

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 cruisers, and claims "generally 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 generally 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 "generally," 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 "generally." "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 Plenipotentiaries 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