COMMON SENSE.

BY

AN AMERICAN.

LONDON:

EDWARD STANFORD, 6 & 7, CHARING CROSS, W. C.

1872.

Price Sixpence.

COMMON SENSE.

DIFFERENCES have arisen between Great Britain and the United States, which are rapidly drifting the two nations into a war. I am confident that the American Government and people not only all desire no such result, but will look upon it as the greatest calamity which can befall them. I am equally confident that the issue will be unanimously accepted if forced upon them.

In the hope of contributing even in the smallest degree, towards averting what would be a catastrophe to the civilized world, I submit for candid consideration a few facts.

I am sure that it will be conceded that the language of the Treaty of Washington is ambiguous. If it be claimed with Mr. Gladstone that there is no ambiguity, and that therefore the American claims are absurd, that is an end of both reasoning and reason. For the position assails the good faith of the American Government in presenting a statement which it

assumes must have been known to be without the limits of the Treaty.

An influential part of the English press concedes that the American position is tenable. The "Times" and the "Pall Mall Gazette," each has repeatedly insisted upon this. Even the "Daily News" says:—"It is admitted that the terms employed have a regrettable ambiguity." Lord Cairns, Lord Derby, and other statesmen have, with equal candor, assented to this.

On the other hand, I take it that reasonable Americans will concede with equal fairness that there is much to be said in favour of the British construction of the Treaty and Protocols. It is plain, therefore, on this assumption that a misunderstanding exists between the governments which can only be decided either by mutual agreement or by a reference to the language of the Treaty, before an influential tribunal.

Now, as to the first mode of settlement, reflecting persons cannot fail to see that after the irritating, and I think I may say, ill-judged (if a peaceful solution be the object), language of the London press, it is absolutely impossible for the American Government to concede that it has been mistaken. Lest, however, I should be misunderstood, I ought to add, that in the judgment of all the Americans whom I have met, as well as in my own judgment, our government is right and ought not to retract until a competent tribunal decides that it is wrong; and I may further say, that the assent of two-thirds of the Senate having been

given to the Treaty in its present form, the Executive cannot without a similar assent, consent to what will practically amount to a modification or change in that instrument. If the case were reversed, is it likely that the assent of two-thirds of the House of Commons could be obtained to a similar modification.

Then, as to the second mode of settlement—the reference of the dispute to Geneva—I understand that the United States are willing to abide by the decision of that tribunal. If I am mistaken our American colony in London cannot too strongly condemn the government at Washington.

Is there any reason why it should not be referred there?

I take it that neither party has any doubt of the justice of the tribunal. If a tribunal selected with such care from different nationalities cannot deal with so simple a question as this, there is much more reason why the complicated and difficult questions beyond it should be removed from them. I therefore dismiss this idea also as untenable and absurd.

Nor is there anything dishonourable to either party in such a submission. The Government of the United States is understood to contemplate such a submission as the natural result of the Treaty. Her Majesty's Government cannot think it dishonourable to do the same thing. For, be it remembered, both Her Majesty's Government and the Government of the United States are at this moment before the Emperor of Germany in an arbitration in which the sole question

for the decision of the arbitrator is the interpretation of a Treaty, which interpretation is submitted for his decision by this same Treaty of Washington. And we learn from the protocols of the Joint High Commissioners that in the negotiations which resulted in the Arbitration at Berlin two points were made which have an important bearing on the present question.

1st. On the 15th of March, it appears that the American Commissioners said that, "in view of the position taken by the British Commissioners it appeared that the Treaty of June 15, 1846, might have been made under a mutual misunderstanding, and would not have been made had each party understood at that time the construction which the other party puts upon the language in dispute; they therefore proposed to abrogate the whole of that part of the Treaty." The British Commissioners replied that the proposal to abrogate a Treaty was one of a serious character, and that they had no instructions which would enable them to entertain it; and at the Conference on the 20th of March, the British Commissioners declined the proposal. It may therefore be assumed that the British Government does not think that the difference between the two Governments in a question similar to this should be met by an abrogation of that part of the Treaty which is in dispute.

2nd. It also appears that on the 19th of April the British High Commissioners stated that they were "convinced of the justice of their view of the Treaty of 1846, and that they could not abandon it except after a fair decision by an impartial arbitrator."

It may then also be assumed that in the opinion of Her Majesty's Government not only is there nothing dishonourable in agreeing to submit to the fair decision of an impartial arbitrator the construction of ambiguous language in a treaty, but that such is the most reasonable course for a Government desiring to maintain an honourable peace.

Now, is there anything in the character of the present difference which renders it dishonourable for England to leave the question to the decision of the Tribunal at Geneva? It will be observed that I purposely reject many considerations which will doubtless be urged by the Americans, and by their Government, should the questions be discussed in a controversial spirit, and do not now dispute the right of Great Britain to recede from the arbitration. Therefore, setting aside these considerations, I ask again, Is it derogatory to the honour of England to submit this question with the others to the Geneva Tribunal?

If it be supposed that the United States do not present the claims in good faith, there may certainly be some reason for supposing that it may be dishonourable to do so. But the mere suspicion of bad faith closes the door to discussion. It is only just to say that the great mass of British statesmen and writers are not so deluded as to entertain such an opinion. In the absence of such an idea, I do not see how it can be claimed that the submission of such a question to arbitration is derogatory to the honour of a nation. The conduct of Great Britain, or of her Government, is not involved, except as it may be involved in the

general discussion upon the merits of the whole case. If there be no liability for "claims" growing out of the acts of any of the vessels, it is entirely unimportant whether these particular classes of claims are or are not within the submission. If, on the other hand, the arbitrators should arrive at the conclusion that the acts of one or more vessels render Great Britain liable to the United States, the question (in the further and more remote contingency of their finding that the liability extends to the indirect damages) would be purely a pecuniary one, involving no point of honour. I therefore assume that it cannot be seriously contended that Great Britain may not honourably do towards the United States, regarding the Treaty of Washington, what she insisted that the United States should do towards her regarding the Treaty of 1846.

I will not violate good taste and fair dealing by discussing the probable result of such a reference. It may be said, however, without impropriety, that it will be incumbent on the United States to establish—1st. That the disputed classes of claims are within the terms of the submission. 2nd. That Great Britain is responsible for the losses growing out of the acts of this, that, or the other cruiser, after a thorough consideration of the evidence adduced as to each cruiser. 3rd. That the losses involved in these disputed claims can be specifically brought home to the particular cruisers, for whose acts Great Britain is found liable. Any sensible man can determine for himself the probability of the concurrence of three such events.

The tone of the London Press in the discussion of these delicate questions has not always been as judicious as could be desired. It is not impossible that we may hear responses in the same spirit from the other side of the Atlantic. It is to be hoped that the Governments which are charged with the maintenance of peace, will disregard all intemperate expressions of individual views, and will aim to meet the issues animated by a desire to prevent war. Unless they are animated by such a desire it is but too probable that war may be the result.

The idea seems to prevail in England that the Continental press sustains the London press in its avowal that the arbitration must fall through unless the United States withdraws its claims for indirect damage. I believe that opinion to be a mistake, and quote a few extracts from various journals to show that I have reason for my opinion.

"If it had not been for the attitude of Messrs. "Cobden and Bright, and the wisdom and self-denial "of the working classes of Lancashire, the old English "aristocracy would have willingly contributed to the "dismemberment of a Republic whose power had for a "long time been a source of annoyance to it. But "even this wisdom, which has prevented the old "governing classes in England from compromising "their country by some adventure akin to that which "led Imperial France to Mexico, deserves, on the "part of America, some consideration and a feeling "of gratitude. Thus there have been on both sides

"reciprocal wrongs, aggravated at this moment by "patriotic passions and by manœuvres of parties in "both countries. This is as true with regard to "England, where the Tories endeavour to work to "their own advantage the embarrassments they have "helped to create, as with regard to the United States, "where the policy of recrimination may become a "lever in the approaching campaign against the re-"election of Mr. Grant to the presidential chair. The "wisest thing for the people and governments of the "two countries to do in this situation is, to refer the "matter to the arbitration of the Tribunal of Geneva. "This Tribunal has no interest in the debate, and is "much better able, therefore, than the parties inte-"rested, to restore peace and harmony between them." —*Indépendance Belge*, February 1, 1872.

"We cannot see how England can make any re-"servations now on the nature of certain claims "which have always been urged, nor on the compe-"tence of the Tribunal proposed by herself to decide "the questions which may be brought before it on "her own request. This point is already conceded "by one of the leading London journals, the 'Pall "Mall Gazette.' It is equally clear that the English "Government must be of the same opinion: but in "the presence of an unforeseen agitation, is it not "being urged towards raising a difficulty which, by "putting in doubt this great matter, will compromise "the peace of the world to a serious degree."— *Mémorial Diplomatique*, February 3, 1872.

"Neither in the course of the discussions of "the Joint High Commission, which lasted two "months, nor in any of the clauses of the Treaty "for determining the proceedings and the powers "of the Tribunal of Arbitration, as well as the prin- "ciples which should guide it in its decisions, did "England raise the least objection upon the nature "of the American Claims. She rejected all alike, "without making any distinction; and she declared "herself ready to abide by the decision of the Tribu- "nal. By what right, then, can England now insist "upon reservations as to this or that category of the "American claims, or upon the competence of the "Tribunal to which she has agreed to refer these "diverse claims. We can scarcely think that England "will wish to incur the responsibility of a conflagra- "tion, the consequences of which may be incalculable. "To refuse to submit to the arbitrators the questions "in dispute is either to doubt the impartiality of the "Tribunal, or to withdraw in advance from a verdict "which is foreseen."—*Constitutionelle*, February 6, 1872.

"The stipulations of the Treaty leave no one to "doubt that the American Commissioners expressly "reserved the right to present such claims, though "nothing was said about the amount of the claims, "the decision in that respect being left to the Tri- "bunal of Arbitration. It sounds strangely when "the English nation either sets down its representa- "tives as dupes, or suddenly separates itself from

" their opinions—opinions which, at a period nearer
" the events, were not so absurd but that the Brights
" and the Cobdens openly acknowledged them."—
Allgemeine Zeitung.

" If the demands are really as preposterous as the
" English press endeavour to represent them, why
" should not the latter wait in confidence the decision
" of the eminent men composing the Court of Arbi-
" tration, who will sift the matter thoroughly, being
" assisted in their deliberations by the best jurists of
" England? In official circles these claims must
" have been well understood, for the protocols plainly
" show that the American representatives, in draw-
" ing up the Treaty, expressly reserved the right to
" make these claims."—*Basler Nachrichten.*

" The attitude of the United States in this matter
" affords a striking contrast to that of England. There
" the question is put upon the proper foundation. It
" is said that England wished to carry the dispute
" before a Tribunal of Arbitration instead of settling
" it amicably. It is now therefore simply a question
" to be debated before a sovereign tribunal, and the
" subject of this debate is all the claims arising from
" the actions of the Confederate cruisers, and all
" questions relative to these claims. The text of the
" Treaty is formal, and upon reading the protocols
" we are in still less doubt as to the extent of the
" claims made by the United States according to the
" principle laid down. The Tribunal will decide
" what are valid claims and what questions are to be

"discussed. The American Government demands "neither more nor less than this. It has represented "its case to the judges, and it awaits their decision. "England would have done better if she had done "the same. Her irritation is that of a bad pleader "who is in doubt as to his law, and as to the impar- "tiality of his judges. She can gain nothing by this "irritation. If any question demands calm and cool "treatment, it is this one, for on its solution may "depend the future of British Commerce, as it will "not be difficult for us to show."—*Journal de Paris*, Fév. 8.

"* * * Upon this basis therefore the Treaty was "signed. If it is repudiated, it will be the fault of "England, and not of the United States, which still "adheres to it more than ever. Article I. of the "Treaty announces that 'in order to remove and adjust "all complaints and claims on the part of the United "States it has been agreed that *all* claims arising "from acts committed by the vessels spoken of shall "be referred to a Tribunal of Arbitration.' It is "evident that in the actual state of the case it is not "a question as to the pretensions of the United States "so much as of the refusal of England to submit to the "Arbitrators *all* the complaints and *all* the claims, "which the terms of the Treaty of Washington seem "to demand."—*Liberté*, 8 Février.

"The Cabinet of London maintains that the Com- "mission of Arbitration at Geneva can only pass upon "the question of direct damages, which amount, ac-

"cording to the calculations of the Cabinet at Wash-
"ington to fourteen millions of dollars. The question
"having some interest, our readers will not object to
"our placing before them the principles in dispute.
"It is not, we hasten to say, that the calculations of
"the American authorities are not made with a certain
"amount of exaggeration: but the essential point to
"be regarded is whether the preparatory arrange-
"ments for the Tribunal convened at Geneva exclude
"the question of indirect damages. We think that
"they do not exclude it."—*Soir*, February 9, 1872.

"The abstract given by the 'Observer' of the
"despatch said to have been sent to Washington,
"bears better witness to the trouble the British Cabi-
"net is in, than to its ability. Aside from the
"'Friendly Tone' the despatch contains the three
"following propositions:—England earnestly wishes
"to carry out the Washington Treaty. England
"thought the claim for indirect damages not included
"in the Treaty. England cannot submit to a decision
"by the Tribunal of Arbitration if the question of in-
"direct damages is to be considered an open one.
"In no more clumsy or frivolous manner would it
"be possible to jump from the position of an adhe-
"rent to a treaty to the declaration of wish to recede
"from its obligations. 'England did not consider
"the claim for indirect damages as included in the
"Treaty.' This is the only argument with which the
"British Government covers its *Salto Mortale*. The
"simple supposition by one of the two contract-

"ing parties that the Treaty of Washington had "reference only to direct damages, is to be the "motive for an abrogation of this Treaty. We "should doubt the truth of this abstract if it did not "agree so well with the tone of the London press, and "especially with that of the 'inspired' papers. Since "it became known that the North American Cabinet "had brought forward claims for indirect damages "for the consideration of the Geneva Tribunal, a "panic has arisen in England, and now they wish "to have nothing further to do with this Tribunal. "It cannot be shown that the United States have "broken the Treaty. It may be said that the Union "is shameless in her demands, and that her claims "exceed proper bounds — but the wording of the "Treaty does not prevent her in any manner from "bringing forward claims for indirect as well as "direct damages. Therefore the English statesmen "have been able to find no escape except that of an "appeal to their personal interpretation of the Treaty. "They understood it otherwise than the United States: "they understood it did not admit claims for indirect "damages. This is a mere pretext, and can only be "called a retreat, a very sorry retreat at that. With "an appeal to personal interpretation and belief what "Treaty can be for a moment on a firm and solid "foundation? In America this declaration will make "no little stir. As England, instead of adhering to the "Geneva Tribunal, appeals directly to the White "House, it will probably be concluded that she intends

"thus to indicate her retreat from the Treaty of May 8,
"1871. Under these circumstances this much to be
"regretted affair may still make much trouble, although
"we believe it will not extend beyond the region of
"diplomacy."—*Frankfurter Zeitung*, 6 Feb. 1872.

"* * * The chief argument of America against the
"English protest is a reference to a decision by the
"Tribunal of Arbitration. Here the American press
"is in direct opposition to that of England, which
"in advance has distinctly declared that England
"cannot agree to an unfavourable decision by the
"Tribunal in regard to the claim for indirect
"damages. The Diplomatic Memorial does not con-
"tain the objections which England raises. The de-
"mands of America were known to England from the
"first, and her representatives did not object. They
"contented themselves by indicating that England
"could not be held liable for damage done the
"United States by cruisers of the Confederate States,
"as proper diligence had been exercised to prevent
"their being armed and fitted out in English ports,
"and these representatives simply referred all the
"claims of North America having the action of these
"cruisers for a basis to a Tribunal of Arbitration.
"Article I. of the Treaty of Washington distinctly de-
"clares:—'Now in order to remove and adjust all com-
"'plaints and claims on the part of the United States,
"'and to provide for the speedy settlement of such
"'claims which are not admitted by Her Britannic
"'Majesty's Government, the High Contracting

" 'Parties agree that *all* the said claims growing out " 'of acts committed by the aforesaid vessels, and " 'generically known as the 'Alabama Claims' shall " 'be referred to a Tribunal of Arbitration.' "—*Der Bund*, Feb. 7, 1872.

The London Correspondent of the "Allgemeine Zeitung" has lately written to that journal a resumé of the articles in the London press on this question. It ought to be a subject of interest to both Americans and Englishmen to know how these remarkable productions are regarded by a neutral writer. Writing on the 1st of February, he says:—

"We have already pointed out that the violent " effort made by the English press to prejudice public " opinion in advance in favour of their own views in " regard to the American case was as imprudent as " unjust: unjust because it was based upon state- " ments which were not made in the American case, " imprudent because the design was evidently far from " conciliatory. We should not hesitate to censure this " behaviour still more severely if it appeared to us " inexcusable that the reserve demanded in private " affairs of honour where a reference to arbitration is " made, should not also be carried into state affairs. " In view of the silence or moderation of the American " press, the English papers appear to have felt the " necessity of an apology, if not even of a change of " opinion, and if we detect here and there traces of " more moderate views it is because the English press " does not learn for the first time to-day that it is easier

" to kindle a flame than to put it out. We have
" already remarked how the intemperate articles of
" the 'Saturday Review' fanned the lightly-veering
" wind of the 'Times' into a storm which soon swept
" over the whole country. And so powerful was this
" unanimity of public opinion that even organs which
" had bitterly blamed the action of the Government
" during the civil war, such as the 'Observer,' yielded
" at once to it. The leading journal declares that it
" is impossible, with honour, to reject an unfavourable
" decision if the question has been allowed to be sub-
" mitted to arbitration, and thus seeks to excuse its
" action; it is impossible to reject any decision unless
" it has been beforehand agreed not to abide by the
" judgment of the arbitration. The journal assumes
" thereby a position outside of the Treaty, and it is
" but one step further to declare that an unfavourable
" judgment should be rejected, a determination which
" is expressed in explicit terms in case these claims are
" presented on behalf of the other side to the Tribunal.
" It is supposed that anything derogatory to the
" Arbitration Tribunal is avoided by the declaration
" that the question of presenting these claims for in-
" direct damages is not within the jurisdiction of the
" Tribunal of Geneva, and it is alleged with regard
" to this that their Commissioners in Washington were
" duped. 'Had they anticipated,' continues the
" same journal in another article, 'that these claims
" would be presented, the Commission would have been
" speedily broken up. In that case England would

" not have consented to record an expression of regret,
" and would not have yielded her claims for Fenian
" invasions in Canada. The public has a right to be
" informed whether the American understanding of
" the Treaty will be rejected energetically, and it asks
" for that purpose a state paper that shall be worthy of
" England.' In conclusion it says: 'This is the usual
" way in such proceedings, to ask that both Govern-
" ments should declare their understanding of the
" meaning of the Treaty,' a request which, in the 'Pall
" Mall Gazette,' amounts to the threat that if the
" Government does not take immediate steps with re-
" gard to these claims, immediate steps must be taken
" against the Government itself. Public opinion is
" often in danger of going too far, and truly in this
" matter the press does not hold it back. Rumours
" have been openly circulated in all the papers calcu-
" lated to produce great bitterness; it is reported that
" American swindlers had made it their business to buy
" up the claims. 'Immediately after the war,' said the
" 'Morning Post,' 'an Alabama Ring was formed, which
" got possession of the claims at 20 per cent. of their
" nominal value, and were now making a shameful
" stock speculation with the indirect claims.' The
" informant further states that, during the transactions
" for the reciprocity Treaty with Canada, through the
" English Minister at Washington, a public offer was
" made to settle the matter behind the scenes, in con-
" sideration of a bonus of £25,000 sterling; only the
" want of secret funds prevented the thing being

"accomplished. Others declare the indirect claims "to be an election card of Grant's, to win the Re- "publican Convention which is to assemble in June "at Philadelphia; but that this could be easily frus- "trated. In fact, they omit nothing which can serve "to confuse men's minds, and such has been the effect; "and the Government itself has yielded to threats, "and has at least semi-officially declared its intention "in the 'Daily Telegraph.' The summing up of that "paper may be briefly given thus: that the submission to "arbitration, if the Americans persist in referring the "indirect claims, must be courteously but inflexibly re- "fused. 'A half-dozen words,' it adds, 'at the opening "of our answer, will suffice to enlighten the Tribunal "upon the views of England with regard to this point. "But these words must be spoken without delay, "without hesitation, with a boldness and confidence "of demeanour which will bear witness that, behind "the men who make these utterances, will be found "the whole English nation, willing to do its duty, "but prepared to uphold its rights.' While we are "writing, a telegram reaches us from the 'Daily "News,' according to which the Government has "the firm intention to ask an immediate revision of "the Washington Treaty."

I have already said that, should this submission fall through, the failure may be followed by war. I do not, however, mean to imply that the Government of the United States would necessarily be placed in a

position to declare war, or that the American people would desire it.

Should Her Majesty's Government refuse to go on with the arbitration, in consequence of a misunderstanding between the two Governments as to the extent of the submission, or should it also refuse to submit that misunderstanding to arbitration, it would logically follow that the United States would be at liberty to insist that a Treaty framed in misapprehension, should be abrogated.

But it is not unlikely that the people of the United States would prefer to await a European complication, which would leave them as neutrals to put Great Britain's Alabama theories of neutrality in practice. It is scarcely possible, however, that a collision among the mackerel fishermen could be avoided in the coming season. In such case, with the temper that would be left after the abrogation of the Treaty, there would be little hope of preventing a fishery squabble on the coast of Canada from expanding into a gigantic war.

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London, February 9, 1872.

CHISWICK PRESS:—PRINTED BY WHITTINGHAM AND WILKINS,
TOOKS COURT, CHANCERY LANE.