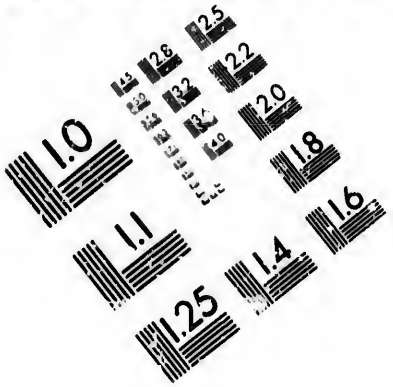

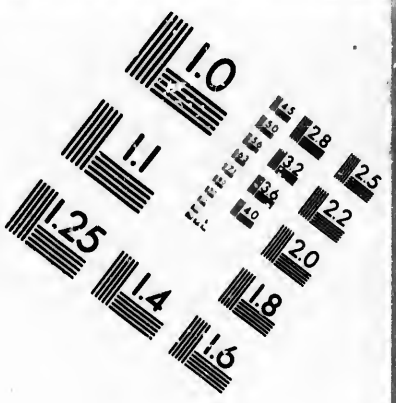

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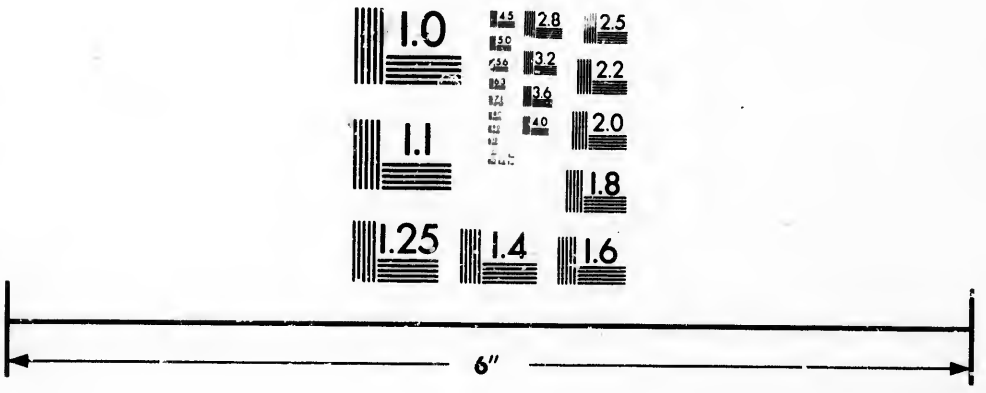

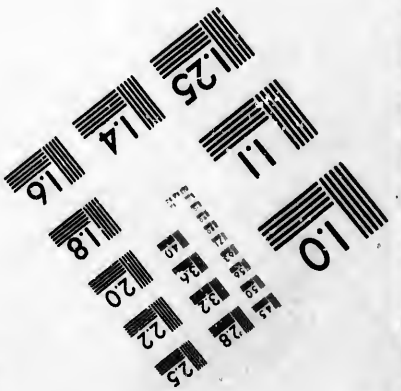

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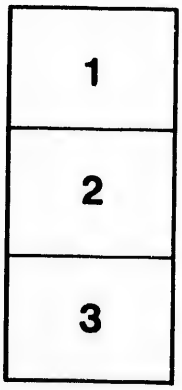

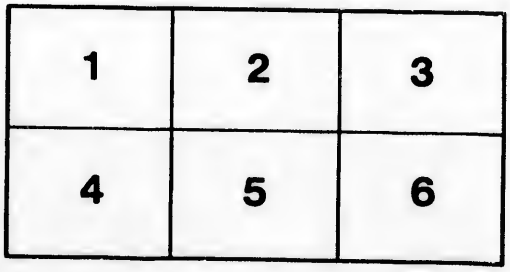

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THE TREATY OF WASHINGTON.

AN ANALYSIS OF ITS PROVISIONS.

Our Losses, England's Gains.

24

ADDRESS

OF

Hon. Benj. F. Butler,

AT

Music Hall, Philadelphia, Oct. 16, 1871.

BOSTON:
W. F. Brown & Co., Printers, No. 50 Bromfield Street.
1871.

ADDRESS.

Permit me to discuss with you for the brief hour of our conference, a treaty which ought to cover more points of difference between two great nations; adjust more and difficult questions of right; be more momentous in its effects for good or evil, than any treaty ever concluded, saving, perhaps, the treaty of Peace between the colonies of Great Britain and their mother country, which established our independence and existence as a nation. I am now speaking to a most intelligent audience of a most intellectual city, in the centre state of the arch of the Union, to a people who are supposed to examine with the utmost vigilance, so that they may approve or dissent from every act of their government.

The first question, therefore, I wish to ask is: How many of you have ever read the Treaty of Washington? the product of the late Joint High Commission. If this audience has not read it, and each will answer for himself, then, how many of the people of this country have ever read it, or have any substantial knowledge of its provisions? And yet we are told by newspapers, whose editors have never read its provisions themselves, that the Treaty meets the entire approbation of the people of the country, and we pass resounding resolutions in party conventions, sometimes very effectively in the small hours of the morning, approving of each and all of its clauses! Substantially all knowledge the country has of the Treaty of Washington is derived from the publication of a supposed copy surreptitiously obtained by a newspaper correspondent, but which was pronounced in the Senate of the United States to be more or less incorrect. These observations are made as an apology in your minds for a somewhat tedious and didactic statement of the provisions of the Treaty.

It consists of forty-three articles, the first eleven of which concern the depredations upon American commerce by certain

Confederate cruisers fitted out by the help of Great Britain, and provide the mode in and extent to which claims of the nation and individuals for those depredations shall be atoned for, determined and paid.

The next eight articles provide for the settlement and payment of claims arising out of acts committed by either government, against the property of, or persons of, corporations, companies, or private individuals, subjects of the other, between the 13th of April, 1861, and the 9th of April, 1865.

Then nine articles are devoted to adjusting the rights of the fisheries, and the free importation and exportation of fish and fish-oil.

The next eight articles treat of opening the navigation of the St. Lawrence and the canals which improve its waters, to the use of the citizens of the United States, but giving, in return therefor, the navigation of the Great Lakes, including Lake Michigan, heretofore a "closed sea" to the subjects of Great Britain, for the term of ten years, and until two years after notice; and, in addition, permitting the transit of British goods over all our territory, without payment of duties.

The remaining articles from 36 to 42 are devoted to the question, whether the line on the northwestern coast between the two countries shall run through the Rosario Straits or through the Canal de Haro, or, in other words, whether the island of San Juan shall be in American or British territory, under the Treaty of June 15th, 1846.

That question, however, is submitted to His Majesty the Emperor of Germany — who of course must know all about it, and have nothing else to do but study it — for his final award and determination.

We see, therefore, that the Treaty deals with these topics only, 1st, The depredations of the Alabama and other vessels; 2d, The injuries to British subjects by the government of the United States, and injuries to our citizens by the British Government, from April 13, 1861, to April 9, 1865; 3d, Of our rights in the fisheries, and the importation of fish and fish-oil; 4th, Free navigation of the Saint Lawrence and the Great Lakes, and the free transit of British goods through the United States; 5th, The nationality of the island of San Juan.

It would seem, when we examine the matter actually in controversy, or which may become subject of difference between the two countries, that the Treaty is as remarkable for what it does not deal with at all, as for the number, importance and manner of its treatment of those matters which it does attempt to adjust.

It attracts observation that the Treaty makes no provision for the payment or settlement of claims for injuries done by Great Britain upon American citizens since the last Convention of 1853, and prior to April, 1861.

Secondly, it makes no provision for the outrages committed by the British Government upon American citizens *since* 1865, although it is well known, to speak of no others, that for the last four years British and Canadian cruisers have been constantly seizing our fishing vessels along the shores of Nova Scotia and New Brunswick, maltreating their crews, confiscating their property, and ruining the owners.

Thirdly, again, it is too well known that numbers of American citizens, — some of whom bear honorable scars of wounds received in our war — have been, since 1865, imprisoned in English prisons, as well on this continent as in the British islands, without due process of law, and against right, and in derogation of our national honor and the protection that America owes to each and all of her sons, whether by birth or adoption; yet the treaty provides for the payment to the Englishman for every bale of his cotton destroyed by us, even by accident, in the war for the Union. It makes no provision for the redress of the imprisonment of the citizen. Is not the liberty of one American citizen of more worth than many bales of cotton?

Fourthly, The Treaty has no prohibition of the payment of claims of British subjects in the Confederate debt, claimed to be due to them, and secured by pledge of cotton, though that subject was thought important enough by the people of this country to cause them to amend their Constitution to provide against the payment of that debt to their own citizens. We shall see that the Treaty has left the question fairly open to be determined against us by the arbitrators.

Fifthly, It does not settle, in terms nor by implication, in how far the claims of British subjects shall be recognized in prop-

erty to their slaves freed by the war and by the proclamation of President Lincoln.

Sixthly, The Treaty has no article determining the position which the Southern Confederacy, during its existence, shall be deemed to have held toward the two countries, whether as a belligerent both at sea and on land, whether a government *de facto* carrying on war as such, or as a revolted territory simply.

The determination of this class of questions by the Treaty would have been, as we shall see as we proceed, of the highest and gravest importance in settling the rights and claims of each government, and the citizens thereof, before the several boards of arbitrators provided in the Treaty; questions, too, which have been debated by publicists both in this country and Europe, with more division of opinion than scarcely any other.

Seventhly, While adjusting the controversies relating to the fisheries on the northeastern coast, the Treaty has made no provision about the fisheries claimed by Great Britain on our northwestern coast, between our newly-acquired possession of Alaska and the British possessions, although questions are now arising there as important and irritating as any settled by the Treaty.

Having thus seen exactly what has been negotiated, and what has been left untouched by the Treaty of Washington, it will be instructive to learn precisely what has been gained by the United States, and what has been yielded by us in reference to each subject about which negotiations were had.

THE ALABAMA CLAIMS.

What the people of the United States denominate the "Alabama Claims," are for payment of depredations committed by fourteen Rebel cruisers, amounting in the aggregate, as far as presented, to *thirteen and a half millions of dollars*, of which more than thirteen millions are for outrages committed by four vessels — the Alabama, Florida, Shenandoah and Georgia. The case of the United States, founded upon the depredations of each of those four vessels, stands upon different considerations of international law, and of facts applicable to each.

The first criticism that we make upon the treaty, is to ask why did not the American commissioners insist upon the recognition of the liability by Great Britain for the acts of these ves-

sels, so far as we mean to insist on this liability, so as to leave no room for dispute before the arbitrators upon such questions. This, it would seem, should have been granted, and something certain would have been gained. On the contrary, the British commissioners nowhere admit any liability; and the only atonement they give for the substantial destruction of the entire commerce of America, the untold losses which never can be put in the form of claims of American merchantmen, the insult to national honor, the violation of national rights, the affront to the national heart, by the fitting out, harboring, ownership, aiding and abetting the depredations of these fourteen vessels, is an expression, "in a friendly spirit of regret" felt by Her Majesty's "government for the escape, under whatever circumstances, from "British ports, of the Alabama and other vessels, and their sub-"sequent depredations." But, the majority of the vessels did not, in fact, "escape" from British ports, and we have no claim upon Great Britain for that reason. Many others were harbored, their officers feted, their crews enlisted, their provisions and coal and war material supplied, their repairs furnished, in several British ports, notwithstanding the urgent and frequently-repeated remonstrance of our minister; and, for all that, there is no word of regret, in a "friendly spirit" or otherwise.

Therefore, our whole case is open before the Board of Arbitration, of which I will speak hereafter, precisely as if the treaty had never been made.

Instead of the recognition by Great Britain of her liability in the case of either vessel, *three rules*, to be international law in the future, have been agreed upon, for the guidance of the arbitrators, but which the British commissioners required, before they would agree to them, as appears by the protocol, should be made rules of international law betwixt this country and Great Britain, for all future time, and they further demanded that these should be impressed upon every other maritime nation as international law, before they would be bound by them in the arbitration of the Alabama claims. They even declaring, at the same time, that these rules were not now the law of nations.

The reason for this persistence, on the part of Great Britain, upon these as rules of international law in the future will be

apparent in a moment, and will show how much we have conceded and paid for the poor privilege of having our claims laid before a board of arbitration to sit in Geneva, Switzerland. This, in fact, is all we have gained; and the results, if any, obtained from that privilege even, must be shared with the underwriters of Great Britain, because the vessels destroyed by rebel cruisers were either insured or re-insured by British offices, who will get a large share of whatever is awarded to the claimants.

I think I can state with sufficient distinctness, for the purposes of this discussion, these three rules of international law, without giving you their exact words, except in case of the second, which is too remarkable to be passed over by any paraphrase or digest of its contents.

The first rule requires the neutral government to use due diligence to prevent the fitting out of any vessel to carry on war against a friendly power, and to use like diligence to prevent the departure from its ports of any vessel intended to carry on war, such vessel being *adapted in whole or in part, within the jurisdiction, to warlike use.*

The third enjoins the exercise of due diligence to prevent any violation of its obligations and duties within its jurisdiction. Herein lies the weakness of the case of the United States. We must prove that each Rebel vessel was adapted to warlike use, within the jurisdiction of England, she not using due diligence to prevent it.

I put the second rule last because of its importance, and I give it in words:

"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."

Without stopping to comment on the fact that, with one or two exceptions, none of the Rebel cruisers had been adapted to warlike use within the jurisdiction of Great Britain, and "escaped" therefrom, and a majority of them had not been adapted at all to that use within her jurisdiction — but admitting that we may get many thousands or a few millions of dollars by having these rules of international law made the basis of argument be-

fore the board of arbitration — let us see the price we are to pay for what we do get.

Before the mind turns to that, please bear in recollection that Great Britain, during the war, had in effect ruined our commerce; that from that shock it has in no considerable degree recovered; that England is to-day doing the carrying trade of the world in her ships; that it is of the last importance to her to be able to protect her shipping, so that she may bring to her island raw material and there manufacture it and carry back the product; and you will understand the necessity of this second rule to Great Britain in time of war — especially, if adopted, as we have covenanted it shall be, by the other maritime powers; and this necessity appears more clearly in view of the fact, as the British Commissioners claim, that this rule is not now a part of the Law of Nations.

Under this rule, no private or public armed vessel of a nation at war can get any supplies to aid her in carrying on warlike operations in any foreign port of the world. Now it has, without doubt, come to be settled law that coal, to a steam vessel-of-war, is a military supply. Nothing is more certain than that all attacks upon an enemy's commerce must hereafter be made by swift armed steam-vessels, as was done by the Shenandoah and Alabama in the Confederate raid upon our own. But speed in a steam-vessel uses up coal almost in an arithmetical ratio of progression to the amount of speed attained. Therefore steam-vessels pursuing the commerce of an enemy must use vast quantities of coal, requiring frequent visitations to ports and harbors for renewal. Now, the United States have not a single coaling station in the world, beside the harbors on her own coasts, other than hired docks in neutral ports, from which, under this rule, we must be at once shut out in case of war. The establishment of this rule of law, therefore, protects British commerce in all time, because under it no steam-vessel of war of the United States, either private or public, can steam more than five days' distance from our own coasts, for the reason that no one of them can carry, with its armament, more than ten days' coal, and it is neither prudent nor safe for a war steamer to be on the ocean without coal to return to port — five days out and five days back.

Heretofore when I have suggested this difficulty of want of coal depots, to unreflecting persons, the answer has been: "Well, Great Britain, by this rule, has deprived herself of the right to coal in neutral ports, as well as the United States. If this rule is so disastrous as suggested, why did the English Commissioners insist upon its establishment, and insist further that it should be made a rule of public law for all time and for all maritime nations?" Please reflect that Great Britain has for two-hundred years been acquiring and fortifying harbors and naval stations all over the world now fitted and used as coaling stations. Halifax, the Barbadoes, Jamaica, Honduras, Guiana and the Falkland Islands, make a cordon along the Atlantic shore, north and south. Heligoland, Gibraltar, St. Helena, Gambia, Gold Coast, Mauritius, Cape Good Hope, in the eastern and Indian Ocean; Malta in the Mediterranean; India, Hong Kong, Ceylon and Labuan, Australia, New South Wales and Tasmania, New Zealand and the islands of the Eastern Archipelago, furnish her with both coal and coaling stations in that part of the world, so that England has to-day, without striking a blow, moving a man or mounting a gun, ample supply of coal stations, to a degree that with an expenditure of a thousand millions of money, twenty years' time and fifty millions yearly outlay to keep them up, would not put the United States on an equality with her in that regard.

When I stated this view of the effect of this rule of law to one of the learned Senators from my own State, who had served on the Committee of Foreign Affairs, and asked for explanation of its effect upon our naval power, what would you suppose was that statesman's patriotic and far-reaching reply? This and nothing more: "As there will never be any more wars, I am glad that the United States hasn't a coaling station anywhere away from our own coasts. That will keep our navy at home." Alas! I had heard the declaration of that Senator that there were to be no wars before. I listened to his peace lectures quite a quarter of a century ago, and quite that time since, I was told to lay off my uniform as a Massachusetts volunteer soldier, as it was useless to keep up military organizations and prepare for war which could never happen in this civilized and christianized age of the world. Happily wiser counsels

prevailed, or the Sixth Massachusetts Regiment would never have marched side by side with a Pennsylvania Regiment first of all to save the nation's capital from rebel arms. In spite of the mistaken *ipse dixit* of that Senator, I have lived to take part in one of the most gigantic wars the world ever saw, and within six years of its termination the other continent was swept by wars, foreign and civil, on a scale that has not been equaled since the fabled hosts of Xerxes.

I agree our Republic will never be a great naval power, because our people will never appropriate the money in time of peace to keep up a large naval establishment, which is then looked upon as useless; and wars are never long enough to enable any country to build fleets of ships. We are to look, then, for our means of naval warfare to our private armed vessels, the militia of the seas, which, in six months, can sweep from the ocean the entire commerce of any nation at war with us, provided always, that they can get the modern necessity of naval warfare, — coal, from which we are cut off by the terms and express provisions of this Treaty.

Let us pause here. Am I right upon this point? If I am right, where have we found any discussion of this momentous question, either in the protocols of the Commissioners, on the floor of the Senate, or in those illusory and useless editorials of newspapers in which alone some features of the Treaty have been portrayed? Yet, with this great rule of public law underlying the maritime superiority of this country for all time, established against us before our very faces, will you do me the favor to remember, that the principal journals of the country were more busily engaged in discussing, with more or less of virulence and vituperation, the right of a newspaper correspondent to steal a portion of the secret archives of the nation and publish it to the world, than in showing to the people the provisions of that same treaty by which their naval power was crippled forever.

If in this I am correct — and as an American I only hope I am not, for I have struggled to get rid of the conviction that such is the result of our negotiation on the Alabama claims — have we not indeed paid a fearful price for the regrets of the English Government, in however "friendly spirit" expressed, and for the few millions which by possibility may be awarded to

us by the arbitration at Geneva composed of a representative of the United States, a representative of Her Britannic Majesty, a representative of the King of Italy, a representative of the Swiss Confederation, and an umpire — the cause to be decided by a majority — chosen by the Emperor of Brazil, whose subjects harbored the Rebel steamer Florida in the port of Bahia, giving her aid and comfort until she was cut out by the brave and patriotic Collins and brought home, but not until after she had committed three millions of damage upon our commerce to the five done by the Alabama.

The Emperor of Brazil did not then regard the capture of that pirate in a friendly spirit, but insisted that she should be returned with her armament and crew, in full piratical order, to his safe harbor, from whence she might sally forth again to prey upon and burn our merchant ships. His Majesty, the Emperor, insisted that the right of his neutral territory to protect pirates had been invaded by our gallant navy, and demanded, in an unfriendly spirit, instant reparation then in aid of the rebellion — perhaps that makes him all the better arbitrator on like acts of England now. In compliance with his majesty's peremptory demand, an order for the return of the Florida was given, and she would have again been let loose upon our commerce, but luckily she was in James River when the order came, within the Department of Virginia and North Carolina, the Commander of which now addresses you, so that he has knowledge of the fact of which he speaks; and unfortunately for the Confederacy, but happily for our commerce, the Florida collided, as she lay at anchor, with an army transport, and sunk in six fathom of water, where she has lain harmless ever since; and the person now addressing you, as counsel for Commodore Collins and his crew, is endeavoring to recover her value in prize for the daring, gallant and patriotic act of her capture.

Is it not possible that in considering the duty of a neutral nation not to harbor the armed vessels of belligerents who are preying upon the commerce of a friendly power, under the third rule, the arbitrator representing the Emperor of Brazil may pause to reflect whether the consequence to his master of finding England guilty in case of the Alabama and Shenandoah, may not be to render him liable for the three million of damages done by the Florida, sheltered in the port of Bahia?

In the omissions of the treaty to provide specifically for damages done to our citizens, I have a grief which almost partakes of the character of a private one, because the vessels of my constituents and neighbors, the fishermen of Massachusetts, were destroyed by the Tacony. Now as there is not only no evidence that she was ever in a British port so as to come within either rule laid down in the treaty, but, on the contrary, full evidence that she was not, although she was a tender or consort of one of the pirates fitted out by England's subjects, I see no redress whatever, even negotiated for, in behalf of the brave and hardy fishermen of my State; and yet Massachusetts had a member of the Joint High Commission.

But what shall be said if the treaty is so loosely framed, after all, that Great Britain has left to her, by its provisions, a valid defence to all our claims for the Alabama outrages, or at least one exceedingly difficult to answer? What is to be done or said if our Commissioners on the Joint High Commission have not only wholly failed to get an acknowledgment of liability for our claims, but by an express provision have left the door open to a defence by Great Britain which may be well urged as sounding in equity and justice? Curiously enough, although the claims are those of individual merchants for their property destroyed, yet there is an express provision that "if the tribunal find that Great Britain has failed to fulfill any duty or duties, it 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." I was puzzled, at first, to understand why this provision should have place in the treaty. But Lord Redesdale, in the House of Lords, has not left us in doubt as to what use is to be made of this provision for the payment of a gross sum to the treasury in connection with the other provisions, or rather want of them, in the treaty. It is to be remembered that our claim for damages for the depredations must be primarily upon the rebels who destroyed our vessels, and that on England is a secondary one, because she aided them by affording the means of doing the acts of which we complain. The wrongs were actually inflicted by our Southern brethren of the Confederate States, and we hold Great Britain as accessory only.

Therefore may not Britain well urge before the Arbitration, that as the United States have condoned the offences of the Southern States committed during the war, — have taken them back as an integral part of the Government of the nation, and as the money paid for the depredations of the Alabama will go into the treasury of the United States, for the joint benefit of all the citizens of the United States, as well Admiral Semmes who commanded the Alabama, as Admiral Winslow and officers and crew of the Kearsarge that sunk her, it is unjust and inequitable to call upon England to pay money for the depredations of the Alabama for the benefit, in part, of the very men and States who did the acts, and who are now a portion of the nation demanding payment. In other words, in justice and equity the accessory cannot be called upon to pay his principal for the amount of damages done by himself in committing a robbery. Yet in the protocols of the Commissioners, in the discussions in the Senate, so far as they were permitted to come to the public ear, and especially in the pauses of the defence of the larcinious newspaper correspondents by their employers, wherein some mention has been made of the provisions of the treaty, not a word of all this vital question of defence by England, so cunningly planned and so artistically provided by the British Commissioners, has been said. Yet, say the newspapers, all the people are in favor of every provision of the treaty of Washington!

But these are not all the price we pay for the regrets of England, and for the privilege of presenting our case for the few millions which we suppose we may get back, lost by rebel depredations.

PAYMENT OF CLAIMS OF BRITISH SUBJECTS.

We have agreed, by the Twelfth Article of the Treaty, to pay all the claims of British subjects for losses suffered at the hands of the United States government during the war that may be determined against us by a commission, the majority of whom give decree, to be appointed jointly by Great Britain and the United States, and in their failure by the representative of the King of Spain.

What is the amount of those claims? Does any man know? Have they ever been stated? Of what do they consist?

Was any bill of particulars or schedule received or ever asked for by our Commissioners? Does any body know whether they are four or four hundred millions? Does any body know the validity of them or the grounds on which they rest? The provision is "for all acts done or committed against the persons or property of British subjects between the 13th of April, 1861, and the 9th of April, 1865, not being Alabama claims, which may have been presented and yet remain unsettled, or which may hereafter be presented within six months after the date of the first meeting of the Commissioners."

Observe the difference in the statement of the two classes of claims. When our claims of any magnitude are made upon England, they are specified as known under the head of "Alabama Claims." When the English claims are provided for, as against us, there is not even a generic specification, but are *all* that have been or may hereafter be presented.

True, it is well argued that this country is not liable for damages done in the war to the persons and property of a neutral foreign resident here, any more than to our own citizens. Granted. But this government, by appointing the Southern Claims Commission, has admitted its liability for all the property taken and used by the armies of the United States in the course of its military operations, belonging to its loyal citizens. Every subject of Great Britain being a neutral, must be taken to have been loyal, under the provisions of this treaty, unless some overt act is shown, and stands, therefore, upon the ground of the most loyal citizen of the United States; and for every dollar of his property taken, used or injured, by the United States, and for every injury to his person, the United States by this treaty is made responsible. What that amount may be depends upon the advocacy of the English Commissioner and the conscience of the representative of the King of Spain.

I have already called attention to the fact that there is no prohibition against British claims as holders of the Confederate loan. I shall probably be answered that there was no need of such a prohibition because the Confederate debt was neither an "act done or committed against a British subject by the United States." True, but I cannot forget, however, that this Confederate loan was specially secured by a pledge of the cotton

owned by the Confederate government, placed in the hands of agents as security for the loan at a given price per pound, making as full a pledge in the eye of municipal law as between individuals as could be well stated. Therefore, it would seem to me quite clear that all such Confederate cotton so pledged became the qualified property of the holders of the loan for whose benefit it was held as a pledge. Indeed I remember that portions of that very cotton were shipped and sold to pay the interest as long as the Confederacy had existence.

Now, is it not historically true that the United States took and destroyed many millions of this cotton and put some forty million dollars more into the Treasury realized from its sale? Did we not claim this property as successors to the Confederate States captured by us in the war? But is it not under this Treaty subject to the pledge and the rights of neutrals who had loaned their money upon it, and held it by their agents and servants? Although we have a constitutional provision against the payment of the Confederate debt, we have no constitutional provision against payment for the cotton that we have destroyed or taken and sold belonging to British subjects, which we have agreed to pay by the solemn provisions of a treaty which are in themselves the supreme law of the land.

What answer to this view of the British right of property? I have heard but one, and that is, that cotton being an article of property capable of being used in aid of the war in the Southern States when captured by the United States became the property of the captors as against all the world, although, at the time of capture the actual title might be in a neutral British subject. Grant that, for the sake of the argument, it would be so in the absence of the Treaty. But by the Treaty of Washington we have agreed to pay for all property taken from British subjects by the United States between the 13th of April, 1861, and the 9th of April, 1865. Yet, "all the people are thoroughly satisfied with the Treaty of Washington."

I do not dwell upon the fact that there is no prohibition inserted that the British subject under this rule may claim his property in slaves lawfully his property by our laws and constitution prior to the war, and for which he could have brought suit in any of our courts, although that class of property would

swell British claims to millions in amount, because it is stated in the protocol that the British Commissioners declared that the British Government would not present any such claims. Probably not. But why not have made that certain in the Treaty itself? A declaration not put in the Treaty, and not in the purview of the instructions of the British Commissioners may be determined not to be within their province, so as to be binding on private claimants.

I trust it may so be held. One would be grieved to find even in the Treaty of Washington an entering wedge to the payment for slave property set free by the war, the proclamation of Emancipation and the Constitutional amendments.

It will be observed that I have not dwelt at all upon the fact that the Treaty provides for the payment by Great Britain of claims of our citizens against England, for acts done or committed against their persons and property in the same period, because I have heard of substantially none. Perhaps the Confederate raid upon the Saint Albans Bank during the war would come more nearly under this class of cases than any other, but unless it can be shown that the Government of Canada connived at and became parties to that raid it seems difficult to see how such a claim can be validated.

There is still another large class of claims which may come in under the provisions of this Treaty, and certainly will be pushed, and that is for restitution of the blockade runners captured during the war. It has been insisted, and it is still insisted by the British owners that all these captures are illegal, because, among other reasons, by the proclamation of the blockade of President Lincoln it is distinctly ordered that our naval vessels warn off the merchant vessels coming to a Southern port the first time they are found within the inhibited waters, and that capture should only be made for the second offence. But soon these warnings were omitted, and a capture was made whenever and wherever a vessel was found attempting to enter a blockaded port.

Again, it will be claimed that we have insisted, and do still insist, that we never have accorded belligerent rights to the Confederates at sea, because they had neither ports nor a navy. This is one of the grounds upon which the senior Senator from

Massachusetts, in his speech against a former treaty, put his case with all his strength, and made the recognition by England of the belligerent rights of the Confederates at sea, when we had accorded them none, a distinctive and most formidable ground of liability to us for all wrongs done to us by the Alabama — a view, by the way, which has been wholly ignored and repudiated by this treaty — yet the newspapers said that the whole country adopted this view. The British lawyers say, be it so; assume that there was no state of belligerency at sea, how then do you maintain the legality of a blockade which could only be set up because of a state of belligerency on the waters?

And if there is anything in this doctrine that a state of belligerency may exist between the parent state and its revolted subjects on the land and yet there be no state of belligerency at sea, so that we might have been justified in hanging Confederate sailors as pirates, — as we essayed to do, but were prevented by threats of retaliation, — then all our prize adjudications fall to the ground, and we are accountable for the vessels captured, before a Court of Arbitration to be presided over by the representative of the King of Spain, who has subjects with like claims against us.

Remember, again, that this question is not to be determined by us with our patriotic emotions and ideas of international law tinged by the decisions of our highest courts, but by the representative of the King of Spain, who sits as arbitrator in all this class of cases, as well the cotton as the ships, and from whose sole decision there is no appeal or escape. Indeed, in regard to payment of this class of claims the English Commissioners, as if fearing that we might deem ourselves over-reached, have taken great pains to bind the United States very securely, and a special provision, the like to be found no where else, in any diplomatic convention, not even in our treaty with the Indian tribes — seeming to question, in advance, by implication, the good faith of the nation — is appended to article thirteenth.

Listen; The high contracting parties hereby engage "to consider the decision of the Commissioners as absolutely final and "conclusive upon each claim decided upon by them, and to give "full effect to such decisions without any objection, evasion, or "delay whatsoever."

Why, this reads like an oath in a Ku-Klux lodge, instead of a provision of a treaty between two of the most powerful and most honorable nations of the earth, and amounts to this: "You promise and agree without any mental reservation or equivocation or evasion of mind whatever."

Yet, we are all in favor of every provision of the Treaty of Washington!

THE FISHERIES.

I have heretofore so often and at such length dwelt upon the injustice done the people of the United States, and especially my constituents and neighbors, in the settlement of the fishery question under this Treaty, that I forbear wearying your patience with it here by a recital of the wrongs done to us, especially because, by the provisions of the Treaty itself, the part of it relating to the fisheries does not become effective until both Houses of Congress, after full revision and examination in open session, with the whole country looking on, pass a law to carry it into effect and agree to it; and that, I trust and verily believe, never will be done.

The statement of the provisions of the Treaty relating to the fisheries, is the best argument against them. For the privilege of fishing without annoyance, and buying bait, for catching mackerel only, within three miles of the shore of the British province, which has been and can be demonstrated even by the admission of the Canadian authorities themselves to be scarcely worth seven thousand dollars a year, the Treaty throws open all our fisheries, from Easport to Delaware Bay, to British fishermen in full competition with our own.

In addition to which we are to give the introduction of all kinds of fish and fish-oils free of duty into this country, and virtually open to Canada a trade and industry which produces more than twelve millions yearly to the United States. And while we surrender all this, we make no provision for the reimbursement of our fishermen for their vessels seized and confiscated without right, while prosecuting their hardy toil of the sea, for a series of years by Canadian and British cruisers. And yet all the people are in favor of every provision of the Treaty of Washington!

NAVIGATION OF THE ST. LAWRENCE.

By the 26th Article we obtain the free navigation of the St. Lawrence, for which we should be duly grateful, unless it shall turn out, as I fear it may upon examination, that in this case also we have paid too great a price for the favor, or in the language of Massachusetts' and Pennsylvania's greatest economist, we have "paid too dear for our whistle." I am one of those who believe in the demonstration made by Henry Clay, that the free navigation of the St. Lawrence belongs of right to the United States, as a proposition of national law, especially as since his argument every considerable river in the world, like the St. Lawrence, draining a part of one country and debouching into the sea in another, has been, by convention and otherwise, declared free to the navigation of all peoples under regulations applicable to all alike. Let us not omit to mention that we also get the right to navigate the Welland, and St. Lawrence and other canals, in the dominion of Canada, under the same conditions that the subjects of Great Britain have that right, to wit, by paying toll, not a priceless privilege, which we have always enjoyed and shall now enjoy, because of the provisions of this Treaty, in no greater degree than hitherto. That navigation never would have been hindered except in case of war between this country and Great Britain, and in such case the provisions of the Treaty are useless.

We have paid for these limited privileges even in advance, first by giving the free navigation to the subjects of Great Britain of the Sault Ste. Marie Canal, and the St. Clair Canal, and by opening our great lakes to the subjects of Great Britain to compete with us for our own coasting and carrying trade. That commerce is, *at least*, one and a half times greater than the whole coasting trade on our Atlantic shores, which we have so sedulously guarded from the foundation of the Government. We have also opened to British competition the commerce of Lake Michigan, which lies wholly within our borders. We have not only given all this, but in addition we have granted the free transit of all British-owned goods through all our territories, in bond, without payment of duties, thereby opening a door to smuggling and fraud upon the treasury many hundred times

greater than all the Alabama claims, however reckoned. Under our Internal Revenue laws, it was found impossible to transport whiskey in bond by any safeguards and penalties we could throw around such transportation so as to protect the revenue against untold millions of frauds. So impossible was it that we were obliged to prohibit such privilege to our own citizens, of spirituous liquors our own product. By this treaty we permit all foreign liquors — wines and brandies, however valuable — to be carried all over our country and to be deposited along the extended line of division between the British dominions and this country, a custom-house line of nearly six thousand miles, in bond, by every railroad and every other vehicle of transportation. The impossibility of prevention of frauds in transportation of spirits becomes now trebly impossible under these provisions. Remember, the owners of the goods will be British subjects, not themselves amenable to our customs laws, incurring therefore no penalty save the loss of their merchandise; and who shall guarantee the integrity of the throng of custom-house officials through whose hands these valuables must pass, under so great temptation? Laws may be passed, regulations made, penalties provided; but over the extended border of six thousand miles of customs lines between the two countries, where shall the witnesses come from to give evidence of their infraction? Shall we not find, in practice, that we have in this regard paid far "too dear for our whistle"?

Again, I grieve that all these advantages of our commerce and our ports should have been accorded to the domain of Canada, because it retards the consummation of that which is, in my view, a most desirable event to both countries — the annexation of the British dominions to the United States, and the unification of North America. If the Canadas can enjoy all that we have without any of our burdens, annexation may be retarded; but the most skillful and ingenious blundering of diplomacy cannot long retard the inevitable. And yet everybody is in favor of all the provisions of the treaty of Washington!

THE ISLAND OF SAN JUAN.

I will not detain you to comment upon the last provisions of this treaty securing the adjudication of our title to the island of

San Juan by the Emperor of Prussia, first, because, in itself for the present, the title to that island is of very small consequence, in view of the fact that long before it becomes a territory of considerable value, with patriotic administration of public affairs in this country not only the island of San Juan, if British territory, but all the British possessions, — Manitoba and British Columbia, — will have become ours. Squeezed in between Alaska on the north and Oregon on the South, manifest, nay, inevitable destiny will settle the question of annexation that inattention or timidity of diplomats and commissioners have only delayed. But even in this we pay by far "too dear a price for our whistle," because, while we have shown our confidence in his most Catholic Majesty of Spain, by entrusting him with the appointment of one of our arbitrators; his less Catholic Majesty of Italy to appoint another; his Protestant Majesty the King of Sweden and Norway to appoint another, the President of the Swiss Confederation to appoint another, our good friend the Emperor of Austria and King of Hungary in appointing another — who will probably *not* be Louis Kossuth — and his slave-holding Majesty the Emperor of Brazil to appoint another, it will be observed that we have apparently taken great pains to pass over and by the only Christian monarch who was our good friend during the rebellion, and who set us the example by emancipating all the slaves of his empire, one who rules to-day over one-seventh of the population of the globe — Alexander of Russia — and have refused to trust him to appoint a single arbitrator to determine the value of a mackerel, even when swimming in the water off the coast of New Brunswick. Such is the return we make to the Emperor of all the Russias for his firm and undeviating friendship during the war of the rebellion, who did not acknowledge the belligerent or other rights of the rebels, and bestow our confidence, at the bidding of England, upon monarchs who took part in fact against us. And yet all the people are in favor of every provision of the Treaty of Washington!

WHY WERE ALL THESE CONCESSIONS TO ENGLAND MADE?

In the course of this discussion, it has doubtless crossed your minds many times, why were all these concessions to England

made? Why did the good and patriotic men who were of the American Commission in this behalf yield so much in return for so little if what we have seen were all the inducement? Of their patriotism no man can doubt; of the wisdom of what they did, and the motives which led to it, each for himself must judge. The secret of the treaty of Washington is an all-pervading fear of war with Great Britain. Conservative timidity seems to have ruled the counsels of the American Commission, tinged — unconsciously perhaps to themseves — with a desire to link their names to a treaty between two great nations which they might naturally suppose would carry them down through all time.

If we agree to this theory that there was any considerable danger of a war with Great Britain, or with anybody else, then we can not only pardon their acts, but commend them for yielding so much. War is to be averted from a nation, as personal strife is to be avoided by an individual, at all risks and at all hazards, save the loss of honor and of life. Therefore, while we may well excuse the giving up our rights as a nation to Great Britain by the over-cautious prudence which dictated it, we are at liberty, each for himself, to judge whether the danger, the fear of which swayed the negotiations, actually existed. Undoubtedly the cry that went forth that peace has been assured between the two great nations speaking the English language forever by the Treaty of Washington, has been the compelling cause of the acquiescence of the people of the United States in its provisions without much of examination or weighing of their effects.

Was, then, war imminent or probable if the treaty had not been concluded? The answer must be, by every reflecting person, clearly NOT. War with England was not possible except at the will of the United States; and the same desire for the avoidance of war which has rendered even the Treaty of Washington acceptable to us would have effectually controlled all probability of it. England could not go to war with us. She had neither grievance nor cause. We had fitted out no Alabamas and Shenandoahs against her commerce. We had acknowledged no belligerency of her rebels, either at sea or upon land. We had loaned no money to her enemies to aid them to fight

her. We had run no blockade with our ships for the purpose of supplying her enemies with arms. We had not destroyed her commerce and crippled her maritime resources for years, if not forever. She had no cause of complaint against us; she made none. How, then, could there have been a war between this country and England unless we had taken the initiative?

There was no cause why we should begin. Our claims against England could very well wait for settlement until the time when her exigency should be our opportunity.

A little less than a year ago, on the lecture platform, I took occasion to state to the country the causes why it was impossible that Great Britain could permit a war between the United States and herself. The fact is, England was at that time and is now menaced by Russia whenever she is embroiled with a naval power approaching in strength to her own, of which alone this country has, since the crippling of France, the capability. I also stated the fact that upon no battle-field had England ever placed more than twenty-five thousand of her own men, not even in the battle of Waterloo; that Ireland — heretofore the beehive of soldiers for her recruitment — was now unavailable through emigration and discontent. The unification of the German empire had rendered it impossible for her to send to America to fight her battles, as in the days of our fathers, the subjects of Hesse Cassel, except as they are now coming, the soldiers of the plow and of the armies of the industries of peace. Attention was further called to the fact that the inhibition of the importation of breadstuffs and cotton into England would work a revolution in her government in six months; and that in fact, from its own inherent defects, her monarchy was now tottering to its fall. I again call attention to the fact that quite one in every eighteen of the people of England enter the poor-house or the prison annually; that some less than thirty-two thousand of her people own the great bulk of her soil; that her agricultural population is decreasing in the same ratio; that her small farms are diminishing in number; that there are but little more than three million inhabited houses for her twenty millions of population; that four-fifths of her inhabitants reside in towns and cities and but one-fifth in the country; that the great bond which is supposed to bind her people together, her national debt — now twice the amount of ours — is held by a little more

than one hundred and twenty-six thousand of her people, out of a total of thirty millions in the United Kingdom; and how little it may affect the vast population over which she holds sway may be judged from the fact that the inhabitants of her colonial dependencies are nearly one hundred and sixty millions of people. To all this I may add the further facts which have lately occurred. England finds herself powerless to collect a tax of half a million dollars upon friction matches without stirring an *emeute* by her people with which the government dared not contend, while we here collect a revenue of two millions on the same article, and I have never heard the question discussed, in Congress or elsewhere; and the still further fact that such is the consciousness of her weakness in case of war that Great Britain has been thrown into a ferment of preparation, and a change has been made in her entire army system, by a mere magazine article of one of her citizens, describing the disasters of a possible invasion.

Is such a country likely to go to war with the United States?

Need I stop to contrast the situation of America in view of the possibilities of war? Forty millions of people; without a colony or other dependency to be a source of weakness; without a vulnerable point; with a veteran army of a million and a half of soldiers lately disbanded and thoroughly trained, two-thirds of which may be brought into the field in ninety days; a navy of which I wish I could say more, but sufficient to protect our home ports, while our naval power, as a means of offence, consists in the speedy adaptation of the merchant-marine to the purposes of war, and the enterprise of our people which would cause private armed vessels to sally forth everywhere to attack a commerce extended all over the globe; a country so situated that even the stopping the importation of goods by war would only deprive us of that we do not need, and are only the extravagances and not the necessaries of life, and thus save a great part of the cost of a war to the nation; containing everything within ourselves, as we have demonstrated, to carry on war for years with no possibility of being crippled in our resources by any attack from abroad; and — what is not to be forgotten in case of a war with England — a million and a half of our voting population absolutely eager for such a war to avenge the wrongs suffered by themselves and their fathers from the tyranny of Great Britain over the green isle, their fondly loved home. I say, with this contrast

was war with England possible, unless we chose to make it? Impossible, and any fear of it absurdity.

Therefore when, a year ago, I brought these considerations to the attention of the country as they bore upon the settlement of the Alabama claims, I spoke in the interest of peace, and not of war. My object was to show that the issues of peace and war remained with us, and not with our hereditary enemy. I intended that the views therein expressed should tend to bring about peace, but not a peace in the way this one has been obtained through this treaty, by humiliating concessions to England, and a sacrifice of the interest of my constituents, and rights of my country.

In view of these considerations which I have hastily sketched, ought the possibility of England making a war upon us to have been weighed for a moment in the adjustment of the provisions of this treaty? Should anything more than what was a fair and just equivalent, to be given and received, have been asked or granted by us to Great Britain in settling the wrongs we had received at her hands during the war of the Rebellion?

ONE WORD IN CLOSING.

It would have been much easier for him who addresses you to have floated along with the current of popular indifference and given his adhesion to the Treaty of Washington, than to bring to your attention, and that of the American people, that which I believe we have lost in this adjustment of differences between England and ourselves. It may be popular for the hour to cry with the unreflecting, All, all is Peace! There is never to be more of war, and there need be no preparation for war, or thought of what may be the condition of the country in the event of war! But seeing distinctly the losses we have sustained, the difficulties and dangers we have incurred, the unnecessary concessions we have made, in the Treaty of Washington, I felt it my duty as an American citizen, having to do with public affairs, to lay all these things before my fellow-countrymen, in so far as my feeble voice might reach them, for their calm, careful consideration and candid judgment. Believing this to be my duty, there was but one other thing, and that was to do it!

I may at least draw the attention of the people to the questions of national rights and national honor involved in this adjustment, so

that they and their representatives may be prepared to act upon them as they arise upon the determination of the several Boards of Arbitration as may become a great, wise, and powerful people. If I am right — as I verily fear I am — then my warning voice will have prepared the public mind for not too great revulsion when they find themselves disappointed in the treaty of Washington. If I am wrong, then, as a patriot, I shall rejoice with my countrymen in finding that the Joint High Commission "builded wiser than they knew."