

Annex 2.

Reasons of Sir Alexander Cockburn for dissenting from the Award of the Tribunal of Arbitration.

THE indirect claims at first insisted on by the Government of the United States being now out of the question, we have to deal with the claims for damages, "growing out of the acts" of certain specified vessels, as to which it is alleged that, by reason of some default on the part of the Government of Her Majesty the Queen of England, these vessels were enabled to take and destroy ships and cargoes belonging to citizens of the United States.

The causes of complaint put forward by the United States' Government may be classed under the following heads:—

Causes of complaint brought forward by the United States.

1. That by reason of want of due diligence on the part of the British Government, vessels were allowed to be fitted out and equipped, in ports of the United Kingdom, in order to their being employed in making war against the United States, and having been so equipped, were allowed to quit such ports for that purpose.

2. That vessels, fitted out and equipped for the before-mentioned purpose, in contravention of the Foreign Enlistment Act, and being therefore liable to seizure under that Act, having gone forth from British ports, but having afterwards returned to them, were not seized as they ought to have been, but having been allowed hospitality in such ports, were suffered to go forth again to resume their warfare against the commerce of the United States.

3. That undue favour was shown in British ports to ships of war of the Confederate States, in respect of the time these ships were permitted to remain in such ports, or of the amount of coal with which they were permitted to be supplied.

4. That vessels of the Confederate States were allowed to make British ports the base of naval operations against the ships and commerce of the United States.

Owing to all, or some one or other of these causes, vessels of the Confederate States were enabled, it is alleged, to do damage to the commerce of the United States; and compensation is claimed in respect of the damage so done.

The Treaty of Washington, from which our authority is derived, lays down, for our guidance in dealing with and deciding on these claims, certain rules as to the obligations of Great Britain as a neutral State, which for the purpose of this arbitration are to be taken to have been binding on it.

Rules of the Treaty of Washington.

Not, indeed, that the British Government admits that these rules form part of the law before existing between nations. On the contrary, it is expressly stated that "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, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these Rules. And the High Contracting Parties agree to observe these Rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them."*

The Rules in question are as follows:—

"A neutral Government is bound—

"First. To use due diligence to prevent the fitting out, arming, or equipping

* Treaty of Washington, Article VI.