# THE TREATY.

## Correspondence on the Consequential Damages in Our "Case."

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## Firm Attitude of England Throughout.

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## GRANVILLE'S FIRST LETTER OF ASSERTION

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WASHINGTON, May 14, 1872.

The following is the correspondence in relation to the Alabama claims and the demand for indirect damages which passed between the State Department and the English Government.

### The President's Special Message to the Senate.

TO THE SENATE OF THE UNITED STATES:—

I transmit herewith the correspondence which has recently taken place respecting the differences of opinion which have arisen between this government and that of Great Britain with regard to the powers of the Tribunal of Arbitration created under the treaty signed at Washington May 8, 1871. I respectfully invite the attention of the Senate to the proposed article submitted by the British government with the

OBJECT OF REMOVING THE DIFFERENCES

which seem to threaten the prosecution of the arbitration, and request an expression by the Senate of their disposition in regard to advising and consenting to the formal adoption of an article such as is proposed by the British government. The Senate is aware that the consultation with that body in advance of entering into agreements with foreign States has many precedents. In the early days of the republic General Washington asked their advice upon pending questions with such Powers. The most important recent precedent is that of the Oregon Boundary Treaty, in 1846.

THE IMPORTANCE OF THE RESULTS

hanging upon the present state of the treaty with Great Britain leads me to follow these former precedents, and to desire the counsel of the Senate in advance of agreeing to the proposals of Great Britain. U. S. GRANT.

WASHINGTON, May 13, 1872.

### THE CORRESPONDENCE.

NO. I.

LORD GRANVILLE TO GENERAL SCHENCK.

FOREIGN OFFICE, Feb. 3, 1872.

SIR—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 has been presented to Her Majesty's agent. I will not allude in this letter to several portions of the United States' "case," which are of comparatively 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 toward 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 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. I have stated above the importance which Her Majesty's government attach to the prosecution of this arbitration. The primary object of the governments 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 that 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—namely,

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 that an example so full of good promise for the future may not be lost to the civilized world. I have the honor to be, with the highest consideration, sir, your most obedient, humble servant, GRANVILLE.

To GENERAL R. C. SCHENCK, &c., &c., &c.

NO. II.

GENERAL SCHENCK TO LORD GRANVILLE.

This letter is a mere formality, showing that General Schenck had transmitted Granville's letter to the United States government.

NO. III.

MR. FISH TO GENERAL SCHENCK.

This letter merely directs General Schenck to deliver the following to Lord Granville:—

NO. IV.

MR. FISH TO GENERAL SCHENCK.

DEPARTMENT OF STATE, WASHINGTON, Feb. 27, 1872.

SIR—I have laid the note from Earl Granville, addressed to you, bearing date the 3d of 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 generally 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 cruisers; 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 have 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 interests of both governments require 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 11 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 withholding 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 generally 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 prominent 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 in the first discussion of the claims, on the 8th 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 differences 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 Power "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 favor 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 JUDGE 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 forever 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 REASON OVER PASSIONS

and deferring their own judgments to the calm interpretation of a disinterested and discriminating tribunal. I am, sir, your obedient servant,

HAMILTON FISH.

To GENERAL ROBERT C. SCHENCK.

NO. V.

GENERAL SCHENCK TO MR. FISH.

LEGATION OF THE UNITED STATES, LONDON, March 16, 1872.

On the day of the reception of your note of the 27th February, and within a few hours after its arrival, I was enabled to have an interview with Lord Granville at the Foreign Office, with a view to making him acquainted, agreeably to your instructions, with its contents. Your communication had been looked for by the government here with great anxiety. Following, in substance, the language of your No. 145, I began by saying that, although Her Majesty's government had not invited any reply to their note, but had been content to make a naked announcement, unaccompanied by reasons or argument, of their opinion that certain of the claims put forward by the United States in their case presented at Geneva did not come within the province of the Tribunal of Arbitration to decide, yet such was the earnest desire of my government for the settlement of all differences between the two countries, and for the successful carrying out of a treaty which offered to the world so good an example of a peaceful and effective method for the removal of international difficulties that the President was most ready to accept the assurances of the friendly feelings which had prompted that note, and that you had communicated to me in a despatch, with some fulness, the opinion and views of the government of the United States on the point which they had raised. I said also to Lord Granville that I was authorized to read to him the despatch referred to, and if he desired it to leave with him a copy of it. He remarked to me that being just then pressed and occupied, as I must know he was, if I were to read it he should not probably make it the subject of any comment at that time, and he said, if agreeable to me, therefore, and understanding that, anticipating his request for a copy, I had one already prepared, he would ask me to leave that with him that he might have it to

LAY BEFORE THE CABINET AT AN EARLY MEETING.

This, of course, I consented to do. I gave him the copy, therefore, leaving him to return to the House of Lords, from which he had been hurriedly called to meet his appointment with me. Before we parted, however, I thought it proper to say to His Lordship that as Her Majesty's government would undoubtedly take a little time, perhaps a few days, to consider whether they should make any answer, and what answer to this communication from the United States, if, at any time in the interval, he deemed it advisable in the interest of our two countries to have free, confidential conversation with me, or if he thought that good understanding might be promoted by any exchange of unofficial suggestions touching some mode of issue from our present complication, I would always be happy to meet him and cooperate with him in such friendly endeavor. He assented at once cordially to the propriety of our keeping ourselves in such relation and free, unofficial intercourse with each other, but he did not express himself as hopefully as he thought I did of an ultimate satisfactory adjustment. I have the honor to be, very respectfully, your obedient servant,

ROBERT C. SCHENCK.

NO. VI.

GENERAL SCHENCK TO MR. FISH.

LEGATION OF THE UNITED STATES, LONDON, March 21, 1872.

SIR—I have barely time to transmit, so as to catch at Queenstown the mail which has left Liverpool to-day, the reply of Lord Granville to your despatch of the 27th February. It came to me at eleven o'clock last night, and the printed "memorandum" which accompanies it as an enclosure, and which is to be taken as a part of the communication, reached me only this afternoon.

I send also, herewith, a copy of my answer to His Lordship, acknowledging the receipt of his note and the "memorandum." You will observe that Her Majesty's government have construed your despatch to me as containing apparently an invitation

TO OPEN FULLY THE DISCUSSION WITH YOU

on the question of the right of the United States to include in their case presented at Geneva any claim for indirect losses or damages. There is nothing advanced, however, either in the way of any proposal for the removal of the difficulty between us or intimating what may be the consequence in case of continued difference of opinion. It is still but the notice which was contained in Lord Granville's note of the 3d ult., accompanied now by the reasons which have led Her Majesty's government to the conclusion which was then communicated. But I must close in haste, without further comment.

I have the honor to be, sir, your obedient servant,

ROBERT C. SCHENCK.

Inclosures—1 and 2, Lord Granville to General Schenck; note of March 20, 1872, with accompanying printed "memorandum;" 3, General Schenck to Lord Granville—note of March 21, 1872.

NO. VII.

EARL GRANVILLE TO GENERAL SCHENCK.

FOREIGN OFFICE, March 20, 1872.

SIR—I have laid before my colleagues Mr. Fish's despatch of the 27th ult., of which, at my request, and authorized by your government, you gave me a copy on the 14th inst. 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 3d ult., 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 the 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 after mentioned as included in the accountability."

THE LIE DIPLOMATIC.

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 or specific losses arising from 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 those 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 27th 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 fourth 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 Reverdy Johnson in March, 1869, to Lord Clarendon, in which he suggested that the term 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 the suggestion.

In Mr. Fish's despatch of the 25th 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 acts of the Alabama and other similar vessels, or to any mere consequences of such acts, nor were these public claims then decided on 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 decide 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 claim 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 relation of the United States toward 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 individuals 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 afterward 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 the 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 to 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 have been 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 on 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 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 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 sixth article of the treaty, for they thus accepted the retroactive effect of rules to which, nevertheless, they feel 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 farther 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 negotiation 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 character. The importance of the 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 and 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 part of United States and recognized in the preamble of the treaty. Such a waiver was, in fact, a necessary condition of the success of negotiation. It was in 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. That can be done in the form of a letter, and I have accordingly embodied them in a memorandum, which I have the honor to enclose, 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 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 assertions 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 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 seven and ten of the treaty for arriving at the amount of the payment to be made by Great Britain in event of any liability being established the answer seems obvious, viz.:—That these alternatives are applicable 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 government claims could under such circumstances ever be made; for before the time for the 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 Congress, subsequently said that extravagant claims might be put in and take their chance, he was met with an expression of dissent. Moreover, Lord Derby, while criticising the negotiation and 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 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 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, on the 16th of December, 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 3d of February last can have been received by the President with surprise. Mr. Fish urges that the claims for national indirect losses which have been put forward in behalf of his government involve questions of public law which the interests of both governments require to 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 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 first article of the treaty it is impossible to sever the terms of reference therein contained from the rules in the sixth article, and the measure of liability under the arbitration therefore will be the measure of liability incurred by any neutral State which after, according 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 a single act of negligence, would strike a heavy blow at the neutrals of the war. There are scarcely any consequences more formidable to a belligerent than those which might thus be incurred by a neutral. If such claims as these were once admitted they would 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 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 enclosed memorandum.

THE CONFEDERATE COTTON CLAIMS.

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 claims have or have not been duly made, preferred and laid before them, either wholly or to any and what extent, according to the true extent 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, *prima 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 COURT OF ARBITRATION ON THE BONDS.

The jurisdiction of the Geneva Tribunal was limited to one particular class and description of claims. The facts are as follows:—On the 17th 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 learned 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 collegues, 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 Commission, those words being also used in the twelfth 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. The decision was that the Confederate cotton claim should not be presented unless in the case of bonds exchanged for cotton which had thereby become the actual property of the claimant, 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 fourteenth 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 Convention 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 favorable 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 23d 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 permitted, 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 government 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.

THE GENERAL ARGUMENT AGAINST INDIRECT DAMAGE CLAIMS.

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 shows 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 the decision of the tribunal would be a measure fraught with pernicious consequences to the interest of all nations and to the future peace of the world. I appreciate the desire substantially but 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 3d 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 is drawn from the authoritative documents themselves or from collateral considerations, or from both sources combined.

ASSURANCES OF VERY HIGH CONSIDERATION—A RED TAPE VALEDICTORY.

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 3d of February, and to which I need hardly say that they adhere, cannot be shaken. I have, &c., GRANVILLE.

MEMORANDUM.

PART 1.—On the waiver of claims for indirect losses contained in the thirty-sixth protocol.

PART 2.—On the construction of the treaty.

PART 3.—On the amount of the claims for indirect losses. Part 1, on the waiver of claims for indirect losses contained in the thirty-sixth 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 furnish 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 commissioner stated on the 8th of March that the history of the Alabama and other cruisers which had been fitted out as armed or equipped, or which had received augmentation of force in Great Britain, or in her colonies, and of the operation 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 on the pursuit of the cruisers, 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 cruisers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions dollars without interest, which amount was liable to be greatly increased by claims which had been presented; that the cost to which the government had been put in the pursuit of cruisers 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 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 arbitrators 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 sixth article of the treaty. On the 6th of May the commissioners met for their final conference, and Lord DeGrey 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 honorable 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 afterward the treaty was signed, with the following preamble:—

Her Britannic Majesty and the President of 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 form, have agreed to and concluded the following articles:—

In the view of Her Majesty's government the statement made by the American Commissioner 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.

1. The affirmative statement that in hope of amicable settlement no estimate was made of the indirect losses. The words "in 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 the 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 mentioned 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 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 order 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 play. 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:—

1. What claims are described by the words "the claims generally known as the Alabama claims?"

2. What vessels are described by the words, "the several vessels which have given rise to the claims generally known as the Alabama claims?"

3. What claims are described by the words "All the said claims growing out of acts committed by the aforesaid vessels, and generally 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 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 are intended *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 negotiations must therefore be referred to to discover—1. What demand had been presented or notified; 2. 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 of 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 merchandise 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

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