

Inclosure 2.

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 Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America.

Her Britannic Majesty and the United States of America 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:—

One by Her Britannic Majesty,
 One by the President of the United States,
 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

Her Britannic Majesty, the President of the United States, H.M. the King of Italy, the President of the Swiss Confederation, and H.M. the Emperor of Brazil, having respectively named their Arbitrators, to wit:—

Her Britannic Majesty :

Sir Alexander James Edmund Cockburn, Baronet, a Member of Her Majesty's Privy Council, Lord Chief Justice of England ;

The President of the United States :
 Charles Francis Adams, Esquire ;

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 :
 Mr. James Stämpfli ;

His Majesty the Emperor of Brazil :

His Excellency Marcos Antonio d'Araujo, 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 ;

And the five Arbitrators above named having assembled at Geneva (in Switzerland) in one of the Chambers of the Hotel de Ville on the 15th of December 1871, in conformity with the terms of the II^d 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 authenticated, 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 Her Britannic Majesty :

Charles Stuart Aubrey, Lord Tenterden, a Peer of the United Kingdom, Companion of the Most Honourable Order of the Bath, Assistant Under-Secretary of State for Foreign Affairs,

and for the United States of America :

John C. Bancroft Davis, Esquire ;
 whose powers were found likewise duly authenti-

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 III^d Article of the said Treaty.

In virtue of the decision made by the Tribunal at 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 Hotel de Ville of Geneva.

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 IV of the said Treaty.

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,

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 fulfil the obligations of neutrality on their part ;

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 offence 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 ;

And whereas the privilege of extraterritoriality according 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 ;

And whereas the absence of a previous notice cannot be regarded as a failure in any considera-