment* by the belligerent of the neutral nation, as for hostile acts exposing the neutral nation to this general punitive harassment of its trade?

It will, we think, be readily seen that this *analogy* to contraband trade, as giving the measure of the endurance of the responsibility of Great Britain for the hostile expedition of the Florida, is but a subtle form of the general argument, *that the outfit of the Florida was but a dealing in contraband of war, and was to carry no other consequence of responsibility than the law of nations affixed to that dealing.* But this argument has been suppressed by the Rules of the Treaty, and need be no further considered.

II.

The criticism on the celebrated judgment of Chief Justice Marshall, in the case of the Gran Para, does not seem to shake its force as authoritative upon the precise point under

discussion, to wit, whether a visit to a belligerent port terminated the neutral's duty and responsibility in respect of a vessel which, in its origin and previous character, lay at the neutral's charge. It is not profitable to consider the special distinctions which may be drawn between the facts of the Gran Para and of the Florida in this respect. If it is supposed that *other* circumstances than the *mere* visit of the Florida to a Confederate port, divested her of being any longer an instrument of rebel maritime war, furnished from the neutral nation, we fail to find in the evidence any support to such suggestions. Certainly, the fact, if it existed or was shown by any definite evidence, of the fluctuating element of actual hostilities or navigation in the presence on board of substituted or added seamen, does not divest the cruiser, its armament, its munitions, and its setting forth to take and keep the seas, of their British origin and British responsibility. These all continued up to the violation of the blockade, which they enabled the Florida to make. They equally enabled it to take, and to use in the hostile cruize, the enlistments at Mobile. Yet, if there be anything in the learned Counsel's argument, it comes to this: that the *seamen* enlisted at Mobile became, thereafter, the effective maritime war of the Florida, and the cruizer and her warlike and navigable qualities "suffered a sea change," which divested them of all British character and responsibility. This reasoning is an inversion of the proposition, *Omne principale ad se trahit accessorium.*

III.

As a matter of fact, the evidence concerning what happened at Mobile by no means exhibits the crew with which the Florida left Mobile as *original* enlistments there. The force she took from Nassau, and which enabled her to make the port of Mobile, must have adhered to her. All the motives for such adherence continued in full force, and in a port without ships or trade, and so absolutely closed as Mobile was, there was no possible chance for them, as seamen, except to adhere to the Florida. The evidence does not contain any shipping articles, either at Nassau or at Mobile, and the list made by, or for verification by, Thomson at Liverpool, in reference to prosecutions under the Foreign Enlistment Act, was made only in reference to nationality and the place where, within Thomson's knowledge (who did first join her at Mobile), *he found them connected with the Florida.* Very possibly a form of enlistment or engagement, as from Mobile as the place of departure, if they could ever get out, for the purposes of wages or otherwise, may have been gone through at Mobile, though it is not so proved. A perusal of Thomson's affidavit will show that it, and the accompanying list, relate only to crew *dating* on the cruize from Mobile, or from later recruitment, and that he imports to give no evidence that there were not *re-enlistments* at Mobile of her former crew, except in his own case, or by incidental inference, perhaps, in some others.

IV.

The learned Counsel diverges, as it seems to us, from the point open for discussion into a somewhat vague inquiry as to what should be the consequences in respect of *indemnity* to the United States, from the responsibility of Great Britain for the violations of her obligations as established by the three Rules of the Treaty, if the Tribunal should find Great Britain so responsible.

We have considered this subject in our Argument, submitted on the 15th of June, and need not renew that discussion unless it is required from us. Of course minute and artificial reasoning may attempt to make out that the *last* man essential to a crew for navigation or fighting, or the *last* rope or spar which she could not spare, was the guilty cause of all a cruiser's subsequent depredations, and that all preceding structure, fitment, armament, munitions, officers, and men, are absolved from any share of the guilt. This reasoning may point the wit of the proverb that "it is the last ounce that breaks the camel's back," but will not go much further. The response is too immediate. What preceded is what gives the place and power for the casual incorporation of the new atom, and the preceding preparations prepared for these casual and fluctuating elements of prosperous war, and thereby, as well as directly, for the war itself. Again we have only need to repeat, "*Omne principale ad se trahit accessorium.*" The provisions of the Treaty plainly indicate what the responsibility for *indemnity* should be if the responsibility for *fault* be established.

C. CUSHING.
WM. M. EVARTS.
M. R. WAITE.

No. 32.

Tables presented by the British Agent.

Claims in respect of Vessels destroyed by the Shenandoah after the month of January, 1865.

Page of Statement.	Name of Vessel.	Tonnage.	Days Out.	Claim for Vessel.		Claim for Prospective Earnings.	Claim for Secured Earnings.		Claim for Personal Effects.		Claim for Damages and Sundries.	Total.
					$	$		$		$	$	$
225	Abigail	310	44		60,000	169,819		1,514		23,303	..	251,696
227	Brunswick	295	52	Double claim ..	73,200 23,200	38,625	Double claim ..	13,379 1,000		1,080	..	126,284
					50,000			12,379				
229	Catherine	385	84		48,677	156,807		18,329		8,295	..	272,108
232	Congress	380	755	Double claim ..	97,000 41,000	53,075		33,815		982	..	184,992
					56,000							
233	Covington	350	218		32,251	61,507		25,010		9,196	..	127,964
238	Edward Carey ..	355	68		42,983	66,600		..		1,170	10,000	120,753
238	Euphrates	365	63	Double claim ..	59,750 9,750	100,875		17,814		3,213	..	181,652
					50,000							
241	General Williams ..	420	155	Double claim ..	142,350 77,173	196,807		36,292		1,485	30,000	406,934
					65,177							
243	Gipsy	360	115	Double claim ..	84,000 21,000	49,075		10,664		9,034	..	152,773
					60,000							
244	Hector	380	135	Double claim ..	81,175 31,875	99,750		21,347		939	..	203,911
					50,000							
245	Hillman	385	..	Double claim ..	91,250 31,250	54,675		10,490		1,762	..	158,177
					60,000							
247	Isaac Howland ..	400	90	Double claim ..	125,500 60,500	196,158	Double claim ..	57,554 9,000		3,937	..	383,149
					65,000			48,554				
248	Isabella	315	270	Double claim ..	81,650 21,650	174,600		27,765	Double claim ..	13,222 1,000	..	297,237
					60,000					12,222		
250	J. Swift	455	72		60,000	138,088		25,500		2,293	..	225,881

247	Isaac Howland ..	400	90	Double claim ..	125,500 60,500 65,000		196,158	Double claim ..	57,554 9,000 48,554		3,937	..	383,149
248	Isabella	315	270	Double claim ..	81,650 21,650 60,000		174,600		27,765	Double claim ..	13,222 1,000 12,222	..	297,237
250	J. Swift	455	72		60,000		138,088		25,500		2,293	..	225,881

Page of State-ment.	Name of Vessel.	Tonnage.	Days Out.	Claim for Vessel.		Claim for Prospective Earnings.		Claim for Secured Earnings.		Claim for Personal Effects.		Claim for Damages and Sundries.	Total.
					$		$		$		$		$
253	Martha	360	86	Double claim ..	94,200 34,200 60,000		192,062		9,906		7,690	.. ..	303,858
255	Nassau	410	67	Double claim ..	152,500 72,500 80,000		78,750		9,924		900	..	241,574
258	Nimrod	340	62	Double claim ..	79,000 19,000 60,000		158,500	Double claim ..	36,782 9,000 27,782		1,638	..	275,920
259	Pearl	195	63		27,000		60,890		..		6,150	6,200	100,240
260	Sophia Thornton ..	430	41	Double claim ..	86,333 27,050 59,283		51,100		..		2,851	..	110,284
262	Susan Abigail ..	160	57		24,397		95,975		..		..	107,476	227,848
210	Favorite	295	61	Double claim ..	110,000 50,000 60,000		87,250		41,070		2,659	..	240,979
263	Waverley	330	73	Double claim ..	81,250 31,250 50,000		110,876		34,655		1,732	..	228,513
264	Wm. Thompson ..	495	56	Double claim ..	141,500 51,500 90,000		131,250		15,093		..	..	236,843
265	W. C. Nye ..	390	93	Double claim ..	75,000 20,000 55,000		218,125		7,087		625	5,000	305,837
				Gross claims ..	1,954,666		2,781,269		453,550		104,156	158,676	5,452,317
				Double claims ..	628,898		..		35,292		1,000	..	664,190
	Gross tonnage ..	8,560	..	Net claims ..	1,325,768		2,781,269		418,258		103,156	158,676	4,788,127
211	Genl. Pike	315	..	..	..	..	..	..	..	..	..	..	76,119
250	Jas. Maury	295	..	..	..	..	..	..	..	..	..	..	73,039
255	Milo	400	..	..	..	..	..	..	..	..	..	..	141,648
257	Nile	2	..	..	..	..	..	..	..	..	..	..	92,915
													383,721
													5,879,038

CLAIMS for Prospective Earnings in the case of Vessels captured by the Shenandoah after the month of January, 1865.

Page of Revised Statement.	Name of Vessel.	Loss of Prospective Earnings.	Dollars.	Observations.
225	Abigail	Loss by interruption of voyage.	169,849	
227	Brunswick ..	Loss of prospective catch ..	38,625	
229	Catherine ..	Ditto	196,807	See original list p. 436, and commencement of the second report. It is a new claim.
232	Congress ..	Ditto	53,075	
233	Covington ..	Ditto	61,507	
238	Edward Carey ..	Ditto	66,600	
238	Euphrates ..	Loss by interruption of voyage.	100.875	
241	Genl. Williams ..	Loss of prospective catch ..	196,807	See original list p. 437, and commencement of the second report. It is a new claim.
243	Gipsy	Ditto	49,075	
244	Hector	Ditto	99,750	
245	Hillmann ..	Ditto	54,675	
247	Isaac Howland ..	Ditto	196,158	See original list p. 436, and commencement of the second report. It is a claim increased by 43,000 dollars.
248	Isabella	Ditto	174,600	
250	J. Swift	Ditto	138,088	
253	Martha	Loss by interruption of voyage.	192,062	See original list, p. 438.
255	Nassau	Ditto	78,750	See original list, p. 438.
258	Nimrod	Ditto	158,500	
259	Pearl	Loss of prospective catch ..	60,890	
260	Sophia Thornton.	Ditto	51,100	
262	Susan Abigail ..	Ditto	95,975	
240	Favorite	Loss by interruption of voyage.	87,250	See original list p. 438, and commencement of the second report. It is a new claim.
263	Waverley ..	Loss of prospective catch ..	110,876	See original list p. 436. It is a new claim.
264	Wm. Thompson .	Ditto	131,250	
265	W. C. Nye ..	Ditto	218,125	
		Total	2,781,269	

DOUBLE Claims in the case of Vessels captured by the Shenandoah after the month of January, 1865.

Page of Revised Statement.	Name of Vessel.	Claimants.	Dollars.	Observations.
228	Brunswick ..	Columbian Insurance Company.	8,000	
		Commercial Company ..	16,200	
232	Congress ..	Atlantic Mutual Company ..	35,700	
		Metropolitan Company ..	5,300	
339	Euphrates ..	Commercial Mutual Company ..	9,750	
241	General Williams	Columbian Company ..	22,500	
		Sun Mutual Company ..	2,500	
		Atlantic Mutual Company ..	7,500	
		Error of calculation	41,673	
		Atlantic Mutual Company ..	23,792	
243	Gipsy.. ..	Atlantic Mutual Company ..	10,000	
		Columbian Company ..	14,000	
244	Hector ..	Union Mutual Company ..	17,000	
		Commercial Mutual Company ..	4,500	
		Mutual Marine Company ..	10,375	
245	Hillmann ..	Atlantic Mutual Company ..	26,250	
		Metropolitan Company ..	5,000	
247	Isaac Howland ..	Columbian Company.. ..	16,500	
		Commercial Mutual Company ..	15,000	
		Atlantic Mutual Company ..	38,000	
249	Isabella ..	New England Company ..	1,000	
		Commercial Mutual Company..	1,000	
		Columbian Company ..	3,050	
		Metropolitan Company ..	800	
		Atlantic Mutual Company ..	16,800	
253	Martha ..	Mercantile Mutual Company ..	1,000	
		Atlantic Mutual Company ..	33,200	
256	Nassau .	Sun Mutual Company .. .	10,000	
		Metropolitan Company ..	9,000	
		Atlantic Mutual Company ..	47,500	
		Union Mutual Company ..	6,000	
258	Nimrod ..	Atlantic Mutual Company ..	28,000	
260	Sophia Thornton.	Ocean Mutual Company ..	3,050	
		Commercial Mutual Company ..	15,000	
		Union Mutual Company ..	9,000	
210	Favorite ..	Metropolitan Company ..	10,000	
		Atlantic Mutual Company ..	40,000	
263	Waverley ..	Atlantic Mutual Company ..	31,250	
264	Wm. Thompson..	Commercial Mutual Company..	15,500	
		Ocean Mutual Company ..	16,500	
		Union Mutual Company ..	22,500	
265	W. C. Nye ..	Atlantic Mutual Company ..	20,000	
		Total	662,690	

TABLE of Claims and Provisional Allowances in respect of the Vessels captured by the Shenandoah after the month of January, 1865.

Vessels Claimed for.	Subject.	Claims.					Allowance.
			$	$	$	$	$
The 4 bonded whalers, viz.— General Pike, Jos. Maury, Alile, Nilo	Damages		...	...	...	306,951	67,446
The 24 whalers destroyed, viz.— Abigail	Vessels and outfits	Double claim	1,954,666 628,898				
Brunswick				...	1,325,768		
Catherine							
Congress	Earnings:—						
Covington						4,525,295	
Edward Carey	Prospective ...	...	2,781,269				For vessels, outfits and earnings, 856,000 + 167,318 = 1,023,318 gold dollars.
Euphrates		Double claim		2,781,267			
General Williams					3,199,527		
Gipsy	Secured	...	453,550				
Hector		Double claim	35,292				
Hillmann				418,258			
Isaac Howland							
Isabella							
J. Swift							
Martha							
Nimrod							
Pearl							
Susan Abigail	Personal effects ...	...	104,156				
Favorite		Double claim	1,000				
Waverley				103,156			
W. Thompson					...	261,832	For personal effects, damages, and sundries, 46,175 paper dollars.
W. C. Nye	Damages, &c. ...	...	...	158,676			
Nassau							
Tonnage, 8560							

The gross total claim, including the inadmissible double claims, claims for *gross* prospective earnings, *gross* freights, *gross* secured earnings, profits, &c., amounts to 5,839,068 *paper* dollars.

The provisional estimated allowance amounts to 1,023,318 *gold* dollars for vessels, outfits, secured and prospective earnings, and 113,621 *paper* dollars for the remaining claims.

EXPLANATION OF THE TABLE.

1. *As regards the four first whaling vessels* which were simply detained, we have reduced the claim from 306,951 paper dollars to 67,446 gold dollars.

2. *As regards the twenty-four whalers destroyed.*

The Table shows that there is claimed for the vessels and outfits a sum of 1,954,766 paper dollars; but from this sum 628,898 dollars must be deducted as being double claims, leaving a total of 1,325,768 paper dollars.

There is claimed besides for *gross* prospective earnings a sum of 2,781,269 paper dollars.

For the *gross* secured earnings, 453,550 paper dollars are claimed, from which must be deducted 35,292 dollars as being double claims, leaving a total of 418,258 paper dollars.

The claims for vessels, outfits, and gross prospective and secured earnings amount, consequently, after deducting the double claims, to 4,525,295 paper dollars.

We estimate the losses in respect of which this claim is made at 1,023,318 gold dollars, of which 856,000 dollars represent the value of vessels and outfits at the commencement of their voyage, and 167,368 dollars profits at the rate of 25 per cent. per annum, and wages from the commencement of the voyage to the date of capture.

The Table also shows that there is a claim for personal effects of the masters (and, in one or two cases, for those of the mates of the vessels) which amounts, after deducting the double claims, to 103,156 dollars, and for damages 158,676 dollars in paper.

As regards the claims for personal effects of the masters or crew, they have been passed in every case but six. We are prepared to show that in these cases the claims are evidently exaggerated, and we have consequently reduced them.

As regards the claim for damages, it is almost entirely composed of the following items:—

In the case of the Edward Carey, the master claims in March last, for the first time, the sum of 10,000 dollars for damages, over and above his claim for personal effects.

In the case of the General Williams, the master and mate have claimed in March last, for the first time, the sums of 20,000 and 10,000 dollars respectively for loss of prospective catch, over and above their claims for personal effects.

In the case of the Pearl, the master and one Gardener, carpenter, claim in the month of March last, for the first time, the sums of 5,000 and 12,000 dollars respectively, for loss of time for twelve months, over and above their claims for personal effects.

In the case of the W. C. Nye, the master claims 5,000 dollars for loss in consequence of the breaking up of the voyage, over and above his claim for personal effects.

In the case of the Susan Abigail, there is a claim for 18,716 dollars for merchandise shipped for trading purposes, and a claim of 88,750 dollars for profits which were expected from this trade.

We believe we are in a position to prove to the Tribunal that there are grounds for rejecting all these claims for damages.

No. 33.

Lord Tenterden to Earl Granville.—(*Received August* 29.)

My Lord. *Geneva, August* 26, 1872.

AS, in consequence of the adjournment of the Tribunal, the Protocol of the proceedings this day cannot be forwarded to your Lordship for several days, I think it right at once to report them.

After the Protocol of the preceding meeting had been read and approved, the Chief Justice called attention to the publication of the arguments recently delivered by the United States' Counsel in a local newspaper, and asked Mr. Bancroft Davis if he could explain it. Mr. Davis said that he knew nothing whatever about it.

After some conversational discussion, in which the Tribunal agreed with the Chief Justice that the publication of papers of this description was contrary to the agreement which had been arrived at, that the proceedings should be considered confidential until their termination, Mr. Adams gave notice of a resolution which he intended to bring forward, to the effect that the time was approaching when the injunction of secrecy might be removed.

It was decided that the discussion as to the publication of the papers in the local newspaper need not be recorded in the Protocol, with the exception of the resolution of which Mr. Adams had given notice.

The case of the Florida was then proceeded with and a vote taken, Count Sclopis, M. Staempfli, Viscount Itajubá, and Mr. Adams voting for the responsibility of Great Britain, notwithstanding the entry of the vessel into the port of Mobile, and the Chief Justice holding a contrary opinion.

As a matter of principle, it was then unanimously agreed that the responsibility for the acts of the vessels known as "tenders" followed from the decision taken as to the vessels to which they were attached.

The Tribunal then unanimously declared that Great Britain was responsible, upon this principle, for the acts of the Tuscaloosa, tender to the Alabama; and Count Sclopis, Viscount d'Itajubá, M. Staempfli, and Mr. Adams declared Great Britain also responsible for the acts of the Clarence, Tacony, and Archer, tenders to the Florida, the Chief Justice dissenting.

The question of the Tables presented by the United States' Agent, containing new claims, was then taken into consideration.

The Agent of the United States read a paper, of which I inclose a copy, attempting to justify their presentation.

Mr. Adams held that the United States' Agent was in the right in presenting the Tables for the information of the Tribunal, and that it would not be satisfactory to the United Sates that any of their claims should be refused consideration.

M. Staempfli said that the Tables should be received, but that no new facts should be taken into consideration in awarding a gross sum.

Viscount d'Itajubá held that the Tribunal could not refuse to receive Tables which it had asked for, but that, as far as he was concerned, the new claims would not affect his judgment.

The Chief Justice said that if the claims had been advanced by individuals he would not have refused to receive them, but that, being advanced by the United States' Agent, and being quite imaginary, they should be rejected.

Count Sclopis held that the presentation of Tables of this description was not excluded by the Treaty, and that they should be received as for the information of the Tribunal.

The Tribunal finally decided, by a majority of four against the Chief Justice, that they could not accede to my demand, and disallow the Tables.

I thereupon, under the unanimous advice of Sir R. Palmer, Mr. Bernard, and Mr. Cohen, made the following statement:—

"I have already forwarded to Her Majesty's Government copies of the Tables and Memorandum presented by Mr. Davis, and of the Statement which I thought it my duty to address to the Tribunal on the 23rd instant.

"I shall now have the honour of also forwarding to Her Majesty's Government a copy of the paper presented by Mr. Davis this morning, and of acquainting Her Majesty's Government at the same time with the decision of the Tribunal, and it will then rest with Her Majesty's Government to give me such instructions as they may think fit with regard to such further representations, if any, as they may consider proper for me to address to the Tribunal."

Count Sclopis requested that I would add to my report the following, which he also desired might be placed on record in the Protocol:—

"Le Tribunal ne croit pas à propos d'ordonner le retrait des tableaux présentés de la part des Etats Unis, ainsi qu'il a été demandé par Lord Tenterden; mais il déclare qu'il ne considère ces pièces que comme de simples éclaircissements tels qu'ils ont été demandés par l'un des Arbitres, M. le Vicomte d'Itajubá, auxquels le Tribunal aura tel égard que de droit."

I shall be obliged by your Lordship furnishing me with instructions, and in order to avoid delay have communicated the substance of this despatch to your Lordship by telegraph.

I have, &c.
(Signed) TENTERDEN.

P.S.—I have to add that at the conclusion of the proceedings the Tribunal adjourned until Thursday, when the Arbitrators are to meet in private conference to consider some of the principles of money compensation in regard to the claims for prospective profits, freights, interest, and the pursuit and capture claims.

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Inclosure in No. 33.

Paper read by the United States' Agent.

[See Protocol No. XXVI, p. 325.]

No. 34.

Earl Granville to Lord Tenterden.

My Lord, *Foreign Office, August 29, 1872.*

YOUR telegram of the 26th, having reference to the presentation by the United States' Agent of certain supplementary claims, and the course to be pursued by you in consequence, have been duly considered; and I have now to state to you that, assuming that the new claims thus put in, though in the form of explanations only, ought not to be considered by the Tribunal under the Treaty, Her Majesty's Government nevertheless do not desire to raise any objection to the decision of the Tribunal allowing them to be put in merely as explanatory documents, as they wish that no impediment should arise to a final settlement of all differences, and they place confidence in the declaration of the Tribunal that it only regards these documents as merely explanations.

I am, &c.
(Signed) GRANVILLE.

No. 35.

Lord Tenterden to Earl Granville.—(Received September 2.)

My Lord, *Geneva, August* 31, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 26th instant, as since approved and signed.

I have, &c.

(Signed) TENTERDEN.

Inclosure in No. 35.

Protocol No. XXVI.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-sixth Conference, held at Geneva, in Switzerland, on the 26th of August, 1872.

THE Conference was held pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Lord Tenterden, as Agent of Her Britannic Majesty, delivered to the Tribunal and the Agents of the United States Tables of figures relating to the claims contained in the Tables presented on the part of the United States on the 19th instant.

The Tribunal concluded the discussion of the question concerning the entrance of the Florida into Mobile and her stay at that port, and proceeded to the definitive vote on this vessel.

Count Sclopis, as President of the Tribunal, having asked, under the VIIth Article of the Treaty of Washington, whether, as to the Florida, Great Britain had, by any act or omission, failed to fulfil any of the duties set forth in the Rules mentioned in Article VI of the Treaty, or recognized by the principles of international law not inconsistent with such Rules, Mr. Adams, Viscount d'Itajuba, M. Staempfli, and Count Sclopis answered "Yes," and Sir Alexander Cockburn answered "No."

As a question of principle, the Tribunal then unanimously declared that Great Britain should be considered as responsible for the tenders in the same degree as for the vessels to which they were attached.

The same question as had been put with regard to the Florida, was next asked by Count Sclopis as to the Tuscaloosa, a tender to the Alabama, and the Tribunal unanimously answered "Yes."

The same question was asked, separately, as to the Clarence, the Tacony, and the Archer, as tenders to the Florida, and Mr. Adams, M. Staempfli, Viscount d'Itajuba, and Count Sclopis answered "Yes," for each of these vessels, and Sir Alexander Cockburn answered "No," for each of these vessels.

The Tribunal then proceeded to the consideration of the representation made by the Agent of Her Britannic Majesty, at the last Conference.

Mr. J. C. Bancroft Davis, as Agent of the United States, read the following statement in reply:—

"L'Agent de Sa Majesté Britannique a présenté au Tribunal un Memorandum destiné à critiquer le résumé des indemnités demandées par les Etats Unis, et dans lequel le Tribunal est prié de remettre ce résumé à l'Agent des Etats Unis comme non avenu.

"L'Agent des Etats Unis soutient respectueusement que son résumé est parfaitement en règle et en tout conforme aux droits des Etats Unis aussi bien qu'à la demande particulière du Tribunal.

"1. Les objections de l'Agent de Sa Majesté Britannique portent sur les points suivants:—

"(*a.*) Les gages des équipages des navires capturés par les vaisseaux armés des Confédérés.

"(*b.*) Les pertes des personnes de ces équipages, tant officiers que matelots.

"(*c.*) Des parties indivisées d'un navire qui ne paraissent pas expressément dans les Tableaux originaux.

"(*d.*) Augmentation prétendu du montant total des réclamations.

"2. L'Agent de Sa Majesté Britannique objecte aussi:—

"(*a.*) En matière de forme.

"(*b.*) En matière de compétence.

"Nous répondrons *seriatim* à toutes ces objections :—

"1. Quant à la forme, il est évident que les Arbitres, pour faciliter leurs investigations, ont désiré avoir sous les yeux un abrégé comparatif de ce que les Etats Unis réclament et de la critique de ces réclamations par l'Angleterre, critique portant sur les chiffres aussi bien que sur les chefs des réclamations. Ces résumés faits par les deux parties ne lient d'aucune manière les Arbitres: ce sont tout simplement des renseignements propres à guider le Tribunal à travers la masse de chiffres et de détails renfermés dans les Mémoires et les pièces justificatives des deux Gouvernements.

"L'Agent Sa Majesté Britannique prétend que les Etats Unis doivent calquer leur résumé sur le modèle du résumé de l'Angleterre, non seulement quant à la forme, mais aussi quant au fond. C'est-à-dire, que, s'il plaît à l'Angleterre d'omettre dans son résumé quelque chef de réclamations, l'Amérique doit aussi l'omettre. Ce serait une étrange table synoptique.

"La raison requiert l'explication des différences qui existent entre les chiffres de chaque chef de réclamations. Mais elle requiert aussi l'explication des différences qui existent entre les chefs mêmes des réclamations. Sans cela, l'Angleterre n'aurait qu'à supprimer dans son résumé le chef des assurances, ou celui des frêts, ou celui d'un navire quelconque, pour soustraire ce chef à la connaissance des Arbitres. Ce ne serait pas le moyen de renseigner le Tribunal, mais plutôt celui de le tromper. Une telle idée a l'air d'une plaisanterie, et nullement d'une objection sérieuse au tableau des Etats Unis.

"Le Tribunal examinera les résumés des deux Gouvernements. A la lumière de ces résumés, le Tribunal examinera tous les documents relatifs compris dans les Mémoires et Contre-Mémoires des deux Gouvernements. C'est le droit et c'est le devoir de chaque Gouvernement de soumettre au Tribunal les preuves respectives sans retranchement d'un côté et sans suppression de l'autre. Alors le Tribunal jugera.

"2. Quant à la compétence :—

"(*a.*) Le Traité *comprend toutes les réclamations des Etats Unis qui sont désignées sous le nom générique de réclamations de l'Alabama.*

"(*b.*) Le Tribunal par son opinion préliminaire a limité la généralité de ces mots, en écartant des réclamations certaines pertes nationales alléguées par les Etats Unis.

"Mais, à la suite de cette opinion, le Tribunal reste saisi de la question de toutes les réclamations faites par les Etats Unis dans l'intérêt des individus lésés et comprises sous le nom générique de réclamations de l'Alabama.

"Les pertes des officiers et en général des équipages des navires capturés ne sont pas moins valables que celles des armateurs et des assureurs. Le doute est impossible à cet égard.

"(*c.*) Des réclamations pour les pertes personnelles des équipages des navires capturés sont formulées de la manière la plus explicite dans le Mémoire des Etats Unis, comme suit :—

"'Réclamations pour dommages ou mauvais traitements infligés aux personnes et qui ont été le résultat de la destruction des vaisseaux appartenant aux deux classes précédentes. . . . .

"'Il est impossible à présent pour les Etats Unis de soumettre au Tribunal un état détaillé des dommages ou mauvais traitements personnels qui ont résultés de la destruction de chaque classe de vaisseaux. Les officiers et l'équipage de chaque vaisseau avaient droit à la protection du drapeau Américain; leurs réclamations doivent être incluses dans la somme totale que le Tribunal peut allouer. D'après les éléments d'appréciation qui leur sont fournis, il ne sera pas difficile aux Arbitres de connaître les noms et le tonnage des bâtiments détruits, de déterminer le nombre de ces hardis marins sans ressources qui ont été privés ainsi de leurs moyens de subsistance et de fixer la somme totale qui de ce chef devrait être placée dans les mains des Etats Unis. Elle ne peut pas être inférieure à des centaines de mille dollars et elle peut s'élever à des millions.'*

"(*d.*) Nous prions les Arbitres de lire ces extraits attentivement. Ils verront que les Etats Unis ont présenté les réclamations de cette classe de la manière la plus claire et la plus positive, comme un chef capital des indemnités demandées à la Grande Bretagne.

"Nous ajoutons que ce sont des réclamations réelles et méritées.

"L'incertitude du chiffre ne nuit pas à sa réclamation.

"Nous aurons plus tard quelque chose à dire à ce sujet.

* Traduction Française, pages 377-378.

"(e.) Les pertes d'effets, soit d'officiers, soit de matelots, sont expressément récitées dans plusieurs cas. Dans les autres, ces pertes sont estimées d'après le chiffre des pertes actuellement exprimées.

"Quant aux gages et au chiffre des équipages nous avons essayé de rassembler tous les renseignements possibles, et nos estimations sont fondées sur les faits développés dans les pièces justificatives.

"Nous distinguons entre les gages des équipages des baleiniers et ceux des navires marchands proprement dits.

"Pour les deux classes de navires les gages ont été perdus, ou par les armateurs qui les avaient payés, ou pour les équipages qui ne les avaient pas reçus.

"Pour les baleiniers, la perte était plus sérieuse, parce que dans la plupart des cas le montant des gages se fixait, en tout ou en partie, selon les bénéfices, et les familles des matelots recevaient de l'armateur une partie notable de ces gages pendant le temps du voyage.

"Dans ces cas, les matelots des baleiniers avaient été victimes des frais des six ou neuf premiers mois d'un voyage, en attendant les bénéfices qui devraient être reçus dans les trois mois à venir.

"De deux choses l'une; pour indemniser ces gens, il faut leur allouer ou des bénéfices en perspective, ou des gages se rapportant à ces bénéfices.

"Pour les navires marchands, il peut se faire que la question des gages des matelots soit compliquée de la question des frêts. En supposant que les indemnités demandées sous le chef de frêt soient, comme nous le croyons, les pertes actuelles des armateurs dans cette relation, il s'ensuit que nous avons droit à être indemnisés pour les gages.

"Pour la plupart des navires, les Etats Unis réclament sous le nom de gages la perte du temps des matelots aussi bien que les frais de leur transport du lieu de capture aux lieux respectifs de leur résidence habituelle, et sous ce chef nous allouons des gages durant six mois ou durant neuf mois, selon que la capture a été faite dans les eaux de l'Atlantique ou bien dans celles du Pacifique.

"En effet, nous donnons des gages doubles pendant trois mois pour le premier cas, et pendant quatre mois et demi pour le second cas. Quoique ceci ne soit qu'une estimation, le résultat est au-dessous de la vérité plutôt qu'au-dessus.

"Nous avons estimé le chiffre de l'équipage de chaque navire conformément aux données qu'on trouve dans nos pièces justificatives, en distinction du chiffre des baleiniers qui nécessitent un plus grand nombre d'hommes que les navires marchands.

"3. Les Etats Unis réclament pour toutes les parties indivisées d'un navires soit que le propriétaire d'une partie mineure quelconque paraisse ou non, parce que les Etats Unis auront à répondre à tous les propriétaires dans le cas où le Tribunal accorderait en bloc une somme aux Etats Unis. Sans cela, il y aurait injustice évidente. L'objet du Traité est d'indemniser les Etats Unis pour toutes les pertes subies par leurs citoyens et non d'imposer une partie de cette indemnification aux Etats Unis eux-mêmes.

"4. L'Agent de Sa Majesté Britannique objecte que nous avons augmenté le montant des réclamations en ajoutant les chiffres appartenant aux trois chefs suivants:—

	£
"Gages	939,597
Effets	441,050
Intérêts indivisés	42,273
	1,422,920

"Il s'agit de moins d'un million et demi et non des deux millions allégués dans le *Memorandum* de l'Agent de Sa Majesté Britannique.

"Il est vrai de dire qu'il y a de plus une addition à la valeur de certains navires. C'est une méprise de l'expert employé dans les calculs relatifs à ces navires. Cette erreur est expliquée et corrigée dans une note placée à la suite de ce *Memorandum*.

"Mais, en même temps, nous avons mis de côté les réclamations fondées sur des bénéfices en perspective qui est le double des additions faites.

"5. Enfin et pour résumer le débat:—

"L'Angleterre a composé un tableau non des faits actuels, mais tout d'estimations, d'appréciations et de moyennes arbitraires et supposées.

"Notre tableau est composé de faits actuels et prouvés, pour la plupart, avec un petit nombre d'appréciations très-simples, et celles-ci fondées sur des preuves et des analogies évidentes et appuyées par les documents.

" Nous avons pleinement le droit de nous plaindre du tableau tout entier présenté au nom d'Angleterre : elle n'a à critiquer que quelques chiffres secondaires du même ordre appartenant au *Memorandum* des Etats Unis.

" L'Agent de Sa Majesté paraît supposer que les Etats Unis ont eu l'intention, dans tout ceci, de préparer notre estimé de manière à exercer une influence fâcheuse sur la conscience des Arbitres. Est-ce le Tribunal qu'on soupçonne ? Est-ce l'Agent des Etats Unis ? On pourrait s'y méprendre. On pourrait même imputer de tels motifs à l'Agent de Sa Majesté. Mais ce ne serait digne ni de lui, ni de nous, en vue des relations courtoises des Agents et des Conseils des deux Gouvernements.

" Mais à quoi bon cette critique de part ou d'autre ?

" Si les Arbitres allouent une somme en bloc, cette somme sera nécessairement une appréciation en partie, sans quoi le résultat des travaux des Arbitres ne serait pas une indemnification réelle des Etats Unis.

" S'il y a quelques défauts secondaires dans les preuves des Etats Unis, il y a un manque presque total de preuves définies de la part de la Grande Bretagne.

" Mais si le Tribunal renvoie ces réclamations à des Assesseurs, l'Angleterre sera tenue par les stipulations du Traité de payer aux Etats Unis la somme adjugée par les Assesseurs, sans restriction, ni de preuves affirmatives, ni de preuves négatives. Alors, les matelots qui n'ont pas présenté leurs réclamations, et même les armateurs, assureurs ou autres, auront le droit de réclamer devant les Assesseurs. Tel est le sens évident du Traité.

" En attendant, tout ce qui se fait, soit de la part de l'Amérique, soit de la part de l'Angleterre, tend à essayer d'éclairer, par les moyens qui sont à notre disposition, le jugement du Tribunal.

" Enfin nous protestons contre certaines appréciations du Traité de Washington qui sont ou exprimées ou impliquées dans le Mémoire de l'Agent de la Grande Bretagne, sans nous arrêter pour les discuter ici.

" NOTE.

	£	c.
" (A.) Les réclamations pour les gages des baleiniers et des pêcheurs des navires détruits ou détenus par l'Alabama, par le Florida, ou par le Shenandoah, après sa sortie de Melbourne (la correction étant faite des erreurs notées dans le Mémorandum qui accompagne nos Tableaux), estimées d'après les preuves soumises, s'élèvent à	588,247	50
" Ce montant doit être soustrait de la somme totale dans le Sommaire annexé, si le Tribunal accorde les réclamations des baleiniers pour la pêche perspective et pour l'interruption du voyage.		
" (B.) Les réclamations pour les gages des officiers et des hommes des navires marchands ainsi détruits ou détenus, estimées d'après les preuves soumises, s'élèvent à	408,070	0
" Quelques-uns des navires détruits ou détenus étaient sur lest. En tous cas pareils, nous insistons sur ce que le Tribunal nous accorde le total des gages réclamés. Plusieurs ou même la plupart des navires étaient chargés de frêt. Dans tous les cas où le Tribunal est convaincu que le frêt réclamé est frêt pur, il doit accorder les réclamations pour gages ; mais dans tous les cas où le Tribunal est convaincu que la réclamation pour frêt est pour frêt brut, il doit refuser d'accorder les réclamations pour gages. Ceci est exposé d'une manière très-précise dans le Memorandum qui accompagne nos Tableaux.		
" (C.) Les estimations des réclamations pour les effets personnels des officiers et des hommes des navires ainsi détruits ou détenus s'élèvent à	421,000	0
" Les Etats Unis insistent sur ce qu'il leur soit accordé la somme totale de ces réclamations.		
" (D.) Les Tableaux présentés par l'Agent des Etats Unis comprenaient tous les navires détruits par le Shenandoah. Depuis que ces Tableaux ont été terminés, le Tribunal a décidé que la Grande Bretagne n'est pas responsable des actes du Shenandoah avant sa sortie de Melbourne. Le montant des réclamations à déduire par suite de cette décision s'élève à	453,290	49
" (E.) Il y a une erreur palpable de la part du comptable dans le Tableau intitulé 'Shenandoah, Supplément, Classe A.' La valeur estimée de huit navires détenus, c'est-à-dire, $80,000 chacun, fut retenue par le comptable par mégarde, et joint aux chiffres de la colonne des totaux de pertes.		
" Dans la discussion détaillée devant le Tribunal, on se serait aperçu tout de suite de cette erreur qui était demeurée inaperçue dans la hâte des préparatifs pour rédiger les Tableaux. On fournit ci-inclus un Tableau nouveau sous le même titre. Le montant de cette erreur, qui se trouve corrigée ici, est de	640,000	0
" (F.) L'exposé révisé ci-joint, Totaux des Réclamations Comparées, exhibe ces corrections : c'est-à-dire, que les montants (D) et (E), qui s'élèvent à $1,093,290 49 c., sont déduits.		
" C'est au Tribunal à décider si une partie quelconque des montants (A) et (B) doit être déduite.		

"TOTAUX DES RÉCLAMATIONS COMPARÉES.

	Montants réclamés dans les Tableaux Américains.	Montants accordés dans le Rapport ajouté à l'Argument Britannique.
	£ c.	£ c.
"Alabama—		
"Classe A	1,314,286 99	460,893 0
" B	1,396,430 83	618,538 0
" C	3,309,876 10	2,004,376 0
" D	413,288 33	136,021 0
" E et F	123,807 78	47,850 0
	6,557,690 3	3,267,678 0
"Florida, y compris le Clarence et le Tacony—		
"Classe A	228,941 92	108,569 0
" B	539,179 10*	644,709 0
" C	3,339,410 2	1,776,375 0
" D	138,929 17	44,570 0
" E et F	278,618 62	61,350 0
" G	91,225 10	..
	4,616,303 93	2,635,573 0
"Shenandoah—		
"Classe A et Supplément	3,263,149 55	1,171,464 0
"Récapitulation—		
"Alabama	6,557,690 3	3,267,678 0
"Florida	4,616,303 93	2,635,573 0
"Shenandoah	3,263,149 55	1,171,464 0
	14,437,143 51	7,074,715 0
"Réclamations actuelles des Etats Unis pour les dépenses causées à leur marine par suite des actes du Florida, de l'Alabama, et du Shenandoah	6,735,062 49	940,460 24
	21,172,206 0	8,015,175 24
"Réclamations provenant de l'interruption des voyages et des pertes sur bénéfices en perspective	4,099,302 50	..

"SOMMAIRE.

	£ c.
"Totaux des réclamations (y compris les réclamations provenant de l'interruption des voyages, et des pertes sur bénéfices en perspective)	25,281,508 50
"Si les susdites réclamations sont comprises, il faut déduire (*vide* A) ..	588,247 50
"Ou,	24,693,261 0
"Totaux des réclamations (non compris les dites réclamations)	21,272,206 20
"Dans le cas où une pareille élimination serait faite, il faudrait ajouter 25 pour cent sur la valeur des navires et des équipements (*vide* le Memorandum qui accompagne les Tableaux)	400,127 91
	21,672,334 11

"En tous cas il faut ajouter l'intérêt de 7 pour cent. par an jusqu'au jour du paiement indiqué par les termes du Traité."

After deliberation, the Tribunal gave its decision as follows:—

"The Tribunal does not see fit to order the withdrawal of the Tables presented on the part of the United States as requested by Lord Tenterden; but it declares that it considers these documents only as simple elucidations, such as were required by one of the Arbitrators, Viscount d'Itajubá, to which the Tribunal will give such attention as is right."

* "Le comptable, qui a fait l'arrangement des navires dans nos Tableaux, a placé dans la Classe C deux navires qui auraient dû être dans la Classe B, savoir:—

	£ c.
"L'Oneida	471,849 12
Le Windward	22,598 0
	494,447 12

"Cette erreur corrigée, la somme totale de la Classe B (sous le nom du Florida) serait de $1,033,626 22 c., et de la Classe C. $2,844,962 90 c. Comme les sommes totales des réclamations sous le nom du Florida ne seraient aucunement changées par la correction de cette erreur, purement formelle, j'ai pensé qu'il ne valait pas la peine de changer les Tableaux détaillés.

The Tribunal determined to devote the next Conference to the consideration of the questions concerning the claims for "expenditure incurred in pursuit of the cruizers, prospective profits, freights and interest," and decided to deliberate with closed doors.

Sir Alexander Cockburn, as one of the Arbitrators, declared that he objected to this latter decision.

The Conference was then adjourned until Thursday, the 29th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

(Translation of Mr. Bancroft Davis' Statement, embodied in the preceding Protocol.)

"The Agent of Her Britannic Majesty has presented to the Tribunal a memorandum intended to criticize the summary of indemnities demanded by the United States, and in which the Tribunal is requested to return this summary to the Agent of the United States, as disallowed.

"The Agent of the United States respectfully maintains that his summary is perfectly in order and in complete conformity with the rights of the United States, as well as with the specific request of the Tribunal.

"1. The objections of Her Majesty's Agent relate to the following points—

"(*a.*) The wages of the crews of vessels captured by the armed vessels of the Confederates.

"(*b.*) The losses of individuals of those crews, both officers and sailors.

"(*c.*) Unallotted portions of a vessel which do not appear expressly in the original Tables.

"(*d.*) Asserted augmentation of the total amount of the claims.

"2. The Agent of Her Britannic Majesty also objects—

"(*a.*) On the point of form.

"(*b.*) On the point of competence.

"We will reply *seriatim* to all these objections.

"1. As to the form, it is evident that the Arbitrators, to facilitate their investigations, wished to have before them a comparative summary of what is claimed by the United States, and of the criticism of these claims by England, whether as regards the amount or the nature of the claims. These summaries made by the two parties in no way bind the Arbitrators; they are simply information fitted to guide the Tribunal through the mass of figures and details contained in the Cases and evidence of the two Governments.

"Her Britannic Majesty's Agent claims that the United States ought to frame their summary on the model of the English summary, not merely in regard to form, but also in regard to principle. That is to say that, if England be pleased to omit in her summary any head of claim, America must omit it too. This would be a strange synoptical Table.

"Reason requires an explanation of the differences which exist between the amounts under each head of claim; but it also requires an explanation of the differences between the classes of claims themselves. Otherwise, England would only have to suppress in her summary the claims for insurances, or those for freights, or those for any particular vessel, to withdraw that class of claims from the cognizance of the Arbitrators. This would not be a method of instructing the Tribunal, but rather of leading it astray. Such an idea looks like a pleasantry, and not like a serious objection to the United States' Tables.

"The Tribunal will examine the summaries of the two Governments. By the light of these summaries the Tribunal will examine all the documents relative thereto contained in the Cases and Counter-Cases of the two Governments. It is the right and the duty of each Government to submit to the Tribunal the respective evidence without excision on the one side or suppression on the other. The Tribunal will then form its judgment.

"2. As to competence—

"(*a.*) The Treaty *comprises all the claims of the United States which are designated under the generic name of the Alabama Claims.*

"(*b.*) The Tribunal by its preliminary opinion limited the generality of these words, excluding from the claims certain national losses alleged by the United States.

"But, as a corollary of this opinion, the Tribunal remains seized of the question of all the claims made by the United States in the interest of injured individuals, and comprised under the generic name of the Alabama claims.

"The losses of the officers and of the crews of the captured vessels in general are not less valid than those of the owners and insurers. There is no possibility of doubt on this point.

"(*c.*) Claims for the personal losses of the crews of the captured vessels are advanced in the most explicit manner in the case of the United States, as follows:—

"'Claims for damages or injury to persons, growing out of the destruction of the two preceding classes of vessels. . . . . .

"'It is impossible, at present, for the United States to present to the Tribunal a detailed statement of the damages or injuries to persons growing out of the destruction of each class of vessels. Every vessel had its officers and its crew, who were entitled to the protection of the flag of the United States, and to be included in the estimate of any sum which the Tribunal may see fit to award. It will not be difficult, from the data which are furnished, to ascertain the names and the tonnage of the different vessels destroyed, and to form an estimate of the number of hardy, but helpless, seamen who were thus deprived of their means of subsistence, and to determine what aggregate sums it would be just to place in the hands of the United States on that account. It cannot be less than hundreds of thousands, and possibly millions, of dollars.'*

"(*d.*) We beg the Arbitrators to read these extracts attentively. They will see that the United States have presented this class of claims in the clearest and most positive manner, as a capital head of indemnity demanded from Great Britain.

"We add that they are real and solid claims.

"The uncertainty of the amounts does not invalidate the claim.

"We shall have something to say on this subject later.

"(*e.*) The loss of effects whether of officers or sailors, is expressly mentioned in several cases. In others, these losses are estimated according to the amount of the losses actually recorded.

"As to the wages and the number of the crews, we have endeavoured to collect all the information possible, and our estimates are founded on the facts detailed in the evidence.

"We distinguish between the wages of the crews of the whalers and those of the merchant-vessels properly so-called.

"For the two classes of vessels the wages have been lost, either by the owners who had paid them, or by the crews who had not received them.

"For the whalers the loss was more serious, because in the majority of cases the amount of the wages was fixed, in whole or in part, according to the profits, and the families of the sailors received from the owner a considerable portion of those wages during the time of the voyage.

"In these cases, the seamen of the whalers had suffered the expenses of the six or nine first months, while awaiting the profits which should have been received in the three months to come.

"One thing or the other; to indemnify these people, they must be allowed either their prospective profits, or wages in respect of those profits.

"As regards the merchant-vessels, it is possible that the question of the seamen's wages may be complicated by the question of the freights. Supposing that the indemnities demanded under the head of freight are, as we believe, the actual losses of the owners in this respect, it follows that we have a right to be indemnified for the wages.

"For the majority of the vessels the United States claim, under the name of wages, the loss of the time of the sailors, as well as the cost of their transports from the place of capture to the respective localities where they habitually resided, and under this head we allow wages during six months or during nine months, according as the capture was made in the waters of the Atlantic or in those of the Pacific.

"In fact, we give double wages during three months in the first case, and during four months and a half in the second case. Although this is only an estimate, the result is rather below than above the truth.

"We have estimated the number of the crew of each vessel in conformity with the data found in our evidence, in distinction to the numbers in the case of the whalers, which require a larger number of men than the merchant-vessels.

"3. The United States claim for all the unallotted portions of a vessel, whether the proprietor of any smaller portion appears or not, because the United States will have to answer to all the owners in case the Tribunal should award a sum in gross to the

* Case of the United States, pp. 469, 471.

United States. Otherwise there would be manifest injustice. The object of the Treaty is to indemnify the United States for all the losses sustained by their citizens, and not to impose a portion of this compensation on the United States themselves.

"4. Her Britannic Majesty's Agent objects that we have increased the amount of the claims by adding sums under the three following heads:—

	$
"Wages	939,597
Personal effects..	441,050
Unallotted shares	42,273
	1,422,920

"The amount is less than a million and a half, and not two millions as alleged in the Memorandum of Her Britannic Majesty's Agent.

"It is true that there is also an addition to the value of certain vessels. This is a mistake of the expert employed in the calculations with respect to these vessels. This error is explained and corrected in a note annexed to this memorandum.

"But, at the same time, we have put aside the claims founded on prospective profits, which are double the additions made.

"5. Finally, and to sum up the discussion—

"England has composed a Table, not from actual facts, but entirely from estimates, valuations, and arbitrary and supposititious averages.

"Our Table is composed from actual proved facts for the most part, with a small number of very simple estimates, and these founded on evidence and evident analogies supported by the documents.

"We have good right to complain of the whole Table presented in the name of England; she has nothing to criticize but some secondary figures of the same kind belonging to the Memorandum of the United States.

"Her Majesty's Agent seems to suppose that the intention of the United States in all this was to prepare our estimate in a manner to exercise a prejudicial influence on the judgment of the Arbitrators. Is it the Tribunal which is suspected, or the Agent of the United States? There might be a mistake on this point. Such motives might even be imputed to Her Majesty's Agent. But it would be worthy neither of him nor of ourselves, in view of the courteous relations of the Agents and Counsel of the two Governments.

"But what is the use of this criticism on either side?

"If the Arbitrators award a sum in gross, this sum will necessarily be in part an estimate, otherwise the result of the labours of the Arbitrators would not be a real indemnification of the United States.

"If there are some minor defects in the evidence of the United States, there is an almost total absence of definite evidence on the part of Great Britain.

"But if the Tribunal sends these claims to Assessors, England will be bound by the stipulations of the Treaty to pay to the United States the sum awarded by the Assessors, without restriction either of affirmative or negative evidence. Then the seamen who have not presented their claims, and even the owners, insurers, or others, will have the right of claiming before the Assessors. Such is the evident sense of the Treaty.

"In the meanwhile, all that is done, either on the part of America or England, tends to endeavour to enlighten the judgment of the Tribunal by the means which are at our disposal.

"Lastly, we protest against certain constructions of the Treaty of Washington, which are either expressed or implied in the Memorandum of the Agent of Great Britain, without stopping to discuss them here.

"NOTE.

"(A.) The claims for the wages of the whalers and fishermen of the vessels destroyed or detained by the Alabama, by the Florida, or by the Shenandoah, after her departure from Melbourne (with the corrections of the errors noted in the Memorandum accompanying our Tables) estimated from the proofs presented, amount to 588,247 50

"This amount should be deducted from the total amount in the annexed Summary, if the Tribunal awards the claims of the whalers for prospective catch and interruption of the voyage.

"(B.) The claims for the wages of the officers and men of the merchant vessels so destroyed or detained, estimated according to the evidence submitted, amount to 408,070 00

"Some of the vessels destroyed or detained were in ballast. In all such cases we maintain that the Tribunal should award us the total of the wages claimed. Some, or even the majority, of the vessels had freight on

board. In all these cases in which the Tribunal is satisfied that the freight claimed is net freight, it should allow the claims for wages; but in all cases in which the Tribunal is satisfied that the claim for freight is for gross freight, it should refuse to allow the claims for wages. This is explained with perfect precision in the Memorandum which accompanies our Tables. $ c.

"(C.) The estimates of the claims for personal effects of the officers and men of the vessels so destroyed or detained amount to 421,000 00

"The United States maintain that the sum total of these claims should be awarded to them.

"(D.) The Tables presented by the Agent of the United States comprised all the vessels destroyed by the Shenandoah. After these Tables were finished, the Tribunal decided that Great Britain is not responsible for the acts of the Shenandoah before her departure from Melbourne. The total of the claims to be deducted in consequence of this decision amounts to .. 453,290 49

"(E.) There is a palpable error on the part of the accountant in the Table entitled 'Shenandoah, Supplement, Class A.' The estimated value of the eight vessels detained, that is to say, $80,000 each, was retained by the accountant by mistake, and added to the figures of the column of the total of losses.

"In the detailed discussion before the Tribunal, this error, which escaped notice in the hurry of the preparation of the Tables, will have at once been perceived. A fresh Table is supplied herewith under the same title. The amount of this error, which is here corrected, is 640,000 00

"(F.) The annexed revised statement, Totals of Claims Compared, shows these corrections: that is to say, that the items (D) and (E), which amount to $1,093,290 49 c., are deducted.

"It is for the Tribunal to decide if any part of the items (A) and (B) should be deducted.

"Totals of Claims Compared.

	Amounts claimed in the American Tables.	Amounts allowed in the Report annexed to the British Argument.
	$ c.	$ c.
"Alabama—		
"Class A	1,314,286 99	460,893 0
" B	1,396,430 83	618,538 0
" C	3,309,876 10	2,004,376 0
" D	413,288 33	136,021 0
" E and F	123,807 78	47,850 0
	6,557,690 3	3,267,678 0
"Florida, including the Clarence and Tacony—		
"Class A	228,941 92	108,569 0
" B	539,179 10*	644,709 0
" C	3,339,410 2	1,776,375 0
" D	138,929 17	44,570 0
" E and F	278,618 62	61,350 0
" G	91,225 10	..
	4,616,303 93	2,635,573 0
"Shenandoah—		
Class A and Supplement	3,263,149 55	1,171,464 0
"Recapitulation—		
"Alabama	6,557,690 3	3,267,678 0
"Florida	4,616,303 93	2,635,573 0
"Shenandoah	3,263,149 55	1,171,464 0
	14,437,143 51	7,074,715 0
"Actual claims of the United States for the expenses caused to their navy by reason of the acts of the Florida, Alabama, and Shenandoah	6,735,062 49	940,460 24
	21,172,206 0	8,015,175 24
"Claims arising from interruption of voyages and loss of prospective profits ..	4,099,302 50	..

"* The accountant who arranged the vessels in our Tables has placed in Class C two vessels which should have been in Class B, viz.:—

	$ c.
"The Oneida	471,849 12
"The Windward	22,598 0
	494,447 12

"Correcting this error, the sum total of Class B (under the name of the Florida) would be $1,033,626 22 c., and of Class C, $2,844,962 90 c. As the total amount of the claims under the Florida would in no way be changed by the correction of this purely formal error, I have not thought it worth while to alter the detailed Tables."

"SUMMARY.

	$	c.
"Total claims (including the claims arising from the interruption of voyages and loss of prospective profits)	25,281,508	50
"If the above claims are included, there should be subtracted (*see* A.) ..	588,247	50
	24,693,261	0
"Or—		
"Total claims (not including the said claims)	21,272,206	20
"In case such deduction should be made, 25 per cent. on the value of the vessels and outfits must be added (see the Memorandum which accompanies the Tables)	400,127	91
	21,672,334	11

"In any case, interest must be added at 7 per cent. per annum up to the date of payment prescribed by the terms of the Treaty."

No. 36.

TABLES PRESENTED BY THE BRITISH AGENT, AUGUST 26, 1872.

New Claims contained in the Tables presented by the United States, August 19, 1872.

1. The new and conjectural claims for wages, extending over periods of three years in some cases, and the claims for personal effects, of which there is no evidence nor any probability that they were ever lost, amount altogether to about a million and a-half of dollars. The particulars are annexed. The claims for wages amount to about 1,100,000 dollars, and those for personal effects to about 420,000 dollars.

2. The claims which are increased in amount without any reason being given in the Table of Claims or the Memorandum, amount to about half a million of dollars. The particulars are annexed.

3. The additional claims for shares not claimed for in the Revised Statement amount to 48,973 dollars. Particulars of these claims are also annexed.

The total amount of these claims, which are now presented for the first time, exceeds two millions of dollars.

New and Conjectural Claims for Wages and Personal Effects, unsupported by any Evidence.

Vessels captured by the "Alabama."

Name of Vessel.	Wages.			Personal Effects.	Total.
	Men.	Months.	Dollars.		
Class A—					
Alert	39	9	11,295	5,650	16,945
Altamaha	27	10	11,150	3,200	14,350
Benjamin Tucker	30	25	29,375	3,000	32,375
Courser	27	13	14,495	3,950	18,445
Elisha Dunbar	27	7	7,805	3,700	11,505
Kate Cory	27	12	13,380	3,200	16,580
Kingfisher	27	26	28,990	4,950	33,940
Lafayette 2nd	27	17	18,955	3,700	22,655
Levi Starbuck	32	7	8,505	4,700	13,205
Nye	27	15	16,725	3,200	19,925
Ocean Rover	28	9	10,215	3,700	13,915
Oemulgee	38	8	10,680	4,350	15,030
Virginia	30	7	8,225	5,250	13,475
Weather-gage	27	8	8,920	3,850	12,770
Class B—					
Brilliant	31	7	6,195	4,050	10,245
Charles Hill	26	8	6,280	3,550	9,830
Conrad	15	7	3,955	3,450	7,405
Crenshaw	13	7	3,675	3,250	6,925
Express	39	10	9,850	5,100	14,950
Golden Eagle	40	9	9,585	4,950	14,535
Jabez Snow	39	8	7,460	4,850	12,310
John A. Parkes	38	7	6,215	4,700	10,915
Lafayette	15	7	6,755	3,700	10,455
Lamplighter	15	7	3,955	2,950	6,905
Louisa Hatch	31	7	6,195	4,050	10,245
Palmetto	13	7	2,775	2,250	5,025
Rockingham	36	8	6,980	4,550	11,530
S. Gildersleeve	31	9	7,965	5,050	13,015
Wave Crest	17	7	3,215	2,150	5,365
Class C—					
Amanda	23	11	6,325	2,500	8,825
Amazonian	19	8	5,160	1,750	6,910
Anna F. Schmidt	29	2	10,140	3,750	13,890
Contest	40	10	10,650	4,950	15,600
Dorcas Prince	26	8	6,280	3,550	9,830
Dunkirk	13	7	2,625	1,500	4,125
Golden Rule	13	7	2,675	2,150	5,825
Lauretta	13	7	3,675	3,250	6,925
Martaban	27	10	8,050	3,650	11,700
Olive Jane	15	7	2,905	2,450	5,355
Parker Cook	13	12	2,775	2,250	5,025
Sea Bride	18	12	6,600	2,750	9,350
Talisman	44	8	8,560	5,850	14,410
Sea Lark	35	8	7,720	4,450	12,170
Thomas B. Wales	23	11	7,975	2,500	10,475
Tycoon	27	8	5,540	3,650	9,190
Union Jack	19	8	3,960	2,850	6,810
Winged Racer	62	10	13,700	6,400	20,100
Manchester	38	7	7,175	4,750	11,925
Class D—					
Chastelaine	13	7	3,675	2,250	5,925
Emma Jane	40	10	..	..	..
Highlander	38	10	10,250	4,750	15,000
Sonora	27	10	5,550	2,900	8,450
Class E, F—					
Ariel	..	..	..	..	..
Justina	..	..	..	..	..
Morning Star	..	..	..	..	..
Nora	12	7	2,275	2,250	4,525
Starlight	8	7	2,975	1,750	4,725
Baron de Castine	..	..	..	..	..

Total in the case of the "Alabama," 631,835 dollars.

NEW and Conjectural Claims for Wages and Personal Effects, Unsupported by any Evidence.

Vessels captured by the "Florida."

Name of Vessel.	Wages.			Personal Effects.	Total.
	Men.	Months.	Dollars.		
Class A—					
Goleonda	29	3	3,465	3,650	7,115
Rienzie	27	4	4,460	4,950	9,410
Ada	..	..	..	1,000	1,000
Elizabeth Ann	7	3	950	1,000	1,950
Marengo	7	3	950	1,000	1,950
Rufus Choate	7	3	950	1,000	1,950
Wanderer	7	3	950	1,000	1,950
Class B—					
Anglo-Saxon..	32	7	6,335	5,150	11,485
Avon	35	10	8,750	3,700	12,450
B. J. Hoxie	49	9	10,305	6,850	17,155
Greenland	21	7	3,895	3,050	6,945
Southern Cross	34	9	8,505	5,350	13,855
W. C. Clark	14	7	3,815	3,350	7,165
Mary Alvina..	13	7	3,675	2,250	5,925
Class C—					
Aldebaran	13	7	3,675	2,250	5,925
Clarence	13	7	3,675	2,250	5,925
Commonwealth	46	8	9,480	6,450	15,930
Crown Point..	40	8	7,470	4,700	12,170
Electric Spark	30	7	6,055	4,950	11,005
Henrietta	18	8	5,000	2,750	7,750
Jacob Bell	49	10	12,450	5,850	18,300
Lapwing	22	7	4,935	4,150	9,085
M. J. Colcord	15	7	3,955	3,450	7,405
Red Gauntlet	38	7	5,675	4,000	9,675
Star of Peace	34	9	8,505	4,350	12,855
William B. Nash	13	7	3,675	3,250	6,925
Oneida	13	9	4,275	2,250	6,525
Windward	13	7	3,675	2,250	5,925
Class D—					
Estelle	13	7	3,675	3,250	6,925
Zelinda	13	7	3,675	3,250	6,925
Umpire	13	7	3,675	2,250	5,925
Mondamin	16	7	4,095	2,550	6,645
Class E, F—					
Corris Ann	20	7	4,935	4,150	9,085
General Berry	13	3	1,575	1,500	3,075
George Latimer	13	7	3,675	2,250	5,925
Harriet Stevens	13	7	3,675	3,250	6,925
Byzantium	25	7	5,455	4,450	9,905
Good Speed	13	7	3,675	3,250	6,925
Class G—					
M. Y. Davis	10	4	800	800	1,600
Tacony	13	4	2,100	3,250	5,350
Whistling Wind	..	..	..	..	..
Archer	..	..	..	..	..
Ripple	7	3	950	1,000	1,950

Total in the case of the "Florida," 312,865 dollars.

New and Conjectural Claims for Wages and Personal Effects, Unsupported by any Evidence.

Vessels captured by the "Shenandoah."

Name of Vessel.	Wages.			Personal Effects.	Total.
	Men.	Months.	Dollars.		
Class A—					
Abigail	28	11	12,485	3,200	15,685
Brunswick	27	11	12,265	3,950	16,215
Catherine	33	12	14,820	3,550	18,370
Congress	32	34	41,310	4,450	45,760
Covington	30	17	18,445	3,900	22,345
Edward	27	13	14,495	4,950	19,445
Edward Carey	31	13	13,665	3,600	17,265
Euphrates	31	14	12,470	3,600	16,070
Favorite	27	11	12,265	3,700	15,965
General Williams	35	15	19,125	4,000	23,125
Gipsey	31	13	12,160	3,600	15,760
Hector	32	14	17,010	4,150	21,460
Hillmann	33	41	49,960	4,450	54,410
Isaac Howland	34	12	15,060	3,900	18,960
Isabella	28	30	31,050	3,300	37,350
Jirah Swift	37	12	15,780	3,700	19,480
Martha	31	12	12,877	2,850	15,727
Nassau	34	11	13,805	4,650	18,455
Nimrod	30	35	41,125	3,000	44,125
Sophia Thornton	35	9	13,575	4,000	17,575
Susan Abigail	27	8	8,920	4,950	13,870
Waverley	29	12	13,860	4,150	18,018
William Thompson	40	11	15,125	6,250	..
William C. Nye	33	9	11,115	4,550	15,665
Pearl	27	12	12,705	3,600	..
Class B—					
Alina	27	7	4,035	3,150	7,185
Susan	13	8	3,600	2,500	6,100
Class C—					
D. Godfrey	13	8	3,300	2,250	5,550
L. Stacey	13	8	3,300	2,150	5,450
Charter Oak	13	8	4,200	2,250	6,450
Class D—					
Delphine	26	12	10,350	2,800	13,150

CLAIMS Increased without any Ground being given for such Increase.

Name of Vessel.	Dollars.
Alabama—	
Ocean Rover	200
C. Hill	1,359
Express	6,762
Amazonian	800
Golden Rule	3,063
Martaban	5,040
Olive Jane	21,500
Sea Bride	256
Sea Lark	578
Thos. B. Wales	1,805
Florida—	
Avon	15,000
W. C. Clark	17,391
Clarence	852
Commonwealth	2,561
Electric Spark	8,132
Red Gauntlet	1,025
Star of Peace	20,663
Oneida	1,000
Windward	220
Harriet Stevens	34,500
Shenandoah—	
Edward Carey	630
Almira	
Europa	
General Pike	
James Maury	
Milo	
Nile	
Richmond	
Splendid	
Louisiana	

In the Summary in the Revised Statement there were claims for only four of these vessels, viz.:—*General Pike*, *James Maury*, *Milo*, and *Nile*, amounting to 386,751 dollars: now there are claims for the whole of them, amounting to 951,000 dollars.

The claims which are to be found in the Revised Statement in respect of these vessels amount to 610,747 dollars.

CLAIMS for *additional shares* of Vessels.

Greenland	23,500
B. Tucker	16,200
G. Latimer	4,189
Martha	2,255
Rienzie	2,829

No. 37.

Lord Tenterden to Earl Granville.—(*Received September* 3.)

My Lord, *Geneva, August* 31, 1872.

YOUR Lordship will see that the Protocol inclosed in my despatch of this day's date* does not include the statement which I made to the Arbitrators on the 26th instant, and of which a copy was forwarded to your Lordship with my despatch of the 26th instant, informing them that it was my intention to apply to your Lordship for instructions as to the further representations, if any, which you might desire me to make with regard to the presentation of new claims by the Agent of the United States in the Tables of Claims delivered by him to the Tribunal on the 19th instant.

The Protocol as originally prepared by the Secretary contained a record of the proceedings in the terms of my Report to your Lordship in my above-

mentioned despatch. Under Count Sclopis' instructions the additional declaration that the claims were considered "only as simple elucidations" to which the Tribunal would "give such attention as is right," which had been elicited by my statement, was made to form part of the decision of the Tribunal, and thus preceded, instead of succeeding, my statement, as shown in the printed draft, of which I transmit a copy.

The subsequent meetings of the Tribunal having been held with closed doors, that is to say, without the Agents or Counsel being present, I have had no opportunity of communicating to the Arbitrators personally the instructions which I received from your Lordship on the 28th instant.

I had, however, lost no time in acquainting the Chief Justice with them, and requesting him to state their substance to the other Arbitrators.

The matter having thus, from the circumstances, practically been allowed to drop, the Chief Justice, at the instance of some of the other members of the Tribunal, asked me, after the sitting on the 29th instant, whether I still desired that my statement should be retained on the Protocol as part of the record of the proceedings of the Tribunal.

As it appeared that my doing so might possibly lead to a continuance of the discussion upon these claims, which, after your Lordship's instructions and the declaration of the Tribunal, could lead to no useful result, I consented, with the concurrence of Her Majesty's Counsel, to the statement being omitted, reserving to Her Majesty's Government the right to publish the correspondence on the subject between your Lordship and myself when the Protocols are published.

I have, &c.
(Signed) TENTERDEN

Inclosure in No. 37.

Draft of Protocol No. XXVI.—Identical with the signed version given under No. 35 *up to the last paragraph but three, when the following is inserted:—*

LORD TENTERDEN, as Agent of Her Britannic Majesty, thereupon said:—

"M. le President,

"I have already forwarded to Her Majesty's Government copies of the Tables and Memorandum presented by Mr. Davis, and of the statement which I thought it my duty to address to the Tribunal on the 23rd instant.

"I shall now have the honour of also forwarding to Her Majesty's Government a copy of the paper presented by Mr. Davis this morning, and of acquainting Her Majesty's Government, at the same time, with the decision of the Tribunal; it will then rest with Her Majesty's Government to give me such instructions as they may think fit with regard to such further representations, if any, as they may consider proper for me to address to the Tribunal."

The Tribunal determined, &c. (as in the signed version).

No. 38.

Lord Tenterden to Earl Granville.—(*Received September* 2.)

My Lord, *Geneva, August* 31, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration at their meeting with closed doors on the 29th instant, as approved and signed at the meeting yesterday, which have been forwarded to me by the Secretary to the Tribunal.

I have, &c.
(Signed) TENTERDEN.

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* No. 35.

Inclosure in No. 38.

Protocol No. XXVII.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-seventh Conference, held at Geneva, in Switzerland, on the 29th of August, 1872.

THE Conference was held with closed doors, pursuant to adjournment. All the Arbitrators were present.

The Protocol of the last Conference was read; the approval and signing of the same was deferred until the next meeting.

The Tribunal proceeded to consider the questions concerning the claims for "expenditure incurred in pursuit of the cruizers, prospective profits and freights."

As to the claims for expenditure incurred in pursuit of the cruizers, a majority of the Tribunal decided to reject them, as comprised in the costs of the war; M. Staempfli and Mr. Adams declared them to be admissible, as belonging to the direct losses, reserving to appreciate their amount according to the bases laid down in the Table at page 120 of the VIIth Volume of the Appendix to the Case of the United States.

As to the claims for prospective profits, the Tribunal unanimously decided to reject them, reserving, however, the questions as to the wages for the whalers, and the interest for the value of the vessels and their outfit.

As to the claims for freights, the Tribunal unanimously decided not to admit of the gross freight, but only the nett freight.

The Tribunal also decided to consider at the next Conference the questions concerning the valuation of the destroyed vessels and the claims for interest.

Lastly, the Tribunal decided to adjourn this Conference until Friday, the 30th instant, at 12 o'clock, and to deliberate again with closed doors.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 39.

Lord Tenterden to Earl Granville.—(Received September 3.)

My Lord, *Geneva, August* 31, 1872.

I TRANSMIT to your Lordship herewith a copy of a further memorandum which has been circulated by Mr. Bancroft Davis, together with a copy of some notes drawn up by Mr. Cohen, which I have circulated in reply.

I have, &c.
(Signed) TENTERDEN.

Inclosure 1 in No. 39.

Reply of the United States to the new Matter introduced by the Agent of Her Britannic Majesty on the 19th and 26th instant, on the call of the Tribunal for Elucidation in respect to the Tables presented by the two Governments.

THE Tables presented to the Tribunal by the Agent of Her Britannic Majesty on the 19th and 26th instants, under the call for a comparative statement of the British and American Tables then already presented, are new in substance as well as form, and contain new criticisms on the American Tables.

The Agent of the United States makes no exception to this liberty taken by the British Agent. His Government courts a free discussion of all its claims, and has no desire to shut out criticism by technical objections.

He claims, however, his right under the Treaty to reply to the new matter introduced under the call for elucidation made at the request of the Viscount d'Itajubá.

I.—*The Question of Gold or Paper.*

It is several times stated in the papers presented by the British Agent that the claims of the United States are made in paper money. This is not so. They are made in gold, unless when expressly stated to be made in paper. The proof of this is multifarious.

(*a*). The Treaty provides that they are to be paid in gold. The claims are stated by individual claimants for presentation under the provisions of the Treaty, and in accordance with a notice from the Department of State of the United States issued after the ratifications of the Treaty were exchanged. The strong presumption is, therefore, that the claimants stated their claims in the currency in which the Judgment is to be made, viz., coin.

(*b*.) This presumption is strengthened by the fact that during the war most of the merchants on the Atlantic coast engaged in foreign trade, and many or most of the large Insurance Companies on that coast, and all persons engaged in business on the Pacific Coast, kept their books and accounts in coin.

(*c*.) It is also strengthened by the fact that the cruises of many of the vessels destroyed began before the paper money of the United States had depreciated.

(*d*.) It is also strengthened by the internal evidence contained in the revised list of claims filed April 15, 1872.

The subject is mentioned under the heads of the following vessels captured by the Alabama:—

1. The Amanda, p. 7. The insurance deducted from the claim of Isaiah Larrabee (179*l*.), is stated to amount to 866 dol. 36 c. This is the exact sum in coin which the sterling should yield with exchange at par, viz., 4 dol. 84 c. to the pound.

2. The Brilliant, p. 26. The claim for freight (3,415*l*. 9*s*. 8*d*.) is stated to amount to 16,531 dol. 03 c. This also is the exact sum in coin which the sterling should yield at par.

3. The Chastellaine, p. 28. Here a claim in gold is converted into currency, showing expressly that the whole claim is in currency.

4. The Martaban, p. 64. The loss (rupees 80,000) is stated to amount to 35,600 dollars. This is undoubtedly stated in gold.

5. The Nora, p. 65. The claims are stated in gold.

6. The Sea Lark. The claim of F. M. and Mary Jane Rawlins (p. 82) is stated with an insurance deduction of "1,565 dollars gold." This shows that the whole claim is in gold. It also shows that the insurances were paid in gold.

Under the head of the "Florida," some claims are expressly advanced in gold; *e.g.*, under the Commonwealth the claims of Hortsman, Page, Bachman, and Myer (p. 136). Independently of the general considerations already presented, this offers the best reason for supposing that the other claimants also have made their claims in gold.

See also Williams' claim under the "Jacob Bell," p. 182.

(*e*.) A payment even in gold a year hence at the full rate of the claims will not enable the individual claimants to restore to the United States the full measure of the national wealth destroyed by the Florida, the Alabama, and the Shenandoah, after leaving Melbourne; because it is well known the purchasing power of gold has diminished about 50 per cent. within the last ten or twelve years. Therefore the same amount of coin now would not represent the same amount of values in ships and their equipments and in cargoes which it did in 1863. And as these proceedings have no relation to contracts in which the representative of values is to be restored to the claimant, rather than the values themselves, but relate to injuries which are to be compensated to the full measure of the damage, that is, to a measure which will restore the sufferer to the condition in which he was before the injury was inflicted; these considerations should be regarded by the Arbitrators. And even should they come to the conclusion that some exceptional claims are stated in paper currency, they will also see that the loss in the purchasing power of gold since the injury took place, is greater than the difference between gold and paper at the time of the injury. So that a payment a year hence, even in gold, at the rates claimed, will not, and, in the nature of things, cannot, be a restoration to the United States of the national wealth destroyed through the fault of Great Britain.

II.—*Wages and Personal Effects.*

The allegation that new claims have been introduced into the United States'

Tables, is not true in the sense in which the Agent of the United States understood the rights of his Government under the Treaty.

(*a.*) It has already been shown to the Tribunal that the United States in their Case made claim for all "their direct losses growing out of the destruction of vessels and their cargoes by insurgent cruizers" (American Case, p. 469), under which they classified "claims for damages or injuries to persons growing out of the destruction of each class of vessels" (*ibid.*), and that they asked the Tribunal, "from the data which were furnished to ascertain the names and the tonnage of the different vessels destroyed, and to form an estimate of the number of hardy but helpless seamen who were thus deprived of their means of subsistence, and to determine what aggregate sum it would be just to place in the hands of the United States on that account" (*ibid.* p. 471).

(*b.*) The real question raised by the Agent of Her Britannic Majesty is therefore, not whether the United States have presented new figures which were not contained in their former statements (although advanced in the gross in those statements as forming part of their losses), but it is this, viz., whether the Tribunal, in the exercise of the power to award a sum in gross, conferred upon it by the VIIth Article of the Treaty, should limit itself by the rules and modes of proceedings prescribed for the Assessors in the Xth Article.

(*c.*) The Assessors are to be allowed by the Treaty two and one half years to conclude their examinations, and they are required to examine each claim separately, and to render their decision in each case on the proofs adduced.

(*d.*) But the Tribunal is to make its decision on a gross sum, if possible, in three months from the submission of the Argument, having first exhausted most of the time in determining separately as to each vessel whether Great Britain is responsible for its acts, and there is nothing in the Treaty requiring them to make their decision on the examination of proofs furnished by the parties.

(*e.*) The gross sum which the Tribunal may award is to be accepted by the United States as a satisfaction "of all the claims referred to it" (Article VII), not of all the claims presented by them.

(*f.*) It is, therefore, manifest that the Treaty contemplated that the individual Arbitrators in reaching such a gross sum as they might see fit to award, should have regard to all considerations of damage or injury to the United States within the scope of the Arbitration, whether presented in detail or not, and that they should be at liberty to award such sum as justice might require, without a minute examination of detailed proofs.

(*g.*) Respecting the wages claimed in our Tables, the Arbitrators will find in the volumes of the American Appendix statements of the numbers of the officers and crews of several of the vessels destroyed by the insurgent cruizers, and in the proofs, statements of the wages of such persons. From these particular proofs, they will be able to determine whether the estimates in our Tables of the amount of the claims presented originally in the American Case, are or are not correct. Respecting the claims for effects, the same proofs show that in cases in which such claims have been actually presented in detail, they equal or exceed the average claimed in our Tables. The Arbitrators have, therefore, the means of determining, with the reasonable accuracy contemplated by the Treaty, the amount of the injury suffered by the United States in each of these respects.

(*h.*) The Agent of the United States assumes that the Arbitrators will not regard the vessels destroyed by the cruizers as phantom ships without officers or crews. On the contrary, he supposes that they will assume that they were officered and manned, and that, from the general proofs in the case, and from their own knowledge, and from any other sources of information within their reach, they will determine whether the statement in our Tables regarding those numbers are or are not probably correct.

(*i.*) A gross sum made up without regard to these classes of losses would not be a due compensation to the United States for the injuries complained of before this Tribunal.

III.—*Prospective Search.*

On this subject it is only necessary to repeat what has already been said on the part of the United States.

In the Memorandum accompanying the Tables presented by the Agent of the United States on the 19th instant, it was said:—"In the American statements,

particularly in the claims growing out of the destruction of whalers, 'prospective profits' or 'prospective catch,' enter into the computation of damages." (See Note D, American Argument, p. 168.)

"In accordance with the suggestions of some of the Arbitrators, we have eliminated from these Tables the claims for prospective catch, amounting to 4,009,302 dol. 50 c.; but we do not intend to retire these claims, nor to suggest that we do not think them just. On this subject we refer the Arbitrators to the Note from the American Argument cited above."

And in the Note accompanying the statement made by the American Agent on the 26th instant, it was stated that "the claims for whalers' and fishermen's wages for vessels destroyed or detained by the Alabama, by the Florida, or by the Shenandoah (with the corrections of the errors noted in the Memorandum accompanying our Tables), estimated from the proofs presented were 588,247 dol. 50 c." And it was said that "this amount should be deducted from the total amount in the annexed summary, if the Tribunal allow the whalers' claims for prospective catch or interruption of the voyage."

And it was further said in that Memorandum, that, if the Tribunal should be of the opinion that the prospective catch should not be allowed, then "we ask as an equivalent an allowance of 25 per cent. on the value of the vessel and the equipment;" and in the said Note, we gave the amount so to be added at 400,127 dol. 91 c.

It cannot, therefore, be said with truth, that the United States abandon the claims for prospective catch or prospective profits, or that they present them as double claims.

IV.—*Freights.*

In the Memorandum above referred to, it was said that "according to the arbitrary assumption of the British statements, the freight claimed by the United States in the name of their mercantile marine, is gross freight, and those statements reject all claims for freight.

"On our side, in the absence of all evidence to the contrary, we assume that these reclamations are for net freight." And in the Note above referred to, it is said that "in all cases in which the Tribunal is satisfied that the freight claimed is net freight, the claim for wages should be allowed, but in all cases in which the Tribunal is satisfied that the claim for freight is for gross freight, the claim for wages should be disallowed."

It cannot be said, therefore, that we either make double claims in this respect, or do not indicate to the Tribunal the questions for their investigations.

V.—*Double Claims.*

The Agent of the United States has thought that it did not become him to assume the province of the Tribunal by deciding in advance what claims for insurance are and what are not double claims. He has, instead of such a course, indicated in the Tables presented by him such claims as in his opinion are clear from doubt, such claims as may or may not be double, and such claims as, on their face, appear to be double, but which yet deserve the scrutiny of the Tribunal. These columns are thus referred to in the Memorandum accompanying the Tables. "Column 3 shows the claims for insurance which are clearly not double claims. Column 4 shows the claims for insurance about which the evidence is silent. It is possible that some of these should be withdrawn from the aggregate of Column 2; this can only be determined by the examination of the particular facts in each case. Column 5 shows other claims for insurance in which the owners of the property destroyed claim at the same time full indemnity for their losses without regard to the insurance embraced in this column."

VI.—*General Remarks on the Character of the Claims.*

It is said that the United States admit that these claims have never been audited. This is true only in the sense that they have never been subjected to official scrutiny, such as they would receive at the hands of assessors. But it is not true that they have not been carefully examined, as is charged by the British Agent. On the contrary,

they were carefully scrutinized, document by document, and proof by proof, under the superintendence of the Solicitor of the United States in these proceedings, and the abstract of the proof was in every case carefully verified with the original documents on file in the Department at Washington, and referred to in the Revised List of Claims. In the American Case, profert was made of the original proof should it be desired; and had the request been made by the British Agent, those proofs would have been here. It is also not admitted that the American claims are in any way exaggerated, or that, as now revised, the statements on our side contain any material errors.

Inclosure 2 in No. 39.

Note on some Observations presented by Mr. Bancroft Davis on the 29th of August, 1872.

THE Agent of the United States has forwarded to the Agent of Her Britannic Majesty, and has, it is supposed, delivered to the Tribunal, a paper containing some observations, to which it may be proper briefly to reply.

It will be convenient, for the sake of brevity, to refer to the various points to which these observations relate, in the order in which they are mentioned by the Agent of the United States.

I.—*As to the United States' Tables and the British Tables, and Allowances generally.*

On comparing the British allowances, as stated in the United States' Tables, with those contained in the British Tables, it will be found that the total allowances have been recently increased. This arose from a desire to save the time of the Tribunal and to avoid disputes on minor matters, which led to all the claims for personal effects being allowed, except a few which were manifestly extravagant. In no case have the total allowances in respect of any one cruizer been diminished. The alterations, therefore, in the British Tables are not such as the United States have any reason to complain of. On the other hand, where the claims in the United States' Tables differ from those in the Revised Statement they have been invariably increased, and, in some cases to no inconsiderable extent.

II.—*As to the Currency Question.*

It appears from the paper presented by the United States' Agent being occupied by this more than any other question, that it is felt to be a question of considerable importance; but it appears to the Agent of Her Britannic Majesty that the arguments urged in that paper strongly confirm the view which has been submitted on this matter in behalf of Great Britain. The reasons for this opinion are briefly as follows:—

(*a.*) The circumstance of the Treaty providing for the payment of the claims in gold, would no doubt have raised a presumption that they are made in that currency, if they had been originally advanced subsequently to the Treaty. The fact, however, is, that a list of the claims was prepared and was presented to the Congress of the United States as early as the year 1866, and that the claims now advanced are founded on this list of claims, that they are, in very many cases, identical with, that they never fall short of, but, in a great many cases, considerably exceed, the latter claims.

Under these circumstances, as it is almost certain that the claims advanced in 1866 were estimated in the ordinary paper currency, except in some few cases where gold currency is expressly referred to; it seems to follow that the claims on which the Tribunal is called upon to adjudicate must also be considered as estimated in paper currency.

(*b.*) This conclusion is strongly confirmed by the fact that, in the well-known Report which was presented to Congress in the year 1870, and which contains most valuable Tables showing the average value of American ships and their gross earnings, gold currency is specially designated as "specie currency," to distinguish it from the ordinary paper currency.

(*c.*) The same conclusion is also proved almost beyond a doubt by the very facts cited in the paper now under consideration, for they show that in the few instances in which the claims are made in gold there is some special reference to that fact, a circumstance which necessarily leads to the inference that these are the exceptional and not the ordinary cases.

(*d.*) The Agent of Her Britannic Majesty entirely denies the extraordinary allegation that the purchasing power of gold has, during the last eight years, diminished 50 per cent., and is also at a loss to conceive, according to any sound principles of jurisprudence, what bearing the alleged fact, if true, ought to have on the decision of the Tribunal.

III.—*As to the Wages.*

The Tribunal has already decided that there should be an allowance made to the masters, officers, and crews of the whaling vessels of one year's wages. It is, therefore, clear that the additional claims for these wages contained in the United States' Tables must be struck out. As regards the wages of the merchant vessels they will be referred to in the course of the observations to be presently made in reference to the freights of those ships.

IV.—*As to the Personal Effects.*

Many claims for personal effects, some of them of an extravagant amount, are comprised in the revised statement. There is certainly no reason to believe that any were omitted which could with any propriety have been advanced. The new and very large claims for personal effects advanced on the 19th August for the first time, are purely conjectural, and are not supported by any evidence which has been presented to the Tribunal. Indeed, it is almost certain that no such evidence could have been adduced, for, from Captain Semmes's Journal and other sources of information, it is well known that it was neither the policy nor the practice of the captains of the Confederate cruisers to seize or destroy the personal effects of the officers or crews of the captured vessels. The Agent of Her Britannic Majesty also begs the Tribunal to bear in mind that to advance these claims without the slightest evidence in support of them, is to act quite inconsistently with the assertion, so frequently made on behalf of the United States, that all the claims are supported by the affidavits of the claimants themselves; and there does not seem any reason why the United States might not with equal plausibility have advanced a series of new hypothetical claims for the effects of the numerous American passengers who might be imagined to have been on board the captured vessels.

V.—*As to the Prospective Catch.*

The question relating to the enormous claim for prospective catch, a claim which has been increased in so striking and unjustifiable a manner since the year 1866, has been already decided by the Tribunal. The Agent of Her Britannic Majesty therefore thinks it his duty to refrain from making any observations on this subject.

VI.—*As to the Freights of the Merchant Vessels.*

The Agent of Her Britannic Majesty is surprised to meet with a repetition of the assertion made for the first time on the 19th August last, that the claims for freights should be taken as claims for *net* and not for *gross* freights. These claims, in the case of the Alabama, amount to more than 45 per cent. of those for the vessels and outfits; but on looking at the Report presented to Congress in the year 1870 it will be found in Table XVI that the average *gross* yearly earnings of American vessels engaged in foreign trade from the year 1861 to the year 1870 amounted to 33¾ per cent. of the values of the vessels. Under these circumstances, the Agent of Her Britannic Majesty is at a loss to conceive how, in the face of this well-known official estimate, it can with any plausibility or propriety be contended that the claims of 45 per cent. of the values of the vessels on voyages which would not average more than six months, that is to say, claims equal to a gross return of 90 per cent. per annum, are claims for *net* freights, or how it can be denied that they are greatly exaggerated even when considered as claims for gross freight. The Tribunal has decided that one-half this large amount should be allowed, and it certainly must be admitted that this allowance would be amply sufficient to cover, not only the net profits expected to be derived by the ship-owners from these voyages, but also any wages which the officers and crews could be reasonably supposed to have lost.

VII.—*As to the Double Claims.*

These are of two descriptions: those which are avowedly and expressly made, and which, though admitted in the United States' Tables, are nevertheless included in the

alleged total; and those which are tacitly made, and which are not denied by the United States' Government, but are left by them for the determination of the Tribunal.

As regards the former class, amounting to 869,400 dollars, the Agent of Her Britannic Majesty confidently submits that the suggestion made by the Tribunal ought to have been at once adopted, and that these double claims should have been struck out, and ought not to have been included in the total claim which is stated in the United States' Tables, and which is there compared with the total British allowance of 7,074,710 dollars.

As regards the [illegible] claims tacitly made, they were, many months ago, specifically pointed out in the British Reports, and there shown to be double claims. The United States' Government has had all the evidentiary documents in its possession for a long time, and has, according to the statement now made by its Agent, carefully examined them. Such being the case, it is submitted by the Agent of Her Britannic Majesty that, as the United States' Government does not now deny these double claims, they must of course be deducted. The double claims altogether considerably exceed 1,500,000 dollars.

Finally. It is now alleged by the Agent of the United States that his Government has carefully examined the documents which are filed at Washington. The assertion that that Government had never audited the claims is to be found in the Argument of the United States, and is there used as an excuse for the double claims not having been excluded. It seems also to be the only reason for the very inaccurate statement made in that Argument to the effect that "very few, if any, double claims exist, except in the case of the whaling vessels destroyed by the Shenandoah, there being none of this class of claim in the case of the merchant ships." To what extent this statement is incorrect is at once apparent on looking at the United States' Tables themselves. Moreover, it seems difficult to reconcile the statement that these claims have really been carefully examined on behalf of the United States' Government with the fact of the presentation to the Tribunal of some of the very extravagant claims enumerated in the British Reports, such as a claim of 7,000 dollars by a harpooner for personal injuries in no shape or way indicated or described; a claim of 15,000 dollars by the master of the Louisiana for interruption of business (neither of which claims is to be found verified by any affidavit whatever); a claim of 10,000 dollars by a passenger for loss of office as Consul; a claim by Ebenezer Rye, the master of the Abigail, for more than 17,000 dollars for personal effects, &c.; claims by masters and mates of vessels (over and above their demands for personal effects) of 20,000 and 10,000 dollars for loss of wages; and many other similarly exorbitant claims, which are more specifically referred to in the British Report.

No. 40.

Lord Tenterden to Earl Granville.—(*Received September 7.*)

My Lord, *Geneva, September 4*, 1872.

I TRANSMIT to your Lordship herewith copies of Protocol of the proceedings of the Tribunal of Arbitration on the 31st ultimo, as approved and signed at the meeting on the 2nd instant, which have been forwarded to me by the Secretary to the Tribunal.

I have, &c.
(Signed) TENTERDEN.

Enclosure in No. 40.

Protocol XXVIII.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-eighth Conference, held at Geneva, in Switzerland, on the 30th of August, 1872.

THE Conference was held with closed doors, pursuant to adjournment. All the Arbitrators were present.

The Protocol of the twenty-sixth Conference, having been corrected, was approved, and the Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal.

On the proposal of Sir Alexander Cockburn, as one of the Arbitrators, the Tribunal permitted that the Counsel of Her Britannic Majesty should present, on the question of interest, a note which should be directly communicated by the Agent of Her Britannic

Majesty to the Agent the United States, in order that the latter may prepare a reply to it, if he thinks fit.

The Tribunal desired that these two communications on the part of the respective Agents should be presented at the Conference, which will be held with closed doors on Monday, the 2nd of September, at half-past 12 o'clock.

The Tribunal proceeded to the consideration of the matters submitted to them, and unanimously declared that the *double claims* should be dismissed.

The Tribunal having discussed in general the award of a gross sum, requested Mr. Staempfli, one of the Arbitrators, to present for the next Conference copies of a synoptical Table which he has prepared on the subject.

The Conference was then adjourned until Monday, the 2nd of September, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS,
ALEX. FAVROT, *Secretary*.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 41.

Lord Tenterden to Earl Granville.—(*Received September 9.*)

Geneva, September 7, 1872.

My Lord,

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 2nd instant, as approved and signed at the meeting yesterday, which have been forwarded to me by the Secretary to the Tribunal.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 41.

Protocol No. XXIX.—Record of the Proceedings of the Tribunal of Arbitration at the Twenty-ninth Conference, held at Geneva, in Switzerland, on the 2nd of September, 1872.

THE Conference was held with closed doors, pursuant to adjournment. All the Arbitrators were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal.

Count Sclopis, as President of the Tribunal, acknowledged the receipt by the Arbitrators of the note presented by the Agent of Her Britannic Majesty on the question of interest, and of the reply to the same, presented by the Agent of the United States.

The Tribunal then proceeded to consider that question, and a majority of four to one decided that interest should be admitted as an element in the calculation for the award of a sum in gross.

M. Staempfli, as one of the Arbitrators, presented to the Tribunal copies of the synoptical Table which he had prepared as a proposition for the determination of a sum in gross:—

ESTIMATE of M. Staempfli for the Determination of a Sum in Gross.

	After the last American Table.	British Allowance.	Mean.
	Dollars.	Dollars.	Dollars.
Amount of claims..	14,437,000	7,374,000	10,905,000
Expenditure in pursuit	6,735,000	940,000	Struck out
Prospective profits on the voyage	4,009,000	Struck out as such, but for wages ..	588,000
		25 per cent. on the values of vessels ..	400,000
			11,893,000
Round sum	.. ..	.. ..	12,000,000

INTEREST from the 1st January, 1864, to the 15th September, 1872.

	Dollars.	Dollars.
1. At 5 per cent. during 8 years and 8½ months—		
8 × 600,000	4,800,000	
8½ × 50,000	425,000	
		5,225,000
		17,225,000
Eventually, 1 year's interest more		17,825,000
2. At 6 per cent. during 8 years and 8½ months—		
8 × 720,000	5,760,000	
8½ × 60,000	510,000	
	6,270,000	
		18,270,000
Eventually, 1 year's interest more		18,990,000
3. At 7 per cent. during 8 years and 8½ months—		
8 × 840,000	6,720,000	
8½ × 70,000	595,000	
	7,315,000	
		19,315,000
Eventually, 1 year's interest more		840,000
		20,155,000
Round sum		20,000,000

Sir Alexander Cockburn, as one of the Arbitrators, then presented the following memorandum on M. Staempfli's estimate.

Memorandum on M. Staempfli's Estimate.

The figures contained in M. Staempfli's paper require some material corrections, as to which, as soon as they are pointed out, there can be no doubt.

The total claim by the United States of 14,437,000 dollars will be found, on an inspection of the United States' Tables, to include the following amounts:—

(*a.*) *All the double claims without exception*, notwithstanding the clear expression of opinion on the part of the Tribunal, that they were to be struck out. These double claims amount to 1,682,243 dollars.

(*b.*) *The gross freights of the merchant-vessels*, amounting to 1,007,153 dollars, as to which the Tribunal has decided that at the utmost only half, that is to say, 503,576 dollars, should be allowed.

(*c.*) *The new claim of* 1,450,000 *dollars*, advanced for the first time on the 19th of August last, as to which claim M. Staempfli declared that he would exclude it from consideration. It is important to observe that this new claim comprises over and above the entirely unsupported claims for shares of vessels and for additional personal effects, the claims for wages extending over very long and varying periods. The Tribunal has decided that one year's wages in respect of the whalers are to be allowed in lieu of prospective catch. For this one year's wages, M. Staempfli has made a separate allowance of 588,000 dollars (an allowance which can be shown to be excessive by, at least, 88,000 dollars), and he has, therefore, included in his calculation the claim for wages twice over.

It is therefore clear that M. Staempfli, whilst he excludes some of the items of claim which the Tribunal has disallowed, has omitted to strike out the other items, against which the Tribunal has pronounced its opinion; but it is equally clear that all the disallowed items must be excluded before a comparison can be fairly or usefully made between the United States' claim and the British estimate.

It is necessary, therefore, in the first place to deduct from the United States' claim the three amounts specified in paragraphs *a*, *b*, and *c*, respectively, which will leave, as is shown by the annexed Table, a properly reduced claim of 10,801,324 dollars, as against the British estimate of 7,465,764 dollars, if the difference between paper and gold currency be for the present purpose disregarded.

It must, however, be carefully borne in mind that the claim of 10,801,324 dollars includes the following items:—

1. *A claim of* 659,021 *dollars for secured earnings*, which ought beyond a doubt to

be reduced by an amount equivalent to the wear and tear of the whalers and their outfits and the consumption of stores which must have taken place before these earnings could be secured, and for which a deduction should be made, inasmuch as the full original values of the vessels and their outfits have been allowed.

2. *The claims in respect of the merchant-vessels.*—These are valued in the United States' Tables at more than 60 dollars per ton on the average, although, according to the well-known Official Report presented to Congress in 1870, the cost of a first-class perfectly new American vessel made ready for sea, did not average that amount per ton, and although, according to the same report, the average value of American vessels engaged in the foreign trade was in 1861 only 41 dollars, and has been since *only* 45 *dollars per ton.*

3. *The claims in respect of cargoes, the insurances,* commissions and profits on the same, which profits are sometimes claimed at the rate of 20, 50, and even 100 per cent. The various important considerations mentioned at page 13 of the British Report, and the fact that numerous claims for cargo, presented for the first time in April last, are unsupported by any vouchers, bills of lading, or like documents, undoubtedly require that a very considerable reduction should be made under this head.

4. *Several large claims not supported by any affidavit* or declaration on oath.

5. *Numerous clearly extravagant claims* specified in the British Reports, such as the claim of 7,000 dollars by a harpooner for personal injuries, the claim by a passenger of 10,000 dollars for loss of office as Consul, all the numerous claims by the masters of whalers for wages, sometimes at the rate of 15,000 or 20,000 dollars a year and which are of course superseded by M. Staempfli's allowance of 588,000 dollars, and many other equally exorbitant claims more particularly specified in the British Reports.

From these considerations, it is manifest that more than ample justice will be done to the United States by taking a mean between the claim of 10,301,324 dollars and the British estimate of 7,464,764 dollars, and by adding thereto the allowance of 588,000 dollars in lieu of prospective catch.

M. Staempfli has also added, for some unknown reason, 25 per cent. on the values of the whalers, an addition which can be easily shown to be equivalent to altogether allowing over and above the original values of the whalers and their outfits a percentage exceeding 90 per cent., and this although the question of interest is still left open to the decision of the Tribunal.

Admitting, however, this extraordinary addition of 25 per cent., and the excessive estimate of the wages, it is shown by the annexed Table that if M. Staempfli's figures be properly corrected, the estimate would scarcely exceed 10,000,000 of dollars, even without any allowance being made for the great difference between the values of the paper and the gold currency.

M. Staempfli's calculations of interest (supposing interest to be allowed) are made, at the alternative rates of 5, 6, and 7 per cent., for the period of eight and-a-half years, from the 1st of January, 1864, to the 15th of September, 1872.

But to this he proposes to add another year's interest for the period of delay in payment after the date of the award, which is allowed by the Treaty.

The Tribunal has no power, under the Treaty, to award payment of a gross sum with interest. The amount awarded is to be paid without interest: and if the Tribunal were to add a year's interest to the gross sum which they would otherwise award, in respect of the year allowed for payment by the Treaty, they would be doing indirectly what they have no authority to do directly, and would (it is submitted) be contravening the true intent of the Treaty and charging interest, where it was the intention of the Treaty that interest should *not* be paid.

This is the more objectionable, because it is proposed to charge a whole year's interest, at either 5, 6, or 7 per cent.; whereas the British Government has the option under the Treaty, to pay the sum awarded at any time *within* the year allowed for that purpose; and might certainly raise the money, (if that operation were necessary) at a considerably lower rate of interest than 5 per cent.

TABLE in Reference to the Estimate of M. Staempfli.

		Dollars.
Total United States' claim in the last revised Tables		11,437,143
Necessary reductions to be made from the above supposed total—		
Double claims	1,682,243	
New claims	1,450,000	
½ gross freight	503,576	
		3,635,819
Making the total reduced claim		10,801,324
As against the British estimate of		7,464,764
The mean of these two sums is		9,133,044
Add to this Mr. Staempfli's allowances in lieu of prospective catch—		
One year's wages	588,000	
25 per cent. on the values of vessels	400,000	
		988,000
		10,121,044

The Tribunal also considered the question of the award of a sum in gross.

After a detailed deliberation, a majority of the Tribunal, or four to one, decided, under the VIIth Article of the Treaty of Washington, to award in gross the sum of fifteen millions, five hundred thousand dollars (15,500,000 dollars), to be paid in gold by Great Britain to the United States, in the time and manner provided by the said Article of the Treaty of Washington.

The Conference then adjourned until Friday, the 6th instant, at half-past 12 o'clock, to be held with closed doors.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 42.

Argument of Her Britannic Majesty's Counsel on the Claim of the United States for Interest by way of Damages (pursuant to the Resolution of the Tribunal of August 30, 1872).—(*Presented September* 2.)

1. THE question of the allowance of interest on the sums claimed in respect of their alleged losses by the United States, is one of grave importance, both in principle and in amount. It has not hitherto been discussed, with any precision or fulness, by either party. By Great Britain, this demand has been simply demurred to in principle: it was thought premature to enter into any detailed argument on that subject until some liability should have been established, which would properly raise the question. The United States, in their Argument, presented on the 15th of June, have suggested (paragraphs 484-5) some reasons why, if a gross sum is awarded, "interest" should be "awarded by the Tribunal as an element of the damage;" but these reasons are very short and vague; and no attempt has been made to develop them in such a manner as to be of any real assistance to the Tribunal.

2. It is necessary to bear in mind what it is which the Tribunal has power to do in this matter. Under the VIIth Article of the Treaty, on finding that Great Britain has failed to fulfil any of the duties previously mentioned, in respect of any of the vessels, the Tribunal "may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it." If it does not award a sum in gross under this Article, the duty of examining and of ascertaining and determining the validity of all the claims brought forward, and "what amount, or amounts, shall be paid by Great Britain to the United States on account of the liability as to each vessel, *according to the extent of such liability as decided by the Arbitrators*," will devolve upon Assessors, under the Xth Article.

It may be that the Tribunal has power to decide, if it should think it right and just to do so, that, on all or some part of the principal amounts of the losses for which Great Britain may be found liable, when ascertained and determined by Assessors in the manner provided by the Xth Article, Great Britain should further be liable to pay interest at some rate, or rates, to be fixed, which interest would, in that case, have to be computed by the Assessors, and would be included in the sum, or sums, finally ascertained and determined by them as payable by Great Britain. But it is indisputable, on the other hand, that, under the IXth Article, the Tribunal has no power to direct any interest to be paid upon any gross sum which they may think fit to award. It is one gross sum only, to be paid in coin within twelve months after the date of the award, which they have power to

allow. The Counsel for the United States appear to be sensible of this, when they assume, in the passage of their Argument already quoted (page 484), that "interest will be awarded by the Tribunal, *as an element of the damage*," the meaning of which evidently is, that they ask the Tribunal, when fixing the amount of the gross sum (if any) which they may award to be paid, to take into consideration, and to include in such gross sum (amongst other "elements of damage") some allowance in respect of interest upon the losses, for which Great Britain is held responsible.

3. When attention is directed to the nature of the process by which only the Arbitrators can arrive at any gross sum to be awarded against Great Britain, and to the materials, or "elements," available to them for the purposes of such an award, it will be clearly seen, that they cannot, without disregarding every principle on which the doctrine of interest ordinarily rests, make any such allowance. Instead of being "conformable to public law," and "required by paramount considerations of equity and justice," this demand can be demonstrated, without difficulty, to be just the reverse. The proofs, however, of this proposition will be better understood if, in the first instance, we ascertain the rules of civil jurisprudence, applicable to the subject of interest.

4. Putting aside those cases, in which the liability of an individual to pay interest rests upon an express or implied contract, or upon positive legislation, it may be stated generally, that interest, in the proper sense of that word, can only be allowed where there is a principal debt, of liquidated and ascertained amount, detained and withheld by the debtor from the creditor after the time when it was absolutely due, and ought to have been paid, the fault of the delay in payment resting with the debtor; or where the debtor has wrongfully taken possession of, and exercised dominion over, the property of the creditor.

In the former case, from the time when the debt ought to have been paid, the debtor has had the use of the creditor's money, and may justly be presumed to have employed it for his own profit and advantage. He has thus made a gain, corresponding with the loss which the creditor has sustained by being deprived during the same period of time of the use of his money; and it is evidently just that he should account to the creditor for the interest, which the law takes as the measure of this reciprocal gain and loss. In the latter case the principle is exactly the same; it is, ordinarily, to be presumed that the person, who has wrongfully taken possession of the property of another, has enjoyed the fruits of it; and if, instead of this, he has destroyed it, or kept it unproductive, it is still just to hold him responsible for interest on its value, because his own acts, after the time when he assumed control over it, are the causes why it has remained unfruitful.

In all these cases it is the actual or virtual possession of the money or property belonging to another, which is the foundation of the liability to interest. The person liable is either *lucratus* by the detention of what is not his own, or is justly accountable, as if he were so.

5. The rules of the Roman law, as to interest for non-payment of a debt due upon contract, are in strict accordance with the above statement: In bonæ fidei contractibus usuræ *ex morâ* debentur" (Digest, lib. 32, § 2; lib. 17, § 3). "Interest," says Domat (lib. 3, tit. 5, § 1), "is the name applied to the compensation which the law gives to the creditor, who is entitled to recover a sum of money *from his debtor in default:*" (cited in Sedgwick on Damages, page 234).

The Code Civil of France in like manner (lib. 3, tit. 3, "Contrats et Obligations," Art. 1146) provides that "les dommages et intérêts" (which, in the absence of a stipulated amount between the parties, are limited, by Art. 1153, to the rate of interest fixed by law), "ne sont dûs que lorsque le débiteur *est en demeure de remplir une obligation:*" and Art. 1139 defines the meaning of this expression: "Le débiteur est constitué en demeure, soit par une sommation, ou par autre acte équivalent, soit par l'effet de la convention, lorsqu'elle porte que, sans qu'il soit besoin d'acte, et par la seule échéance du terme, le débiteur sera en demeure." The laws of Great Britain and America recognize the same principles.

6. Mr. Sedgwick, an American author, whose work "On the Measure of Damages" is highly esteemed, and of frequent reference in the courts of Great Britain, as well as in those of the United States, has a chapter (XV) on "*Interest with reference to Damages.*" At page 373 he says:—

"The allowance or infliction of interest often presents itself entirely disconnected from any question of contract; and, in this aspect, the subject cannot be omitted in any work which treats of compensation, for it is to be observed generally, to use the language of Lord Kenyon, that where interest is intended to be given, it forms part of the damages assessed by the jury, or by those who are substituted in their place by the parties.

"The subject of interest is susceptible of very clearly defined division; *first*, where it can be claimed as a right, either because there is an express contract to pay it, or because it is recoverable as damages which the party is legally bound to pay for the detention of money or property improperly withheld

second, where it is imposed to punish negligent, tortious, or fraudulent conduct. In the first case it is recoverable as matter of law. In the second case it rests entirely in the pleasure of the jury."

He then states the rules of the English law, that "all contracts to pay undoubtedly give a right to interest *from the time when the principal ought to be paid*;" and that "where money is due, *without any definite time of payment*, and there is no contract, express or implied, that interest shall be paid, the English rule, independent of statute, is, that it cannot be claimed."*

This latter rule does not appear to be adopted in the greater number of the United States.

"There is," says Mr. Sedgwick, "considerable conflict and contradiction between the English and American Cases on this subject. But, as a general thing, it may be said that, while the Tribunals of the former country restrict themselves, generally, to those cases where an agreement to pay interest can be proved or inferred, the courts of the United States, on the other hand, have shown themselves more liberally disposed, *inclining the allowance of interest more nearly to depend upon the equity of the case*, and not requiring an express or implied promise to sustain the claim. The leading difference seems to grow out of a different consideration of the nature of money. *The American Cases look upon the interest as the necessary incident, the natural growth, of the money, and, therefore, incline to give it with the principal*; while the English treat it as something distinct and independent, and only to be had by virtue of some positive agreement."†

The American rules for the application of the principles recognized in their courts were thus stated by the Chief Justice of New York, in a case in which the whole subject was carefully examined:—

"From an examination of the Cases, it seems that interest is allowed: (1) Upon a special agreement; (2) Upon an implied promise to pay it; and this may arise from usage between the parties or usage of a particular trade; (3) *When money is withheld against the will of the owner*; (4) By way of punishment, *for any illegal conversion or use of another's property*; (5) Upon advances of money."‡

In Connecticut, similar propositions were laid down:—

"(1) Interest will be allowed, when there is an express contract to pay it; (2) Such contract may be inferred from usage, special or general; (3) *Where there is a contract to pay money on a day certain, and the agreement is broken*, interest will be allowed by *way of damages*, as on notes, &c.; (4) When goods are sold, to be paid for on a day certain, interest, in like manner, follows; (5) *Where money is received for the use of another, and there is neglect in not paying it, interest follows*; (6) *Where money is obtained by fraud*, interest is allowed; (7) *Where an account is liquidated and balance ascertained, interest begins to run*; (8) *Where goods* are delivered to be paid for, not at a day certain, but in a reasonable time, and there is unreasonable delay, interest is allowed; (9) But where there are current accounts, founded on mutual dealings, and no promise to pay interest, interest will not be allowed."‡

With respect to the fraudulent detention of money, the rule acted upon as to interest by the courts of America generally is the same with that which now prevails in the English courts of equity. "Where money is received by a party who improperly detains it, or converts it to his own use, he must pay interest" (p. 378).

In all these cases, the money must be actually due, and the amount liquidated, that is, ascertained and fixed, or capable of being ascertained by a mere process of computation resulting from known facts, of which actual indebtedness is the legal consequence. With respect to claims for interest on *unliquidated* demands, the law of Great Britain and of the United States is the same.

"'It is a general rule," says Mr. Sedgwick, p. 377, 'that *interest is not recoverable on unliquidated demands*. In an action for not delivering teas according to agreement, Judge Washington, at Nisi Prius, said, '*It is not agreeable to legal principles to allow interest on unliquidated or contested claims in damages*.' 'The rule is well-established,' says Judge Parker, in the Supreme Court of New York, 'that interest is not recoverable on running or unliquidated accounts, unless there is an agreement, either express or implied, to pay interest.' So in Massachusetts, it is said, that, 'interest cannot be recovered upon an open and running account for work and labour, goods sold, and the like, unless there is some contract to pay interest, or some usage, as in the case of the custom of merchants, from which a contract may be inferred. And so also in Texas, interest is denied on an open account. *So, in an action on a policy of insurance, if the preliminary proofs are so vague that the claim cannot be computed, interest is not allowable.*"

At pages 385-387, Mr. Sedgwick considers another class of cases, under the head of "*interest, when given as damages*," *i.e.*, those in which it is not given properly "*as interest*," under the control of the Court, and "allowed or disallowed upon certain rules of law;" but "where it is to be settled by the verdict of a jury," and "given more strictly as damages."

* "On the Measure of Damages," p. 376. † Page 383. ‡ Page 380.

The cases, in which this rule is applied, are generally those in which the property of the plaintiff has been wrongfully taken possession of by the defendant :—

"This is generally so in actions of tort, as trover or trespass for taking goods, where interest i allowed at the discretion of the jury. So in an action of trespass, the Supreme Court of New York said :—'The plaintiff ought not to be deprived of his property for years without compensation for the loss of the use of it; and the jury had a discretion to allow interest in this case as damages. It has been allowed in actions of trover, and the same rule applies to *trespass when brought for the recovery of property*.' So in Kentucky, in case of a fraudulent refusal to convey land; and so declared also in North Carolina in cases of trover and trespass"*

It is to be observed that the action of "trover" here mentioned is a form of remedy under American and English law, for the conversion by a defendant to his own use of the plaintiff's property; and the action of "trespass" is another form of remedy, under the same laws, when a defendant has intruded, without right, upon the property of the plaintiff. In all the cases here contemplated, the liability to be mulcted in interest as damages arises out of the exclusion of the owner from the enjoyment of his own property, by the direct act of the person from whom the damages are recovered, and who, by reason thereof has himself enjoyed (or, but for his own wilful default, might have enjoyed) that benefit of the property, from which the owner has been so excluded. The principle on which a jury ought to proceed in giving, or not giving, interest by way of damages, was thus explained by the Court of New York :—"In two actions against a master of a ship for non-delivery of goods, it was held in New York that the jury might give damages *if the conduct of the defendant was improper; i.e., where fraud or gross misconduct could be imputed to him*: but it appearing that such was not the fact, it was not allowed."†

The principle, thus laid down, is in strict conformity with that stated in another American treatise of reputation, upon the "Law of Negligence," by Messrs. Shearman and Redfield :—

"§ 600. Exemplary, vindictive, or punitive damages can never be recovered in actions upon anything less than *gross negligence*. Of this there can be no doubt. . . . . It is often said that exemplary damages may be awarded for gross negligence. But it should be distinctly understood that *gross negligence means such entire want of care as to raise a presumption that the person in fault is conscious of the probable consequences of his carelessness, and is indifferent, or worse, to the danger of injury to the persons or property of others*; and such appears to us to be the construction put upon these words by the Courts, in the cases referred to. *It is only in cases of such recklessness* that, in our opinion, exemplary damages should be allowed."

7. Let us now, with these principles of general jurisprudence in view, examine the circumstances of the present case, in order to see whether they present any just and equitable grounds, or any sufficient materials, on which interest by way of damages can be included by the Tribunal in any gross sum, which they may think proper to award against Great Britain.

8. In the first place, this is not the case of a detention or delay in the payment of a liquidated debt or ascertained liability, payable at a period which has elapsed; there was, in fact, no liability at all, independently of the exercise of the judgment of Arbitrators upon a very novel, entangled, and difficult state of facts and public law. The claims made by the United States extended to many matters for which the Arbitrators have found Great Britain not responsible. The decisions of the Arbitrators against Great Britain have been mainly founded upon the conventional rules of judgment first introduced, as between the two nations, by the Treaty of 1871, though agreed by that Treaty to be retrospectively applied; and there are, down to this moment, no means of ascertaining, by any method of computation whatever, the actual amount of the liability properly resulting from those decisions.

9. The observations of Professor Bluntschli, in his paper on these claims ("Revue de Droit International," 1870, p. 474), are material in this respect :—

"A en croire," he says, "plusieurs orateurs et écrivains Américains, il irait de soi que le Gouvernement de la Grande Bretagne serait obligé de dédommager au moins les particuliers, dont la propriété aurait été détruite par l'*Alabama* (ainsi que par la *Florida*, ou d'autres corsaires Sudistes). A mon avis, ce point est loin d'être entièrement évident; et l'on pourrait singulièrement se tromper, en se faisant trop un succès réservé à ces réclamations privées, devant un Tribunal Arbitral. Si l'Union ne prend pas, comme Etat, ces réclamations privées sous sa protection, et si elle ne fait pas consister dans leur équitable apaisement la satisfaction que les Etats Unis ont droit de réclamer de la Grande Bretagne, dans ce cas les particuliers intéressés n'ont absolument aucune perspective de dédommagement. D'après les règles du droit privé ordinaire, leurs prétentions seraient tout-à-fait vaines. Nulle part ils ne trouveraient un juge qui condamnerait le Gouvernement Anglais à payer une indemnité.

* Page 385. † Page 386.

. . . . D'après les observations qui précèdent, tout le débat se résume, non pas en un litige entre des particuliers auxquels la guerre a causé des pertes, et l'Etat de la Grande Bretagne que l'on veut rendre responsable de celles-ci, mais en un litige entre la fédération des Etats Unis d'un côté, et la Grande Bretagne de l'autre. *Et ce qui fait l'objet du litige, ce n'est pas un dommage matériel, mais la non-observation des devoirs internationaux de la part d'un Etat ami et neutre.*"

As there was no liability which could properly be called a debt, or in respect of which any interest could be due upon juridical principles, so (on the other hand), there was no property belonging to the United States or their citizens, of which possession was at any time taken, or any enjoyment whatever had, by Great Britain, her officers, or her citizens, or by any persons under British protection, availing themselves of that protection to maintain such possession or enjoyment. The words of Professor Bluntschli, already quoted in a former argument, are here again material :—

"Il ne faut d'ailleurs pas perdre de vue que tous ces effets désastreux sont en premier lieu imputables, non pas au Gouvernement Anglais mais aux *croiseurs* eux-mêmes. Personne n'accusera le Gouvernement Anglais d'avoir donné mission de détruire les navires de commerce Américains, ou d'avoir, par ses agissements, entravé ou endommagé la marine Américaine. Ce que l'on peut lui reprocher à bon droit (en supposant que les faits cités plus haut doivent être considérés comme avoués ou prouvés), ce n'est pas un *fait*, mais une *omission contre le droit*. Sa faute ne consiste pas à avoir équipé et appareillé les corsaires, mais à *n'avoir pas empêché* leur armement et leur sortie de son territoire neutre. Mais cette *faute* n'a qu'un rapport *indirect*, et nullement un rapport *direct*, avec les déprédations réellement commises par les croiseurs."*

Great Britain did not make or authorize the captures by which the citizens of the United States lost their property; they were never brought within her territory, so as to make her answerable for them, on the principle of reception; nor had she, or her citizens, at any time, any profit or benefit whatever, or any possibility of deriving profit or benefit from any of them. Nor is it supposed to be possible that the Tribunal can be led to attribute any want of diligence, with which, in certain cases, Great Britain may in their view be chargeable, to any such motives or causes as, according to the analogy of private jurisprudence, would justify a jury or an Arbitrator in giving vindictive or penal damages. Every ground, therefore, on which (according to juridical principles) interest could be awarded as an element of damages, is wanting here.

11. Furthermore, independently of the facts affecting the nature and amount of the claims themselves, which will be hereafter referred to, there are other special considerations which, in the present case, appear to make it the duty of the Arbitrators, if they find Great Britain responsible at all in damages to the United States, to mitigate, in the exercise of a reasonable discretion, the amount of those damages; and certainly not to inflame or aggravate them by the addition of penal interest.

If the following arguments in the British Counter-Case (p. 132), are held insufficient to exonerate Great Britain from all liability, they must at least be admitted to be of great weight and pertinence, as against any attempt to push the doctrine of compensation and indemnity, in this case, to an extreme length :—

"The w[illegible] responsibility of the acts which caused these losses, belonged, primarily, to the Confederate States; they were all done by them, beyond the jurisdiction and control of Great Britain; wrong was done by them to Great Britain, in the very infraction of her laws, which constitutes the foundation of the present claims. But from them, no pecuniary reparation whatever for these losses has been, or is now, exacted by the conquerors: what has been condoned to the principals, is sought to be exacted from those, who were, at the most, passively accessory to those losses, through a wrong done to them, and against their will. The very States which did the wrong are part of the United States, who now seek to throw the pecuniary liability for that wrong solely and exclusively upon Great Britain, herself (as far, at least, as they are concerned) the injured party. They have been re-admitted to their former full participation in the rights and privileges of the Federal Constitution; they send their members to the Senate and the House of Representatives; they take part in the election of the President; they would share in any benefit which the public revenue of the United States might derive from whatever might be awarded by the Arbitrators to be paid by Great Britain. On what principle of international equity can a Federal Commonwealth, so composed, seek to throw upon a neutral, assumed at the most to have been guilty of some degree of negligence, liabilities which belonged in the first degree to its own citizens, with whom it has now re-entered into relations of political unity, and from which it has wholly absolved those citizens?"

The American Union is not a single Republic, but is a Federation of States. The eleven States, which joined the Southern Confederacy, are also now joining in the present claims. Upon ordinary principles of justice, if Great Britain is held responsible for those claims, she would herself have a claim for indemnity against those eleven States; which, in their external relations towards herself and other countries, are represented by the

* Page 473. The italics in this passage are in the original text.

Federal Government. If everything has been condoned to them by the Federal Government, and if their relations to that Government preclude Great Britain from having recourse to them for the indemnity which would otherwise be justly due to her, it is surely impossible to conceive a case in which there would be less justification for a discretionary and penal augmentation of damages, such as an allowance in respect of interest, in a proceeding for unliquidated damages, always is.

Another argument, arising from the peculiar circumstances of the present case, and which has also a strong bearing in favour of a reasonable modification of the liability of Great Britain, and, at all events, against any aggravation of that liability by the addition of interest as an element of damages, is thus stated in the British Counter-Case (p. 132):—

"When any vessels, whether procured from Great Britain, or otherwise obtained, had become Confederate ships of war, the duty of repelling their hostile proceedings by all proper and efficient means (like the rest of the operations necessary for the conduct of the war), devolved exclusively upon the United States, and not upon the British Government. Over the measures taken by the United States for that purpose, Great Britain could exercise no influence or control; nor can she be held responsible in any degree, for their delay, their neglect, or their insufficiency. Any want of skill or success, even in the operations by land, would have the effect of prolonging the period during which cruizes of this nature could be continued. All losses, which might have been prevented by the use of more skilful or more energetic means, ought justly to be ascribed to a want of due diligence on the part of the Government of the United States, and not to any error, at any earlier stage, of the British Government. *Causa proxima, non remota spectatur.*"

In support of this reasoning, various facts are referred to, at pages 138-140 of the same Counter-Case, which show that numerous opportunities of arresting the progress of the Confederate cruizers were actually lost, through the remissness or fault (according to the judgment of their own official superiors) of the officers who ought to have performed that duty; and that the means employed by the Government of the United States for that object were on the whole inadequate for its energetic accomplishment. It would surely be of very dangerous example to hold that a belligerent power is at liberty (upon such an occurrence, *e.g.*, as the enlistment of forty men of the Shenandoah on the night of her leaving Melbourne), to leave a vessel which has abused the hospitality of a neutral State, to harass the commerce of its citizens without the use of efficient means of prevention; relying upon an eventual pecuniary claim against the neutral State for the value of all the subsequent captures of that vessel, with interest to the day of payment.

12. Even if it were possible that interest could be held due, on account of delay of payment, in a case of unliquidated and unascertained claims of this nature, between nation and nation, it is obvious that the United States, and not Great Britain, are exclusively responsible for so much, at least, of the delay, as has been due to the rejection by the Senate of the United States of the Convention signed by Mr. Reverdy Johnson and the Earl of Clarendon on the 14th January, 1869. (British Appendix, vol. iv, part 9, pp. 36-38.) That Convention provided for a reference to arbitration of all the claims of American citizens, arising out of the acts of the several vessels to which the present controversy relates.

It was the result of a careful negotiation, expressly authorized from the beginning to the end by the Government of the United States. Its form was several times altered to meet suggestions proceeding from that Government; and no such suggestion was made, before the final signature, which was not met by a practical concession on the part of Great Britain. If that Convention had been ratified in 1869, a settlement of all these claims would have taken place either three, or at least two, years since. It was, however, rejected by the Senate of the United States without so much as the communication, at the time, of any reason or explanation whatever to the British Government (British Appendix, vol. iv, part 9, page 10, *ad finem*). No reason or explanation has ever been offered which can alter the significance of this fact, or make it reconcileable with any conceivable view of justice, that, as against a Government which has never derived any profit or benefit, either directly or through its citizens, from any of the captures in question, the United States should claim interest for a delay due only to themselves. Great Britain, from the commencement of the negotiations between Lord Stanley and Mr. Reverdy Johnson in 1866, was always willing that these claims should be settled by arbitration; the difficulty (which appears to have originated in the suggestion by Mr. Sumner of those indirect claims, which are now excluded from the consideration of the Tribunal) was on the part of the United States alone. Can it be said that, if the delay, so caused, had lasted for twenty or for ten years, a claim by the United States for interest during that period could still have been maintained? If not, it cannot be maintained now; whether the delay is twenty years or two years, can make no difference in principle.

13. All the foregoing reasons belong to the general equity of the case, and are inde-

pendent of all the objections to the allowance of interest as an element of damages or compensation, which arise out of the particulars of the claims, and the impossibility of ascertaining or defining them before this tribunal.

14. The substantial claims (setting aside that of the United States for the alleged expenses of pursuit and capture) are those of the owners of ships and other property destroyed, and those of the insurance companies with whom the property lost was insured. The amount of both these classes of claims is stated in dollars of the currency of the United States at the respective times when the losses were sustained and the insurances paid. The value of the dollar currency was, during that whole period, enormously depreciated by reason of the war and of the suspension of specie payments in the United States. Its exchangeable value, as compared with the exchangeable value of the dollar in gold, during the period of specie payments before the war and also at the present time, was as 5.614 to 7.744, or, in round numbers as 8 to 11.*

All values of property computed in dollars of the forced paper currency, during that period, stood at proportionally higher figures than they would have done during the time of specie payments. The payment of all these claims,† so stated at their values in a forced paper currency, is now sought to be recovered against Great Britain at the nominal value of the same number of dollars converted into gold at the present rate of exchange; thus giving to every claimant *a direct gain of above* 27 *per cent.*, by the difference only between the value of the dollar in which the losses were estimated, and the value of the dollar in which the payment is asked to be made. This gain is alone equivalent to the actual addition of interest, at the rate of 6 per cent. per annum, for four years and a half upon every claim.

15. With respect to the insurance companies, it must be remembered that, as against the losses which they paid, they received the benefit of the enormous war premiums which ruled at that time; and that these were the risks against which they indemnified themselves (and, it cannot be doubted, so as to make their business profitable upon the whole) by those extraordinary premiums. Would it be equitable now to reimburse them, not only the amount of all these losses, *but interest* thereon, without taking into account any part of the profits which they so received?

16. These remarks would hold good if an exact valuation of the claims were possible; but, before this Tribunal, neither an exact valuation of any part of these claims, nor any approximation to such a valuation, is possible. This consideration alone ought to be decisive against the demand of interest, as an element of damages, in any gross sum to be awarded by the Tribunal.

When this is held to be admissible in private jurisprudence, the estimate or computation of the amount to be added for interest is always founded upon some appropriate evidence, by which the Jury or the Court is enabled to fix a definite sum as the value of the principal subject for which compensation is due. Before interest can be computed, whether as a legal incident of a liquidated debt, or as an element in damages previously unliquidated, the principal sum must be known; and this, not by conjecture, not by accepting, without proof in detail, the amount at which the interested party may choose to state his own claim (almost always excessive and exorbitant, and, as a general rule, purposely so overstated, in order to leave a very wide margin for a profit after all probable deductions), nor by any merely arbitrary modification of that amount, but by such vouchers and proofs as, after the opposite party has had the opportunity of seeing and checking them, are deemed satisfactory. Where such vouchers and proofs are absent, or cannot be satisfactorily tested, all foundation for an allowance of interest, as an element of damages, necessarily fails.

17. In the present case, not only is it altogether impossible to ascertain, either accurately or proximately, any sum which can be taken by the Tribunal as representing the principal amount of the losses, for which Great Britain ought to be held responsible; but the figures, which have been laid before the Tribunal on both sides, show in a very significant manner what great injustice might be inadvertently done, and how largely any just measure of compensation or indemnity might be exceeded, if the Tribunal were either to assume some amount, arbitrarily fixed, as representing the principal of those losses, and then to add interest on that amount; or were, without any such attempt at exactness, to swell, by some undefined and arbitrary addition under the notion of providing for interest, an award for a gross sum, founded on no distinct elements admitting of any computation. It does not require much attention to the particulars of the claims to see that they have been intentionally so stated, as to leave not only a wide margin for all those deductions, which the criticism of Great Britain might prove to be necessary, but ample room, after every such deduction has been made, for a large and full compensation and indemnity,

* British Summary, p. 68.

† The exceptions are few, and of no importance to the argument.

without any further addition whatever. The British criticisms cannot and do not attempt more than to cut off manifest exaggerations of those claims, either by demonstrating the inadmissibility in principle of some of them (*e.g.*, the double claims, and the prospective earnings), or by showing that others (*e.g.*, the claim for gross freights) must, on principle, be reduced by manifestly necessary deductions, or by appealing to the known and ascertained values of shipping, &c., of the same classes before the war, as a standard of comparison to which estimates of losses, manifestly excessive, may be referred. But when the fullest effect has been given to all these criticisms, the remaining claims continue unvouched and untested, under circumstances in which every really doubtful and uncertain question of actual value is practically taken for granted, even by the reduced British estimate, in the claimant's favour.

18. In illustration and proof of the preceding observations, the following important extract from the Report of Messrs. Cohen and Young, appended to the British Argument or Summary (pp. 46-47), containing matters, not of opinion, but of fact, which the Arbitrators may verify for themselves, merely by referring to the several documents in which the claims of the United States have been at different times stated, is here subjoined :—

"It will be useful," they say, "to make some observations which present themselves on comparing, with the revised statement, the original list of claims which was sent by Mr. Seward to Mr. Adams in August 1866, and also the extension of this, as presented by the President to the House of Representatives in April 1869, and which are to be found in the fourth volume of 'the Correspondence concerning Claims against Great Britain transmitted to the Senate of the United States.'

"These lists of claims not only strongly confirm the opinion we expressed in our first report, that the estimate we there made of the value of the vessels was probably a very liberal one, but also show in a remarkable manner, how since the year 1866 the claimants have in most cases enormously increased their estimate of the losses alleged to have been sustained by them.

"We will cite some of the more striking instances,—calling the list of claims sent to Mr. Adams the 'Original List,' the list presented to the House of Representatives the 'United States Amended List,' the Statement* on which we have already reported the 'Former Statement,' and the revised list of claims† on which we are now reporting the 'Revised Statement.'

"The Alert.—The claim as stated in the "Original List' amounted to $57,859; in the 'Revised Statement' (p. 1) it amounts to $202,726. In the 'Original List' there was a claim of $30,000 for '*interruption of voyage*;' but now, in addition to that amount, there is claimed a sum of $144,869 for '*prospective earnings*.'

"The Anna Schmidt.—This vessel was in the 'Original List' valued at $30,000, which is somewhat less than the average valuation we have allowed in proportion to her tonnage, but in the 'Revised Statement' (p. 13) the sum claimed in respect of the *vessel* is double that amount.

"The Golden Eagle.—In the 'Original List' the owners claimed for the *vessel* $36,000, and for *freight* $26,000. Our average estimate in proportion to her tonnage was about $45,000. In the 'Revised Statement (p. 40) the owners claim $86,000 for *vessel and freight*, thus increasing their claim by nearly 50 per cent.

"The Highlander.—She was a vessel of 1,049 tons, and was in ballast. In the 'Original List' two insurance companies advanced claims for insurances to the extent of $30,000, which was probably about the value of the vessel, but in the 'Revised Statement' (p. 46) the owners put forward an additional claim for the ship to the extent of $84,000. This claim is, however, far less extravagant than the claim for freight, which in the 'Original List' amounted to $6,000; whereas in the 'Revised Statement' it exceeds $68,000, and is advanced without any deduction whatever, although the ship was in ballast at the time of her capture. It will be found that at pages 6 and 27 of our First Report we have specially commented on the character and extent of the extraordinary demands put forward in respect of this vessel.

"The Ocean Rover.—In the 'Original List' the owners claimed $10,400 for *value of ship, loss of oil on board, and damages for breaking up of voyage*. The claims now advanced in the 'Revised Statement' (p. 68) in respect of the same losses exceed $193,000, the difference between the original claim and the more recent one being made up entirely of '*double claims for single losses*.'

"The Kate Cory.—In the 'Original List' the owners claimed $27,800 for the value of *the brig, outfit and oil on board*, and there was also a claim of $1,820 for the value of 'reasonable prospective catch of oil.' In the 'Revised Statement' (p. 51) the amounts insured have, as usual, been added to the claims by the owners, and there has been inserted a claim of $19,293 for loss of *prospective catch*, so that the original claim for $29,620 has grown to $56,474.

"The Lafayette, No. 2.—In the 'Original List' the owners valued the ship and outfit at $24,000, which is less than our average valuation according to her tonnage; and the secured earnings at $10,475: but in the 'Revised Statement' (p. 55) the claim put forward in respect of *ship and outfit and secured earnings* is more than $89,000; and the *prospective earnings*, which were in the 'Original List' valued at $33,446, are now estimated at a sum exceeding $50,000. The original claim for $69,471 has grown to $141,858.

"The Rockingham.—The claim in the 'Original List' amounted to $165,000, whereas the claim in the 'Revised Statement' (p. 74) exceeds $225,000. This is also one of the vessels which we selected

* Presented with the American Case, on December 15, 1871.
† Presented with the American Counter-Case, on April 15, 1872.

in our First Report (page 23) as a striking example of the exorbitant nature of some of the claims. There can be no doubt that the original claim was very extravagant, but in the 'Revised Statement' it has been doubled by improperly adding the insurances to the alleged values.

"The Union Jack.—In the 'Original List' it is stated that G. Potter, *after deducting the amount* received from the Atlantic Insurance Company, claims the sum of $7,584; but in the 'Revised Statement' (p. 111) he claims the sum of $34,526, *without making any deduction* for insurances, although the insurance companies at the same time claim $32,014 in respect of the amount insured by them; and it therefore clearly follows that a sum, at any rate exceeding $26,000, is claimed twice over.

The Catherine.—In the 'Original List' the owners claimed about $45,000 for *vessels and secured earnings*, but made no claim in respect of *prospective earnings*. Now, in the 'Revised Statement' (p. 229) there is a claim put forward of $35,329 for loss of *vessel and cargo*, over and above $31,676, the alleged amount of insurances by the owners, which is also at the same time claimed by the insurance company. In addition to this there is a claim for *prospective earnings* exceeding $19,600, so that the original claim of $45,805 has now grown to the enormous sum of $272,108.

"The Favourite.—She was a barque of 393 tons. In the 'Original List' the Atlantic Insurance Company, as insurers and assignees of the owners, claimed for loss on *vessel and outfit* $40,000, which there can be little doubt was the full value. In the 'Revised Statement' (p. 240) the claims in respect of the *vessel and outfit* amount altogether to $110,000. The master, in the 'Original List,' claimed $1,498 for the *loss of his effects*; but now he claims for the *loss of his personal property*, $2,239, and *for loss of interest in oil and bone*, $2,709.

"The Isaac Howland.—In the 'Original List' the claim for *prospective earnings* was $53,075, but in the 'Revised Statement' (p. 247) it has grown to nearly four times that sum, namely, to $196,158. Moreover, in the 'Original List,' the owners claimed $65,000 for ship and outfit, *subject to abatement for insurance*; whereas, in the 'Revised Statement,' they claim the same sum, but *protest against any diminution of claim by reason of insurance obtained by them*, although the insurance companies claim at the same time the whole amount insured by them.

"The General Williams.—In the 'Original List' the owners claimed $40,503 as *damages by the destruction of the vessel*, over and above $44,673, the amount of insurances received by them. In the 'Revised Statement' (p. 241) there is added to the amount of insurances a sum of $85,177, the claim being in this manner all but doubled. There are also added the following claims:—A claim by the owners for *prospective earnings* amounting to $196,807; a claim by the master for loss of *prospective catch, time, and occupation*, amounting to $20,000; a similar claim by the mate, amounting to $10,000; another claim of $30,000 for *insurances on vessel and outfit*; and finally, the sum of $16,000 for *insurances by the owners on the vessel's prospective earnings*. In this manner the original claim, which was less than $66,000, has grown to the sum of $406,934, and has therefore been increased more than six-fold."

19. One more subject remains to be dealt with. The United States, in their Argument (pages 484-5), have appealed to certain historical precedents. After stating, in a passage already referred to (and to which, it is hoped, a full and sufficient reply has been made), that they conceive this demand of interest, as an element of damage, to be "conformable to public law, and to be required by paramount considerations of equity and justice," they add:—

"Numerous examples of this occur in matters of international valuation and indemnity.

"Thus, on a recent occasion, in the disposition of Sir Edward Thornton, British Minister at Washington, as Umpire, of a claim on the part of the United States against Brazil, the Umpire decided that the claimants were entitled to interest by the same right which entitled them to reparation. And the interest allowed in this case was (45,077 dollars) nearly half of the entire award (100,740 dollars).

"So, in the case of an award of damages by the Emperor of Russia in a claim of the United States against Great Britain under the Treaty of Ghent, additional damages were awarded in the nature of damages from the time when the indemnity was due. In that case, Mr. Wirt holds that, according to the usage of nations, interest is due on international transactions.

"In like manner Sir John Nicholl, British Commissioner in the adjustment of damage between the United States and Great Britain under the Jay Treaty, awards interest, and says:—

"'To reimburse to claimants the original cost of their property, and all the expenses they have actually incurred, *together with interest on the whole amount*, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations for losses, costs, and damages occasioned by illegal captures.'"

20. There can be no greater fallacy, and there is also none more familiar to the practical experience of jurists, that this kind of general reference to precedents, which, when the facts are examined, are found to differ from the case to which they are sought to be applied, in all, or some, of the most essential points, upon which the question in controversy depends.

Let us now examine these "examples" in their proper historical order, which has been inverted in the Argument of the United States.

21. The earliest in date is that of the claims under the "Jay Treaty," *i.e.*, the Treaty between Great Britain and the United States, signed at London on the 19th November, 1794. That Treaty contained two Articles applicable to different descriptions of claims. The VIth Article was in these terms:—

"Whereas it is alleged by divers British merchants and others, His Majesty's subjects, that *debts to a considerable amount, which were bonâ fide contracted before the peace, still remain owing to them by*

citizens or inhabitants of the United States; and that, by the operation of various lawful impediments since the peace, *not only the full recovery of the said debts has been delayed*, but also the value and security thereof have been in several instances impaired and lessened, *so that, by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive, full and adequate compensation for the losses and damages which they have thereby sustained;* it is agreed that, in all such cases where full compensation for such losses and damages cannot, for whatever reasons, be actually obtained, had, and received by the creditors, in the ordinary course of justice, *the United States will make full and complete compensation for the same to the said creditors;* but it is distinctly understood that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors or other causes as would equally have operated to produce such loss if the said impediments had not existed; nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant."

This Article, having relation to *debts, actually and bonâ fide due and payable* by American to British subjects, and of which the payment had been delayed and prevented by legal impediments opposed to the recovery of such debts by the policy and legislation of the Government of the United States, it is apparent, not only that the claims, being liquidated, admitted of the computation of interest upon them in the most proper sense of that word, but also that they were such as entitled the claimants to interest upon the strictest principles of private jurisprudence, which here necessarily furnished the rule; the responsibility for these private debts being expressly assumed, on grounds of public policy, by the Government of the United States. The British Commissioners, under this Article (being a majority), accordingly decided, in the case of Messrs. Cunningham and Co. (18th of December, 1798), that interest ought to be awarded "for the detention and delay of payment of these debts, during the war, as well as in time of peace, according to the nature and import, express or implied, of the several contracts on which the claims were founded." From this decision the American Commissioners, Messrs. Fitzsimons and Sitgreaves, on the 21st December, 1798, recorded their dissent, their objections being most strongly urged with reference to the allowance of interest during the time of war; and, on the 11th January, 1799, they followed up this dissent, and another protest made by them in a different case, by withdrawing from the Board, and altogether suspending the proceedings of the Commissioners on that description of claims.

22. The VIIth Article of the same Treaty provided for the settlement by Commissioners of two other classes of claims. The first class consisted of claims by citizens of the United States:—

"Whereas complaints have been made by divers merchants and others, citizens of the United States, that, during the course of the war in which His Majesty is now engaged, they have sustained considerable losses and damage, *by reason of irregular or illegal captures or condemnations of their vessels and other property, under colour of authority or commissions from His Majesty;* and that, from various circumstances belonging to the said cases, adequate compensation for the losses and damages sustained cannot now be actually obtained, had, and received, by the ordinary course of judicial proceedings: it is agreed that, in all such cases where adequate compensation cannot, for whatever reason, be now actually obtained, had, and received by the said merchants and others in the ordinary course of justice, full and complete compensation for the same will be made by the British Government to the said complainants. But it is distinctly understood that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimants."

The Commissioners appointed "for the purpose of ascertaining the amount of any such losses and damages" were to "decide the claims in question according to the merits of the several cases, and to justice, equity, and the laws of nations." Sir John Nicholl was one of those Commissioners, and he concurred (on the grounds stated in the Argument of the United States) in awarding interest on the ascertained amount of "the original cost of the property of the claimants," and "all the expenses which they had actually incurred." This, again, was a case of the award of interest on a principal value, actually ascertained and proved to be recoverable by appropriate evidence, in respect of property, belonging to citizens of the United States, which had been seized and appropriated, and unjustly detained, and (in some cases) sold or otherwise disposed of for their own benefit, by persons acting under the public authority of the Crown of Great Britain. In both these essential points this precedent of 1794 stands in direct opposition and contrast to the claims now before the present Tribunal.

23. The second class of claims, under the VIIth Article of the Treaty of 1794, consisted of claims of British subjects who complained "that, in the course of the war, they had sustained loss and damage by *reason of the capture of their vessels and merchandize taken within the limits and jurisdiction of the United States, and brought into the ports of the same, or taken by vessels originally armed in ports of the said States.*"

As to these vessels, the Government of the United States entered into an engagement (by Mr. Jefferson's letter to Mr. Hammond of September 5, 1793), with the British Government, to "use all the means in their power" for the restitution of *such of them (and such only) as had been brought into ports of the United States after the 5th of June*, 1793, on which day M. Genêt, the French Minister, received notice from the President of the United States that he was prohibited from bringing in such prizes: a promise being added that compensation should be made for some particular vessels acknowledged to be within that category, as to which Mr. Jefferson expressly admitted that "for particular reasons" his Government had "forborne to use all the means in their power for their restitution;" and in like manner for any others, as to which they might subsequently think fit to exercise a similar forbearance.

The Commissioners, under this part of the Article, refused all compensation to the owners of British vessels taken by French ships of war or privateers originally armed in ports of the United States, which were either brought by the captors into American waters before the 5th of June, 1793, or were destroyed at sea, and never brought at all into ports of the United States. As to the other cases, in which compensation was given, it does not appear, from any materials accessible to the Counsel of Her Britannic Majesty, whether interest upon the ascertained value of any British prizes brought into ports of the United States after the 5th of June, 1793, and not restored pursuant to Mr. Jefferson's letter, was, or was not, awarded. Assuming such interest to have been awarded, the reason is obvious. The values of these prizes were ascertained and determined by the Commissioners upon appropriate evidence; and the interest (if any) was calculated upon those ascertained amounts. The engagement of the Government of the United States had made the amounts so ascertained *debts directly due to Great Britain by the United States upon the footing of an express contract*, from the moment at which the prizes, being within the power of the United States, ought to have been restored according to the terms of Mr. Jefferson's letter, but were, "for particular reasons," purposely allowed by the United States' Government to remain in the hands of the captors. This was strictly a case of a debt due and of a wilful delay and default in payment; according, therefore, to ordinary juridical principles, it was right that it should be recovered with interest.

24. The next in order of the historical precedents is that of the claims under the Treaty of Ghent. The following is the history of that case:—

During the war between Great Britain and the United States, in 1812-13, the British forces took possession of certain private property (principally slaves) of American citizens. The 1st Article of the Treaty of Ghent (1814) contained a positive engagement by Great Britain for the restitution of "slaves, or other private property," so taken, which might remain in British possession at the time of the exchange of the ratifications of the Treaty. "In violation of this Treaty, the slaves and other property of American citizens," says Mr. Wirt, the American Attorney-General, in his opinion of May 1826, now quoted by the United States, "were carried away in the year 1815, and have been detained from them ever since. They have thus lost the use of this property for eleven years."* In October 1818, differences having arisen between the two countries on this subject, a Supplemental Treaty was signed in London, by the Vth Article of which, after stating that "the United States claim for their citizens, and as their private property, the restitution of, or full compensation for all slaves, &c.," it was referred to the Emperor of Russia to decide between the parties, "whether, by the true intent and meaning of the aforesaid Article (*i.e.*, Article I of the Treaty of Ghent) the United States are entitled to the restitution of, or full compensation for, all or any slaves as above described." The Emperor of Russia made his award, deciding that the United States were "*entitled to a full and just indemnification for the slaves and other property carried away by the British forces, in violation of the Treaty of Ghent.*"† A Convention was afterwards (July 1822) signed between the United States and Great Britain at St. Petersburgh, under which Commissioners of Claims were appointed for the purpose of carrying the award of the Emperor into effect.

Under this Convention, the British and American Commissioners disagreed upon the question, whether interest ought or ought not to be allowed upon the ascertained value of the slaves, from the time when they were taken away in the manner which the Emperor of Russia had determined to be a violation of the Treaty of Ghent. These conflicting views of the Commissioners were supported on each side by the Law Officers of their

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* Opinions of the Attorneys-General of the United States, vol. ii, p. 32.

† The statement of the United States that the Emperor awarded either "damages" or "additional damages in the nature of damages from the time when the indemnity was due" is entirely erroneous. The reference to the Emperor was only to determine a disputed question on the construction of the Treaty of Ghent.

respective Governments. Mr. Wirt, the American Attorney-General, insisted "that interest at least was a necessary part of the indemnity awarded by the Emperor;" that, "without it, a just indemnification could not be made." "The first *act of dispossession* being thus established to be a wrong, is the continuance of it," he asked, "*of that* dispossession for eleven years, no wrong at all? Is it consistent with that usage of nations, which Sir John Nicholl recognizes, *to redress an act of wrongful violence* by the return, at any length of time, of the naked value of the article at the date of the injury?" And he states his conclusion thus: "Upon the whole, I am of opinion that the just indemnification awarded by the Emperor involves not merely the return of the value of the specific property, *but a compensation also for the subsequent and wrongful detention of it, in the nature of damages.*" (Opinions of Attorneys-General of the United States, Vol. II, pp. 29, 31, 32, 33.)

It is instructive, on the other hand, to observe the views upon the question of principle, applicable to the claim of interest (independently of the construction of the Treaties, the Emperor's award, and the Convention of St. Petersburgh), which were expressed by the eminent Law Officers of the British Crown. Sir Christopher Robinson was then King's Advocate, and Sir John Copley (afterwards Lord Lyndhurst), and Sir Charles Wetherell were Attorney-General and Solicitor-General. The King's Advocate (19th May, 1825) thought that, [illegible]ral principles, interest was not payable. He referred to the same rules of private jurisprudence, which have been stated in an earlier part of the present Argument:—

"The rules of law, so far as they may be applicable to this question, do not favour claims of interest, except under special circumstances, as in cases of agreement, expressed or implied, or of the possession and enjoyment of intermediate profits, or of injury, properly so termed, in respect to the tortious nature of the act, for which the compensation is to be made."

He proceeded to illustrate these rules, from the laws of England and of the United States, and added:—

"The principles of the General Law of Europe as derived from the Civil Law, and adopted in the several countries, correspond with this exposition. 'Interest of money is not a natural revenue, and is only, on the part of the debtor, a punishment which the law inflicts upon him for delay of payment (usura pecuniæ quam percipimus, in fructu non est, quia non ex ipso corpore, sed ex alia causa est, id est nova obligatione')*

"'Usuræ non propter lucrum petentium, sed propter moram solventium infliguntur.'"†

In the result, he regarded the question as entirely depending upon the true interpretation of the Treaties and the Convention of St. Petersburgh, and considered that these instruments did not support, but were, on the contrary, at variance with the claim.

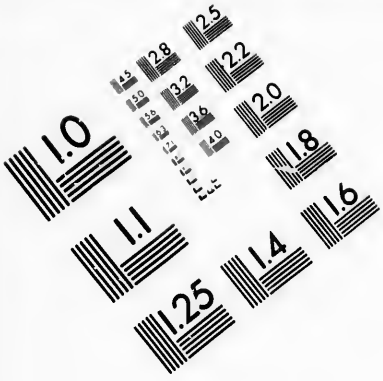
The views of Sir J. Copley and Sir C. Wetherell (10th November, 1825), were in some respects different from those of Sir C. Robinson. After referring to the 1st Article of the Treaty of Ghent, and to the Emperor's award as to its construction, they said:—

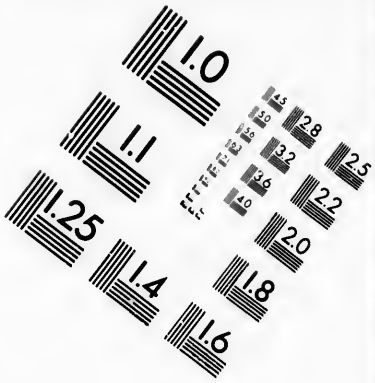
"In the removal, therefore, of the slaves in question this engagement has been infringed, and the parties injured by such infringement are entitled to compensation. It must be obvious, however, that the bare restitution or payment of the value of the slaves, after an interval of so many years *from the period when they ought, according to the agreement, to have been restored*, will not form by any means an adequate compensation to the owners for the loss they have sustained by the breach of this Article of the Treaty; and we *think the addition of interest to the value of the slaves, such interest being calculated from the period when they ought to have been given up, is a fair and moderate mode of estimating the damage sustained by the injured parties.* In our municipal law, *where a party contracts to deliver personal property at a particular time, or where he unjustly detains the goods of another, he may be compelled to deliver such property, or to pay the value, and further to pay damages for the detention. If, therefore, the question had rested here, we should have been of opinion, upon this general reasoning, that the claim to interest ought to have been allowed by the Commissioners.* But upon adverting to the Treaty of London, to the award of the Emperor, and the Convention of St. Petersburgh, we are led to a different conclusion."

The question, upon which the British and American Commissioners and Law Officers had thus differed, was eventually settled, upon terms of compromise, by another Supplementary Convention between the two countries. But supposing that the question had been unembarrassed by any difficulties in the construction of the express Treaty engagements upon the subject, and that it ought properly to have been determined, on general principles, in accordance with the views of Mr. Wirt, Sir John Copley, and Sir C. Wetherell, it is plain that these views rested upon the simple and ordinary ground, that property of ascertained value, which Great Britain had in her actual possession at the time of the ratification of the Treaty of Ghent, and which, by that Treaty, she had expressly contracted and

* Domat, tit. "Interest," lib. i, p. 121.

† Ibid., p. 419.





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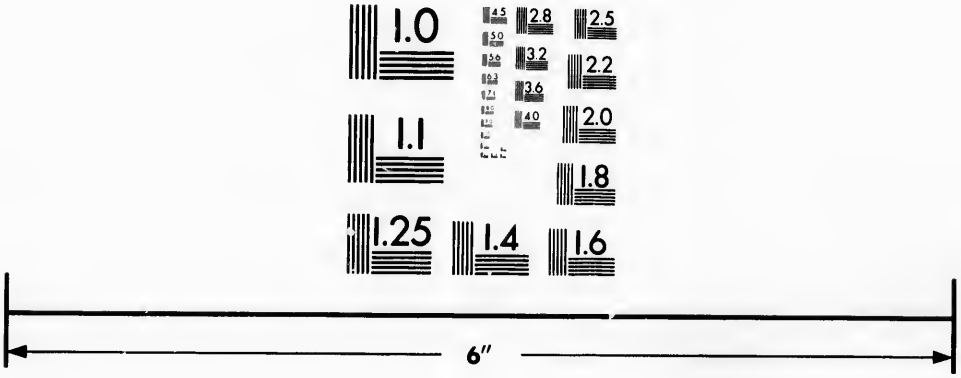

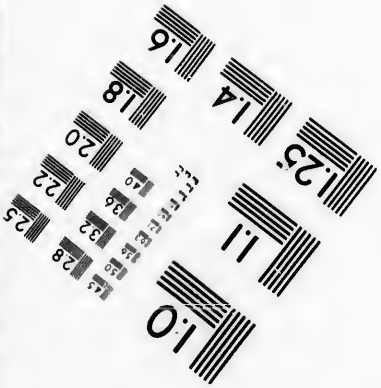

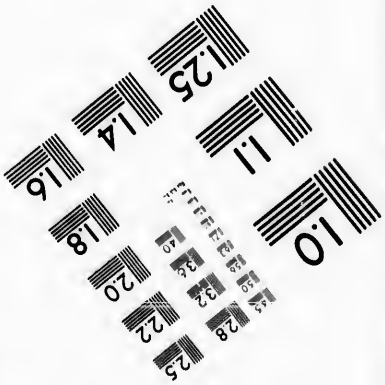

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engaged to deliver up to the United States, had been wrongfully and permanently detained in violation of that engagement. The case, in these respects, was precisely similar to that under the latter clause of the VIIth Article of the Treaty of 1794.

25. Before parting entirely with this precedent, it does not seem out of place to refer to some other forcible observations, made by Sir Christopher Robinson, in an earlier opinion given to the British Government on the same subject, on March 18, 1825.

"The subject of interest presents a question of considerable importance and delicacy, and to which it will be difficult to apply the analogy of rules derived from legal proceedings, independent of the political considerations, which may have regulated the conduct of the Power making compensation in the particular case. In that view, it seems to be a reasonable distinction which is raised, that Sovereign Powers do not usually pay interest, unless they stipulate so to do. The obligations of Governments for civil injuries are matters of rare occurrence, and depend, in form and substance, as much on liberal concessions, or on reciprocal engagements, as on the intrinsic justice or equity of the claim. They are usually compensations (compromises?) made on questions in doubt, after considerable intervals of time, by which interest is much enhanced. They are also compensations for the acts of others; for the consequences of error or misunderstanding, rather than of intentional injury; and for cases in which no profit or advantage has accrued to the party, by whom such compensation is made. Considerations of this kind seem to require that, if interest is to be paid as part of the compensation by Treaty, it should be matter of special arrangement as to amount and particulars; and the reasonableness of that expectation supports the distinction suggested, that, where no such stipulation is made between Sovereign Powers, interest shall not be considered as due."

26. These are the words of a jurist (the reporter of the celebrated judgments of Sir William Scott, Lord Stowell), who was particularly conversant with questions of Public and International Law. Of the numerous examples of the allowance of interest between nations, without special agreement, which are supposed by the Counsel of the United States to exist, he was evidently not aware. Instances may, indeed, be found (some before, and some later than 1825), in which claims of individuals for interest, as a legal incident of liquidated debts and obligations, have been held proper to be considered, and to be allowed if found just. There are also other instances, in which a State, acknowledging itself to have made default in the payment of its own liquidated pecuniary debts and obligations to the citizens of another State, or acknowledging itself to be responsible for the wrongful appropriation and detention, by its officers or people, of property belonging to the citizens of another State, has expressly contracted to make payments or restitution, with interest at an agreed rate. But Her Britannic Majesty's Counsel, after careful inquiry from the best sources of information, has failed to become acquainted with any instance in which interest has yet been allowed as an element of damages beween nation and nation in the settlement of unliquidated claims (to recur to the words of Sir C. Robinson), "for the acts of others, for the consequences of error or misunderstanding, rather than of intentional injury; and for cases in which no profit or advantage has accrued to the party, by whom compensation is made."

27. The third and latest precedent, cited by the United States, is that of the recent award of Sir E. Thornton between Brazil and the United States, in the case of the ship Canada.

In the year 1857 the Minister of the United States at Rio demanded compensation from the Government of Brazil for "an outrage committed on the high seas, near the Brazilian coast, by a body of Brazilian soldiers, upon a whale-ship called the Canada, sailing under the flag, and belonging to citizens, of the United States."* The matter continued pending for some years, and, eventually, on the 14th March, 1870, a Convention was concluded between Brazil and the United States, by which this question was referred to the arbitration of Sir Edward Thornton, then and now Her Britannic Majesty's Minister at Washington.

Under this reference Sir Edward Thornton made his award, dated the 11th July, 1870, by which he found the following facts to be established by the evidence laid before him; viz., that, on the 27th November, 1856, the Canada grounded upon a reef of rocks within Brazilian jurisdiction; that, during the four following days, proper means were used by her captain and crew, with every prospect of success, to get her off; but that, on the 1st of December a Brazilian officer, with fourteen armed men, boarded her, superseded the authority of the Captain, and forcibly prevented the further prosecution of the efforts which were being made to save the ship; that she would, in fact, have been saved, but for this improper interference of the officers of the Imperial Government of Brazil, and that she was lost through that interference; for which reason, he held the Imperial Government to be responsible for the value of the property so destroyed. He then proceeded to determine, according to the evidence before him (which included proper particulars of her

* Despatch of Mr. Fish to Mr. Blow, communicated to Baron Cotegipe on the 28th December, 1869.

age and classification, and valuations of different dates), the principal sum, representing the value of the ship at the time of her loss, and the actual cost of her outfit. He rejected all claims for prospective catch and earnings; he allowed some small sums for necessary expenses incurred by the crew in travelling; he also allowed to some of them moderate sums for three months' wages; and he allowed interest at 6 per cent. from the date of the loss, as the necessary result (in his judgment) of the liability of the Brazilian Government for the principal amount.

This decision, like those before examined, proceeded upon ordinary juridical principles. The Brazilian Government, by their officers and soldiers, had wrongfully taken possession of, and had, in effect, destroyed, a United States' ship within their jurisdiction, which was entitled to their protection. For the full value of the loss so inflicted upon subjects of the United States, they became immediately and directly responsible, as much as if they had seized and detained the ship, under circumstances enabling them to restore it to its owners. Restitution of the ship itself being impossible, a full compensation and indemnity became actually due, from the moment of the loss; and the payment of this compensation and indemnity, though promptly claimed, was for many years delayed. The amount of the principal loss was properly investigated and accurately determined, and the interest given was accurately computed upon that amount.

28. In every point of importance, with respect to the principles involved, this last precedent (like those which had gone before it) stands in absolute contrast with the present case. In this, as in the earlier cases (to sum up the whole matter shortly), those elements were found to be present, which were juridically necessary to constitute a *right* to interest; and interest was accordingly given, as a matter of strict right. In the present case all these elements are absolutely wanting; and, instead of them, others are present, the effect of which is not to support, but to repel, the claim of interest, even if the appeal is made, not to any rule or principle of public law, but to the exercise of a reasonable and equitable discretion.

(Signed) ROUNDELL PALMER.

No. 43.

Reply on the part of the United States to the Argument of Her Britannic Majesty's Counsel on the Allowance of Interest in the Computation of Indemnity under the Treaty of Washington.—(Presented September 2.)

THE question upon which the Tribunal is understood to have admitted argument on the part of Her Britannic Majesty's Government is, "Whether, supposing a capital sum as an adequate measure of injury, in the judgment of the Tribunal, has been arrived at, the proper indemnity for that injury involves the allowance of interest, as a part of that indemnity, from the date when the losses occurred to the sufferers (and as of which the capital of the losses has been computed) until the indemnity is paid?" We have had an opportunity to read the Argument of Her Britannic Majesty's Consul submitted to the Tribunal upon this question, and now avail ourselves of the right, under the Treaty, to reply to it so far as such reply seems to us suitable.

I. It is important in reference to this question, as we have heretofore had occasion to suggest in respect to other questions opened for discussion by the Tribunal, to confine the Argument within proper limits. By doing this in the present case, we may very briefly dispose of much that occupies a good deal of space in the learned Counsel's Argument.

(*a.*) The question assumes that a method of measuring the injury to the United States, and the indemnity therefor from Great Britain, has been adopted, which takes account of the losses suffered as of the dates (actual or average) when they were suffered, and fixes an amount in money which, if *then* paid to the sufferers, would, in the judgment of the Tribunal, be an adequate, and no more than an adequate, indemnity for such losses to the sufferers. Upon this view of the capital sum, in respect of which the allowance or refusal of interest thereon is in question (and no other view seems admissible), it is impossible to raise any other points for debate than the following:—

First. Is the delayed payment of a sum which, if paid at an earlier date, would *then* be only an adequate payment, still an adequate payment without compensation for the delay?

There can be but one answer to this question. The earlier and the later payment cannot *both* be adequate, and not more than adequate, to the same obligation unless they are equivalent to each other. But common sense rejects the proposition that a present payment of money and a delayed payment of the same sum are equivalent. They are not

the same to the creditor or sufferer who receives the payment, nor to the debtor or wrongdoer who makes the payment. Compensation for the delay of payment is necessary to make present and delayed payment equivalent to each other, and each equal to the same obligation.

It thus being clearly impossible that earlier and later payment should be equivalent, whenever, in fact, only the later payment can be, and is to be, made, it must draw with it the compensation for the delay in the nature of interest, *provided* it is intended that the parties should stand after the delayed payment as they would have stood after an earlier payment.

Second. It will be readily admitted that this necessary compensation for delay in payment of a sum, which has been computed as a just payment, if made without any delay therein, cannot be justly withheld, unless there shall have been some fault on the part of the creditor or sufferer whereby the delay of the adequate payment is imputable to him.

We imagine that the principles of private law governing this question, and justifying the refusal of interest for delay of payment, all turn upon this, viz., that the debtor was ready to pay and the creditor was unwilling to receive. It is true, in addition, that the jurisprudence of Great Britain and of the United States permits nothing but an actual *tender* of the sufficient sum, and a continued keeping of the sum good for payment on the part of the debtor, and a refusal to receive on the part of the creditor, to stop the running of interest on the debt.

The other class of cases in which the *debt* is frequently spoken of as not drawing interest, more accurately should be described as a situation wherein the transactions between the parties do not culminate in any obligation of one party to pay, or right of the other party to demand, until, as a part of these transactions, there has been an ascertainment of amounts, and a demand of payment. These are cases of mutual accounts, or of open demands as yet unliquidated. Until the eventual creditor strikes his balance, or computes and demands his debt, *there is no delay of payment* requiring compensation between the parties.

Third. There seems to be no other possible reason in the nature of things for refusing to add interest for delayed payment to a sum which was a mere indemnity had it been promptly paid, than a disposition not to give *full indemnity*, that is, an intention *to apportion the loss.* But this disposition, if it should be just, can hardly be said to raise any question of the allowance of *interest*, any more than of the allowance of principal. It will be all the same to the American sufferer, who fails to receive the full indemnity which delayed payment involves, whether the sum which is actually paid him is computed by the Tribunal as half his principal loss with interest added, or the whole of his principal loss without interest. It is all the same to Great Britain in making the payment, whether the deduction from a full indemnity is computed by refusing the full capital and calculating interest on the part allowed, or by allowing the full capital and refusing all interest upon it. The fact that full indemnity is or is not given cannot be disguised. It will not be more than given, because interest is allowed. It will not be any less withheld, because the part withheld is withheld by the refusal of interest.

II. If these views are correct, it will be seen that, notwithstanding the very extended discussion of Her Britannic Majesty's Counsel, the real considerations which should affect the allowance or disallowance of interest in the computation of the award of the Tribunal, lie within a very narrow compass.

(*a.*) We may lay aside all the suggestions that interest on the capital sum, as it has been adopted, or shall be adopted, by the Tribunal, should not be allowed, because the capital is, or is like to be, excessive, and interest would be an additional injustice. These ideas are put forth in sections 14, 17, and 18 of the learned Counsel's Argument, under two heads: (1), that the computation by the Tribunal of the capital will be excessive *per se;* and (2), that it will be excessive by adopting in *coin* values what are stated in *paper* currency.

In the first place, all this is not a reason for refusing *interest*, but for correcting the computation of capital on which the interest should be computed. We cannot enter into any such crude judgment as this. We are not invited to criticise the Tribunal's computation of the *capital* of the losses. We are not advised what that computation is, or is to be. We have exhibited to the Tribunal evidence and computations bearing upon the just measure of the capital of the losses. If those should be adopted by the Tribunal, there is no danger of excessive indemnity to the sufferers. We have also exhibited to the Tribunal the evidence and the reasons upon which we insist that the valuations given to property in the "Claims" as presented are to be paid in coin. We do not repeat them here, but we protest against an attack in the dark upon the Tribunal's measure of the capital of the losses, under the form of an Argument against the allowance of interest.

(*b.*) We may also lay aside the suggestions prejudicial to the allowance of interest on the claims, which, by subrogation or assignment, have been presented by the *insurers* who have indemnified the original sufferers. So far as Great Britain and this Tribunal are concerned, who the private sufferers are, and who represent them, and whether they were insured or not, and have been paid their insurance, are questions of no importance. But it is worth while to look this argument in the face for a moment. Some of the sufferers by the depredations of the Alabama, the Florida, and the Shenandoah, were insured by American underwriters. These sufferers have collected their indemnity from the underwriters, and have assigned to them their claims. The enhanced premiums of insurance on general American commerce have presumptively enriched the insurance companies. Great Britain should have the benefits of these profits, and the underwriters, at least, should lose the interest on *their* claims. It is difficult to say whether the private or the public considerations which enter into this syllogism are most illogical. Certainly, we did not expect that "*the enhanced payment of insurance*" which Great Britain could not tolerate, and the Tribunal has excluded, as too indirect consequences of the acts of the cruizers to be entertained *when presented by the merchants who had paid them*, were to be brought into play by Great Britain itself as direct enough in the general business of underwriting, to reduce the indemnity on insured losses, which if uninsured, they would have been entitled to.

(*c.*) Equally irrelevant to this particular question of interest, are the considerations embraced in section 11 of the learned Counsel's Argument. These relate (1) to the fact that the belligerent aids given by Great Britain, for which it is now to be charged as responsible, were given in aid of the rebels against the Government of the United States in their attempt to overthrow it, and that by the triumph of the Government these rebels have been merged in the mass of the population of the United States. This idea, as intimated in the principal discussions of the British Case and Counter-Case, has been responded to by us already, so far as it seemed to us to require response. (Argument, p. 479.) It certainly has no special application to the question of interest. The notion seems more whimsical than serious, but whatever weight it possesses should have been insisted upon *before or while making the Treaty of Washington*. The terms of that Treaty have relieved the Tribunal from any occasion to weigh this argument.

But (2) in section 11 of the learned Counsel's Argument, it is insisted that the allowance of interest, as part of the indemnity, should be affected by the circumstances of the failure of the United States sooner to cut short the career of the cruizers, for whose depredations Great Britain is now held responsible. A plea to this effect, based upon efforts of Great Britain to arrest, disarm, or confine these cruizers, and thus reduce the mischiefs for which it is held responsible, would have had some merit. But, alas! the proofs furnish no support for such a plea. As to the action of the United States, however unsuccessful, it will be time enough for Great Britain to criticise it as inefficient when its navy has attempted the chase of these light-footed vagabonds, which found their protection in *neutral* ports from blockade or attack, and sought remote seas for their operations against peaceful commerce. But this consideration has no special application to the question of interest.

III. We now come to an examination of some suggestions which purport to bear upon the question—whether there may not be found in the relations between the parties, in respect to, and their dealings with, these claims, some reasons why interest should, for affirmative cause, be withheld.

(*a.*) It is said that Great Britain is not in a position of having had *value to herself*, and so the reasons for adding interest against one who withholds a debt representing money that he has had, and actually or presumptively keeps and enjoys, or detains property whose profits he actually or presumptively receives and enjoys, do not apply.

It is true *these precise* reasons do not apply, and they do not any more in a multitude of private cases, where, nevertheless, the idemnity exacted for wrong doing, or the payment required to make whole the creditor, involves the payment of interest.

It has never been suggested that, when the injury consisted in an actual destruction of property, the wrong-doer was less liable for interest as a part of a delayed indemnity than when he had applied it to his own use, and reaped the advantages thereof. So too, in matter of contract, the surety, being liable for the debt, is just as liable for the interest as if he had received and was enjoying the money. So, too, when one is made responsible for the injury which his dog has done to his neighbour's sheep, he pays interest for delayed indemnity just as much as if he wore their wool, or had eaten their mutton.

In fine, the question in respect of contracts, is whether the contract expresses or imports interest, and in respect of costs, whether *indemnity* is demandable, or is to be

mitigated. If indemnity is demandable, it has never been held to be complete unless it included compensation for delay. Besides, in this actual case, suppose that twenty millions of dollars are a measure of the indemnity that Great Britain should pay for the capital of the losses suffered, for which it is responsible. This means that if that sum had been paid *when* the loss happened, the sufferer would have been made whole, and the wrong satisfied. Instead of that adjustment having been made, instead of that sum of money having then passed from the wealth of Great Britain into the hands of the sufferers, they have been kept out of it, and Great Britain has retained it. It is in vain to say then that the delay of payment has not left Great Britain in the possession of the money during the interval, for the contrary is true. The lapse of time has all the while been to the gain of the indemnitor, and to the loss of the sufferer, unless interest added corrects the injustice of delay.

(*b.*) But it is said that the indeterminate or unascertained amount of these injuries precludes the allowance of interest on the capital that shall be finally ascertained. To us, this seems no more sensible than to say that interest should not be allowed because the date from which or to which it was to run, also needed to be ascertained before it could be computed.

The problem before the Tribunal, as bearing upon this question of interest, may be very simply stated.

The injuries for which Great Britain is to make indemnity happened in the years 1863 to 1865. The Treaty of Washington provides that the sum for this indemnity, as fixed by the Tribunal, shall be paid within one year after the award. What sum, payable as of this date, will be an indemnity for destruction of property occurring seven, eight, and nine years ago? Manifestly, the question whether Great Britain should pay interest is an inseparable part of the question whether it is to make indemnity.

(*c.*) But, it is said, that for a certain period of time, the United States are responsible for the delay of payment by Great Britain, and for *that* period Great Britain should be exempted from interest. This period is put as from the failure of the Johnson-Clarendon Convention, negotiated in London in January, 1869, but not ratified by the United States.

If this means anything, it means that Great Britain, in January, 1869, was ready then to pay to the United States the sum that *this* Tribunal shall find reason to fix under the Rules of the Treaty of Washington, and so notified the United States. The intervening delay, consequently, in the receipt of the money is chargeable to the United States.

Thus put, the proposition is intelligible, but utterly unsupported by the facts of the case.

Great Britain has never admitted its liability to the United States in the premises for a single ship destroyed by any one of the cruisers, nor is it pretended to the contrary. Of what value is it, then, to say that *if* Great Britain and the United States had been able to agree upon different and earlier arbitration, there might have been an earlier award, and so interest should cease from a date when Great Britain was ready to accede to an arbitration upon certain terms which the United States rejected?

Certainty, the efficacy of this novel limitation on the running of interest must date from the probable period of the *award* under the failing arbitration. Upon no reasonable conjecture could the Commission of Claims arranged by that Convention have produced its award at all in advance of what may be expected from this Tribunal.

We leave out of consideration, as wholly irrelevant, the suggestions that it was to the non-concurrence of the *Senate* of the United States that the failure of the previous attempt at arbitration was due. That arbitration failed because the *United States* did not ratify the Convention.

But to give any force to this argument, it should appear that the United States in the present Treaty have simply, at a later date, concurred in what they then refused. This is not pretended. Indeed, it is to the presence of the three Rules of the Treaty of Washington as the LAW of this arbitration, that Great Britain seems disposed to attribute its responsibility to the United States, if, in the judgment of this Tribunal, it shall be held responsible. We respectfully submit that there is no support in fact or reason for this attempted limitation on the period of interest to the date of the Johnson-Clarendon Convention.

(*d.*) The Argument of the learned Counsel concludes with a criticism upon the cases under the Jay Treaty, and under the Treaty of Ghent, and the case of the Canada as decided by Sir Edward Thornton, all of which were adduced by us in our principal Argument as pertinent on the question of interest. (pp. 484, 485.)

We must think, with great respect to the observations of the learned Counsel upon these cases, that their authority remains unshaken.

We respectfully submit herewith, a statement showing what computation of interest we suppose would rightly satisfy the demands of the United States in this behalf.

In conclusion, we may be permitted to repeat, in reference to this element of computation of a just indemnity, what we have said on the general measure of indemnity:—

"This principal question having been determined, if Great Britain is held responsible for these injuries, the people of the United States expect a just and reasonable measure of compensation for the injuries as thus adjudicated, in the sense that belongs to this question of compensation, as one between nation and nation." (American Argument, p. 494.)

It is a matter of the greatest interest to both nations, that the actual injuries to private sufferers from the depredations of the cruisers, for which Great Britain shall be held responsible, shall be fairly covered and satisfied by that portion of the award that shall be applicable to, and based upon them. That this cannot be expected without an allowance of interest, is obvious. A recognized right to indemnity, and a deficient provision of such indemnity, should be the last thing to be desired as a solution of this great controversy between these nations.

WILLIAM M. EVARTS.
C. CUSHING.
M. R. WAITE.

NOTE TO THE REPLY.

SUMMARY of the American Claims, with Interest at 7 per Cent.

	Principal.	Interest.	Total.
	Dols. c.	Dols. c.	Dols. c.
Alabama	6,557,690 00	4,740,420 04	11,298,110 04
Florida	4,616,303 93	3,257,760 85	7,874,664 78
Shenandoah	3,663,277 46	2,123,741 46	5,787,018 90
	14,837,271 39	10,121,922 35	24,959,193 72

In case the Arbitrators shall reject Column 5, under the Shenandoah, the sum of the claims will amount to—

	Dols. c.
Principal	14,476,921 39
Interest	9,615,659 26
Total	23,993,189 65

NOTE.

(*a.*) Interest has been calculated above at the rate of 7 per cent. per annum.
(*b.*) It has been calculated for the true average of the dates of the captures of each cruizer, viz.:—
By the Alabama, for 10 years and 2 months;
By the Florida, for 10 years and 1 month;
By the Shenandoah, for 8 years and 5 months.

Names of the Vessels.	Amount of the Claims.	Times of the Captures.	Interest at 6 per cent. to September 1873, a year after the Date of the Award.
	Dols. c.		Dols. c.
Alert	44,803 91	No date	28,874 50
Altamaha	27,165 60	September 1862 ..	17,929 30
Benj. Tucker	127,610 06	Ditto	84,222 64
Courser	50,752 53	Ditto	33,496 70
Elisha Dunbar	88,200 00	Ditto	58,212 00
Kate Cory	53,760 25	April 1863 . ..	33,700 16
Kingfisher	53,292 17	March 1863 ..	33,574 07
Lafayette 2nd	111,747 00	April 1863 . ..	69,841 87
Levi Starbuck	168,415 00	November 1862 ..	109,469 75
Nye	107,974 25	April 1863 . ..	67,483 90
Ocean Rover	145,271 03	No date	92,973 50
Oemulgee	269,505 00	September 1862 ..	177,873 30
Virginia	77,025 00	Ditto	50,836 50
Weather Gauge	23,515 00	Ditto	15,519 90
Brilliant	135,457 83	October 1862 ..	88,724 88
Chas. Hill	56,464 93	March 1863 ..	35,572 90
Conrad	101,646 00	June 1863 . ..	62,512 29
Crenshaw	34,399 49	October 1862 ..	22,531 66
Express	103,820 00	July 1863 . ..	63,330 20
Golden Eagle	129,222 50	February 1863 ..	82,056 29
Jabez Snow	104,518 00	May 1863 . ..	64,801 16
John A. Parks	137,715 50	March 1863 ..	86,760 76
Lafayette	132,250 10	October 1862 ..	86,623 81
Lamplighter	34,355 00	Ditto	22,830 02
Louisa Hatch	95,625 00	April 1863 . ..	65,503 12
Palmetto	27,858 33	February 1863 ..	17,690 04
Rockingham	189,954 05	April 1864 . ..	107,324 04
S. Gildersleeve	48,015 00	May 1863	29,769 30
Wave Crest	64,629 10	October 1863 ..	38,454 31
Amanda	78,678 01	November 1863 ..	46,420 03
Amazonian	143,612 82	June 1863 . ..	88,321 88
Anna F. Schmidt	308,544 49	July 1863	188,212 14
Contest	158,465 97	November 1863 ..	93,494 92
Dorcas Prince	69,644 60	April 1863 . ..	43,527 87
Dunkirk	21,250 00	October 1862 ..	13,918 75
Golden Rule	96,840 70	(?) 1863 ..	56,167 60
Lauretta	37,264 64	October 1862 ..	24,408 34
Martaban	69,662 75	December 1863 ..	40,752 71
Olive Jane	97,383 66	February 1863 ..	61,838 62
Parker Cook	31,089 56	November 1862 ..	20,208 21
Sea Bride	155,944 12	August 1863 ..	94,346 19
Talisman	247,765 00	June 1863	152,375 48
Sea Lark	323,725 14	May 1863	200,709 59
T. B. Hales	241,261 24	November 1862 ..	156,819 80
Tycoon	456,589 00	March or April 1864 .	260,255 73
Union Jack	179,044 65	May 1863 . ..	111,007 67
Winged Racer	385,867 91	November 1863 ..	227,662 07
Manchester	173,080 92	October 1862 ..	113,368 00
Chastelaine	17,595 55	January 1863 ..	11,261 15
Emma Jane	86,557 34	January 1864 ..	50,203 26
Highlander	206,171 00	December 1863 ..	120,610 00
Sonora	102,964 44	Ditto	60,234 20
Ariel	10,403 38	December 1862 ..	6,723 08
Justina	7,000 00	No date	4,480 00
Morning Star	5,614 40	March 1863 . ..	3,537 07
Nora	88,025 00	March 1863 . ..	55,455 75
Starlight	11,245 00	September 1862 ..	7,421 70
Baron de Castine	1,500 00	October 1862 ..	982 50
	6,557,690 00	..	4,063,217 18
Add one-sixth, to increase the sum to the rate of 7 per cent. . ..	..	..	677,202 86
			4,740,420 04

The average time for the computation of interest upon the value of the property destroyed by the Alabama is about ten years and two months.

We have consequently the following Comparative Results :—

	Principal.	Interest at 7 per cent. for 10 Years 2 Months.	Total.
	Dols. c.	Dols. c.	Dols. c.
American statement	6,557,690 00	4,740,420 04	11,298,110 04
British statement	3,267,678 00	2,363,629 36	5,631,298 36

Whatever may be the sum fixed upon by the Tribunal, as a base for the computation of interest, and whatever shall be the rate which it shall decide to allow, the average time ought to be the same in all cases, namely, ten years and two months.

Florida.

Names of the Vessels.	Amount of the Claims.	Time of the Captures.	Interest at 6 per cent to September 1873, one year from the Date of the Award.
	Dols. c.		Dols. c.
Golconda	169,195 92	July 1864 . ..	93,057 75
Rienzi	20,726 00	July 1863 . ..	12,642 86
Ada	6,300 00	June 1863 . ..	3,874 50
Elizabeth Ann	8,650 00	June 1863 . ..	5,319 75
Marengo	7,746 00	Ditto	4,763 79
Rufus Choate	8,775 00	Ditto	5,396 62
Wanderer	8,389 00	Ditto	5,159 23
Anglo Saxon	63,695 79	August 1863 ..	38,535 95
Avon	183,851 40	March 1864 ..	104,795 29
B. F. Hoxie	115,155 00	March 1863 ..	72,547 65
Greenland	47,170 00	July 1864	25,943 50
Southern Cross	79,305 00	June 1863 . ..	48,772 57
Wm. C. Clark	29,556 91	June 1864 . ..	16,404 08
Mary Alvina	20,445 00	June 1863 . ..	12,573 67
Aldebaran	30,957 91	March 1863 ..	19,503 48
Clarence	26,177 50	May 1863 . ..	16,230 05
Commonwealth	470,533 58	April 1863 . ..	294,083 48
Crown Point	436,073 00	May 1863	270,365 16
Electric Spark	468,366 83	May 1864	257,601 75
Henrietta	73,556 94	April 1863 . ..	45,973 08
Jacob Bell	421,986 40	February 1863 ..	267,961 36
Lapwing	84,085 00	March 1863 ..	50,453 55
M. J. Colcord	107,896 21	Ditto	67,974 60
Red Gauntlet	124,475 94	June 1863 . ..	76,752 70
Star of Peace	532,128 65	March 1863 ..	335,241 04
Wm. B. Nash	68,724 94	July 1863	41,922 21
Oneida	471,849 12	April 1863 . ..	294,905 70
Windward	22,598 00	January 1863 ..	14,462 72
Estelle	24,925 00	Ditto	15,952 00
Zelinda	42,925 00	July 1864	23,608 75
Umpire	35,530 00	June 1863 . ..	21,850 95
Mondamin	35,549 00	September 1864 ..	19,206 26
Corris Ann	34,485 00	January 1863 ..	22,070 40
General Berry	35,918 48	July 1863	21,910 27
Geo. Latimer	49,830 33	May 1864 . ..	27,905 54
Harriet Stevens	51,925 00	July 1864 . ..	28,558 75
Byzantium	63,240 51	June 1863 . ..	38,892 91
Goodspeed	43,218 30	Ditto	26,579 25
M. Y. Davis	18,604 00	No date	11,441 46
Tacony	39,622 00	June 1863 . ..	24,367 53
Whistling Wind	12,594 10	No date	7,745 37
Archer	4,300 00	Ditto	2,644 50
Ripple	10,755 00	June 1863 . ..	6,614 32
	4,616,303 93	..	2,792,366 45
Add one-sixth, to increase the sum to the rate of 7 per cent. . ..	..	..	465,394 40
			3,257,760 85

The average time for the computation of interest upon the value of property destroyed by the Florida and its tenders is about ten years and one month.

COMPARATIVE RESULTS.

	Principal.	Interest at 7 per cent. for 10 Years 1 Month.	Total.
	Dols. c.	Dols. c.	Dols. c.
American statement	4,616,303 93	3,257,760 85	7,874,064 78
British statement	2,695,573 00	1,860,263 60	4,495,836 60

Whatever may be the sum fixed upon by the Tribunal, as a base for the computation of interest, and whatever shall be the rate which it shall decide to allow, the average time for the computation ought to be the same in all cases, viz., ten years and one month.

SHENANDOAH.

Names of the Vessels.	Amount of the Claims.	Time of the Captures.	Interest at 6 per cent. to September 1873, one year from the Date of the Award.
	Dols. c.		
Abigail	100,531 79	May 1865	See Table 2.
Brunswick	103,874 50	June 1865 . ..	
Catherine	93,670 90	Ditto	
Congress	177,587 00	Ditto	
Covington	88,802 50	Ditto	
Edward Carey	72,047 70	April 1865 . ..	
Euphrates	96,846 50	June 1865 . ..	
Favorite	169,693 44	Ditto	
General Williams	113,905 85	Ditto	
Gipsy	95,457 75	Ditto	
Hector	125,620 80	April 1865 . ..	
Hillman	157,366 50	June 1865 . ..	
Isaac Howland	205,951 00	Ditto	
Isabella	159,987 00	Ditto	
Jireh Swift	107,273 25	Ditto	
Martha	129,779 02	Ditto	
Nassau	181,179 50	Ditto	
Nimrod	162,124 87	Ditto	
Sophia Thornton	106,759 31	Ditto	
Susan Abigail	56,993 37	Ditto	
Waverley	135,655 25	Ditto	
William Thompson	180,968 75	Ditto	
William C. Nye	98,377 50	Ditto	
Pearl	55,685 50	April 1865 . ..	
Almira			
Europe			
General Pike			
James Maury			
Milo	333,500 00	June 1865 . ..	
Nile			
Richmond			
Splendid			
Australia			
Louisiana			
	3,263,149 55		

SECOND TABLE.—SHENANDOAH.

Names.	Claims.	Interest.
	Dols. c.	Dols. c.
The ships Edward Cary, Hector, and Pearl, were captured in April 1865	253,354 00	127,943 77
The Abigail was captured in May	100,531 79	50,265 89
The other ships were captured in June 1865	2,909,263 76	1,440,075 56
Add 25 per cent. upon the value of the whalers	400,127 91	202,064 59
		1,820,349 81
Add one-sixth of the interest, to increase the sum to the rate of 7 per cent.	..	303,391 63
	3,663,277 46	2,123,741 44

The average time for the computation of interest upon the value of property destroyed by the Shenandoah is about eight years and five months.

COMPARATIVE RESULTS.

	Principal.	Interest at 7 per cent. for 8 Years 5 Months.	Total.
	Dols. c.	Dols. c.	Dols. c.
American statement	3,663,277 46	2,123,741 44	5,787,018 90
British statement	1,171,464 00	690,187 54	1,861,651 54

In case the Arbitrators shall reject, as double claims, the claims for insurance in Column 5 of the American Tables, the comparative statement will be as follows:—

	Principal.	Interest.	Total.
	Dols. c.	Dols. c.	Dols. c.
American statement	3,202,957 46	1,617,478 37	4,820,405 83
British statement	1,171,464 00	690,187 54	1,861,651 54

Whatever may be the sum fixed upon by the Tribunal, as a base for the computation of interest, and whatever shall be the rate which it shall decide to allow, the average time of computation ought to be the same in all cases, viz., eight years and five months.

No. 44.

Lord Tenterden to Earl Granville.—(*Received September* 11.)

Geneva, September 7, 1872.

My Lord,

I HAVE the honour to report that Mr. Cohen left Geneva on the 4th instant as soon as he had been informed that the award of the Tribunal had been finally decided upon.

The various Memoranda and explanatory Tables relating to the details of the claims, of which I have forwarded to your Lordship copies, will enable Her Majesty's Government to appreciate the unremitting and careful attention which Mr. Cohen has devoted to the onerous duties which devolved upon him in this respect. It is not too much to say that Mr. Cohen's services have been indispensable, and that he deserves the greatest credit for the manner in which he has carried on the argumentative analysis of the American claims under circumstances of no ordinary difficulty.

Sir Roundell Palmer desires to join with me in, at the same time, expressing our sense of the able assistance rendered to us by Mr. Cohen in the other business of Her Majesty's Agency.

I have, &c.

(Signed) TENTERDEN.

No. 45.

Lord Tenterden to Earl Granville.—(*Received September* 11.)

Geneva, September 9, 1872.

My Lord,

YOUR Lordship will have learned from the Protocol of the proceedings of the Tribunal inclosed in my despatch of the 7th instant,* that the Arbitrators have decided, by a majority of four, to award a sum in gross to be paid by Great Britain to the United States in final settlement of all the claims referred to the Tribunal, in accordance with the powers conferred upon them by the VIIth and XIth Articles of the Treaty of Washington, and have fixed this sum at 15,500,000 dollars in gold.

I inclose a statement showing the manner in which it may be assumed that this sum has been arrived at.

Your Lordship will observe that, after deducting some claims excluded as indirect, the amount of the claims preferred by the Government of the United States in the revised Statement of Claims presented in April last was 26,819,573 dollars, including 7,080,478 dollars claimed for the expenditure incurred in the pursuit and capture of

* No 41.

the Alabama and other Confederate cruizers. In addition to this, interest at the rate of 7 per cent. was claimed from the 31st of July, 1863, to one year after the date of the award; making the total amount claimed about 45,593,273 dollars.

The Tribunal, as recorded in the 25th and 26th Protocols forwarded in my despatches of the 26th and 31st ultimo, decided unanimously that Great Britain was responsible for the acts of the Alabama, on account of which 7,009,129 dollars were claimed in April; by a majority of four to one that Great Britain was responsible for the acts of the Florida and her tenders, on account of which 4,176,097 dollars were claimed; and by a majority of three to two that Great Britain was responsible for the acts of the Shenandoah after that vessel had left Melbourne, for which 5,839,068 dollars were claimed. Great Britain was held not to be responsible for the acts of the Georgia or any of the other cruizers.

The result of these decisions was to reduce the claims to 17,024,234 dollars, without interest, to which must be added the claims for expenses of pursuit and capture, reduced, according to the statement presented by the United States' Agent, to 6,735,062 dollars, making a total of 23,759,346 dollars. But the addition of the new claims for wages, personal effects, &c., presented on the 19th ultimo, and against which I thought it my duty to remonstrate, raised the amount to 24,683,261 dollars, as appears by the Memorandum presented by the United States' Agent on the 26th ultimo, which, with interest at 7 per cent. for nine years, would amount to 40,233,715 dollars.

As recorded in the 27th Protocol, inclosed in my despatch of the 31st ultimo, the Tribunal on the 29th ultimo unanimously rejected the claims of 6,735,063 dollars, to which the costs of pursuit and capture, as estimated by the Government of the United States, had been reduced by the decision of the Tribunal in regard to the Georgia and other Confederate cruizers.

The representations which had been made to the Arbitrators on the part of Great Britain may, I trust, be credited with the further disallowances, which may be assumed to have been made by the Arbitrators, of 1,007,153 dollars for claims made for gross freights, from which it was clearly proved that reductions ought to be made for necessary expenses in earning the freight, such as wages of crew, wear and tear of vessel, and the like;—of 1,682,243 dollars for double claims, *i.e.*, claims made twice over on account of the same cargoes or vessels;—of 4,139,396 dollars, for prospective catch of the whalers; and of 1,450,000 dollars for the new claims.

These deductions being made, it would appear that the Arbitrators took a mean between the total of the remaining American claims of 10,297,748 dollars, and the estimate for the claims on account of the Alabama, Florida, and Shenandoah (after leaving Melbourne) as shown in the Report of the Committee appointed by the Board of Trade and the Memoranda and Tables which I have since presented to the Tribunal. This estimate is 7,464,784 dollars, and the mean between the two amounts, 8,881,266 dollars.

The Tribunal would then seem to have added to this the sums which the Arbitrators agreed to award in lieu of the prospective catch and gross freights, as recorded in the 29th Protocol inclosed in my despatch of the 7th instant.

These sums were respectively 98,000 dollars and 503,576 dollars, making the total amount of the claims on account of losses suffered by individuals from the acts of the three cruizers 10,372,842 dollars.

The Tribunal further decided to award interest, but, presumably, calculated it at the rate of 6 per cent. for about eight years instead of 7 per cent. for more than nine years, as claimed by the United States' Government.

This raised the award to 15,500,000 dollars, the sum decided upon by the Arbitrators.

As the Agents were not present when the Tribunal was engaged in deliberating upon the amount of this award, I have no personal knowledge of the exact basis upon which it was calculated, but I have reason to believe, and indeed the figures themselves go far to show it, that the foregoing account must be approximately correct.

I should add that, in the note to the reply of the Counsel of the United States to Sir Roundell Palmer's argument on the claim of the United States for interest as damages, presented on the 2nd instant, and of which a copy is inclosed in my despatch of the 7th instant, the claims of the United States, exclusive of the claims for pursuit and capture and for prospective catch, which had been disallowed by the Tribunal, are stated at 14,837,271 dollars, with interest on those for captures by the Alabama for ten years and two months; for those by the Florida for ten years; and for those by the Shenandoah for eight years and five months, amounting

together to 10,121,922 dollars, and making a total of 24,959,193 dollars, or in case of the deduction of the confessedly double claims under the Shenandoah a total of 23,993,189 dollars.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 45.

	Dollars.
Total amount of the claims advanced by the United States in the revised Statement which was presented in April last, excluding claims for increased insurance premiums	19,739,095
Over and above this was preferred a claim for costs of pursuit	7,080,478
	26,819,573
Interest was also claimed at 7 per cent. from the 31st July, 1863 (as a mean date), to the day of payment (which, as appears from recent American calculations, was taken as a full year after the date of the award). Say, therefore, 10 years at 7 per cent.	18,773,700
Total	45,593,273

Great Britain was held by the Tribunal not to be responsible for the Sumter, Nashville, Georgia, Tallahassee, Chickamauga, Retribution, and certain other small vessels, on account of which claims had been advanced, and to be liable only for the acts of the Alabama and Florida, and of the Shenandoah, after the departure of the latter from Melbourne.

In the Tables calculated on this basis and presented by the Agent of the United States on the 19th of August, new claims to the amount of two millions of dollars were advanced in the shape of allowances for wages and personal effects to the officers and crews of the captured vessels, and other additions to claims already presented.

The amounts were subsequently in some respects corrected in Tables presented by the United States' Agents on August 26, where the claims stand thus—

	Dollars.
Claims for losses by insurgent cruizers (including the new claims for wages, &c.)	14,437,143
For prospective catch, if allowed, an additional sum of	3,511,055
Claims for pursuit and capture	6,735,063
	24,683,261
With interest at 7 per cent., which, taken for 9 years, would amount to ..	15,550,454
Total	40,233,715

The Tribunal disallowed the claims for pursuit and capture, and for prospective catch.

They further disallowed—

	Dollars.
The claims for gross freight	1,007,153
Double claims	1,682,243
And may further be assumed to have disregarded the new claims to the amount of	1,450,000
Making a further reduction from the American claim of 14,437,144 dollars of ..	4,139,396
And leaving a balance of	10,297,748
Taking a mean between this and the British estimate of 7,464,784 dollars, the result is	8,881,266
To this must be added two allowances made by the Tribunal—	
In lieu of prospective catch, one year's wages, and 25 per cent. on the values of the vessels	988,000
In lieu of the claims for gross freight, 50 per cent. of the claims as nett freight	503,576
Total	10,372,842
Which, with interest at 6 per cent. for about 8 years, gives a result of ..	15,500,000

As actually arrived at by the Tribunal.

No. 46.

Lord Tenterden to Earl Granville.—(*Received September* 13.)

My Lord, *Geneva, September* 11, 1872.

I TRANSMIT to your Lordship herewith a copy of a letter which I considered it necessary to address to the Secretary of the Tribunal, requesting to be informed officially when I might expect to receive the copies of the statements read by the Arbitrators in delivering their preliminary opinions, and which it had been agreed at the meeting on the 17th of July last, as recorded in the 11th Protocol, should be furnished to the Agents.

I also inclose a copy of his reply, promising to supply me with the copies as soon as the printing is completed.

When I receive them, I will arrange them in proper order, and forward them to your Lordship.

I have, &c.
(Signed) TENTERDEN.

Inclosure 1 in No. 46.

Lord Tenterden to M. Favrot.

Sir, *Geneva, September* 8, 1872.

I WILL be obliged by your informing me officially when I may expect to receive the printed copies of the opinions or statements read by the Arbitrators to the Tribunal, in accordance with the 11th Protocol.

I have at present received only two statements by M. Staempfli on the cases of the Alabama and Florida. You informed me some days ago that you had commenced printing the statements of Count Sclopis and Viscount d'Itajubá, and I have reason to believe that the printing of M. Adams' statements is completed; but as it is very desirable that I should be furnished with complete records of the proceedings of the Tribunal before the final Judgment is pronounced, for transmission to Her Majesty's Government, I should be obliged by your letting me know precisely how the matter now stands, in order that I may make the necessary arrangements.

I have also to request that I may be furnished with at least six printed copies of the Judgment of the Arbitrators in French and English at the same time that it is delivered.

I am, &c.
(Signed) TENTERDEN.

Inclosure 2 in No. 46.

M. Favrot to Lord Tenterden.

My Lord, *Hotel de Ville, Geneva, September* 9, 1872.

I HAVE the honour to acknowledge the receipt of your Lordship's letter, dated the 8th September, but handed to me to-day at 12 o'clock just as I was coming to the Conference of the Tribunal.

Your Lordship asks to be officially informed when he may expect to receive the printed copies of the opinions or statements read by the Arbitrators to the Tribunal, in accordance with 11th Protocol.

In reply, I beg to inform your Lordship that besides M. Staempfli's papers on the Alabama and Florida, I possess only Count Sclopis' opinions on the three questions of law, and Viscount d'Itajubá's on the same questions and on the cases of the vessels, and that these two last were not brought to me before Saturday the 7th instant. Copies of these papers will be sent this evening to your Lordship.

The second proofs of Count Sclopis' statement on the vessels are now in his own hands, and if there be any delay in the delivery of those papers, that delay is not caused by any negligence on my part. M. Staempfli had given me positive orders not to deliver any more of his own papers before the other Arbitrators would deliver theirs. He has now in hand his opinions on the three questions of law, of which he gave me copies only at this day's Conference, though they had long before been printed. His

statements on the Sumter, the Retribution, and the Shenandoah are now at the printer's. I will do all that depends upon me in order that your Lordship shall have the wanting papers on Thursday next, or before if possible.

M. Adams had his own papers printed; but I never had anything to do with them. I begged him to-day for some copies which he promised to send to me, and which I will forward as soon as I receive them.

Having been to-day directed by the Tribunal to have its act of decision printed, I shall deliver to your Lordship on Saturday the number of printed copies he requires.

I further beg to inform your Lordship that the Tribunal decided to meet on Saturday the 14th instant, at half-past 12 o'clock, in the usual Hall of Conference, in order to read and sign its decision, and deliver copies of it to the Agents of the two Governments, and that this next and last Conference was to be held with open doors, ladies being also admitted.

Apologizing for the delay there has been in the expedition of all these printed matters, but assuring at the same time your Lordship that no exertion was wanting on my part to hasten the termination,

(Signed) ALEX. FAVROT, *Secretary.*

No. 47.

Earl Granville to Lord Tenterden.

My Lord, *Foreign Office, September* 13, 1872.

I HAVE received your despatch of the 31st ultimo, containing an explanation of the omission from the Protocol No. XXVI inclosed in your despatch of the statement you made to the Arbitrators in regard to the new claims presented to them by the American Agent; and, in reply, I have to acquaint you that Her Majesty's Government approve the course your Lordship pursued in this matter.

I am, &c.
(Signed) GRANVILLE.

No. 48.

Lord Tenterden to Earl Granville.—(*Received September* 16.)

My Lord, *Geneva, September* 10, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 6th instant, as approved and signed at the meeting yesterday, which have been forwarded to me by the Secretary to the Tribunal.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 48.

Protocol No. XXX.—Record of the Proceedings of the Tribunal of Arbitration at the Thirtieth Conference, held at Geneva, in Switzerland, on the 6th of September, 1872.

THE Conference was held with closed doors pursuant to adjournment. All the Arbitrators were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal.

The Tribunal proceeded to consider a project of redaction for their decision.

At the request of the Tribunal, Mr. Adams and Sir Alexander Cockburn kindly undertook to provide for the translation into English of the French text of this act of decision.

The Conference was then adjourned until Monday, the 9th instant, at half-past 12 o'clock, to be held with closed doors.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 49.

Lord Tenterden to Earl Granville.—(*Received September* 16.)

My Lord, *Geneva, September* 14, 1872.

I TRANSMIT to your Lordship herewith copies of the Protocol of the proceedings of the Tribunal of Arbitration on the 9th instant, as approved and signed at the meeting this day.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 49.

Protocol No. XXXI.—Record of the Proceedings of the Tribunal of Arbitration at the Thirty-first Conference, held at Geneva, in Switzerland, on the 9th of September, 1872.

THE Conference was held with closed doors pursuant to adjournment. All the Arbitrators were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal.

Mr. Adams and Sir Alexander Cockburn presented the English translation of the Act of Decision, which they had kindly undertaken to prepare.

The Tribunal definitively adopted the Act of Decision, which was considered at the last Conference, and decided to have it printed.

Viscount d'Itajubá, as one of the Arbitrators, made the following statement:—

"Viscount d'Itajubá, whilst signing the Decision, remarks, with regard to the recital concerning the supply of coals, that he is of opinion that every Government is free to furnish to the belligerents more or less of that article."

The Tribunal resolved that the decision should be signed at the next Conference, which is to be held with open doors, and adjourned until Saturday the 14th instant, at half-past 12 o'clock.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 50.

Lord Tenterden to Earl Granville.—(*Received September* 18.)

My Lord, *Geneva, September* 14, 1872.

I HAVE the honour to transmit to your Lordship herewith a copy of the Protocol of the proceedings of the Tribunal of Arbitration this day, to which is annexed a copy of the Decision and Award of the Arbitrators.

A copy of this Decision and Award, signed by the Arbitrators assenting to it, has also been delivered to me in accordance with the provisions of the VIIth Article of the Treaty of Washington, and is forwarded to your Lordship with this despatch.

After the Decision and Award of the majority of the Arbitrators had been read and signed, the Chief Justice presented to the Tribunal a statement of his reasons for dissenting from it.

A copy of this statement is also annexed to the Protocol.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 50.

Protocol No. XXXII.—Record of the Proceedings of the Tribunal of Arbitration at the Thirty-second Conference, held at Geneva, in Switzerland, on the 14th of September, 1872.

THE Conference was held with open doors, pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal.

The President then presented the Decision of the Tribunal on the question of the Alabama Claims, and directed the Secretary to read it; which was done, and the Decision was signed by Mr. Charles Francis Adams, Count Frederic Sclopis, M. Jacques Staempfli, and Viscount d'Itajubá, Arbitrators, in the presence of the Agents of the two Governments.

A copy of the Decision, thus signed, was delivered to each of the Agents of the two Governments respectively, and the Tribunal decided to have a third copy placed upon record; they further decided that the decision should be printed and annexed to the present Protocol.

Sir Alexander Cockburn, as one of the Arbitrators, having declined to assent to the Decision, stated the grounds of his own decision, which the Tribunal ordered to be recorded as an Annex to the present Protocol.

The Tribunal resolved to request the Council of State at Geneva to receive the archives of the Tribunal and to place them among its own archives.

The President, Count Sclopis, then directed the Secretary to make up the record of the proceedings of the Tribunal at this XXXIInd and last Conference, as far as completed; which was done, and the record having been read and approved, was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Thereupon the President declared the labours of the Arbitrators to be finished and the Tribunal to be dissolved.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

[For the Award of the Tribunal and Sir Alexander Cockburn's reasons for dissenting from it, see Part II of this series of papers, North America No. 2 (1873).]

No. 51.

Lord Tenterden to Earl Granville.—(Received September 18.)

My Lord,

Geneva, September 14, 1872.

AFTER the proceedings of the Tribunal of Arbitration had been concluded and the Protocol approved, Count Sclopis read an address, of which I have the honour to inclose a copy.

I have, &c.
(Signed) TENTERDEN.

Inclosure in No. 51.

Address by Count Sclopis.

MESSIEURS et chers Collègues! Notre tâche est remplie. Le Tribunal d'Arbitrage a vécu. Pendant son existence les meilleurs rapports se sont constamment maintenus entre nous. En ce qui me concerne je ne saurais assez vous exprimer, Messieurs, toute la reconnaissance que j'éprouve pour m'avoir soutenu par le concours de votre indulgence et de vos lumières dans l'exercice des fonctions délicates que vous m'avez confiées.

Nous avons été heureux de voir le succès complet obtenu par la première partie de notre œuvre conçue uniquement dans le sens d'une initiative officieuse. Nul éloge plus flatteur pouvait nous être adressé que celui sorti des voix les plus autorisées dans les deux Gouvernements intéressés dans la controverse; elles reconnurent que nous avons agi en amis dévoués des deux Puissances. Tel était en effet le sentiment vrai et profond qui nous animait.

Dans la seconde partie de notre travail, renfermée entièrement dans le cercle de l'autorité judiciaire qui nous avait été conférée par le Traité de Washington, nous avons mis un soin d'examen scrupuleux accompagné d'une impartialité absolue à ne pas dévier un instant des règles de la justice et de l'équité.

La co-opération des éminents juristes qui assistaient les deux Gouvernements, ainsi que celle des Agents que les répresentaient, nous a aidés puissamment dans ce travail. Nous sommes heureux de leur en offrir ici tous nos remerciments.

Nous emportons avec nous le témoignage de notre conscience de ne pas avoir failli à notre devoir.

Nous formons des vœux fervents pour que Dieu inspire à tous les Gouvernements la pensée constante et efficace de maintenir ce qui est le désir invariable de tous les peuples civilisées, ce qui est, dans l'ordre des intérêts moraux ainsi que dans celui des intérêts matériels de la société, le bien de tous les biens—la paix.

Notre dernier mot sera pour Genève, cette cité noble et hospitalière qui nous a si bien accueillis; en lui disant adieu nous pouvons l'assurer que son souvenir ne s'effacera point en nous.

Le Tribunal a cru qu'il serait agréable au Gouvernement de cette République de garder dans ses archives un témoignage de ce qui s'est passé à l'Hôtel de Ville dans cette occasion.

Il a ordonné qu'une expédition de l'acte de décision signée par tous ses membres soit déposée aux archives du Conseil d'Etat.

Encore une fois en prenant congé de la ville de Genève nous lui souhaitons tout le bonheur qu'elle mérite.

(Translation.)

GENTLEMEN and dear Colleagues! Our task is fulfilled. The Tribunal of Arbitration has come to a close. During its existence the best relations have constantly subsisted between us. As regards myself it is impossible for me adequately to express, Gentlemen, all the gratitude which I feel to you for having supported me by your combined indulgence and knowledge in the exercise of the delicate functions which you have entrusted to me.

We have been fortunate in witnessing the complete success obtained by the first portion of our work, which was conceived solely in the sense of an unofficial initiative. No praise more gratifying could have been addressed to us than that which fell from the lips of the most authoritative members of the two Governments interested in the controversy; they acknowledged that we had acted as the devoted friends of the two Powers. Such, in fact, was the sincere and profound feeling by which we were animated.

In the second portion of our work, entirely confined within the circle of the judicial authority which had been conferred on us by the Treaty of Washington, we have devoted ourselves to a scrupulous examination combined with absolute impartiality, taking care not to deviate an instant from the rules of justice and equity.

The co-operation of the eminent jurists who assisted the two Governments, no less than that of the Agents who represented them, has materially assisted us in this task. We are happy to have the present opportunity of offering them our hearty thanks.

We carry away with us the testimony of our conscience that we have not failed in our duty.

We fervently hope that God may inspire all Governments with the constant and effectual idea of maintaining that which is the invariable object of desire on the part of all civilized nations, that which is, both as regards the moral and material interests of society, the chief of all benefits—peace.

Our last word must be for Geneva, that noble and hospitable city which has so well received us; in taking leave of her we can assure her that her remembrance will not be effaced from our memory.

The Tribunal believed that it would be agreeable to the Government of this Republic to preserve in its archives a record of what has taken place at the Hôtel de Ville on this occasion.

It has resolved that a copy of the Award, signed by all its members, should be deposited in the archives of the Conseil d'Etat.

Once more, in taking leave of the town of Geneva, we wish her all the good fortune she deserves.

No. 52.

Lord Tenterden to Earl Granville.—(Received September 17.)

My Lord, *Geneva, September 14, 1872.*

I TRANSMIT to your Lordship herewith the copies of the statements of the opinions of Mr. Adams, Viscount Itajubá, M. Staempfli, and Count Sclopis,* as delivered at the different meetings of the Tribunal, with which I have been officially furnished by the Secretary.

The statements of the Chief Justice's opinions are embodied in his statement of reasons for dissenting from the decision and award of the other Arbitrators.

I have, &c.

(Signed) TENTERDEN.

No. 53.

Lord Tenterden to Earl Granville.—(Received September 17.)

My Lord, *Geneva, September 14, 1872.*

MY duties as Her Majesty's Agent being now terminated, I have to request your Lordship's permission to place on official record my grateful sense of the support and assistance I have derived from the cordial co operation of Sir Roundell Palmer in all the business of the Arbitration, and also of the advantages which I have personally obtained, as well as the benefit to the public service which has been occasioned, from the counsels of Mr. Mountague Bernard, who has been present during the meetings of the Tribunal.

I have at the same time to express to your Lordship my warm and sincere appreciation of the devotion to the very arduous work which has devolved upon them, which has been shown throughout our stay at Geneva by Mr. Sanderson and the other gentleman attached to Her Majesty's Agency.

Mr. Sanderson' ability and assiduity are so well known to your Lordship that it is unnecessary for me to do more than say that on the present occasion he has exerted them to the utmost; and it is with the greatest satisfaction that I have the honour of forwarding a letter addressed to your Lordship by the Chief Justice, in which he bears witness to the value of those exertions.

Sir Roundell Palmer has, in like manner, given me a letter to transmit to your Lordship stating the high opinion which he has formed of Mr. Lee Hamilton's talents and zeal. I have to add that it is owing to Mr. Lee Hamilton's scholarly mastery of the French language in all its nicety of phraseology, and consequent fluency in translation, that I have been enabled to conduct the business on the part of Her Majesty's Government without any delay being occasioned by the necessity of presenting all papers to the Arbitrators in both French and English. Mr. Lee Hamilton's perfect knowledge of German and Italian has likewise rendered him a most useful assistant in other respects.

The Chief Justice has mentioned the important services, as a translator, of Mr. Markheim. The translations of the British Case, Counter-Case, and Argument with which Mr. Markheim was intrusted, and which he so ably executed, have now been completed by his translation of the Chief Justice's Judgment, which, from the rapidity with which it has had to be effected, has been a work of no ordinary difficulty.

I was obliged, soon after the Tribunal had resumed its sittings in July, to report to your Lordship the severity with which the clerical labours of the Agency pressed upon Mr. Langley and Mr. Villiers, and to ask for further assistance. Since that time, although the assistance so promptly rendered by Mr. Hildyard of Her Majesty's Legation at Berne was of great service, those labours have been unremitting. There have been no office hours here, all hours have been office hours from early morning till late at night. Nor have Mr. Villiers and Mr. Langley been confined to clerical work. They have been frequently called upon to undertake other duties, which they have always most cheerfully and satisfactorily discharged.

I have, &c.

(Signed) TENTERDEN.

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* These papers have now been placed after the Protocols of the meetings at which they were read, so as to show the proceedings of the Tribunal in consecutive order.

Inclosure 1 in No. 53.

The Lord Chief Justice to Earl Granville.

My Lord, *Geneva, September* 14, 1872.

I CANNOT quit the scene of my two months' labours here without conveying to your Lordship my sense of the very valuable services, in every point of view, rendered by Mr. Sanderson throughout the whole course of this inquiry.

His perfect mastery of the subject of the Alabama Claims, extending even to the most minute details, his general information, his great intelligence, his indefatigable industry, his readiness, only equalled by his ability, to afford assistance, have excited my warmest admiration, and deserve my sincerest acknowledgments.

I am bound to say that without his very valuable aid I greatly doubt whether I could have brought my labours to a satisfactory completion within the time.

I sincerely hope that he will receive, as he deserves, your Lordship's entire and marked approbation.

I beg, at the same time, to add that the other gentlemen who have been attached to the British party here have been deserving of all praise.

Our translators, Mr. Hamilton and Mr. Markheim, have done their work admirably, and Mr. Langley, Mr. Villiers, and Mr. Hildyard have been always ready, at any amount of time and labour, to assist in the work in hand.

I trust your Lordship will not think I am going beyond my province in declaring how favourable an impression the experience of two months, passed in common labours and common society, has produced on my mind with reference to all these gentlemen.

Sir Roundell Palmer desires that I should add that he entirely concurs in all I have written.

I have, &c.
(Signed) A. E. COCKBURN.

Inclosure 2 in No. 53.

Sir R. Palmer to Earl Granville.

My Lord, *Geneva, September* 14, 1872.

IT is impossible for me, now that our labours in the business of the Arbitration are ended, to be satisfied without bearing my particular testimony (in addition to that borne by the Lord Chief Justice, in which I most cordially concur as to all the gentlemen named by him) to the remarkable zeal and ability displayed on all occasions on which I have stood in need of his assistance, by Mr. Lee Hamilton. All the arguments which I have been permitted to offer to the Tribunal have had the advantage, which I cannot estimate too highly, of translation by his hand, and I can truly say that his constant, unwearied, and cheerful help has contributed greatly to lighten my labours, and has, more than once, enabled me to overcome difficulties which, from the shortness of the time allowed, might otherwise have proved insuperable. It will be very gratifying to me to learn that his services, in this and other respects, have been approved by your Lordship.

I have, &c.
(Signed) ROUNDELL PALMER.

No. 54.

Earl Granville to Lord Tenterden.

My Lord, *Foreign Office, September* 17, 1872.

I RECEIVED yesterday your despatch of the 14th September, inclosing the award of the Tribunal of Arbitration, and I have this morning received your despatch No. 164 of the 14th.

I have laid these despatches before the Queen, and I am commanded by Her Majesty to signify to your Lordship, and through you to all those who have been associated with you for so many months in the delicate and arduous task on which you have been engaged, Her Majesty's gracious approval of the zeal, diligence, and great

ability that you have shown in upholding the honour and interests of this country throughout proceedings which not only closely affected them, but which it was for the general advantage of all nations should be brought to a successful issue.

To your Lordship, as primarily charged in your capacity of Her Majesty's Agent with the conduct of these proceedings, the thanks of Her Majesty's Government are first due; but I request your Lordship to convey to Sir Roundell Palmer, who so kindly undertook the duty of Her Majesty's Counsel, the obligations which Her Majesty's Government feel for the assistance which he so readily afforded on all occasions, and for the zeal and devotion with which he applied his great talents in support of the cause of this country, throughout the whole course of the matter, and more especially during the last eventful weeks at Geneva.

I must request you also to assure Mr. Bernard of the high degree in which Her Majesty's Government appreciate his services in England and in Geneva in connection with the Arbitration; and I desire in the same manner to convey to Mr. Sanderson, Mr. Langley, and Mr. Villiers, all Members of this office, to Mr. Hildyard, and to Mr. Lee Hamilton, of Her Majesty's Diplomatic Service, and also to Mr. Markheim, my entire approval of their conduct and the satisfaction with which I have received the testimony you bear in your despatch of the 14th instant.

Mr. Sanderson, in his longer official career, had already impressed me with a high sense of his ability and application to the public service, and I augur well from the manner in which the other Members of the Foreign Office and of the Diplomatic Service who have been specially employed under you, have conducted themselves, that they will continue hereafter to merit the approbation of the Secretaries of State under whom they may serve, which they have now so justly earned from myself.

I am, &c.
(Signed) GRANVILLE.

No. 55.

Viscount Enfield to Mr. Cohen.

Sir, *Foreign Office, September 23, 1872.*

I HAVE much pleasure in conveying to you, by Earl Granville's direction, his Lordship's thanks for the assistance which you have lately rendered at Geneva to Her Majesty's Agent with reference to the proceedings of the Tribunal of Arbitration, now concluded.

Lord Granville directs me to say that Her Majesty's Government highly appreciate your unremitting and careful attention, and more particularly the manner in which you drew up the argumentative analysis of the American claims under circumstances of no ordinary difficulty.

I am, &c.
(Signed) ENFIELD.

No. 56.

*Earl Granville to Sir A. Paget.**

Sir, *Foreign Office, September 28, 1872.*

THE Tribunal of Arbitration at Geneva, in the matter of the differences between Her Majesty and the United States of America on which it was appointed to adjudicate, having brought its labours to a close, and pronounced on the 14th instant its final award, it becomes my duty, in obedience to the Queen's commands, to request you to convey to His Majesty the King of Italy Her Majesty's acknowledgments for the care and attention which Count Sclopis, the Arbitrator appointed by His Majesty, bestowed on the important matter with which he was called upon to deal, and Her Majesty's high appreciation of the ability and indefatigable industry which that distinguished statesman displayed during the long-protracted inquiries and discussions in which he has been engaged.

* Similar despatches were addressed to Mr. Mayhew, Mr. Bonar, and Sir E. Thornton.

You will submit to His Italian Majesty to make known Her Majesty's sentiments as herein expressed to Count Sclopis.

I am, &c.
(Signed) GRANVILLE.

No. 57.

Earl Granville to the Lord Chief Justice.

My Lord, *Foreign Office, September* 28, 1872.

THE service which, under a sense of public duty, and at much personal inconvenience, you consented to undertake, as Arbitrator on behalf of Her Majesty in the Tribunal appointed under the 1st Article of the Treaty of Washington of May 8, 1871, being now brought to a close, I have received the Queen's commands to convey to you Her Majesty's acknowledgments for your services, and her high appreciation of the attention, the zeal, and the ability which you have displayed throughout a proceeding of no ordinary character, and of the energy which, while discharging with impartiality the duties of an Arbitrator, you showed in maintaining the cause of this country against the allegations and the claims preferred by the United States, whenever those allegations appeared to you to be unfounded and those claims unreasonable and exorbitant.

Her Majesty's Government for themselves desire to return to you their warm thanks for the services you have rendered in this matter.

I am, &c.
(Signed) GRANVILLE.

No. 58.

Earl Granville to Mr. Adams.

Sir, *Foreign Office, September* 28, 1872.

I CANNOT allow the proceedings at Geneva to be brought to a close without expressing to you, on behalf of Her Majesty's Government, their acknowledgments for the patience and attention which, in your character of Arbitrator, you exhibited during the laborious and protracted discussions in which you have been engaged.

Her Majesty's Government sincerely trust that while the result of the labours of the Tribunal shall obliterate all feelings of animosity between Great Britain and the United States arising out of the events of the late civil war, the proof that has now been afforded that differences between nations may be adjusted by other means than by resorting to war may conduce to the maintenance of peace among them, and to the general welfare and happiness of mankind.

I am, &c.
(Signed) GRANVILLE.

No. 59.

Earl Granville to Mr. Bonar.

Sir, *Foreign Office, September* 28, 1872.

I HAVE to instruct you to convey to the Swiss authorities at Geneva the thanks of Her Majesty's Government for the attention which they showed and the facilities which they afforded to the Tribunal of Arbitration which has now brought to a close the important discussions on which it has been for such a length of time engaged.

I am, &c.
(Signed) GRANVILLE.

No. 60.

The Lord Chief Justice to Earl Granville.—(*Received October* 7.)

My Lord,

October 4, 1872.

ABSENCE on a cruize at sea has occasioned some delay in my receiving and acknowledging the letter which your Lordship did me the honour to write to me on the 28th ultimo, and in which you conveyed to me the gratifying intelligence of the Queen's gracious approval of my discharge of the duty committed to me by Her Majesty on the recent Arbitration on the Alabama Claims.

May I beg of your Lordship to take the earliest opportunity to place me at the Queen's feet, and express the profound and grateful sense I entertain of Her Majesty's goodness and condescension, and the infinite satisfaction which her approval of my services affords me.

To be selected by the Queen for such a service was in itself a great and unlooked-for honour. To have obtained Her Majesty's approval of the discharge of it will be to me a source of deep and enduring happiness.

I beg also to offer my thanks to Her Majesty's Government for their acknowledgment of my services.

When I undertook the office of Arbitrator, I believed that the only question would be whether Her Majesty's Government had by any oversight or omission during the American civil war, failed to fulfil the obligations admitted by the Treaty of Washington to have been binding on it. When I found that, with a view to a favourable decision on this question, charges involving the honour and good faith of the Queen's Government and the country were put forward in the pleadings of the United States, and saw plainly that these charges were unfounded and unjust, I thought it my duty not to pass them over in silence. If I have at all succeeded in placing the facts in their true light, to the satisfaction of Her Majesty, the Government, and the country, I am abundantly rewarded for any personal pains which the performance of an arduous duty may have occasioned me.

I have, &c.

(Signed) A. E. COCKBURN.

No. 61.

Mr. Cohen to Viscount Enfield.—(*Received October* 14.)

My Lord,

6, *King's Bench Walk, Temple, October* 11, 1872.

I HAVE the honour to acknowledge the receipt of your Lordship's letter. May I beg that you will express to Lord Granville the gratification which his communication through you has afforded me? I feel that the humble services which I have been enabled to render at Geneva have not deserved so favourable a notice from Her Majesty's Government.

I am, &c.

(Signed) ARTHUR COHEN.

No. 62.

Mr. Adams to Earl Granville.—(*Received November* 4.)

My Lord,

London, October 23, 1872.

I HAVE the honour to acknowledge the reception, through the Legation of the United States at this place, of your note of the 28th of September.

It is with great pleasure that I receive the assurance from Her Majesty's Government of their satisfaction with my performance of the share of labour that devolved upon me as one of the five persons designated as Arbitrators in the Tribunal recently holding its sessions at Geneva.

Whatever may be the views entertained of the general results arrived at, I can with great confidence declare, on behalf of myself and in regard to my colleagues, that they were reached only through a most conscientious and impartial devotion to the duty imposed upon them.

Great as has been the responsibility incurred in initiating an important modifica-

tion of the policy of nations in regard to each other, I trust this experiment will be considered as having been so far satisfactory as to inspire confidence in repetitions of it on future emergencies.

I have, &c.
(Signed) CHARLES FRANCIS ADAMS.

No. 63.

Sir E. Thornton to Earl Granville.—(Received November 3.)

My Lord, *Washington, October 21, 1872.*

WITH reference to your Lordship's despatch of the 28th ultimo, I thought it best, in order to comply with the instructions contained in that despatch, both to address a note to Mr. Fish and to communicate personally to the President the substance of your Lordship's instructions. My note was transmitted to Mr. Fish on the 17th instant, and I waited upon the President on the following day. He received me with great cordiality, and after I had communicated to him the contents of your Lordship's despatch, he evinced his great gratification at the gracious expressions made use of by the Queen with regard to the United States' Arbitrator, Mr. Adams, and said that it would afford him the highest pleasure to communicate them to that gentleman.

He begged me to assure your Lordship that he was greatly rejoiced that the Tribunal of Arbitration had succeeded in arriving at a decision, and had thus given an example which he hoped might powerfully contribute to the future peace of the world.

The President added that he had constantly enlarged to General Badeau, with whom he was on terms of greater confidence than with most of those about him, upon the necessity and great advantage of peace being firmly established between the two great English-speaking nations, not only for their own sake, but with reference to the progress of civilization all over the world, of which they were the leaders. He said that he had desired General Badeau to give utterance to his feelings on this subject in England, and he begged me to assure your Lordship that he should do his utmost to strengthen the friendly relations which he earnestly desired should exist between the two countries.

I have, &c.
(Signed) EDWD. THORNTON.

No. 64.

Sir E. Thornton to Earl Granville.—(Received November 11.)

My Lord, *Washington, October 28, 1872.*

WITH reference to your Lordship's despatch of the 28th ultimo, I have the honour to inclose copy of a note which I have received from Mr. Fish in answer to one which I addressed to him conveying to him the substance of the above-mentioned despatch, as reported in my despatch of the 21st instant.

I have, &c.
(Signed) EDWD. THORNTON.

Inclosure in No. 64.

Mr. Fish to Sir E. Thornton.

Sir, *Department of State, Washington, October 22, 1872.*

I HAVE the honour to acknowledge the receipt of your note of the 17th instant, in which, after reference to the fact that the Tribunal of Arbitration at Geneva in the matter of differences between the United States of America and Her Majesty, had brought its labours to a close, and had pronounced its final award, you inform me of instructions from your Government to convey to the President Her Majesty's acknowledgments for the care and attention which Mr. Adams, the Arbitrator appointed by the President, had bestowed on the important matter with which he was called upon to deal, and Her Majesty's high appreciation of the ability and indefatigable industry

which that distinguished statesman displayed during the long-protracted inquiries and discussions in which he had been engaged. Also, that you are instructed to submit to the President that he would be pleased to make known Her Majesty's sentiments, as expressed in your note, to Mr. Adams.

I have communicated the substance of your note to the President, who directs me to express the gratification with which he receives the intelligence of Her Majesty's appreciation of the manner in which Mr. Adams, whom he had named as one of the Arbitrators, had discharged the high duties intrusted to him.

This expression, which Her Majesty has been pleased to cause to be communicated, will be made known to Mr. Adams immediately on his return to the United States, and will, doubtless, be appreciated by him as a recognition, alike grateful and honourable, of his efforts to act on the High Tribunal with the dignity and impartiality becoming a judge.

I have, &c.
(Signed) HAMILTON FISH.

No. 65.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, November* 8, 1872.

I HAVE received and laid before the Queen your despatch of the 21st ultimo, reporting that you had personally communicated to the President the despatch in which I instructed you to express the Queen's acknowledgments to Mr. Adams for his performance of the duties of Arbitrator, and I have to state to you that I approve of your having sought an interview with the President, and that I have read with much satisfaction your report of the language used by him, in which Her Majesty's Government cordially concur.

I am, &c.
(Signed) GRANVILLE.

APPENDIX.

PROTOCOLS I TO VII, AND PAPERS REFERRED TO THEREIN.

[These Protocols have mostly been given in previous Papers already laid before Parliament, but are reproduced for the purpose of making the record of the proceedings complete.]

No. 1.

Protocol No. I.—Record of the Proceedings of the Tribunal of Arbitration under the provisions of the Treaty between Her Britannic Majesty and the United States of America concluded on the 8th of May, 1871, at the First Conference, held at Geneva, in Switzerland, on the 15th day of December, 1871.

THE Conference was convened at the Hotel de Ville at Geneva in compliance with notices from Lord Tenterden, Agent of Her Britannic Majesty, and Mr. J. C. Bancroft Davis, Agent of the United States, in the form following:—

"The Undersigned having been appointed Agent of Her Britannic Majesty to attend the Tribunal of Arbitration about to be convened at Geneva under the provisions of the Treaty between Great Britain and the United States of the 8th of May last, has the honour to acquaint Count Sclopis that it is proposed by the Government of Her Britannic Majesty that the first meeting of the Tribunal should be held at Geneva, if not inconvenient to the Arbitrators, on the 15th instant.

(Signed) "TENTERDEN."

The Arbitrators who were present and produced their respective powers, which were examined and found to be in good and due form, were:—

The Right Honourable Sir Alexander Cockburn, the Lord Chief Justice of England, the Arbitrator named by Her Britannic Majesty; Charles Francis Adams, Esquire, the Arbitrator named by the President of the United States of America; his Excellency Count Sclopis, the Arbitrator named by His Majesty the King of Italy; M. Jacques Stæmpfli, the Arbitrator named by the President of the Swiss Confederation; and his Excellency the Baron d'Itajubá, the Arbitrator named by His Majesty the Emperor of Brazil.

The Right Honourable Lord Tenterden attended the Conference as the Agent of Her Britannic Majesty; J. C. Bancroft Davis, Esquire, attended as the Agent of the United States.

Mr. Adams proposed that Count Sclopis, as being the Arbitrator named by the Power first mentioned in the Treaty after Great Britain and the United States, should preside over the labours of the Tribunal.

The proposal was seconded by Sir Alexander Cockburn and was unanimously adopted, and Count Sclopis, having expressed his acknowledgments, assumed the Presidency.

On the proposal of Count Sclopis, the Tribunal of Arbitration requested the Arbitrator named by the President of the Swiss Confederation to recommend some suitable person to act as the Secretary of the Tribunal.

The Swiss Arbitrator named M. Alexandre Favrot as a suitable person, and M. Alexandre Favrot was thereupon appointed by the Tribunal of Arbitration to act as its Secretary during the Conferences, and entered upon the duties of that office.

Lord Tenterden then presented in duplicate to each of the Arbitrators and to the Agent of the United States, the printed Case of the Government of Her Britannic Majesty, accompanied by the documents, official correspondence, and other evidence on which it relies.

Mr. J. C. Bancroft Davis, in like manner, presented to each of the Arbitrators and to the Agent of Great Britain, the printed Case of the United States, accompanied by the documents, official correspondence, and other evidence on which they rely.

The Tribunal of Arbitration thereupon directed that the respective Counter-Cases, additional documents, correspondence, and evidence called for or permitted by the IVth Article of the Treaty, should be delivered to the Secretary of the Tribunal at the Hall of the Conference at the Hotel de Ville at Geneva, for the Arbitrators and for the respective Agents on or before the 15th day of April next.

The Arbitrators further directed that either party desiring, under the provisions of the IVth Article of the Treaty, to extend the time for delivering the Counter-Cases, documents, correspondence, and evidence, shall make application to them through the Secretary, and that the Secretary shall thereupon convene a Conference at Geneva, at an early day, to suit the convenience of the respective Arbitrators, and that due notice thereof shall be given to the Agent of the other party.

The Tribunal of Arbitration proceeded to direct that applications by either party, under the provisions of the IVth Article of the Treaty, for copies of Reports or documents specified or alluded to and in the exclusive possession of the other party, shall be made to the Agent of the other party with the same force and effect as if made to the Tribunal of Arbitration.

The Tribunal of Arbitration further directed that, should either party, in accordance with the provisions of the IVth Article, call upon the other party through the Arbitration, to produce the originals or certified copies of any papers adduced as evidence, such application shall be made by written notice thereof to the Secretary within thirty days after the delivery of the cases, and that thereupon the Secretary shall transmit to the Agent of the other party a copy of the request; and that it shall be the duty of the Agent of the other party to deliver said originals or certified copies to the Secretary, as soon as may be practicably convenient.

The Arbitrators also agreed that, for the purpose of deciding any question arising upon the foregoing rules, the presence of three of their number shall be sufficient.

The Conference was adjourned to the following day, the 16th of December, at 3 o'clock P.M.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

No. 2.

Protocol No. II.—Record of the Proceedings of the Tribunal of Arbitration at the Second Conference, held at Geneva, in Switzerland, on the 16th day of December 1871.

THE Conference was held pursuant to adjournment.

All the Arbitrators were present.

Lord Tenterden and Mr. J. C. Bancroft Davis attended the Conference as Agents of Her Britannic Majesty and of the United States respectively.

The Record of the proceedings of the Conference held on the 15th instant was read and approved, and the Secretary was directed to attest it.

Lord Tenterden and Mr. J. C. Bancroft Davis were requested also to sign this and all subsequent records as Agents of their respective Governments.

The Tribunal of Arbitration directed that when an adjournment of the Conference should be entered, it should be entered as an adjournment until the 15th day of June next, subject to a prior call by the Secretary, as provided for in the proceedings at the first Conference.

The Tribunal then directed the Secretary to make up the record of the proceedings of the second Conference as far as completed; which was done, and the record was read and approved.

The Tribunal of Arbitration then adjourned to meet at Geneva on the 15th day of June next, unless sooner convened by the Secretary, in the manner provided in the proceedings at the first Conference.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

granted can be extended to the 1st of August next, it is believed that this will meet the views of the Counsel and Agents of both Parties, and may probably enable the Counsel, when again before the Tribunal, to discharge their duty in a shorter time than might otherwise be requisite.

Sir Roundell Palmer then read a statement.

Mr. Bancroft Davis then said that, upon being furnished with a copy of the paper now presented on the part of Her Britannic Majesty's Counsel, he would lay the same before the Counsel of the United States, and would present their views to the Tribunal after such consultation.

Count Sclopis then stated that the Tribunal had, at the request of the Agent of Her Britannic Majesty, granted permission to Sir Roundell Palmer to read the statement requesting the Tribunal to authorize him to furnish the Arbitrators with further arguments on the points therein specified, and that, with reference to this request, Mr. Adams, as one of the Arbitrators, had suggested a preliminary question, viz., whether, under the terms of Article V of the Treaty of Washington, it is competent for the Agents or Counsel to make requests of this nature, and that the Tribunal, after discussion, and having in view the precise terms of the Treaty, had decided that the Arbitrators alone have the right, if they desire further elucidation with regard to any point, to require a written or printed statement or argument, or oral argument by Counsel upon it, under the terms of the said Article.

The Conference was then adjourned until Friday, the 28th instant, at 11 o'clock, A.M.

(Signed) FREDERIC SCLOPIS.
ALEX. FAVROT, *Secretary.*

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

(Translation of Count Sclopis' Speech embodied in the above Protocol.)

"Gentlemen,

"At the moment when the difficulty which threatened to prevent, for a long time to come, the execution of the Treaty of Washington has been so satisfactorily settled, at the time when our labours are about to take a free and regular course, allow me to inform you, most honoured colleagues, how much I appreciate the honour of sitting with you in this Tribunal of Arbitration, upon which the eyes of the civilized world are now fixed.

"Permit me also to express to you the gratitude which I feel for the flattering mark of confidence which you have been pleased to show me in calling me to occupy this chair.

"I understand thoroughly the value of this undeserved distinction, but still better do I understand the need which I shall have of being supported by the assistance of your knowledge, and by the help of your forbearance, in the discharge of the functions which you have confided to me. It will be to you that I shall be indebted if I do not appear too unequal to the task.

"The meeting of the Tribunal of Arbitration in itself marks a new direction given to the ideas which govern the policy of the nations most advanced on the path of civilization.

"We have arrived at an epoch when, in the high spheres of politics, the spirit of moderation and the feeling of equity are beginning everywhere to prevail over the tendencies of the old routines of overbearing force or culpable indifference. To diminish the occasions for making war, to lessen the evils which follow in its path, to place the interests of humanity above those of policy, this is the work towards which all great minds and magnanimous hearts are striving. Thus, how joyfully welcomed was the wish so nobly expressed by the Congress of Paris in 1856, that the States between whom a serious difference might arise, should, before appealing to arms, have recourse, as far as circumstances might allow, to the kind offices of friendly Powers. What advantageous results might not be expected from the declaration in this same Congress with regard to the abolition of privateering, and respect for private property? Lastly, we must not forget the Convention of Geneva, which succeeded in placing under the especial protection of the law of nations the efforts of charity upon the field of battle.

"It is much to be regretted that the just and sound views of the Congress of Paris were not promptly seconded by events. The hopes entertained by generous minds were

sadly deceived,* but the moral influence of the principles proclaimed at that time was not weakened.

"Thanks to the initiative of the statesmen who preside over the destinies of America and England, that generous idea is now beginning to bear fruit. The great experiment of applying the austere and calm rules of law to pressing political questions is about to be made. Contemporary history will hand down to posterity that, even in the heat of the sharpest recriminations, the thought on both sides of the Atlantic has always been to keep open the way to an arrangement acceptable to the friends of peace and progress.

"Throughout the negotiations, which were unavoidably prolonged under the action of the changeable currents of public opinion, which are inevitable under popular Governments, the object of these magnanimous efforts was never lost sight of. No one, indeed, could deny its utility; but to accept purely and simply the system of arbitration, to renounce the privilege so dear to vulgar ambition, of taking the law into one's own hands, this required a rare firmness of conviction, a devotion to the interests of humanity, proof to every ordeal. The Prime Minister of England was right in speaking of the Treaty of Washington in terms which characterize at once the greatness and the difficulties of the enterprize. 'The vision,' he said, 'may be too bright and too happy to be capable of being realized in this wayward and chequered world in which we live; but it is an experiment worth the trial at any rate, whether it is possible to bring the conflicts of opinion between nations to the adjudication of a tribunal of reason instead of to the bloody arbitrament of arms. It will be an event recorded in history to the honour of the United States and of the United Kingdom that for the first time having a great controversy in hand, feeling themselves unable either the one or the other to recede from the ground they had taken, they have, notwithstanding, chosen deliberately to tread the path of peace, and not only to settle their own disputes without the risk of bloody differences, but to set an example which we trust will have many imitators among the other nations of the world.'†

"It has been said that the triumph of an useful idea is never anything but a question of time. Let us congratulate ourselves, Gentlemen, that we assist at the realization of a design which must be productive of the happiest results; let us hope that it will realize in the future all that it promises to-day.

"We have heard that terrible cry, 'Might above right;' it is a challenge to civilization. We now see policy appeal to justice in order to avoid the abuse of power; it is a tribute which civilization should be happy to receive.

"Let us not complain too much if the questions which we are called upon to decide have come before us after prolonged discussions. Let us rather recognize the importance of the documents which have been furnished to us, and of the arguments which accompany them.

"Long investigations lead to the best solutions. Navigation is safest on the rivers which have been most thoroughly sounded.

"International law has been too often looked upon as a shifting soil on which the foot, when it would advance, slips backwards. Would it be presumptuous to hope that we may make this soil a little more secure by our efforts?

"The object of our deliberations calls for labours both varied and serious. We shall have to examine it from different points of view, now with the large view of a statesman, now with the critical eye of a judge, always with a profound sentiment of equity and with absolute impartiality.

"We expect much from the assiduous aid of the Agents of the two Powers which have resorted to the Tribunal; their high intelligence and their enlightened zeal are equally well known to us.

"Lastly, the Tribunal relies on the assistance of the Counsel of the High Parties present at the bar; of those eminent jurisconsults, whom to name is to praise. We expect that they will co-operate frankly with us in that which should be not only an act of justice, but also a great work of pacification.

"May we be able fully to act up to the praiseworthy objects of the Powers which have honoured us with their choice; may we fulfil, with the assistance of God, a mission which may terminate long-standing and painful differences, which, while

* "In the performance of a melancholy duty," says Sir Robert Phillimore, in his preface to the 2nd edition of "Commentaries upon International Law, 1871." "I am obliged to close this chronicle of events by the admission that the suggestion contained in the last Protocol to the Treaty of Paris, 1856, has remained a dead letter, except perhaps in the case of Luxembourg. Neither of the belligerents in the present horrible war would listen to the suggestion of such an arbitration."

† Speech delivered by Mr. Gladstone at the inaugural banquet of the Lord Mayor, November 9, 1871.

settling important interests, may smoothe excited feelings, and which may not be without a favourable influence on the maintenance of the peace of the world, and on the progress of civilization.

"You will doubtless, most honoured colleagues, agree with me in hoping that the attempt which is about to be made may serve in future to remove the occasions of sanguinary strife, and may aid in strengthening the empire of reason.

"In this gratifying hope I am happy to recall the words of George Washington, the hero of America: 'If there is one truth firmly established, it is that there is on earth an indissoluble connection between the pure maxims of an honest and magnanimous policy, and the solid rewards of prosperity and of public happiness.'"*

Memorandum by Sir R. Palmer on the necessity of a Reply to the Argument of the United States.—(Read at the Meeting of the 27th June.)

FURTHER argument appears to Her Britannic Majesty's Counsel to be necessary on the following, among other points; as to all which he is prepared to show that the new arguments, now advanced by the Counsel of the United States, are either wholly erroneous and unwarranted, or calculated to mislead unless corrected by proper explanations and qualifications.

I.—*As to Principles.*

(*a.*) The doctrines of general international obligation, asserted more particularly at pages 34 to 42 of the United States' Argument.

(*b.*) The view submitted in the United States' Argument (pages 316 to 318 and elsewhere) of the effect, in the present controversy, of Her Majesty's consent, that the three Rules embodied in the VIth Article of the Treaty of Washington may be applied by the Tribunal, as rules of judgment, to the facts of the present case.

(*c.*) The doctrines as to "due diligence," and as to the practical consequences of the obligation of such diligence, and of the omission in any case to use it, advanced more particularly at pages 333 to 350, 320 to 322, and 409 of the United States' Argument.

(*d.*) The doctrines that a Sovereign Power, in repressing acts of its subjects contrary to its neutrality, ought to act by prerogative and not by law, and that any reference to the internal laws of a neutral State ought to be rejected as irrelevant to the question whether that State has used due diligence in the performance of its international obligations. (Pages 34, 44 to 47, 50, 322 to 331, and 357 to 359 of the United States' Argument.)

(*e.*) The doctrines as to belligerency and neutrality in cases of civil war, set forth particularly at pages 6 to 19, 33, and 50 of the United States' Argument; and the conclusions thence drawn as to the recognition of the belligerency of the Confederates by Her Britannic Majesty, and the effect of Her Britannic Majesty's proclamation of neutrality, and the bearing of those matters upon the present controversy, notwithstanding the admission, at pages 459, 460, that such recognition of the belligerency of the Confederates is excluded, by the terms of the Treaty of Washington, from being admissible as a specific ground of claim before the Tribunal.

(*f.*) The doctrines that the public ships of war of a "non-sovereign belligerent" are liable to neutral jurisdiction or control in cases in which the public ships of a sovereign belligerent would not be so liable; and that it was part of the duty of Her Britannic Majesty's Government towards the United States, either by virtue of the First Rule in the VIth Article of the Treaty of Washington, or otherwise, to detain certain of the Confederate vessels, being public ships of war of a "non-sovereign belligerent," when found within British ports, or, in the alternative, to exclude them from all access to those ports: see pages 331 to 333, 381 to 388, and 397 of the United States' Argument.

(*g.*) The application, attempted to be made in several parts of the United States' Argument, of the phrases "base of naval operations" and "augmentation of force," used in the 2nd Rule, and particularly the doctrine (see pages 280 to 284, and 301), that to allow belligerent cruisers, navigated by steam-power, to receive supplies of coal, or "repairs which may make their steam-power effective," in neutral ports, is a breach of that Rule, or of any other neutral obligation.

* Speech delivered on the 30th April, 1789, at the sitting of the American Senate on the occasion of the proclamation of Washington as President, and of John Adams as Vice-President of the United States.

(*h.*) The doctrine that the character of acts or omissions on the part of a neutral Power, which would otherwise be consistent with the due performance of neutral obligations, is altered by the circumstance that a belligerent has agents and agencies within the neutral territory, and has direct dealings there with neutral citizens.

(*i.*) The argument of the United States, as to the liability of Great Britain to make pecuniary compensation to the United States if she is found in any respect to have failed in the performance of her neutral obligations, and as to the measure of damages, and the principles applicable thereto.

II.—*As to Facts generally.*

(*j.*) The argument of the United States that the British Foreign Enlistment Act of 1819 contained no provisions of a preventive efficacy, but was merely of a punitive character.

(*k.*) The argumentative comparison between the British Foreign Enlistment Act and the Foreign Enlistment Act and executive powers of the United States, and those of other countries, intended to show the inferior efficacy of the British Statute.

(*l.*) The suggestion of the existence of prerogative powers in the Crown of Great Britain, and of powers under the British Customs and Navigation Laws, which ought to have been, but were not, used for the maintenance of Her Britannic Majesty's neutrality.

(*m.*) The alleged admissions of various British writers and statesmen in printed books, parliamentary speeches, and otherwise, of principles or facts assumed to be in accordance with the present Argument of the United States.

(*n.*) The alleged differences between the conduct of France and other countries, and the conduct of Great Britain, in the observance of neutrality during the war.

III.—*As to erroneous Views of British Arguments, &c.*

(*o.*) The assertion that Great Britain has made her own municipal legislation the measure of her international obligations, and has pleaded any supposed insufficiency of her laws as an excuse for the non-performance of such obligations, which she has never done.

(*p.*) The inference that, because Great Britain has thought it right to legislate since the war, so as to enlarge the legal control of her Government over certain classes of transactions by her citizens calculated to lead to difficulty with foreign Powers, she has thereby, or otherwise, admitted the insufficiency of her laws, during the civil war, for the performance of her neutral obligations.

(*q.*) The manner in which it has been thought fit, in the Argument of the United States, to treat the refusal of Great Britain, in her Counter-Case, to enter into any detailed justification of her Government against the imputation of insincere neutrality and unfriendly motives towards the United States, as a virtual admission of such insincere neutrality and such unfriendly motives.

(*r.*) The erroneous representation in the same Argument, of the purpose for which numerous historical instances of the extensive and persistent violation of the neutral or friendly obligations of the United States towards other Powers by citizens of the United States, acting contrary to their laws, have been referred to in the Counter-Case of Her Britannic Majesty's Government; and the attempt to escape from the direct bearing of those instances upon the question whether the views of the preventive power which a belligerent has a right to exact from a neutral State, and of the measure of the due diligence with which it is incumbent upon a neutral State to use its preventive powers, insisted upon by the United States in the present controversy against Great Britain, are historically well founded, or politically possible, or consistent with the practice and experience of the United States themselves, who have appealed in their own Case and Counter-Case, and in the Appendix to their Counter-Case, to most of the very same transactions (which Great Britain is now alleged to have improperly brought forward), as actually furnishing evidence of the efficacy of their laws, and of the diligence and good faith with which those laws have been executed.

IV.—*As to the particular ships Florida, Alabama, Georgia, and Shenandoah.*

Her Britannic Majesty's Counsel does not here particularize various new matters now brought forward or suggested in the Argument of the United States as to each of these ships. If those matters should appear to the Arbitrators to be of any importance,

it is not doubted that they will ask for and receive the explanations and answers concerning them, which Her Britannic Majesty's Counsel will be ready, at the proper time, to give.

General Reasons why further Arguments on the above points should be allowed.

1. The character of the documentary evidence presented in the several volumes of the Appendix to the Case of the United States, containing a large mass of miscellaneous papers, or extracts from papers, laid before the Congress of the United States, as to much of which it was necessarily impossible for Her Britannic Majesty's Government to anticipate the use which would be made of them in argument until the present Argument of the United States was presented.

2. The course taken by the Government of the United States in withholding (as far as possible) their reply, as well to the Case as to the Counter-Case of Great Britain, until the Argument now delivered, so as to make it impossible for the Argument to be at the same time delivered on the part of Her Britannic Majesty's Government, to deal adequately by anticipation with many important views which it was intended by the United States to present to the Tribunal.

3. The new and copious use made in the Argument of the United States of extracts from the work of Sir Robert Phillimore, and from speeches and writings of various British statesmen in Parliament and elsewhere, to many of which no reference had been before made, and some of which are actually now appended as new matter to the Argument itself.