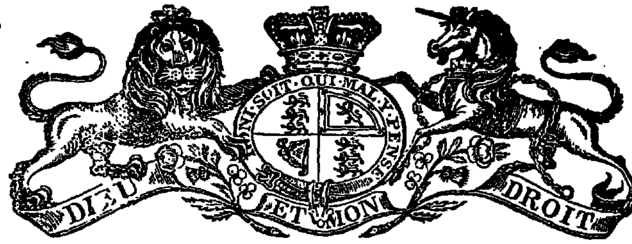

SUPPLEMENT

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FRIDAY, MAY 17, 1872.

Foreign Office, May 16, 1872.

CORRESPONDENCE respecting Claims for Indirect Losses put forward in the Case presented by the Government of the United States to the Tribunal of Arbitration at Geneva.

No. 1.

Earl Granville to General Schenck.

SIR, *Foreign Office, February 3, 1872.*

HER Majesty's Government have had under their consideration the Case presented on behalf of the Government of the United States to the Tribunal of Arbitration at Geneva, of which a copy had been presented to Her Majesty's Agent.

I will not allude in this letter to portions of the American Case which are comparatively of smaller importance, but Her Majesty's Government are of opinion that it will be in accordance with their desire that no obstacle should be interposed to the prosecution of the Arbitration, and that it will be more frank and friendly towards the Government of the United States, to state at once their views respecting certain claims of an enormous and indefinite amount which appear to have been put forward as matters to be referred to Arbitration.

Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the Case of the United States, including the loss in the transfer of the American commercial marine to the British flag, the enhanced payments of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and suppression of the rebellion.

I have stated above the importance which Her Majesty's Government attach to the prosecution of this Arbitration.

The primary object of the Governments on both sides was the firm establishment of amicable relations between two countries which have so many and such peculiar reasons to be on friendly terms, and the satisfaction with which the announcement of the Treaty was received by both nations showed the strength of this feeling.

But there is another object to which Her Majesty's Government believe the Government of the United States attach the same value as they do themselves, viz., to give an example to the world how two great nations can settle matters in dispute by referring them to an impartial tribunal.

Her Majesty's Government on their part feel confident that the Government of the United States are also equally anxious with themselves that the amicable settlement which was stated in the Treaty of Washington to have been the object of that instrument, may be attained, and an example so full of good promise for the future should not be lost to the civilized world.

I have, &c.,
(Signed) GRANVILLE.

No. 2.

General Schenck to Earl Granville.—(Received February 6.)

Legation of the United States, London,
MY LORD, *February 5, 1872.*

I HAVE the bonour to acknowledge the receipt, on the evening of the 3rd instant, of your note of that date, in which, after stating that Her Majesty's Government have had under their consideration the Case presented on behalf of the United States to the Tribunal of Arbitration at Geneva, you proceed to say that you will not allude to several portions of that Case which are of comparatively smaller importance, but that Her Majesty's Government are of opinion that it will be in accordance with their desire that no obstacle should be interposed to the prosecution of the arbitration, and that it will be more frank and friendly towards the Government of the United States to state at once their views respecting certain claims, which you describe as of an enormous and indefinite amount, which appear to

have been put forward as matters to be referred to arbitration.

You then go on to state that Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the Case of the United States, including the loss in the transfer of the American commercial marine to the British flag, the enhanced payment of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and suppression of the rebellion.

Referring then to the importance which Her Majesty's Government attach to the prosecution of the arbitration, you proceed to speak of the objects which Her Majesty's Government had in view in that arbitration. The primary object, you say, was the firm establishment of amicable relations between two countries which have so many and such peculiar reasons to be on friendly terms; and you add that the satisfaction with which the announcement of the Treaty was received by both nations showed the strength of that feeling.

But you say there is another object to which Her Majesty's Government believe the Government of the United States attach the same value as they do themselves, namely, to give an example to the world how two great nations can settle matters in dispute by referring them to an impartial tribunal.

And you close your note with the statement that Her Majesty's Government, on their part, feel confident that the Government of the United States are also equally anxious with themselves that the amicable settlement which was stated in the Treaty of Washington to have been the object of that instrument may be attained, and that an example so full of good promise for the future may not be lost to the civilized world.

The purpose of your Lordship's writing appearing to be to notify me of the opinion which Her Majesty's Government hold as to the power of the Tribunal of Arbitration to decide upon certain claims for indirect losses and injuries put forward in the Case of the United States, I shall hasten to communicate your note with this information to my Government.

In the mean time I venture to assure your Lordship that the Government of the United States will be gratified by this renewed assurance of the desire of Her Majesty's Government that no obstacle should be interposed to the prosecution of the arbitration, and by the frank and friendly terms in which this statement of their views is made to me. The objects which the Government of the United States proposed to itself in the Treaty and the arbitration for which it provides being identical with those stated by your Lordship, that is, the firm establishment of amicable relations between the two countries, and the giving to the world an example showing how two great nations can settle matters in dispute by referring them to an impartial tribunal, I can further assure Lordship that my Government does reciprocate most fully and earnestly the anxiety that the speedy settlement by arbitration, which was provided for by the Treaty of Washington, may be attained, so that, as your Lordship has eloquently expressed it, an example so full of good promise for the future may not be lost to the civilized world.

I have, &c.,
(Signed) ROBT. C. SCHENCK.

No. 3.

Mr. Fish to General Schenck.—(Communicated to Earl Granville by General Schenck, March 14, 6 P.M.)

Department of State, Washington,
SIR, *February* 27, 1872.

I HAVE laid the note from Earl Granville, addressed to you, bearing date the 3rd February instant, before the President, who directs me to say that he sincerely desires to promote that firm and abiding friendship between the two nations to which the note so happily refers.

It was under the inspiration of such sentiments that he accepted the invitation of Her Majesty's Government for the establishment of a Joint High Commission to treat and discuss the mode of settling certain questions referred to therein, and suggested on his own part that the proposed Commission should also have authority to consider the removal of the differences which arose during the rebellion in the United States, growing out of the acts committed by the vessels which have given rise to the claims generically known as the "Alabama Claims."

It was his earnest hope that the deliberations of the Commission would result in an acceptance by Her Majesty's Government of the proposition, submitted by his direction, that a gross sum be agreed upon and paid to the United States, as an amicable settlement of all claims, of every description, arising out of such differences, instead of the lengthened controversy and litigation which he foresaw must attend any plan of arbitration. He was the more solicitous that such an amicable settlement, without the intervention of third parties, should be adopted, because he feared that so thorough and comprehensive a presentation before the Tribunal of Arbitration of the matters of law and of fact on which the claims of this country rest, as it would be his duty to cause to be made, might for the moment revive past excitements and arouse unnecessary apprehensions, if not imperil those ties of international kindness and good-will he so much desires to strengthen and make perpetual.

The regret which he felt for the rejection by Her Majesty's Commissioners of the proposition for an amicable settlement is revived with great force by the necessity of this correspondence.

The proposition for a Joint High Commission, which was made by Her Majesty's Government, would not have received the approbation of the President had he supposed it was not to comprehend a consideration and adjustment of all the differences growing out of the acts of the cruizers, nor could he have given his sanction to the Treaty had it been suggested to him, or had he believed that any class of the claims which had been presented by this Government were excluded by the terms of submission from presentation on the part of this Government to the Tribunal of Arbitration. It was, in his appreciation, the chief merit of the mode of adjustment adopted by the Commission, that it was on both sides a frank, full, and unreserved surrender to impartial arbitrament, under the rules therein prescribed, of everything that had created such differences.

Whatever degree of importance might here or there be attached to any of these complaints, the President desired and intended, as had the American Commissioners, that all, of every form and character, should be laid before the Tribunal for its final and absolute disposition, either by recognition and settlement, or by rejection, in order that in the future the harmony of personal and political intercourse between the two countries

might never again be disturbed by any possible phase of the controversy.

In his opinion, since entry upon a thorough trial of the issues which divide the two Governments could not be avoided, the claims for national or indirect losses (referred to in the note of Earl Granville), as they are put forward by this Government, involve questions of public law which the interest of both Governments requires should be definitely settled.

Therefore it is with unfeigned surprise and sincere regret that the President has received the intimation conveyed in Earl Granville's note, that Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration to decide upon certain claims for indirect losses and injuries. His Lordship, however, does not assign any reason for the opinion that losses and injuries with respect to which there has been no concealment—which were presented to the British negotiators at the opening of the discussion in precisely the same manner as they are put forward in the "Case," not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration in a final settlement of all differences between the two countries—which remained unchallenged through the entire negotiations, and not relinquished in the Treaty, but covered by one of its alternatives, are not within the jurisdiction of the Arbitrators.

Unadvised as to the reasoning which has brought Her Majesty's Government to the opinion stated by Lord Granville, the President is unable to adopt it, but being convinced of the justice of his views, that the Treaty contemplated the settlement of all the claims of the United States, is of the opinion that he could not abandon them except after a fair decision by an impartial arbitration. He seeks no meaning in the Treaty which is not patent on its face; he advances no pretensions at Geneva which were not put forth pending the negotiations at Washington.

This Government knows not where to find the meaning or the intent of the Treaty unless within the Treaty itself.

The object of the Treaty, as declared in its preamble, was "to provide for an amicable settlement of all causes of difference between the two countries;" but the Treaty is not, of itself, the settlement,—it is an agreement between the Governments as to the mode of reaching a settlement, and its Article XI engages the Contracting Parties to consider the result of the arbitration as a full, perfect and final settlement of all the claims. Until that be reached, no proffer of witholding an estimate of the indirect losses, dependent on the hope of an amicable settlement, can be claimed as a waiver or an estoppel.

The first Article recites that differences have arisen between the two Governments, and still exist, and provides, "in order to remove and adjust all complaints and claims on the part of the United States, that all the claims growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama Claims,'" be referred to a Tribunal of Arbitration, to be composed as therein provided. There is no limitation or restriction to any part or description of the claims. All the claims growing out of certain acts, and generically known as the "Alabama Claims," were referred. What they were, is a question of fact and of history. Which of them are well founded is a question for the Tribunal of Arbitration.

What are called the indirect losses and claims are not now put forward for the first time. For years they have been prominently and historically part of the "Alabama Claims."

It would be superfluous to quote, or perhaps even to refer to, particular passages in the published instructions of this Government to their Minister to Great Britain, in the notes of that Minister to Her Majesty's Principal Secretary of State for Foreign Affairs, or in other public papers, to show that the expectation of this Government has, from the beginning of the acts which gave rise to the "Alabama Claims," been that the British Government would indemnify the United States. Incidental or consequential damages were often mentioned as included in the accountability.

In the progress of the acts which gave rise to the claims, high British authority was not wanting to warn Her Majesty's Government in the House of Commons that "they had been inflicting an amount of damage on that country (the United States) greater than would be produced by many ordinary wars," and to indicate, as part of that damage, the losses to whose presentation exception is now taken.

Public men in both countries discussed them, while the public press on the one side and on the other advanced and combatted them with an earnestness and warmth that brought them into a prominence beyond the direct losses and injuries sustained by individuals. A detailed statement of their claims, enumerating and setting forth the indirect losses, precisely as they are advanced in the Case, was submitted by the American negotiators to the Joint High Commission on the first discussion of the claims on the 8th day of March, and appears in the Protocol approved on the 4th of May.

Her Majesty's Government therefore, cannot, in the absence of any specific exclusion of these damages by the Treaty, be said to be taken unawares by their presentation to the Tribunal, and the President was not at liberty to regard as withdrawn or settled any of the claims enumerated in a Statement prepared and approved by the Joint High Commission after their discussions were closed, and within four days of the signing of a Treaty which declares that the differences which had arisen with respect to the "Alabama Claims" still exist. Appearing thus, from whatever cause, not to have been eliminated from the enumerated claims of the United States, the President had not the power of his own accord to withhold them from the Case to be presented to the Tribunal of Arbitration; but in frankness and in sincerity of purpose to remove, in the spirit of the Treaty, all causes of difference between the two Governments, he has set them forth before the Geneva Tribunal, content to accept any award that the Tribunal may think fit to make on their account.

It is within your personal knowledge that this Government has never expected or desired any unreasonable pecuniary compensation on their account, and has never entertained the visionary thought of such an extravagant measure of damages as finds expression in the excited language of the British Press, and seems most unaccountably to have taken possession of the minds of some even of the Statesmen of Great Britain.

A Mixed Commission is now in session in this city, under the Treaty, to which are referred all claims of citizens or subjects of either Powers (other than "Alabama claims") which arose out of acts committed during a specified period.

In the correspondence which preceded the agreement for the meeting of the Joint High Commission which negotiated the Treaty, language was purposely agreed upon and used to express the idea which the Representatives of the two

Governments entertained, that no claim founded on contract, and especially no claim on account of the Rebel or Confederate cotton debt was to be presented. Similar language, and for the same avowed and admitted purpose, was used in the Treaty.

Among other claims of an unexpected character presented by the agent of the British Government, there was one for a part of the Confederate debt which is understood to be held in Great Britain to the extent of many millions. Immediately on its presentation the United States remonstrated and requested the British Government to instruct their agent to withdraw that claim. Their remonstrance was unheeded; their request was not answered. If any instruction was given this Government was not informed thereof, and it failed to be observed; and the claim was pressed to argument. The United States demurred before the Commission to its jurisdiction over claims of that description, and the decision of the Commission disposed of the case adverse to the claimant.

The attitude of the two Governments is now reversed, with the difference in favour of the United States, that there was no question raised as to the understanding of both Governments at the date of the Treaty, with reference to the exclusion of claims of the character then presented.

The United States seek not to be the judges in their own case.

The course which they pursued afforded a happy solution to what might have been a question of embarrassment.

They desire to maintain the jurisdiction of the Tribunal of Arbitration over all the unsettled claims, in order that being judicially decided, and the questions of law involved therein being adjudicated, all questions connected with or arising out of the "Alabama claims," or "growing out of the acts" of the cruisers, may be for ever removed from the possibility of disturbing the perfect harmony of relations between the two countries. The President regrets that there should be any difference of opinion between the two Governments on any question connected with the Treaty.

He indulges, however, the earnest hope that the disposition which has been equally manifested by both Governments to remove all causes of difference between them will bring them to an agreement upon the incidental question which has arisen, and will allow no obstacle to deprive the world of the example of advanced civilization presented by two powerful States, exhibiting the supremacy of law and of reason over passions, and deferring their own judgments to the calm interpretation of a disinterested and discriminating Tribunal.

I am, &c.
(Signed) HAMILTON FISH.

No. 4.

Earl Granville to General Schenck.

SIR, *Foreign Office, March* 20, 1872.

I HAVE laid before my colleagues Mr. Fish's despatch of the 27th ultimo, of which, at my request, and authorized by your Government, you gave me a copy on the 14th instant.

Her Majesty's Government recognize with pleasure the assurances of the President that he sincerely desires to promote a firm and abiding friendship between the two nations; and, animated by the same spirit, they gladly avail themselves of the invitation which your Government appear to have given, that they should state the reasons which induced them to make the declaration contained in my note to you of the 3rd ultimo, and which I then purposely omitted, in the hope of obtaining, without any controversial discussion, the assent of the Government of the United States.

Mr. Fish says, "What are called the indirect losses and claims are not now put forward for the first time. For years they have been prominently and historically part of the 'Alabama claims.' It would be superfluous to quote, or perhaps even to refer to, particular passages in the published instructions of this Government to their Minister to Great Britain, in the notes of that Minister to Her Majesty's Principal Secretary of State for Foreign Affairs, or in other public papers, to show that the expectation of this Government has, from the beginning of the acts which gave rise to the 'Alabama claims,' been that the British Government would indemnify the United States. Incidental or consequential damages were often mentioned as included in the accountability." This assertion does not appear to me accurately to represent the facts as they are shown in the correspondence between the two Governments. It is true that in some of the earlier letters of Mr. Adams vague suggestions were made as to possible liabilities of this country extending beyond the direct claims of American citizens for specific losses arising from the capture of their vessels by the Alabama, Florida, Shenandoah, and Georgia; but no claims were ever defined or formulated, and certainly none were ever described by the phrase "Alabama claims" except these direct claims of American citizens.

No mention of any claim for national or indirect losses had been made during the negotiation commencing with Mr. Seward's despatch to Mr. Adams, dated the 27th of August, 1866, and ending with the signature of the Convention of the 10th of November, 1868, by Lord Stanley and Mr. Reverdy Johnson, by the IVth Article of which power was given to Commissioners "to adjudicate upon the class of claims referred to in the official correspondence between the two Governments as the 'Alabama claims.'"

The first subsequent mention of any claim for national losses was in a communication, unauthorized by his Government, made by Mr. Reverdy Johnson, in March, 1869, to Lord Clarendon, in which he suggested that the terms of the Convention signed by him with Lord Clarendon, on the 14th of January, which comprised a reference to a Mixed Commission of the "Alabama claims," should be enlarged so as to include all claims on the part of either Government upon the other, an essential condition of the proposal being, that in case a claim was set up by the United States, founded on the recognition of the Confederate States as belligerents, it should be open to the British Government to advance claims on their part, such as a claim for injury to British interests by the assertion and exercise of belligerent rights by the United States upon British commerce.

Lord Clarendon at once declined to entertain this suggestion.

In Mr. Fish's dispatch of the 25th of September, 1869, the Government of the United States intimated that they considered there might be grounds for some claims of a larger and more public nature, though they purposely abstained at that time from making them; but the grounds indicated were not limited to the acts of the Alabama and other similar vessels, or to any mere consequences of such acts, nor were these public claims then described or referred to in any manner as "Alabama

claims." That expression "the Alabama claims," which first occurs in a letter from Mr. Seward to Sir F. Bruce of the 12th of January, 1867, had always been used in the correspondence between the two Governments to describe the claims of American citizens on account of their own direct losses by the depredations of the Alabama and other similar vessels, and had never been employed to describe, or been treated as comprehending, any public or national claims whatever of the Government of the United States.

Down, therefore, to the time when Her Majesty's Government proposed the appointment of a Joint High Commission to settle the Fishery Question and all other questions affecting the relations of the United States towards Her Majesty's possessions in North America, no actual claim against Her Majesty's Government had been formulated or notified on the part of the United States, except for the capture or destruction of property of individual citizens of the United States by the Alabama and other similar vessels.

When Her Majesty's Government consented, at the request of the Government of the United States, that the "Alabama claims" should be dealt with by the High Commission, it was in the full confidence that the phrase "Alabama claims" was used by the United States' Government in the same sense as it had been used throughout the previous correspondence and in the Conventions signed by Lord Stanley and Lord Clarendon.

National claims of an indirect character, such as those referred to in Mr. Fish's despatch, could not be comprehended under the term "claims generically known as the Alabama claims." The possibility of admitting as a subject of negotiation any claim for indirect national losses has never been entertained in this country; and it was therefore without the slightest doubt as to such claims being inadmissible that the British High Commissioners were appointed and proceeded to Washington.

At a meeting of the British and United States' High Commissioners on the 8th of March, the latter, after a general statement of the claims of the United States, proceeded to say that, in the hopes of an amicable settlement, no estimate was made of indirect losses, without prejudice, however, to the right of indemnification on their account, in the event of no such settlement being made; and they afterwards proposed, by direction of the President, that "the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon."

Mr. Fish says that the President earnestly hoped that the deliberations of the Commission would have resulted in an acceptance by Her Majesty's Government of this proposition.

Her Majesty's Government cannot understand upon what this hope was founded.

The position which the Government of this country have maintained throughout all the negotiations has been that they were guilty of no negligence in respect of the escape of the Alabama and the other vessels, and have therefore incurred no liability for any payment, and they still maintain this position.

The only ground on which Her Majesty's Government could be asked to pay any sum would have been an admission on their part that there had been such negligence as rendered them justly liable to pay a sum in compensation. This would have been an absolute surrender of the position which has always been held by this country, and a confession, which never could have been expected from them, that they had been guilty of negligence. Her Majesty's High Commissioners, therefore, could only declare at once that a proposal of an "amicable settlement" in this particular form could not be entertained.

Her Majesty's High Commissioners, on the part of this country, immediately made a counter-proposal, namely, the proposal of arbitration, and this proposal, after being to a certain extent modified on the suggestion of the United States' High Commissioners, was accepted by them.

The modification suggested by the United States' High Commissioners, and accepted by those of Great Britain, was a concession of no slight importance on the part of this country, namely, that the principles which should govern the Arbitrators in the consideration of the facts should be first agreed upon, and this concession was very materially enhanced when, in order to strengthen the friendly relations between the two countries, and make satisfactory provision for the future, they further agreed that these principles should be those contained in the Rules in the VIth Article of the Treaty; for they thus accepted the retroactive effect of rules to which, nevertheless, they felt bound to declare that they could not assent as a statement of principles of international law in force at the time when the "Alabama claims" arose.

The friendly spirit of Her Majesty's Government was further shown by their authorizing Her Majesty's High Commissioners to express the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and the other vessels from British ports, and for the depredations committed by those vessels, and by their agreeing that this expression of regret should be formally recorded in the Treaty.

Nor did Her Majesty's Government object to the introduction of claims for the expense of the pursuit and capture of the Alabama and other vessels, notwithstanding the doubt how far those claims, though mentioned during the Conferences as direct claims, came within the proper scope of the arbitration. They acquiesced in the proposal to exclude from the negotiations their claims on behalf of Canada against the United States for injuries suffered from Fenian raids—an acquiescence which was due partly to a desire on their part to act in a spirit of conciliation, and partly to the fact, stated by Her Majesty's High Commissioners, that a portion of these claims was of a constructive and inferential character.

The importance of these concessions must not be underrated. Nor can it have been expected by the Government of the United States that concessions of this importance would have been made by this country if the United States were still to be at liberty to insist upon all the extreme demands which they had at any time suggested or brought forward.

Her Majesty's Government considered themselves justified in treating the waiver of indirect claims, in the event of an amicable settlement, proffered by the High Commissioners of the United States, as one which applied to any form of amicable settlement, and therefore comprised, in like manner, the form of amicable settlement proposed by the British High Commissioners, accepted on the part of the United States, and recognized in the preamble of the Treaty.

Such a waiver was, in fact, a necessary condition of the success of the negotiation.

It was in the full belief that this waiver had been made that the British Government ratified the Treaty.

Her Majesty's Government are anxious that the considerations which made them hold this belief should be more fully explained to the Government of the United States than can be done in the form of a letter, and I have accordingly embodied them in a Memorandum which I have the honour to inclose, and which I beg may be read with, and considered as part of, my present communication.

Her Majesty's Government do not deny that it is as competent for the Government of the United States as it is for themselves to assert that their own interpretation of the Treaty is the correct one. But what Her Majesty's Government maintain is, that the natural and grammatical construction of the language used in the Treaty and Protocols is in accordance with the views which they entertain, and sustains their assertion that the terms of reference to the Arbitrators are limited to direct claims, inasmuch as direct claims only have throughout the correspondence been recognized and repeatedly defined under the name of the "Alabama claims."

There are some passages in Mr. Fish's despatch in which he defends the introduction into the American Case of the claims for indirect losses and injuries, which I cannot allow to pass without more special remark.

It is stated that they are put forward in the Case not as claims for which a specific demand is made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration in a final settlement of all differences between the two countries, and as not relinquished in the Treaty, but covered by one of its two alternatives.

Her Majesty's Government do not perceive what "alternative" in the Treaty can cover these claims.

If, indeed, by this language Mr. Fish is to be understood as referring to the two different modes provided by Articles VII and X of the Treaty, for arriving at the amount of the payment to be made by Great Britain in the event of any liability being established, the answer seems obvious, viz., that these alternatives are applicable only to the settlement of the amount of damages, and not to the measure of liability.

Again, Mr. Fish states that the Treaty was not an amicable settlement, but only an agreement between the Governments as to the mode of reaching a settlement, and that no proffer of withholding an estimate of indirect losses can be claimed as a waiver until the result of the arbitration is arrived at: but he overlooks the fact that the Treaty is called an amicable settlement, not merely in relation to the "Alabama claims," but as an entirety; and even in relation to the "Alabama claims" alone, it must clearly be taken that the amicable settlement which it professed to provide was arrived at from the moment when the Treaty containing the agreement to go to arbitration upon the claims was signed and ratified. If, according to Mr. Fish's view, an amicable settlement upon a reference to arbitration can only be arrived at by an adjudication of the claims, it is obvious that no waiver of any such claims could, under such circumstances, ever be made, for before the time for waiver (on this supposition) had arrived, the claims would already have been decided upon.

That Her Majesty's Government never intended to refer these claims to arbitration, and that, in ratifying the Treaty, they never contemplated their being revived in the argument before the Arbitrators, must have been obvious to you from the language used in the debate in the House of Lords on the 12th of June, on the motion for an address to the Queen, praying Her Majesty to refuse to ratify the Treaty.

On that occasion I distinctly stated this to be the understanding of Her Majesty's Government, and quoted the very Protocol of the 4th of May, to which I have referred above, as a proof that these indirect claims had "entirely disappeared." When Lord Cairns, to whose speech allusion has been made in the United States' Case, subsequently said that extravagant claims might be put in and take their chance, he was met with expressions of dissent. Moreover, Lord Derby, while criticizing the negotiation and the terms of the Treaty in other respects, particularized the withdrawal of indirect claims. "The only concession," he said, "of which I can see any trace upon the American side, is the withdrawal of that utterly preposterous demand that we should be held responsible for the premature recognition of the South as a belligerent Power, in company with that equally wild imagination, which, I believe, never extended beyond the minds of two or three speakers in Congress, of making us liable for all the constructive damages to trade and navigation which may be proved or supposed to have arisen from our attitude during the war."

I observed that you were present in the House of Lords on that occasion, and you informed me in January that you were present during the speeches of Lord Russell and myself, and that you communicated the next day the full newspaper report of the debate to your Government.

Sir S. Northcote, in the House of Commons, repeated, in other words, the substance of my remarks on the limitation of the terms of reference; and as his speech is printed in the papers on Foreign Relations recently laid before Congress, it must also have been reported to your Government. But neither on the occasion of my speech nor of his, nor when the ratifications of the Treaty were exchanged on the 17th of June, did you call my attention to the fact that a different interpretation was placed on the Treaty and Protocol by Her Majesty's Government and the Government of the United States; nor, so far as Her Majesty's Government are aware, was their interpretation, thus publicly expressed, challenged either by the Statesmen or the public press of the United States.

Her Majesty's Government must therefore confess their inability to understand how the intimation contained in my note of the 3rd February last can have been received by the President with surprise.

Mr. Fish urges that the claim for national indirect losses which have been put forward on behalf of his Government involve questions of public law which the interest of both Governments requires should be definitely settled.

Her Majesty's Government agree with Mr. Fish that it is for the interest of both countries that the rights and duties of neutrals upon some of the points hitherto thought open to serious controversy should be definitely settled, and had hoped that such a settlement had been secured by the Rules to which they have given their assent; but they cannot see that it would be advantageous to either country to render the obligations of neutrality so onerous as they would become if claims of this nature were to be treated as proper subjects of international arbitration.

Whatever construction may be placed upon the Ist Article of the Treaty, it is impossible to sever the terms of reference therein contained from the Rules in the VIth Article; and the measure of liability under the Arbitration, therefore, will be the measure of liability incurred by any neutral

State which, after acceding to these Rules, may "by any act or omission" fail to fulfil any of the duties set forth in them.

The United States and Great Britain have bound themselves by the Treaty to observe these Rules as between themselves in future.

They have, moreover, bound themselves to bring these Rules to the knowledge of other maritime Powers, and to invite them to accede to them. Could it have been expected that those Powers would accept a proposal which might entail upon a neutral such an unlimited liability, and, in some instances, might involve the ruin of a whole country?

Her Majesty's Government cannot for themselves accept such a liability, nor recommend the acceptance of it to other nations.

Are the Government and people of the United States themselves prepared to undertake the obligation of paying to an aggrieved belligerent the expenses of the prolongation of the war, and other indirect damages, if, when the United States are neutral, they can be shown to have permitted the infringement of any one, or part of any one, of the three Rules through a want of due diligence on the part of their executive officers?

To attach such tremendous consequences to an unintentional violation of neutrality—it might be by a single act of negligence—would be to strike a heavy blow at the interests of peace; for war has scarcely any consequences more formidable to a belligerent than those which might thus be incurred by a neutral; and, while war offers a chance of gain, neutrality would, if such claims as these were once admitted, present without any such compensation the risk of intolerable loss.

With respect to the disclaimer made by Mr. Fish of any expectation or wish, on the part of the United States' Government, to obtain any "unreasonable pecuniary compensation" on account of these indirect claims, I think it sufficient here to observe that, on the question of amount, the British people and Government have necessarily been obliged to look to the nature and grounds of the claims as they are stated in the Case of the United States, and have, of course, been unable to form a judgment from any other data of the expectations of those by whom the claims are advanced. If these claims could be considered as well-grounded in principle, it appears to Her Majesty's Government to be capable of demonstration that the magnitude of the damages which might be the result of their admission is enormous. The grounds of these views are more fully stated in the Third Part of the inclosed Memorandum.

Mr. Fish has appealed to the proceedings at the Washington Claims Commission in connection with the Confederate cotton claims. Her Majesty's Government must, however, observe that there is no analogy between the two cases, as, by the Treaty, the Washington Commission has power "to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly, or to any and what extent, according to the true intent and meaning of the Treaty;" no similar words being used as to the powers of the Geneva Tribunal.

It is the function of the Washington Commission to decide upon a variety of general claims, not of one kind, nor limited or defined beforehand, and Her Majesty's Agent was instructed that his duty would *primâ facie* be, to present such claims as private individuals might tender for that purpose for acceptance or rejection by the Commission; Her Majesty's Government not intending to make themselves responsible either for the merits of the particular claims or for the arguments by which they might be supported. The jurisdiction of the Geneva Tribunal was limited to one particular class and description of claims.

The facts are as follows:—

On the 11th of November, in pursuance of the general instructions which had been given to Her Majesty's Agent, a claim upon a bond issued by the so-called Confederate States for a sum forming part of a loan called the "Cotton Loan," contracted by those States, and for the payment of which certain cotton seized by the United States was alleged to have been hypothecated by the Confederate Government, was filed at Washington; and on the 21st I learnt from you that the United States' Government objected to claims of this kind being even presented.

Some delay took place in consequence of unavoidable causes with some of which you are well acquainted. And there were others, such as the necessity not only of communicating with my colleagues but with Sir E. Thornton, and of considering how far, under the same general description, there might be included claims substantially different. The despatches from Her Majesty's Agent giving the details of the nature of the claim, and of the demurrer made to it by the United States' Agent, did not reach me until the 6th of December. I had in the meantime ascertained from Sir E. Thornton that the expression "acts committed" had been used by mutual agreement in the negotiations which preceded the appointment of the High Commission with a view to exclude claims of this class from the consideration of the High Commissioners; those words being also used in the XIIth Article of the Treaty with regard to private claims. The question was brought before the Cabinet at its next meeting on the 11th, and was finally decided on the 14th, as recorded in a minute by Mr. Gladstone. This decision was, that the Confederate cotton claims should not be presented unless in the case of bonds exchanged for cotton, which had thereby become the actual property of the claimants, and directions were given for a despatch to be sent to this effect, and on the 16th I informed you that you might write to Mr. Fish that Her Majesty's Agent would be instructed not to present any claims that did not come within the provisions of the Treaty.

Although it appears that the understanding need not necessarily have extended beyond the rejection by the Commissioners of the claims, under the XIVth Article, by which the Commissioners have power to decide whether any claim is preferred within the true intent and meaning of the Treaty (as was done with various claims under a similar Article in the Claims Conventions of 1853), Her Majesty's Government acceded to the construction which the United States' Government had put upon that understanding.

Mr. Fish will observe the feeling by which Her Majesty's Government were guided in coming to their decision on the 14th. They desired to put the most favourable construction upon any understanding which the United States' Government might have supposed to exist.

Information reached me the next morning by telegraph of the adjudication, which Her Majesty's Government had not expected to take place, upon the merits of the claim by the Commissioners. This required a reconsideration of the instructions, and fresh instructions were sent by the mail of the 23rd, and also by telegraph, to Sir E. Thornton to arrange with Mr. Fish that the presentation of claims which appeared to be manifestly without the terms of the Treaty should be withheld, and

that when Her Majesty's Agent was of opinion that a claim belonged to a class that ought not to be presented, it would be desirable that an agreement to that effect should be made and signed by Sir E. Thornton and Mr. Fish. These instructions were communicated to Mr. Fish.

Her Majesty's Agent has since acted in accordance with the decision of the Cabinet of the 14th of December. New claims of the like character have been tendered to him by parties who were unwilling to acquiesce in the decision of the Commissioners as applicable to their own cases, but which claims, under instructions from Her Majesty's Government, have not been presented.

I have now placed in your hands, for examination by the Government of the United States, a statement of the reasons which, in the opinion of Her Majesty's Government, sufficiently show that claims for indirect losses are not within the meaning of the Treaty; that they were never intended to be included by Her Majesty's Government; that this was publicly declared before the ratification, when the error, if any, might have been corrected; that such claims are wholly beyond the reasonable scope of any Treaty of Arbitration whatever; and that to submit them for decision by the Tribunal would be a measure fraught with pernicious consequences to the interests of all nations, and to the future peace of the world.

I appreciate the desire substantially, if indirectly, expressed by the Government of the United States, to be advised of the reasons which have prompted the declaration made by me on behalf of Her Majesty's Government on the 3rd of February, no less than the friendly and courteous language which has been employed by the United States' Secretary of State. The present letter is intended by Her Majesty's Government, not as the commencement of a diplomatic controversy, but as an act of compliance with that most reasonable desire. They are sure that the President will be no less anxious than they are that the conduct of both Governments should conform to the true meaning and intent of the instrument they have jointly framed and signed, whether that meaning be drawn from the authoritative documents themselves, or from collateral considerations, or from both sources combined.

Entertaining themselves no doubt of the sufficiency of the grounds on which their judgment proceeds, they think it the course at once most respectful and most friendly to the Government of the United States to submit those grounds to their impartial appreciation. Her Majesty's Government feel confident that they have laid before the President ample proof that the conclusion which was announced by me on the 3rd of February, and to which I need hardly say that they adhere, cannot be shaken.

I have, &c.,
(Signed) GRANVILLE.

Inclosure in No. 4.

Memorandum.

PART I.—ON THE WAIVER OF CLAIMS FOR INDIRECT LOSSES CONTAINED IN THE 36TH PROTOCOL.
PART II.—ON THE CONSTRUCTION OF THE TREATY.
PART III.—ON THE AMOUNT OF THE CLAIMS FOR INDIRECT LOSSES.

PART I.—*On the Waiver of Claims for Indirect Losses contained in the 36th Protocol.*

THE first Protocol of the Conferences of the High Commission begins with a recital of the powers of the British Commissioners, stating Her Majesty's purpose in their appointment to be, to "discuss in a friendly spirit with Commissioners to be appointed by the Government of the United States the various questions on which differences had arisen between Great Britain and that country," and to "*treat for an agreement as to the mode of their amicable settlement.*"

The Protocol of the 4th of May recounts that the American Commissioners stated, on the 8th of March, "that the history of the 'Alabama' and other cruizers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her Colonies, and of the operations of those vessels, showed (1) extensive *direct losses* in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruizers; and (2) *indirect injury* in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion; and also showed (3) that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly *liable for the acts of those cruizers and of their tenders;* that the *claims* for the loss and destruction of private property which had thus far been presented amounted to about 14,000,000 dollars, without interest, which amount was liable to be greatly increased by *claims* which had not been presented; that the cost to which the Government had been put in the pursuit of cruizers could easily be ascertained by certificates of Government accounting officers; that, in the hope of *an amicable settlement,* no estimate was made of the *indirect losses,* without prejudice, however, to *the right to indemnification on their account* in the event of *no such settlement* being made.

"The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They *also proposed* that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of *all the claims and the interest thereon.*"

The British Commissioners abstained "from replying in detail to the statement of the American Commissioners in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of *so fair a mode of settlement* as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

"The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that *they could not consent to submit the question of the liability of Her Majesty's Government to arbitration, unless* the principles which should govern the Arbitrator in the *consideration of the facts could be first agreed* upon."

These principles were subsequently discussed and agreed upon, and incorporated in the Draft of the VIth Article of the Treaty.

On the 6th of May, the Commissioners met for their final Conference, and Lord de Grey said that "it had been most gratifying to the British Commissioners to be associated with colleagues who were animated with the same sincere desire as themselves to bring about *a*

settlement equally honourable and just to both countries."

Mr. Fish replied that "from the first Conference the American Commissioners had been impressed by the earnestness of desire manifested by the British Commissioners to reach *a settlement worthy of the two Powers*. . . . His colleagues and he could never cease to appreciate the generous spirit and the open and friendly manner in which the British Commissioners had met and discussed the several questions that had led to the conclusion of *the Treaty, which it was hoped* would receive the approval of the people of both countries, and *would prove the foundation of a cordial and friendly understanding* between them for all time to come."

Two days afterwards the Treaty was signed with the following Preamble:—

"Her Britannic Majesty and the United States of America, being desirous to provide for *an amicable settlement* of all causes of difference between the two countries, have, for that purpose, appointed their respective Plenipotentiaries. . . . And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper from, *have agreed* to and *concluded* the following Articles."

In the view of Her Majesty's Government the statement made by the American Commissioners on the 8th of March contained a waiver of the claims for indirect losses contingent on an "amicable settlement" being arrived at; and this waiver consisted of two parts:—

First, the affirmative statement that, "in the hope of an amicable settlement, no estimate was made of the indirect losses." The words "in the hope of an amicable settlement" are in themselves grammatically general, and, unless qualified by a subsequent limitation, mean, in the hope of any such settlement as the parties shall acknowledge to fall under the phrase "amicable settlement." Now, this part of the waiver, being a declaration in which the other party had an interest, and, so far, of the nature of a promise, could only be so limited by an express specification following it immediately, or at least before the other party had taken any step in reliance on its general character. But no such specification was made; nor does any specification at all as to the particular form of settlement appear in the Protocol. The phrase consequently retains the general character above described as its literal and grammatical meaning.

It might be said that the concluding words of the phrase—"no estimate was made of the indirect losses"—had a special regard to the form of amicable settlement thereafter proposed by the American Commissioners, viz., the payment of a gross sum. This, however, can only be maintained subject to the qualification that, if the estimate of indirect losses was withheld in the hope that that proposal would be accepted, and if the view of the American Commissioners was that the acceptance of that proposal alone would constitute the "amicable settlement" in consideration of which the estimate of indirect losses was withheld, then the next step for them, when the proposal was declined, was to present that estimate; or, if not, then in some other specific manner to keep alive the claim. But they did neither; they did not intimate or give notice to the British Commissioners that their hope of an "amicable settlement" had been frustrated or disappointed; nor did they say anything to the effect of making this first portion of the waiver dependent on the rejected proposal. And thus the phrase "an amicable settlement" is left to stand in its original and grammatical generality.

The second part of the waiver is as follows:—

"Without prejudice, however, to the right of indemnification on their account [*i.e.*, on account of indirect losses] in the event of no such settlement being made." Its precise bearing obviously depends upon the meaning of the words "no such settlement."

Now the word "such" grammatically qualifies the word "settlement" by referring to the antecedent expression "amicable settlement." "Such," therefore, means "amicable;" and the right reserved by the American Commissioners is grammatically a right to revive the question of indirect losses *in the event of no amicable settlement being made*; and is nothing more.

It is to be observed that at this time no proposal whatever had been made for payment of a gross sum, or for any particular form or mode of settlement.

The only remaining question is, whether the Treaty was itself "an amicable settlement," or, which is the same thing for the purposes of the argument, was *in ordine* towards an amicable settlement, and a step on the road to it.

This question is answered by the preamble of the Treaty, which declares that the President of the United States had (as well as Her Majesty) given his Commissioners certain powers "in order to provide for an amicable settlement" of certain differences, in which the "Alabama claims" were included; that these powers had been compared and verified; and that in virtue of them the Commissioners had agreed upon the Articles of the Treaty which are then set forth in order. The "amicable settlement" is here distinctly recognized not as a particular solution of the pending questions which had been proposed and set aside, but as an object of negotiation which had been provided for in a manner satisfactory to both parties, and the provision for which was embodied in the Treaty. The reservation, therefore, made by the American Commissioners had not come into paly; the waiver remained in full force; and the indirect losses were excluded by the preamble of the Treaty from the scope of the arbitration.

PART II.—*On the Construction of the Treaty of Washington.*

UPON the construction of the Treaty of Washington, apart from the Protocols, there appear to be three questions:—

First. What claims are described by the words, "*the claims generically known as the 'Alabama claims?'*"

Second. What vessels are described by the words, "*the several vessels, which have given rise to the claims generically known as the 'Alabama claims?'*"

Third. What claims are described by the words, "*all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama claims?'*" (being the words in which the subject matter of the reference to arbitration agreed upon, is defined).

Each of these questions will be examined separately.

1. What claims are described by the words "the claims *generically known* as the 'Alabama claims?'"

The word "known," signifies, that this collective expression had acquired a definite sense, supposed to be mutually understood, from its use in previous communications, between the same parties.

The word "generically," naturally signifies that all the claims intended were *ejusdem generis.*

The word "claims," itself naturally signifies demands actually presented or notified, either with or without a full specification of particulars.

The diplomatic correspondence, which preceded the negotiation, must therefore be referred to, to discover, first, what demands had been presented, or notified; and secondly, what had been the previous use of the phrase "the 'Alabama claims?'"

The earliest intimation of any claims against this country was in the letter of Mr. Adams to Lord Russell, of 20th November, 1862; which spoke "of the depredations committed on the high seas upon merchant-vessels" by the "Alabama," and of "the right of reclamation of the Government of the United States for the grievous damage done to the property of their citizens," by reason of the escape of that vessel from British jurisdiction: and which referred, in support of that alleged right, to the Treaty of 1794 between Great Britain and the United States, by which (as Mr. Adams inaccurately represented) "all cases of damage previously done by capture of British vessels or merchandize, by vessels originally fitted out in the ports of the United States," were agreed to be referred to a Commission, to award "the necessary sums for full compensation." He added, that he had received directions from his Government "to solicit redress for *the national and private injuries,* already *thus* sustained."

On the 19th February, 1863; 29th April, 1863; 7th July, 1863; 24th August, 1863; 19th September, 1863; and 23rd October, 1863, Mr. Adams presented to Lord Russell a series of definite claims made against the Government of this country by particular American citizens, in respect of ships and property belonging to them, said to have been destroyed by the "Alabama," intimating in his letter of the 23rd October, that his 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.'*" He added (in an important passage containing the first suggestion of arbitration as a mode of thereafter solving the question), "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 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. . . . For these reasons I am instructed to say, that they frankly confess themselves unwilling to regard the present hour as the most favourable 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 arbitrament or reference to which they will not be willing to submit. 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 a later letter of 31st October, 1863, Mr. Adams (while presenting other similar demands in respect of property destroyed by the "Florida"), spoke of "*the claims growing out of the depredations of the 'Alabama' and other vessels issuing from British ports.*"

On the 20th January, 1864, he presented another similar claim by the owners of the "Sea Bride," captured by the "Alabama." And at later dates the particulars were transmitted by him of certain claims made by persons whose property was alleged to have been destroyed by the "Shenandoah."

On the 7th April, 1865 (when the war was considered by him as actually or virtually at an end), Mr. Adams transmitted to Lord Russell certain reports of "depredations committed upon the commerce of the United States," by the "Shenandoah," and added, "Were there any reason to believe that the operations carried on in the ports of Her Majesty's Kingdom and its dependencies to maintain and extend this systematic depredation upon the commerce of a friendly people had been materially relaxed or prevented, I should not be under the painful necessity of announcing to your Lordship the fact, that *my Government cannot avoid entailing upon the Government of Great Britain the responsibility for this damage,*"—and he proceeded to speak of "the injury that might yet be impending from the part which the British steamer 'City of Richmond' had had in being suffered to transport with impunity from the port of London men and supplies, to place them on board of the French-built steam-ram 'Olinthe,' alias 'Stoerkodder,' alias 'Stonewall,' which had, through a continuously fraudulent process, succeeded in deluding several Governments of Europe, and in escaping from this hemisphere on its errand of mischief to the other." He then went on to complain that, by reason of a series of acts (*the furnishing of vessels, armaments, supplies, and men*"), which he contended to be almost wholly attributable to Great Britain, or to British citizens, the entire maritime commerce of the United States was in course of being transferred, and had already to a large extent passed over, to Great Britain; whose recognition of the belligerent character of the insurgents he alleged to be the main and original source of all this mischief; adding, "In view of all these circumstances, I am instructed, whilst insisting on the protest heretofore solemnly entered against that proceeding" (*i.e.*, the recognition of Southern belligerency), "further respectfully to represent to your Lordship, that, in the opinion of my Government, the grounds on which Her Majesty's Government have rested their defence against the responsibility incurred in the manner hereinbefore stated, for the evils that have followed, however strong they might have hitherto been considered, have now failed, by a practical reduction of all the ports, heretofore temporarily held by the insurgents."

It is to be observed that, although the general injury to the commerce of the United States is largely referred to in this letter, Mr. Adams advances no new claim for compensation, on that or any other account (except for captures made by the "Shenandoah"), against Her Majesty's Government; he even intimates, that the particular claim for the captures by the "Shenandoah" would not then have been made, if his Government could have felt assured that no further operations of the like nature would take place.

This letter led to a prolonged controversial argument; in the course of which (on the 4th

May, 1865) Lord Russell observed, that he could "never admit that the duties of Great Britain towards the United States were to be measured by the losses which the trade and commerce of the United States might have sustained," and said, "The question then, really comes to this: Is Her Majesty's Government to assume or be liable to a responsibility for conduct, which Her Majesty's Government did all in their power to prevent and to punish? A responsibility which Mr. Adams, on the part of the United States' Government in the case of Portugal, positively, firmly, and justly declined. Have you considered to what this responsibility would amount? Great Britain would become thereby answerable for every ship, that may have left a British port, and have been found afterwards used by the Confederates as a ship of war: nay more, for every cannon and every musket used by the Confederates on board any ship of war, if manufactured in a British workshop." To which Mr. Adams replied (20th May, 1865) by a "recapitulation" of nine points, which he said he had desired to embody in his previous arguments. These points (beginning with the recognition of Southern belligerency on the high seas, and alleging this belligerency to have been in fact created, after the recognition, by means derived from Great Britain), mentioned, under the 7th head, "*the burning and destroying on the ocean a large number of merchant vessels and a very large amount of property belonging to the people of the United States.*"

The 8th and 9th heads were thus worded:—

"8. That, in addition to this direct injury, the action of these British-built, manned, and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and, to a corresponding extent, enlarging that of Great Britain, thus enabling one portion of the British people to derive an unjust advantage from the wrong committed on a friendly nation by another portion.

"9. *That the injuries thus received* by a country, which has, meanwhile, sedulously endeavoured to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, *are of so grave a nature, as in reason and justice to constitute a valid claim for reparation and indemnification.*" Later on, in the same letter, Mr. Adams also said: "Your Lordship is pleased to observe, that you can never admit that the duties of Great Britain towards the United States are to be measured by the losses which the trade and commerce of the United States may have sustained. To which I would ask permission to reply, that no such rule was ever desired. The true standard for the measurement would seem to be framed on the basis of the obligations themselves, and the losses that spring from the imperfect performances of them;" and "thus it is, that whatever may be the line of argument I pursue, I am compelled ever to return to the one conclusion: *the nation that recognized a Power as a belligerent before it had built a vessel, and became itself the sole source of all the belligerent character it has ever possessed on the ocean, must be regarded as responsible for all the damage that has ensued from that cause to the commerce of a Power*, with which it was under the most sacred of obligations to preserve amity and peace."

It will be seen that, although the general propositions of this letter might be wide enough to include the largest imaginable demands, it nevertheless abstains from putting forward any new claim in a definite or tangible form; and purports rather to recapitulate, and adhere to, the tenor of the preceding correspondence. And in this sense it was, evidently, understood by Lord Russell, who, in his answer of 30th August, 1865, referred to the suggestion of an arbitration contained in Mr. Adams' former letter of the 23rd of October, 1863; and, while declining "either *to make reparation and compensation for the captures made by the 'Alabama,'* or to refer the question to any foreign State," offered a reference to a Commission of "all claims arising during the late civil war," which the two Powers should agree to refer to the Commissioners. And again, on the 14th October, he repeated: "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, &c."

On the 21st of October, Mr. Adams addressed a long letter, with numerous inclosures, to Lord Russell, with reference to the "Shenandoah," alleging that vessel to have been received by the authorities at Melbourne with knowledge of an illegal equipment in this country; and insisting that, on that account, "*Her Majesty's Government assumed a responsibility for all the damage which it had done*, and which, down to the latest accounts, it was still doing, to the peaceful commerce of the United States on the ocean." A particular claim by the owners of a ship captured by the "Shenandoah," was presented with this letter.

In his letter to Lord Clarendon of the 21st November, 1865, Mr. Adams, under the instructions of his Government, declined Lord Russell's proposal for a limited reference to Commissioners of such claims as the two Governments could agree upon. "Adhering," he says, "as my Government does to the opinion *that the claims it has presented*, which his Lordship 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 propositions."

The whole result of this correspondence, down to the change of Administration in this country in 1866, may be thus summed up:—

1. That, notwithstanding continual complaints, extending over a vast range of subjects, from the recognition of the belligerency of the Southern States downwards, no "claims" against this country were ever defined, formulated, or presented on the part of the United States, except for the specific losses of American citizens arising from the capture of their vessels and property by the "Alabama," "Florida," and "Shenandoah;" and (2) that no such form of expression as "*the Alabama claims*" had ever, down to this time, been used to describe even the claims in respect of those captures, much less to comprehend any more vague and indefinite demands of indemnity to the general mercantile or national interests of the United States.

On the accession of Lord Derby to power, Mr. Seward, in a despatch to Mr. Adams, dated the 27th August, 1866, thus defined the "claims" which it had been the object of the United States

to press in the preceding correspondence, and of which he now again instructed Mr. Adams to urge the settlement: you will herewith receive a summary of *claims of citizens of the United States against Great Britain for damages which were suffered by them* during the period of our late Civil War and some months thereafter, *by means of depredations upon our commercial marine, committed on the high seas by the 'Sumter,' the 'Alabama,' the 'Florida,' the 'Shenandoah,' and other ships-of-war*, which were built, manned, armed, equipped, and fitted out in British ports, and despatched therefrom by or through the agency of British subjects, and which were harboured, sheltered, provided, and furnished, as occasion required, during their devastating career, in ports of the realm, or in ports of British colonies in nearly all parts of the globe. *The Table is not supposed to be complete, but it presents such a recapitulation of the claims as the evidence so far received in this Department enables me to furnish. Deficiencies will be supplied hereafter.* Most of the *claims* have been from time to time brought by yourself, as the President directed, to the notice of Her Majesty's Government, and made the subject of earnest and continued appeal. That appeal was intermitted only when Her Majesty's Government, after elaborate discussions, refused *either to allow the claims or to refer them* to a Joint Claims Commission or to submit the question of *liability therein* to any form of arbitration. The United States, on the other hand, have all the time insisted upon *the claims* as just and valid. This attitude has been, and doubtless continues to be, well understood by Her Majesty's Government. The considerations which inclined this Government to suspend for a time the pressure of *the claims* upon the attention of Great Britain are these:—The political excitement in Great Britain, which arose during the progress of the war, and which did not immediate subside at its conclusion, seemed to render that period somewhat unfavourable to a deliberate examination of the very grave questions which *the claims* involve, &c. . . The principles upon which *the claims* are asserted by the United States have been explained by yourself in an elaborate correspondence with Earl Russell and Lord Clarendon. In this respect, there seems to be no deficiency to be supplied by this Department. . . . *It is the President's desire that you now call the attention of Lord Stanley to the claims* in a respectful but earnest manner, and inform him, that, in the President's judgment, *a settlement of them has become urgently necessary* to a re-establishment of entirely friendly relations between the United States and Great Britain. *This Government, while it thus insists upon these particular claims*, is neither desirous nor willing to assume an attitude unkind or unconciliatory towards Great Britian. If on her part there are claims either of a commercial character, or of boundary, or of commercial or judicial regulation, which Her Majesty's Government esteem important to bring under examination at the present time, the United States would, in such case, be not unwilling to take them into consideration *in connection with the claims which are now presented on their part*, and with a view to remove at one time, and by one comprehensive settlement, all existing causes of misunderstanding."

Mr. Seward proceeded to recommend, in support of these claims, the use of the same general arguments (including prominently the alleged effect of the recognition of Southern belligerency, and the general injury to the national commerce of the United States), whice had been previously so often employed by Mr. Adams. He added: "*The claims upon which we insist are of large amount. They affect the interest of many thousand citizens of the United States*, in various parts of the Republic. The justice of *the claims* is sustained by the universal sentiment of the people of the United States."

The claims specified in the inclosure to this despatch (which is headed "*Summary of claims of citizens of the United States against Great Britain*"), relate exclusively to losses sustained by the owners and insurers of divers ships and cargoes, captured by the "Alabama," the "Shenandoah," the "Florida," and the "Georgia," respectively.

This despatch having been communicated by Mr. Adams to Lord Stanley, his Lordship, through Sir F. Bruce (Lord Stanley to Sir F. Bruce, 30th November, 1866), called attention to what he supposed to be an accidental error of Mr. Seward, in mentioning the "Sumter;" which "did not proceed from a British port, but was an American vessel, and commenced her career by escaping from the 'Mississippi.'" Then, after dealing with Mr. Seward's general arguments, and declining to abandon the ground taken by former Governments, "so far as to admit the liability of this country for the claims then and now put forward," he expressed his sense of the "inconvenience which arose from the existence of unsettled claims of this character between two powerful and friendly Governments," and his willingness to adopt the principle of arbitration, providing that a fitting arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. He objected to refer to arbitration the question of the alleged premature recognition of the Confederate States as a belligerent; saying "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." In another despatch to Sir F. Bruce, of the same date, he says, "I have confined myself exclusively to the consideration of *the American claims put forward in Mr. Seward's despatch to Mr. Adams of the 27th August, and arising out of the depredations committed on American commerce by certain cruizers* of the Confederate States. But, independently of these claims, *there may*, for aught Her Majesty's Government know, *be other claims on the part of American citizens*, originating in the events of the late civil war, while there certainly are very numerous British claims, arising out of those events, which it is very desirable should be inquired into and adjusted between the two countries . . . The Government of the United States have brought before that of Her Majesty, *one class of claims of a peculiar character, put forward by American citizens*, in regard to which you are authorized by my other despatch of this date to make a proposal to Mr. Seward; but *Her Majesty's Government have no corresponding class of claims to urge upon the attention of the American Government.*" And he, presently afterwards, speaks of "*the special American claims*, to which my other despatch alludes," an expression which is adopted and repeated by Mr. Seward, in his reply to Sir F. Bruce (12th January, 1867).

In a further despatch to Mr. Adams (12th January, 1867), Mr. Seward justifies and reaffirms the sentence in his letter of the 27th August, in which the "Sumter" was mentioned, as "substantially correct;" on the ground that that vessel had been admitted into the British

ports of Trinidad and Gibraltar, and "allowed to be sold" (in the latter port) "to British buyers, for the account and benefit of the insurgents;" and afterwards received, under the British flag, at Liverpool. His practical conclusion is, that "The United States think it not only easier, but more desirable, that Great Britain should acknowledge and satisfy *the claims for indemnity which we have submitted*, than it would be to find an equal and wise arbitrator who would consent to adjudicate them. If, however, Her Majesty's Government, for reasons satisfactory to them, should prefer the remedy of arbitration, the United States would not object. The United States, in that case, would expect to refer the whole controversy, just as it is found in the correspondence which has taken place between the two Governments, with such further evidence and arguments as either party may desire, without imposing restrictions, conditions, or limitations upon the umpire, and without waiving any principle or argument on either side. They cannot consent to waive any question, upon the consideration that it involves a point of national honour: and, on the other hand, they will not require that any question of national pride or honour shall be expressly ruled and determined as such."

To this Lord Stanley (9th March, 1867, to Sir F. Bruce) replied: "To such an extensive and unlimited reference, Her Majesty's Government cannot consent, for this reason, among others, that it would admit of, and indeed compel, the submission to the arbiter of the very question which I have already said they cannot agree to submit. *The real matter at issue between the two Governments*, when kept apart from collateral considerations, *is, whether, in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen*, the course pursued by the British Government and by those who acted under its authority was such as would involve *a moral responsibility* on the part of the British Government *to make good either in whole or in part, the losses of American citizens. This is a plain and simple question, easily to be considered by an arbiter, and admitting of solution without raising other and wider issues;* and on this question Her Majesty's Government are fully prepared to go to arbitration, with the further proviso, that if the decision of the arbiter is unfavourable to the British view, *the examination of the several claims of citizens of the United States shall be referred to a mixed Commission, with a view to the settlement of the sums to be paid on them.*" His Lordship then repeats, that deeming it important "that the adjudication of this question should not leave *other questions of claims, in which their respective subjects or citizens may be interested*, to be matter of further disagreement between the two countries, Her Majesty's Government think it necessary, in the event of an understanding being come to between the two Governments as to the manner in which *the special American claims (which had formed the subject of the correspondence of which his present despatch was the sequel)* should be dealt with, that under a Convention to be separately and simultaneously concluded, the general claims *of the subjects and citizens of the two countries* arising out of the events of the late war should be submitted to a Mixed Commission," &c. "Such, then," he concluded, "is the proposal which Her Majesty's Government desire to submit to the Government of the United States: *limited reference to arbitration in regard to the so-called 'Alabama' claims*, and adjudication by means of a Mixed Commission of general claims."

The first occasion on which these words, "*the so-called 'Alabama' claims*," occurred in the course of the whole correspondence, was shortly before the date of this letter; in a letter from Mr. Seward to Sir F. Bruce (12th January, 1867), in which he spoke of Lord Stanley's previous despatch of the 30th November, 1866, as setting forth "the views of Her Majesty's Government *of the so-called 'Alabama' claims presented in my despatch to Mr. Adams*," and as concluding with a proposal of "the principle of arbitration, attended with some modifications in regard to *those claims*." Lord Stanley himself had spoken of "the settlement of *the 'Alabama' and other claims*," by means of the proposals which he had authorized Sir F. Bruce to make, in a note to Sir F. Bruce, dated the 24th January, 1867. The same phrase, "Alabama claims," had also been used on one or two occasions, with reference to the same proposed settlement, in articles which previously appeared in some of the English newspapers during the autumn of 1866.

Lord Stanley's letter of the 9th March, 1867, was, by his direction, read to, and a copy left with Mr. Seward; and on the 2nd May, 1867, Mr. Adams communicated to Lord Stanley the substance of Mr. Seward's reply, saying that "the Government of the United States adhere to the view which they formerly expressed as to the best way of dealing with *these claims*. They cannot, consequently, consent to a special and peculiar limitation of arbitrament in regard to *the 'Alabama' claims*, such as Her Majesty's Government suggest. They cannot give any preference to *the 'Alabama' claims* over others, in regard to the form of arbitrament suggested; and, while they agree that all mutual claims which arose during the civil war *between citizens and subjects of the two countries* ought to be amicably and speedily adjusted, they must insist that they be adjusted by one and the same form of tribunal, with like and the same forms, and on principals common to all." (Lord Stanley to Sir F. Bruce, 2nd May, 1867.)

The language of this communication led Lord Stanley to think that his proposal might, perhaps, have been understood as applying only "to the claims arising out of the proceedings of the 'Alabama,' to the exclusion of those arising out of the like proceedings of the 'Florida,' 'Shenandoah,' and 'Georgia.'" He, therefore, wrote to Sir F. Bruce, on the 24th May, 1867, saying, "It is important to clear up this point; and you will, therefore, state to Mr. Seward that *the offer to go to arbitration was not restricted to the claims arising out of the proceedings of the 'Alabama,' but applied equally to those arising out of the like proceedings of the other vessels that I have named;*" referring again to the terms of his despatch of the 9th March, he then directs Sir F. Bruce to inform Mr. Seward, that "*there was no intention on the part of Her Majesty's Government to give any preference*, in regard to the form of arbitrament, *to the 'Alabama' claims over claims in the like category*," thinking that there must have been some misapprehension on this point, because "the question of disposing of general claims, in contradistinction to *the specific claims, arising out of the proceedings of the 'Alabama,' and vessels of that class*, had not hitherto been matter of controversy between the two Governments." Shortly afterwards, having spoken of "*the first or 'Alabama' class of claims*," he says, "*The one class, or the specific claims, such as those arising out of the proceedings of the 'Alabama' and such vessels*, depend for their settlement on the solution of what may be called an abstract question; namely, 'whether, in the

matters connected with *the vessels, out of whose depredations the claims of American citizens have arisen*, the course pursued by the British Government, and those who acted under its authority, was such as would involve a moral responsibility on the part of the British Government *to make good, either in whole or in part, the losses of American citizens,*" and he repeats his former offer of separate modes of arbitration, as to the two classes of claims, viz., "*those of the 'Alabama' class,*" or "*the 'Alabama' and such like claims,*" and the general claims of *the citizens* of both countries.

Further discussion ensued. Mr. Seward, on the 12th of August, 1867 (in a despatch communicated by Mr. Adams), said that he understood the British offer "to be at once comprehensive and sufficiently precise to include *all the claims of American citizens for depredations on their commerce during the late rebellion, which had been the subject of complaint on the part of the Government of the United States,* but that the Government of the United States would deem itself at liberty to insist before the arbiter, that the actual proceedings and relations of the British Government, its officers, agents, and subjects, towards the United States, in regard to the rebellion and the rebels, as they occurred during that rebellion, were among the matters which were connected with *the vessels whose depredations were complained of.*" He then objected to the constitution of two different tribunals, "one an arbiter to determine the question of the moral responsibility of the British Government *in regard to the vessels of the 'Alabama' class*, and the other a Mixed Commission to adjudicate the so-called general claims on both sides," and said, that "in every case" his Government "agreed only to unrestricted arbitration" (Lord Stanley to Sir F. Bruce, 10th September, 1867).

Lord Stanley, in his reply of the 16th November (through Mr. Ford, 16th November, 1867), used further arguments in support of the British proposal, designating throughout the special class of claims as "*the so-called Alabama claims.*"

After some intermission the correspondence was resumed by a despatch of Mr. Seward to Mr. Adams, expressing his wish "that some means might be found of arranging the differences now existing between England and the United States," which was communicated to Lord Stanley on the 15th February, 1868. The questions causing these differences were thus enumerated by Mr. Seward:—"1st. *The Alabama claims.* 2nd. The San Juan Question. 3rd. The Question of Naturalized Citizens, their rights and position. 4th. The Fishery Question;" and he suggested, that "the true method of dealing with all these matters was by treating them jointly, and endeavouring, by means of a Conference, to settle them all." (Lord Stanley to Mr. Thornton, 15th February, 1868.)

Negotiations followed, in the first instance, directed to the third and second of these four questions. On the 20th October, Mr. Reverdy Johnson (who had now succeeded Mr. Adams) called on Lord Stanley "to discuss with me" (says Lord Stanley in a despatch of 21st October, 1868, to Mr. Thornton), "the question of *the Alabama claims,*" proposing a Mixed Commission, to whom "*all the claims on both sides*" should be referred. Lord Stanley "pointed out the inapplicability of this method of proceeding, as applied to the *Alabama claims and other of the same class,*" and suggested, as arbitrator, the head of a friendly State. As to the recognition of belligerency, he said that Her Majesty's Government could not depart from the position which they had taken up, "but that he saw no impossibility in so framing the reference, as that by mutual consent, either tacit or express, the difficulty might be avoided."

On the 10th November, 1868, a Convention was accordingly signed (subject to ratification) between Lord Stanley, on the part of Her Majesty, and Mr. Johnson, on the part of the United States. By Article I of this Convention it was agreed, that "all *claims of subjects of Her Britannic Majesty* upon the Government of the United States, *and all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty*, which might have been presented to either Government for its interposition with the other since the 26th of July, 1853, . . and which yet remain unsettled, as well as any other such claims which might be presented within the time specified in Article III" (viz., within six months from the day of the first meeting of the Commissioners, unless they or the Arbitrator or Umpire should allow a further time), should be referred to four Commissioners, with provision for an arbitration or umpirage, in case of their being unable to come to a decision on any claim. Article IV was in these terms:—"The Commissioners shall have power to adjudicate upon *the class of claims referred to in the official correspondence between the two Governments as the 'Alabama' claims*, but before any of *such claims* is taken into consideration by them, the two High Contracting Parties shall fix upon some Sovereign or Head of a friendly State as an Arbitrator in respect of *such claims*, to whom *such class of claims* shall be referred, in case the Commissioners shall be unable to come to an unanimous decision upon the same."

Article VI provided, that "with regard to *the before-mentioned 'Alabama' class of claims*, neither Government shall make out a case in support of its position, nor shall any person be heard for or against any such claim. The official correspondence which has already taken place between the two Governments respecting the questions at issue, shall alone be laid before the Commissioners; and (in the event of their not coming to an unanimous decision as provided in Article IV), then before the Arbitrator, without arguments written or verbal, and without the production of any further evidence. The Commissioners unanimously, or the Arbitrator shall, however, be at liberty to call for argument or further evidence if they or he shall deem it necessary.

Down to this point, it is manifest that, in all the communications between the two countries, the claims known and referred to as "the 'Alabama' claims," were *claims for direct damage suffered by American citizens* through the acts of the "Alabama" and similar vessels, and such claims only.

When the terms of this Convention became known in America, the Government of the United States desired certain alterations to be made in it, none of which had any tendency either to enlarge the category of the claims in question, or to change the sense or application of the phrase "the 'Alabama' claims." The correspondence, as to the modifications desired, continued till January, 1869, when (Her Majesty's Government having agreed to the alterations then proposed by Mr. Seward), the amended Convention of the 14th January, 1869, was signed by Lord Clarendon and Mr. Reverdy Johnson.

The correspondence of this period throughout maintains and confirms the sense, which the words "the 'Alabama' claims," or "the so-called 'Alabama' claims," had now acquired. In Lord

Stanley's despatch of December 8, 1868, to Mr. Thornton, memoranda of several consultations and conferences with Mr. Reverdy Johnson, prior to the signature of the Convention of the 10th November, were inclosed. "*The 'Alabama' claims;*" "*the 'Alabama' and other similar claims;*" "*the so-called 'Alabama' and other similar claims;*" and "*the so-called 'Alabama' claims, and others included under the same head;*" are the several varieties of phrase used in these memoranda to describe the subject, ultimately defined in the IVth Article of that Convention as "*the class of claims referred to in the official correspondence between the two Governments as the 'Alabama' claims.*" In a letter of the 12th November, 1868, Mr. Reverdy Johnson, while communicating a telegraphic despatch from Mr. Seward (in which a general approval of the terms of the Convention, afterwards modified in various important points, was accompanied by a stipulation that Washington, and not London, should be the place of meeting of the Commissioners, to which Her Majesty's Government assented), said, "I think the change will be disadvantageous to *the 'Alabama' claimants.*" In a despatch of 30th November, 1868, Mr. Thornton stated the objections, then urged by Mr. Seward to the Convention, in which Mr. Seward also spoke of the claims mentioned in Article IV as "*the 'Alabama' and war claims,*" and "*the 'Alabama' claims,*" and of the persons interested in those claims as "*the 'Alabama' claimants.*" Mr. Seward's despatch, of the 27th November, to Mr. Reverdy Johnson (communicated to Lord Clarendon on the 22nd December), repeatedly employs the same language. He says, "The United States are obliged to disallow this Article IV. The United States have no objection to the first clause of the Article, which declares that the Commissioners shall have power to adjudicate upon *the so-called 'Alabama' claims.* Indeed, the United States would willingly retain this clause, because of its explicitness with regard to *the 'Alabama' claims.* They did not, in their instructions to you, insist upon such a special direction in regard to *the 'Alabama' claims*; but only because they thought that special mention of *these claims* might be deemed inconvenient on the part of Her Majesty's Government; while it could not admit of doubt that *these so-called 'Alabama' claims were plainly included, as well as all other claims of citizens of the United States,* in the comprehensive description of claims contained in Article I. Secondly, it is to be considered by Her Majesty's Government, that *the 'Alabama' class of claims constitute the largest and most material of the entire mass of claims of citizens of the United States against Great Britain, which it is the object of the Convention to adjust.* Upon *the 'Alabama' claims* as well as all others, this Government is content to obtain, and most earnestly desires, a perfectly fair, equal, and impartial judicial trial and decision. This Government has always, explicitly stated that it asks no discrimination in favour of *the 'Alabama' claims,* and can admit of no material discrimination against them in the forms of trial and judgment; but must, on the contrary, have them placed on the same basis as all other claims." . . . . . "It probably would conduce to no good end to set forth, on this occasion, the reasons why *the 'Alabama' claims, more than any other class of international claims existing between the two countries, are the very claims against which the United States cannot agree to, or admit of any prejudicial discrimination.* To present these reasons now, would be simply to re-state arguments which have been continually presented by this Department in all the former stages of this controversy; while it is fair to admit, that these reasons have been controverted with equal perseverance by Her Majesty's Department for Foreign Affairs."

The general result of this correspondence was that, in the Convention of the 14th January, 1869, other provisions were substituted for those of the IVth and VIth Articles of the Convention of 10th November, 1868, to which the United States' Government had objected; and the special mention of the "Alabama" claims was transferred from those Articles to Article I, which provided "that all claims on *the part of subjects of Her Britannic Majesty* upon the Government of the United States, and *all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty, including the so-called 'Alabama' claims,* which may have been presented to either Government for its interposition with the other since the 26th of July, 1853, . . . and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article III of this Convention, whether or not arising out of the late civil war in the United States, shall be referred," &c.

On the 22nd February, 1869, Mr. Thornton reported to Lord Clarendon the Resolution of a majority of the Committee on Foreign Relations of the Senate of the United States, recommending the Senate not to ratify this Convention; Mr. Sumner, who moved the Resolution, having said, "that *it covered none of the principles* for which the United States had always contended." He also inclosed a Resolution of the Legislature of Massachusetts, "protesting against the ratification of any Convention which did not admit *the liability of England for the acts of the 'Alabama' and her consorts.*"

On the 22nd March, 1869, Mr. Reverdy Johnson (without any special instructions) called upon Lord Clarendon, and proposed a further change in the Ist Article of the Convention, which he thought "would satisfactorily meet the objections entertained by the Senate to the Convention, and would secure its ratification by that body." This new change consisted in the introduction of "*all claims on the part of Her Britannic Majesty's Government upon the Government of the United States, and all claims on the part of the Government of the United States upon the Government of Her Britannic Majesty,*" as well as all claims of subjects and citizens, as to which the language of the Convention would have remained unaltered. Lord Clarendon reports what then took place in his despatch to Mr. Thornton (22nd March, 1869). "I remarked to Mr. Johnson that his proposal would introduce an entirely new feature into the Convention, which was for the settlement of claims between the subjects and citizens of Great Britain and the United States, but that *the two Governments not having put forward any claims on each other,* I could only suppose that his object was to favour the introduction of some claim by the Government of the United States for injury sustained on account of the policy pursued by Her Majesty's Government. Mr. Reverdy Johnson did not object to this interpretation of his amendment, but said that *if claims to compensation on account of the recognition by the British Government of the belligerent rights of the Confederates were brought forward by the Government of the United States, the British Government might, on its part, bring forward claims to compensation for damages done to British subjects by American blockades, which, if the Confederates*

were not belligerents, were illegally enforced against them." Lord Clarendon then, after referring to the proofs which Her Majesty's Government had given of their willingness to make any reasonable amendments to meet the wishes of the United States, and to the difference in the course of proceeding adopted in America, said "that it did not seem proper for Her Majesty's Government to take any further step in the matter, or to adopt any amendment of the Convention, even if it had been free from objection."

Mr. Reverdy Johnson (still without authority) renewed his proposition, in a letter to Lord Clarendon, dated 25th March, 1869, in which he stated he had reason to believe that the objection of the Senate of the United States to the Convention consisted "in the fact that the Convention provided only for the settlement by arbitration of *the individual claims of British subjects and American citizens upon the respective Governments, and not for any claims which either Government, as such, might have upon the other.*" "*My Government,*" he added, "*believe*, as I am now advised, that *it has a claim of its own upon Her Majesty's Government, because of the consequences resulting from a premature recognition of the Confederates during our late war, and* from the fitting out of the 'Alabama' and other similar vessels in Her Majesty's ports, *and* from their permitted entrance into other ports to be refitted and provisioned during their piratical cruise. *The existence of such a claim* makes it as necessary that its ascertainment and adjustment shall be provided for as the individual claims growing out of the same circumstances."

The United States' Government down to this time, had insisted that the new Convention ought strictly to follow the precedent of the Convention of 1853, which contained no provision for any species of public claims. Lord Clarendon, therefore, on the 8th of April, 1869, thus answered Mr. Reverdy Johnson:—"Her Majesty's Government could not fail to observe that this proposal involved a wide departure from the tenor and terms of the Convention of 1853, to which, in compliance with your instructions, you have constantly pressed Her Majesty's Government to adhere, as necessary to insure the ratification of a new Convention by the Senate of the United States. No undue importance is attached to this deviation; but I beg leave to inform you that, in the opinion of Her Majesty's Government, it would serve no useful purpose now to consider any amendment to a Convention which gave full effect to the wishes of the United States' Government, and was approved by the late President and Secretary of State, who referred it for ratification to the Senate, where it appears to have encountered objections, the nature of which has not been officially made known to Her Majesty's Government."

Mr. Reverdy Johnson, on the 9th of April, replied that, "the design of the Convention of 1853, was to settle all claims which either Government, in behalf of its own citizens or subjects, might have upon the other. . . . *At that time, neither Government, as such, made a demand upon the other. But that, as my proposition assumes, is not the case now. The Government of the United States believes that it has, in its own right, a claim upon the Government of Her Majesty.* In order therefore to a full settlement of all existing claims, it is necessary that *the one which my Government makes, and any corresponding claim which Her Majesty's Government may have upon the United States*, should be included within the Convention of the 14th January, 1869. *My instructions, to which your Lordship refers, were to provide for the settlement of the claims mentioned in such instructions*, by a Convention upon the model of the one for February, 1853. *That I did not suggest in the negotiations which led to the Convention of January the including within it any Governmental claims, was because my instructions only referred to the individual claims of citizens and subjects.* I forbear to speculate as to the grounds upon which my instructions were *so limited.*"

Her Majesty's Government adhered to their decision not to entertain at all the suggestion thus made by Mr. Reverdy Johnson; and they intimated (in correction of an erroneous inference drawn by him from the concluding sentence of Lord Clarendon's letter of the 8th April), that it was not to be supposed that this proposal would be acceptable to Her Majesty's Government, even if it were made or repeated under positive instructions from the United States' Government, and with the prospect of terminating the entire controversy.—(Lord Clarendon to Mr. Johnson, 15*th April*, 1869; and Mr. Johnson's reply, 16*th April*, 1869.

From this in the history of the negotiations, the following conclusions of fact result:—

1. That Mr. Reverdy Johnson's instructions from his Government never extended to the assertion, or settlement, of any other claims, than those of individual citizens of the United States against Great Britain.

2. That in suggesting (for the first time), the possible existence of public claims on behalf of his Government, he acted without authority.

3. That no such public claims as those of which the existence was suggested by him, had ever been presented or notified; nor were, even then, in any manner defined.

4. That the public claims, of which the possible existence was so suggested, were not claims "growing" or arising (simply) "out of the acts of" the "Alabama," or any other vessels; but claims, "because of the consequences resulting from a premature recognition of the Confederates during the war, AND from the fitting out of the 'Alabama' and other similar vessels in Her Majesty's ports, AND from their permitted entrance into other ports."

5. That the words "*Alabama claims*" (or any equivalent form of expression) were never made use of, nor was their use ever proposed to be varied or extended, so as to comprehend this new class of (suggested) public claims.

6. That the idea of a *one-sided* reference of such supposed public claims of the Government of the United States only, was never for a moment advanced or entertained; on the contrary, the essential condition of Mr. Johnson's proposal was, that it should also be open to Her Majesty to advance any public claims whatever, which they might conceive themselves to have against the Government of the United States,—a claim for injury to British interests, by the assertion and exercise of belligerent rights against British commerce, being expressly anticipated, as a probable or possible set-off to any claim on the part of the United States, founded upon the denial of a belligerent status, at any given period, to the Confederates.

7. That, although offered under these conditions, the proposal was simply, and without any discussion, declined by Her Majesty's Government.

In was in Mr. Sumner's speech, at the meeting of the United States' Senate, which refused to ratify the Convention of the 14th January, 1869, that the first conception of public claims, of the nature and magnitude of those now advanced in

the "Case" of the United States, was made known to the world. His argument on this head was thus summed up by Mr. Thornton (19th April, 1869, to Lord Clarendon): "Your Lordship will perceive, that the sum of Mr. Sumner's assertions is, that England insulted the United States by the premature, unfriendly, and unnecessary Proclamation of the Queen, enjoining neutrality on Her Majesty's subjects; that she owes them an apology for this step: that *she is responsible for the property destroyed by the "Alabama" and other Confederate cruizers, and even for the remote damage to American shipping interests, including the increase of the rate of insurance; that the Confederates were so much assisted by being able to get arms and ammunition from England, and so much encouraged by the Queen's Proclamation, that the war lasted much longer than it would otherwise have done, and that we ought therefore to pay imaginary additional expenses imposed upon the United States by the prolongation of the war."* Mr. Sumner himself did not affect to represent the latter portion, at all events, of his suggested demand, as "growing out of the acts of" the "Alabama," or of any other particular vessels: and Mr. Thornton's comment upon the whole of it shows very clearly the impossibility of ascribing to the acts of any particular vessels, alleged to have been fitted out from British ports, either the whole, or any ascertainable part of the general losses sustained by American commerce during the war, or even distinguishing between such losses of that kind as were real, and those which were apparent only.

So far, no step was taken by the United States' Government to adopt Mr. Sumner's views, or to advance claims corresponding to them. On the 10th of June, 1869, Mr. Motley renewed to Lord Clarendon the declaration of the wish of his Government, "that existing differences between the two countries should be honourably settled, and that the international relations should be placed on a firm and satisfactory basis;" which Lord Clarendon, of course, reciprocated. Then, after adverting to other subjects, he said that "the Claims Convention had been published prematurely, owing to some accident which he could not explain; and that consequently, long before it came under the notice of the Senate, it had been unfavourably received by all classes and parties in the United States. The time at which it was signed was thought most inopportune, as the late President and his Government were virtually out of office, and their successors could not be committed on this grave question. The Convention was further objected to, *because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other;*" and, "lastly, that it settled no question, and laid down no principle. These were the chief reasons which had led to its rejection by the Senate;" and Mr. Motley added "that although they had not been at once and explicitly stated, no discourtesy to Her Majesty's Government was thereby intended."

On the 25th September, 1869, Mr. Fish revived the whole subject of the controversies between the two Governments within its widest range in a long and elaborate dispatch to Mr. Motley, in which he referred (among other things) to the responsibility of the British Government for (at least) "*all the depredations committed by the 'Alabama'*" as indisputable. He stated, towards the end, the President's concurrence with the Senate in disapproving the Convention of the 14th January, 1869, thinking (in addition to general reasons left to be inferred from the general arguments of the despatch), that "the provisions of the Convention were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress." He added: "The President is not yet prepared to pronounce on the question of the indemnities which he thinks due by Great Britain to individual citizens of the United States for the destruction of their property by rebel cruizers fitted out in the ports of Great Britain. *Nor is he now prepared to speak of the reparation which he thinks due by the British Government for the larger account of the vast national injuries it has inflicted on the United States. Nor does he attempt now to measure the relative effect of the various causes of injury; as, whether by untimely recognition of belligerency; by suffering the fitting-out of rebel cruizers; or by the supply of ships, arms, and munitions of war to the Confederates; or otherwise, in whatsoever manner.* . . . All these are subjects of future consideration, which, when the time for action shall come, the President will consider, with sincere and earnest desire that all differences between the two nations may be adjusted amicably and compatibly with the honour of each, and to the future promotion of concord between them; to which end he will spare no efforts within the range of his supreme duty to the rights and interests of the United States. . . . . At the present stage of the controversy, the sole object of the President is to state the position and maintain the attitude of the United States in the various relations and aspects of this grave controversy with Great Britain. It is the object of this paper (which you are at liberty to read to Lord Clarendon) to state calmly and dispassionately, with a more unmeasured freedom than might be used in one addressed directly to the Queen's Government, what this Government seriously considers the injuries it has suffered. *It is not written in the nature of a claim, for the United States now make no demand against Her Majesty's Government on account of the injuries they feel that they have sustained.*"

Lord Clarendon, understanding this despatch as intended to revive, and to prepare the way for a new settlement of, the claims previously advanced, spoke of it, in his answering despatch to Mr. Thornton (November 6, 1869), as "a despatch from Mr. Fish *on the 'Alabama' claims.*" That it was not intended to extend, and that it had not the effect of extending, the signification of that term, as used in the previous correspondence, is plain, (1) from the fact that Mr. Fish expressly disclaimed for his despatch the office or effect of *making* any new *claim* or *demand*; (2) that it reserved for future consideration the question of reparation for the (supposed) "national injuries" inflicted by the British Government on the United States; and (3) that it declined "to measure the relative effect of the various (alleged) causes of injury;" the "suffering the fitting out of rebel cruizers," being only one of three causes enumerated. Lord Clarendon simply contented himself with replying, that "Her Majesty's Government could not make any new proposition, or run the risk of another unsuccessful negotiation until they had information more clear than that which was contained in Mr. Fish's despatch, respecting the basis upon which the Government of the United States would be disposed to negotiate." But, in a paper of observations upon the arguments in this despatch, which he at the same time (6th November, 1869), transmitted to Mr. Thornton, to be communicated

to Mr. Fish, he remarked, under the head of "*Indirect injury to American Commerce.*" "*This allegation of national, indirect, or constructive claims was first brought forward officially by Mr. Reverdy Johnson, in his attempt to renew negotiations on the Claims Convention in March last.* Mr. Thornton has shown the difficulty there would be in computing the amount of the claim, even if it were acknowledged, in a despatch in which he mentions the continual decrease of American tonnage. This is partly, no doubt, to be ascribed to the disturbance of commercial relations consequent on a long war, partly to the fact that many vessels were nominally transferred to British owners during the war to escape capture. . . . . Is not, however, a good deal of it to be attributed to the high American tariff, which makes the construction of vessels in American ports more expensive than ship-building in England, and has thereby thrown so large a proportion of the carrying trade into English hands? There must be some such cause for it, or otherwise American shipping would have recovered its position since the war, instead of continuing to fall off." . . . . And with regard to "*the claims for vast national injuries,*" he noticed that Professor Wolsey, the eminent American jurist, had repudiated them as untenable," &c.

This closes the narrative of the communications between the two Governments, anterior to those which had for their immediate result the negotiation of the Treaty of Washington. They show conclusively: (1) that, down to the 26th of January, 1871 (when Her Majesty's Government, through Sir E. Thornton, proposed to Mr. Fish the appointment of a Joint High Commission to settle the Fishery Question, and all other questions affecting "the relations of the United States towards Her Majesty's possessions in North America"), no *actual claim* had been formulated or notified on the part of the United States against Her Majesty's Government, except for the capture or destruction of property of individual citizens of the United States by the "Alabama" and other similar vessels; (2) that the Government of the United States had, in Mr. Fish's despatch of the 25th September, 1869, for the first time intimated to the Government of this country, that they considered there might be grounds for some claims of a larger and more public nature, though they purposely abstained at that time from making them; (3) that the grounds indicated, as those on which any such larger and more public claims might be made, were not limited to the acts of the "Alabama" and other similar vessels, or to any mere consequences of those acts; and (4) that the expression "*the 'Alabama' claims,*" had always been used, in the correspondence between the two Governments, to describe the claims of American citizens on account of their own direct losses by the depredations of the "Alabama," "and other similar vessels;" and had never been employed to describe, or as comprehending, any public or national claims whatever of the Government of the United States.

It was under these circumstances, that Mr. Fish, on the 30th of January, 1871, informed Sir E. Thornton that the President thought, "that the removal of the differences which arose during the rebellion in the United States, and which had existed since then, *growing out of the acts committed by the several vessels which had given rise to the claims generically known as the 'Alabama' claims,* would also be essential to the restoration of cordial and amicable relations between the two Governments." Sir E. Thornton replied (1st February, 1871), that he was authorized by Earl Granville to state, that "it would give Her Majesty's Government great satisfaction if *the claims commonly known by the name of the 'Alabama' claims* were submitted to the consideration of the same High Commission, by which Her Majesty's Government had proposed that the questions relating to British possessions in North America should be discussed, provided *that all other claims, both of British subjects and citizens of the United States,* arising out of acts committed during the recent civil war in this country, were *similarly* referred to the same Commission." Mr. Fish, in answer to this announcement, on the 3rd February, 1871, after citing the exact terms of Sir E. Thornton's letter, expressed the satisfaction with which the President "had received the intelligence, that Earl Granville had authorized him to state that Her Majesty's Government had accepted the views of the United States' Government as to the disposition to be made of *the so-called 'Alabama' claims;*" and that "if there be other and further claims *of British subjects or of American citizens* growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission."

Mr. Fish, therefore, and Sir E. Thornton agreed in describing, by the several forms of expression, "*the claims generically known as the 'Alabama' claims;*" "*the claims commonly known by the name of the 'Alabama' claims;*" "*the 'Alabama' claims;*" and "*the so-called 'Alabama' claims:*" one and the same subject matter. What this was is proved, not only by the previous use of the same or similar terms, but also by the fact that, if these words had been now intended to include indefinite public or national claims of the United States' Government against Great Britain, and not merely those claims for direct losses, which had been previously presented or notified, and any others *ejusdem generis,* it must of necessity have followed (according to the suggestions which had been made by Mr. Reverdy Johnson, and afterwards by Mr. Motley), that any counter claims, which the Government of Great Britain might have thought fit to advance, on public or national grounds, against the Government of the United States, must have been in like manner provided for. But the only other claims provided for were those of subjects of Great Britain and citizens of the United States.

In strict conformity with this view, Lord Granville, when enumerating in his instructions to Her Majesty's High Commissioners (9th February, 1871) the principal subjects to which their attention would be directed, described these claims as "the claims on account of the 'Alabama,' 'Shenandoah,' and certain other cruizers of the so-styled Confederate States;" saying, "Under this head are comprised the claims against Great Britain for damages sustained by the depredations of the 'Alabama,' 'Shenandoah,' and 'Georgia,' the vessels which were furnished on account of the Confederate States and armed outside of British jurisdiction, and the 'Florida,' which, though built in England, was armed and equipped in the port of Mobile."

The same, or the equivalent words, therefore, as often as they are used in the Protocols of the Commissioners and in the Treaty of Washington itself, ought, upon ordinary principles of construction, to be understood as bearing the same sense. And this seems to be made more clear by the exclusion from the reference of any claims of this country or of the people of Canada, on account of the proceedings of the Fenians in the

United States. There might certainly have been national claims of Great Britain arising out of those proceedings (in addition to any particular losses by Canadian subjects), which could not possibly have been excluded on any just or intelligible principle, if indefinite claims for public or national losses had been intended to be left open to the Government of the United States.

On a careful examination of the language of the Protocols and the Treaty, nothing is found at variance with this conclusion, while very much is found to confirm it.

The 36th Protocol, drawn up after the Commissioners had agreed upon all the terms of the Treaty, for the purpose of recording (so far as they thought it necessary or desirable) the history of their proceedings, begins by stating the proceedings at their first conference, on the 8th March, 1871. On that occasion the American Commissioners spoke (1) of the feeling of the United States, "that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests *by the course and conduct of Great Britain during the recent rebellion in the United States;*" (2) of "*the history of the 'Alabama' and other cruizers* which had been fitted out, or armed, or equipped, or which had received augmentation of force, in Great Britain or in her Colonies, *and of the operations of those vessels, as showing* (A) *extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditure in the pursuit of the cruizers; and* (B) *indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion;* and as also *showing* (C) that Great Britain, by reason of failure in the proper observance of her duties as a neutral, *had become justly liable for the acts of those cruizers and their tenders.*" So far all is preamble, and as yet there is no mention of *claims*. General injury to the commerce and material interests of the United States, "*by the course and conduct of Great Britain;*" *direct losses* by the *captures* of the "Alabama" and similar cruizers, and also (an item now first added) *by the national expenditure in their pursuit;* and indirect public injury, "shown by the history of those vessels and their operations," are all spoken of; but the "*liability,*" expressly inferred from the same "history" against Great Britain, is limited to "*the acts of those vessels and their tenders.*"

The American Commissioners then proceed to speak of "*the claims* for the loss and destruction of private property *which had thus far been presented,*" as amounting to about 14,000,000 dollars, without interest, "which amount was liable to be greatly increased by claims which had not yet been presented;" and, with respect to the new head of direct losses, now for the first time mentioned, they say that "the cost to which the Government had been put in pursuit of cruizers, could easily be ascertained by certificates of Government accounting officers." Here the word "*claims*" is used with respect to direct losses only, as it had always been used before, but with notice that direct losses of the Government, in pursuit of the vessels referred to, are now meant to be included in that category, as well as the losses of private citizens. And then follow the the words: "That in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right of indemnification on their account, in the event of no such settlement being made."

Here is a clear waiver of the (assumed) "right of indemnification" for indirect losses in the event of "an amicable settlement" being made. The meaning of the words "an amicable settlement" has been already considered in the First Part of this Memorandum. At present the question is as to the meaning of the words "the claims generically known as the 'Alabama' claims." If no actual claim for these indirect losses had been previously made, it clearly was not made now by treating it as a reserved "right" which would or might be insisted on in the event of no amicable settlement being arrived at. Still less could it, by means of any such reservation, be brought within the category of "claims" already "generically known as the 'Alabama' claims."

The next step in the proceedings corroborates this view. For, after stating their desire for an expression of regret on the part of Her Majesty's Government, which they obtained, the American Commissioners then proposed "that the Joint High Commissioners should agree upon a sum which should be paid by Great Britain to the United States, *in satisfaction of all the claims,* and the interest thereon." *All the claims* are here spoken of; but it can hardly be possible that, in this proposal, they meant to include indirect losses: because "the right to indemnification" on that account was only to be asserted in the event of no amicable settlement being made: nor were these indefinate claims such as, by any possibility, could be regarded as bearing interest.

In the later passages of this Protocol, which relate to the proceedings resulting in the reference to Arbitration, and in the agreement as to the three "Rules," no trace occurs of any recurrence to the reserved "right of indemnification," or to the subject of indirect losses. "*The 'Alabama' claims*" alone are spoken of.

In the 1st Article of the Treaty itself, the words "*generically* known," &c., so far as they differ from other forms of expression previously used in respect of the same subject, differ only by defining that subject with greater accuracy, so as more pointedly to exclude indirect losses.

"Generically" is an adverb of classification, with reference to the nature of the subject matter itself. Claims for direct losses, by the acts of a particular class of vessels, or by a definite expenditure for the prevention of these acts, are, in their nature, of the same category or genus; and it is the very fact of their being capable of being directly connected with the acts of those vessels, as an effect with its cause, which makes them so. Indirect public losses, to which many concurrent causes may have contributed (as, with respect to those now in question, is clearly demonstrated by Mr. Sumner's speech, and Mr. Thornton's observations upon it, and also by Lord Clarendon's memorandum of the 6th November, 1869), are different in their kind, and open up much wider, and wholly different, fields of inquiry.

The VIIth and Xth Articles of the Treaty appear also to be irreconcileable with any other view of the "Claims" referred. The Arbitrators are to "first determine *as to each vessel separately,* whether Great Britain has, *by any act or omission,* failed to fulfil any of the duties," &c.; and "shall *certify the fact, as to each of the said vessels.*" This inquiry is addressed, and is limited, to certain imputed "acts or omissions" of this country, not as to any other matters, but as to *each, separately,* of certain vessels. The Arbitrators, if they should find "that Great Britain has failed to fulfil any duty or duties *as aforesaid,*" have power to

"*award a sum in gross to be paid* by Great Britain to the United States *for all the claims referred.*" But the power of awarding a sum in gross cannot enlarge or alter the category of the claims referred, or the scope of the enquiry: the foundation of such an award must be some particular failure of duty, considered by the Arbitrators to have been established against Great Britain, by some acts or omissions as to some particular vessels or vessel; and the sum awarded can only be in respect of damages resulting from such failure of duty, as to such particular vessels or vessel. If the Arbitrators should "find that Great Britain has failed to fulfil any duty or duties *as aforesaid,*" but do not award a sum in gross, a Board of Assessors is then "to ascertain and determine *what claims are valid* and what amount or amounts shall be paid by Great Britain to the United States, *on account of the liability arising from such failure as to each vessel,* according to the extent of such liability as decided by the Arbitrators." It seems impossible that power can have been given to the Arbitrators to award a sum in gross for claims not severable as to each vessel, and which, therefore, the Assessors, when dealing with the case of each vessel in detail, could not entertain or allow.

II. The second question, viz., what vessels are described by the words "*the several vessels* which have given rise to the claims generically known as the 'Alabama claims,'" admits of being more concisely treated.

Until Mr. Seward's despatch to Lord Stanley of the 27th August, 1866, the "Alabama," "Florida," "Georgia," and "Shenandoah" were the only particular vessels in respect of whose acts any claims had been made. With respect to more general complaints of the same character, Mr. Adams in his letter to Lord Russell of the 7th April, 1863, referred only to vessels "*supplied from the ports of the United Kingdom,*" adding, "So far as I am aware, not a single vessel has been engaged in these depredations excepting such as have been so furnished. Unless, indeed, I might except one or two passenger steamers belonging to persons in New York, forcibly taken possession of whilst at Charleston in the beginning of the war, feebly armed, and very quickly rendered useless for any aggressive purpose." In his letter of the 20th May, 1865, when recapitulating his former complaints, he mentioned under this head, only "*the issue from British ports* of a number of British vessels," by which a large amount of American property had been destroyed; "*the action of these British-built, manned, and armed vessels;* the ravages committed by armed steamers, *fitted out from the ports of Great Britain;*" and "*the issue of all the depredating vessels from British ports with British seamen, and with, in all respects but the presence of a few men acting as officers, a purely British character.*"

Mr. Seward in his despatch of the 27th August, 1866 (as has been already seen), spoke of "depredations upon our commercial marine, committed by the 'Sumter,' the 'Alabama,' the 'Florida,' the 'Shenandoah,' *and other ships of war, which were built, manned, armed, equipped, and fitted out in British ports, and despatched therefrom by or through the agency of British subjects,* and which were harboured, sheltered, provided, and furnished as occasion required, during their devastating career, in ports of the realm, or in ports of British Colonies in nearly all parts of the globe."

As the "Sumter" was (notoriously) not built, manned, armed, equipped, or fitted-out in any British port, or despatched therefrom by or through the agency of any British subjects, Lord Stanley thought that this was a casual and unintentional error, and pointed it out to Mr. Seward (through Sir F. Bruce) as such; especially as the "Georgia," in respect of which vessel particular claims were scheduled to Mr. Seward's despatch, was not named therein; while no such claims were scheduled in respect of the "Sumter" or of any other ships, except the "Alabama," "Shenandoah," "Georgia," and "Florida." Mr. Seward, as has been already seen, justified himself (12th January, 1867) as "substantially correct," on the ground that the "Sumter" had received certain hospitalities in the British ports of Trinidad and Gibraltar, and had been sold to British subjects at Gibraltar, and afterwards received at Liverpool.

As this was the first occasion, so it was also the last, on which mention was made of any ship or ships, not alleged to have been fitted-out, armed, equipped, or manned in any British port, but which had merely been allowed to receive limited supplies of coal or other necessaries in British waters, as coming within the category of vessels whose acts could be made the foundation of claims against Great Britain. The words "the several vessels which have given rise to the claims generically known as the Alabama Claims" cannot possibly be extended to vessels of this character, unless it be on the ground of this one mention of the "Sumter" in the context which has been cited in these two letters of Mr. Seward. In the "Case," however, presented on the part of the American Government under the Treaty, damages are claimed in respect of five vessels ("Sumter," "Nashville," "Retribution," "Tallahassee," "Chickamauga"), which were in every sense American; and which are not alleged to have been built, fitted-out, armed, equipped, or manned in any part of the British dominions; and in the 7th Volume of the Appendix to that "Case," further claims of the like character appear to be made in respect of the acts of two other similar vessels ("Boston" and "Sallie").

It may be here observed that, by the general list of claims filed in the State Department of the United States, besides these vessels, not less than eight other American ships ("Calhoun," "Echo," "Jeff. Davis," "Lapwing," "Savannah," "St. Nicholas," "Winslow," "York"), in respect of whose acts no claim is now made against Her Majesty's Government, appear to have been also engaged in belligerent naval operations on the part of the Confederate States, which resulted in the destruction of ships and other property belonging to citizens of the United States.

When Lord Stanley (24th May, 1867) spoke of the "proceedings of the 'Alabama' *and vessels of that class,*" and (10 September, 1867) of "claims arising out of the depredations of the 'Alabama'", and "*of vessels of the like character;*" when Mr. Reverdy Johnson (25th March, 1869) spoke of the possible public claim of the United States' Government, as resulting (*inter alia*), "from the *fitting out of the 'Alabama' and other similar vessels in Her Majesty's ports,* and from *their* permitted entrance into other ports;" when Mr. Fish (25th September, 1869) spoke of the destruction of the property of American citizens "*by rebel cruizers fitted out in the ports of Great Britain,*" and injury "*by suffering the fitting out of rebel cruizers, or by the supply of ships,* arms, and munitions of war to the Confederates;" when Mr. Motley (23rd October, 1869), spoke of "the destruction of American commerce *by cruizers of British origin* carrying the insurgent flag;" it is clear that they did not include, or mean to include, as if belonging to one and the same category of vessels, ships alleged to be of British origin,

and ships of American origin, with the fitting out or equipment of which British subjects had been in no way concerned.

In Lord Granville's instructions to Her Majesty's High Commissioners, it is also plain that the former class of vessels alone is contemplated. In the narrative of the proceedings of the 8th March, 1871, contained in the 36th Protocol, it seems equally clear, that the United States' Commissioners had also the same class of vessels in view: for they spoke of "*the history of the 'Alabama' and other cruizers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies;*" and they expressed a hope "that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed *by the vessels whose acts were now under discussion.*" Her Majesty's Commissioners (on a later day) "replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government *for the escape, under whatever circumstances, of the 'Alabama' and other vessels from Britsh ports*, and for the depredations committed *by them;*" which expression of regret was accepted by the American Commissioners "as very satisfactory."

In the first Article of the Treaty itself, the expression of Her Majesty's regret, in these identical words, immediately precedes the agreement of reference by which the claims referred are described as "*growing out of acts* committed *by the aforesaid vessels.*"

The necessary conclusion appears to be, that the vessels intended to be referred to in the Treaty were only such as could, in good faith, be alleged to have been fitted out, or armed, or equipped, or to have received an augmentation of force, in some part of the British dominions:—the three Rules in the VIth Article of the Treaty being, of course, material to be regarded, in determining all questions of fact in any case alleged to be of this nature. The "Sumter," "Nashville," and other ships above mentioned, have never been alleged to come within any of the terms of this description, unless, indeed, it is now meant to be said that the permission to any Confederate vessel to obtain, in a British port, such limited supplies of coal as were permitted to both the belligerent parties by Her Majesty's regulations, ought to be deemed an improper "augmentation of the force" of such vessel, within the meaning of the second Rule.

III. The solution of the third question, viz., what claims are described by the words, "*all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the Alabama claims*" (being the words in which the subject matter of the reference to arbitration agreed upon is defined), has been anticipated by the conclusions already arrived at. It may be added, however, that the words "growing out of *acts committed by* the aforesaid vessels" cannot, without forcing them altogether beyond their fair and natural sense, be applied to claims for indirect losses, not resulting from any particular *acts committed* by any particular ship or ships; but alleged to result (so far as they may be referable at all to naval or maritime causes) from the very existence on the high seas of a naval force belonging to the Confederate States, and recognized by Great Britain and other neutral Powers as having a belligerent character and belligerent rights. If the Confederate States had, in fact, procured all their cruizers from British sources, this criticism would still hold good; much more when several (in fact, a considerable majority in number) of the cruizers actually employed by them, and by which losses were inflicted on United States' citizens, were otherwise procured.

PART III.—*On the Amount of the Claims for Indirect Losses.*

"The claims as stated by the American Commissioners may be classified as follows:—

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

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

"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.

"So far as these various losses and expenditures grew out of the acts committed by the several cruizers, the United States are entitled to ask compensation and remuneration therefor before this Tribunal."—(United States' Case, p. 469.)

Mr. Fish observes that "an extravagant measure of damages" has been supposed, not only by the British press, but also, "most unaccountably," by some of the statesmen of this country, to be sought through the claim for compensation on account of indirect losses. It will therefore be well to present, from United States' authority, some part of the evidence which, in the absence of explanation or retractation, has led to this conception. Undoubtedly the Case p. 476) disclaims an accurate estimate; but it supplies materials which cannot fail to suggest the appropriate conclusion. They are as follows:—

From the 4th of July, 1863, Great Britain is declared to have been "the real author of the woes" of the American people (p. 479). From this time "the war was prolonged for the purpose" of maintaining offensive operations "through the cruizers" (*ibid.*). And the Arbitrators are accordingly called upon "to determine whether Great Britain ought not, in equity, to reimburse to the United States the expenses thereby entailed upon them" (*ibid.*). On all these points, the Case proceeds to state, the evidence "will enable the Tribunal to ascertain and determine the amount." To this amount interest is to be added up to the day when the compensation is payable, within twelve months after the award (p. 480). The rate of interest in New York is 7 per cent. (*ibid.*); and "the United States make a claim for interest at that rate" from 1st July, 1863, "as the most equitable day." The interest therefore is to be charged at 7 per cent. for a period of from ten to eleven years.

It may be presumed to be incapable of dispute, that more than half the expenses of the war were incurred after the 1st July, 1863. What was the sum total of those expenses? Upon this point there is, in a form generally if not precisely appropriate, official evidence from America. In the Report of the Special Commissioner of the Revenue for 1869, p. vi, they are stated at 9,095,000,000 dollars, including 1,200,000,000 dollars for the suspension of industry. Of this amount 2,700,000,000 are set down to the Confederates.

Thus it appears that the Case does not go beyond the truth (so far as this head of damage is concerned) in stating that the Arbitrators would find the materials sufficiently supplied for esti-

mating the amount which "in equity" Great Britain ought to pay. It may indeed be said that the amount, suggested by the passages and facts to which reference is made, forms an incredible demand. But, in perusing and examining this Case, the business of Her Majesty's Government has been to deal, not with any abstract rule of credibility, but with actual, regular, and formal pleas, stated and lodged against Great Britain on behalf of one of the greatest nations of the earth. Is it then "most unaccountable," in view of the evidence as it stands, that the press and that statesmen of this country should have formed the idea that "an extravagant measure of damages" was sought by the Government of the United States?

It appears from the despatch of Mr. Fish that no such idea has ever been entertained by that Government. Having this authentic assurance so supplied, it may be deemed little material to inquire whether on this important matter the language of the Case has been misunderstood by Her Majesty's Government, or whether it is now disavowed. If, however, it has been misconstrued, the misconstruction undoubtedly has not been confined to England, but has been largely shared by writers on the Continent of Europe.

Were this Government indeed prepared to acquiesce in the submission of these claims, it would still remain to ask in what way the Government of the United States proposed to guard against the acceptance by the Arbitrators of those enormous estimates which, taken without authoritative comment, the language of the Case suggests. But it is scarcely necessary to observe that the question of more or less in this matter is entirely distinct from the question of principle on which the statements and arguments of Her Majesty's Government are founded.

No. 5.

Mr. Fish to General Schenck.—(Communicated to Earl Granville by General Schenck, May 1.)

Department of State, Washington, April 16, 1872.

SIR,

I HAVE given very careful attention to the note of the 20th of March, addressed to you by Earl Granville, professing to state the reasons which induced Her Majesty's Government to make the declaration contained in his previous note to you of 3rd of February—that in the opinion of Her Majesty's Government it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the Case of the United States.

His Lordship declares this statement to be made upon the invitation which this Government appears to have given. I should regret that what was intended only as a courteous avoidance of the naked presentation of a directly opposite opinion to that which had been expressed on behalf of the British Government, unsustained by any reasons, should have subjected his Lordship to the necessity of an elaborate reply. It was not the desire of this Government to invite any controversial discussion, nor have they now any wish to enter upon or continue such discussion.

Some remarks, however, appear in the note of his Lordship which seem to require a reply.

It opens with a seeming denial of the accuracy of my assertion that claims for indirect losses and injuries are not put forward for the first time in the "Case" presented by this Government to the Tribunal at Geneva; that for years they have been prominently and historically part of the "Alabama claims;" and that incidental or consequential damages were often mentioned as included in the accountability. It cannot be supposed that his Lordship intends more than to say that the claims for indirect or national losses and injuries were not "formulated" by this Government, and the amount thereof set forth in detail and as a specific demand; for he admits that, on the 20th November 1862, within a few weeks after the "Alabama" had set out on her career of pillage and destruction, Mr. Adams suggested the liability of Great Britain for losses other than those of individual sufferers. In his note of that date to Lord Russell, Mr. Adams stated that he was instructed by his Government to "solicit redress for the *national* and private injuries already thus sustained."

On the 19th February, 1863, Mr. Seward instructed Mr. Adams that "this Government does not think itself bound in justice to relinquish *its* claims for redress for the injuries which have *resulted from the fitting-out and dispatch of the 'Alabama' in a British port.*"

As the consequences of this fitting-out began to develop themselves and their effects in encouraging the rebellion, became manifest, Mr. Adams, in an interview with Lord Russell, indicated them (as described by the latter in a letter to Lord Lyons under date of 27th March, 1863), as "a manifest conspiracy in this country (Great Britain) to produce a state of exasperation in America, and thus bringing on a war with Great Britain, *with a view to aid the Confederate cause.*"

In a note dated April 7, 1865, addressed to Lord Russell, Mr. Adams, after complaining of the hostile policy, pursuant to which the cruizers were fitted out, says, "That policy, I trust, I need not point out to your Lordship, *is substantially the destruction of the whole mercantile navigation belonging to the people of the United States.*" "It may thus be fairly assumed as true that *Great Britain, as national Power, is, in point of fact, fast acquiring the entire maritime commerce of the United States.*"

That Lord Russell regarded this as the foundation of a claim for damages for the transfer of the commercial marine of the United States to the flag of Great Britain is apparent in his reply to Mr. Adams, under date of May 4, 1865, when he says, "I can never admit that the duties of Great Britain toward the United States are to be measured by the losses which the trade and commerce of the United States may have sustained."

Again, on 20th May, 1865, Mr. Adams, writing to Lord Russell, distinctly names *indirect* or consequential losses. His language is "that in addition to this *direct* injury the action of these British-built, manned and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain;" "that injuries thus received are of so grave a nature as, in reason and justice, to *constitute a valid claim for reparation and indemnification.*" In the same note he says, "The very fact of the admitted *rise in the rates of insurance on American ships* only brings us once more back to look at the original cause of all the trouble."

It is difficult to imagine a more definite statement of a purpose to require indemnification.

On the 14th February, 1866, after the presentation of the above recited complaints, Mr. Seward, writing to Mr. Adams, said, "There is not one member of this Government, and, so far as I know, not one citizen of the United States, who expects that this country will waive, in any case, the demand that we have heretofore made upon the

British Government for the redress of wrongs committed in violation of international law."

And, again, on 2nd May, 1867, Mr. Seward writes to Mr. Adams, "As the case now stands, the injuries by which the United States are aggrieved *are not chiefly the actual losses sustained in the several depredations*, but the first unfriendly or wrongful proceeding of which they are but the consequences."

His Lordship also admits the mention, by Mr. Reverdy Johnson, in March 1869, of a "claim for national losses," which Lord Clarendon, in a paper published in the British Parliamentary Papers, "North America, No. 1, 1870," page 18, defines as "national, indirect, or constructive claims."

On 15th May, 1869, I instructed Mr. Motley that this Government, in "rejecting the recent Convention, abandons *neither its own claims* nor those of its citizens."

Lord Clarendon, in a despatch of 10th June, 1869, to Mr. Thornton, mentioned that Mr. Motley had assigned, among the causes which led to the rejection of the Johnson-Clarendon Treaty, that the "Convention was objected to because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other,"

On 25th September, 1869, writing to Mr. Motley, I said, "The number of ships thus directly destroyed amounts to nearly 200, and the value of the property destroyed to many millions. *Indirectly* the effect was *to increase the rate of insurance* in the United States, and *to take away from the United States its immense foreign commerce, and to transfer this to the merchant-vessels of Great Britain.*" "*We complain of the destruction of our merchant marine by British ships, &c.*" "The President is not yet prepared to speak of the reparation which he thinks *due by the British Government for the larger account of the vast national injuries it has inflicted on the United States.*"

In the same instruction I also wrote what seems pertinent to the present phase of the question between the two Governments. "When one Power demands of another the redress of alleged wrongs, and the latter entertains the idea of arbitration as the means of settling the question, it seems irrational to insist that the arbitration shall be a qualified or limited one.

Lord Clarendon wrote to Mr. Thornton on the 6th November, 1869, that he was officially informed by Mr. Motley that, while the President at that time abstained from pronouncing on the indemnities due for the destruction of private property, he also abstained from speaking "of the reparation which he thinks due by the British Government for the *larger account of the vast national injuries* it has inflicted on the United States."

Lord Clarendon, in some "observations" on my note (Blue Book, North America, No. 1, 1870, p. 13 *et seq.*) dwelt at length on my allegation of national or indirect injuries, and characterized them as "*claims*," and resisted them as such; and in an instruction to Mr. Thornton, of 12th January, 1870, he recognizes the paper as relating to the "Alabama claims." (Blue Book, North America, No. 1, 1870, p. 20.)

It cannot be denied that these public or national claims (now called "indirect") were prominently before the Senate of the United States when the Convention of 14th January, 1869, was under advisement in that body, nor that they were subsebuently actively canvassed before the people of both countries, and especially by the press of Great Britain.

It is equally indisputable that, in my note to Mr. Motley of September 25, 1869, to which Lord Clarendon replied, there was presented the reparation which the President thought "due by the British Government for the *vast national injuries* it had inflicted on the United States."

The 36th Protocol of the Joint High Commission shows that the indirect losses were distinctly presented to the notice of the British Commissioners in the very beginning of the negotiations on the subject, and that they remained unchallenged to the signing of the Treaty.

At every stage, therefore, of the proceeeings, from November 1862, when Mr. Adams "solicited redress for the *national* injuries sustained," to the date of the Treaty, this Government has kept before that of Great Britain her assertion of the liability of the latter for what are now termed the "*indirect* injuries."

The President now learns, for the first time, and with surprise, that Her Majesty's Government accepted his suggestion that the proposed Commission should treat for "the removal of the differences which arose during the rebellion in the United States, and which have existed since then, *growing out of the acts* committed by the several vessels have given rise to the claims generically known as the 'Alabama claims,'" in the full confidence that no claim would be made by the United States for the national losses which had been continuously presented.

It is not to be denied that "differences" had arisen between the two Governments respecting these claims, and the Treaty attests that the two Governments were desirous to provide for an amicable settlement of *all causes of difference*, and for that purpose appointed their respective Plenipotentiaries. It is thus declared, in the outset, that the agreements which are about to be formulated are not intended to be "an amicable settlement," but are intended, on the contrary, "*to provide* for a speedy settlement." The subject of the submission in a solemn Treaty will not be narrower than the declared object sought to be accomplished in the reference, and that object was declared to be the removal of all *complaints and claims.*

The Treaty also attests that the differences which had arisen *growing out of* the acts committed by the several vessels which had given rise to the claims generically known as the "Alabama claims," *still* exist, and that, in order to remove and adjust *all complaints and claims* "*all* claims *growing out of the acts* committed by the aforesaid vessels, and *generically* known as "the 'Alabama claims,' shall be referred to a Tribunal of Arbitration."

You can bear witness that not even an intimation of the character now put forward by Earl Granville was made at any time during the deliberations of the Joint High Commission.

If Her Majesty's Commissioners were appointed, entered upon and continued the negotiations with this Government under instructions, and with the conviction that the correspondence between Sir Edward Thornton and myself did not cover, and was not intended to cover, "as a subject of negotiation, any claim for indirect or national losses," the withholding of such instructions and the abstaining from the expression of such conviction on their part was most unfortunate, and the absence of any dissent or remonstrance against this class of the claims, either when first formally presented to the Commissioners, or during the whole negotiation, or in the Protocols, is most remarkable.

These claims were presented to the British Commissioners as solemnly and with more definiteness of specification than were presented by them to the American Commissioners the claims for alleged injuries which the people of Canada were said to

have suffered from what was known as the Fenian raids; yet while the American Commissioners formally objected to the claims for the Fenian raids, as not embraced in the scope of the correspondence which led to the formation of the Commission, and recorded in the Protocols their unwillingness to enter upon the consideration, each time that they were referred to, the British Commissioners, from the first to the last, took no exception and recorded no objection to the presentation made by the American Commissioners of the claims *generically* known as the "Alabama claims," which stand on the Protocol as a "*genus*" or class of claims comprehending several species, and among them enumerating specifically the claims for indirect losses and injuries.

The positive exclusion by the Protocol of one class of claims advanced would seem to be conclusive of the non-exclusion of the other class advanced with greater definiteness and precision, but with respect to which no exception was taken and no dissent recorded.

It is difficult to reconcile the elaborate line of argument put forward by Earl Granville to show a waiver of claims for indirect losses, with the idea that, at the outset of the negotiations, Her Majesty's Government did not consider the matter of public or national injuries as the basis of an outstanding claim against Great Britain on the part of the *United States.*

If these claims had (as Lord Granville's note implies, even if it does not assert) no existence in fact, and had never been "notified" or presented, and were not within the jurisdiction of the Joint High Commission, why is so much stress laid upon their assumed relinquishment?

If, on the other hand, they had existence in fact, if they had (as the references which I have made to a correspondence extending over a long series of years establishes, I think, beyond the possibility of doubt) been frequently and persistently presented and notified to the British Government, why is not their positive exclusion from the reference to the arbitration shown? Why should an important class of claims, measured in their possibilities, according to the estimate of the British press, by fabulous amounts, be left to an *inferential* exclusion?

What interest, upon Lord Granville's theory, could Great Britain have in the proposed abandonment of such claims, or why offer any consideration therefor?

How can Her Majesty's Government contend at the same moment that the preliminary correspondence excluded the indirect or national losses, *and* that the possibility of admitting such claims as a subject of negotiation had never been entertained by Great Britain, and on the other hand that they offered and considered the "amicable settlement" of the Treaty, with its expressions and its recognition of certain rules, as the consideration and the price paid for a waiver of those claims by the United States?

I should not feel justified in referring to the expressions used by Earl Granville end other eminent Members of the British Parliament in their legislative capacities, but for his own reference thereto, and for the responsibility to which his Lordship attempts to hold you for your presence at one of their sessions, and to which I shall again refer.

But the reference made by Earl Granville to the debate in the House of Lords on the 12th of June, and his own declarations on that occasion, that "they (the indirect claims) entirely *disappear*," strengthens the position of this Government that they had been presented and were recognized as part of the claims of the United States.

A disappearance certainly implies a previous appearance.

Lord Cairns, long accustomed to close judicial investigation, and the critical examination of Statutes and of Treaties, did not agree to the proposition that there had been a relinquishment of the claims; he declared that there could not be found "one single word . . . . which would prevent such claims being put in, and taking their chance under the Treaty."

If, therefore, you were present through the whole of the debate, you heard advanced in the House of Lords as well the opinion held by the United States as that now put forward in behalf of Great Britain.

It is true that Mr. Adams did not "define or formulate" claims for national losses. He did, however, "notify" them to Her Majesty's Government.

During the war, these claims were continually arising and increasing, and could not then be "defined," and the time for "formulating" them would not arise until a willingness to enter upon their consideration arose.

It is to be remembered that, in the spring of 1863, Her Majesty's Government exhibited some impatience when Mr. Adams communicated losses and claims of indemnification therefor, and Lord Russell, under date of 9th March of that year, wrote to Mr. Adams that "Her Majesty's Government entirely disclaim all responsibility for any acts of the 'Alabama,' and they hoped that they had already made this decision on their part plain to the Government of the United States."

In July 1863, Lord Russell referred Mr. Adams to his note of the 9th March, and repeated the disclaimer of all liability, and on 14th September, in still more marked language, he expressed the hope "that Mr. Adams may not be instructed again to put forward claims which Her Majesty's Government cannot admit to be founded on any grounds of law or justice."

Lord Russell's replies to Mr. Adams afford the answer to Lord Granville's remark that "no claims (except direct claims) were ever defined or formulated.'"

But, although the United States under these circumstances could not consider that hour as the most favourable to a calm examination of the facts or principles involved in cases like those in question, and notwithstanding these admonitions, it became imperative on Mr. Adams still to present complaints.

On the 30th December, 1862, he had complained of acts with the intent "to procrastinate the war."

On the 14th March, 1863, he wrote to Lord Russell that "the war had been continued and sustained by the insurgents for many months past, mainly by the co-operation and assistance obtained from British subjects in her Majesty's kingdom and dependencies." He repeats a similar complaint on 27th March, and again on 28th April, coupled with the suggestion of the responsibility attending those who "furnish the means of protracting the struggle."

At no time during the occurrence of the events which gave rise to the differences between the two Governments, did the United States fail to present ample and frequent notice of the nature of the indirect injures, or of their inclusion in the accountability of Great Britain.

Lord Granville admits that Mr. Johnson proposed the national claims in March 1869. I mentioned them in my instructions to Mr. Motley in May 1869; and again in that of September of that year, although I made no claim or demand for either direct or indirect injuries, I did present the

vast national injuries, so that Lord Clarendon, in his reply, manifested no difficulty in discerning that the United States did expect and would demand the consideration of national, indirect, or consequential losses.

I can therefore have no doubt whatever that the assertion in my instruction to you of 27th February, commented upon by Lord Granville, does "accurately represent the facts as they are shown in the correspondence between the two Governments."

Earl Granville endeavours to limit the nature and extent of the claims by an argument based upon the expressions the "Alabama claims," which, he says, first occurs in a letter, which he designates.

It may be true that this "expression" appeared for the first time in the official correspondence, in the letter and at the date indicated; but his Lordship overlooks the fact, that in this letter, the language used is "the *so-called* Alabama claims," showing evidently the adoption, for convenience, of a then familiar term in common use, designating by a short generic name the whole class and variety of claims, for the various injuries of which the United States had, at different times, made complaint. The question, however, is not what was understood by the expression "Alabama claims" in 1867, but what that same expression implied in 1871, when introduced into the Treaty. It might not be difficult to show that the expression had, in 1867, acquired a definite sense far more comprehensive than that to which Earl Granville desires to restrict it. It is impossible to deny that in 1871 it was as comprehensive in signification as the United States claim it to have been.

The official correspondence of this Government which was published, and is within the knowledge of Her Majesty's Government, included the indirect injuries under the expression "the Alabama claims." They were prominently put forward in the debates and the public discussions on the rejection of the Johnson-Clarendon Treaty. The American press abounded in articles setting them forth as part of the "Alabama claims."

The President enumerated them in his Annual Message to Congress in December 1869.

The British press, in the summer of 1869, and subsequently, discussed most earnestly the indirect losses under the title of "Alabama claims."

Continental jurists and publicists discussed the national claims on account of the prolongation of the war, &c., under the head of "réclamations," having "qu'un rapport *indirect*, et nullement un rapport *direct* avec les déprédations réellement commises par les croiseurs."

In the year 1870 Professor Mountague Bernard, subsequently one of the Commissioners on the part of Her Majesty, and whose name is signed to the Treaty, published a very able, but intensely one-sided and partial defence of the British Government, under the title of "A Historical Account of the Neutrality of Great Britain during the American Civil War." The XIVth chapter of this work, as appears in the Table of Contents, is entitled the "Alabama claims." Under this head he presents the demand made by the United States for redress for "the *national* as well as the private injuries." Professor Bernard knew the extent of our complaints and of our demands. In this work he summarises an instruction from this Department to the Minister of this country in Great Britain as presenting "the opinion of this Government" that the conduct of England "had been a virtual act of war." He says, "The estimate which the American Government has thought fit to adopt of its own claims * * * * * is not favourable to a settlement;" that among the reasons for the rejection of the Convention of the 14th January, 1869, was the fact that it embraced *only* the claims of individuals, and had no reference to *those of the two Governments on each other*.

He sets forth that the President assigned among the reasons for his disapproval of that Convention, that "its provisions were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress," and that the President further declared that he was not then (1869) "prepared to speak of the reparation which he thinks due by the British Government for the *larger account of the vast national injuries* it has inflicted on the United States;" and further that this Government held that "all these are subjects for future consideration which, *when the time for action shall come*, the President will consider with sincere and earnest desire that *all differences* between the two nations may be adjusted amicably and compatibly with the honour of each and to the promotion of future concord between them.

With this knowledge of the demand for "*national*" redress, that the American opinion regarded the conduct of Great Britain as "a virtual act of war;" with the expressed opinion that the American estimate of its claims was extravagant; with the knowledge that a previous Convention had recently been rejected, because, among other reasons "it embraced *only* the claims of individuals, and had no reference to those of the Government; that the President expected reparation for the vast *national injuries*" which Great Britain had inflicted on the United States, and that he "held *all these subjects for future consideration when the time for action shall come;*"—when "the time for action" did come, Professor Bernard, bringing this knowledge, appeared as one of Her Majesty's Commissioners to treat on these very subjects.

It would be doing great injustice to the other eminent and distinguished statesmen and diplomatists who were his associates on the British side of the Commission, to entertain the belief that they brought less knowledge on these points than was held by Professor Bernard.

I hold that enough has been shown to establish that the British Commissioners who negotiated the Treaty did not enter upon the important duty committed to them in any ignorance of the nature or of the extent of the claims which the American Government intended to present and to have settled.

Earl Granville's efforts to limit and confine the meaning of the expression "the Alabama claims" might induce one who had not the text of the Treaty at hand to suppose that the reference to the Tribunal of Arbitration was limited by the restricted meaning which he attempts to give to the phrase "Alabama claims." But the words of the Treaty impose no such limitation—they are that "whereas *differences have arisen* between the Government of the United States and the Government of Her Britannic Majesty *and still exist, growing out of the acts* committed by the several vessels which have given rise to the claims *generically* known as the 'Alabama claims.'" 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 Majesty's Government, the High Contracting Parties agree that *all* the said claims *growing out of the acts* committed by the aforesaid vessels and generically known as the "Alabama claims" be referred, &c.

All the claims *growing out of the acts committed, &c.*, are the subject of reference.

That which grows out of an act is not the act itself; it is something consequent upon or incident to the act,—the result of the act: and whether the claims to which Her Majesty's Government now take exception be the results of the acts committed

by the vessels, is in the opinion of this Government for the decision of the Arbitrators.

After the positive declaration of Earl Granville, that it "never could have been expected" that Her Majesty's Government would accept the proposition of payment of a gross sum in satisfaction of all our claims, it is apparent that an exposition, at this time, of the reasons which led the President to hope that the amicable settlement which he proposed, coupled with the suggestion of large pecuniary concessions on our part, would be made, will not tend to remove the differences now existing between the two Governments respecting the jurisdiction of the Geneva Tribunal.

I as deeply regret that Her Majesty's Government cannot understand upon what that hope was founded, as I deplore what now appears to have been the predetermination of Her Majesty's Government to reject every proposal which involved an admission of any liability on the part of Great Britain.

Another proposal, having no similitude to the previous one submitted by us, was made by Her Majesty's Commissioners. They accepted without objection the American statement of the subject-matter in dispute as it was made, and they proposed instead of the "amicable settlement" offered by the American Commissioners, "a mode of settlement" by arbitration—a litigation, a lawsuit, in which Great Britain should deny all liability to the United States for all the injuries complained of. After sundry modifications, their proposal was accepted by the United States, who were thus compelled to bring before the Tribunal the same presentment of their losses which they had laid before Her Majesty's Commission. The subject-matter of the submission made by the American "Case" to the Geneva Tribunal differs in no particular from that which was accepted as the statement of the American claims, without objection on the part of the British members of the Joint High Commission.

The President is now, for the first time, authentically informed that a waiver by this Government of the claims for indirect losses which were formally presented, was, in the opinion of Her Majesty's Government, also contained in this second proposal, was a necessary condition of the success of the negotiation, and that "it was in the full belief that this waiver had been made that the British Government ratified the Treaty." Such a relinquishment of a part of the claims of this Government is now made by Earl Granville the pivot and real issue of the negotiation. He appears to imply that the price paid by Her Majesty's Government to obtain that waiver was the concession referred to in his Lordship's note, and which, he says, would not have been expected by this Government "if the United States were still to be at liberty to insist upon all the extreme demands which they had at any time suggested or brought forward."

Here, again, is a clear intimation that Her Majesty's Government were not in ignorance of the character of our demands, but that they were well "*known*" and that the consideration to be paid for their waiver (whether real or imaginary) had been deliberately determined.

Is it not surprising that such "extreme demands" should be waived on the one hand, and such "concessions" made on the other, without a word of reference or suggestion that the one was conditioned on the other?

You can bear witness that at no time during the deliberations of the Joint High Commission was such an idea put forward by Her Majesty's Commissioners.

The Protocols are utterly silent on this subject.

That no such relinquishment was incorporated into the text of the Treaty is clear enough.

Why not, if thus deemed at the time by Her Majesty's Government the hinge and essential part of the Treaty?

What are termed the "concessions" on the part of Great Britain appear in the Treaty. If the relinquishment by the United States of a part of their claim was the equivalent therefor, why is not that set forth?

Throughout the Treaty are to be found reciprocal grants, or concessions, each accompanied by its reciprocal equivalent.

How could it happen that so important a feature of the negotiation as this alleged waiver is now represented to be, was left to inference, or to argument from intentions never expressed to the Commissioners, or to the Government of the United States, until after the Treaty was signed?

The amplitude and the comprehensive force of the 1st Article (or the granting clause) of the Treaty did not escape the critical attention of Her Majesty's Commissioners: but was any effort made to limit or reduce the scope of the submission, or to exclude the indirect claims?

You were informed in my instruction of February 27, that this Government does not consider the Treaty as of itself a settlement, but as an agreement as to the mode of reaching a settlement. To that opinion the President adheres. He cannot admit that the Treaty provision for a settlement is, in substance or legal effect, the same as the "amicable settlement spoken of in the Conference held on the 8th of March, as is set forth in the Protocol. The differences between the two stand out clear and broad. One would have closed up, at once and for ever, the long-standing controversy; the other makes necessary the interposition of friendly Governments, a prolonged, disageeeable, and expensive litigation with a powerful nation, carried on at a great distance from the seat of this Government, and under great disadvantages; and, more than all, it compels the re-appearance of events and of facts, for the keeping of which in lifeless obscurity the United States were willing to sacrifice much, as they indicated in their proffer to accept a gross sum in satisfaction of *all* claims.

The United States can assent to no line of argument which endeavours to transfer the waiver of claims for indirect injuries (implied from their withholding the estimate of the amount of such claims) from the rejected proposal of the American Commissioners for a settlement *à l'amiable* by the Joint High Commission, and to incorporate it, *sub silentio*, in the Arbitration proposed by the British Commissioners.

The offer of this Government to withhold any part of its demands expired and ceased to exist when the acceptance of the proposal which contained the offer was refused. It was never offered except in connection with the proposal that the Joint High Commission should agree upon a gross sum to be paid in satisfaction of all the claims, and then it was repelled. It was never again suggested from any quarter. It is impossible for Her Majesty's Government to fix upon a moment of time when there was an agreement of the Contracting Parties respecting such a waiver as that to which Earl Granville refers.

To the suggestion of doubt contained in the note of Lord Granville whether "it would be advantageous to either country" to treat claims of the nature of those now under discussion "as proper subjects of international arbitration," I can only reply that for all practical purposes argument upon this question is suspended, inasmuch as in our judgment Great Britain and the United States have bound themselves respectively by the Treaty to make such submission.

The first Article of that solemn instrument recites and declares 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." Earl Granville admits that the foregoing are "the words in which the subject matter of the reference to arbitration agreed upon is defined."

If the Case of the United States, as presented at Geneva, contain claims not "growing out of acts committed" by the aforesaid vessels, then such claims are not within the reference, and must be so adjudjed.

In like manner, if any of the claims set forth in the American Case were not *at the date of the correspondence between Sir Edward Thornton and myself* (in January and February, 1871), "generically known" as part of the Alabama claims, they are not within the jurisdiction of the Tribunal, and must be so adjudged.

The President admits unreservedly that every item of the demand presented at Geneva must, within the meaning of the Treaty, be a "claim"—that it must be one of the claims "generically known as the 'Alabama claims'"—and that it must grow out of acts committed by the vessels which have given rise to the claims thus generically known.

Which of the claims presented by the United States at Geneva answers these requirements, and is well founded, according to the true intent and meaning of the Treaty, is not to be determined by either party litigant, but is a question for the Tribunal to decide.

I have already referred to the comprehensiveness which the expression "Alabama claims" had acquired when it was used in the correspondence, and was incorporated in the Treaty in 1871.

Lord Granville says, "The word *generically* naturally signifies that all the claims intended were *ejusdem generis*." His argument would require them to be *ejusdem speciei.*

The word was designedly used to embrace a "genus," a class of claims divided into several species: "genus est id, quod sui similes communione quadam, *specie autem differentes* duas aut plures complectitur partes."

The direct losses from destruction of property are of one species: they differ in dates, localities, and amounts; they do not differ in character or in "species."

Referring to my remark in the note to you of 27th February, that the indirect injuries are covered by one of the alternatives of the Treaty, Earl Granville does not perceive what "alternative" in the Treaty covers these claims.

This Government is of the opinion that they are covered by the alternative power given to the Tribunal of Arbitration of awarding a sum in gross, in case it finds that Great Britain has failed to fulfil any duty, or of remitting to a Board of Assessors the determination of the validity of claims presented to them and the amounts to be paid.

By Article VII, in case the "Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it."

If Great Britain be found by the Tribunal to have failed of any of its duties, it is clearly within the power of the Tribunal, in its estimate of the sum to be awarded, to consider all the claims referred to it, whether they be for direct or for indirect injuries. There is no limitation to their discretion, and no restriction to any class or description of claims.

The United States are "prepared to accept the award, whether favourable or unfavourable to their views. They are confident that it shall be just."

Earl Granville refers to the allusion made in my instruction to you of 27th February to the presentation by Her Majesty's Agent to the Claims Commission now sitting in this city of a claim for a part of the Confederate Cotton Loan, the express exclusion of which from the consideration of the Commission his Lordship admits had been mutually agreed upon in the negotiations which precede the appointment of the High Commissioners, and was provided for by the wording of the Treaty.

He thinks, however, that there is no analogy between the proceedings before the Washington Commission and those before the Geneva Tribunal—such, at least, appears to be the inference to which his argument is intended to lead.

He cites from Article XIV the power given to the Claims Commissioners "to decide in each case whether any claim has or has not been duly made, preferred and laid before them, either wholly or to any extent, according to the true intent and meaning of the Treaty," and he adds that "no similar words" are used as to the powers of the Geneva Tribunal.

It is true that "no similar words" are used, but his Lordship has overlooked the much broader and more comprehensive powers given to the Geneva Arbitrators, by the words in Article II authorizing them "to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and of Her Britannic Majesty respectively."

These grants of power are to be taken in connection with the subject matter referred.

The subject matter of the reference to the Washington Commission is the claims for alleged wrongful acts by either Government upon the persons or property of individuals, or of corporations, citizens or subjects of the other Government.

Articles XII and XIV prescribe certain requirements as to the manner, the channel and the time of presentation of the claims to be examined.

The words "made, prepared and laid before" have no possible reference to the nature, the character or the groundwork of the claim, and can be construed only as applying to each claim which is a proper subject of reference, the test of the requirements of the Treaty, with respect to the manner, the channel and the time of its being brought before the Commission.

The subject-matter referred to the Arbitrators at Geneva is "all the claims growing out of acts committed by the vessels which have given rise to the claims generically known as the 'Alabama claims,' 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."

In connection with such claims, and with the purpose expressed in the Treaty, the Arbitrators have the broad grant of power to "examine and decide *all questions* that shall be laid before them on the part of" either Government.

If Lord Granville can find, in the words he has quoted, power in the Washington Commission to determine whether or not a claim presented is within its jurisdiction, it will be difficult to deny the same power to a Tribunal to which the more comprehensive grant is made in the words of the Article II.

The allusion, in my instruction of 27th February, to the Confederate Cotton Loan was, to the fact that a claim, one of a class for whose exclusion his Lordship admits that expressions had been used in the negotiations which preceded the appointment of the High Commission, and were also used in the

Treaty, was presented by Her Majesty's Government (for by the Treaty a claim can only be laid before the Commission on the part of the Government), and that, when the United States remonstrated and requested the British Government to withdraw the claim, their remonstrance was unheeded, and the claim was pressed to argument; that the United States demurred before the Commission to its jurisdiction, and that the decision of the Commission disposed of what might have been a question of embarrassment.

The claim was put forward as a test case, and was one of a class involving upwards of fifty millions of dollars.

My allusion to it was not in the nature of a complaint of its presentation.

Earl Granville has kindly furnished certain dates. From his note we find that it was on the 21st November, that he learned that the United States remonstrated against the presentation of this class of claims; that *prior* to the 6th December he had ascertained from Sir Edward Thornton (who it is known, had left England on his return to the United States as early as the 28th day of November) that claims of this class were intended to be excluded, and that the Treaty contained words inserted for that object; that the remonstrance and request of the United States were not considered by Her Majesty's Government until the 11th of December; that a decision thereon was not made until the 14th (on which day, I may add, the Agent and Counsel of the British Government brought the case to trial in Washington); and that the announcement of the decision of Her Majesty's Government was not made to you until the 16th December, two days after the case had been adjudged.

These dates illustrate my allusion to this case. The United States calmly submitted to the Commission the decision of its jurisdiction over a claim involving in its principle the question of liability for many millions of dollars, which it is admitted had been expressly agreed to be withheld from the province of the Commission, and thereby avoided jeoparding the Treaty, and the serious embarrassment which might have resulted from their undertaking to become the judges in their own behalf.

I cannot pass over without notice the allusion made by Earl Granville to your presence in the House of Lords on the occasion of the debate of the 12th of June last, and the fact that you did not at any time challenge either of the conflicting interpretations of the Treaty expressed on that occasion. I may add that similar reflections upon the conduct of this Government in that relation uttered by prominent statesmen and newspapers in Great Britain have been made public, and thus brought to my notice.

To all of these it is sufficient to say, that the President does not hold it as any part of his duty to interfere with the differences in the Parliament or the public press of Great Britain respecting the true construction of the Treaty. The utterances in Parliament are privileged, the discussion in that high body is looked upon by us as a domestic one, of which this Government has no proper cognizance. If it is bound to take notice, it has the right to remonstrate.

To concede either to a foreign State, would be on the part of a Parliamentary Government the abandonment of the independence which is its foundation, and its great security and pride.

Had you interfered therefore, either to remonstrate or to demand explanation, you would have exposed yourself and your Government to the very just rebuke, which the United States has had occation to administer to Diplomatic Agents of foreign Governments, who, in ignorance or in disregard of the fundamental principles of a constitutional Government with an independent Legislature, have asked explanations from this Government concerning the debates and proceedings of Congress, or of the communication by the President to that body.

You had a right to assume that if Her Majesty's Government desired any official information from you or your Government respecting the Treaty, or desired to convey any information to you or to your Government, they would signify as much in the usual forms of diplomatic intercourse, as was done by Lord Granville in his note to you of the 3rd February.

Certain it is, that it would have been in violation of recognized diplomatic proprieties had you, on the occasion referred to, taken sides with either of the opposing views of the Treaty uttered on that occasion in Parliament.

Further than this, it appears to me that the principles of English and American law (and they are substantially the same) regarding the construction of Statutes and of Treaties, and of written instruments generally, would preclude the seeking of evidence of intent outside the instrument itself.

It might be a painful trial on which to enter, in seeking the opinions and recollections of parties, to bring into conflict the differing expectations of those who were engaged in the negotiation of an instrument.

While the United States have nothing to fear from departing from the eminently just rule of law to which allusion has been made, it abstains from such departure.

Very much of the matter so elaborately and ingeniously presented in the Memoranda attached to the note of Earl Granville could be fitly and appropriately addressed by the British Government to the Tribunal which is to pass upon the points presented therein. It would require amplification, if not correction of statement, to make it present all the facts essential to a correct judgment, and might require a reply, before that Tribunal. It would certainly require explanation as to many of its presentations, and its logic would be denied; but it does not seem to require a reply from me in the form of diplomatic correspondence.

As to what is contained in Part III of that Memorandum, I repeat in substance what I mentioned in my note to you on this subject of 27th February, that the indirect losses of this Government, by reason of the inculpated cruizers, are set forth in the American Case as they were submitted to the Joint High Commission in the first discussion of the claims on 8th March, and stand in the Protocol approved 4th May. They were presented at Geneva, not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration on a final settlement and adjudication of all the differences submitted to the Tribunal. The decision of what is equitable in the premises, the United States sincerely, and without reservation, surrender to the arbitrament designated by the Treaty.

What the rights, duties and true interests of both the contending nations, and of all nations, demand shall be the extent and the measure of liability and damages under the Treaty, is a matter for the supreme determination of the Tribunal established thereby.

Should that august Tribunal decide that a State is not liable for the indirect or consequential results of an accidental or unintentional violation of its neutral obligations, the United States will unhesitatingly accept the decision.

Should it, on the other hand, decide that Great Britain is liable to this Government for such consequential results, they have that full faith in

British observance of its engagements, to expect a compliance with the judgment of the Tribunal which a solemn Treaty between the two Powers has created in order to remove and adjust all complaints and claims on the part of the United States.

To the judgment of the Tribunal, when pronounced, the United States will, as they have pledged their faith, implicitly bow. They confidently expect the same submission on the part of the great nation with which they entered into such solemn obligations.

I am, &c.
(Signed) HAMILTON FISH.

No. 6.

Earl Granville to Sir E. Thornton.

Foreign Office, May 1, 1872.

SIR,

GENERAL SCHENCK read to me this day a despatch which he had received from Mr. Fish in reply to my letter of the 20th of March, respecting the arbitration on the "Alabama claims" under the Treaty of Washington.

At my request General Schenck gave me a copy of this despatch, which I told him I would submit to my colleagues.

A copy is inclosed for your information.

I am, &c.
(Signed) GRANVILLE.

No. 7.

Earl Granville to General Schenck.

Foreign Office, May 6, 1872.

SIR,

I HAVE the honour to acknowledge the receipt of Mr. Fish's despatch of the 16th of April, which you communicated to me on the 1st instant. I abstain from addressing any observations to you on the tenour of that despatch, pending the result of the communications which are now passing between us, and which it is the earnest hope of Her Majesty's Government may lead to a satisfactory settlement of the questions under discussion between our two Governments.

I am, &c.
(Signed) GRANVILLE.

No. 8

Earl Granville to Sir E. Thornton.

SIR, *Foreign Office, May* 13, 1872.

HER Majesty's Government have refrained from continuing an argumentative discussion with the Government of the United States upon the scope and intention of the Articles in the Treaty of Washington relating to the arbitration on the "Alabama claims."

There are, however, some passages in Mr. Fish's despatch on this subject of the 16th ultimo, upon which it seems desirable that, for your own information, and for use in any future communications with the Government of the United States, you should be put in possession of the views of Her Majesty's Government.

In the first place, Mr. Fish takes exception to the assertion in my letter of the 20th of March, that although it is true that in some of the earlier letters of Mr. Adams vague suggestions were made as to possible liabilities of this country, extending beyond the direct claims of American citizens for specific losses arising from the capture of their vessels by the "Alabama," "Florida," "Shenandoah," and "Georgia," no claims were ever defined or formulated, and certainly none were ever described by the phrase "Alabama claims," except these direct claims of American citizens.

Mr. Fish states that I cannot be supposed to intend more than to say that the claims for indirect or national losses and injuries were not "formulated" by the United States' Government, and the amount thereof set forth in detail and as a specific demand.

I did not, however, confine myself to saying that no claims of this nature were ever defined or formulated, but added that no such claims had ever been "described" as "Alabama claims."

Mr. Fish admits that the claims for indirect or national losses were not formulated or defined, but proceeds to cite various passages in the correspondence in which he considers that they were brought forward. He does not mention one instance in which they were described as "Alabama claims."

The fact is that, throughout the correspondence, the repressntations made by the United States' Government respecting the actual claims for injuries sustained by American citizens from the depredations of the "Alabama" and other cruizers, were interspersed with complaints of the supposed premature recognition of the belligerent rights of the Confederate States by the issue of Her Majesty's Proclamation of Neutrality, and of the proceedings of blockade-runners.

Nearly all the passages cited by Mr. Fish will be found, when read with their context, to have reference to these complaints, and to the indefinite suggestions of liability founded on them. On the other hand, on turning to the Memorandum inclosed in my letter of the 20th of March, it is apparent that the phrase "Alabama claims" has uniformly been used to distinguish the actual claims on account of the acts committed by the "Alabama" and the other cruizers, from these complaints of the "attitude" assumed by Great Britain.

Mr. Fish lays great stress on the statement in Mr. Adams' letter of the 20th of November, 1862, that he was instructed to "solicit redress for the *national* and private injuries already thus sustained." The injuries *thus* sustained were, as appears by the inclosures in Mr. Adams' letter, the destruction of the "Ocmulgee" and other vessels by the "Alabama." As already pointed out in the Memorandum, Mr. Adams spoke merely of the "depredations committed on the high seas upon merchant-vessels" by the "Alabama," and of "the right of reclamation of the Government of the United States for the grievous damage done to the property of their citizens," and referred to the Claims Commission under the Treaty of 1794 as a precedent for awarding compensation. There is not a word in the letter to suggest any indirect or constructive claims.

In the despatch of the 19th of February, 1863, Mr. Seward, in a similar manner, uses the term "its claims," with obvious reference to the claims put forward by the United States on behalf of American citizens: those, indeed, being the only claims that had been indicated in the correspondence between Mr. Adams and Lord Russell to which he was alluding.

I must remark that this despatch of the 19th of February, 1869, was not communicated to the British Government.

Mr. Fish has omitted some important words in the next passage which he adduces, from Lord

Russell's despatch to Lord Lyons on the 27th of March, 1863.

The despatch gives an account of a conversation with Mr. Adams, at the close of which Lord Russell said that it was his belief "that if all the assistance given to the Federals by British subjects and British munitions of war were weighed against similar aid given to the Confederates, the balance would be greatly in favour of the Federals.

"Mr. Adams totally denied this proposition. But above all, he said, there is a manifest conspiracy in this country, of which the Confederate loan is an additional proof, to produce a state of exasperation in America, and thus bring on a war with Great Britain with a view to aid the Confederate cause, and secure a monopoly of the trade of the Southern States, whose independence these conspirators hope to establish by these illegal and unjust measures."

Mr. Fish omits the words "of which the Confederate Loan is an additional proof," which, taken with the context, show that Mr. Adams was then speaking, not of the case of the "Alabama," but of the assistance in money and materials which he considered was improperly rendered to the Confederate States by blockade-running and the Cotton Loan.

Mr. Adams' letters of the 7th of April and 20th of May, and Lord Russell's letter of the 4th of May, 1865, are commented on in the Memorandum, Part II, and it is unnecessary for me to make any further observations on them, as Mr. Fish does not reply to those which I have already offered. Whatever may have been the purpose to require indemnification, no claim was presented or notified, and the grievances of which complaint was made were in no way identified with the "Alabama claims."

The despatch of the 14th of February, 1866, was not communicated to Her Majesty's Government; but, on referring to the 3rd volume of the Appendix to the American Case, p. 628, in which it is given, it appears to refer to the possibility of fresh negotiations in regard to a revision of the Neutrality Laws and to Lord Russell's refusal of arbitration. Both these subjects are referred to at page 625, and the despatch accordingly concludes, after the paragraph quoted by Mr. Fish, by saying, "I think that the country would be unanimous in declining every form of negotiation that should have in view merely prospective regulations of national intercourse, so long as the justice of our existing claims for indemnity is denied by Her Majesty's Government, and those claims are refused to be made subject of friendly but impartial examination."

There can be no pretence that the claims which Lord Russell refused to submit to arbitration extended to indirect claims. The proposal arose in connection with "a claim for the destruction of the ship 'Nora' and other claims of the same kind" (see Mr. Adams' letter of the 23rd of October, 1863), and Lord Russell, in reply to it, stated that Her Majesty's Government must decline "either to make reparation and compensation *for the captures made by the 'Alabama,'* or to refer the question to any foreign State."

I have already pointed out that no importance can be attached to the claims of private citizens being spoken of by Mr. Seward as "our claims." The "claims of citizens of the United States against Great Britain for damages, &c., by means of depredations upon our commercial marine committed on the high seas by the 'Sumter,' the 'Alabama,' the 'Florida,' the 'Shenandoah,' &c.," of which a summary was annexed to the despatch from Mr. Seward to Mr. Adams, of the 27th of August, 1866, communicated to Lord Stanley, and which are undeniably private claims, are mentioned in that despatch as "the claims upon which we insist," and "our claims."

The next despatch referred to, that from Mr. Seward to Mr. Adams, of the 2nd of May, was likewise not communicated to Her Majesty's Government. The context clearly shows that the "injuries" from "the first unfriendly or wrongful proceeding" referred to the "concession of belligerency." Mr. Seward, in a preceding paragraph, says, "I feel quite certain that the balance of faults has been on the side of Great Britain. First, the concession of belligerency ought not to have been made; second, upon our earnest appeals it ought to have been earlier rescinded." The despatch goes on to state the conviction of the American people that "the proceedings of the British Government in recognizing the Confederacy were not merely unfriendly and ungenerous, but entirely unjust."

In another part of Mr. Fish's despatch complaints (not claims) are noticed as having been made by Mr. Adams on the 30th of December, 1862, 14th and 27th of March, 1863, and 28th of April.

The "acts" complained of in the first extract will be seen, on reading the entire passage, to have been, that "vessels owned by British subjects have been and are yet in the constant practice of departing from British ports laden with contraband of war and many other commodities, with the intent to break the blockade and to procrastinate the war."

The despatch of the 14th of March, 1863, refers to certain intercepted correspondence relating to the proceedings and supposed intentions of Confederate agents, blockade-runners, and to the Cotton Loan.

The complaint on the 27th of March, as I have already explained, also referred to the Cotton Loan and to these proceedings of Confederate agents.

The despatch of the 28th of April begins, "I am instructed to inform your Lordship that the Government of the United States has heard with surprise and regret of the negotiation of a loan in this city;" and proceeds to state that "this transaction must bring to an end all concessions, of whatever form, that may have been heretofore made for mitigating or alleviating the rigors of the blockade in regard to the shipment of cotton;" and concludes, "I am sure that it is with the greatest reluctance it" [the United States' Government] "finds itself compelled by the offensive acts of apparently irresponsible parties, bent upon carrying on hostilities under the shelter of neutrality, to restrict rather than to expand the avenues of legitimate trade. The *responsibility for this*" [*i.e.*, for this restriction] "must rest mainly upon those who, for motives best known to themselves, have laboured and continue to labour so strenuously and effectually to furnish the means for the protraction of the struggle."

I have reviewed the passages cited by Mr. Fish in support of his argument, that the "Alabama claims" included other claims than those for the actual losses of American citizens, in order to show how little support they afford to it; but this is almost superfluous, as a conclusive answer is afforded by the very volume of despatches from which Mr. Fish has taken these extracts.

Mr. Reverdy Johnson, in a despatch to Mr. Seward, dated February 17, 1869 (page 767), containing a report of his negotiations with Her Majesty's Government, states, "I hear that in

some quarters objections are made to the Claims Convention, for which I was not prepared.

"1. It is said, I am told, that the claims to be submitted should not be all that have arisen subsequent to July, 1853.

"2. That no provision is made for the submission of any losses which our Government, as such, may have sustained by the recognition of the insurgents as belligerents, and the depredations upon our commerce by the 'Alabama' and other vessels. . . . .

"As regards the second objection," he urges, "I am at a loss to imagine what would be the measure of the damage which it supposes our Government should be indemnified for. How is it to be ascertained? By what rule is it to be measured? A nation's honour can have no compensation in money, and the depredations of the 'Alabama' were of property in which our nation had no direct pecuniary interest. If it be said that those depredations prevented the sending forth of other commercial enterprises, the answer is twofold: first, that if they had been sent forth, the nation would have had no direct interest in them; and, second, that it could not be known that any such would have been undertaken. Upon what ground, therefore, could the nation demand compensation in money on either account? And if it was received, is it to go into the Treasury for the use of the Government, or to be distributed amongst those who may have engaged in such enterprises, and how many of them are there, and how are they to be ascertained? France recognized the insurgents as belligerents, and this may have tended to prolong the war. This, too, it may be said, was a violation of her duty, and affected our honour. If we can claim indemnity for our nation for such a recognition by England, we can equally claim it of France. And who has suggested such a claim as that?

"But the final and conclusive answer to these objections is this:

"1. That at no time during the war, whether whilst the "Alabama" and her sister ships were engaged in giving our marine to the flames, or since, no branch of the Government proposed to hold Her Majesty's Government responsible, except to the value of the property destroyed and that which would have resulted from the completion of the voyages in which they were engaged. The Government never exacted anything on its own account. It acted only as the guardian and protector of its own citizens, and therefore only required that this Government should pay their losses, or agree to submit the question of its liability to friendly arbitrament. To demand more now, and particularly to make a demand to which no limit can well be assigned, would be an entire departure from our previous course, and would, I am sure, not to be listened to by this Government, or countenanced by other nations. We have obtained by the Convention in question all that we have ever asked; and with perfect opportunity of knowing what the sentiment of this Government and people is, I am satisfied that nothing more can be accomplished. And I am equally satisfied that if the Convention goes into operation, every dollar due on what are known as the 'Alabama claims' will be recovered."

If Mr. Johnson was mistaken in the view thus decidedly expressed, it might be expected that some notice would have been taken of so important an error. But Mr. Seward's reply of March 3, 1869, gives no intimation of any dissent whatever. He writes, "Your despatch No. 112 of the 17th ultimo, relative to the Protocol and Convention recently signed by you on behalf of this Government, has this day been received and submitted to the President. He directs me to say, in reply, that it is regarded as an able and elaborate paper, and would have been communicated to the Senate had it not reached here at the close of the present Session and that of his Administration."

Thus, according to an uncontradicted statement in an official despatch from the United States' Minister in London to the Government at Washington, officially published by the United States' Government, that Government had "never exacted anything on its own account," and the claims "*known as the 'Alabama claims'*" had been limited during the whole war, and in the subsequent negotiations up to February, 1869, to the claims for the value of the property destroyed, and that which would have resulted from the completion of the voyages in which the captured vessels were engaged.

Mr. Johnson confirmed the statement in his despatch, in a letter to Mr. J. A. Parker, published in the "New York Journal of Commerce," 30th November, 1870: "My instructions, as did those of Mr. Adams, looked exclusively to the adjustment of individual claims, and no alleged commission or omission of the British Government of her duty to the United States pending the war was given in any part of the correspondence between the two Governments as having any influence upon other than individual claims."

It is not easy to understand how a class of claims which had been known under one appellation for seven years could have suddenly acquired a far wider and more onerous significance.

Mr. Fish relies on Mr. Reverdy Johnson's proposed amendment of the Clarendon-Johnson Convention, on these public or national claims having been prominently before the Senate when that Convention was under advisement (by which it is to be presumed he refers to Mr. Sumner's speech, the only part of the proceedings which was published), on the President's Message of December, 1869, and on his despatch to Mr. Motley of the 25th of September, 1869.

Mr. Johnson's proposal, however, was not to include national claims under the head of "Alabama claims," but to superadd them by inserting certain words after the words "agree that," in the first Article of the Convention.

Had his proposal been adopted, the Article would have stood thus: "The High Contracting Parties agree that"—here comes the insertion—"[all claims on the part of Her Majesty's Government upon the Government of the United States, and all claims of the Government of the United States upon Her Majesty's Government, and] all claims on the part of subjects of Her Britannic Majesty upon the Government of the United States, and all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty, including the so-called 'Alabama claims,'" &c.

Mr. Johnson avowedly made this proposal, as Lord Clarendon informed you in his despatch of the 22nd of March, 1869, to introduce "claims to compensation on account of the recognition by the British Government of the belligerent rights of the Confederates," which the British Government might balance by "claims to compensation for damages done to British subjects by American blockades, which, if the Confederates were not belligerents, were illegally enforced against them."

Mr. Johnson's belief was that the Convention was unacceptable because it did not include national claims on account of the recognition of belligerent rights, which he purposely distin-

guished from the "Alabama claims," and was in no respect therefore inconsistent with his despatch of the 17th February, limiting the meaning of that expression. The information on which he founded that belief was derived, as he reported to Mr. Fish on the 9th of April, 1869, from a private source; and his suggestion made in the same despatch, that instructions should be given to him to endeavour to supply the omission, was not favourably entertained by the United States' Government, who telegraphed in reply that "as the Treaty was then before the Senate no change was deemed advisable."

The only intimation, as I have stated, which Her Majesty's Government possessed of the propriety of making any demands for national losses having been debated or considered by the Senate, was by the publication of Mr. Sumner's speech, in which he urged that England was liable for national injuries of the most extensive character; but these injuries were rhetorically deduced, chiefly from the Proclamation of Neutrality, and the supplies furnished through the blockade.

The effect of Mr. Sumner's speech in England was reported by Mr. Johnson to Mr. Fish on the 10th of May:—"If an opinion may be formed from the public press, there is not the remotest chance that the demands contained in that speech will ever be recognized by England. The universal sentiment will be found adverse to such a recognition. It would be held, as I hear from every reliable source, to be an abandonment of the rights and a disregard of the honour of this Government."

Her Majesty's Government never learnt that Mr. Sumner's views were endorsed by the Government of the United States.

Mr. Fish next mentions his instructions to Mr. Motley of the 25th of September. These instructions, however, were not communicated to Her Majesty's Government, and when Mr. Motley told Lord Clarendon, on the 10th of June, 1869, that the Convention "was objected to because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other; and, lastly, that it settled no question, and laid down no principle," he proceeded to speak of the "risk and responsibility" incurred by a Government which conferred belligerent rights, and thus his representations naturally connected themselves with Mr. Johnson's proposal with regard to the mutual claims of the two Governments.

Mr. Fish admits that, in his despatch of the 25th of September, he "made no claim or demand for either direct or indirect injuries."

These indirect injuries could not therefore have received the designation of "Alabama *claims*" from that despatch.

Indeed, on examining the extracts which he gives from it with their context, it is apparent that the "vast national injuries" which he states that he presented in it are ascribed to other causes than the acts committed by the Confederate cruizers.

The first extract, beginning "The number of our ships thus directly destroyed," &c., follows a paragraph complaining of the Proclamation of Neutrality:—"In virtue of the Proclamation, maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were rendered lawful, and *thus* Great Britain became, and to the end continued to be, the arsenal, the navy yard, and the treasury of the Confederacy.

"A spectacle was *thus* presented without precedent or parallel in the history of civilized nations, Great Britain," &c.

The second extract runs thus:—

"We complain that the insurrection in the Southern States, if it did not exist, was continued, and obtained its enduring vitality, by means of the resources it drew from Great Britain. We complain that, by reason of the imperfect discharge of its neutral duties on the part of the Queen's Government, Great Britain became the military, naval, and financial basis of insurgent warfare against the United States. We complain of the destruction of our merchant marine by British ships, manned by British seamen, armed with British guns, dispatched from British dockyards, sheltered and harboured in British ports. We complain that, by reason of the policy and acts of the Queen's Ministers, injury incalculable was inflicted on the United States."

The third extract, respecting the vast national injuries, is followed in the despatch by a passage explaining the various causes of injury, which Mr. Fish has omitted to notice, "*Nor does he* attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel cruizers, or by the supply of ships, arms, and munitions of war to the Confederates, or otherwise, in whatsoever manner."

Lord Clarendon's memorandum of observations on Mr. Fish's despatch, like the despatch itself, touched on various topics besides that of the Confederate cruizers, and Her Majesty's Government cannot admit that, because Mr. Motley read a despatch to Lord Clarendon on the 12th of January, 1870, stating that Mr. Fish had not included it "among the papers respecting the 'Alabama claims,'" therefore all the subjects mentioned in it were "Alabama claims."

Still less can they admit that because Mr. Bernard, in the 14th Chapter of his work, gave certain extracts from Mr. Fish's despatch, under the head of "Alabama claims," that despatch became the standard by which the claims known as the "Alabama claims" was to be measured. It happens moreover that, in the extracts given by Mr. Bernard in the chapter to which Mr. Fish refers, the three passages cited by Mr. Fish in his present despatch as relating to indirect injuries and national losses are omitted.

It only remains to notice the President's Message of December, 1869. This Message does not mention the "Alabama claims," but speaks of the "injuries resulting to the United States by reason of the course adopted by Great Britain during our late Civil War."

I have thus been able to show upon the testimony of Mr. Reverdy Johnson, the American Minister, corroborated on examination by the extracts cited by Mr. Fish, that for the first seven years of the discussion up to 1869, none but direct claims were "known as 'Alabama claims:'"

And that, in the only authoritative document in which national indirect injuries were mentioned, up to the time of the recent negotiation, they were not described as 'Alabama claims," or as claims of any description.

Mr. Fish states that "continental jurists and publicists discussed the national claims on account of the prolongation of the war under the head of 'réclamations,' having 'qu'un rapport *indirect*, et nullement un rapport *direct* avec les déprédations réellement commises par les croiseurs.'"

The quotation appears to be taken from a pamphlet by Dr. Blüntschli, entitled "Opinion impartiale sur la question de 'l'Alabama' et sur la manière de la résoudre." In this pamphlet Dr. Blüntschli reviews the various points men-

tioned by Mr. Sumner in his speech in the Senate on the 13th of February, 1869, including the recognition of belligerency. In the 6th Section he discusses the effects attributed by Mr. Sumner to the acts of the "Alabama" and other vessels, and states that all the effects are attributable, in the first place, to the cruisers themselves, and not to the British Government. "Sa faute ne consiste pas à avoir équipé et appareillé les corsaires, mais *à n'avoir pas empêché* leur armement et leur sortie de son teritoire neutre. Mais cette *faute** n'a qu'un rapport *indirect* et nullement un rapport *direct* avec les déprédations réelement commises par les croiseurs."† Dr. Blüntschli's remark did not, therefore, relate to claims for indirect losses, nor does the word "réclamations" occur in the sentence, in the paragraph, or in the whole section from which the quotation is taken. All that he says is, that the default on the part of Great Britain, by which the cruizers escaped, has but an indirect, and in no way a direct, connection with the depredations actually committed by them.

Mr. Fish gives as a reason for no claims for national losses having been "defined" or formulated, that Lord Russell objected in July, 1863, to any claims being put forward. As Mr. Adams continued to present claims for the destruction of property by the "Alabama" in August, September, and October of that year, and numbers of similar direct claims have since been presented, Her Majesty's Government are unable to see the force of this argument.

Whatever may have been the reason, the fact remains, that up to the time of the arrival of the British High Commissioners at Washington, the term "Alabama claims" had a recognized and well-known meaning as direct claims, and that no other claims had been presented to the British Government. Nor, indeed, were these other claims even then presented.

The American High Commissioners, as appears by the 36th Protocol, stated that the history of the "Alabama," and other cruizers, showed extensive direct losses, and indirect injury, and that Great Britain had become justly liable *for the acts* of those cruizers and their tenders; that *the claims* for the loss and destruction of private property, which had thus far been presented, amounted to about 14,000,000 dollars, and "that in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account, in the event of no such settlement being made."

The "indirect losses" were thus mentioned, not as *claims*, but as grievances, and were mentioned only to be withdrawn from discussion.

Mr. Fish says that it is unfortunate that the British High Commissioners did not remonstrate against the presentation of these claims, and "from the first to the last, took no exception, and recorded no objection, to the presentation made by the American Commissioners of the claims *generically* known as the 'Alabama claims,' which stand on the Protocol as a 'genus,' or class of claims comprehending several species, and among them enumerating specifically the claims for indirect losses and injuries."

The answer to this is, that no mention is made in the Protocol of "claims generically known as the 'Alabama claims,'" or of any specific enumeration of them, or of any such presentation at all. All that occurred was the above-mentioned statement that the history of the "Alabama" and other cruizers showed indirect injuries, followed by the waiver of the indemnification on their account, in the hope of an amicable settlement.

The British High Commissioners thereupon took the natural course of not "entering upon a lengthened controversy" upon the barren question of injuries for which they believed no claim was presented, and these indirect losses and injuries were never, as you are aware, again brought forward by the American High Commissioners, nor did they re-appear until they were revived in the Case presented by the United States' Agent at Geneva, on the 15th of December.

Mr. Fish could not have been ignorant, from the report to which I have already referred, which he had received from Mr. Johnson, and from the discussions in the public press, of the feeling in England with regard to the exaggerated pretensions in Mr. Sumner's speech; and when he intended to introduce as "Alabama claims," similar claims of equally onerous character, it is much to be regretted that he and his colleagues did not explain more clearly that by "an amicable settlement" they meant one particular form of settlement, and that if the British High Commissioners did not acquiesce in it, they would bring forward the constructive claims, for which an enormous indemnity might be held due.

Instead of this, the American High Commissioners made a statement which was accepted by the British High Commissioners and read by Her Majesty's Government, and as far as they are aware, by the press and public of both countries, in a sense which, it is now stated, the American High Commissioners never intended it to bear, but which, until the interpretation appeared in the American Case, seemed the only sense in which it could be read.

Her Majesty's Government cannot accept the view which Mr. Fish appears to entertain that a negotiation must necessarily be a matter of bargain, in which a concession on one side is to be set off in each instance against a concession on the other. The waiver of the constructive claims was, as I stated to General Schenck, a requisite preliminary to the negotiation, because Her Majesty's Government could not (as the Government of the United States must have been aware then, and must have since become convinced) have assented to any mode of settlement which comprised these constructive claims, upon which the opinion of this country had already been pronounced so strongly when they were raised by Mr. Sumner.

Mr. Fish asks, "How could it happen that so important a feature of the negotiation as this alleged waiver is now represented to be, was left to inference, or to argument from intentions never expressed to the Commissioners or to the Government of the United States, until after the Treaty was signed?

"The amplitude and the comprehensive force of the 1st Article (or the granting clause) of the Treaty did not escape the critical attention of Her Majesty's Commissioners; but was any effort made to limit or reduce the scope of the submission, or to exclude the indirect claims?"

The answer to this is that, in the first place, the British High Commissioners believed that after the waiver they were agreed with the United States' High Commissioners upon the basis of the terms of the submission; and, in the second place, that they did limit the scope of the submission.

The British High Commissioners, in the information which they have furnished to Her Majesty's Government, both during the negotiation

* The italics are Dr. Blüntschli's.

† "Revue de Droit International et de Législation comparée," 1870, pp. 473-4.

and since the presentation of the American Case, have uniformly maintained that the claims for indirect losses were not included, nor intended by them to be included, in the terms of the submission to arbitration, and you are aware that the British High Commissioners objected to the adoption of a form of reference to the Arbitrators, which might from its vagueness be taken to permit the introduction of such claims, and that it was not until after lengthened discussion in the Commission that the terms of reference as they now stand in the Treaty were settled.

Her Majesty's Government cannot acknowledge that the nature of the claims submitted was left to inference. On the contrary, the precise claims referred to arbitration were closely defined and limited.

Mr. Fish writes as though the reference to arbitration comprised "differences" and "complaints," and "all claims;" but the British High Commissioners especially guarded against this. The claims submitted must be both "claims growing out of the acts committed by the aforesaid vessels," *i.e.*, "Alabama" and other cruizers, *and* claims "generically known as the 'Alabama claims.'"

The use of the words "acts committed" admittedly excludes the questions of blockade-running and concession of belligerent rights from the arbitration, and the specification of the claims as "claims generically known as the 'Alabama claims'" limits them to the class of direct claims; which it has, I trust, been abundantly shown were alone known at the time as "Alabama claims."

Mr. Fish attaches some importance in support of his views to the words "growing out of" and "generically," but the first phrase is taken from Mr. Adams' letter of the 31st of October, 1863, when, in forwarding "a number of memorials and other papers connected with the depredations of the vessel formerly called the 'Oreto,' and now the 'Florida,'" he observed that "the conclusion to which it would seem that both Governments arrive in regard to the disposition to be made of the claims growing out of the depredations of the 'Alabama' and other vessels issuing from British ports appears to render further discussion of the merits of the question unnecessary." No mention whatever of indirect or constructive claims had been made at this time, and the claims to which Mr. Adams referred are manifestly the claims for actual damages.

When the same expression is used again it must be taken to have the same meaning.

I will not follow Mr. Fish into the etymology of the word "generically." "Generically known as the 'Alabama claims,'" seems to be the same as the "class of claims known as the 'Alabama claims'" the phrase used in the Stanley-Johnson Convention, and serves to distinguish this class of claims from every other class of claims which the United States' Government might have to prefer. The "Alabama claims" have been designated as a "class of claims" to avoid the misapprehension, which at one time seemed to have occurred to Mr. Seward, that the words "Alabama claims" might be construed as meaning only claims on account of injuries sustained from the one vessel "Alabama." The phrase itself goes very far to define its own limited meaning; for, while it is quite intelligible that, for brevity's sake, the name of one vessel should stand for others of a particular class, of which it is the principal example, it appears to be contrary to all reason that the name of such a particular ship should be used to describe claims for general national losses, such as those for the decline of the commercial marine of the United States and the prolongation of the war.

Mr. Fish, with reference to the remark in his despatch of the 27th of February, that the indirect claims are covered by one of the alternatives of the Treaty, states that the Government of the United States are "of opinion that they are covered by the alternative power given to the Tribunal of Arbitration of awarding a sum in gross, in case it finds that Great Britain has failed to fulfil any duty, or of remitting to a Board of Assessors the determination of the validity of claims presented to them, and the amounts to be paid."

The VIth Article of the Treaty, after stating the three Rules, proceeds:—"Her Britannic Majesty has commanded her High Commissioners and Plenipotentiares to declare that Her Majesty's Government cannot assent to the foregoing Rules as a statement of principles of international law which were in force *at the time when the claims mentioned in Article I* arose; but that Her Majesty's Government . . . agrees that, in deciding the questions between the two countries arising out of *those claims*, the Arbitrators should assume," &c.

Article VII provides that "the said Tribunal *shall first determine as to each vessel separately* whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the three foregoing Rules, or recognised by the principles of international law not inconsistent with such Rules, *and shall certify such fact as to each of the said vessels.* In case the Tribunal find that Great Britain has *failed to fulfil any duty or duties as aforesaid*, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain *for all the claims referred to it.*"

All the claims must mean all the "claims mentioned in Article I."

Mr. Fish admits that the indirect losses are not covered by what he terms the other "alternative" of the Treaty, viz., the provision in Article X, that "in case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the Arbitrators."

Mr. W. Beach Lawrence, the distinguished American publicist, in a letter dated the 20th ultimo, and published in the "Springfield Independent," observes:—"As in each case determined against Great Britain, the Board of Assessors are, by Article X, to ascertain and determine the amount which shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators, there would seem to be no room for indirect damages. Besides the difficulty of deciding on a claim indeterminable in its nature, there would be the further embarrassment of apportioning the amount of injury growing out of the acts of each vessel in the general account. Is it possible that the Assessors are to decide what part of the prolongation of the war is to be assigned to each vessel? I am aware that there is a provision that the Arbitrators may after they have decided as to each vessel separately, award a sum in gross for all the claims referred to them. I cannot, however, perceive

how that provision in anywise extends the scope of the power of the Tribunal." Her Majesty's Government cannot perceive it either.

By both Articles VII and X, the Arbitrators are to determine the extent of the liability of Great Britain as to each vessel, *i.e.*, as to each cruizer separately. Throughout, the claims are strictly connected with the acts of the cruizers. Mr. Fish acknowledges that, if the claims are considered in detail, the indirect losses cannot be taken into account; and yet, as he states, they have been "presented at Geneva, not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration on a final settlement and adjudication of all the differences submitted to the Tribunal."

I have already pointed out that "claims" and not "differences" have been submitted; and Mr. Fish's contention would amount to this, that, in awarding damages for a specific want of due diligence in regard to a particular vessel, the Arbitrators should take into consideration a variety of grievances not necessarily connected with that vessel, and which could not be made matters for a claim if examined in detail, and award a gross sum not proportioned to the want of diligence or to the injury thereby occasioned, but swelled by the amount of all the injuries and losses of which the United States may have complained in all the correspondence of which the history of the cruizers forms part.

That is to say, that the Arbitrators should give judgment in one matter and inflict a penalty for another matter. A principle so contrary to the ordinary practice of jurisprudence could not have been presumed by the British High Commissioners, or by Her Majesty's Government, to have been intended to be introduced, unless the intention was explained to them; but, from first to last, no mention of indirect losses was made in connection with the payment of a gross sum.

If the American High Commissioners desired that the alternative of the award of a gross sum should cover the claims for indirect losses, why were they not more explicit? and why did they not require some provision to be made in the Treaty to explain this for the guidance of the Arbitrators?

Mr. Fish says that "the claims for indirect losses were presented to the British Commissioners as solemnly and *with more definiteness of specification* than were presented by them to the American Commissioners the claims for alleged injuries which the people of Canada were said to have suffered from what was known as the Fenian raids."

But the indirect losses were never "presented" as "claims," and are even now said not to be "presented as claims" for which a specific demand is made; while the Fenian raid "claims" were proposed for consideration on the 4th of March; again "brought before" the High Commission on the 26th of April, when the British negotiators said that "they were instructed to present these claims," and it was not until the 3rd of May that they said that "they would not urge further that the settlement of these claims should be included in the present Treaty, and that they had the less difficulty in doing so, as a portion of the claims were of a constructive and inferential character."

Thus while the American indirect losses were only mentioned once, and then as it were incidentally, the Fenian raid claims were repeatedly and formally presented, and when their withdrawal from the negotiation was agreed to at its close, it was with a remark which could have had no just bearing, had not it been believed that all constructive and consequential claims had been withdrawn and excluded on the American side also.

Mr. Fish expresses doubts as to the point raised in my letter of the 20th of March, that the Washington Claims Commissioners have, and the Arbitrators have not, power to decide upon the extent of their own jurisdiction, and that no words similar to those conferring that power are to be found in the Articles relating to the Geneva Arbitration.

It will be seen, on comparing the Treaty of Washington with the Claims Convention between Great Britain and the United States of the 8th of February, 1853, that the words which I had quoted from the XIVth Article of the former are identical with the words used in the IIIrd Article of the latter, under which the Claims Commissioners were empowered to give, and did undoubtedly give, decisions as to the extent of their jurisdiction; as, for instance, in the claims for Texas bonds of James Holford's executors, and Philip Dawson, and for Florida bonds of Heneage W. Dering, and in other cases.—(See Senate Executive Documents, No. 103, 34th Congress, 1st Session, pp. 63, 64.)

The Articles engaging to consider the results of the proceedings of the Tribunal, and of the Claims Commission respectively, as final settlements, Articles XI and XVII, are also adopted from the Convention of 1853, Article V; and had it been desired to give the same powers of jurisdiction to the Arbitrators as to the Commissioners, a clause similar to that in the XIVth Article would have been inserted to express it.

In the absence of such a clause the jurisdiction of the Arbitrators remains restricted to the particular claims "known as 'Alabama claims,'" submitted to them in Article I.

Her Majesty's Government cannot admit that a power, which, when it is designed to be given to the Claims Commissioners in one part of the Treaty, is given in express words, can be inferentially assumed to be given in another part of the Treaty to the Arbitrators, by assigning a broad signification to the term "question" in the IInd Article.

The questions which the Arbitrators are to examine and decide, are obviously all questions that may be laid before them by the respective Governments, in preferring and refuting the particular claims on which their judgment is requested, and the Article must be read in connection with the succeeding Articles III, IV, and V, providing how the Cases, Counter-Cases, evidence, and arguments are to be brought before them.

Mr. Fish cannot mean that the Arbitrators may decide "any questions" not coming within the terms of the reference to the Tribunal. If that were to be the case, Her Majesty's Government might bring forward as a set-off against the "Alabama claims" the questions of the injury done to British trade by the blockade, or the Fenian raids, or possibly other questions. In short, a scope would be given to the Arbitration which the United States' Government could not have contemplated, and would probably be unwilling to admit.

Mr. Fish states that "the United States calmly submitted to the Commission the decision of its jurisdiction" over the Cotton Loan claims; but this statement does not appear to be at all borne out by the "Argument for the United States on motion to dismiss" these claims.

The United States' agent moved for the dismissal of the claim, as not being included under

the treaty, and plainly notified that the United States refused to permit it to be considered as included; his argument being that there was a constitutional provision which prevented the payment of such claims, that this was known to the American Commissioners when negotiating the Treaty, to the American Government when accepting it, and to the Senate when ratifying it, and that it was impossible for the United States to pay or to consider the question of paying the claims.

"It must be borne in mind," he said, "that at the time of this correspondence, as well as at the time of the conclusion and ratification of the Treaty, the Constitution of the United States contained an express prohibition of the assumption or payment of these debts by the United States or by any State. That every officer of the United States, executive, legislative, and judicial, was thus bound by the supreme law of the land and by his oath of office to treat as utterly null any provision of any Treaty or statute in contravention of that constitutional prohibition, under penalty of impeachment or its equivalent."

The agent concluded by asking "the dismission of the claim on the ground specified in his motion."

In short, he positively declared that no award unfavourable to the United States would, or could, have been accepted and paid.

There are several other statements made by Mr. Fish which are open to reply, but I have considered it sufficient, for the purposes of this despatch, to confine my comments to those which bear more immediately on the negotiation and interpretation of the Treaty.

I am, &c.

(Signed) GRANVILLE

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