THE ALABAMA ARBITRATION

THOMAS WILLING BALCH

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THE

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BY

THOMAS WILLING BALCH

A. B. (HARVARD),

MEMBER OF THE PHILADELPHIA BAR

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INTRODUCTORY NOTE.

THIS is an attempt to tell the story of the *Alabama* arbitration, as far as possible, in the words of the participants in that drama. It is hoped the work will be of use to historical students. My brother, Edwin Swift Balch, Esq., has aided me in one way or another in its preparation.

T. W. B.

PHILADELPHIA, May 5th, 1900.

CHAPTER I.

SOON after the outbreak of hostilities in 1861 in the United States between the Northern and the Southern States over the Slavery question, the Confederate States, in order to injure the power of the Union States by striking and destroying the mercantile marine of the latter, sought with great energy, tenacity and skill to create a navy sufficiently strong to force the Union maritime commerce to seek the shelter of a neutral flag. And in this course their *hasty* recognition as belligerents by England helped them very much.[1] Fort Sumter fell April 13th, 1861; President Lincoln issued his proclamation declaring a

[1] *The National and Private "Alabama Claims" and their "final and amicable settlement,"* by Charles C. Beaman, Jr. Printed by W. H. Moore, Washington, D. C., 1871, pages, 7–48. *Correspondence concerning Claims Against Great Britain.* Volume VI. Washington: Government Printing Office, 1871, page 4 *et seq.* Letter of "C." on *The American Blockade and Belligerent Rights* in the *London Daily News*, Thursday, October 19th, 1865: reprinted in *Correspondence concerning Claims Against Great Britain.* Volume IV. Washington: Government Printing Office, 1869, page 257. *Charles Francis Adams*, by his son, Charles Francis Adams. Boston and New York, 1900, pages 168–172.

blockade of the Southern ports on April 19th; and in spite of Earl Russell's promise to Mr. Dallas, the American Minister, to wait to hear Charles Francis Adams, the newly chosen representative to England of the new Administration, the British Government published, on May 13th, the very day of Mr. Adams's arrival in London, the Queen's neutrality proclamation recognizing the Confederates as belligerents. That act was the first step that made it possible for the latter to carry on from the shores of England a naval war against the United States.

The first ship of war of any importance that flew the Confederate flag on the high seas, was the *Sumter*.[2] Under the command of Raphael Semmes, who equipped her and, at the end of June, 1861, took her successfully out of New Orleans past the Union ships, she proved for six months a scourge to Northern commerce. She did not destroy many vessels, but she inspired sufficient fear to Northern ship owners to cause many of them to place their boats under the neutral flag of England. Her career as a Confederate cruiser was cut short at Gibraltar in January, 1862, when her com-

[2] *Memoirs of Service Afloat, during the War between the States*, by Admiral Raphael Semmes, C. S. N., Baltimore, 1869, pages 93–345 *passim*. *Papers relating to the Treaty of Washington*. Volume I. *Geneva Arbitration*. Washington: Government Printing Office, 1872, page 129.

mander, finding it impossible to obtain coal, was forced to have her sold. She was equipped in a Southern port, and was accorded only such recognition by foreign nations as were in accord with the rules of international law. But in the meantime, the Southern Government was preparing to build in England, and equip and man with English guns and English seamen, a fleet of sufficient strength to largely ruin the United States mercantile marine.

Captain James D. Bullock, of the Confederate States Navy, was the naval representative, and Messrs. Fraser, Trenholm and Company were the financial agents of the Confederate Government in England. Captain Bullock first had built at Liverpool in 1861–62 the *Oreto*, subsequently known as the *Florida*.[3] To avoid suspicion it was given out that she was intended for the Italian Government. But upon inquiry to the Italian consul at Liverpool, he disclaimed all knowledge of her; and the United States Minister to England, Charles Francis Adams, informed Earl Russell on February 18th, 1862, that she was intended for the Confederate Government. On the

[3] *Papers relating to the Treaty of Washington.* Volume I. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 133 *et seq.* *The National and Private "Alabama Claims" and their "final and amicable settlement,"* by Charles C. Beaman, Jr. Printed by W. H. Moore, Washington, D. C., 1871, pages 49-68.

22d of February the commissioners of customs reported to the British Government that the *Oreto* was built to carry guns, but that she then had on board neither guns nor gun-carriages, and that she was intended for the use of a Palermo firm. Again, on March 26th, Mr. Adams called Earl Russell's attention to the probable destination of the vessel: but four days before she had sailed with a general cargo, ostensibly for an Italian port. She next was heard of in the West Indies at Nassau, New Providence. There she aroused the suspicion of the American Consul and of some British naval officers, who advised her detention. Other vessels arrived from England with equipments and guns. Finally she was seized; but the Vice-Admiralty Court released her on the ground of lack of evidence. She then sailed for Nassau, received her armament at sea, and was christened the *Florida*. From that time until October, 1864, when she was captured by the United States ship of war *Wachusett*, she destroyed many ships of the United States merchant marine.

But it was the *Alabama*[4] that of all the Confederate cruisers did the most to cause the transfer of United

[4] *Memoirs of Service Afloat, during the War between the States*, by Admiral Raphael Semmes, C. S. N. Baltimore, 1869, pages 370–773, *passim*. *Papers relating to the Treaty of Washington*. Volume I. *Geneva Arbitration*. Washington: Government

States merchant vessels to the protection of the English flag. She was better built, equipped and commanded than any of the others to prey upon the Union commerce. Captain Bullock contracted with the Messrs. Laird of Birkenhead for her construction. She was known as the "290."[5] No secret was made of the purpose for which she was built. She was launched on May 15th, 1862. The United States Consul at Liverpool, Mr. Dudley, finding ample evidence that she was intended as a vessel of war for the Confederate Government, sent it to Mr. Adams. On June 23d, Mr. Adams wrote to Earl Russell inclosing Mr. Dudley's letter, and requested that action might be taken either to stop the projected expedition, or else to establish the fact that its purpose was not hostile to

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Printing Office, 1872, page 146 *et seq.* *The National and Private "Alabama Claims" and their "final and amicable settlement,"* by Charles C. Beaman, Jr. Printed by W. H. Moore, Washington, D. C., 1871, pages 69–100. *Charles Francis Adams*, by his son, Charles Francis Adams. Boston and New York, 1900, page 306 *et seq.*

[5] The *Alabama* was known as the "290" because she was the two hundred and ninetieth vessel that the Lairds built. It is a curious coincidence that when, a few years since, Mr. Herbert, then Secretary of the Navy of the United States, was to name one of the great battleships building at Philadelphia by the Cramps, he called her after his native State, the *Alabama;* and she, too, though quite unknown to the Secretary, was the two hundred and ninetieth ship that the Cramps built, and was recorded in their books as "No. 290."

the United States. On July 1st, the commissioners of customs, to whom were referred Mr. Adams's letter to Earl Russell and its inclosure, reported to the Government that the vessel was undoubtedly intended for a warship, but that she had neither guns nor gun-carriages on board, and that their solicitor did not think that there was any cause to detain her. The commissioners suggested also that the American Consul at Liverpool should submit to them any further evidence he might obtain. Mr. Dudley soon laid before the commissioners a mass of evidence showing the true state of affairs. The same evidence was submitted to Mr. Collier, an eminent barrister, who, on July 23d, gave his opinion that the "290" should be detained. The next day Mr. Adams sent Mr. Collier's opinion and additional evidence to Earl Russell. While the British Government was deciding what action it would take in the matter, the "290," on July 29th, went to sea without a clearance, ostensibly on her trial trip; she carried a party of ladies and gentlemen, but her guests were sent back from the bar on a tug, and she herself proceeded to a bay on the island of Anglesea. The order for her detention arrived only after she had sailed.[6] She then proceeded to the Azores. There,

[6] When the *Alabama* escaped, the Confederate cause was at high-water mark, and there were good reasons for believing that the Union would be broken. But Meade's victory at Gettysburg and

two English boats, carrying her armament and additional seamen, met her. After receiving from them her equipment, the "290" was turned over to Captain Semmes and a crew composed almost entirely of Englishmen, who, on the broad Atlantic, christened her the

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Grant's capture of Vicksburg at the beginning of July, 1863, and the gradual, but steady ebbing, thereafter, of the tide of Confederate power, undoubtedly influenced the action of the British Government. At the beginning of the following September (1863), in spite of the ample evidence that Mr. Adams furnished to Earl Russell of the ultimate destination and use of the two iron-clad rams that the Lairds were building at Birkenhead for the Confederates, Mr. Adams received from Earl Russell, on September 4th, a note dated the 1st, in which the Earl said that under the circumstances, "Her Majesty's Government are advised that they cannot interfere in any way with these vessels." Mr. Adams, seeing that one of the iron-clads was about to escape to sea much in the same way that the *Alabama* had done, sent the following vigorous communication to the Earl:—

"LEGATION OF THE UNITED STATES,
"LONDON, September 5, 1863.

"MY LORD:—At this moment, when one of the iron-clad vessels is on the point of departure from this kingdom, on its hostile errand against the United States, I am honored with the reply of your lordship to my notes of the 11th, 16th, and 25th of July, and of the 14th of August. I trust I need not express how profound is my regret at the conclusion to which her Majesty's Government have arrived. I can regard it no otherwise than as practically opening to the insurgents free liberty in this kingdom to execute a policy described in one of their late publications in the following language:

"'In the present state of the harbor defences of New York, Boston, Portland, and smaller northern cities, such a vessel as

Alabama. Then for nearly two years, under the skilful command of her brave and able captain, the *Alabama*, until her destruction by the *Kearsarge* off Cherbourg, June 19th, 1864, became the terror of

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the *Warrior* would have little difficulty in entering any of these ports and inflicting a vital blow upon the enemy. The destruction of Boston alone would be worth a hundred victories in the field. It would bring such a terror to the "blue-noses" as to cause them to wish eagerly for peace, despite their overweening love of gain, which has been so freely administered to since the opening of this war. Vessels of the *Warrior* class would promptly raise the blockade of our ports, and would even, in this respect, confer advantages which would soon repay the cost of their construction.'

"*It would be superfluous in me to point out to your lordship that this is war.* No matter what may be the theory adopted of neutrality in a struggle, when this process is carried on in the manner indicated, from a territory and with the aid of the subjects of a third party, that third party to all intents and purposes ceases to be neutral. Neither is it necessary to show that any government which suffers it to be done fails in enforcing the essential conditions of international amity towards the country against whom the hostility is directed. In my belief it is impossible that any nation, retaining a proper degree of self-respect, could tamely submit to a continuance of relations so utterly deficient in reciprocity. I have no idea that Great Britain would do so for a moment.

* * * * * * *

"I pray your lordship to accept the assurances of the highest consideration with which I have the honor to be, my lord, your most obedient servant,

"CHARLES FRANCIS ADAMS.

"Right Honorable Earl Russell, &c., &c., &c."

Mr. Adams's protest bore good fruit; for a few days later he received from Earl Russell the following note:—

American seamen. She hoisted the British flag to lure prizes to their destruction, was welcomed at Cape Town, Singapore, and other British harbors,[7] and practically drove the American flag from the

"FOREIGN OFFICE, September 8, 1863.

"Lord Russell presents his compliments to Mr. Adams, and has the honor to inform him that instructions have been issued which will prevent the departure of the two iron-clad vessels from Liverpool."

The English Government *did not allow* the vessels to sail to enter the Confederate service, and subsequently bought them itself.

Papers relating to Foreign Affairs, accompanying the Annual Message of the President to the First session of the Thirty-eighth Congress. Part I. Washington: Government Printing Office, 1864, pages 357–360, 361–364, 367, 368. *Charles Francis Adams*, by his son, Charles Francis Adams. Boston and New York, 1900, pages 334–336, 341–344.

[7] The following letter from Dr. Edmund W. Holmes, of the University of Pennsylvania—who was during a part of the Civil War at Cape Town, South Africa, where his father, Captain Gideon S. Holmes, was formerly the United States Consul—shows how hostile British feeling was towards the Union cause :—

"PHILADELPHIA, April 9th, 1900.

"MY DEAR SIR :—I send you herewith the remarks about the visit of the *Alabama* to Cape Town, as requested by you.

"Upon the signal hill is the station from which approaching vessels are signalled and reported down into the city by semaphore. From here, on that memorable day in '63, was announced the approach of the luckless American bark *The Sea Bride;* quickly followed by that of a steamer, under the British flag, supposed to be the bi-monthly mail steamer of those days. Soon the British flag changed to the Confederate colors and she proved to be the cruiser *Alabama.* I arrived on horse-back, at Sea

high seas to the shelter of the Union Jack. What the United States lost, England gained. The feeling in the United States towards England grew bitter.[8] The *Alabama* was openly called a British pirate,[9] and

Point in time to see her fire a shot and bring to *The Sea Bride*, and put a prize crew aboard. Every American swore the bark was within the three mile limit; every Englishman swore she was without these limits; she was declared to be a lawful prize by the British authorities.

"I went aboard of the *Alabama*, saw the mark of the unexploded shell of the *Hatteras*, which one of the junior officers with great gusto declared if exploded would have ended the steamer's career.

"I saw Captain Semmes in his cabin, with flowers piled higher than his head surrounded by the *elite* of English aristocratic society; and when anyone talks now of British friendship I cannot help thinking of this vessel, built in England, built with English capital, armed with English guns, manned with English men to prey upon the commerce of a friendly nation.

"The day after the arrival of the *Alabama* in Table Bay the merchants were gathered upon 'change, and in a bantering spirit, taunted my father, Gideon S. Holmes, publicly upon the sucessful career of the Confederate cruiser in evading the United States men of war, when he replied: 'Well! you dance now, but you will pay the piper,' and the Geneva award was the fulfillment of that prophesy. "Yours truly,

"E. W. HOLMES.

"Mr. T. W. Balch."

[8] *Proceedings of the Chamber of Commerce of the State of New York on the continued piracies of vessels fitted out in Great Britain upon American commerce.* Saturday, February 21st, 1863. New York, 1863.

[9] *English Neutrality. Is the Alabama a British Pirate?* (By G. P. Lowrey.) New York, 1863.

her successful destruction of American commerce roused public opinion to fever heat.

American sentiment was well expressed in Lowell's *Jonathan to John*:—

"We own the ocean, tu, John:
You mus' n' take it hard,
Ef we can't think with you, John.
It's jest your own back-yard.
Ole Uncle S. sez he, 'I guess,
Ef *thet's* his claim,' sez he,
'The fencin'-stuff'll cost enough
To bust up friend J. B.,
Ez wal ez you an' me!'

"Why talk so dreffle big, John,
Of honor when it meant
You did n't care a fig, John,
But jest for *ten per cent.?*
Ole Uncle S. sez he, 'I guess
He's like the rest,' sez he:
'When all is done, it's number one
Thet's nearest to J. B.,
Ez wal ez t' you an' me!'"

Of the numerous other commerce destroyers flying the Confederate flag for whose existence the United States held Great Britain answerable, two, the *Georgia* and the *Shenandoah*, gained a good deal of notoriety. The former sailed before notice of her destination was addressed to the British Government, but ample warning was given of the intended shipping of her armament to her off the French coast for the British

Government to have stopped the shipment. After destroying many American ships, the *Georgia* returned to Liverpool.[10] Thomas Baring, in a speech in Parliament on May 13th, 1864, thus described her career:[11] "At the time of her departure the *Georgia* was registered as the property of a Liverpool merchant, a partner of the firm which shipped the crew. She remained the property of this person until the 23d of June, when the register was cancelled, he notifying the Collector of her sale to foreign owners. During this period, namely, from the 1st of April to the 23d of June, the *Georgia* being still registered in the name of a Liverpool merchant, and thus his property, was carrying on war against the United States, with whom we were in alliance. It was while still a British vessel that she captured and burned the *Dictator*, and captured and released, under bond, the *Griswold*, the same vessel which had brought corn to the Lancashire sufferers. The crew of the *Georgia* were paid through

[10] *Papers relating to the Treaty of Washington.* Volume I. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 156. *The National and Private "Alabama Claims" and their "final and amicable settlement,"* by Charles C. Beaman, Jr. Printed by W. H. Moore, Washington, D. C., 1871, pages 101–106.

[11] *Papers relating to the Treaty of Washington.* Volume I. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 160.

the same Liverpool firm. A copy of an advance note used is to be found in the *Diplomatic Correspondence*. The same firm continued to act in this capacity throughout the cruise of the *Georgia*. After cruising in the Atlantic, and burning and bonding a number of vessels, the *Georgia* made for Cherbourg, where she arrived on the 28th of October. There was, at the time, much discontent among the crew; many deserted, leave of absence was given to others, and their wages were paid all along by the same Liverpool firm. In order to get the *Georgia* to sea again, the Liverpool firm enlisted in Liverpool some twenty seamen, and sent them to Brest. The *Georgia* left Cherbourg on a second cruise, but having no success she returned to that port, and thence to Liverpool, where her crew have been paid off without any concealment, and the vessel is now laid up. Here, then, is the case of a vessel, clandestinely built, fraudulently leaving the port of her construction, taking Englishmen on board as her crew, and waging war against the United States, an ally of ours, without once having entered a port of the power the commission of which she bears, but being, for some time, the property of an English subject. She has now returned to Liverpool—and has returned, I am told, with a British crew on board, who, having enlisted in war against an ally of ours, have committed a misdemeanor in the sight of the law."

The *Shenandoah*[12] was originally the *Sea King*. On September 20th, 1864, she was sold to the father-in-law of the managing partner of Fraser, Trenholm and Company, and the transfer was registered the same day. In October she cleared from London for Bombay. About the same time a smaller steamer, carrying her armament, sailed from Liverpool. They met at Madeira where the *Sea King*, from that time known as the *Shenandoah*, took on board her equipment. She then cruised in the Atlantic and the Pacific for ninety days, destroying many ships, when she arrived at Melbourne. The news of her escape from England had preceded her to Australia; but, nevertheless, in spite of the protests of the American Consul, she was allowed to make repairs, recruit her crew, and replenish her supply of coal. Then the authorities permitted the *Shenandoah* to sail to still further harass and destroy American commerce.[13] After destroying a number of whaling vessels—some, owing

[12] *Papers relating to the Treaty of Washington.* Volume I. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 165. *The National and Private "Alabama Claims" and their "final and amicable settlement,"* by Charles C. Beaman, Jr. Printed by W. H. Moore, Washington, D. C., 1871, pages 107–149.

[13] *Papers relating to the Treaty of Washington.* Volume I. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 165 *et seq.* Letter of Mr. Adams to Earl Russell,

to her captain's ignorance of the cessation of hostilities, after the close of the war—she finally made her way back to Liverpool, where her commander gave her up to the British Government, by whom she was transferred to the United States Consul.

The havoc and terror wrought by these vessels ruined the mercantile commerce of the United States.[14] After Charles Francis Adams, who represented the United States at the Court of St. James with ability and dignity, had done everything possible to prevent the escape of the *Oreto* and the *Alabama*, he summarized with great vigor in a letter to Earl Russell written on October 23d, 1863, the case for the United States at that time against Great Britain. That letter was as follows:—

"LEGATION OF THE UNITED STATES.

(Received October 23.)

"LONDON, October 23, 1863.

"MY LORD:—It may be within your recollection that in the note of the 17th of September which I had the

April 7th, 1865; *Papers relating to Foreign Affairs, accompanying the Annual Message of the President to the First Session Thirty-ninth Congress.* Part I. Washington: Government Printing Office, 1866, page 578.

[14] Speech of Richard Cobden delivered in the House of Commons, May 13th, 1864.

honor to address to you in reply to yours of the 14th of the same month, respecting the claim for the destruction of the ship *Nora*, and other claims of the same kind, which I had been instructed to make, I expressed myself desirous to defer to your wishes that they should not be further pressed on the attention of Her Majesty's Government, so far as to be willing to refer the question of the withdrawal of my existing instructions back for the consideration of my Government. I have now the honor to inform your lordship of the result of that application.

"After a careful resurvey of all the facts connected with the outfit and later proceedings of the gun-boat 'No. 290,' now known as the war-steamer *Alabama*, I regret to report to you that the Government of the United States finds itself wholly unable to abandon the position heretofore taken on that subject.

"The reasons for this conclusion have been so often explained in the correspondence which I have heretofore had the honor to hold with your lordship touching this case that I shall endeavor to confine myself to a brief recapitulation.

"The United States understand that they are at peace with Great Britain. That peace is furthermore secured by treaties which oblige both parties to refrain and to restrain their subjects from making war against each other.

"They greatly regret to be compelled to admit the fact that the vessel known first as the gun-boat, 'No. 290,' and now as the *Alabama*, is roving over the seas capturing, burning, sinking, and destroying American vessels without lawful authority from any source recognized by international law, and in open defiance of all judicial tribunals established by the common consent of civilized nations as a restraint upon such a piratical mode of warfare.

"That this vessel was built with the intent to make war against the United States by British subjects, in a British port, and that she was prepared there to be armed and equipped with a specified armament adapted to her construction for the very purpose she is now pursuing does not appear to them to admit of dispute.

"That this armament and equipment, adapted to this ship and no other, were simultaneously prepared by British subjects in a British port, with the intent to complete her preparation for her career, seems equally clear. Furthermore, it is sufficiently established that when this vessel was ready, and her armament and equipment were equally ready, she was clandestinely sent, by the connivance of her British holders, and the armament and equipment were at the same time clandestinely sent, through the connivance of the same or other British subjects who prepared them to a common point outside of British waters, and there the

armament and equipment of this vessel as a war-ship were completed.

"This war-ship, thus deriving all its powers to do mischief from British sources, manned by a crew of British subjects enlisted in and proceeding from a British port, then went forth on her work to burn and destroy the property of the people of the United States, in fraud of the laws of Great Britain and in violation of the peace and sovereignty of the United States. From the earliest to the latest day of her career she does not appear to have gained any other national character on the ocean than that which belonged to her in her origin.

"From a review of all these circumstances, essential to a right judgment of the question, the Government of the United States understand that the purpose of the building, armament, equipment and expedition of this vessel, carried with it one single criminal intent, running equally through all the portions of this preparation, fully complete and executed when the gun-boat 'No. 290' assumed the name of the *Alabama;* and that this intent brought the whole transaction in all its several parts here recited, within the lawful jurisdiction of Great Britain, where the main portions of the crime were planned and executed.

"Furthermore, the United States are compelled to assume that they gave due and sufficient previous

notice to Her Majesty's Government that this criminal enterprise was begun and in regular process of execution, through the agencies herein described, in one of Her Majesty's ports. They cannot resist the conclusion that the Government was then bound by treaty obligations and by the law of nations to prevent the execution of it. Had it acted with the promptness and energy required by the emergency, they cannot but feel assured the whole scheme must have been frustrated. The United States are ready to admit that it did act so far as to acknowledge the propriety of detaining this vessel for the reasons assigned, but they are constrained to object that valuable time was lost in delays, and that the effort, when attempted, was too soon abandoned. They cannot consider the justice of their claim for reparation liable to be affected by any circumstances connected with those mere forms of proceeding on the part of Great Britain which are exclusively within her own control.

"Upon these principles of law and these assumptions of fact resting upon the evidence in the case, I am instructed to say that my Government must continue to insist that Great Britain has made itself responsible for the damages which the peaceful law-abiding citizens of the United States sustain by the depredations of the vessel called the *Alabama*.

"In repeating this conclusion, however, it is not to

be understood that the United States incline to act dogmatically, or in a spirit of litigation. They desire to maintain amity as well as peace. They fully comprehend how unavoidably reciprocal grievances must spring up from the divergence in the policy of the two countries in regard to the present insurrection. They cannot but appreciate the difficulties under which Her Majesty's Government is laboring from the pressure of interests and combinations of British subjects apparently bent upon compromising by their unlawful acts the neutrality which Her Majesty has proclaimed and desires to preserve, even to the extent of involving the two nations in the horrors of a maritime war. For these reasons I am instructed to say, that they frankly confess themselves unwilling to regard the present hour as the most favorable to a calm and candid examination by either party of the facts or the principles involved in cases like the one now in question. Though indulging a firm conviction of the correctness of their position in regard to this and other claims, they declare themselves disposed, at all times, hereafter as well as now, to consider in the fullest manner all the evidence and the arguments which Her Majesty's government may incline to proffer in refutation of it; and in case of an impossibility to arrive at any common conclusion, I am directed to say there is no fair and equitable form of conventional arbitra-

ment or reference to which they will not be willing to submit.[15]

"Entertaining these views, I crave permission to apprise your Lordship that I have received directions to continue to present to your notice claims of the character heretofore advanced, whenever they arise, and to furnish the evidence on which they rest, as is customary in such cases, in order to guard against possible ultimate failure of justice from the absence of it.

"In accordance with these instructions I now do myself the honor to transmit the papers accompanying the cases heretofore withheld, pending the reception of later information.

"I pray, &c.,

"CHARLES FRANCIS ADAMS."[16]

Earl Russell wrote to Mr. Adams three days later:—

"FOREIGN OFFICE, October 26, 1863.

"SIR:—I have had the honor to receive your letter of the 23d instant.

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[15] See Seward's letter of September 27th, 1865, to Adams, *post*, page 66.

[16] *The case of Great Britain as laid before the Tribunal of Arbitration, convened at Geneva under the provisions of the treaty between the United States of America and Her Majesty the Queen of Great Britain, concluded at Washington, May 8th, 1871.* Printed by order of Congress, U. S. A. Washington: Government Printing Office, 1872. Volume III., page 490.

"In that letter you inform me that you are instructed to say that the Government of the United States must continue to insist that Great Britain has made itself responsible for the damages which the citizens of the United States sustain by the depredations of the vessel called the *Alabama*.

"But toward the conclusion of your letter you state that the Government of the United States are not disposed to act dogmatically or in a spirit of litigation; that they desire to maintain amity as well as peace; that they fully comprehend how unavoidably reciprocal grievances must spring up from the divergence of the policy of the two countries in regard to the present insurrection. You add, further on, that the United States frankly confess themselves unwilling to regard the present hour as the most favorable to a calm and candid examination by either party of the facts or the principles involved in cases like the one now in question.

"With this declaration Her Majesty's Government may well be content to await the time when a calm and candid examination of the facts and principles involved in the case of the *Alabama* may, in the opinion of the Government of the United States, usefully be undertaken.

"In the meantime, I must request you to believe that the principle contended for by Her Majesty's Government is not that of commissioning, equipping,

and manning vessels in our ports to cruise against either of the belligerent parties—a principle which was so justly and unequivocally condemned by the President of the United States in 1793, as recorded by Mr. Jefferson in his letter to Mr. Hammond of the 13th of May of that year.

"But the British Government must decline to be responsible for the acts of parties who fit out a seeming merchant ship, send her to a port or to waters far from the jurisdiction of British Courts, and there commission, equip, and man her as a vessel of war.

"Her Majesty's Government fear that if an admitted principle were thus made elastic to suit a particular case, the trade of shipbuilding, in which our people excel, and which is to great numbers of them a source of honest livelihood, would be seriously embarrassed and impeded. I may add that it appears strange that notwithstanding the large and powerful naval force possessed by the Government of the United States, no efficient measures have been taken by that Government to capture the *Alabama*.

"On our part I must declare that to perform the duties of neutrality fairly and impartially, and at the same time to maintain the spirit of British law and protect the lawful industry of the Queen's subjects, is the object of Her Majesty's Government, and they trust that the Government of the United States will

recognize their earnest desire to preserve, in the difficult circumstances of the present time, the relations of amity between the two nations.

"I am, &c., "RUSSELL."[17]

The unfriendly course pursued by the English Government toward the Union States in permitting the building of Confederate cruisers in English ports, was forcibly brought to the attention of the people of the North by the totally different policy followed by the Russian Government. The Government of the Tzar not only did not recognize the belligerency of the Confederate States,[18] but in addition, when there were various credited rumors that the English and the French Governments contemplated an intervention in behalf of the Confederacy,[19] it sent a fleet under Admi-

[17] *The case of Great Britain as laid before the Tribunal of Arbitration, convened at Geneva under the provisions of the treaty between the United States of America and Her Majesty the Queen of Great Britain, concluded at Washington, May 8th, 1871.* Printed by order of Congress, U. S. A. Washington: Government Printing Office, 1872. Volume III., page 505.

[18] *The case of Great Britain as laid before the Tribunal of Arbitration, convened at Geneva.* Washington: Government Printing Office, 1872. Volume III., page 46.

[19] *Papers relating to Foreign Affairs, accompanying the Annual Message of the President to the First Session of the Thirty-eighth Congress.* Part I. Washington: Government Printing Office, 1864, pages 1, 3.

The following extracts from the correspondence between Lord

ral Popoff to San Francisco[20] and subsequently another

Palmerston and Lord John Russell in 1861 and 1862 will help to explain the policy of the English Government during the ups and downs of the Union cause.

Referring to the strong opinion in May, 1861, of the French Minister to Washington, Monsieur Mercier, in favor of raising the blockade, Lord John Russell wrote on October 17th of that year to Lord Palmerston:—

"There is much good sense in Mercier's observations. But we must wait. I am persuaded that, if we do anything, it must be on a grand scale. It will not do for England and France to break a blockade for the sake of getting cotton. But, in Europe, powers have often said to belligerents, Make up your quarrels. We propose to give terms of pacification which we think fair and equitable. If you accept them, well and good. But, if your adversary accepts them and if you refuse them, our mediation is at an end, and you must expect to see us your enemies. France would be quite ready to hold this language with us.

"If such a policy were to be adopted the time for it would be the end of the year, or immediately before the meeting of Parliament."

The next year Palmerston wrote to Russell:—

"94 PICCADILLY: September 14, 1862.

"MY DEAR RUSSELL,—The detailed accounts given in the *Observer* to-day of the battles of August 29 and 30 between the Confederates and the Federals show that the latter got a very complete smashing; and it seems not altogether unlikely that still greater disasters await them, and that even Washington or Baltimore may fall into the hands of the Confederates.

"If this should happen, would it not be time for us to consider

[20] *Narrative of the Mission to Russia, in 1866, of the Hon. Gustavus Vasa Fox.* New York: D. Appleton and Company, 1873, pages 20, 101, 107, 111.

under Admiral Lessovsky to New York.[21] Indeed, it was

whether in such a state of things England and France might not address the contending parties and recommend an arrangement upon the basis of separation? * * *

"Yours sincerely,

"PALMERSTON."

Earl Russell replied:—

"GOTHA, September 17, 1862.

"MY DEAR PALMERSTON,—Whether the Federal army is destroyed or not, it is clear that it is driven back to Washington, and has made no progress in subduing the insurgent States. Such being the case, I agree with you that the time is come for offering mediation to the United States Government, with a view to the recognition of the independence of the Confederates. I agree further, that, in case of failure, we ought ourselves to recognize the Southern States as an independent State. For the purpose of taking so important a step, I think we must have a meeting of the Cabinet. The 23d or 30th would suit me for the meeting.

"We ought then, if we agree on such a step, to propose it first to France, and then, on the part of England and France, to Russia and other powers, as a measure decided upon by us.

"We ought to make ourselves safe in Canada, not by sending more troops there, but by concentrating those we have in a few defensible posts before the winter sets in.

* * * * * * *

"J. RUSSELL."

Then Palmerston wrote:—

"BROADLANDS: September 23, 1862.

"MY DEAR RUSSELL,—Your plan of proceeding about the mediation between the Federals and Confederates seems to be excellent. Of course, the offer would be made to both the contend-

[21] *Narrative of the Mission to Russia, in 1866, of the Hon. Gustavus Vasa Fox.* New York: D. Appleton and Company, 1873, pages 21, 88, 101, 106, 107, 110, 357.

even hinted that Admiral Lessovsky had secret orders

ing parties at the same time; for, though the offer would be as sure to be accepted by the Southerns as was the proposal of the Prince of Wales by the Danish Princess, yet, in the one case as in the other, there are certain forms which it is decent and proper to go through.

"A question would occur whether, if the two parties were to accept the mediation, the fact of our mediating would not of itself be tantamount to an acknowledgment of the Confederates as an independent State.

"Might it not be well to ask Russia to join England and France in the offer of mediation? * * *

"We should be better without her in the mediation, because she would be too favorable to the North; but on the other hand her participation in the offer might render the North the more willing to accept it.

"The after communication to the other European powers would be quite right, although they would be too many for mediation.

"As to the time of making the offer, if France and Russia agree—and France, we know, is quite ready, and only waiting for our concurrence—events may be taking place which might render it desirable that the offer should be made before the middle of October.

"It is evident that a great conflict is taking place to the northwest of Washington [Antietam], and its issue must have a great effect on the state of affairs. If the Federals sustain a great defeat, they may be at once ready for mediation, and the iron should be struck while it is hot. If, on the other hand, they should have the best of it, we may wait awhile and see what may follow. * * *

"Yours sincerely,

"PALMERSTON."

As, however, the Confederates were unable to follow up their successes, and the Unionists had the larger population and

that, in case of an attack upon the United States by a foreign power, he should place his squadron at the disposal of President Lincoln;[22] and, as at that time—

resources, it became more likely that the latter would ultimately win. The British Cabinet, when it assembled towards the end of October, 1862, decided to do nothing, and, a month later, it refused to join France in the offer to mediate that Napoleon the Third made.

The Life of Lord John Russell, by Spencer Walpole. London, 1889. Second Edition. Volume II., pages 344, 349–352.

See also *Charles Francis Adams*, by his son, Charles Francis Adams. Boston and New York, 1900, pages 280–290. "*Blackwood's*" *History of the United States*, by Frederick S. Dickson. Philadelphia: George H. Buchanan & Co., 1896. *Blackwood's Edinburgh Magazine*. Volume 91 (January-June, 1862), pages 118, 129; volume 92 (July-December, 1862), page 646.

[22] The following letter from George Peirce, Esq., of the Philadelphia Bar, throws light upon the attitude of Russia towards the United States during the Civil War. Judge William S. Peirce sat in the Court of Common Pleas of Philadelphia from 1866 to his death in 1887. Andrew G. Curtin—"the War Governor" of Pennsylvania—was Governor of the Commonwealth from 1861 to 1867. In 1869 General Grant appointed him Minister to Russia.

"PHILADELPHIA,

"15 March, 1900.

"MY DEAR MR. BALCH,—Many years ago my Father, the late Judge Peirce, told me that there had come into a conversation between him and Governor Andrew G. Curtin a question of the attitude of Russia toward the United States during the Civil War, and that Governor Curtin had given him certain details of very great interest bearing on that question. Those details my Father repeated to me, and it gives me great pleasure to set down for

as Mr. Laird,[23] formerly of Laird Brothers, the builders of the *Alabama*, had more than once shown—the

you here the story as told me by him. In order to understand clearly a certain point referred to in it I should premise that, after the war and during the presidency of General Grant, the Grand Duke Alexis, a son of Czar Alexander II., came to this country and when in Washington called on the President and was afterwards, I think, entertained at a dinner at the White House. But the President, unfortunately, overlooked making a formal call on the Grand Duke, and at no time called on him either formally or informally during his stay in Washington. His reception, however, by the people at all points visited by him was enthusiastic.

"Governor Curtin, who was the United States Minister to Russia, said that when he was leaving Russia to return to this country, he called to take leave of the Czar and, after a conversation of a most friendly and cordial character, the Czar, in bringing the interview to a close, requested the Minister to convey to the people of the United States an expression of his kind feeling and good will toward them. Governor Curtin thought it strange that no message was sent the President, but said nothing on the point, and then went to make his adieux to the Czarina. She too was most friendly and on saying farewell, added, 'Mr. Minister, you bear with you my salutations and those of Russia to the people of your country.' Governor Curtin said, 'And is there no message to the President?' 'No;' replied the Czarina, 'there is not—my message is to the people. If you would know the reason ask Gortschakoff.' And so the Governor went to see Prince Gortschakoff—he would have gone in any event to say good-bye—and asked him what it all meant and why there was no word to the President. Whereupon M. Gortschakoff sent for

[23] *Mr. John Laird, M. P., upon national defences.* The London *Times* of October 26th, 1863; *Papers relating to Foreign Affairs, accompanying the Annual Message of the President to the Second Session, Thirty-eighth Congress.* Part III. Washington: Government Printing Office, 1865, pages 259, 260.

English navy was inferior for defensive purposes to that of the United States, the presence of Admiral

certain portefolios and, opening them, showed him: first, an autograph letter from the Emperor Napoleon III. to the Czar, asking him to join France and England in an intervention between the United States and the States in revolt and in a recognition of the Confederacy: second, a copy of the Czar's answer declining the Emperor's request and informing him that, if France and England attempted to intervene, Russia would give active aid to the United States: third, a copy of the instructions to the Russian Admiral in American waters directing him to assemble his fleet in the harbor of New York and, on any adverse demonstration made by France and England, to communicate at once to the President of the United States, that the Russian fleet then at New York was at the command of the Federal Government and further, that, if money was needed it would be furnished, that if more ships were wanted they would be sent, and that if men were needed they would be forthcoming. 'This', said M. Gortschakoff, 'is what Russia did for you at a time of need. Your people remember it and were kind when Alexis was among them—your President seems to have forgotten it. And so the message of my Masters was to your people alone.'

"Sometime after my Father told me this, I met Governor Curtin at an entertainment and, in conversation with him, I mentioned the interest I took in the story repeated to me by my Father, and Governor Curtin confirmed the details as here set down by me.

"You may observe that, as I recall the story, the first paper shown Governor Curtin by M. Gortschakoff simply asked Russia to join France and England. I do not recall any assertion that the Emperor Napoleon stated that England was ready to join France or had already joined her in the purpose. But certain correspondence at that time between Lord Palmerston and Lord John Russell, which has very recently come to light, goes far to show that the Emperor Napoleon had a very substantial

Lessovsky and his ships in American waters was an important factor in the game of international politics.

basis for a thought (I will not venture to say a promise) that he could command the co-operation of England.

"I saw the Russian fleet in New York Harbor and remember the demonstrations of welcome given its officers and men by our people.

"Sincerely yours,

"GEORGE PEIRCE.

"T. W. Balch, Esq'e."

Under the title, "What we Owe to Russia," an article—written evidently, by some one who heard the above story, not directly from Governor Curtin himself, but only at second or even third hand—appeared in the *New York Evening Express* of September 1st, 1874, on the front page:—"When Gov. Curtin on the eve of his return to this country, went, in his capacity as Minister to Russia, to take formal leave of the Emperor, the latter closed the conversation substantially in these words: 'I wish, sir, that you would, on your return, express my hearty thanks to the American people for the reception they have given my son, the Grand Duke Alexis.' This, it will be remembered, was shortly after General Grant had refused to return Alexis' call, and the latter had left Washington in disgust. Gov. Curtin noticed the Emperor's failure to send thanks to the Government as well as to the people. He supposed, however, that it was a slip of the tongue until the Empress bade him farewell in almost precisely the same words.

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"He was invited by Gortschakoff to a conference on the subject. Three books were brought in from the archives of the Foreign Office. The first contained an autograph letter from Napoleon III., asking Russia to join with England and France in breaking up the Federal blockade and guaranteeing the independ-

The fleet of Admiral Lessovsky, which consisted of the *Alexander Nevski*, the *Osliaba*, the *Peresvet*, the *Variag*, and the *Vitiaz*, arrived in the harbor of New York in the autumn of 1863.[24] The citizens and the

ence of the Confederacy. The letter asserted that England had promised her co-operation, which was probably a lie. [Compare the Palmerston-Russell correspondence on the question of intervention, *ante* page 25, note 19.] The second contained the Emperor's reply. He flatly declined the alliance proposed by Napoleon, and declared that, in the event of any European interference in the War, Russia would actively aid the North. The third book had within it copies of the sealed orders given to the Russian Admiral, who, as our readers will remember, brought his fleet into New York Harbor during the war. The orders directed him to proceed at once with his whole available force, to New York city; to remain at anchorage there for some time; and, in the event of European interference with the blockade, to put himself and his whole force at the command of the Cabinet at Washington, and promise abundant and speedy reinforcements."

[24] *Harper's Weekly*, for October 17th, 1863. Other Russian war ships appear to have joined, subsequently, Lessovsky's fleet in American waters. *La Politique Française en Amérique, 1861–1864*, by Henry Moreau, Paris, 1864, page 71, foot-note.

On October 6th, 1863, Sumner wrote to John Bright: "At this moment I am more solicitous about France and England than about our military affairs. In the latter there is a temporary check, and you know I said long ago that I was prepared for further disaster; but this can only delay, not change the result. Foreign intervention will introduce a new, vast, and incalculable element; it would probably provoke a universal war. You will observe the hobnobbing at New York with the Russian admiral. Why is that fleet gathered there?" *Charles Sumner*, by Moorfield Story. Boston and New York, 1900, page 247.

authorities of the city gave the Russians a grand welcome. They showed the Russian officers over the fortifications of the port, gave them a public reception and held a military review in their honor;[25] and the

[25] "Yesterday, our city gave proofs of the profound appreciation by the American people of the friendly attitude which the Russian Government has occupied toward our own, and especially since the beginning of the Southern Rebellion. It was the occasion of extending to Admiral Lessofsky (*sic*), and the officers of the Russian vessels of war now temporarily anchored in our harbor, the hospitalities of the city, in accordance with the resolutions adopted by the Common Council and approved by the Mayor. No unusual effort had been given to give publicity to the proposed ceremonies, and mere idle curiosity to see the military and civic display was not sufficient to have drawn forth the immense concourse of people which, with enthusiastic plaudits and shouts of welcome, greeted our transatlantic visitors. The occasion was a grand ovation, and in its proportions as well as the enthusiasm that characterized it, was as gratifying to our distinguished guests as it was unexpected." The *New York Tribune*, October 2d, 1863, page 3.

During the mission to Russia of the Hon. G. V. Fox, then Assistant Secretary of the Navy, Captain Murray, in responding at a banquet at the Merchant's Club of Saint Petersburg to the toast, proposed by the Russians, "The health of our masters, the Officers of the American Navy," said in part:—

"In bringing across the ocean, the sympathies of a great people, the vessels-of-war which I have the honor to represent have come freighted with a cargo more precious than the wealth of the Orient or the mines of California; but we were not the first to bear across the ocean wares as treasured. I shall never forget the thrill of joy that pervaded America when the Russian fleet, under Admiral Lessovsky, anchored in the harbor of New York and spread the glad tidings that one great nation sided with

significance of these festivities were the more marked in that an English fleet, to whom only the usual courtesies were extended, was also in the harbor at the time. Afterwards Admiral Lessovsky took his squadron into Chesapeake Bay and up the Potomac River; and President Lincoln and Secretary Seward gave the Russians a most cordial welcome at Washington.[26] In view of the sympathetic attitude taken by the Russian Government towards the United States from the beginning of the Civil War on the one hand,[27] and the

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us in our troubles. It is always a pleasure to renew the remembrance of such national sympathy, and I am rejoiced that the duty of toasting the Russian Navy has devolved on me. It is always agreeable to drink to our friends, our sympathizers, our allies."

Narrative of the Mission to Russia, in 1866, of the Hon. Gustavus Vasa Fox. New York: D. Appleton and Company, 1873, page 162.

[26] *Papers relating to Foreign Affairs accompanying the Annual Message of the President to the Second Session of the Thirty-eighth Congress.* Part III. Washington: Government Printing Office, 1865, page 279.

[27] *Papers relating to Foreign Affairs accompanying the Annual Message of the President to the First Session of the Thirty-eighth Congress.* Part II. Washington: Government Printing Office, 1864, pages 763, 765, 767, 769, 779. *Abraham Lincoln*, by John G. Nicolay and John Hay. New York, 1890. Volume VI., pages 63–66. *Charles Sumner*, by Moorfield Story. Boston and New York, 1900, page 339.

Mexican expedition carried on by Louis Napoleon [28]

[28] *Quelques Pages d'Histoire Contemporaine. Lettres Politiques* by Prévost-Paradol. Paris, *Michel Lévy Frères. Deuxième Série*, 1864, page 201 *et seq. Troisième Série*, 1866, page 166. *Commentaire sur les Élêments du Droit International et sur l'Histoire des progrès du Droit des Gens de Henry Wheaton. Précédé d'une notice sur la carrière diplomatique de M. Wheaton* by William Beach Lawrence. F. A. Brockhaus, Leipzig, 1869, Volume II., pages 339–387, *passim*.

The following letters from Richard Cobden to Charles Sumner throw a flood of light on the Anglo-American relations during the Civil War; but some of the letters that passed between Lord Palmerston and Lord John Russell (see *ante* page 25, note 19) show that the English Cabinet was not nearly so friendly to the Union as Cobden supposed.

"ATHENÆUM CLUB, LONDON,

"*Private.* "2 April, 1863.

"MY DEAR SUMNER.

"On receipt of your letter I communicated privately with Lord Russell, urging him to be more than passive in enforcing the law respecting the building of ships for the Confederate government. I especially referred to the circumstance that it was suspected that some ships pretended to be for the Chinese government were really designed for that of Richmond, and I urged him to furnish Mr. Adams with the names of all the ships building for China and full particulars where they were being built. This Lord Russell tells me he had already done, and he seems to promise fairly. Our government are perfectly well informed of all that is being done for the Chinese.

"Now there are certain things which can be done and others which cannot be done by our government. We are bound to do our best to prevent any ship of war being built for the Confederate government, for a ship of war can only be used or owned legitimately by a government. But with munitions of war the

and the building of the *Alabama* and other Confeder-

case is different. They are bought and sold by private merchants for the whole world, and it is not in the power of governments to prevent it. Besides your own government have laid down repeatedly the doctrine that it is no part of the duty of governments to interfere with such transactions for which they are not in any way responsible. I was therefore very sorry that Mr. Adams had persisted in raising an objection to these transactions in which by the way the North has been quite as much involved as the South. If you have read the debate in the House on the occasion when Mr. Forster brought up the subject last week, you will see how Sir Roundell Palmer, the Solicitor General, and Mr. Laird the shipbuilder availed themselves of this opening to divert attention from the real question at issue—the building of war-ships to the question of selling munitions of war—in which latter practice it was shown you in the North were the great participators.

"You must really keep the public mind right in America on this subject. Do not let it be supposed that you have any grievance against us for selling munitions of war. Confine the question to the building of ships in which I hope we shall bring up a strong feeling on the right side here.

"I remain truly yours,

"R. COBDEN."

"MIDHURST, 22 May, 1863.

"*Private.*

"MY DEAR SUMNER.

"I called on Lord Russell and read every word of your last long indictments against him and Lord Palmerston, to him. He was a little impatient under the treatment, but I got through every word. I did my best to improve on the text in half-an-hours conversation.

Public opinion is recovering its senses. John Bull you know has never before been a neutral when great naval operations have

ate cruisers in England on the other hand, the public

been carried on, and he does not take kindly to the task. But he is becoming gradually reconciled. He also *now* begins to understand that he has acted illegally in applauding those who furnished ships of war to prey on your commerce. *It will not be repeated.* I cannot too often deplore the bungling mismanagement on your side which allowed the two distinct questions of selling munitions of war, and the equipping of privateers to be mixed up together. It has confused the thick wits of our people, and made it difficult for those who were right on this side on the Foreign Enlistment Act to make the public understand the difference between what was and what was not a legal transaction. In fact your Foreign Office played into the hands of our politicians by affording them the means of mystification. If a plain, simple, short and dignified declamation had been at first made against the fitting out of ships of war, with clear statement of the law, and a brief recital of what your government had done under similar circumstances, to us, it would have been impossible for our government to have resisted it. But when you opened fire on us for not stopping the export of arms and munitions of war, you offered an easy victory to our lawyers, and gave them an opportunity of escaping in a cloud of dust from the real question at issue.

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"Yours very truly,

"R. COBDEN."

"MIDHURST, SUSSEX, 7 Aug., 1863.

"MY DEAR SUMNER.

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"Though we have given you such good ground of complaint on account of the Cruisers which have left our ports, yet you must not forget that we have been the only obstacle to what would have been almost a European recognition of the South. Had England

looked on the visit of the Russian fleet as a mark of sympathy and encouragement.

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joined France they would have been followed by probably every other State of Europe, with the exception of Russia. This is what the Confederate agents have been seeking to accomplish. They have pressed recognition on England and France with persistent energy from the first. I confess that their eagerness for European intervention in some shape has always given me a strong suspicion of their conscious weakness. But considering how much more we have suffered than other people from the blockade, this abstinence on our part from all diplomatic interference is certainly something to our credit, and this I attribute entirely to the honorable attitude assumed by our working population.

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"Yours very truly,

"RIC. COBDEN."

The American Historical Review. Volume II. New York, 1897, pages 309, 311, 313.

CHAPTER II.

Towards the close of the Civil War, the temper of the American people against England was thoroughly roused, and a hostile demonstration at Washington would have met with a hearty response throughout the country.[29] The situation was not encouraging for

[29] At the eleventh annual meeting of the National Association for the Promotion of Social Science (September, 1867), Mr. David Ross, of the English Bar, in discussing international arbitration, said:—

"During a somewhat prolonged visit to the United States in the year 1865, I talked freely and frequently with men of all conditions of life in the Northern and Western States, and none of them, so far as I can recollect, had the slightest ill-will to England on account of the *Trent* affair, because they seemed to think that England was right in the extreme course she adopted; but I met comparatively few who could talk with common patience of the *Alabama* depredations, and I doubt if I met one who would have raised his voice for peace if the President of the United States had decided that redress must be had by war." *Transactions of the National Association for the Promotion of Social Science.* Edited by G. W. Hastings, LL. D., General Secretary of the Association. London: Longmans, Green, Reader & Dyer, 1868, page 174.

Sumner wrote to Cobden, on March 16th, 1863: "I am anxious, very anxious, on account of the ships building in England to cruise against our commerce. Cannot something be

a peaceful settlement. The English Government throughout had assumed an attitude such as to preclude, apparently, all hope of an adjustment.

In 1864, Thomas Balch—a member of the Philadelphia Bar then residing at Paris, who was present at Cherbourg during the fight between the *Kearsarge* and the *Alabama* (June 19th, 1864)[30]— proposed, after

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done to stop them? Our people are becoming more and more excited, and there are many who insist upon war. A very important person said to me yesterday: 'We are now at war with England, but the hostilities are all on her side.'" *Charles Sumner*, by Moorfield Storey. Boston and New York, 1900, page 243.

Sumner wrote on August 4th, 1863, to John Bright: "The second cause of anxiety is in our relations with England. Your government recklessly and heartlessly seems bent on war. * * * A leading merchant said to me this morning that he would give fifty thousand dollars for war between England and Russia, that he might turn English doctrines against England. The feeling is very bitter." *Charles Sumner*, by Moorfield Storey. Boston and New York, 1900, page 246.

[30] On Thursday, June 30th, 1864, some of the American colony in Paris gave a dinner, at short notice, to Captain Winslow, at Phillippe's on the Rue Montorgueil, at that time the leading restaurant of Paris. Besides Captain Winslow and a few of his officers, there were present: Mr. Dayton, the American Minister to France, John Bigelow, the American Consul at Paris, Thomas Balch, Mr. Beckwith, John Camac, Mr. Chadwick, G. H. Coster, William L. Dayton, Jr., W. E. Johnston, Mr. Jones, Mr. Langdon, V. F. Loubat, John Monroe, Mr. Pennington, John Reubell, George T. Richards, Joseph Swift, Stewart Thorndike, J. J. Vanderkemp and others.

mature reflection and looking up precedents, to various continental jurists, that the differences between the

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The dinner that was served to, as one of the participants put it, "Our Hero of the *Kearsarge*," was as follows:—

MENU.

Potage à la Bisque et Consommé Quenelles et Laitues.

Relevé.

Turbot deux sauces. Filets Orly sauce tomates.

Jambon d'Yorck aux épinards.

Entrées.

Filet de Boeuf à la jardinière. Poulardes braisées truffées.

Côtelettes d'agneau Maintenon fin.

Salade à la russe. Mayonnaise de homard.

Punch à la Polonaise.

Rôt.

Dindonneau nouveau. Canetons à la rouennaise.

Entremets.

Haricots flageollets maitre d'hotel. Pois à la française.

Croutes à la parisienne et aux ananas.

Macédoine de fruits glacés.

Dessert.

Mr. Dayton's letter accepting the invitation of the committee was as follows:—

"THURSDAY, A. M.,
"6 Rue de Presbourg.

"MY DEAR SIR,—It will give me, as well as my son, much pleasure to join you at dinner at Phillippe's this (Thursday) evening at six o'clock.

"Very truly yours,
"WILLIAM L. DAYTON.

"Thos. Balch, Esq.,
"48 Av: Gabriel."

United States and England arising out of the cruise of the *Alabama* and kindred causes, should be argued before an International Court of Arbitration. In November, 1864, Mr. Balch, during a visit home, urged upon some of his friends, among them General Nathanial P. Banks, the submission of the Anglo-American differences to such a court.[31] General Banks requested Mr. Balch to see President Lincoln, and arranged an interview. The President questioned Mr. Balch, then lately returned from Europe, largely about trans-Atlantic affairs. The President ridiculed the Mexican Empire and said that he considered it "a pasteboard concern on which we won't waste a man nor a dollar. It will soon tumble to pieces and, may be, bring the other down with it." To Mr. Balch's suggestion that the difficulties with England should be argued before a Court of Arbitration, the President said that he thought it might be possible in the future, that it was "a very amiable idea, but not possible just now, as the millen-

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[31] *International Courts of Arbitration*, by Thomas Balch, 1874. Reprinted at Philadelphia, 1899. Henry T. Coates & Co., page 9, note 6.

General Nathanial P. Banks, who was elected Governor of Massachusetts in 1857, 1858 and 1859, served three years in the Civil War; in 1864 he was elected to Congress, and except that he failed of re-election in 1872, continued to serve in the lower House until 1877. For a number of years he was chairman of the Committee on Foreign Relations.

nium is still a long way off." But he added: "There is no possible risk of a quarrel with England, as we have enough on our hands. One quarrel is enough for a nation or a man at a time." As to the proposed Court of Arbitration he said: "Start your idea. It may make its way in time, as it is a good one." On arriving in London, on Christmas Day, 1864, Mr. Balch spoke of it to several friends, but found no one to treat it other than as the conceit of a well-meaning enthusiast, except Richard Cobden.[32]

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[32]At the beginning of January, 1865, Richard Cobden wrote to Mr. Balch:—

"MIDHURST, 3d January, 1865.

"MY DEAR MR. BALCH:—I was very sorry to miss the opportunity of seeing you in London. There are very many topics on which I should have liked to have talked with you. * * * I think it depends entirely on the discretion of your own authorities at Washington to remain at peace with all the world until your civil war is ended. I do not say that you have not grievances; but one quarrel at a time, as Mr. Lincoln says, is enough for a nation or an individual. With the British Government I do not think, on the whole, you have as much to be angry about as to be grateful for what it has refused to do in conjunction with France and other powers. Against *individual* British shipbuilders and capitalists I admit you have very just grounds of grievance and I have said as much publically. The French Government has no doubt given you just ground of complaint by their occupation of Mexico. But I don't think your Congress shows much wisdom in trying to push Mr. Lincoln into hostilities on that subject at present, and I hope he will give the 'House' a hint that they may find full employment in domestic affairs, particularly in their

Finally, Mr. Balch made his plan public in an open letter. More than one editor refused to publish it.

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finances, for the present. The Canadian affair will be peaceably arranged. * * *

"My wife and daughter join me in kind remembrances to Mrs. Balch and all your circle and I remain,

"Very truly yours,

"R. COBDEN."

Here is an extract from another letter of Richard Cobden to Mr. Balch:—

"MIDHURST, 17th Feb., 1865.

* * * * * * *

"There never was a more absurd canard than that invented by the Southern sympathizers—that England and France contemplated an intervention. And there is almost as great absurdity in the programme which the same party has cut out for you when the war ends—viz., that you are to begin a war with France or England or all the world. Now, I have a very different work in store for you. When the war ceases, you will be like two line-of-battle ships after a desperate struggle; all hands will be required to clear the wreck, repair damages in hull and rigging, look after the wounded and bury the dead. There will be great suffering among all classes before you return to a normal state of things. You have been in a saturnalia of greenbacks and Government expenditure, which may be likened to the pleasant excitement of alcohol. But peace will be the headache after the debauch, with the unpleasant tavern reckoning."

Some of the letters that passed between Lord Palmerston and Lord John Russell upon the question of intervention show that they thought of joining Napoleon the Third against the Union. See *ante*, page 25, note 19.

The *New York Tribune*, April 21st, 1865, page 8. *International Courts of Arbitration*, by Thomas Balch. Edition of 1899, page 18, note 14.

But Horace Greeley, who feared no unpopularity where a cause was entitled, as he thought, to a hearing, gave it a place in the columns of the *New York Tribune*, May 13th, 1865.[33] The letter was addressed to the able and conscientious correspondent of that journal at Paris, Mr. W. H. Huntington, and was as follows :—

"ENGLAND AND THE UNITED STATES:

"A letter from Thomas Balch.

"PARIS, March 31st, 1865.

"MY DEAR SIR,—You asked me to put in writing the observations which I made to you yesterday touching the outstanding questions between England and the United States. I should be sorry to make you read all that you so kindly listened to. It would be to tax you rather too severely. But the current of my remarks was to this effect:

"I. That both England and the United States preferred claims which, if not judiciously managed, might and perhaps would lead to war.

[33] This letter will be found in the *New York Tribune* of May 13th, 1865, on the fourth page, in the upper right hand corner. The *Tribune* of that date can be found in the New York Public Library (Astor, Lenox and Tilden Foundations), in a number of other American libraries, and in the British Museum.

"II. That the American claims were chiefly the depredations of the *Alabama*, whilst it seemed from the tenor of Mr. Layard's recent speech, that the British claims were also such as to rest upon questions of law. Neither set of claims was strictly national; they were rather those of individuals, merchants, shipowners, and others.

"III. That as to such claims, war was a barbarous manner of enforcing them; that the most successful war would after all be a most expensive and unsatisfactory process of litigation; and that the civilized and Christian way of ascertaining their validity and extent should be by arbitration.

"IV. That the best manner of composing such a Court of Arbitration would be, that each party should select some competent jurist, those two to select an umpire. The claims to be presented, proved and argued before this Court, whose decisions should be final and without appeal.

"V. That such a proposition, proceeding from our Government, would, without doubt, receive the countenance and support of all intelligent Englishmen. It is true that some of the speeches recently made in Parliament about us and Canada are of a nature to discourage such expectations. On the other hand, it

must be borne in mind that these gentlemen form a class apart; that it is their political faith to believe and say unseemly things of Republican institutions, of the men, habits of life, and principles of action developed under them. But it was long ago that the wisest of men gave us the measure of such people, and the experience of mankind has confirmed his judgment.

"VI. Such a proposition from our Government would at once quiet all the foolish alarms which have, or appear to have, taken possession of so many persons in England. It would also uphold and strengthen all the advocates of progress. It would give greater force to their arguments in favor of just reforms and liberty; and this not only in Great Britain, but throughout Europe. The abandonment of the old system of arbitration by a reference to a Sovereign, more or less unfit from the very nature of his position, and the introduction of a tribunal, almost republican in its character, whose decisions would have a weight as precedents, an authority heretofore unknown as expositions of international law, would be no trifling events in the march of Democratic Freedom.

"VII. Such a proposition would also be in accord with our traditional policy of peace and goodwill towards men.

"The most serious objection that has been urged, so far as I have heard, against such a Court of Arbitration, is the difficulty of finding gentlemen not already biased by their feelings or in some way committed in their opinions.

"This objection applies, however, in a measure, to all human tribunals; it would apply to arbitration by a sovereign, and would leave us no solution other than the dread arbitrament of war. For myself, I cannot believe that there are not to be had in England and America gentlemen of the requisite learning, experience, and impartiality for a position so dignified and useful. At all events, there are many eminent men in Europe in every way qualified for this high duty. I have in my mind's eye a Swiss publicist, who, after having filled the most responsible stations at home, is now worthily representing his people in their most important diplomatic post.[34] The decisions rendered by him and gentlemen like him would be such as two great and free nations could accept with satisfaction. I dare say he has friendly feelings towards the Republic, but he cannot be wanting in like sentiments for the old Champion of Liberty. The preferences of such enlightened statesmen could not possibly be of a char-

[34] This referred to that most worthy, high-minded gentleman, Dr. Kern, formerly President of the Federal Council, but then Minister to France.

acter to influence their judgments, and the parties most interested might well be content to abide their award.

"Believe me, my dear sir, yours sincerely,

"THOMAS BALCH." [35]

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[35] In 1874, Professor James Lorimer, the Regius Professor of Public Law and of the Law of Nations in the University of Edinburgh, wrote to Mr. Balch a letter concerning International Arbitration, in which he said:—

"Considering the interest which is everywhere taken in International Arbitration at present, and more especially with a view to the discussion that will take place at the meeting of the International Institute at Geneva in October, I think it very desirable that you should republish the letter which you addressed to the '*New York Tribune*' in 1865, adding to it such suggestions as your observation of subsequent events may enable you to offer.

"I do not know to what extent that letter, or anything else you said or did, may have led to the negotiation of the Treaty of Washington, by which the threatened war between our countries is believed by many to have been averted; but certain it is, that the letter was a very remarkable anticipation of the treaty which was negotiated six years afterward. The tribunal which you suggested almost exactly corresponded to that appointed under Article XII. of the Treaty, and even the great tribunal which sat at Geneva under Article I. was only a fuller realization of your original conception, by a larger infusion of the neutral element than you had contemplated, into the Court. In this respect it certainly was an improvement. But for the presence of the neutral judges it is doubtful if the work would have been brought to a successful issue, and I think it very worthy of consideration whether, on all future occasions, the Commissioners ought not to be appointed exclusively from neutrals."

See the *New York Tribune*, April 11th, 1874. *International*

The publication of this letter proved that the proposition was not popular at that time in the United States. Writing seven years later of this event Mr. Balch said: "At home I was met in a less satisfactory manner.

Courts of Arbitration by Thomas Balch, 1874. Reprinted at Philadelphia, 1899, Henry T. Coates & Co., page 28.

In the above letter Professor Lorimer points out how closely Mr. Balch's suggestion was followed in the Treaty of Washington, as may be seen by a comparison of the letter printed in the *Tribune* on May 13th, 1865, and Articles XII. and I. of the treaty.

In Article XII. of the Treaty of Washington (1871), after a statement of some matters other than the *Alabama* claims that should be referred for settlement to three Commissioners, provision was made for the appointment of the Commissioners in the following manner: "One Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date of the exchange of the ratification of this treaty, then the third Commissioner shall be named by the Representative at Washington of His Majesty the King of Spain. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment; the period of three months in case of such substitution being calculated from the date of the happening of the vacancy." *Treaties and Conventions concluded between the United States of America and other Powers since July 4th, 1776.* Department of State. Washington: Government Printing Office, 1889, page 484.

In Article I., the Court of Arbitration to consist of five Arbitrators to try the "*Alabama* Claims" was provided for as follows:—

The Civil War was near its end, and the passions aroused by it were at their highest. I received more than one angry rebuff, and sometimes the contempt which the idea excited was not always civil. Some good people went so far as to say that I had lived so

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"One [Arbitrator] shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

"In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or, in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such head of a State.

"And in the event of the refusal or omission for two months after receipt of the request from either of the high contracting parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator either to fill the original appointment or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators." *Treaties and Conventions concluded between the United States of America and other Powers since July 4, 1776.* Department of State. Washington: Government Printing Office, 1889, page 479.

long abroad that I had become 'a —— Britisher.' Not encouraging for my idea of a mild-mannered way of cutting the knot of difficult national questions." Still Mr. Balch did not despair, and continued to work among his friends and acquaintances, both at home and abroad, and soon he found in Professor James Lorimer, of the University of Edinburgh, and Prévost-Paradol, of *l'Academie Française*, two powerful helpers.[36]

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[36] James Lorimer, Regius Professor of Public Law and of the Law of Nations in the University of Edinburgh, was born in 1818 and died in 1890. He was a founder of *l'Institut de Droit International*, and the author of *The Institutes of Law as determined by the Principles of Nature* (1872), *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities* (1883–84), and several other valuable books on social science and international law. Lucien Anatole Prévost-Paradol, the brilliant author of *Quelques Pages d'Histoire Contemporaine* (1862–1866) and *La France Nouvelle* (1868), and a member of *l'Academie Française*, was the leading writer in the *Journal des Debats* against the Empire. In the days of the Imperial censorship, as some one said, "Prévost-Paradol excellait avec J. J. Weiss dans l'art de tout faire entendre sans tout exprimer." Subsequently, when Ollivier assumed the responsibilities of Government under the *liberal* Empire, Prévost-Paradol accepted the post of Minister to Washington.

CHAPTER III.

On August 30th, 1865, Earl Russell in a long review of the acts and rights of the two Governments in the controversy between them, referred to Mr. Adams's remark upon arbitration in the latter's letter of October 23d, 1863, and said:—

"In your letter of October 23, 1863, you were pleased to say that the Government of the United States is ready to agree to any form of arbitration.

" Her Majesty's Government have thus been led to consider what question could be put to any Sovereign or State to whom this very great power should be assigned.

"It appears to Her Majesty's Government that there are but two questions by which the claim of compensation could be tested. The one is: Have the British Government acted with due diligence, or, in other words, with good faith and honesty, in the maintenance of the neutrality they proclaimed? The other is: Have the Law Officers of the Crown properly understood the Foreign Enlistment Act when they declined, in June 1862, to advise the detention and seizure of the '*Alabama*,' and on other occasions

when they were asked to detain other ships building or fitting in British ports?

"It appears to Her Majesty's Government, that neither of these questions could be put to a foreign Government with any regard to the dignity and character of the British Crown and the British nation.

"Her Majesty's Government are the sole guardians of their own honor. They cannot admit that they may have acted with bad faith in maintaining the neutrality they professed. The Law Officers of the Crown must be beld to be better interpreters of a British statute than any foreign Government can be presumed to be. Her Majesty's Government must therefore decline either to make reparation and compensation for the captures made by the '*Alabama*,' or to refer the question to any foreign State.

"Her Majesty's Government conceive that if they were to act otherwise, they would endanger the position of neutrals in all future wars.

"Her Majesty's Government are, however, ready to consent to the appointment of a Commission to which shall be referred all claims arising during the late civil war, which the two Powers shall agree to refer to the Commissioners." [37]

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[37] *The Official Correspondence on the Claims of the United States in respect to the "Alabama."* (Published by Earl Russell.) London: Longmans, Green & Co., 1867, page 147.

On September 17th, 1865, Francis Lieber, the international law publicist, addressed to Secretary Seward an open letter on arbitration which was printed in the *New York Times*, of September 22d.[38] Mr. Lieber suggested that the questions at issue should be submitted to the law faculty of some continental university, like Heidelberg or Leyden. His letter was as follows:—

"INTERNATIONAL ARBITRATION.

"A letter to Hon. William H. Seward, Secretary of State, by Francis Lieber.

"DEAR SIR: Permit me to address to you in the form of a letter, some remarks on a subject which deserves the attention of every American citizen and every lover of right and progress. You, Sir, at the head of our foreign affairs, influencing and guiding, in a great measure, our highest transactions abroad and at home, will, I respectfully trust, pardon me for sending forth this letter with your name as that of its public recipient, since its topic is international arbitration.

[38] There is a copy of the *New York Times* of September 22nd, 1865, in the New York Public Library (Astor, Lenox and Tilden Foundations). For an account of Francis Lieber and his work see *Francis Lieber*, by Lewis R. Harley, Ph. D., New York: The Columbia University Press, 1899.

"The United States have large claims upon Great Britain for the injury done them by the armed vessels fitted out against them in English ports contrary to the laws of neutrality. On the other hand it is understood that Great Britain exhibits counter claims against the United States. The subject is in every respect, a serious one. How are such claims and counter claims to be settled?

"International disputes of a grave character can only be concluded in one of the following four ways: The discussion may be drawn on for so long a time that greater questions arise in the course of events, and the original subject is dropped by its mention being omitted in a new treaty which may be concluded. This has happened, indeed, but such a settlement by default as it were, is not likely to occur again, in modern times, when the parties at issue are large and powerful nations, and the subject in question is of commensurate magnitude.

"Or, the contending governments may diplomatically settle their difficulties and seal the settlement by special treaty. It is not probable either that America and England will arrive at a conclusion of their differences by this means; certainly not within a reasonably short time. All protraction, however, of international difficulties, especially between great nations destined to have the closest intercourse, is

both injurious and dangerous. It interferes with the international spirit of peace, without which a purely formal peace, that is mere non-existence of war, amounts only to international quiescence shorn in a great measure of the best realities of peace. This is especially the case with all those nations who acknowledge that the first and perhaps the highest law of modern extending civilization is the commandment that there shall be an increasing and widening family of nations, bound together by the great law of nations. At any rate this communication is written on the supposition that the present English-American disagreement will not be settled by diplomatic transactions, or cannot thus be concluded within any reasonable period of time.

"The third way of stopping international discussion is war. A discussion may certainly thus be stopped for a time, but neither party can expect the settlement of pecuniary claims by rushing into war, since new claims would necessarily arise, and each belligerent would be obliged to incur expenditures greater than any indemnities claimed of the opponent before the war. Neither ourselves nor the English would expect to indemnify themselves by conquest, which, moreover, is generally a poor indemnification, so far as the settlement of pecuniary claims is concerned. The enormous sums which Napoleon drew by way of

'contributions,' from the conquered countries, did not lessen the heavy taxation in France, made necessary by his wars. Going to war with England on account of our pecuniary claims would simply amount to the attempt of killing a fly, crawling on a costly piece of sevre, by throwing a stone at the insect, from fear that it may soil the precious vase.

"There remains, then, arbitration only, as the fourth method of ending international differences. International arbitration, freely resorted to by powerful governments, conscious of their complete independence and self-sustaining sovereignty, is one of the foremost characteristics of advancing civilization—of the substitution of reason, fairness and submission to justice, for defying power or revengeful irritation. It belongs to modern, indeed to recent times; yet although it is a noble characteristic of the more recent times, it still bears uncouth features of coarser periods, and demands improvement and development. The law of nations is awaiting them.

"The administration of all law may be said to originate with arbitration, and all law, as it develops itself further and further, largely returns to courts of arbitration, justly and beautifully called, in French and German, Courts of Peace. The Roman civil law acknowledged arbitration. The courts of arbitration, with elected and non-professional judges, to whom

parties voluntarily go to obtain equitable arbitraments, with the exclusion of professional counsel, have spread all over Prussia, Denmark, and other countries, settling annually immense amounts in litigation.

"The ancient Greeks, with their many city-states and confederacies of the same language and religion, and with a similar culture, knew, if not of international, yet of *inter-statal* arbitration—temporary commissions appointed by contending cities, to whose judgment the parties swore to submit. For, it will be hardly necessary to state, that the characteristic feature of these arbitrations is the voluntary submission of the parties to a freely chosen judge, with a binding and solemn promise of the litigants to abide in good faith by his adjudication.

"That international arbitrament, however, which consists in a sovereign power chosen by two contending equally sovereign powers, or by governments representing entire nations, rendering judgment, and this judgment being submitted to in good faith by two potent sovereigns—this arbitration belongs to the most recent times, and is considered by international jurists, and by the students of the history of civilization, one of the encouraging signs of real progress.

"So far, however, monarchs have been almost exclusively chosen as arbiters, which is inconvenient on

several accounts. It may happen that the parties may be unable to unite in the election of a monarch or government, suiting both alike. The present case between the United States and Great Britain seems a case in point. We would probably select none but the Emperor of Russia, if we were at all willing to submit our case to a European government, and if we were convinced of a sufficient acquaintance with the law of nations as well as with maritime law in the officials of that high military government; while Russia, in all probability, would not suit Great Britain.

"The other and great inconvenience in selecting a monarch as arbiter is the fact that the only one who is publicly known as the judge, is the very one who, in the course of things, does not occupy himself with the case, cannot do so, and is not expected by any one to do so.

"When an international difficulty is brought before a monarch, or even before the chief representative of a republic, who is now always the *chief executive*, what is the course which things take? The Minister of Justice, or some similar high functionary, is directed to take the case in hand; he appoints some counsellor or other officer, possibly a committee, to make a report to him, which he lays before the nominal arbiter. Those who really decide the case are unknown,

or at least bear no public, and feel no last responsibility. In many cases of this sort exist the grave inconvenience and serious inconsistency of handing over questions of the highest law and most elevated justice to an executive and not to an authority of judicial renown and responsibility. How much easier would be the acquiescence in the judgment; how much more becoming to civilized communities, and how much nobler in every way would be the selection of judges from among jurists of a high reputation for their comprehensive knowledge and unyielding loyalty to justice and jural truth! There is, probably, no fair-minded Englishman or American who would not submit the whole amount of the claims in question far more readily to a Hugo Grotius, than to the ruler of any empire now existing. Still, it may be observed that there is not always a Hugo Grotius at hand; nor can individuals, however unsullied in reputation and resolute in speaking out what is right, be expected, in all countries, to be able wholly to separate themselves from government pressure. It would be difficult, in the present state of our civilization, to make two contending nations agree on a single person, not a monarch, and assign to a living jurist that authority which the Congress of Vienna granted, among others, to Grotius, freely quoted in that great international council. Nor would it be easy to

persuade a private individual to serve as umpire, could the contending parties be made to agree as to the desirable international judge; but could they not be induced to agree to lay the whole subject at issue before the law faculty of some foreign university, if both parties are sincerely disposed to obtain only what is due to them and what is strictly right? The members of such a faculty are generally men who have already made a name which they hope will go down to posterity in law and its literature; they know the whole weight and meaning of a grave decision in the highest regions of the law, and would be conscious that in an international case their decision, while probed and scanned by the foremost intellects of their race, would pass over as part and parcel into that law which prevails between independent nations, which is enforced by equity and reason, and is gradually extending even beyond that race which happily created it: for, I am writing this paper, when not only the Turks, Egypt and Persia have given in their adhesion to many of the main points of our law of nations, but when a translation of *Wheaton's Law of Nations* into Chinese has arrived in this country, and is now in the library of your department.

"In the present case it is taken for granted that neither party desires nor hopes to be able to outwit the other. The American and the English nations are

too great to descend to diplomatic artifice; and if there were no objection to such a course or to such attempts, on the ground of international high-mindedness and equity, prudence and expediency alone would dictate to abandon so unworthy a desire. The American and English are people at once too clear-sighted and too stubborn; too much on a level of intellect and civilization, and they agree too much in their knowledge and conceptions of justice, law and fairness, to hope much from diplomatic cunning or from successful overreaching. But if they really wish to settle their differences on the principles of law, it may be asked whether there is a single English-speaking man on this side of the Atlantic, or on the eastern side, who would doubt that such a faculty of law as that of the University of Berlin, with the international jurist Heffter in it; or if Prussia were considered too much of a great Power, the law faculty of Heidelberg or of Leyden would be a fitter body to decide our differences than any Emperor or any republic. A republic could not decide the case as a republic, but must hand it over to some commission. A law faculty, especially that of a renowned university in a minor State, seems to form a tribunal fitter than any other that can be imagined for many, perhaps most, of the great international cases. It would seem almost made for so high a function, and the selection of a

law faculty as a court of international arbitration, would be a measure worthy of being inaugurated by the two freest large nations, and whose governments are to be numbered, in diplomacy, among the least unreasonable and uncandid ones.

"Let the United States and Great Britain agree upon the University; let them obtain the permission of its government to appeal to the law faculty, which would doubtless be readily granted; let the two powers distinctly settle the remuneration which each in equal shares is to grant to the faculty, excluding all other immediate or prospective presents or distinctions; let each contending party appoint its commissioners, as many as each party chooses, and nobody would doubt that a just judgment would be obtained.

"The compensation out of place, as it would seem in an international case, is nevertheless taken into consideration here, for the reasons that the case at issue would occupy a very large space of time of the high judges; and in order to forestate every particle of that machinery which consists in part of ribbons and orders, snuff-boxes and titles, presents of money or land, direct or prospective. Not that such judges would be likely to be swayed by means of this kind in their judgment. That tribunal, with nations for its clients, would doubtless be conscious of standing, in

turn, before a greater tribunal—before their profession in all history; but all seeming attempt or faint suspicion of an attempt at lowering so great a court to common diplomacy ought to be kept far away.

"Great universities have been appealed to in former times, though it was generally in theological matters. Within the different countries, such as France or Germany, they have indeed been appealed to, and still are occasionally so, at least in the last mentioned country, in civil and penal matters. Why should we not seize upon these institutions, themselves characteristic of our own civilization, in international matters? The adoption of the proposed plan would be a signal step in the progress of the race. There is no nobler sight than the strong—be they single men or nations—laying down their strength like a sword by their side, saying: 'We will abide by the judgment of the just; let justice be done.'

"This proposition does not interest my mind by the charms of novelty. I communicated a similar one to a prominent statesman in Congress as far back as the time of the Oregon question, and it was clearly elicited in my mind when the decision of King William of the Netherlands, concerning the northeastern boundary became known in this country. Circumstances did not call for a closer consideration, but I

now venture to lay it before you, Sir, in a more elaborate form, and try to attract the attention of the public to it through your eminent name.

"Whether the two nations to whom the spread of civilization over the globe has been assigned more than to any other people, will accept this way of settling differences in the present case or not, there is no doubt in my mind that the Cis-Caucasian race will rise, at no very distant day, to the selection of such umpires, far more dignified than a crowned arbitrator can be.

"I have the honor to subscribe myself, with the highest regard,

"Your very obedient servant,

"FRANCIS LIEBER.

"WASHINGTON, D. C., Sept. 17, 1865."

On September 27th, 1865, five days after the publication of Mr. Lieber's letter to Secretary Seward, the latter wrote to Mr. Adams :—

"In a note of yours to Earl Russell, written so long ago as the 23d of October, 1863, in regard to the difficulties in our relations then developed, you remarked as follows : 'I am directed to say there is no fair and equitable form of conventional arbitrament or reference to which they,' the United States, 'will not be willing to submit.'

"Earl Russell at this late day recalls the friendly remark thus incidentally made by you, and, manifestly treating it in the character of a formal proposition for arbitration still existing, if not newly tendered, states reasons why such a mode of adjustment would not be acceptable to her Britannic Majesty's government. You are authorized, therefore, to say, that whatever may have heretofore been or might now have been thought by us of umpirage between the two powers, no such proposition for arbitration of the existing differences will henceforward be insisted upon or submitted to by this government.

"In disallowing our assumed proposition for arbitration, Earl Russell distinctly declares that Her Majesty's government must decline to make reparation or compensation for the captures which were made by the *Alabama*.

"Nevertheless, Earl Russell announces that Her Majesty's government are ready to consent to the appointment of a commission, to which should be referred all claims which have arisen during our civil war, and which the two powers should agree to refer to the commission.

"Earl Russell is understood by us, in submitting this proposition, as implying, that among those claims which Her Britannic Majesty's government would not agree to refer to such a joint commission are the

claims heretofore presented in behalf of American citizens or others for redress and reparation in cases of captures and spoliations made by the *Alabama*, and other vessels of her class, including even the *Shenandoah*, now still engaged in the same work of depredation, which piratical vessels, as is alleged by the United States, were fitted out, manned, equipped, and despatched by British subjects in British ports." [39]

Earl Russell, on October 14th, 1865, in a supplementary letter to Mr. Adams, further explained his proposal, in his letter of August 30th preceding, for the appointment of a Commission. The English Foreign Secretary said:—

"FOREIGN OFFICE, Oct. 14, 1865.

"SIR:—I have thought it best to wait for the answer to the reference you have made to your Government before replying to your last letter.

"But I observe that you have not clearly understood my proposal for the appointment of a Commission.

"That proposal is made in the following terms:—

"'Her Majesty's Government are ready to consent

[39] *Papers relating to Foreign Affairs accompanying the Annual Message of the President to the First Session Thirty-ninth Congress.* Part I. Washington: Government Printing Office, 1866, page 565.

to the appointment of a Commission to which shall be referred all claims arising during the late civil war which the two Powers shall agree to refer to the Commissioners.'

"There are, I conceive, many claims upon which the two Powers would agree that they were fair subjects of investigation before Commissioners.

"But I think you must perceive that, if the United States Government were to propose to refer claims arising out of the captures made by the *Alabama* and *Shenandoah* to the Commissioners, the answer of Her Majesty's Government must be, in consistency with the whole argument I have maintained, in conformity with the views entertained by your Government in former times.

"I should be obliged, in answer to such a proposal, to say—'For any acts of Her Majesty's subjects committed out of their jurisdiction, and beyond their control, the Government of her Majesty are not responsible.'

"I should say further, that the appointment of a Commission for such purpose would not be consistent with any practice usual among civilized nations, and that it is a principle well known and well understood that no nation is responsible for the acts of its citizens committed without its jurisdiction, and out of the reach of its control.

"I should have cleared up this point before, but I thought that the words 'which the two Powers shall agree to refer to the Commissioners' would put an end to any doubt upon the subject. I am, &c.,

"RUSSELL."[40]

On October 17th, 1865, Mr. Adams replied to Earl Russell's letters of August 30th and October 14th as follows:—

"LEGATION OF THE UNITED STATES,

"LONDON, October 17, 1865.

"MY LORD,—I have the honor to acknowledge the reception of your note of the 14th instant, explanatory of some portions of a preceding one dated August 30 last.

"This has reached me just in season to enable me to dispense with the necessity of soliciting precisely that information. For although the Government which I have the honor to represent had already understood your Lordship's note as substantially in the same sense, it has instructed me to ask the confirmation of it which has now been supplied.

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[40] *The Official Correspondence on the Claims of the United States in respect to the "Alabama."* (Published by Earl Russell.) London: Longmans, Green & Co., 1867, page 165.

"I am now directed to inform your Lordship that the contents of your note of August 30 have received the most careful consideration.

"With regard to the reference which you were pleased to make to a friendly remark contained in the note which I had the honor to address to your Lordship on October 23, 1863—apparently considering it in the light of a formal proposal for arbitration—I am now desired, in view of the reasons given by your Lordship why such a mode of adjustment would not be acceptable to Her Majesty's Government, to state that, whatever may have heretofore been, or might now be, thought by the President of umpirage between the two Powers, no proposition of that kind for the settlement of existing differences will henceforward be insisted upon, or submitted on the part of my Government.

"The proposal of some form of Commission made by your Lordship still remains under consideration. To the end that my Government may be the better enabled to make a satisfactory reply to it, I am still under the necessity of soliciting more information in regard to the precise nature of the claims which Her Majesty's Government is disposed to agree to consider. I am instructed to venture so far as to ask the favour of your Lordship to distinguish as well what among the classes of claims it is willing, and what it

would not be willing, to refer to the proposed Commission.—I pray, &c.

"CHARLES FRANCIS ADAMS." [41]

A month later, Mr. Adams declined in behalf of his Government, Earl Russell's proposal to submit some of the claims pressed by each Government against the other to the consideration of a joint commission. Writing to the Earl of Clarendon, Mr. Adams said:—

"LEGATION OF THE UNITED STATES,

"LONDON, November 21, 1865.

"MY LORD,—I have the honor to inform your Lordship that the notes elicited by the proposal for a Commission to consider certain classes of claims growing out of the late difficulties in the United States, made by your predecessor, the Right Honorable Earl Russell, in his letter addressed to me on August 30 last, have received the careful consideration of my Government.

"Adhering, as my Government does, to the opinion that the claims it has presented, which his Lordship

[41] *The Official Correspondence on the Claims of the United States in respect to the "Alabama."* (Published by Earl Russell.) London: Longmans, Green & Co., page 166.

has thought fit at the outset to exclude from consideration, are just and reasonable, I am instructed to say that it sees now no occasion for further delay in giving a full answer to his Lordship's proposition.

"I am directed, therefore, to inform your Lordship that the proposition of Her Majesty's Government for the creating of a joint Commission is respectfully declined. I pray, &c.

"CHARLES FRANCIS ADAMS." [42]

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[42] *The Official Correspondence on the Claims of the United States in respect to the "Alabama."* (Published by Earl Russell.) London: Longmans, Green & Co., page 223.

CHAPTER IV.

There was a growing, uneasy feeling in England that Earl Russell's abrupt and absolute refusal to discuss the question of liability by England for the *Alabama* claims was a mistake.[43] In this view the English were confirmed by the visit at several of their ports of the double-turretted monitor, *Miantonomoh*.[44] She crossed the Atlantic without trouble, bearing to Russia on a special mission the Hon. Gustavus Vasa Fox, the Assistant Secretary of the Navy. English naval experts freely acknowledged that there was no ship in the English navy that could compete with the

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[43] This was evidenced in a letter, supposed to be written by Mr. Olyphant, a member of Parliament, who had traveled in the United States in 1865, that appeared in the London *Times* on August 20th, 1866. It treated of the neutrality laws; and, after referring to the strong feeling of resentment that existed in the United States against Great Britain on account of the fitting out of the Confederate cruisers in English ports, deplored the rejection by Lord Russell of all attempts to settle the difficulties by arbitration.

[44] *Narrative of the Mission to Russia, in 1866, of the Hon. Gustavus Vasa Fox.* New York: D. Appleton & Company, 1873, pages 39, 40, 43.

Miantonomoh; and as there were a number of others like her in the United States Navy, Great Britain, at that time, was not mistress of the seas. An article in the London *Times*, of July 17th, 1866, showed well the impression the *Miantonomoh* made upon England:—

"The royal visitors at Sheerness on Saturday, as well as the numerous pleasure-parties flocking thither on the same errand, saw a very extraordinary, and—we wish we could not feel it—a portentous spectacle. They saw a fabric, something between a ship and a diving-bell—the Romans would have called it a tortoise—almost invisible, but what there was of it ugly, at once invulnerable and irresistible, that had crossed the Atlantic safely, and was anchored in our waters, with the intention of visiting Russia. Round this fearful invention were moored scores of big ships, not all utter antiquities, but modern, for there were among them steamships, generally screws, and therefore none of them more than twenty years old. These ships form a considerable portion of the navy of this great maritime power, and there was not one of them that the foreigner could not have sent to the bottom in five minutes, had his errand not been peaceful. There was not one of these big ships that could have avenged the loss of its companion, or saved itself from immediately sharing its fate. In fact, the wolf

was in the fold, and the whole flock was at its mercy." [45]

The advisability of reopening the subject became by the latter half of 1866 a topic of general discussion in the English press; and the Government—Lord Stanley had succeeded Earl Russell as Foreign Secretary—was understood to favor an amicable settlement of the question. The Prime Minister, Earl Derby, gave countenance to such a view in a speech at the Mansion House.[46] The *Times* in several leaders supported the view that Earl Russell had rejected Mr. Adams's demands on rather narrow grounds, and urged that the claims were "not forgotten by the American people," and that they never would be forgotten until they were submitted to "some impartial adjudication." [47]

Meanwhile Lord Stanley instructed the British Minister at Washington to propose to the American Government a limited form of arbitration: this dis-

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[45] *Narrative of the Mission to Russia, in 1866, of the Hon. Gustavus Vasa Fox.* New York: D. Appleton & Company, 1873, pages 48, 49.

[46] *Papers relating to Foreign Affairs, accompanying the Annual Message of the President to the Second Session, Fortieth Congress.* Government Printing Office, 1868, part I., page 25.

[47] The London *Times*, November 17th, 1866; January 4th, 1867.

patch, which was as follows, the English Minister, Sir Frederick Bruce, communicated to Mr. Seward on January 7th, 1867 :—

"FOREIGN OFFICE, November 30, 1866.

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"It is impossible for Her Majesty's present advisers to abandon the ground which has been taken by former Governments, so far as to admit the liability of this country for the claims then and now put forward. They do not think that such liability has been established according to international law or usage; and though sincerely and earnestly desiring a good understanding with the United States, they cannot consent to purchase even the advantage of that good understanding by concessions which would at once involve a censure on their predecessors in power, and be an acknowledgment, in their view uncalled for and unfounded, of wrong-doing on the part of the British Executive and Legislature. But, on the other hand, they are fully alive to the inconvenience which arises from the existence of unsettled claims of this character between two powerful and friendly Governments. They would be glad to settle this question, if they can do so consistently with justice and national self-respect; and with this view they will not be disinclined to adopt the principle of arbitration, provided

that a fitting arbitrator can be found, and that an agreement can be come to as to the points to which arbitration shall apply.

"Of these two conditions, the former need not be at present discussed: the latter is at once the more important and the more pressing.

"With regard to the ground of complaint on which most stress is laid in Mr. Seward's despatch, viz., the alleged premature recognition of the Confederate States as a belligerent Power, it is clear that no reference to arbitration is possible. The act complained of, while it bears very remotely on the claims now in question, is one as to which every State must be held to be the sole judge of its duty; and there is, so far as I am aware, no precedent for any Government consenting to submit to the judgment of a foreign Power, or of an international Commission, the question whether its policy has or has not been suitable to the circumstances in which it was placed.

"The same objection, however, does not necessarily apply to other questions which may be at issue between the two Governments in reference to the late war; and with regard to these, subject to such reservations as it may hereafter be found necessary to make, I have to instruct you to ascertain from Mr. Seward whether the United States' Government will be prepared to accept the principle of arbitration, as

proposed above. Should this offer be agreed to, it will be for Mr. Seward to state what are the precise points which, in his opinion, may be, and ought to be, so dealt with. Any such proposal must necessarily be the subject of deliberate consideration on the part of Her Majesty's Government; but they will be prepared to entertain it in a friendly spirit, and with the sincere desire that its adoption may lead to a renewal of the good understanding formerly existing, and as they hope, hereafter to exist, between Great Britain and the United States.

"I am, &c.,

"STANLEY." [48]

January 12th, 1867, Mr. Seward wrote to Mr. Adams that the United States would not object to arbitration if the British Government desired it, but it declined arbitration with the limitations that Lord Stanley imposed.[49]

At the request of Professor James Lorimer of the University of Edinburgh, Mr. John Westlake—a prominent member of the English Bar and the Foreign

[48] *A Historical Account of the Neutrality of Great Britain during the American Civil War* by Mountague Bernard. London: Longmans, Green, Reader & Dyer, 1870, page 483.

[49] *Papers relating to Foreign Affairs accompanying the Annual Message of the President to the Second Session, Fortieth Congress.* Washington: Government Printing Office, 1868, part I., page 45.

Secretary of the National Association for the Promotion of Social Science—had reprinted—March 15th, 1867, in *Social Science*,[50] the bi-monthly publication of the association—the letter that Mr. Thomas Balch of the Philadelphia Bar, had addressed on March 31st, 1865, to the New York *Tribune* and which was printed in that journal on May 13th following.

The editor of *Social Science* placed it under the title, "England and the United States," and said: "We have been asked to re-publish the following important letter, addressed to the editor of the *New York Tribune*." Among the members of the association in 1867, were the Right Hon. Sir Stafford Northcote, Bart., M. P., one of the negotiators of the Treaty of Washington (1871), Earl Russell, Lord Brougham, John Stuart Mill, M. P., John Laird, M. P. (formerly of Laird Brothers, the builders of the *Alabama*), and many other members of Parliament, David Dudley Field of the New York Bar, and Baron von Holtzendorff of Berlin. Soon after the republication of the letter in *Social Science*, a number of continental jurists—Edouard Laboulaye, Henry Moreau,[51] Friederich

[50] *Social Science*, March 15th, 1867, pages 201, 202; there is a copy in the British Museum.

[51] "PARIS 9 Oct. 1874.
"370 rue St. Honoré.

"MY DEAR BALCH,—Many thanks for your kind souvenir. I perused with the greatest interest and satisfaction your

Kapp, von Holtzendorff and others—approved Mr. Balch's proposal to refer the "*Alabama* claims" to the decision of an International Court of jurists.[52] Mr. George H. Yeaman, then the United States Minister at Copenhagen, also favored the idea.[53] At the

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remarkable pamphlet on *International Courts of Arbitration*, and found you have given full evidence of your *paternal right* on this service which ended so happily both for America and England, the quarrels springing from the *Alabama* matter and the San Juan Boundaries. I thank you also for having mentioned my name in such an honorable company, with the publicists who have illustrated the dark points of International Law.

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"HENRY MOREAU,
"*Avocat a la cour d'Appel.*"

This letter of Henry Moreau is written in English. Monsieur Moreau was a distinguished member of the Paris Bar, of the *Societé de la Legislation Comparée*, and the author of *La Politique Française en Amerique, 1861–1864* (Paris, 1864).

[52] *International Courts of Arbitration.* Edition of 1899, page 15.

[53] Mr. Yeaman sent the following letter to Mr. Balch:—

"LEGATION OF THE UNITED STATES,
"COPENHAGEN, 26 March, 1867.

"DEAR SIR:—I have read with much interest your letter of the 13 May, 1865, to the Editor of the New York *Tribune*, and now republished in the 'Social Science' for this month, which you have kindly sent me. In that letter you propound what seems to you the best method of amicably settling the pending controversies between the United States and Great Britain.

"Omitting all discussion of the propriety and feasibility of now

eleventh annual meeting of the Association, that was held at Belfast in September, 1867, one of the subjects discussed was: "Is it desirable to establish a general system of International Arbitration, and if so on what principle should it be organized?" Mr. Field presided

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referring the matters in dispute to arbitration, the mode you advocate, I only desire to express my decided approbation of your suggestion as to the mode of selecting and organizing tribunals of arbitration, in cases where the powers interested agree to a reference. That the tribunal or arbiter shall not be the executive head of a government, but a small number of jurists of acknowledged character and learning.

"I have never believed in the durability and efficacy of any of the schemes for an international tribunal to settle all disputes and prevent all wars. Whether it is well or unfortunate, it is quite clear that in the present stage of the development and practice of political science, there can be no reference but by agreement, and the agreement must be had in each case as it arises, and the tribunal or arbiter must be selected for the occasion.

"While this remains the only practicable mode of securing the benefits of a reference, every sound reason is against the ordinary plan of selecting a crowned, or other executive head of a government, and sustains the plan of selecting a tribunal composed of those who make the understanding and the elucidation of law, in its largest sense as the science of justice, the study of their lives.

"It is no disparagement of those generally found at the heads of the executive governments of the civilized world, to say that they are not generally those best acquainted with jurisprudence; and that every government, of whatever form, nearly always contains within its limits, a number of jurists more learned in their profession and better qualified by their habits of thought to conduct such an investigation than the executive head of that govern-

over the debate of this question. Lord Hobart and David Ross of the British Bar read papers; a number of members joined in a general discussion of the subject; and Mr. Field at the close summed up the debate. In speaking of the possibilities of finding arbiters

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ment. Neither is it any impeachment of their probity or their desire to render a just judgment to say that executive rulers, are, from their position, more apt to be influenced by motives of policy, or of personal or political partiality, than a court of international jurists would be; while some, who might render real service in that capacity, would occasionally decline to act on account of the delicate embarrassment in which any action might involve them. And those who consent to act, no doubt often refer the case, for investigation and advice, to a subject of their own selection, one unknown to the parties, at least not agreed upon by them; and though the award may come formally as from the crown, it is really the opinion of some person not embraced in the reference and who neither incurs blame nor makes reputation by his judgment. Thus the parties are put in the position of abiding by the award of one selected for them by another; they know not what influenced the selection, and however learned the advisor may be, the parties have not had the advantage of a consultation and comparison of views. These objections manifestly do not apply to the case of an umpire selected in advance by referees in view of the possibility of their own disagreement.

"Thus the advantages of learning, and of freedom from all improper influences are on the side of a select committee or board of jurists. From their breasts selfishness, jealousy, partiality and refined policy, as applied to the matter before them, are all excluded. They work out their conclusions in the light of usage, precedent, right reason, natural right, *science*. What of ambition they may have is constrained to be innocent and laudable, for it can only be gratified by building a reputation, which, in

other than crowned heads or executives of Republics, he referred to the proposals of Mr. Balch and Mr. Lieber. Mr. Field said: "I think we may say that it is agreed on all hands that it is desirable there should be a system of arbitration, and if a system of arbitration, a general one, by which, I suppose, is meant that

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their vocation, can have no other foundation than justice and truth. The judgments of such tribunals would be sought for and recognized as the highest evidence of what the law is; and they would develop, polish, and make symmetrical the law of nations, as the judgments of Hardwick, Eldon, and Mansfield have done the law of England, and as the judgments of Kent, Marshall and Story have done the law in the United States.

"I have been much impressed with your observation that this 'would be no trifling event in the march of Democratic Freedom.' It would accelerate and illustrate the progress of democratic freedom, a freedom that is far more secure against license than any scheme of personal government or irresponsible power can be, because it would be a tribute to the domination of mind, intelligence, reason, science, over accident, force and tradition in the affairs of men. The struggle for that domination is the beginning, and its full consummation is the highest and fairest fruit of democracy. If that element in government has been the most rare and the least successful, it is because that while appearing to be the most simple, it is really the most difficult, and it is the most difficult because the conditions of its success are the highest and the least frequent among men.

"Very respectfully,

"Your obedient servant

"GEO. H. YEAMAN.

"Thomas Balch, Esq.,
"Paris."

it should be agreed among civilized nations that war should not take place between them until they had offered to submit the matter in disagreement to an impartial arbiter. Then it is said, however, how is an impartial arbiter to be found? I will say that it seems to me we are not confined in that to princes or governments. In this *very* matter of the *Alabama*, it has been suggested that, if arbitration is agreed upon, the question should be referred to the arbitration of the most eminent jurists in the German universities,[54] as persons having the requisite knowledge, as having by their position no cause for partiality, and as having characters to maintain, which will be guarantee for the efforts they will make to give a just decision. It has also been suggested that in the dispute between England and America relative to the *Alabama*, the Government of Switzerland should be arbiter.[55] I am confident impartial persons can be found somewhere in the world to decide between two nations."[56]

The English press gave the subject more and more attention. At the end of January, 1868, Mr. Westlake

[54] See page 63.

[55] See page 48.

[56] For the discussion, including the remarks of Mr. Field, see *Transactions of the National Association for the Promotion of Social Science.* Belfast Meeting, 1867. Edited by G. W. Hastings, LL. D., London, 1868, pages 254–259.

wrote a long letter upon "the *Alabama* Claims" to the Editor of the *London Daily News*;[57] it was published in that paper on January 24th, and was as follows:—

"THE ALABAMA CLAIMS.

"*To the Editor of the Daily News.*

"SIR—Will you allow me a few words about the *Alabama* Claims? Whether the principle of arbitration should have been admitted is, perhaps, not quite so clear as its advocates suppose, but, since our Foreign Secretary has admitted it, I apprehend that both the honor and the interests of the country require that such admission should not be practically withdrawn, through a difference about the form of the issues, which I believe might be easily settled, if some misapprehension that still seems to exist about them were removed.

"In whatever form the reference be made, the points for the arbiter to consider, if he is to give a just deliverance, are these:—

"1. Is England liable to the United States in damages for the sailing of the *Alabama* from the Mersey?

"2. Are those countries which received the *Ala-*

[57] The *London Daily News*, Friday, January 24th, 1868, page 5, columns 2 and 3: there is a copy in the British Museum.

bama in their ports liable to the United States in damages for so doing?

"3. If the general answer to the second question should be in the negative, then does it make any difference in the case of England that the expedition of the *Alabama* from Liverpool was an offense against England on the part of the so-called Confederate States? That is, was it competent to England, as against the United States, to condone that offense, instead of avenging it by arresting the *Alabama?*

"4. If any of the above questions should be answered in favor of the claimants, then to assess the damages payable by England, having a special reference to the second question, and to the facts as to the ports in which the *Alabama* was received.

"Now, it is supposed that, while upon the second question, the arbitrator would have to decide on the propriety of the Queen's proclamation, by which the fact of a war existing in America was recognized; and it is said to be derogatory that we should submit the policy of this country to any such decision. I will first observe that it is not the propriety in policy of the Queen's proclamation, but its justifiableness in law, that can even indirectly come in question; and if it is derogatory to refer that point, then it must also be derogatory to refer the justifiableness in law of those acts of omission through which the British

government is charged with having rendered the *Alabama's* escape from the Mersey possible. But, further, the proclamation can, upon the second question, in no way come before the arbitrator at all, notwithstanding that his decision may indirectly show what he would have thought of it, if it had been before him. For the deliverance must be, whether England is liable in damages for receiving the *Alabama* in British ports; and one must be ignorant of the first elements of law to suppose that if England would have been so liable independently of the proclamation, we can escape such liability by means of the proclamation, a purely British act to which the United States were not a party. The law officer, secretary of state, or minister, who may be charged with preparing the British case to be laid before the arbitrator, will have to show a similar state of facts to that which, on this side of the Atlantic, has always been deemed to justify the proclamation. I say a similar, not the same, because he will have this advantage—that he need not confine himself to the facts which existed at the date when this proclamation was issued; but may include those which existed at the time when the *Alabama* was received in British ports. It will also be open to him to use all those arguments which, with regard to the proclamation, have been drawn from the blockade. He may show

that the United States had captured neutral vessels beyond a marine league from shore, or within that distance from the coast of which they were not in possession, and had also announced that they were prepared to make such captures, and had by such announcement interfered with neutral commerce to a greater extent than even by the captures themselves; and he may argue that, as such captures are permitted only by the laws of war, the United States are estopped from denying that the *Alabama* was a lawful belligerent. In short, the business of our representative, so far as concerns the second question, will be to show that the *Alabama* bore a lawful belligerent commission, justifying her reception in neutral ports; or, if not, that at least the United States are estopped from saying that she did not. And if he refers for this purpose to the Queen's proclamation, not only will he absurdly pretend to bind the claimants by that to which they were not a party, but he will abandon the impregnable ground on which a proclamation itself has always been justified—namely, that it treated the Confederates as the belligerents which they were, but neither did nor could make them belligerents. As to any chance which there may be of the proclamation being drawn into question on the first head, as having incited to the building and sending out of the *Alabama*, I think we may safely leave that pretention to the

summary justice which any honest arbitrator,—and if we do not believe him honest, we shall not accept him—will do upon it if it should be put forward. It would be beneath us to stipulate the exclusion of such a plea; besides that, if any one really believes there is a point in it, we could no more claim to exclude it than any other point.

"I have already alluded to the question whether the principle of arbitration should have been admitted in this case: the considerations which arise on that point can be appreciated now the issues have been placed distinctly before the reader. International arbitration is of great value in disputes of fact, as in boundary cases; sometimes also in those cases from which unfortunately far the larger number of wars arise, that do not turn on international law at all; but on what some nation deems to be necessary for its honor or security. It is of use, again, where claims, of which the principle is admitted, are extravagant in amount, or are pushed with unnecessary harshness. But it is a long step to take from those cases, to admit that arbitration is the true remedy in disputes as to international law. The law declared on such a reference would be open to all the objections which lie to judge-made law in municipal jurisprudence, with the additional one of the difficulty in finding a good arbitrator. For instance, if the dispute relates to maritime

law an inland power will not fully appreciate its practical bearings, and a maritime power will probably, without actual dishonesty, be influenced by its own interests, which can hardly fail to be affected by the question one way or the other. It were much to be desired that disputes about international law should be referred to congresses of the great powers, who might decide them in a legislative rather than a judicial manner.

"The first question in the present case—that of the liability of a nation to pay damages for an escape like the *Alabama's* from the Mersey—is a difficult and not unimportant legal one. Supposing the arbitrator to be of opinion that the designs of the British government were perfectly fair, and its conduct on the whole successful in preventing the escape of cruisers, so that no *casus belli* existed, he will then have to say whether the obligation of a nation with regard to the neutrality of its soil amounts to an absolute insurance of such neutrality, so that damages may be claimed for a breach, even though the case be such as would not justify a war, if damages were offered. If this question were now raised for the first time it would be much easier to answer it in the affirmative than it is under the actual circumstances—that the United States themselves repudiated such an obligation when claimed against them by Portugal, in respect of the captures

made during the South American civil war, by cruisers which sailed from their ports. For the point to be referred to an arbitrator instead of being declared or enacted in Congress, is the same thing as if a colony, instead of deciding in legislative assembly whether Lord Campbell's Act, whereby the liabilities of railway companies were so greatly increased, should be adopted, were, after the occurrence of numerous accidents, suddenly to refer the question of its adoption to the decision of an arbitrator on the next accident. The third question is also a legal one of novelty and difficulty, and may turn out to be the most important in the reference. But in the present case it appears to me to be now too late to put forward these considerations, though note may be taken of them for the future. A reference of the *Alabama* claims was refused by Earl Russell, on grounds which can hardly be deemed satisfactory, and has since been conceded in substance by Lord Stanley. It is not likely that the reference of legal questions to an arbitrator, wrong as it may be in principle, will in the actual instance lead to great mischief. The issues are not really difficult to settle, and involve nothing derogatory to England. The proclamation about which so much has been said is not directly involved, while an indirect judgment on it is so necessarily involved in the question of the *Alabama's* commission,

as justifying her reception in British ports, that it cannot be evaded if the claims are to be referred at all. The only practical questions, then, which appear to me to remain, are those of settling the form of the reference and choosing the arbitrator; and to these I earnestly desire that both governments should address themselves with all candor and sincerity. Let the issues be clear, precise, and appropriate, so the deliverance of them will most tend to take out the sting from the feelings of both sides, and to leave international law, and the habits of conducting international relations, in a better plight and condition than that in which they were found.

"I am, &c.,

"JOHN WESTLAKE.[58]

"LINCOLN'S-INN, Jan. 23."

[58] John Westlake, Q. C., since 1888 Professor of International Law in Cambridge University, published in 1858 *A Treatise on Private International Law, or the Conflict of Laws*, which he rewrote entirely in 1880; in 1894 he published *Chapters on the Principles of International Law*. He was the Foreign Secretary of the National Association for the Promotion of Social Science, and President of its Jurisprudence Department at the Birmingham meeting in 1884. He is a member, and was President at the Cambridge meeting in 1895, of *l'Institut de Droit International*.

CHAPTER V.

On the 6th of March, 1868, there was a debate in the House of Commons on the *Alabama* claims. Mr. Shaw-Lefevre (Liberal), who during the Civil War sympathized with the Union cause, moved an address calling for the publication of papers relating to the *Alabama* claims. The Foreign Secretary, Lord Stanley, Mr. W. E. Forster, Mr. Mill and most of the members who spoke, favored, at the same time that they insisted on the safeguarding of the rights of England, the adoption of a conciliatory policy towards the United States.[59]

In June, 1868, President Johnson appointed Mr. Reverdy Johnson, of Maryland, to succeed Mr. Adams who had resigned in December, 1867, but had continued until May, 1868, at the post he had filled with such marked ability and success, and maintained during the course of difficult negotiations the high diplomatic traditions left him by an honored sire and grandsire. Mr. Johnson arrived in

[59] The London *Times*, March 7th, 1868, page 6.

England with instructions to seek for an amicable arrangement of several vexatious questions, such as naturalization and the San Juan water boundary, then existing between the two countries. He negotiated for many months with Lord Stanley and his successor in the Foreign Office, Lord Clarendon. At length, on January 14th, 1869, the Johnson-Clarendon convention providing for the settlement of the *Alabama* claims was signed. It provided that a commission of four members should sit at Washington, that each power should name two commissioners, that all the claims of subjects of either country against the other nation should be submitted to the four commissioners; and that if in any case the commissioners failed to come to an agreement, they should choose an umpire, but if they did not agree in their selection, then each side should name an umpire, and then from these two persons an umpire should be chosen for each particular case in which the commissioners failed to agree.

When the convention came up for ratification in the United States, it met with strong opposition. Charles Sumner, Senator from Massachusetts, the Chairman of the Committee on Foreign Affairs, delivered, in executive session, on April 13th, 1869, a strong speech against ratifying the convention. Senator Sumner first of all said, that the Committee would not hesitate

to advise the Senate to reject the treaty and then he went on to say :—[60]

"A treaty which, instead of removing an existing grievance, leaves it for heart-burning and rancor, cannot be considered a settlement of pending questions between two nations. It may seem to settle them, but does not. It is nothing but a snare. And such is the character of the treaty now before us. The massive grievance under which our country suffered for years is left untouched; the painful sense of wrong planted in the national heart is allowed to remain. For all this there is not one word of regret or even of recognition; nor is there any semblance of compensation. It cannot be for the interest of either party that such a treaty should be ratified. It cannot promote the interest of the United States, for we naturally seek justice as the foundation of a good understanding with Great Britain; nor can it promote the interest of Great Britain, which must also seek a real settlement of all pending questions. Surely I do not err when I say that a wise statesmanship, whether on

[60] *Appendix to the Congressional Globe: Containing Speeches, Important State Papers and the Laws of the First Session, Forty-first Congress.* City of Washington: Office of the Congressional Globe, 1869, pages 21–26, *passim.*

Speech of Hon. Charles Sumner on the Johnson-Clarendon Treaty for the Settlement of Claims. Delivered in the U. S. Senate. Boston, 1870.

our side or on the other side, must apply itself to find the real root of evil, and then, with courage tempered by candor and moderation, see that it is extirpated. This is for the interest of both parties, and anything short of it is a failure.

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"If we look at the negotiation, which immediately preceded the treaty, we find little to commend. You have it on your table. I think I am not mistaken when I say, that it shows a haste which finds few precedents in diplomacy, but which is explained by the anxiety to reach a conclusion before the advent of a new Administration. Mr. Seward and Mr. Reverdy Johnson both unite in this unprecedented activity, using the Atlantic cable freely. I should not object to haste or to the freest use of the cable, if the result were such as could be approved; but, considering the character of the transaction, and how completely the treaty conceals the main cause of offence, it seems as if the honorable negotiators were engaged in huddling something out of sight.

"The treaty has for its model the Claims Convention of 1853. To take such a Convention as a model was a strange mistake. This Convention was for the settlement of outstanding claims of American citizens on Great Britain, and of British subjects on the United States, which had arisen since the treaty of

Ghent in 1815. It concerned individuals only and not the nation. It was not in any respect political; nor was it to remove any sense of national wrong. To take such a Convention as the model for a treaty, which was to determine a national grievance of transcendent importance in the relations of two countries, marked on the threshold an insensibility to the true nature of the difference to be settled. At once it belittled the work to be done.

"An inspection of the treaty shows how from beginning to end it is merely for the settlement of individual claims on both sides, putting both batches on an equality—so that the sufferers by the misconduct of England may be counterbalanced by British blockade-runners. It opens with a preamble, which, instead of announcing the unprecedented question between the two countries, simply refers to individual claims which have arisen since 1853—which was the last time of settlement—some of which are still pending and remain unsettled. Who would believe that, under these words of common-place, was concealed the unsettled difference which has already so deeply stirred the American people, and is destined until finally adjusted to occupy the attention of the civilized world?

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"The provisions of the treaty are for the trial of these cases. A commission is constituted, which is

empowered to choose an arbitrator; but, in the event of a failure to agree, the arbitrator shall be determined 'by lot' out of two persons named by each side. Even if this aleatory proceeding were a proper device in the umpirage of private claims, it is strangely inconsistent with the solemnity which belongs to the present question.[61] The moral sense is disturbed by such a process at any stage of the trial; nor is it satisfied by the subsequent provision for the selection of a sovereign or head of a friendly State as arbitrator.

"The treaty not merely makes no provision for the determination of the great question, but it seems to provide expressly that it shall never hereafter be presented."

Then Summer went on to state the case against England. He showed how the Civil War began, how

[61] Sumner wrote on January 13th, 1867, to George Bemis:—

"There are difficulties in the way of finding an arbitrator. What power would dare to decide against England? What power would dare to decide against the United States? Whom will England accept that we will accept? On another occasion Lord Lyons told me that England would accept Switzerland, and I drew up and reported a resolution authorizing the submission. But the war soon diverted attention, and that resolution was never acted on. It was on the San Juan difficulty; but there England was anxious simply for a settlement. What say you to a commission of wise men? Who shall they be? Will the country be contented with such a submission? Seward thinks not." *Memoir and Letters of Charles Sumner*, by Edward L. Pierce. Boston, 1893. Volume IV., page 312.

England in hot haste recognized the Confederate States as belligerents, and how the *Alabama* was built and put to sea. He continued:—

"The case is not yet complete. The *Alabama*, whose building was in defiance of law, international and municipal, whose escape was 'a scandal and reproach,'[62] and whose enlistment of her crew was a fit sequel to the rest, after being supplied with an armament and with a rebel commander, entered upon her career of piracy. Mark now a new stage of complicity. Constantly the pirate ship was within reach of British cruisers, and from time to time within the shelter of British ports. For six days unmolested she enjoyed the pleasant hospitality of Kingston, in Jamaica, obtaining freely the coal and other supplies so necessary to her vocation. But no British cruiser, no British magistrate ever arrested the offending ship,

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[62] In a letter to Lord Lyons, dated March 27th, 1863, Earl Russell, in relating a conversation he had with Mr. Adams, wrote among other things:—

"I said that the Cabinet were of opinion that the law [the English municipal 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."

The Official Correspondence on the Claims of the United States in respect to the 'Alabama.' (Published by Earl Russell). London: Longmans, Green & Co., 1867, page 67.

whose voyage was a continuing 'scandal and reproach' to the British Government.

"The excuse for this strange license is a curious technicality, as if a technicality could avail in this case at any stage. Borrowing a phrase from that master of Admiralty jurisprudence, Sir William Scott, it is said that the ship 'deposited' her original sin at the conclusion of her voyage, so that afterwards she was blameless. But the *Alabama* never concluded her voyage until she sank under the guns of the *Kearsarge*, because she never had a port of her own. She was no better than the *Flying Dutchman* and so long as she sailed was liable for that original sin, which had impregnated every plank with an indelible dye. No British cruiser could allow her to proceed, no British port could give her shelter, without renewing the complicity of England.

"The *Alabama* case begins with a fatal concession, by which the rebels were enabled to build ships in England, and then to sail them, without being liable as pirates; it next shows itself in the building of the ship, in the armament, and in the escape, with so much of negligence on the part of the British Government as to constitute sufferance, if not connivance; and then, again, the case reappears in the welcome and hospitality accorded by British cruisers, and by the magistrates of British ports, to the pirate ship, when her

evasion from British jurisdiction was well known. Thus, at three different stages, the British Government is compromised: first, in the concession of ocean belligerency, on which all depended; secondly, in the negligence which allowed the evasion of the ship, in order to enter upon the hostile expedition for which she was built, manned, armed, and equipped; and thirdly, in the open complicity, which, after this evasion, gave her welcome hospitality and supplies in British ports. Thus her depredations and burnings, making the ocean blaze, all proceeded from England, which by three different acts lighted the torch. To England must be traced, also, all the wide-spread consequences which ensued.

"I take the case of the *Alabama*, because it is the best known, and because the building, equipment, and escape of this ship were under circumstances most obnoxious to judgment; but it will not be forgotten, that there were consort ships, built under the shelter of that fatal proclamation, issued in such an eclipse of just principles, and, like the ships it unloosed, 'rigged with curses dark.' One after the other, ships were built; one after the other, they escaped on their errand; and, one after the other, they enjoyed the immunities of British ports. Audacity reached its height when iron-clad rams were built, and the perversity of the British Government became still more

conspicuous by its long refusal to arrest these destructive engines of war, destined to be employed against the United States. This protracted hesitation, where the consequences were so menacing, is a part of the case.

"It is plain that the ships were built under the safeguard of this ill-omened proclamation; which stole forth from the British shores, and afterward enjoyed the immunities of British ports, were not only British in origin, but British in equipment, British in armament, and British in crews. They were British in every respect, except in their commanders, who were rebel, and one of these, as his ship was sinking, owed his safety to a British yacht, symbolizing the omnipresent support of England. British sympathies were active in their behalf. The cheers of a British passenger ship crossing the path of the *Alabama* encouraged the work of piracy, and the cheers of the House of Commons encouraged the builder of the *Alabama*, while he defended what he had done and exclaimed, in taunt to him who is now an illustrious member of the British cabinet, John Bright, that he 'would rather be handed down to posterity as the builder of a dozen *Alabamas*, than be the author of the speeches of that gentleman 'crying up' the institutions of the United States, which the builder of the *Alabama*, rising with his theme, denounced 'as of no

value whatever and as reducing the very name of liberty to an utter absurdity,' while the cheers of the House of Commons echoed back his words. Thus from beginning to end, from the fatal proclamation to the rejoicing of the accidental ship, and the rejoicing of the House of Commons, was this hostile expedition protected and encouraged by England. The same spirit, which dictated the swift concession of belligerency, with all its deadly incidents, ruled the hour, entering into and possessing every pirate ship."

Then Senator Sumner spoke of the reparation due from England to the United States. He estimated the losses that the Confederate cruisers inflicted on the tonnage of the United States at about $15,000,000. Next he went on to describe the "national claims" or "indirect claims;" and said:—

"I refer, of course, to the national losses caused by the prolongation of the war and traceable directly to England. Pardon me if I confess the regret with which I touch this prodigious item; for I know well the depth of feeling which it is calculated to stir. But I cannot hesitate. It belongs to the case. No candid person, who studies this eventful period, can doubt that the Rebellion was originally encouraged by hope of support from England; that it was strengthened at once by the concession of belligerent rights on the

ocean; that it was fed to the end by British supplies; that it was encouraged by every well-stored British ship that was able to defy our blockade; that it was quickened into renewed life with every report from the British pirates, flaming anew with every burning ship; nor can it be doubted that without British intervention the Rebellion would have soon succumbed under the well-directed efforts of the National Government. Not weeks or months, but years were added in this way to our war, so full of the most costly sacrifice. The subsidies which in other times England contributed to continental wars were less effective than the aid and comfort which she contributed to the Rebellion. It cannot be said too often that the *naval base* of the Rebellion was not in America, but in England. The blockade-runners and the pirate ships were all English. * * * Mr. Cobden boldly said in the House of Commons that England made war from her shores on the United States, 'with an amount of damage to that country greater than in many ordinary wars.' According to this testimony, the conduct of England was war; but it must not be forgotten that this war was carried on at our sole costs. The United States paid for a war waged by England upon the National Unity."

After referring to "the multitudinous blockade-runners" that issued from English ports and stating

the rule of damages in the case, Senator Sumner summarized the case against England thus:—

"Applying this rule to the present case, the way is clear. Every British pirate was a *public nuisance*, involving the British Government, which must respond in damages, not only to the individuals who have suffered but also to the National Government, acting as *pater familias* for the common good of all the people.

"Thus by an analogy of the Common Law, in the case of a public nuisance, also by the strict rule of the Roman Law, which enters so largely into International Law, and even by the rule of the Common Law relating to damages, all losses, whether individual or national, are the just subjects of claim. It is not I who say this; it is the law. The colossal sum-total may be seen, not only in the losses of individuals, but in those national losses, caused by the destruction of our commerce, the prolongation of the war, and the expense of the blockade, all of which may be traced directly to England;

'illud ab uno
'Corpore, et ex una pendebat origine bellum.'

Three times is this liability fixed; first, by the concession of ocean belligerency, opening to the rebels ship-yards, foundries, and manufactories, and giving to them a flag on the ocean; secondly, by the organiza-

tion of hostile expeditions, which, by admissions in Parliament, were nothing less than piratical war on the United States with England as the naval base; and, thirdly, by welcome, hospitality, and supplies extended to these pirate ships in ports of the British empire. Show either of these and the liability of England is complete. Show the three and this Power is bound by a triple cord."[63]

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[63] Moorfield Storey, for many years closely connected with Senator Sumner, says of this speech:—

"Notwithstanding its few pacific words the speech seemed hardly calculated to promote a settlement. England had reluctantly consented to arbitrate, and now her most conspicuous friend among American statesmen replied that her concession was idle, and that the claims of the United States exceeded in character and magnitude anything that her statesmen had imagined possible. In it Sumner took no new position; his opinions had already been stated fully, and in fact our government had taken the same ground; but the English had not realized what we meant. As Sumner wrote to Lieber somewhat later: 'I have made no demand, not a word of apology, not a dollar! nor have I menaced, suggested, or thought of war. * * * My object was simply to expose our wrongs as plainly, but as gently, as possible. * * * To my mind our first duty is to make England see what she has done to us.'

"Sumner accomplished this object completely. He instructed England, and he satisfied America.

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"Two years later Sir Stafford Northcote wrote to Mr. Sumner, after reading the speech again: 'Though I must own your speech was somewhat sharp, I verily believe that it taught us a

The Senate refused, with only one dissenting vote, to ratify the treaty. In communicating in a dispatch of April 19th, 1869, to Mr. Reverdy Johnson the rejection of the treaty, Hamilton Fish, the new Secretary of State, wrote that President Grant was not without hope that the two countries might yet find an amicable and satisfactory means of adjusting the controversy. When Mr. Johnson communicated this to Lord Clarendon, the latter said that Her Majesty's Government desired that all difficulties between the two nations should be settled honorably, and that the relations between the two countries might be most friendly and amicable.[64]

In May 1869, Mr. Thomas Balch, who had returned home for a time, discussed at Washington, with Senator Sumner[65] and also with Secretary Fish and

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valuable lesson in that respect, and that we may say of it, *fidelia vulnera amantis*.'

"Mr. Sumner's course was justified by the event, and the words, which seemed likely to prevent an adjustment, paved the way to a real settlement as he intended." *Charles Sumner*, by Moorfield Storey. Boston and New York, 1900, pages 367, 368.

[64] *Correspondence concerning Claims Against Great Britain.* Volume III. Washington: Government Printing Office, 1870, pages 786, 787.

[65] Senator Sumner and Mr. Balch were personal friends for many years, and the following letters throw light on Senator Sumner's views upon the *Alabama* question and English opinion, after the rejection of the Johnson-Clarendon Convention.

President Grant,[66] the possibilities of settling the *Alabama* controversy in a peaceable manner, and urged upon all three the submission of the whole question to the decision of a Court of Arbitration composed

"WASHINGTON,
"24th May, '69.

"DEAR MR. BALCH,

"I have read these enclosures with interest. I remember Mr. B.'s father—as 'lead Beaumont,' and was familiar at the time with his most expensive party contest.

"The view of yr. correspondent is sensible. I now understand what D'Israeli meant when he called ——— 'that wild man.' But all England seems to be 'wild.'

"Sincerely yours,

"CHARLES SUMNER."

WASHINGTON,
"1st June, '69.

"Thanks for this letter, which shows returning reason in England. Is it not strange, the scene of the last month? Will Englishmen ever do me justice?

"Ever Yours,

"CHARLES SUMNER."

"WASHINGTON,
"6th June, '69.

"MY DEAR MR. BALCH,

"Calm the English and teach them to be just. *Ils veuleut être libres et ne savent pas être justes.* These were the words of old Sieyès.

"Think of their press attacking a speech for weeks which it

[66] Manuscript notes of Mr. Balch.

exclusively of jurists; he deprecated also any further attempt to press the question of the recognition in the Queen's Proclamation of the Confederate States as belligerents.[67]

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never laid before its readers. Of course, every article was a misrepresentation.

"Yours sincerely,

"CHARLES SUMNER."

"WASHINGTON,
"11th June, '69.

"DEAR MR. BALCH,

* * * * * * *

"Was there ever such a foolish six weeks as England has passed misrepresenting a speech which their press did not publish! Their case is not improved. Sooner or later they will be obliged to listen.

"Sincerely yours,

"CHARLES SUMNER."

"WASHINGTON,
"15th June, '69.

"DEAR MR. BALCH,

"The Seward dispatch is well known. It is one of those early docts. which show that he did not understand the case any more than the English understand it now. Was England ever before so false and mean? The mean are always false.

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"Faithfully yours,

"CHARLES SUMNER.

"One of my correspondents says that Sir Henry B. [probably Sir Henry Bulwer] is the only Englishman who has kept his temper and is fair minded now."

[67] The following extract is taken from notes written in 1872 by Mr. Balch upon the *Alabama* question:—

"In Mauran *vs.* the Insurance Company, we had ourselves

In the spring of 1869, John Lothrop Motley, the eminent historian, succeeded Mr. Johnson as Minister to England. Mr. Fish in his instructions to Mr. Motley sought to keep three objects in view:—First, to show that the rejection of the Johnson-Clarendon Convention for the settlement of claims, was not an unfriendly act; second, to propose a suspension of discussion until public feeling had grown more calm;

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recognized the Belligerent Status of the South, four days after the Queen's Proclamation. Apart from this decision I was and am among the American lawyers who maintain that the alleged offense in the Queen's Proclamation was not an offense by International Law; and, accordingly, in my interviews with Mr. Sumner and others during my visit in Washington, I deprecated any further attempt to moot this point."

Compare "Mauran *vs.* Insurance Company," 6 Wallace's *United States Supreme Court Reports*, pages 1, 2, 13 *et seq.*: "Fifield *vs.* Insurance Company," 47 *Pennsylvania State*, page 166: "Charles E. Dole and another *vs.* The New England Mutual Marine Insurance Company," "The same *vs.* The Equitable Safety Insurance Company," 6 Allen (Massachusetts), page 373: and *Commentaire sur les Élements du Droit International et sur l'Histoire des Progrès du Droit des Gens de Henry Wheaton*, by William Beach Lawrence; Leipzig: F. A. Brockhaus, 1868. Volume I., pages 184, 185.

See also, by George Bemis, Esq., *Hasty Recognition*, published at Boston, May 30th, 1865: *British Neutrality—Hasty Recognition of Rebel Belligerency and Our Right to Complain of it;* from the *New York Times*, March 16th, 1868. Reprinted in *Correspondence concerning Claims Against Great Britain*. Volume IV. Washington: Government Printing Office, 1869, pages 12–46.

and third, to make it clear that the United States *did not base its claims for damages against England on the latter's recognition of the Confederate States as belligerents.*[68] Mr. Fish instructed Mr. Motley after the latter's arrival in London to inform Lord Clarendon that any future negotiations concerning the *Alabama* claims would be conducted at Washington. Sir John Rose, a member of the Canadian Ministry, arrived in

[68] Mr. Fish in his instructions to Mr. Motley on May 15th, 1869, wrote:—

"The President recognizes the right of every power, when a civil conflict has arisen within another State, and has attained a sufficient complexity, magnitude and completeness, to define its own relations and those of its citizens and subjects toward the parties to the conflict, so far as their rights and interests are necessarily affected by the conflict.

"The necessity and the propriety of the original concession of belligerency by Great Britain at the time it was made have been contested and are not admitted. They certainly are questionable, but the President regards that concession as a part of the case only so far as it shows the beginning and the animus of that course of conduct which resulted so disastrously to the United States. It is important, in that it foreshadows subsequent events.

"There were other powers that were contemporaneous with England in similar concession, but it was in England only that the concession was supplemented by acts causing direct damage to the United States. The President is careful to make this discrimination, because he is anxious as much as possible to simplify the case, and to bring into view these subsequent acts, which are so important to determining the question between the two countries." *Correspondence concerning Claims Against Great Britain.* Volume VI. Washington: Government Printing Office, 1871, pages 3, 4.

the summer of 1869, ostensibly to arrange some commercial matters, but really to sound the United States Government upon the possibility of settling the *Alabama* claims.[69] Mr. Fish told Sir John Rose that some time must elapse to allow the irritation that Senator Sumner's speech had caused in England to quiet down, and "that when the excitement subsided the appointment as special envoy of some man of high rank, authorized to express some kind word of regret, would pave the way for a settlement; and he outlined to Sir John the exact scheme for settlement which was adopted a year and a half later."

President Grant in his message to Congress, December 5th, 1870, spoke with regret of the failure of the two Governments to come to some understanding on the subject. Early in January, 1871, Sir John Rose again visited Washington on a confidential mission.[70]

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[69] *Mr. Fish and the Alabama Claims. A Chapter in Diplomatic History*, by J. C. Bancroft Davis. Boston and New York, 1893, pages 44–46.

The celebrated international jurist, Dr. Bluntschli, professor at Heidelberg, reviewed in 1870 for *La Revue de Droit international et de législation comparée* (Bruxelles) the *Alabama* question in an article entitled, *Opinion impartiale sur la Question de l' Alabama et sur la Manière de la Résoudre.*

[70] *Mr. Fish and the Alabama Claims. A Chapter in Diplomatic History*, by J. C. Bancroft Davis. Boston and New York, 1893, pages 59–64. *Memoir and Letters of Charles Sumner*, by Edward L. Pierce. Boston, 1893. Volume IV., page 467.

After twenty months of intermittent secret negotiations, an accord was finally reached, which found formal expression in four notes that passed between Sir Edward Thornton, the English Minister at Washington, and Secretary Fish.[71] In a note of January 26th, 1871, Sir Edward Thornton proposed to Mr. Fish the appointment of a Joint High Commission to settle the northeast fisheries and any other outstanding differences between the two countries. Four days later Secretary Fish wrote to Sir Edward, that the President approved of the proposal, but it was essential to include the *Alabama* claims in the suggested settlement. Two days later, the English Minister replied that his Government would be pleased to have the *Alabama* claims submitted to the same Joint High Commission, provided that all other claims by British and American citizens arising from the acts of the Civil War were similarly referred. On the 3d of February, Secretary Fish wrote to the English Minister, that the President assented to the proposal to refer to the same Commission all claims of citizens of either nation growing out of acts committed during the Civil War.

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[71] *The National and Private "Alabama Claims" and their "final and amicable settlement,"* by Charles C. Beaman, Jr. Printed by W. H. Moore, Washington, D. C., 1871, pages 308–310. *Correspondence concerning Claims Against Great Britain.* Volume VI. Washington: Government Printing Office, 1871, pages 15–18.

CHAPTER VI.

The Joint High Commission was organized at Washington on February 27th, 1871.[72] The representatives of the United States were Hamilton Fish, Secretary of State, Mr. Justice Nelson of the Supreme Court, General Robert C. Schenck, just appointed Minister to England, Ebenezer Rockwood Hoar, of Massachusetts, and George H. Williams, of Oregon. The representatives of Great Britain were Earl de Grey and Ripon, a member of the English Cabinet, Sir Stafford Henry Northcote, of Her Majesty's opposition, Sir Edward Thornton, Minister at Washington, Professor Mountague Bernard of Oxford University, and Sir John A. Macdonald, the Premier of Canada. Finally, after many and long deliberations, the Commissioners agreed upon and signed on the 8th of May, 1871, the treaty that became known by the name of the city, where they negotiated—the Treaty of Washington.

[72] *Papers relating to the Treaty of Washington.* Volume I. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 9 *et seq.* *Mr. Fish and the Alabama Claims. A Chapter in Diplomatic History*, by J. C. Bancroft Davis. Boston and New York, 1892, page 70 *et seq.*

The treaty consisted of a preamble and forty-three articles. The preamble and the first eleven articles related to the *Alabama* claims. The next six articles, from twelve to seventeen, both included, referred to claims of citizens of the United States against England and of claims of British subjects against the United States arising from acts committed against the person or property of such individuals during the course of the Civil War. Then the succeeding articles beginning with the eighteenth and ending with the thirty-third, provided for the settlement of the North Atlantic fisheries; the navigation of the St. Lawrence, the Yukon and other rivers, of Lake Michigan, and of certain canals; for a system of bonded transit; for certain features of the coasting trade; and for the exemption from duty of lumber cut in United States territory along the St. John River and floated down to the sea. The remaining articles, except the last, that related to the exchange of ratification, arranged for the submission to the arbitration of the Emperor of Germany of the San Juan water boundary between the Territory of Washington and British Columbia.

The provisions of the treaty relating to the *Alabama* claims met in substance the requirements laid down by Senator Sumner in his speech in opposition to the Johnson-Clarendon Convention.

The first article referred to the power that the English Government had granted to its commissioners "to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape of the *Alabama* and other vessels from British ports, and for the depredations committed by those vessels."

Then, further, instead of leaving the choice of an arbitrator to the chance of lot, the same article provided for the constitution of a Court of Arbitration to hear and try the case, in the following manner:—

"Now, in order to remove and adjust all complaints 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, to be composed of five Arbitrators, to be appointed in the following manner, that is to say: One shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

"In case of the death, absence, or incapacity to

serve of any or either of the said Arbitrators, or in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such Head of a State.

"And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator either to fill the original appointment or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators."[73]

The next four articles provided for the meeting of the Court at Geneva, for the limit of time and manner

[73] *Papers relating to the Treaty of Washington.* Volume I. *Geneva Arbitration.* Washington: Government Printing Office 1872, page 12.

of preparing the cases and counter cases, and the presentation of arguments on each side.

In the sixth article the two powers agreed upon three rules that should apply to the case. The *three rules* were as follows:

"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 cruise 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 cruise 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."[74]

These rules were followed with a declaration in the

[74] *Papers relating to the Treaty of Washington.* Volume I. *Geneva Arbitration.* Washington: Government Printing Office, 1872, pages 14, 207 *et seq.*

same article by the English Government that it did not assent to the "rules as a statement of the principles of International Law which were in force at the time" the *Alabama* claims arose, but in order to strengthen "the friendly relations between the two countries, * * * the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth" in the rules.

The other five articles—from seven to eleven both inclusive—related to the manner of rendering the decision, the part each nation should bear of the expenses of the Court, that a majority of the Court should decide, and that the decision should be final.

These eleven articles secured a decision upon all claims national as well as individual growing out of the acts committed by the Confederate cruisers, and "generically known as the *Alabama* claims." The United States Senate confirmed the treaty, May 24th, Senator Sumner voting for it.

In England there were signs of relief that a plan for the settlement of the Anglo-American differences at length was agreed upon: but there was also some criticism of the treaty. Earl Russell attacked it in the House of Lords, June 12th, 1871. The three rules were criticised severely: it was said that they would prevent neutral traders from selling arms and munition of war in the ordinary course of commerce.

The United States chose for their agent Mr. J. C. Bancroft Davis, to whom they entrusted the preparation of their case: for their counsel they appointed William M. Evarts, Caleb Cushing, and Morris R. Waite, afterwards Chief Justice of the Supreme Court.

Great Britain entrusted the preparation of her case to the Lord Chancellor, with the assistance of Lord Tenderden and Professor Bernard: she named Sir Roundell Palmer as her counsel.

In accordance with the provisions in Article I. for the appointment of the members of the Tribunal, the President of the United States named as arbitrator Charles Francis Adams, who during the long course of the war and for more than two years after represented and defended American interests with such rare courtesy and ability; the Queen of England chose Sir Alexander Cockburn, Lord Chief Justice of England; the King of Italy appointed Count Frederic Sclopis, a distinguished judge and lawyer of European reputation; the President of the Swiss Confederation chose Monsieur Jacques Staempfli of Berne, who had served three times as President of the Confederation; and the Emperor of Brazil named Marcos Antonio d'Araujo, Baron d'Itayubá, Brazilian Minister at Paris.[75]

[75] *The Treaty of Washington, its Negotiation, Execution, and the Discussion relating thereto*, by Caleb Cushing. New York: 1873, pages 26, 78–94.

CHAPTER VII.

On December 15th, 1871, in the "Salle des Conferences" at the Hotel de Ville of Geneva, the Court met and organized with Count Sclopis as president.[76] After a speech of Count Sclopis, opening the proceedings, the agents of the two litigant nations presented the case of their respective countries to the Court. The Tribunal then "directed that the respective counter cases, additional documents" *et cetera* should be presented on or before the 15th of April following. On December 16th the Court met and adjourned until June 15th, 1872.[77]

When the contents of the American Case became known, the English press commented at first severely on the chapter on "unfriendliness"; gradually, however, the English journals dropped their attacks on that part of the case to criticise the "indirect claims"

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[76] *Papers relating to the Treaty of Washington.* Volume IV. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 14. *The Treaty of Washington, its Negotiation, Execution, and the Discussion relating thereto*, by Caleb Cushing, New York: 1873, page 74 *et seq.*

[77] *Papers relating to the Treaty of Washington.* Volume IV. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 16.

that the United States put forward.[78] In January, 1872, the comments on that subject became in some cases severe, and the English papers generally said that something must be done to guard England against any possibilities of being called upon to pay damages for the indirect claims.

The Queen, in her speech to Parliament on the 6th of February said:

"The arbitrators appointed pursuant to the Treaty of Washington, for the purpose of amicably settling certain claims known as the *Alabama* claims, have held their first meeting at Geneva.

"Cases have been laid before the arbitrators on behalf of each party to the treaty. In the Case so submitted on behalf of the United States, large claims have been included which are understood on my part not to be within the province of the arbitrators. On

[78] The claims as stated by the American Commissioners were classified as follows:

"1. The claims for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers.

"2. The national expenditures in the pursuit of those cruisers.

"3. The loss in the transfer of the American commercial marine to the British flag.

"4. The enhanced payments of insurance.

"5. The prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the rebellion."

Papers relating to the Treaty of Washington. Volume I. *Geneva Arbitration.* Washington: Government Printing Office, page 185. *Ib.*, Volume IV., pages 4, 5.

this subject I have caused a friendly communication to be made to the Government of the United States."

When the Treaty of Washington was completed, the American Commissioners thought it distinctly provided, and the English Commissioners thought it as distinctly did not provide, to refer the "indirect claims" to a Court of Arbitration.[79]

When the two Governments understood that they held different views on that point, their respective agents conferred and discussed frequently the subject with the object of avoiding a clash upon that question, and the consequent failure of the arbitration. A satisfactory settlement of the differences was most difficult. When the Tribunal reconvened, on June 15th, Lord Tenderden, instead of delivering the printed argument of England, asked the Court to adjourn for eight months.[80] The same day, Mr. Davis

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[79] *Life, Letters and Diaries of Sir Stafford Northcote, First Earl of Iddesleigh*, by Andrew Lang. Edinburgh and London, 1890, vol. II., pages 5–13, *passim*. *Mr. Fish and the Alabama Claims. A Chapter in Diplomatic History*, by J. C. Bancroft Davis. Boston and New York, 1893, pages 74–82, 89–96. *Papers relating to the Treaty of Washington.* Volume II. *Geneva Arbitration.* Washington: Government Printing Office, 1872. Pages 434, 593–604. *Charles Sumner*, by Moorfield Storey. Boston and New York, 1900, pages 368, 369.

[80] *Papers relating to the Treaty of Washington.* Volume IV. *Geneva Arbitration.* Washington: Government Printing Office, 1872, pages 6, 17, 18.

and Lord Tenderden had an interview, and then, after many *pourparlers* during the next few days, between Mr. Davis and Mr. Adams and the American counsel on the one side, and Lord Tenderden and Sir Roundell Palmer on the other side, the two agents came to an agreement.[81] On June 19th, Count Sclopis, as head of the Tribunal, embodied it in formal words. He said, on behalf of all the members of the Court, that, without expressing any opinion on the point in difference as to the meaning of the treaty, the Court thought, individually and collectively, that the "indirect claims" did not constitute, upon the principles of International Law applicable to such cases, good grounds for an award of damages between nations, and, upon such principles, the Tribunal, even if there were no disagreement between the two litigant governments as to the competency of the Court to decide thereon, would exclude them altogether in making its award.[82] This announce-

[81] *Papers relating to the Treaty of Washington.* Volume IV. *Geneva Arbitration.* Washington: Government Printing Office, 1872, pages 6, 19. *Mr. Fish and the Alabama Claims. A Chapter in Diplomatic History*, by J. C. Bancroft Davis. Boston and New York, 1893, pages 98–102. *Charles Francis Adams*, by his son, Charles Francis Adams. Boston, 1900, pages 394, 395.

[82] *The Treaty of Washington, its Negotiation, Execution, and the Discussion relating thereto*, by Caleb Cushing. New York: 1873, page 69 *et seq.*

ment practically ended the subject; for at the next meeting of the Tribunal, a few days later, Mr. Davis informed the Court that, inasmuch as it was of the opinion that it did not have jurisdiction to try the "indirect claims," his Government had empowered him to say that it would not press those claims further, or urge them as a consideration in any award that the Court might decree.[83] Two days afterwards, Lord Tenderden, in behalf of Great Britain, said that in consequence of the decision of the Court that it had not jurisdiction to try the "indirect claims" and the statement of the American agent on the subject, his Government had instructed him to request leave to withdraw the application for an adjournment and to present the British printed argument. This request was readily granted, and the case proceeded.[84]

Then, after holding many sittings to hear the argument of counsel, the Court rendered its decision on September 14th, 1872. As to the *Alabama* the Tribunal was unanimous that England had failed to fulfill the duties prescribed by the first and the third of

[83] *Papers relating to the Treaty of Washington.* Volume IV. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 21.

[84] *Papers relating to the Treaty of Washington.* Volume IV. *Geneva Arbitration.* Washington: Government Printing Office, 1872, page 21.

the three rules established by the Treaty of Washington. In the case of the *Oreto*, the Court held, Sir Alexander Cockburn dissenting, that Great Britain had failed to perform the duties prescribed by the three rules. As to the *Shenandoah*, the Court decided by three votes to two, Sir Alexander Cockburn and Viscount d'Itajubá dissenting, that England had failed to fulfill her duties according to the three rules in the case of that vessel, "from and after her entry into Hobson's Bay," and that Great Britain was responsible, therefore, for the acts of the *Shenandoah* after her departure from Melbourne on February 18th, 1865.[85]

As to the *Tuscaloosa*, the *Clarence*, the *Tacony*, and the *Archer*, tenders either of the *Alabama* or the *Florida*, the Court was unanimous that such auxiliary vessels "must necessarily follow the lot of their principals." Concerning the *Georgia*, the *Sumter*, the *Nashville*, the *Tallahassee*, and the *Chickamauga*, the Tribunal was unanimously of the opinion that England was not responsible. And the Court held, Sir Alexander Cockburn dissenting, that Great Britain

[85] *Papers relating to the Treaty of Washington.* Volume IV. *Geneva Arbitration.* Washington : Government Printing Office, 1872, page 8 *et seq.*, 15–48 *passim*, 49 *et seq.*, 230–544.

The Treaty of Washington, its Negotiation, Execution, and the Discussion relating thereto, by Caleb Cushing. New York : 1873, pages 126–149.

was liable to the United States in damages for the losses inflicted upon the latter's commerce by the Confederate cruisers built in England to the amount of fifteen million five hundred thousand dollars ($15,500,000), payable in gold. Sir Alexander Cockburn filed a separate opinion stating his reasons for disagreeing from the judgment of the majority of the Court.

Thus, after many anxious years, when at times the feelings on both sides of the Atlantic ran high, a burning question of difference between two powerful nations—that, had it continued to smoulder, would certainly have imbittered their relations and might very likely have led to war between them—was eliminated, through a course of action alike honorable to both sides, in a peaceful manner from the sphere of their every-day relations.

APPENDIX.

APPENDIX.

DECISION AND AWARD.

Made by the tribunal of arbitration constituted by virtue of the first article of the treaty concluded at Washington the 8th of May, 1871, between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland.

The United States of America and Her Britannic Majesty having agreed by Article I. of the treaty concluded and signed at Washington the 8th of May, 1871, to refer all the claims "generically known as the *Alabama* claims" to a tribunal of arbitration to be composed of five arbitrators named:

Recital of provisions of the Treaty of Washington.

One by the President of the United States,

One by Her Britannic Majesty,

One by His Majesty the King of Italy,

One by the President of the Swiss Confederation,

One by His Majesty the Emperor of Brazil;

And the President of the United States, Her Britannic Majesty, His Majesty the King of Italy, the President of the Swiss Confederation, and His Majesty the Emperor of

Appointment of arbitrators.

Brazil having respectively named their arbitrators, to wit:

The President of the United States, Charles Francis Adams, esquire;

Her Britannic Majesty, Sir Alexander James Edmund Cockburn, baronet, a member of Her Majesty's privy council, lord chief justice of England;

His Majesty the King of Italy, His Excellency Count Frederic Sclopis, of Salerano, a knight of the Order of the Annunciata, minister of state, senator of the Kingdom of Italy;

The President of the Swiss Confederation, M. Jacques Staempfli;

His Majesty the Emperor of Brazil, his Excellency Marcos Antonio d'Araujó, Viscount d'Itajubá, a grandee of the Empire of Brazil, member of the council of H. M. the Emperor of Brazil, and his envoy extraordinary and minister plenipotentiary in France.

Organization of tribunal.

And the five arbitrators above named having assembled at Geneva (in Switzerland) in one of the chambers of the Hôtel de Ville on the 15th of December, 1871, in conformity with the terms of the second article of the Treaty of Washington, of the 8th of May of that year, and having proceeded to the inspection and verification of their respective powers, which were found duly authenti-

cated, the tribunal of arbitration was declared duly organized.

The agents named by each of the high contracting parties, by virtue of the same Article II., to wit:

For the United States of America, John C. Bancroft Davis, esquire;

And for Her Britannic Majesty, Charles Stuart Aubrey, Lord Tenderden, a peer of the United Kingdom, companion of the Most Honorable Order of the Bath, assistant under-secretary of state for foreign affairs;

Whose powers were found likewise duly authenti-

Delivery of cases.

cated, then delivered to each of the arbitrators the printed case prepared by each of the two parties, accompanied by the documents, the official correspondence, and other evidence on which each relied, in conformity with the terms of the third article of the said treaty.

In virtue of the decision made by the tribunal at

Delivery of counter-cases.

its first session, the counter-case and additional documents, correspondence, and evidence referred to in Article IV. of the said treaty were delivered by the respective agents of the two parties to the secretary of the tribunal on the 15th of April, 1872, at the chamber of conference, at the Hôtel de Ville of Geneva.

Delivery of arguments.

The tribunal, in accordance with the vote of adjournment passed at their second session, held on the 16th of December, 1871, reassembled at Geneva on the 15th of June, 1872; and the agent of each of the parties duly delivered to each of the arbitrators, and to the agent of the other party, the printed argument referred to in Article V. of the said treaty.

Deliberations of tribunal.

The tribunal having since fully taken into their consideration the treaty, and also the cases, counter-cases, documents, evidence, and arguments, and likewise all other communications made to them by the two parties during the progress of their sittings, and having impartially and carefully examined the same,

Award.

Has arrived at the decision embodied in the present award:

WHEREAS, having regard to the VIth and VIIth articles of the said treaty, the arbitrators are bound under the terms of the said VIth article, "in deciding the matters submitted to them, to be governed by the three rules therein specified and by such principles of international law, not inconsistent therewith, as the arbitrators shall determine to have been applicable to the case;"

AND WHEREAS the "due diligence" referred to in the first and third of the said rules ought to be exercised by neutral governments in exact proportion to the risks to which either of the belligerents may be exposed, from a failure to fulfill the obligations of neutrality on their part;

Definition of due diligence.

AND WHEREAS the circumstances out of which the facts constituting the subject-matter of the present controversy arose were of a nature to call for the exercise on the part of Her Britannic Majesty's government of all possible solicitude for the observance of the rights and the duties involved in the proclamation of neutrality issued by Her Majesty on the 13th day of May, 1861;

AND WHEREAS the effects of a violation of neutrality committed by means of the construction, equipment, and armament of a vessel are not done away with by any commission which the government of the belligerent power, benefited by the violation of neutrality, may afterwards have granted to that vessel; and the ultimate step, by which the offense is completed, cannot be admissible as a ground for the absolution of the offender, nor can the consummation of his fraud become the means of establishing his innocence;

Effect of a commission.

Exterritoriality of vessels of war.

AND WHEREAS the privilege of exterritoriality accorded to vessels of war has been admitted into the law of nations, not as an absolute right, but solely as a proceeding founded on the principle of courtesy and mutual deference between different nations, and therefore can never be appealed to for the protection of acts done in violation of neutrality;

Effect of want of notice.

AND WHEREAS the absence of a previous notice cannot be regarded as a failure in any consideration required by the law of nations, in those cases in which a vessel carries with it its own condemnation;

Supplies of coal.

AND WHEREAS, in order to impart to any supplies of coal a character inconsistent with the second rule, prohibiting the use of neutral ports or waters, as a base of naval operations for a belligerent, it is necessary that the said supplies should be connected with special circumstances of time, of persons, or of place, which may combine to give them such character;

Responsibility for acts of the *Alabama*.

AND WHEREAS, with respect to the vessel called the *Alabama*, it clearly results from all the facts relative to the construction of the ship at first designated by the number "290" in the port of Liverpool, and its equipment and armament in the vicinity of Terceira through the agency

of the vessels called the *Agrippina* and the *Bahama*, dispatched from Great Britain to that end, that the British government failed to use due diligence in the performance of its neutral obligations; and especially that it omitted, notwithstanding the warnings and official representations made by the diplomatic agents of the United States during the construction of the said number "290," to take in due time any effective measures of prevention, and that those orders which it did give at last, for the detention of the vessel, were issued so late that their execution was not practicable;

And whereas, after the escape of that vessel, the measures taken for its pursuit and arrest were so imperfect as to lead to no result, and therefore cannot be considered sufficient to release Great Britain from the responsibility already incurred;

And whereas, in despite of the violations of the neutrality of Great Britain committed by the "290," this same vessel, later known as the Confederate cruiser *Alabama*, was on several occasions freely admitted into the ports of colonies of Great Britain, instead of being proceeded against as it ought to have been in any and every port within British jurisdiction in which it might have been found;

And whereas the government of Her Britannic Majesty cannot justify itself for a failure in due dili-

gence on the plea of insufficiency of the legal means of action which it possessed:

Four of the arbitrators, for the reasons above assigned, and the fifth for reasons separately assigned by him,

Are of opinion—

That Great Britain has in this case failed, by omission, to fulfill the duties prescribed in the first and the third of the rules established by the VIth article of the Treaty of Washington.

AND WHEREAS, with respect to the vessel called the *Florida*, it results from all the facts relative to the construction of the *Oreto* in the port of Liverpool, and to its issue therefrom, which facts failed to induce the authorities in Great Britain to resort to measures adequate to prevent the violation of the neutrality of that nation, notwithstanding the warnings and repeated representations of the agents of the United States, that Her Majesty's government has failed to use due diligence to fulfill the duties of neutrality;

And of the *Florida*.

AND WHEREAS it likewise results from all the facts relative to the stay of the *Oreto* at Nassau, to her issue from that port, to her enlistment of men, to her supplies, and to her armament, with the co-operation of the British vessel *Prince Alfred*, at Green Bay,

that there was negligence on the part of the British colonial authorities;

AND WHEREAS, notwithstanding the violation of the neutrality of Great Britain committed by the *Oreto*, this same vessel, later known as the Confederate cruiser *Florida*, was nevertheless on several occasions freely admitted into the ports of British colonies;

AND WHEREAS the judicial acquittal of the *Oreto* at Nassau cannot relieve Great Britain from the responsibility incurred by her under the principles of international law; nor can the fact of the entry of the *Florida* into the Confederate port of Mobile, and of its stay there during four months, extinguish the responsibility previously to that time incurred by Great Britain:

For these reasons,

The tribunal, by a majority of four voices to one, is of opinion—

That Great Britain has in this case failed, by omission, to fulfill the duties prescribed in the first, in the second, and in the third of the rules established by Article VI. of the Treaty of Washington.

And of the *Shenandoah* after leaving Melbourne.

AND WHEREAS, with respect to the vessel called the *Shenandoah*, it results from all the facts relative to the departure from London of the merchant-vessel the *Sea King*, and to the transformation of that ship into a con-

federate cruiser under the name of the *Shenandoah*, near the island of Madeira, that the government of Her Britannic Majesty is not chargeable with any failure, down to that date, in the use of due diligence to fulfill the duties of neutrality;

BUT WHEREAS it results from all the facts connected with the stay of the *Shenandoah* at Melbourne, and especially with the augmentation which the British government itself admits to have been clandestinely effected of her force, by the enlistment of men within that port, that there was negligence on the part of the authorities at that place:

For these reasons,

The tribunal is unanimously of opinion—

That Great Britain has not failed, by any act or omission, "to fulfill any of the duties prescribed by the three rules of Article VI. in the Treaty of Washington, or by the principles of international law not inconsistent therewith," in respect to the vessel called the *Shenandoah*, during the period of time anterior to her entry into the port of Melbourne;

And, by a majority of three to two voices, the tribunal decides that Great Britain has failed, by omission, to fulfill the duties prescribed by the second and third of the rules aforesaid, in the case of this same vessel, from and after her entry into Hobson's Bay, and is therefore responsible for all acts committed by

that vessel after her departure from Melbourne, on the 18th day of February, 1865.

And so far as relates to the vessels called—

And of the *Tuscaloosa*, *Clarence*, *Tacony*, and *Archer*.

The *Tuscaloosa*, (tender to the *Alabama*,)
The *Clarence*,
The *Tacony*, and
The *Archer*, (tenders to the *Florida*,)

The tribunal is unanimously of opinion—

That such tenders or auxiliary vessels, being properly regarded as accessories, must necessarily follow the lot of their principals, and be submitted to the same decision which applies to them respectively.

And so far as relates to the vessel called *Retribution*,

The tribunal, by a majority of three to two voices, is of opinion—

No responsibility for the *Retribution*, *Georgia*, *Sumter*, *Nashville*, *Tallahassee*, or *Chickamauga*.

That Great Britain has not failed by any act or omission to fulfil any of the duties prescribed by the three rules of Article VI. in the Treaty of Washington, or by the principles of international law not inconsistent therewith.

And so far as relates to the vessels called—

The *Georgia*,
The *Sumter*,
The *Nashville*,
The *Tallahassee*, and
The *Chickamauga*, respectively,

The tribunal is unanimously of opinion—

That Great Britain has not failed, by any act or omission, to fulfill any of the duties prescribed by the three rules of Article VI. in the Treaty of Washington, or by the principles of international law not inconsistent therewith.

And so far as relates to the vessels called—

The *Sallie*, *Jefferson Davis*, *Music*, *Boston*, and *V. H. Joy* not taken into consideration.

The *Sallie*,
The *Jefferson Davis*,
The *Music*,
The *Boston*, and
The *V. H. Joy*, respectively,

The tribunal is unanimously of opinion—

That they ought to be excluded from consideration for want of evidence.

AND WHEREAS, so far as relates to the particulars of the indemnity claimed by the United States, the costs of pursuit of the Confederate cruisers are not, in the judgment of the tribunal, properly distinguishable from the general expenses of the war carried on by the United States:

Claims for cost of pursuit not allowed.

The tribunal is, therefore, of opinion, by a majority of three to two voices—

That there is no ground for awarding to the United States any sum by way of indemnity under this head.

AND WHEREAS prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies:

And for prospective earnings.

The tribunal is unanimously of opinion—

That there is no ground for awarding to the United States any sum by way of indemnity under this head.

AND WHEREAS, in order to arrive at an equitable compensation for the damages which have been sustained, it is necessary to set aside all double claims for the same losses, and all claims for "gross freights," so far as they exceed "net freights;"

Net freights only allowed.

AND WHEREAS, it is just and reasonable to allow interest at a reasonable rate;

AND WHEREAS, in accordance with the spirit and letter of the Treaty of Washington, it is preferable to adopt the form of adjudication of a sum in gross, rather than to refer the subject of compensation for further discussion and deliberation to a board of assessors, as provided by Article X. of the said treaty:

The tribunal, making use of the authority conferred upon it by Article VII. of the said treaty, by a majority of four voices to one, awards to the United States a sum of $15,500,000 in gold, as the indemnity to be paid by Great Britain to the United States, for the satisfaction of all the

$15,500,000 compensation awarded.

claims referred to the consideration of the tribunal, conformably to the provisions contained in Article VII. of the aforesaid treaty.

The payment to be a bar.

And, in accordance with the terms of Article XI. of the said treaty, the tribunal declares that "all the claims referred to in the treaty as submitted to the tribunal are hereby fully, perfectly, and finally settled."

Furthermore it declares, that "each and every one of the said claims, whether the same may or may not have been presented to the notice of, or made, preferred, or laid before the tribunal, shall henceforth be considered and treated as finally settled, barred, and inadmissible."

In testimony whereof this present decision and award has been made in duplicate, and signed by the arbitrators who have given their assent thereto, the whole being in exact conformity with the provisions of Article VII. of the said Treaty of Washington.

Made and concluded at the Hôtel de Ville of Geneva, in Switzerland, the 14th day of the month of September, in the year of our Lord one thousand eight hundred and seventy-two.

CHARLES FRANCIS ADAMS.
FREDERIC SCLOPIS.
STAEMPFLI.
VICOMTE D'ITAJUBÁ.

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