THE COUNTER CASE OF THE UNITED STATES,

PRESENTED TO

THE TRIBUNAL OF ARBITRATION,

AT GENEVA,

UNDER THE PROVISIONS OF THE TREATY OF WASHINGTON, APRIL 15, 1872.

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*The IVth article of the treaty of Washington permits each party, within four months after the delivery of the case, to deliver in duplicate to the arbitrators, and to the agent of the other party, a counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence presented by the other party. [1]

Availing themselves of this right, the United States present this as their counter case, together with additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence submitted by Her Majesty's government.

In laying this counter case before the tribunal of arbitration, they deem it proper to premise that they do not consider it within the province of this paper to discuss all the propositions within the British case which they regard as justly disputable or requiring argumentative discussion. So far as the positions taken by Her Majesty's government in its case vary from those which the United States had the honor to lay before *the tribunal in their case, they respectfully refer [2] to that document for an expression of the views which they regard as supported by sound principles of reason and by the acquiescence of other powers, and by the writings of publicists of authority.

So far, too, as contestations of questions of fact are raised between the parties, on their respective cases, and the supporting evidence on either side, a mere renewal of the contestation in the counter case would be superfluous. The United States therefore refer to their original case for their views and estimates of the contested matters of fact.

It has seemed to them to be more in accordance with the spirit of the treaty, and with the convenience of the tribunal, thus to reserve for their counsel the general analysis and discussion of these matters, so far as they shall prove important in their bearing upon the substantial controversy between the parties in the argument which will be prepared by them for submission under the Vth article of the treaty, and in such oral arguments, if any, as the tribunal may express a wish to hear.

Reserving, therefore, their rights and the freedom of their counsel in these respects, they ask the attention of the tribunal to the following observations upon some of the main points of difference between the case and other matter submitted on the part of * Her [3] Majesty's government, and those submitted on the part of the United States.

I.

Certain errors of sense, which run through the case of Her Majesty's government, first claim attention.

1. It is assumed in that case that the rebels of the United States were, by Her Majesty's proclamation of May 3, 1861, invested with some undefined political attributes. But the United States have hitherto understood that Her Majesty's government merely assumed to regard the persons who resisted the power of the United States as a body of insurrectionists who might be recognized as clothed with belligerent rights at the discretion of neutral powers. They therefore think it right to conclude that the frequent use in the British Case of language implying recognized political attributes in the insurrection is an inadvertence.

2. Her Majesty's government assume that the reclamations of the United States are to be confined to claims growing out of the acts of the Florida, the Alabama, the Georgia, and the Shenandoah. The claims growing out of the acts of the other vessels named in the Amer-
[4] ican case are regarded by the *United States as also embraced within the terms of the Treaty. They form part of the claims generally known as the "Alabama claims." They are enumerated in the fourth of a series of five volumes printed by order of the Senate of the United States, which are part of the "documents, correspondence, and evidence" submitted with the case of the United States. These volumes, when thus collected and printed, were entitled: "Claims of the United States against Great Britain." It is believed that under that title they were in the library of the foreign office at London before Her Majesty's high commissioners received their instructions. It may also be said, without impropriety, that under the same title they were on the table of the joint high commission during the negotiations which preceded the conclusion of the treaty. The United States, therefore, while re-asserting their construction of the language of the treaty in this respect, feel that they have the right to ask the arbitrators to assume that Her Majesty's high commissioners had notice of, and acquiesced in, that construction.

3. The United States are at a loss to understand why several observations are introduced into the British Case which apparently aim to limit the operation of the three rules of the treaty. If, by the principles of construction which are suggested, Her Majesty's Govern-
[5] ment intend to ask for a modification *or change in those rules, the United States cannot too strongly protest against it.

4. It is averred in several places that some of the acts of which the United States complain were committed by American citizens. If these statements are introduced for the purpose of urging this fact as an excuse for the negligence of Her Majesty's officials, or for any other, supposed relevant purpose, the United States will ask the tribunal to take note that the "American citizens" referred to were criminals in the eye of American law, at the time when they were elevated to the rank of recognized belligerents against the United States by the act of Her Majesty's government, an act in which the United States did not participate, and against which they have never ceased to protest. It would seem, therefore, to be impossible to impute to the United States any consequences of responsibility for the conduct of the persons thus described as "American citizens."

II.

Her Majesty's government has also stated, in terms, many propositions, some of law, some of fact, some of mixed law and fact.

For the convenience of the arbitrators the United States call attention to some of the leading points of difference between the two cases, with the reservations *heretofore made as to the points not noticed, and as to the rights of counsel. [6]

1. The British Case seems to concede that a belligerent who has wronged a neutral by violating its sovereignty and by forcing it to take part, indirectly, in a war, may, nevertheless, by some subsequent act, (such as commissioning without the jurisdiction of the neutral a vessel of war improperly constructed within its jurisdiction,) deprive the neutral of the right of taking cognizance of the original offense.

The United States suggest that such a right cannot be lost by the mere act of the offending belligerent.

2. It appears to claim for vessels of rebels recognized as belligerents an exemption from national jurisdiction, which should be accorded, if at all, only to vessels of recognized sovereign powers, to which powers political representations can be made in case of violations of neutral sovereignty; and it ignores undoubted prerogatives of the Crown to exclude armed vessels from the national ports.

3. It attempts to limit the operation of the words "due diligence" in a manner inconsistent with principles of law well established on the continent of Europe, in the United Kingdom, and in the United States. It sets up as the measure of care a standard which fluctuates with each succeeding government in the circuit of the globe, viz, "such care as governments *ordinarily employ in their domestic concerns." [7]

4. If the United States have correctly interpreted its somewhat vague language, on page 167, it asserts that, in a case like the present, a belligerent should be required to show on the part of a neutral, as a foundation for a claim for compensation, an absence of care nearly equivalent to willful negligence. The United States had notice that this point would be pressed by Her Majesty's government. It had announced that its case would be prepared partly under the direction of an eminent and learned publicist who had vigorously insisted upon it in his public writings on the neutrality of Great Britain in the American struggle. They therefore presented for the consideration of the arbitrators certain facts exhibiting an unfriendly feeling toward them on the part of individual members of Her Majesty's government during the contest, which might naturally lead to, and would account for, a want of diligence bordering upon willful negligence. But, while thus anticipating this position of Her Majesty's government's case, they did not, and do not, assent to its correctness. They do not conceive that the law of nations tolerates the proposition that belligerents are required to submit, without redress, to the injuries of neutral negligence, till it reaches the extremity suggested.

5. The British Case attempts to narrow the *international duties of a government to the exercise of the restraining powers conferred upon it by municipal law. [8]

6. It overlooks the obligation of the neutral to amend its municipal laws, when the powers conferred by such law prove inadequate for the performance of international duties. In this view the many statements in the British Case as to the actual internal distribution of powers in Her Majesty's government, though interesting, are irrelevant in measuring its external obligations.

7. The British Case proposes that the liability of Great Britain to make indemnity to the United States should be limited to the cases which the United States cannot show, by affirmative proof, that they actively and diligently exerted their naval power to prevent. The United States contend that such a proposed limitation has no just foundation in sound principles of international or other law.

III.

Part II of the British case assumes to give an introductory statement of, (1.) "The events which attended and followed the commencement of the civil war in America;" (2.) "The course pursued by Great Britain in relation to the war;" (3.) The course pursued by "the
[9] other maritime powers" in relation thereto. *Part III assumes to give a "statement on international rights and duties on the powers which were possessed by Her Britannic Majesty's government of preventing 'unlawful equipments,' and the manner and circumstances in and under which these powers were exercised during the war."

The United States, with the reservation heretofore made, now call attention only to some of the principal points of difference in this respect between the cases of the two governments.

1. The United States insists that Her Majesty's government is politically and historically in error in the assertion, on page 6, that the contest terminated in 1865 in the complete reconquest of the eleven Confederated States.

2. If it be intended by the statement in page 7, that "in and soon after the month of May, 1861, a number of armed ships were fitted out and sent to sea from ports in the Confederate States," to lead the arbitrators to suppose that there was any insurgent vessel preying on the commerce of the United States when the Florida or when the Alabama escaped from Liverpool, the United States cannot too strongly protest that Her Majesty's government is in error in this respect.

3. The United States have, in their case, called the attention of
[10] the tribunal to the acts of Belgium, *Portugal, Russia, and Prussia, which seem to have been overlooked by the authors of the British Case in their enumeration of the acts of the maritime powers. In regard to all the maritime powers the tribunal will doubtless observe that those which recognized the insurgents as lawful belligerents did so only after Great Britain, the principal maritime power, had elevated them under the name of the "Confederate States" to this rank, and had thus conferred upon them all the substantial advantages which they could gain from a general recognition by the maritime powers. They will also observe that the other governments did not recognize the title which the insurgents had taken for themselves. Thus, for example, the proclamation of the Emperor of the French spoke of them as "States which pretend to form a confederation;" the circulars of the Dutch government spoke of "the doubtful complications in the United States of North America," "the existing disturbances in the United States of America;" and the Brazilian circular expressly states that "the Confederate States have no legal existence."

4. It is stated, on page 22, that "by the United States cruisers the ports and waters of Her Majesty's dominions were resorted to for coaling and other purposes more frequently than by vessels of the Confederate States." If by this it is intended to imply that, having
[11] regard to the great disparity of numbers between the vessels *of the United States and those of the insurgents, the United States

enjoyed to an equal extent with the insurgents the hospitalities of the British ports, or that, without regard to that disparity, those hospitalities were extended with an impartial neutrality to each, the United States emphatically deny it.

5. It is stated, on page 25, that "the acts of which the Government of the United States is understood to complain belong to a class which have not commonly been made the object of prohibitory legislation;" that "in few countries, or in none, according to the information received by Her Britannic Majesty's government, did the law directly prohibit such acts, or make any definite provision for preventing them at the time when this war began, except in the United States and Great Britain." The information of the United States on this point does not agree with that of Her Majesty's Government. They have the honor to refer the tribunal to statements concerning the laws of Austria, Belgium, Denmark, France, Italy, the Netherlands, Portugal, Prussia, Spain, and Sweden and Norway, which will be found in the fourth appendix attached to the report of the neutrality laws commissioners. This document will be found at the close of the third volume of the British appendix, and in the fourth volume of the American evidence, between pages 126 and 168. They also refer to the documents and evidence herewith submitted *regarding the laws of several powers [12] in Europe and America for the preservation of their neutrality. It will appear, from all this evidence, that acts such as those of which the United States complain have been widely made the subject of positive legislation, and that in no country, except Great Britain, so far as the United States are advised, has it been assumed that proceedings under the municipal or local laws are the measure of neutral obligations toward other governments.

6. On page 25 it is stated, with reference to the steps taken by President Washington, that "the measures adopted by the Executive of the United States to restrain these enterprises [the fitting out of French privateers] proved inadequate." In answer to this, the United States recall to the recollection of the tribunal that the French minister of that day contended that his government derived the right to commission privateers from the ports of the United States from the provisions of the treaty of 1778 between France and the United States—a treaty made at a time when Great Britain was at war with the United States. The repressive measures of President Washington were taken under a sense of the duties of the United States as a neutral under the laws of nations, and in the face of their particular duties under the treaty, as construed by France. In the memoir of Mr. Abbott, now Lord Tenterden,) which will be *found in the British appendix, at the [13] end of volume three, it is stated that "the result of the publication of the rules of the 4th of August [which were the measures adopted by the Executive referred to in the British case] was that the system of privateering was, generally speaking, suppressed, though cases seem to have occurred until the arrival of Mr. Genet's successor, in February, 1794, who disavowed his acts, and recalled the commission he had granted to privateers."

7. The remarks on pages 26, 27, and 28, regarding the manner in which the United States have at different times performed their duties as a neutral nation towards Spain, Portugal, and other powers, are stated to be made without any "intention of Her Majesty's government to cast any reproach upon the Government or people of the United States." They are, however, apparently introduced for the purpose of inducing the arbitrators to assume that the United States, at some or

all of those times, did fail to use the diligence for the repression of hostile expeditions from their shores which ought to have been exercised, and which is required by the rules of the treaty of Washington. The United States would regard such an imputation as a reproach, however intended by its authors. They have therefore determined to ask the arbitrators to examine the further evidence on these points which
[14] they have the honor to submit herewith, *although they cannot but recognize that the arbitrators may justly feel that neither party ought to add to their arduous labors by the introduction of statements and evidence wholly foreign to the issues submitted to their decision. The evidence now submitted by the United States regarding the performance of their international duties is voluminous and spreads over a series of years and a variety of incidents. It relates to the contest between Spain and her colonies, to the war between Brazil and the Artigas government, to struggles of Cubans for independence, to the war between Spain and the South American republics, and to the Crimean war. In all these contests it became the duty of the United States to preserve their neutrality under difficult circumstances; often when the sympathies of large masses of their people were enlisted in opposition to the national obligations. Her Majesty's government has thought it right to call in question the efficiency, while admitting the good faith with which the United States performed their duties in these trying circumstances. The evidence now submitted shows conclusively that Her Majesty's government has been misinformed; that the United States did perform their duties as a neutral at those times with a fidelity and activity which, had they been imitated by Great Britain during the insurrection, would have made the present proceedings unnecessary.

[15] *8. The United States unite with Her Majesty's government in its remarks on page 27, calling attention to the fact that the President of the United States, at the request of the Portuguese government, did, in 1817, recommend Congress to confer upon the government, not only power to punish offenders, but also power to prevent the commission of the offenses; and that Congress did, in compliance with such request, confer such power in the neutrality acts of 1817 and 1818.

9. The United States are at a loss to understand to what reference is intended by the words on page 28: "It is needless here to refer particularly to more recent instances of vessels fitted out in ports of the United States for expeditions against countries with which the United States were at peace. These instances are well known." Vague insinuations like these, without definite statement, allegation, or proof, furnish no foundation for an answer in the only form in which the treaty permits the United States to defend themselves.

10. The United States emphatically deny the statement on page 28, that their prohibitory laws have "been infringed by acts much more flagrant than any of those now charged against Great Britain." They feel confident that a fair consideration of the proof which they have
[16] offered and of that which *they now offer, showing the fidelity with which they have ever performed their international duties, will convince the arbitrators that they have honestly, strenuously, in good faith, and with due diligence, striven to perform those duties.

11. The United States think that Her Majesty's government has been incorrectly informed regarding the United States statute of 1818, commonly known as the neutrality act. It is stated on page 29 that the British act of 1819 is "more stringent, rigorous, and comprehensive than that of the United States." Her Majesty's government does not

say in what respect the superior stringency, rigor, and comprehensiveness of that act is supposed to consist. If the British act could have been suspended by the act of the Crown, which is supposed to have been the case, it may at least be held to have furnished less permanent and certain remedies than the law of the United States. The United States think that the qualities of stringency, rigor, and comprehensiveness will be found in their law in a superior degree; and they call attention to the following points of comparison: 1. Enlistments of British subjects only are made unlawful by the British act; the American act, on the contrary, makes all enlistments within the neutral jurisdiction unlawful, except naval enlistments of subjects of the enlisting
[17] belligerent, made on the deck of a vessel of the belligerent *while within the neutral waters. 2. By executive and judicial construction, the words "equip," "fit out," and "furnish" have received a much broader meaning in America than in Great Britain, as the United States have explained in their case. 3. The tenth and eleventh sections of the American act, commonly known as the bonding clauses, are admitted not to be in the British act. And it is also admitted that these clauses are intended to be preventive, not punitive. 4. The eighth section of the United States act is also omitted in the English act. This section, the practical operation of which is explained in the case of the United States, is regarded by them as by far the most efficient part of the act for the prevention of violations of neutrality. 5. It may not have escaped the attention of the arbitrators that Her Majesty's government has itself furnished evidence of the superiority of the United States statute over the British act. "I may remark," says Sir Frederick Bruce, the British minister at Washington, writing to his government, "that the Government of the United States has considerable advantages in proceeding againstv essels underthe statute. They have, on the spot where the preparations are being made, the district attorney, a legal officer responsible to the Government, to whom the duty of investigation is committed. The libel is in the nature of a proceeding in admiralty *in rem*. It is decided by a judge conversant
[18] *with international and maritime law, without the intervention of a jury." (Vol. 3, Brit. App., last paper, p. 67; vol. 4, Am. evidence, page 162.)

12. Without questioning, in the counter case, the correctness of propositions 1, 2, and 3 of English constitutional law, on page 30, the United States think that they are not mistaken when they say that the privilege which a witness is supposed to have of refusing to answer a question is a personal privilege, of which the witness may or may not avail himself. It is not supposed to be one which a court will voluntarily take for him, and enforce against his wishes.

13. In the statements on pages 31 and 32, regarding the supposed duties of the officials of the United States "to keep a watchful eye on whatever might tend to endanger the security or interests of the United State," &c., it is not made quite clear whether Her Majesty's government regard these as duties of which it had the right to demand performance of these officials, or as duties which they owed to their own government. Although the latter interpretation would seem to be the most reasonable one, there is some ground to suppose that Her Majesty's government has made the statement in the former sense. Without admitting it in that sense to be just, the United States insist that, even should such an obligation not be disputed, Her Majesty's gov-
[19] ernment would not thereby be relieved from *the duty of an independent, diligent, and vigilant watchfulness, in order to prevent

evil-disposed persons from violating its neutrality. Nor would the minister of a belligerent power (as Mr. Adams was in the eye of the English cabinet) be required, after the receipt of official information as to the nature and character of the evidence that must accompany his representations, to make, or complained of for not making, representations of fact to the neutral government, except in the manner in which he had been notified to make them. Thus, (to apply the proposition,) Mr. Adams, being notified by the British government that, in order to secure official action on a complaint of a contemplated violation of British neutrality by the insurgents, he must furnish proof of the fact sufficient to warrant conviction for a violation of the foreign-enlistment act, could not be charged by that government with responsibility for not making representations embodying a lesser degree of proof.

14. The United States do not understand that it is true that "allegations that vessels were being prepared for cruising or carrying on war," were in all cases followed by seizure of the vessels when sufficient *prima facie* evidence of the illegal purpose was furnished. They understand exactly the contrary to have been the case; that until the opinion of the law-officers of the Crown, given on the 29th day of July, 1862,
[20] (the day of the escape of the Alabama,) all branches of *Her Majesty's Government held that it was necessary, not only to establish a preparation for cruising or carrying on war, but also an actual arming of the offending cruiser in a British port, in order to justify seizure, and that this prevailing opinion was afterward sustained in effect by the courts of England in the Alexandra case, which is still the unreversed judicial construction of the act of 1819.

15. On page 57 is given what purports to be an explanation of the meaning of the words "registry" and "clearance," and of the duties of the officers empowered to register ships, and of the officers of the customs in respect to clearances. The acts of Parliament, prescribing the duties and conferring the powers, are not specially referred to; but the United States understand them to be "the merchant shipping act, 1854," (17 and 18 Vict., cap. 104,) and the "customs consolidation act, 1853," (16 and 17 Vict., cap. 107,) with their several amendments. These acts, in the opinion of the United States, confer more extended powers upon the officers of Her Majesty's government than is stated in the British Case, and they therefore ask the attention of the tribunal to the acts themselves, extracts from which are submitted herewith.

[21] *IV.

Part IV of the British Case assumes to state certain considerations proper to be kept in view by the arbitrators in reference to the cases of the Florida, Alabama, Georgia, and Shenandoah.

The United States have already made it clear, both in their case and in this paper, that they regard many of these statements as not "proper to be kept in view by the arbitrators" in reference to any of these vessels. Without repeating their views on this subject, they confine themselves to calling attention to a great error into which the arbitrators may be led in consequence of the use of inaccurate or careless language in the closing paragraph of this statement in the British Case.

It is there stated that "claims for the interference of Her Majesty's government in the case of these and other vessels were based, according to the statement of Mr. Adams, in his letter to Earl Russell dated 9th of October, 1862, on evidence considered by him to apply directly to infringements of the municipal law, and not to anything beyond it."

It is quite possible—perhaps it is not too much to say that it is probable—that the arbitrators may derive from this statement the impression that all the official representations of Mr. Adams in respect to these four vessels were expressly based on evidence offered by *him in support of allegations of infringements of the municipal law. The United States call attention to this, feeling confident that Her Majesty's government will be anxious to exclude a construction of its language which is so little in accordance with the facts. [22]

V.

Part V of the British Case is entitled, "Statement of facts relative to the Florida." The evidence in support of this part of the case is to be found in volume one of the appendix, between pages 1 and 165, inclusive.

There are few discrepancies in the two accounts of the career of this vessel. The new evidence furnished by Her Majesty's government sustains and confirms the views of the United States, and attention is called to some instances of this character.

1. It now appears clearly that, before the Florida left Liverpool, the British government received information from the government of His Majesty the King of Italy that the pretense that the Florida was constructed for the Italian government was a fraud.

2. The participation of the legal authorities at Nassau in the conspiracy for the discharge of the Florida, which was charged by the United States, is established by the official reports accompanying the British case.

3. Her Majesty's government introduces, on *pages 73–4 of its appendix, evidence which sustains the allegations in the American case that the Florida was, in outward appearance, a British man-of-war, and that, in such an assumed character, with the British flag flying, she passed the blockading squadron off Mobile, and that her real character was not suspected until too late to stop her. This act was described at the time by the distinguished admiral who witnessed it as only "an apparent want of vigilance." [23]

4. The official report of the governor of Barbadoes of what took place there in February, 1863, shows that there has been an evident mistake on the part of the governor as to the San Jacinto. It also brings home to the governor positive knowledge of the fact that the act which he was committing was a violation of international duty toward the United States.

5. It now appears in clear colors that Bermuda was made a base of hostile operations by the Florida. The commander of that vessel, having coaled, and having been at Barbadoes within less than seventy days, and having then cruised off the port of New York, destroying American vessels, arrived at Bermuda and informed the governor of all these facts. The governor, with a knowledge of them, gave him a hospitable reception, and permitted him to coal and repair. These facts were officially reported to Her Majesty's government, and were formally approved at the foreign office. *Until now, the United States have been unable to establish, without the help of presumptions, all the links in the chain of evidence. [24]

6. It is stated in the British Case that "had the vessel been seized by Her Majesty's government, a court of law would have ordered, and would, indeed, have been bound to order, the immediate restoration of her for want of evidence to support a forfeiture." It is not for the United States to challenge the statements of Her Majesty's government regard-

ing British municipal law. Their officials sought, during the rebellion, to induce Her Majesty's government to stop the vessels constructed in Great Britain to cruise against the United States. They did not ask for their forfeiture, they did not object to a restoration to their owners, provided they were not to leave British waters to carry on war against the United States. It is necessary to bring the tribunal back to this simple proposition, which has been obscured by the irrelevant considations put forth by Her Majesty's government.

7. It is scarcely necessary to say that the United States deny the allegations regarding the supposed negligence of their Navy.

VI.

[25] The statements made regarding the Alabama * in the VIth part of the British case conflict but little with those made in the American case. In many respects they strengthen the American statement.

1. There is no discrepancy as to what took place in Liverpool prior to the escape of the vessel. Some new facts are introduced. For example: (*a*) That in reply to Mr. Adam's first representations, the law-officers of the Crown advised that he should be informed that Her Majesty's government was investigating the case, and that their course would depend upon the nature and the sufficiency of any evidence of a breach of the law which they might obtain; (*b*) that the official legal advisers of the customs gave opinions on the evidence contained in Mr. Adams's representations which were in conflict with the opinions of the law-officers of the Crown; (*c*) that these opinions were given upon the questions after they had been submitted to the law-officers of the Crown, and before the latter had rendered their opinions; (*d*) that the customs department of Her Majesty's government (to which Mr. Adams was referred by Earl Russell as charged with the management of the affair) acted on the opinions of their own advisers, at a time when they must have known that the law-officers of the Crown had the subject under consideration.

2. The opinion of the law-officers of the Crown, now first made public, confirms the views of the United States presented in their case.

[26] *3. It appears that the commissioners of customs knew on Tuesday, the 29th of July, that the Alabama had escaped that day, and that it was not until Friday, the 1st of August, that the collectors at Holyhead and Beaumaris received instructions to detain her. On the 2d of August the collector at Beaumaris reported that he had attended to his instructions, and had found that the Alabama had left Point Lynas on the morning of Thursday, the 31st. If, therefore, the instructions given on the 1st of August had been given on the 29th of July, the Alabama might have been detained at Point Lynas.

4. Her Majesty's government introduce a dispatch to Mr. Adams regarding his correspondence with Captain Craven, apparently with a purpose of assuming hereafter that Captain Craven was guilty of some negligence. It appears that Captain Craven was at Southampton with his vessel (the Tuscarora) on the 29th of July; that he left there for Queenstown, arriving at the latter place on the 30th; that, on the 31st, he received a telegram informing him that the Alabama was off Point Lynas; and that on the 1st of August he set sail up Saint George's Channel toward that point. Mr. Adams objected to the course he took, as bringing him within British waters. Facts, revealed subsequently to Mr. Adams's dispatch, show that the Alabama had left Point Lynas

before Captain Craven *knew that she had been there. Without [27]
regard, therefore, to principles which might well be disputed, this fact relieves the arbitrators from considering any supposed responsibility of the United States for the acts of the Tuscarora at that time.

5. The British consul's report of the visit of the Alabama to Martinique shows that she was in the habit of sailing under the British flag. This was known to Her Majesty's government on the 17th of December, 1862.

6. In January, 1863, the Alabama entered Port Royal, Jamaica, for repairs and to land prisoners. The course of the governor in allowing such hospitalities to be granted was approved by Earl Russell, February 14, 1863. This approval appears to have been given without regard to the advice of the law-officers of the Crown. (Appendix, page 212.)

7. Great stress is apparently laid on the reception and acts of the Alabama in Brazilian waters. The United States invite attention to the striking contrast between the course of Her Majesty's government in the acts complained of before the tribunal, and the course of the Emperor's government, as shown in inclosure No. 4, on page 276 of the appendix; as shown in the Brazilian circular on page 284, stating that "the Confederate States have no legal existence;" that they have been recognized as belligerents only "with the *necessary re- [28]
strictions," and that the exportation of warlike articles from the ports of the Emperor to the insurgents, whether under the Brazilian or a foreign flag, was forbidden; but that a similar trade to the ports of the United States was forbidden only to the Brazilian flag; as shown in the rule as to coal; and as shown in the carefully drawn distinction between hospitalities like those permitted in the British West Indian ports for the purpose of aiding a vessel in a hostile cruise, and hospitalities given to enable a vessel to reach a home port.

8. Her Majesty's government aver that the original crew of the Alabama was not enlisted for the service of the insurgents. The United States contend that the evidence shows that a large portion of the crew knew quite well whither they were going.

9. The United States contend that it is immaterial whether they did or did not make any efforts to capture the Alabama. The fact is, however, that they made great efforts, and incurred great expense for that purpose.

The United States also respectfully refer the tribunal of arbitration to the correspondence with the Portuguese government and authorities concerning this vessel, which is contained in the documents submitted with this counter case.

*VII. [29]

The evidence offered by Great Britain regarding the Georgia is in the main identical with that offered by the United States. In some respects the new documents strengthen the case of the United States.

1. It appears that Her Majesty's government was officially informed, by its own officials, of the suspicious character of the Alar, two days in advance of Mr. Adams's information, and that it took no steps in consequence.

2. It is intimated that Mr. Adams was in possession of information, before the sailing of the Georgia, which he should have communicated to Her Majesty's government, but it is conceded that the information would not have justified conviction under the foreign-enlistment act,

and that Mr. Adams had, before then, been informed that Her Majesty's government could not act on less complete representations.

3. It appears that orders were given to a British vessel of war to proceed to Alderney, but it does not appear whether those orders were or were not obeyed.

4. The report made in 1871 of the arming of the Georgia differs from the contemporaneous accounts made by eye-witnesses.

5. When Her Majesty's government made the statement that no serious endeavor to intercept or capture the Georgia appears to have
[30] been made on *the part of the United States, it was mistaken. This correction is, however, made under protest that the United States were under no obligation toward Great Britain to relieve her from the consequences of her original wrong-doing.

VIII.

As with the other vessels, so with the Shenandoah, the evidence in the two cases is largely the same, and the evidence exclusively presented by her Majesty's government strengthens the views and theories of the United States.

1. It appears in the opinion of the law-officers of the Crown, (pages 141, 142,) the Sea King was regarded as a British vessel until after its arrival at the Azores; that acts took place there on its deck which were esteemed to be violations of the foreign-enlistment act; and that the question whether her deck was not at that time a place belonging or subject to Her Majesty was thought to be a serious one. The acts which are referred to as having taken place there within British jurisdiction were some of the acts of which the United States now complain.

2. The United States do not admit that the persons who went out in the Laurel are to be regarded as ordinary passengers. They
[31] were persons who, *in violation of the duties of Great Britain as a neutral, were recruited in England to serve on the Shenandoah.

3. The official report of the governor of what took place at Melbourne confirms the account given by the United States in their case. By inclosure 19, on page 499, (appendix,) and by inclosure No. 22, on page 500, it appears that immediately after her arrival at Melbourne she was known as the Sea King. By paragraph 9, pages 505–6, it appears that the commander was not pressed to go to sea until he was quite ready to go; by paragraph 20, on page 507, it appears that the governor was consenting to the condonation of the offenses of the Shenandoah against British neutrality; by the police report, on page 523, it appears that the government was officially informed by its own officers that the commander intended to ship forty men at Melbourne; and by inclosure 90, page 529, it appears that, although the stay of the Shenandoah at Melbourne was nominally for the repair of the screw and its bearings, that part of the machinery was not touched until the vessel had been fourteen days in port. The United States cannot admit that there was any vigilance exercised by the officers of the colonial government.

4. The United States, for reasons stated in their case, cannot agree with Her Majesty's government in the statements made in the
[32] first paragraph of page *160 of the British case, regarding the crew of the Shenandoah and Temple's affidavit; nor can they accept as true the statement of the commander of the Shenandoah, cited by Her Majesty's government on page 167, that on receiving intelli-

gence of the overthrow of the insurrection, he "desisted instantly from further acts of war."

5. The United States, as to the Shenandoah, make the same statement which they have already made in reply to the statements of Her Majesty's government touching attempts to intercept or to capture the Georgia.

IX.

On page 167 of the case of Her Majesty's government, it is said: "If the tribunal should come to the conclusion that Great Britain has incurred any liability to the United States, the question will then arise what should be deemed the just measure and extent of that liability. Her Britannic Majesty's government abstain at present from entering into that question, and will reserve such observations as may be fitly offered in relation to it to a later stage of the proceedings. Here it is sufficient to remark that a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the *ordinary operations of war, on the plea that those [33] operations were assisted or facilitated by negligence on the part of the neutral government, is one which involves grave considerations, and requires to be weighed with the utmost care. Losses of which such negligence is the direct and proximate cause, (and it is in respect of such only that compensation could justly be awarded,) are commonly not easy to separate from those springing from other causes."

The United States concur with Her Majesty's government in the opinion that "a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the ordinary operations of war" "is one which involves grave considerations, and requires to be weighed with the utmost care." Without the explanatory observations which Her Majesty's Government reserves the right to make in a later stage of the proceedings, they cannot say how far they do or do not concur in the further statement that compensation can only justly be awarded by the tribunal in respect to losses of which the negligence of the neutral is the direct and proximate cause. *a*

*It appears to them, however, that certain general considera- [34] tions may reasonably be assumed by the arbitrators. 1. Both parties contemplate that the United States will endeavor to establish in these proceedings some tangible connection of cause and effect between the injuries for which they ask compensation and the "acts committed by the several vessels," which the treaty contemplates are to be shown to be the fount of those injuries. 2. The tribunal of arbitration being a judicial body, invested by the parties with the functions necessary for determining the issues between them, and being now seized of the substance of the matters in dispute, will hold itself bound by such reasonable and established rules of law regarding the relations of cause and effect as it may assume that the parties had in view *when they entered into their engagement to make this refer- [35] ence. 3. Neither party contemplates that the tribunal will

a On the 469th page of the American official case, in the English language, after enumerating the several classes of claims for injuries, the United States say: "*So far as these various losses and expenditures grew out of the acts committed by the several cruisers,* the United States are entitled to ask compensation and remuneration before this tribunal." In the unofficial French translation, made for the convenience of the arbitrators, there is no equivalent for the important words in italics above cited, (*French version, page* 377.) The agent of the United States received the book just as the conferences at Geneva in December were about to begin, and did not discover the error in time to correct it at that conference. He now takes the first opportunity to call attention to it.

establish or be governed by rules in this respect which will either on the one hand tend to release neutrals from their duty to observe a strict neutrality, or, on the other hand, will make a course of honest neutrality unduly burdensome.

Leaving now the issues raised by the cases and counter cases of the two governments to the arguments of counsel and to the decision of the tribunal, the United States repeat with a strengthened conviction the language with which they closed their case: "It is in the highest interest of the two great powers which appear at this bar that the causes of difference which have arisen between them should be speedily and forever set at rest. The United States entertain a confident expectation that Her Majesty's government will concur with them in this opinion."