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Some Political and Diplomatic Aspects of the Treaty of Washington

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Chairman

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CHAPTER I

Origin of the Controversy

On April 15, 1861 President Lincoln issued a proclamation calling for troops for the purpose of "repossessing" the forts in the South which had been seized from the Union. Two days later, President Davis of the Confederate States of America by public proclamation invited applications for letters of marque and reprisal, thereby indicating the intention of waging war on the high seas against the commerce of the United States. On April 19 Lincoln, acting, he said, "in pursuance of the laws of the United States and of the law of nations," issued a proclamation announcing that he had "set on foot a blockade" of the Southern ports from South Carolina to Texas, and eight days later he included the coasts of North Carolina and Virginia. He declared that any person, acting upon the pretended authority of those states, would be held amenable to the laws of the United States for the prevention and punishment of piracy. The proclamation directed that a vessel approaching or attempting to leave a blockaded port "be duly warned by the commander of one of the blockading vessels who will endorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave the blockaded port she will be captured and sent to the nearest port for such proceedings against her and her cargo as prizes as may be deemed advisable."

Until the time of the issuance of the proclamations by Lincoln and Davis, the British government had not decided upon a policy in
regard to the rupture of the Union. Now they were faced with the problem of what seemed to them a civil war, and in order to protect their citizens from its ravages, a policy had to be determined definitely. Discussion in the House of Lords on April 29, 1861 referred to the news of the Civil War, and Malmesbury asked if the government had tried to prevent it, or had set on foot negotiations with other powers to check it. Wodehouse speaking for the government stated that the United States as an independent nation would have resented any suggestion from Great Britain, and that Lyons had been instructed to be extremely careful about offering advice unless asked for by the contending parties. On May 1, Dallas learned of a plan of joint action with France, though what action was planned was not clear. Dallas further reported that the representatives of the Confederacy were in England and that Russell was not unwilling to meet them unofficially, and that there would be some understanding between the British and the French governments. When Russell mentioned the rumor that the southern ports were to be blockaded, Dallas informed him that the new minister would arrive in less than two weeks. Russell replied "The coming of Adams would doubtless be regarded as the natural and appropriate occasion for finally discussing and determining the question." On May 3, the Attorney General, replying to a query of Lord Russell in regard to the recognition of belligerency of the South and as to the right of the South to issue letters of marque and reprisal, stated that Southern privateering would be dangerous to British commerce but that nothing could be done about it. "The best solution," said the Attorney General, Bethell, "would be for
the European nations to determine that the war between the two Con-
federacies shall be carried on on the principles of 'justum bellum' and shall be conducted according to the rules of the Treaty of Paris. Recognize the Southern States as belligerents on this con-
dition only."6

The previous day Lord Russell expressed the official position of the British government when he said in the House of Commons:

"Her Majesty's Government has felt it was its duty to use every possible means to avoid taking part in the lamentable contest now raging in the American States. Nothing but the imperative duty of protecting British interests in case they be attacked justifies the government in at all interfering. We have not been involved in any way in that contest by any act or giving any advice in the matter, and for God's sake, let us, if possible, keep out of it!"7

On May 6, it was stated that according to precedent the Southern states must be recognized as belligerents. Russell, quoting the government policy in 1825, said:

"The character of belligerence was not so much a principle as a fact; that a certain degree of force and consistency, acquired by any mass of population to be treated as a bel-
ligerent, and, even if the title were questionable, must render it the interest well understood of civilized nations so to treat them. A power or a community which was at war with another, and which covered the sea with its cruisers, must either be acknowledged as a belligerent or dealt with as a pirate."8

According to those principles the law officers of the Crown came to the decision that the Southern states must be granted belligerent rights.

According to that decision of the law officers, it was announced that it was the contemplation of Her Majesty's government to issue a proclamation for the purpose of cautioning all her subjects against any interference in the hostilities between the Northern and the Southern States of America. The general principle of the British
law was that no British subject shall enter into the service of any foreign prince or power, or engage in any hostilities that may be carried on between any two foreign states.⁹

On May 10, after pointing out that many seamen would be attracted by the various inducements of privateering, the Earl of Derby remarked, "that they should know upon what footing they stand with respect to their rights as British subjects. I need not say that the offence of entering upon this privateering service is an offence against the Foreign Enlistment Act."¹⁰

On May 13, the Queen's proclamation of neutrality was officially announced. The discussion in the House of Lords on May 16 brings out clearly the general consensus of opinion and the policy of the government in respect to the proclamation. The South was definitely recognized as a belligerent only, and the decision in regard to recognition of independence of the South was to be left to the future. The right of the South to send out privateers was recognized as lawful, and such privateers could not be regarded as pirates and could not be punished as such by the Federal Government. If the Federal Government decided to treat them as such in defiance of international opinion, Great Britain had at least warned her subjects that they had no claim to protection if engaged in the service of the South. A blockade, it was declared, must be effective to be respected, at least to the point where a vessel attempting to pass through was likely to be captured. The Earl of Ellenborough said in the House of Lords that the plan of blockading the entire southern coast was on the face of it impossible.¹¹

Adams reached London on the evening of May 13, the very day on
which the British Cabinet decided to recognize the Southern states as belligerents. This did not seem to him to be a very propitious beginning of his mission. Dallas had been instructed by Seward to use all proper and necessary measures to prevent recognition of the insurgents, and after an interview reported to Seward that no action would be taken before the arrival of Adams. This was understood by the American Secretary of State as a pledge that no official action would be taken until that time. Under these circumstances it seemed to Adams when he learned of the Queen's Proclamation that the government had acted with animus and precipitately. Adams felt that it was unfriendly and discourteous. This feeling was intensified by the knowledge that a few days previous, Russell had received the Southern commissioners, although "unofficially." It was on the point of undue haste that the criticism of the British government was based and not on their legal right to recognize the belligerency of the South. Russell denied that he had made a pledge that no action would be taken until Adams arrived to take up official duties. Russell insisted that he meant to say that England would not commit itself as regards the recognition of the independence of the Southern states.

In his first interview with Russell, Adams said that it was "not without pain" that he was compelled to admit that the opinion in Parliament, in the ministry, and in prevailing society showed much uncertainty in regard to preserving the friendly relations between the two nations. He regretted, he said, the decision of the Queen's Proclamation which raised the insurgents to the level of a belligerent state. Russell replied that in question of fact a war
existed and under the circumstances it was impossible to avoid speak-
ing of a 'justum bellum' and that the intention was to bring the
management of it within the rule of modern civilized warfare. It
was designed to show the purpose of existing laws and explain to the
British subjects their liability in case they should enter the war.
Adams thought that the "action was a little more rapid than was ab-
solutely called for." It pronounced the insurgents to be belliger-
ents before they had shown their capacity to maintain warfare. It
considered them a marine power before they had a single ship upon
the ocean. Many similar representations containing these same
arguments were made by Adams and Seward throughout the war and after-
ward.

Seward, writing under the misapprehension of the report of
Dallas, said in his instructions:

"Her Britannic Majesty's government is at liberty to choose
whether it will retain the friendship of this government by
refusing all aid and comfort to its enemies, now in flagrant
rebellion against it, as we think the treaties existing be-
tween the two countries require, or whether Her Majesty's
government will take the precarious benefits of a different
course." 15

After carrying out these instructions Adams was able to report an
improvement in the attitude of the British government which he
thought was due to the vigor which was being shown by the national
government and in part to a realization by the British government
that their earlier actions had meant more than they intended they
should. 17 Henry Adams wrote:

"The English are really on our side; of that I have no
doubt whatever. But they thought that as a dissolution
seemed inevitable, and as we seemed to have made up our
minds to it, that their proclamation was just the thing
to keep them straight with both sides, and when it turned
out otherwise, they did their best to correct their mistakes." 18
John Bright, an ardent friend of the North, thought that the method of his government rather than the deed was to be regretted. It was unfortunate that the Cabinet had taken action since the new minister was announced and on his way and that it seemed to be done with "unfriendly haste." "It gave comfort and courage to the conspiracy... and caused grief and irritation among... the people of America [who are] desirous of maintaining friendly relations." Speaking later in the United States Senate, Sumner distinguished between belligerency on land and belligerency on sea, and pointed out that England created a sea power since no power previously had existed on the sea as far as the Southern states were concerned.

The United States government based its contentions on the belief that war did not exist in the international sense. The government had not relinquished its sovereignty over the Southern states. To them the struggle was carried on by insurgents, and foreign nations did not have the right to take official recognition of them.

In meeting those contentions Russell pointed out that "the state of things which exists is a state of civil war; and there is, as regards neutral nations, no difference between civil and foreign wars." Lincoln, it was said, acknowledged the situation of public war when he spoke of the blockade "in pursuance of the law of nations." The Supreme Court of the United States declared that the president's proclamation of the blockade itself was "official and conclusive evidence to the court that a state of war existed" and confirmed as valid all prize and vessels found guilty of violating the proclamation. Lord Russell thought it quite inappropriate to speak of "unlawful combinations" when the president was calling for
400,000 men and 400,000,000 of dollars. Earl Derby said: "The
Northern States can not be entitled to claim the rights of belli-
gerents for themselves, and treat the Southern States, not as belli-
gerents, but as rebels." Later, speaking of the matter in 1865,
Lord Palmerston said that "the admission of belligerent rights for
the South was the result rather of necessity than of choice."25

Recent writers on the subject substantiate this position of
Palmerston and hold that the recognition of belligerency was "simply
the natural, direct, and prompt notification to British subjects re-
quired in the presence of a de facto war." C. F. Adams, Jr. came
to the conclusion in his father's biography that the issuance of
the declaration before the arrival of Adams was most fortunate. His
instructions were based on the Lincoln-Seward theory that the for-
eign nations had no concern in the local insurrection. The British
based their claims on the proclamations of Davis and of Lincoln
which recognized the de facto war. Adams suggests as a possible
hypothesis that the protest which Minister Adams planned to make
would have resulted in an immediate rupture, and that had England
delayed this recognition until after the victory of the South at
Bull Run, the consequences might have been the immediate recogni-
tion of the South as an independent state.26

The Foreign Enlistment Act which was largely the subject of
the Queen's proclamation of May 13, 1861 forbade subjects to "be
concerned in the equipping, furnishing, fitting out, or arming of
any vessel, with intent or in order that such ship or vessel shall
be employed in the service" of a belligerent, and provided for
punishment of individuals and forfeiture of vessels if the prohibi-
tion were disobeyed. The act further declared, however, that pun-
ishment or seizure would follow only upon due proof of the offence.

Bullock, the principal Confederate agent in Europe, had consulted
eminent English counsel and had been informed that it was no of-

fence under the act merely to build a ship without arming and equip-
ing it. This was the construction which had been placed upon the
act by the British officials and courts. In its program of build-
ing war ships in British ports the Confederate government adopted
a policy which enabled them to conceal the ownership and destina-
tion of their ships. They were careful to arm these ships and
equip them outside British waters.

Early in 1862 Adams began protesting to Lord Russell in regard
to the steamers which were being fitted out in British ports with
the intention of breaking the Southern blockade. On February 18,
1862 Adams reported to Russell as follows: "An armed steamer is be-
ing prepared with evident intention for hostile operations on the
ocean. From the evidence furnished.... I entertain little doubt
that the intention is precisely.... the carrying on of war against
the United States." Adams pointed out that the parties involved
had previously succeeded in running the blockade, and offered to
procure further evidence if it were needed. Russell referred the
letter to the Commissioner of Customs at Liverpool who reported
that the destination of the vessel was Palermo, that she was not at
the time fitted for the reception of guns, that the builders of the
vessel were not of the opinion that she was to be fitted with guns
whilst she remained in the country, that she was intended for the
Italian government, and that orders had been given to watch the movement of the vessel. On March 25, Adams pointed out to Lord Russell that the duty of friendly nations was not to permit their good faith to be violated by the ill-disposed persons because "the existing municipal laws are found to be insufficient, and do not furnish the means of prevention adequate to the emergency." To Seward, Adams wrote that Russell had been deluded by what he (Adams) could not help thinking was "the willful blindness and credulous partiality of the British authorities." He had no confidence that application to Russell would meet with success, but he did so "to perpetuate testimony for future use."

In a conference with Russell, Adams was informed that the authorities at Liverpool had reported that there was no ground for doubting the legality of the voyage of the ship in question. Adams replied that this was exactly what gave such unpleasant impressions to the people in America. He said:

"The Oreto, by the very papers furnished from the custom-house, was shown to be laden with a hundred and seventy tons of arms, and to have persons called 'troops' on board, destined for Palermo and Jamaica..... The facts of her true destination were notorious all over Liverpool." He said again: "In spite of the admission that troops and guns are on board, Her Majesty's Government still insist(ed) upon being blind to the destination of the vessel, and the government tolerates the abuse."

On June 13, 1862, Adams wrote Russell that it was necessary of apprising his lordship that a new and still more powerful war steamer was nearly ready for departure from the port of Liverpool on the same errand as the Oreto, later called the Florida. He went on to
say that it was being built in the dock-yard owned by British sub-
jects, one of whom was a member of Parliament, and that it was fitted
out with the manifest purpose of carrying on hostilities at sea. It
was to be commanded by the same insurgent agent as sailed in the
Oreto, and that a letter from the agents had been intercepted which
fully explained the situation. He added:

"It is my duty to solicit such action as may tend either
to stop the projected expedition or to establish the fact
that its purpose was not inimical to the people of the
United States." 36

Russell referred the matter to the proper department of Her Majesty's
government. 37 A report from the custom-house showed nothing to be
amiss about the vessel. The report further stated that there had
been no attempt to disguise the fact that the vessel was a ship of
war, that she had neither guns nor carriages, though she did have
powder canisters. The officers had ascertained that she was built
for a foreign government. The builders were not disposed to answer
questions regarding its destination. Beyond this the customs offi-
cers had no other reliable information. Since there was at that
time not sufficient evidence to warrant detention of the vessel, the
custom officers would wait for evidence from the consul before tak-
ing further action. Without sufficient evidence to justify them-
selves, the officers who seized the vessel might entail on themselves
and their government serious consequences. 38

In a note to Adams, dated July 12, 1862, Seward wrote as fol-
lows:

"Since the Oreto and other gunboats are being received by
the insurgents from Europe to renew demonstrations on our
national commerce, Congress is about to authorize the is-

ue of letters of marque and reprisal and that if we find
it necessary to suppress that piracy, we shall bring
privateers into service for that purpose, and of course, for that purpose only."

Russell acknowledged the protests of Adams from time to time and assured him that his complaints were being referred to the proper department of government. In spite of the fact that the foreman in Messrs. Laird's yard said she was the sister to the gunboat Oreto and had been built for the same parties and for the same purpose the officials at Liverpool shut their eyes to facts that were notorious.

On July 16, 1862, Adams received from Collier, the Queen's counsel, an opinion so decided that he (Adams) directed our consul at Liverpool to proceed with utmost vigor in the preparation of depositions to place before the collector of customs there. In this first opinion, Collier considered the evidence almost conclusive that the vessel in question was intended for the Confederate government as a privateer. He felt that the matter was so urgent that he advised the principal officer of the customs at Liverpool to seize the vessel with a view of condemnation, and at the same time to lay the facts before the Secretary of State for Foreign Affairs. He advised immediate action by the commissioner of customs, since the government might not unreasonably take some little time to consider what course to pursue, and in the meantime the vessel might escape.

On July 23, Collier handed down a second opinion in which he said that it was the duty of the collector of customs to detain the vessel. He said, "If he allows the vessel to leave Liverpool, he will incur heavy responsibility.... It appears difficult to make out a stronger case of infringement of the Foreign Enlistment Act,
which, if not enforced on this occasion, is little better than a dead letter."\(^{44}\)

This opinion with eight affidavits was presented to Lord Russell on the 26th of July. The most damaging deposition, and the only one that was considered conclusive rather than mere hearsay evidence, was that of Passmore whose testimony was borne out by four other persons. Passmore was a seaman who had been enlisted by the southern agent. He stated: "that she had a magazine, shot, and canister racks on deck, and was pierced for guns, and was built and fitted up as a fighting ship in all respects." The deposition went on to prove the connection of the agent of the Confederate government, Captain Bullock, with this vessel as superintending her construction. The document closed with these words: "It is well known by the hands on board that the vessel is going out as a privateer for the Confederate government to act against the United States under a commission from Mr. Jefferson Davis."\(^{45}\)

Endless representations followed offering proof of what everyone knew. Squarey, Dudley's counsel, obtained an interview with Layard, the Under-Secretary for the Foreign Department, and from a report of the conversation which he sent to Adams, it appears that he represented the urgency of the case and pressed for a speedy decision.\(^{46}\) Dudley presented strong circumstantial evidence, but the customs collector demanded ocular proof, which could not be furnished.\(^{47}\) Adams then sent "another communication to Lord Russell so that the refusal to act may be made as marked as possible."\(^{48}\)

The papers submitted by Adams to Russell were referred by the latter to the law officers of the Crown. They lay for five days at
the home of the Queen's advocate, who had been stricken with an illness from which he never recovered. Other advisers were called in. On July 29 orders to hold the vessel were telegraphed to Liverpool. It was too late. The order had been anticipated and careful plans had been laid to evade it. With a party of guests on board to cover up her real purpose, and under the pretence of making a trial trip, the Alabama steamed down the Mersey and stood out to sea. The guests were sent back on a tug, but the Alabama did not return. She met her consort at a designated rendezvous, where the Alabama took on stores, arms, and munitions and proceeded on her career as a commerce destroyer. 49

Though the Alabama was still near the Welsh coast, where she remained from 7:30 P.M. on July 29 to 3 A.M. July 31, upward of 31 hours, collecting her crew and making ready for her long journey, no attempt was put forth by the authorities of the port to reach her. "A lamentable proceeding," John Morley called it, "for which the want of alacrity and common sense at the Foreign Office and the bias or blundering of the customs agents at Liverpool may divide the grave discredit." 50

Russell himself recoiled as he contemplated the consequences of the course in permitting this vessel to escape. With the support of the Duke of Argyll, he had drawn up a despatch directing colonial authorities to detain the ship if she came within their reach. When the subject was brought before the cabinet, all the others were against it. The measure had to be abandoned. 51 "There was a perfect insurrection," wrote Lord Russell.

The friends of the Union strongly condemned the negligence of
the customs authorities and the government. Baring in the House of Commons said, "The law officers had been dilatory. It was unfortu-
tunate that the government... should be so badly represented by those whose duty it was to carry those laws into effect that the customs authorities were not aware what was going on." He contended that the vessel would have been seized if the proper precautions had been taken. One point on which information was required, Forster said:

"Was as to the steps the customs authorities had taken to find out the truth or falsehood of the American minister's statements... The House ought to know how it was that the customs authorities, whose duty it was to prevent the breach of the law, independently of the Foreign Office and the American government, took no steps in the matter."

He pressed further accusations against the officials. He said: They "were acting in some respects on the wrong principle; for they seemed to suppose that it was not their business to put it (the Foreign Enlistment Act) in force until the American government took action in the matter." He saw the question, not as a matter of sympathy as between the North and the South. He held that: "It was a question of obedience to a British law, and carrying out a Brit-
ish act, the preamble of which said that the equipping or fitting out of vessels in British ports was to be prevented because it was prejudicial and calculated to endanger the peace and welfare of the kingdom." He said further:

"It appears that the representations of the American minister had merely the effect of warning the owner that it was necessary that she should sail at once. It certainly is a curious coincidence that the day that the opinion of the law officers was received was the very day that the vessel got away... Notwithstanding the suspicions attached to her, the customs author-
ities did not find out that this pleasure excursion was her actual departure."
Forster concluded by expressing the hope that: "surely the government would do their utmost to preserve the neutrality from being violated by private interests in order to put money into the pockets of a few ship-owners and contractors, however wealthy they may be or however high their stations." Cobden wrote to Gladstone that "the spirit of pride and self-sufficiency of the merchant classes" was responsible for the Alabama's escape.

The ministers defended themselves on the grounds that there had not been sufficient evidence; that no arrests could be made on mere suspicion and accusations of a foreign minister. In the debate they evaded the real issue and hid behind the question of selling munitions and enlistment of men. The North was really obtaining more assistance of this nature than the South did, they said. Grounds for complaint, they went on, would exist only if the government itself were concerned in fitting out such a belligerent ship, or if the government permitted the belligerent to carry on operations on their shores and in their waters. Russell officially disclaimed for the British government any responsibility for the escape, but he wrote to Lyons: "I must feel that her roaming the ocean with English ships and English sailors to burn, sink and destroy the ships of a friendly nation is a scandal and a reproach." Russell said in the debate: "A learned judge has said that we might drive, not a coach and six, but a whole fleet of ships through that act of Parliament," and he thought that the law ought to be made more clear and intelligible. But again he writes that the law is sufficient if legal evidence can be obtained.
The escape of the Alabama encouraged the Confederate agents. The road seemed clear for building an unlimited number of ships in the British shipyards.

Shortly before the Alabama left the port of Liverpool, Bullock had contracted with the Lairds at Birkenhead for two ironclad ships-of-war to be built; and by the middle of July the work on both ships was begun. These vessels were of the most advanced design of the times, and equipped with steel rams which were clearly designed to break the blockade. They caused great consternation at Washington. The assistant secretary of the Navy wrote to Adams: "You must stop them [the Laird rams] at all hazards as we have no defense against them.... It is a question of life and death."

Shortly after the news was received at Washington that these iron-clad rams were being planned, a bill was introduced into Congress authorizing the president to issue letters of marque and reprisal. This occurred in July, 1862, and on the twelfth, Seward wrote to Adams of the proposed measures, specifying that the purpose was to permit privateers to seek for and capture or destroy the Alabama and other vessels of a like type. He characterized this as a plan "to organize the militia of the seas by issuing letters of marque and reprisal." Though the bill was introduced in the summer of 1862, it was not taken seriously until February, 1863.

In the Senate discussion of the bill at the time of introduction, Senator Grimes, its sponsor, declared that the object was to encourage privateers to pursue British ships when they should "turn Confederate." It would give the president the power to protect the nation against "insolence of a foreign power." Sumner objected
that the true business of privateers was to destroy enemy commerce and the South had no such commerce. Grimes agreed that this was his opinion also, but explained that the administration wanted the measure passed so that it might have in its hands a power to be used if the need arose. The majority of the Senate was opposed to taking action at this time and the matter was permitted to lapse, but without definite action, so that it could be called up again at any time. The bill again came before the Senate in January 1863, was referred to the committee, reported out, and passed on February 17. The House of Representatives passed the bill without debate. Grimes now clearly expressed the need for the bill because the Confederates "are now building in England a fleet of vessels designed to break our blockade of their coast" and that privateers were to assist in maintaining the blockade.

In the cabinet, opinion was divided on the question of issuing letters of marque and reprisal. Seward and Chase were in favor of it, but Welles was strongly opposed since he feared that it would involve us in war with England. Seward later presented two messages from Russell which Welles said were "insolent, contemptuous, and meant aggression if not war," and he was inclined to believe that the letters of marque would be useful as an admonition to England.

Lord Lyons feared that the measure would be misapprehended abroad. Seward's letter to Adams explaining the nature of the bill was vague. He said that the executive would have discretion in putting the act in force, and there would be entire frankness to "avoid any surprise on the part of friendly nations whose commerce might be incidentally and indirectly affected."
Lyons pointed out to Seward the bad effect which the application of the act would have upon Europe. Seward replied: "[Some remedy must be found for the fact that] the law did not appear to enable the British government to prevent" the issue of Confederate privateers from their ports and added that the departure of any more armed vessels from English ports was a thing to be deprecated above all things. 

On March 8, Seward sent Lyons a letter in which he pointed out that peace could not be preserved without the best intention on the part of the British government to enforce its laws. Lyons protested vigorously to the letters of marque and implied that war would result. Seward replied that he was aware of the inconvenience and danger resulting from the act, and that he would be glad to delay using it; but "that unless some intelligence came from England to allay the public exasperation, the measure would be unavoidable."

Lyons was much alarmed. Seward informed him of instructions which had been sent to Adams to inform Russell of the delicacy of the situation, and to ask for assurance that no further vessels would escape from British ports. The privateering bill would be put in force unless such escapes could be prevented by the British neutrality act.

In the early months of 1863, matters were rapidly coming to a head in both America and England. The question of the letters of marque was before the American cabinet, and Welles, who had previously opposed the measure, was affected by the unfavorable reports regarding the intentions of Great Britain. It was decided to postpone action until further information was received from England.
The newspapers encouraged by Seward were fanning excitement to a blaze.\textsuperscript{73}

In England a feeling was beginning to manifest itself that the ministry had been lax in regard to the Alabama. Merchants were coming to realize that their interests were opposed to those of the ship-builders. Meetings were held and the matter was vigorously discussed. Resolutions were passed which condemned the allowed building and fitting out of vessels-of-war in English ports.\textsuperscript{74}

Adams noted a friendlier feeling in a speech which Lord Russell made in Parliament on March 23, and reported "that it was the most satisfactory of all the speeches he has made since I have been at this post."\textsuperscript{75} Russell further advised Palmerston that he might safely say in the coming debate that "the government disapprove all such attempts to elude our law with a view to assist one of the belligerents."\textsuperscript{76} Adams reported that the government was really better disposed to exertion, and seemed better sustained for action by public sentiment than ever before.\textsuperscript{77} At this time Russell wrote to Lyons: "I must feel that her [the Alabama] roaming the ocean with English guns and English sailors to burn, sink, and destroy, the ships of a friendly nation is a scandal and a reproach."\textsuperscript{78}

Cobden wrote:

"I have every reason to know that our government fully appreciates the gravity of this matter. Lord Russell, whatever may be the tone of his despatches, is sincerely alive to the necessity of putting an end to the equipping of ships-of-war in our harbours to be used against the Federal government by the Confederates. He was bona fide in his desire to prevent the Alabama from leaving; but he was tricked and was angry at the escape of that vessel."\textsuperscript{79}

On April 2, 1863 Cobden again wrote to Sumner saying that he had
urged Russell to be more than passive in enforcing the law. It was suspected that some ships supposed to be for the Chinese government were really for the Confederates. Cobden urged Russell to investigate. Russell had replied that he had already done so and Cobden seemed satisfied. Cobden wrote: "[England] now begins to understand that she has acted illegally in applauding those who furnished ships-of-war to prey on your commerce. It will not happen again." 

On March 27, 1865, the merits of the Foreign Enlistment Act were debated in Parliament. Forster, who led the debate, brought forth two questions for consideration; first, "whether Her Majesty's government had done everything it could to prevent these breaches of the law;" and second, "whether they were impressed with the necessity of the duty of doing their utmost to prevent them in the future." He called on the ministers to explain the violation of the Foreign Enlistment Act and to offer some pledge for the future. He asserted that the government should have acted on its own initiative and hinted at complicity in the escape of the Alabama. These vigorous attacks were carried on against the government by Bright and Baring. Instead of making the favorable reply which had been advised by Russell and expected by Adams, Palmerston was forced to defend the government and asserted the correctness of the governmental procedure. The act was held sufficient in itself, he said, but direct evidence was not always obtainable. No pledge was made for the future.

Adams was disappointed by the results of the debate. In reporting to Seward he said he regretted "that the substance of it should fall so short of what I had been led to expect."
The defects of the Foreign Enlistment Act being apparent, Adams was directed to ask the British minister to provide the required remedy by act of parliament, but this he refused to do. Russell said in reply: "Mr. Adams said that his government would listen to any proposition Her Majesty's government had to make, but they did not see how their own law on the subject could be improved. I said that the cabinet had come to a similar conclusion." Russell answered that the law was sufficient but the evidence was not always to be procured.

It was learned that other warships were being built. Adams was instructed to attempt by judicial proceedings to arrest the departure of the vessels. Evarts was sent to England to confer with Adams in the matter. The British government decided to detain the Alexandra and to order prosecution of the persons concerned, although, as Adams said, the ministry would have to breast a good deal of opposition and subject themselves to heavy responsibilities if they should fail.

That the Alexandra was being built with a view to warlike equipment was beyond doubt, and it was a moral certainty that she was for use in the Confederate service. In instructing the jury, the Lord Chief Baron stated that the act was not designed for the protection of belligerent powers or to prevent Great Britain being made the base of naval operations. The purpose of the act was solely to prevent hostile naval encounters in British waters; and that it forbade equipment merely to prevent immediate hostile operations. The judge fur-
ther instructed the jury that a neutral might make a vessel and arm it, and then offer it for sale to a belligerent, and so also he might execute an order for it. A belligerent might buy muskets, cannon, gunpowder or ammunition, so why should ships be an exception? Under such an interpretation of the statute the jury rendered a verdict for the defendants. The government promptly appealed the decision.88

Russell hoped the orders given to watch and stop vessels apparently intended for the Confederate service would allay the strong feelings which had arisen in the United States by the escape from justice of the Oreto and the Alabama.89

Adams concluded that the construction placed upon the Foreign Enlistment Act left nothing of it as a penal measure; even though the ship would remain under interdict, and there would be no relaxation of the efforts on the part of the government to check the progress of the steamers yet building.90

On July 11, Seward sent a despatch to Adams in which he expressed satisfaction that the British government had seen fit to attempt to stop the fitting out of armed vessels to prey upon the commerce of the United States. He went on to say that it was now understood in this country that there was no law in Great Britain which would be effective to stop the outrages. He suggested that the statute be revised. If this were not done, he said:

"There would be left for the United States no alternative but to protect themselves and their commerce against armed cruisers and to insist upon indemnities... To this end this government is now preparing a naval force with the utmost vigor; and if the national navy shall not be sufficient... the United States must bring into employment such private armed naval forces as the mercantile marine shall afford."91

This was a strong despatch, but Adams, exercising his discretion,
did not communicate the threat directly to Russell. Since there
was no enemy commerce, Seward could only mean to use the privateers
as a cruising squadron. He did find opportunity to say to the Duke
of Argyle, who was a member of the cabinet, that the situation was
"grave and critical," and that his instructions were far more string-
ent than any he had yet received.92

Throughout July and August the correspondence on the rams con-
tinued with Dudley and Adams sending evidence and depositions to
Russell. Twice Adams had supplied to the law officers of the Crown
what he believed sufficient evidence to justify the seizure of the
vessels, but received replies that this was no evidence capable of
being presented to a court of justice. Adams remonstrated and said:
"A war has thus been practically conducted by a portion of her
people against a Government with which Her Majesty is under the
most solemn of all national engagements to preserve a lasting and
durable peace."93

Adams was becoming uneasy, for he felt that the law-officers
were wavering on the point of evidence in regard to intent, which
Adams thought conclusive. The doubt in the mind of the officers was
as to the point of destination which was skilfully concealed.94

The building continued, and the second ram was launched. Adams
reported on September 3, that the first was so far prepared for de-
parture as to bring the question of stopping her to a point calling
for prompt decision.95 Russell sent a note saying that the informa-
tion contained in the depositions was mere hearsay, that the ships
were for Bravay of France, that the depositions did not prove any
infraction of the law, but that careful watch would be kept over
them.
Adams then replied that both countries would be placed in a grave situation if an act of aggression were committed against the government and the people of the United States by either of these formidable vessels.97

On September 5, 1863 Seward wrote to Adams: "The nation, after two years of experience in war has overcome the sense of fear, while its temper is highly excited. It believes that, though found unprepared, there are no limits to its ultimate ability to defend itself."98

On the same day Adams replied to Russell's note of the previous day. It contained plain prophecy of an early rupture of friendly relations between the two countries. He said that no nation retaining a proper degree of self respect could tamely submit to such indignities and added the ambiguous statement, "It would be superfluous in me to point out to your lordship that this is war."99

In the meantime, however, unknown to Adams, the decision had been reached by the government to detain the rams. On the third, Layard wrote to the treasury department desiring that they should be stopped. On the same day Russell wrote to Palmerston: "The conduct of the gentlemen who have contracted for the ironclads at Birkenhead is so suspicious that I have thought it necessary to direct that they be detained."100 While the decision was reached on the third, the matter was still under correspondence with the Lairds until the eighth, the government attempting to get conclusive evidence regarding the ownership of the vessel.101 The Solicitor-General concurred in the action as one of policy, though not of strict law. The two ironclads were finally purchased by the
Thus was the crisis in this controversy during the Civil War passed. Benjamin, Secretary of State for the Confederacy, grudgingly paid Seward this compliment:

"It is impossible not to admire the sagacity with which Mr. Seward penetrated into the secret feelings of the British Cabinet, and the success of his policy of intimidation which the world at large supposed would be met with prompt resentment, but which he with deeper insight into the real policy of that Cabinet foresaw would be followed by submissive acquiescence in his demands." 102

To a great extent the success was due to the tact and diplomacy of Charles Francis Adams. The change in the foreign policy of Great Britain during the Civil War was due to several factors. Affairs in Europe were far from reassuring. The feelings of Great Britain were deeply enlisted on the behalf of Denmark as against the combined force of Austria and Prussia. This, no doubt, had its weight in the American controversy. The Post wrote:

"We may be at war ourselves; we have a future to which to look forward, and we must keep in mind the precept which inculcates the necessity of doing to others as we would be done by......Ship-owners of Liverpool are considering what is to become of their property should we unhappily become involved in war, and innumerable Alabamas issue from neutral ports to prey upon British commerce." 103

Cobden in a letter to Gladstone pointed out what the consequences would be if "by entering a war with a maritime power we give American Lairds an opportunity of supplying a belligerent with Alabamas to prey on our commerce which they will certainly do." 104 He wrote in a similar vein to M. Arles Dufour. 105 In Parliament, Lefevre said:

"Only the other day when were supposed to be on the verge of a war with German, (I) saw it stated in the papers that some of the German States..... were prepared to adopt the principle of the Alabama and
to fit our privateers in neutral ports." 106

Public opinion was gradually turning in favor of the United States, especially after the Emancipation Proclamation was issued. This is shown by the memorials and resolutions sent to Parliament and to the American minister. 107

Recent successes on the battlefront helped to shape the opinion of governmental ministers. John Bright observed: "Attorney-general and Lord Palmerston spoke in language very different from that used last year. As the United States government shows signs of strength and of coming success, so our government becomes more civil. Their conduct is guided by some other principle than that of honour and magnanimity." 108 Cobden wrote:

"Lord Robert Cecil said, rather smartly, that our Foreign Office had a tariff of manners for other countries, regulated according to their power. He might have added that we have a different manner for the same Power, according as it may be weak or strong. It is only because the North has had great successes since July that the British Lion is becoming so lamb-like towards it." 109
Footnotes For Chapter I.

1. J. D. Richardson, Messages and Papers of the Presidents, Washington, 1896-1899, VI., pp. 13-14

2. J. D. Richardson, Messages and Papers of the Confederacy, Nashville, 1906, I., p. 60.


8. Ibid., Vol. 162, p. 1566.


10. Ibid., Vol. 162, p. 1631.


13. Ibid., p. 170.


16. Ibid., I., p. 82.

17. Ibid., I., p. 98.


25. Ibid., Vol. 177, p. 1634.
27. Ibid., II., p. 116.
31. Ibid., I., p. 40.
32. Ibid., I., p. 55.
33. Ibid., I., p. 53.
34. Ibid., I., p. 73.
35. Ibid., I., p. 65.
36. Ibid., I., p. 129.
37. Ibid., I., p. 129.
38. Ibid., I., p. 130.
39. Ibid., I., p. 135.
40. Ibid., I., p. 129.
41. Hansard, op. cit., Vol. 170, pp. 34, 60.
43. Ibid., I., p. 151.
44. Ibid., Ibid., I., p. 153.
30

45. Hansard, op. cit., Vol. 170, p. 34.
47. C. F. Adams, op. cit., p. 311.
48. Ibid., p. 314.
52. Hansard, op. cit., Vol. 170, pp. 60, 61.
53. Ibid., Vol. 170, p. 34.
54. Ibid., Vol. 170, p. 42.
55. Ibid., Vol. 170, p. 36.
56. Ibid., Vol. 170, p. 42.
63. Ibid., p. 321.

70. Ibid., II., p. 126.


72. Welles, Diary, op. cit., I., pp. 245-250.

73. Ibid., I., p. 431.


75. Ibid., I., p. 180.

76. E. D. Adams, op. cit., II., p. 131.


81. Ibid., p. 35, note.

82. Hansard, op. cit., I., p. 188.


84. Ibid., II., pt. 2, p. 407.


86. C. F. Adams, Lee at Appomattox and Other Papers, Boston, 1903, p. 53.


90. Ibid., I., pp. 354-357.


95. Ibid., I., p. 407.
96. Ibid., I., p. 414.
99. Ibid., I., p. 418.
100. Spencer Walpole, op. cit., p. 359, note.
105. Ibid., p. 297.
106. Hansard, op. cit., Vol. 175, p. 1483.
CHAPTER II

Early Negotiations in the Controversy

Claims against Great Britain for the destruction of American commerce were presented by Adams to the British Foreign Office as they arose. Adams was instructed to obtain two effects in his early negotiations: "first, due redress for the national and private injuries sustained; and, secondly, a prevention of such lawless and injurious proceedings hereafter." It was not the intention of the United States to harass Great Britain with repeated demands for immediate reparation, but it was evident that such flagrant cases as that of the Alabama could not be left to be allowed to pass without vigorous and continued protest. To our repeated claims Russell replied that, "much as Her Majesty's government desire to prevent such occurrences, they are unable to go beyond the law, municipal and international."

Although Russell disclaimed all responsibility for damages, Adams continued to present them, and he reported to Seward that "Lord Russell is becoming a little sensitive to the multiplication of the claims for damage done by the Alabama." Indeed, Russell had previously expressed his hope that Adams "may not be instructed again to put forward claims which Her Majesty's government cannot admit to be founded on any ground of law or justice."

Seward declined to cease presenting further claims, saying, however, "that the United States does not intend to act dogmatically or in a litigious spirit.... This government confesses very freely
that it does not regard the present hour as one that is entirely favorable to a calm and candid examination of the facts and principles involved." Nevertheless it looked forward to the period when the interests and passions aroused by the war have subsided and disappeared. He insisted on a policy of presenting claims for future use, if for no other purpose. The government of the United States declared itself disposed at all times to consider all the evidence and the arguments; and Seward said: "There is no fair and equitable form of Conventional arbitration or reference to which they will not be willing to submit." This is the first tentative proposal for arbitration made on the part of the United States to the British government. It was offered as a suggestion to be taken into consideration at some future period. It was made in October 1863, and no further reference was made to it until two years later.

At the close of the Civil War public opinion in the United States was in favor of forcing some kind of a settlement and was not at all disposed to be conciliatory or even reasonable. There were two other subjects of dispute, antedating the Civil War, which were to be adjusted if cordial relations were to be preserved. One was the San Juan water boundary between the island of Vancouver and the mainland, which had been described in indefinite terms in the treaty of 1846, and upon which no agreement had since been reached. The question at issue was whether the boundary should be the channel to the east or that to the west of San Juan Island.

The other question arose out of the decision of the United States to terminate the Canadian Reciprocity and Fisheries Convention of 1854. The twelve months' notice required by the terms of
the convention was given to England on March 17, 1865. The treaty was never regarded with favor, but the main impulse to the denunciation of it seems to spring from the general hostility to England.

A threat was made by Seward to terminate the Rush-Bagot agreement of 1817 establishing disarmament on the Great Lakes, but the demand was not pushed. 9

On May 20, 1865, Adams sent a note to Russell in which he maintained that British recognition of the insurgents was precipitate and unprecedented; that the effect of the act of recognition was to create belligerency on the part of the Southern states instead of acknowledging an existing fact, and he said that the appearance of the ocean belligerency on the part of the insurgents was in the shape of British built, equipped, and British manned vessels. He went on to say that the ministers, while they desired to check the abuses, refused to procure the additional power which would enable them to do so; that property belonging to the people of the United States had been destroyed as a result of the inaction of the British government; that the commercial marine of the United States had been driven from the sea; and that injuries were of so grave a nature as to constitute a valid claim for reparation and indemnification. 10

Russell maintained that he could not admit that the duties of Great Britain toward the United States were to be measured by the losses which the trade and commerce of the United States may have sustained. "The question is," he wrote, "whether in difficult and extraordinary circumstances the government of her Majesty have
performed faithfully and honestly the duties" which international law and their own municipal law impose upon them. He maintained that the United States government by the blockade had recognized belligerency first, and that the British government had performed its duty in the case of the Alabama.11

On August 30, 1865, when the war was over, Russell felt that "the time was favorable for a calm and candid examination of the facts and principles involved." He, therefore, recalled to Adams that the United States had expressed itself in favor of any "fair and equitable form of conventional arbitration or reference." In referring to this proposal, he said that there were but two questions by which the claim for compensation could be tested: The one is, Have the British government acted with due diligence, or in other words, in good faith and honesty, in the maintenance of the neutrality they proclaimed? The other is, Have the law officers of the crown properly understood the foreign enlistment act? Russell went on to say:

"Neither of these questions could be put to a foreign government with any regard to the dignity and character of the British Crown and the British nation. Her Majesty's government are the sole guardians of their honor. They can not admit that they have acted with bad faith in maintaining the neutrality they professed. The law officers of the Crown must be held to be better interpreters of a British statute than any foreign government can be presumed to be. Her Majesty's government must therefore decline either to make reparation and compensation for the captures made by the Alabama or to refer the question to a foreign state."

He added the conciliatory if rather ambiguous statement: "Her Majesty's government, however, are ready to consent to the appointment of a commission, to which shall be referred all claims arising during the late civil war, which the two powers shall agree to refer
to the commission."¹²

The correspondence was at once published in the Gazette, and the Times in commenting editorially on it admitted the desirability of a settlement, and construed the proposal of a commission as designed to embrace the Alabama claims. On the day following this editorial, there appeared an official correction in the Times, and in which the correctness of this implication was denied.¹³

Adams construed the note of Russell as declining the proposal of arbitration, but thought that his government would be willing to consent to the appointment of a joint commission to settle the claims.¹⁴

Seward accepted Russell's statement as implying that the Alabama claims were among those which the British government would not be willing to refer to such a joint commission. On this construction of the offer Seward declined it, but directed Adams to inquire whether this interpretation of Russell's note was correct. Assuming that it was, he authorized Adams to say that "what ever may have heretofore been or might now have been thought by us of umpirage between the two powers, no such proposition for arbitration of the existing differences will henceforward be insisted upon or submitted by this government."

Russell cleared up any doubt about the meaning of his offer when he wrote that the arbitration of the claims in the cases of the Alabama and other vessels would be inconsistent with the stand Her Majesty's government had always taken in the matter.
government would not be responsible for acts committed outside her jurisdiction. Now Seward definitely declined the offer to create a joint commission since the claims for the depredations of the Alabama would not be referred by Great Britain.

Russell was replaced by Clarendon in the Foreign Office in the autumn of 1865. Diplomatic exchanges proceeded without bringing the question nearer to a settlement. Clarendon closed the correspondence with the observation:

"No armed vessel departed during the war from a British port to cruise against the commerce of the United States; the British government have steadily and honestly discharged all the duties incumbent on them as a neutral power, and have never deviated from the obligations imposed upon them by international law."

The Fenian Movement which had for its object the establishment of an independent republic in Ireland added fuel to the hostility against England. The movement received enthusiastic support from the Irish population in the United States who took advantage of the widespread hostility to England to further their cause. Fenian conventions were held and a general convention even went so far as to elect a president for the Irish Republic. Raids were made into Canada by the Fenians. The United States government under the leadership of President Johnson took action to quell these enterprises, and received from the British government warmest acknowledgment of their promptness and sincerity in suppressing these measures. At the same time many Irishmen, who had been naturalized in the United States, returned to their native land to participate in the Fenian movement there, and often times got themselves into trouble with the British government. They were treated by the British government as
British subjects since the principle of expatriation was not recognized by that country. Many Irishmen who had become American citizens were imprisoned and tried for high crimes and misdemeanors.  

The politicians in this country did not hesitate to take advantage of the situation to get votes for themselves and their party. The Fenians felt aggrieved at the Government's attitude toward the raids into Canada. The Canadian and the British governments refused to release the prisoners, and it seemed to the Fenians that the American consuls were failing to maintain the rights of American citizens. They felt, too, that the attitude of Adams was very illiberal. The Radical opponents of the Johnson administration encouraged this dissatisfaction and ingratiated themselves with the Fenians.

Shortly before Congress adjourned in 1866, two resolutions were passed under the leadership of the Radicals. One requested the President to "urge upon the Canadian authorities and also the British Government the release of Fenian prisoners recently captured in Canada." The second urged Johnson "to cause the prosecutions instituted in the United States courts (against the Fenians) to be discontinued."  

Near the close of the same session, the Fenians wanted to rent a public building in Washington to hold a meeting. This privilege was denied them by the mayor of the city. A resolution was introduced by Wilson of Massachusetts from the Committee of Military Affairs which would authorize the use of the building for the Fenians. Reverdy Johnson of Maryland alone spoke against the resolution. He said the resolution would support people whose avowed
purpose was to make war against Great Britain. He insisted that our neutrality laws should be enforced. He indicated the motives of the supporters of the resolution when he said:

"Politicians who suppose or act as if they supposed that mere party is patriotism, who think....that temporary success is permanent fame, may lend themselves to encourage lawless proceedings, and may be found professing friendship for and alluring on an impulsive class who, smarting under the injustice they honestly believe has been done them and their ancestors in their native land, are tempted to violate our laws or disregard our national duty in order to obtain voters at a coming election."21

He thought that England would soon wake up to her default in preserving her neutrality and repair all the consequent damages.

Nye of Nevada replied that England had never shown any such magnanimity towards the United States, but had been exercising a defiant and impudent attitude. He said he clearly sympathized with the Irish struggle for freedom. He pointed out that the Fenians were joining the ranks of the Republicans since they discovered they had linked their political destinies on the wrong car. Howe of Wisconsin paid high compliments to the Irish character and patriotism. "Freedom," he said, "must be as dear a thing in Ireland as in America or elsewhere.... No man who loves equity and justice and fair dealing can fail to sympathize with Ireland and those who struggle for it." Wilson of Massachusetts said he never had any affection for England nor was ever awed by her splendor or charmed by her power. He said he felt the government had erred in enforcing the neutrality laws in the movement in Canada. Stewart of Nevada thought the time had come to take some action in Congress as expressive of the sentiment of the nation and show sympathy with the Irish
rather than with Great Britain which had treated us so badly. The resolution was passed by a vote of twenty yea; seven nay.

Robinson of New York made his appeal to the Irish vote by attempting to show that Adams had been lax in maintaining the rights of American citizens abroad. He went so far as to move impeachment proceedings against Adams.

In the cabinet, Stanton tried to enlist the Irish element against the administration on the Fenian question by having Seward issue a proclamation which should have come from the War Department. Stanton wanted to do nothing against the Fenians.

The deep sense of wrong in the minds of people in the United States found further expression by resolutions introduced by Chandler of Michigan. In December 1864 he introduced a resolution to list the damages and demand that they be paid with interest. He said, "No nation was ever so well prepared to demand compensation at the cannon's mouth as we.... I meant that these claims be paid and promptly paid, paid in full, and if they were not paid, the worse for the British government." In 1866 he said, "Great Britain has declined to pay such bills. She has decided that henceforth the rule of war shall be the torch—that the torch is to be evidence of neutrality. If she desires that in all future time, whenever she be at war, American citizens shall send forth fast sailing steamers with the torch to illuminate the seas with British commerce, so be it." He then presented a resolution to withdraw our minister from London and issue a proclamation of non-intercourse. He thought that if the resolution passed, the bill would be paid in thirty days. In July 1866 he offered another resolution to repeal our neutrality.
laws because he thought they were a farce as they stand. These resolutions would have required unanimous consent to be considered. Since they were objected to by Johnson and Sumner, they were tabled and not heard of again in Congress.28

In November 1867, Chandler presented a resolution to "maintain strict and impartial neutrality in the contest between Great Britain and Abyssinia, granting to ...... each belligerent the same rights and privileges upon land and water."29 He said he introduced this to retaliate for the treatment Great Britain offered us during the Civil War. He made a list of claims when the resolution was presented and said that England must abandon the continent to satisfy our wrongs. He made clear that the resolution was no joke as some in the Senate and the press seemed to think. This remark brought forth a brief debate. Anthony of Rhode Island agreed that we had suffered great wrongs. He explained that our rapid growth had made England jealous and that she wanted to destroy her competitor. He thought we should interpret the law as she had interpreted it. Our country, he said, should be developed and made attractive to capital and labor by building up our factories. This he thought would punish England. Nye said that a little lesson would not be lost on England. She had caused us much suffering. He criticized Sumner for not reporting resolutions on the matter from his committee. Reverdy Johnson said he could see no good that could come out of the resolution. He said it would involve us in a war with England. He agreed that England was wrong, but he thought the claims should be arbitrated. Sumner said the resolution was premature, and succeeded in having it tabled.30
In 1866, the House of Representatives unanimously passed a bill to modify our neutrality act of 1818. The bill was reported by Banks from the Foreign Relations Committee. He said the object of the bill was to scale the neutrality act of this country to the standard of the Foreign Enlistment Act of Great Britain. The bill proposed to repeal the provision of our previous law which prohibited the fitting out of vessels without the jurisdiction of the United States. It also proposed to repeal the section which prohibited the setting on foot expeditions against a foreign power. This latter provision was clearly made to favor Fenianism. Orth of Indiana supported Banks. He said that the existing law placed restraint upon our citizens which no other country placed on theirs. He said also, "We but follow the precedent she Great Britain set us."31 Conkling was in favor of a new law. He said that our painstaking foreign policy had never been reciprocated by other countries. Patterson of New Hampshire and Raymond of New York thought that the act needed careful consideration. Raymond proposed a joint committee of the House and the Senate to frame a new law, but his resolution was voted down. Patterson thought that Banks' proposition would put us at a disadvantage in settling the controversy. Banks insisted that our rights must be maintained. He asked Patterson what the people in the state he represented would say if he asked them whether it was time to defend the rights of this country against Great Britain. Patterson, who was of Irish descent and who had a large Irish constituency, replied that he was deeply interested in Irish liberty, but that actions in which great interests of the country were involved require great consideration. Banks said that he would rather go to the hearts of the people and take counsel of their courage and love
of country than to go to professional men for advice as to what action to take.  

When the bill came to the Senate, Wade asked that it be passed by common consent. Sumner moved that it be referred to the Committee on Foreign Relations. Sumner's motion prevailed and the bill was never reported out from the committee. On February 27, 1867 Sumner asked that the committee be discharged from further consideration of it. This was agreed to by the Senate. Sumner said later that if attempts had been made to force passage of the bill, he was willing to filibuster for five hours at least, and the remainder of the session if necessary.

Seward wrote to Adams: "There is not one member of this government, and, so far as I know, not one citizen of the United States, who expects that this country will waive in any case the demands that we have heretofore made upon the British government for the redress of wrongs committed in violation of international law."

Russell's refusal to discuss the question of liability for the Alabama claims was regarded as a mistake by many public men in England who sincerely desired to remove all grievance and ill feeling. It was perceived that the subject was one that involved more substantial questions of law and international conduct which the government might consider without abating anything of the dignity and character of the crown. Olyphant, a member of Parliament, who had traveled in the United States and noted a feeling of resentment in this country, wrote an article in the London Times in which he deplored the rejection by Lord Russell of all attempts to settle these natural difficulties by arbitration.

A change in the government brought a brighter outlook to those
who wished to promote friendly feelings between the two countries. Lord Stanley was considered friendly to the United States, and Sir Frederick Bruce was deeply impressed with the necessity of arriving at a better understanding than had theretofore existed concerning the claims of our citizens for indemnification for injuries sustained during the war. 39

Lord Derby in a speech in Parliament intimated that a proposition for the arrangement of the differences in respect to the claims would be favorably entertained by his government. Magazine articles began to appear in which it was confessed that the Palmerston government had not performed its duty in regard to the Alabama. All classes showed a growing disposition to reopen the question and settle it as early as possible. 40

In August Seward sent to Adams a list of claims and directed him to call the attention of Lord Stanley to them in an earnest but respectful manner. He said that the president felt that it became urgent that friendly relations be established between the two governments. He again charged that the premature and injurious proclamation of belligerency was the unfortunate cause of the present unfriendly feeling. He spoke of the "ruinous British warlike expeditions against the United States" notwithstanding remonstrance. The United States would, however, be willing to consider a comprehensive settlement of any claims whether a boundary, commercial issue, or a judicial regulation. 41

In answer to Seward's statements, Stanley replied that the state of war had been recognized by courts in this country; that it was impossible for the present government of Great Britain to
admit liability for the claims put forward; that they could not ac-
knowledge that their predecessors had been wrong; but that they
would not be disinclined to adopt the principle of arbitration pro-
vided that a fitting arbitrator could be found, and that an agree-
ment could be reached as to the points to which arbitration should
apply. He insisted, however, that the question of alleged premature
recognition of belligerency was one as to which "every state must
be held to be the sole judge of its duty." 42

To this proposal of Lord Stanley, Seward replied that while he
did not object to the remedy of arbitration, he declined to accept
it with the limitations which Lord Stanley proposed. Seward insis-
ted that the whole controversy should be submitted just as it was
found in the correspondence between the two governments without im-
posing restrictions, conditions, or limitations on the umpire, and
without waiving any principle or argument on either side. 43

Stanley objected to this unlimited reference since it would
bring in wider issues which Her Majesty's government could not ar-
bitrate. He suggested two conventions to be set up separately and
simultaneously; one to consider claims arising out of the depreda-
tions of the Alabama and similar vessels, the other to examine the
general claims of the citizens of both countries. This limited
reference was tendered upon the condition that the United States
waive the position that the Queen's proclamation was not justified. 44

Seward replied: "We can not give any preference to any other
claims over the Alabama claims. All claims must be referred to
one and the same tribunal." 45 The United States can not, he said,
waive the position they had constantly maintained from the
"that the Queen's proclamation of 1861 which accorded belligerent rights to insurgents against the authority of the United States, was not justified on any grounds, either of necessity or moral right, and therefore was an act of wrongful intervention, a departure from the obligation of existing treaties, and without sanction of the law of nations."

The proposed limited reference was therefore declined. The negotiations then ceased for a year. Progress had been made, for Great Britain had changed her attitude from an unwillingness to discuss the claims to an acceptance of a limited arbitration of them.

Seward wrote to Adams in January, 1868:

"Lord Stanley seems to have resolved that the so-called Alabama claims shall be treated so exclusively as a pecuniary commercial claim as to insist on altogether excluding the proceedings of Her Majesty's government in regard to the war from consideration in the arbitration which he proposed.

On the other hand, I have been singularly unfortunate in my correspondence if I have not given it to be clearly understood that a violation of neutrality.... and kindred proceedings.... [are] regarded as a national wrong and injury to the United States; and that the lowest form of satisfaction for that national injury that the United States could accept would be found in an indemnity, without reservation or compromise, by the British government."

Seward intimated further that other subjects were pending which might at any time become a matter of controversy and "that Her Majesty's government, if desirous to lay a broad foundation for friendly and satisfactory relations, might possibly think it expedient to suggest a conference, in which all matters referred to might be considered together and a comprehensive settlement attempted without exciting the sensibilities" that were understood to have caused that government to insist upon a limited arbitration in case of the Alabama claims. Adams was instructed to communicate these directions informally but with distinct understanding that the
United States are not proposing any new negotiations on the question.

Seward suggested to Thornton, the British representative in this country, that the naturalization question should be settled by a treaty similar to that which the United States signed with the North German states; that the San Juan boundary dispute be referred to the president of Switzerland; and that when all these things were done, the existing irritation would be so far relieved that "we can provide for adjusting the Alabama claims in a manner practically unexceptionable to either country."  

Reverdy Johnson was selected to succeed Adams on June, 1868. Johnson did not retain the good opinion at home which his countrymen had when he entered upon his mission. He chapened his office by an inordinate love of speech-making, and offended the patriotic masses at home by his convivial and apparently sympathetic association with the bitterest English partisans of the late rebellion. Bright said: "He means well, but has been indiscreet."  

Johnson was instructed by Seward to settle difficulties regarding naturalization questions on the basis of the treaty with the North German States; to attempt settlement of the Northwest boundary dispute; and if Great Britain seemed favorably disposed to settle the first two questions, Johnson was to sound out Lord Stanley on the subject of settling the claims upon the model of the commission of 1853.  

Johnson pursued his instructions with vigor, and by October protocols were signed to cover the first two questions. He then inquired whether he might sign a protocol covering the Alabama claims on the basis of the Treaty of 1853, with the King of Prussia.
as arbitrator. Seward directed that Johnson was to insist that
the treaty be based on that of 1853 without naming any arbitrator
in advance since the Senate would be sure to object to any arbitra-
tor so named. 54 Seward instructed Johnson to make haste with the
claims protocol. 55

The Treaty of 1853 provided that all claims which had been pre-
icted to either government since 1814 should be referred to two
commissioners, one appointed by the President and the other by the
Queen. The commissioners were to meet at London. Before making
any decisions, the commissioners were to name some third party to
act as arbitrator in any cases where the commissioners could not
agree. If the commissioners could not agree on who the arbitrator
was to be, each was to name a person. Whenever the commissioners
could not agree on a decision, one of the persons named as arbitra-
tor was to be chosen by lot for that particular case. The commis-
sioners were to consider all evidence which might be submitted by
their governments and to hear one person for each government who
would represent it as counsel. There was to be no appeal from the
decision of the arbitrator. 56

On November 10, 1868, Johnson and Stanley had completed a con-
vention for the settlement of all outstanding claims which had
arisen since 1853. This convention provided for the submission of
all claims of British subjects against the United States, and of
all claims of citizens of the United States against Great Britain,
to a tribunal of four commissioners, two to be appointed by each
government. The tribunal was to sit in London. The convention
also provided that the settlement of all claims except the Alabama
claims should be determined by a majority vote. In the case of the Alabama claims a unanimous decision would be required. If the commission should be unable to come to a unanimous vote, the claims should be referred to the sovereign head of a friendly state who should be chosen before any of the claims were considered by the commissioners. In respect to all other claims, if the commissioners were unable to come to a decision, an arbitrator was to be chosen by lot from two named by the commissioners, one being chosen by the representatives of each country. The convention further provided that neither government should make out a case to support its position touching the Alabama claims. Only the official correspondence already exchanged on the subject was to be laid before the commissioners or the arbitrator.  

Seward was disappointed with the convention. It made him "sick, quite sick," he said. "The whole thing was wrong, contrary to instructions, must be sent back." In the cabinet meeting Seward did not make clear what his objections to the convention were. President Johnson was anxious about the treaty. He said he desired to accept and send in the treaty. He did not know why this one was not in good shape. Welles said he thought that Seward had not been disposed to hasten a decision, and that he wished to prolong the negotiations. Seward had requested that the English submit to arbitration the question whether the British government had acted with due diligence.

Two days later Seward read to the cabinet his instructions which he proposed to send to Johnson. They contained his objections to the convention. The commission, he said, must sit in Washington,
not London, due to the highly disturbed national sensibilities. He objected that the Alabama claims were discriminated against, in that: first, they required the decision of the commissioners upon any of those claims to be unanimous; second, in that they prescribed a different mode for the choice of an umpire for the Alabama claims from that provided in respect of all other claims; and third, that in the case of the Alabama claims the choice of an arbitrator was limited to the sovereign head of a friendly state while in the case of other claims no such restriction was made. He objected also to the provision which prohibited additional argument and evidence. He thought that this limitation might excite distrust among the people of both countries.  

These instructions were not approved by the President nor any member of the cabinet. Welles and Evarts inquired whether claims for captures, destruction of property, and prizes were to be permitted. Seward avoided an explicit answer. Evarts thought that if such claims were permitted, the British claims against the United States would be larger than the claims of the United States against Great Britain. The President favored postponing a final decision in regard to the despatch, but Seward wanted an immediate decision. After the cabinet meeting the President had a consultation with Welles. The President wished to have the subject disposed of during his Administration or to have the Senate responsible for the delay. Welles advised the President that since the subject was in the hands of Seward, he would be dissatisfied if overruled by others and his views set aside. Welles thought it would be well under the circumstances to let Seward try further negotiations.
with Reverdy Johnson. Johnson followed this advice and directed Seward to send the despatch.

Johnson was surprised to learn that the treaty was not satisfactory. Before the changes recommended by Seward could be made another change was made in the British government. Stanley was replaced in the Foreign Office by Clarendon. Negotiations were immediately continued, and in a week's time Seward was able to tell the cabinet that the claims of Englishmen for property destroyed in the war and prizes condemned in our courts would not be included. The cabinet was much relieved.

Amendments were promptly made to the Stanley-Johnson convention, which, it was thought, would make the scheme acceptable in this country. On January 14, 1869 the new convention was signed. It provided for the settlement of all claims arising since the Treaty of 1853. There was to be a board of four instead of two commissioners as provided by the earlier convention. The Alabama claims were not expressly referred to, and the modes prescribed for the choice of an arbitrator was uniform to all claims. Arbitrators were to be chosen by lot in each particular case where the commissioners were unable to agree. The Johnson-Clarendon convention contained the further provision that if the commissioners, or any two of them, should think it desirable that a sovereign of a friendly state should be arbitrator in any claim, the commissioners should report the fact to their respective governments, who within six months would agree upon some such person to be invited to decide upon the claim. Before this arbitrator should be laid the official correspondence which had taken place between the two governments,
and any other written documents which were presented to the commissioners in respect to the claim.  

Seward was delighted with the treaty. He was especially eager to bring to a satisfactory solution the complications which arose while he occupied the State Department; but he soon realized the difficulties in the way of ratification. The administration of President Johnson was unpopular and he was to be in a few months replaced by Grant. Seward wrote to Johnson, "Political adversaries, finding your negotiations crowned with complete success, will cavil at the several treaties which you will have made, on the ground that they fall short of what might and ought to have been secured."  

"The confused light of an incoming administration was spreading itself over the country, rendering the consideration of political subjects irksome, if not inconvenient." It was felt by some that the subject properly belonged to the new Administration. Little favor was shown towards the treaty in the cabinet. Welles and McCulloch were outspoken in their opposition, but the President threw his support to Seward and submitted it to the Senate.  

The convention was discussed in executive session and was rejected by the vote of 54 to 1. The sensational feature of the debate was Sumner's speech. Although delivered in executive session, it was released for publication by authority of the Senate. This speech is of importance because of the relation it bears to subsequent negotiations. It put obstacles well nigh insuperable in the way of any future approach to an adjustment.  

In Sumner's case against England, he held that country liable on three grounds: first, in the concession of ocean belligerency;
secondly, in the negligence which allowed the evasion of the ships in order to enter upon hostile expeditions against the United States; and thirdly, in the open complicity with which she gave welcome to Confederate cruisers in British ports. He revived the national claims which Seward had dropped. He estimated the direct damages or individual losses at $15,000,000. "But this," he said, "leaves without recognition the vaster damage to commerce driven from the ocean, and that other damage, immense and infinite, caused by the prolongation of the war, all of which may be called national in contradistinction to individual." The indirect damage to American commerce was put by him at $110,000,000, which he said was "only an item in our bill." He declared that the rebellion had been "Suppressed at a cost of more than four thousand million dollars," that through British intervention the war was doubled in duration, and that England was "justly responsible for the additional expenditure." He added, "To my mind our first duty is to make England see what she has done to us. How the case shall be settled, whether by money more or less, by territorial compensation, by apology, or by an amendment of the law of nations, is still an open question; all may be combined." 71

By the almost unanimous vote against the convention, taken immediately after Sumner's speech, the Senate indorsed his views and by releasing the speech for publication proclaimed them to the world. Adams said of that speech that its practical effect was to raise the scale of demands of reparation so high that there was little chance of negotiation left, unless the English had lost all their spirit and character. 72 John Bright said: "The rejection of
the claims convention by the Senate is a great misfortune, and Charles Sumner's speech, so hostile and vindictive, has caused much pain and disappointment. The London press made the speech the topic of hostile criticism, and public men in England were unanimous in opposition to Sumner's views.

In this country the speech met with hearty approval of the Senate. Anthony, who was in the chair, said, "That was a great speech." Other senators congratulated Sumner. Grant's views conformed with those of Sumner, and after the speech Grant thanked and congratulated Sumner. Welles spoke of the "manly vigor and true statesmanship" which the speech displayed. The Republican press applauded the speech loudly. Indeed, it would have been too much to expect that a treaty submitted by the Johnson administration would be acted upon favorably by a Congress which had been selected in November with great majorities for Grant. The fault of the treaty was that it offered absolutely nothing and might have left matters in worse condition than they previously were. Sumner wrote to Lieber: "I have made no demand, not a word of apology, not a dollar! nor have I menaced, suggested, or thought of war.... My object was simply to expose our wrongs as plainly but as gently as possible.... To my mind our first duty is to make England to see what she has done to us."

Lord John Russell did not regret the action of the Senate in rejecting the Johnson-Clarendon convention. He wrote: "The fault of the convention....was..... that it would have been open to the United States to contend that the conduct of the British government had been throughout wanting in good faith, and that an arbiter
chosen by lot, perhaps Mr. Sumner, or a foreign power or State should decide upon points deeply affecting the honor of the British government."
Footnotes for Chapter II.


6. Ibid., I., p. 420.

7. Ibid., I., p. 448.


12. Ibid., I., pp. 536-545.


15. Ibid., I., pp. 565-566.


17. Ibid., p. 630.


22. Ibid., pt. 5, pp. 4292-4298.
24. E. T. Welles, Diary of Gideon Welles, Boston, 1911, II., pp. 519-520.
28. Ibid., pt. 5, p. 4024.
30. Ibid., pt. 1, pp. 85-86.
32. Ibid., pt. 5, pp. 4194-4197.
34. E. L. Pierce, Memoir and Letters of Charles Sumner, Boston, 1911, IV., pp. 291-292.
36. Ibid., I., p. 67.
39. Ibid., I., pp. 147, 166.
41. Ibid., I., p. 177.
42. House Ex. Doc., No. 1, pt. 1, 40 Cong., 2nd Sess., Washington, 1867, I., p. 188.
43. Ibid., I., p. 54.
44. Ibid., I., pp. 192, 211.

46. Ibid., I., pp. 179-180.


48. Ibid., I., p. 183.


52. Ibid., I., pp. 357, 361.

53. Ibid., I., pp. 363-364.

54. Ibid., I., p. 364.


59. Ibid., III., p. 469.


63. Ibid., I., p. 390.

64. Welles, Diary, op. cit., III., p. 474.


67. Lee at Appomattox, op. cit., p. 94.


72. Lee at Appomattox, op. cit., p. 103.
75. Ibid., IV., p. 386.
76. Ibid., IV., p. 389.
77. Welles, Diary, op. cit., III., p. 579.
Chapter III.

The Fish-Rose Convention

After the rejection of the Johnson-Clarendon convention by the almost unanimous vote of the Senate, the Federal Government took up the work anew under President Grant. President Grant was a military man, and, according to Sumner, he was known to feel intensely on the Alabama question. At the close of the war he had expressed himself in a way hostile to Great Britain. Sumner said of him: "He (Grant) cared little whether England paid our little bill or not; upon the whole, he would rather she would not, as that would leave the precedent of her conduct in full force for us to follow, and he wished it understood that we should follow it." It was known that Grant had heartily approved of Sumner's speech on the Johnson-Clarendon Treaty, and his views carried great influence throughout the country.

Fish, the Secretary of State, being new in his position, was inclined at first to defer as far as possible to Sumner. He, of course, looked to Grant as the head of the administration and always gave him his steady loyalty. Inexperienced in foreign affairs as he was at first and inclined to be distrustful of himself on questions of international law, the Secretary seemed to have turned to Caleb Cushing most frequently for advice. Sumner, by virtue of his long experience as chairman of the Committee on Foreign Affairs, believed himself, of all the persons connected with the administration the best informed on questions of foreign relations. His views, it was well known, were far
from conciliatory. At the beginning of the new administration, his influence in the Senate and in the country was great. What he thought was certain to have an important bearing on the outcome of any negotiations.

Early in the administration discontent and dissatisfaction were manifesting themselves among the leaders of the party. Welles observed that Sumner was wrathful and indignant at Grant's course in making appointments. Sumner complained among his friends that he was offered nothing nor even consulted in regard to the Cabinet, appointments abroad, or as to the policy which the administration should pursue. Indeed Sumner had not approved of Grant's nomination as president, though he campaigned for him. Sumner early incurred Grant's disfavor when the latter wished to appoint Washburne as Secretary of State as a compliment, and again later when Grant wished to have the appointment of A. T. Stewart for Secretary of Treasury confirmed. Stewart was engaged in business and his appointment would have been a violation of an early law which provided that "no person appointed to any office instituted by the act shall directly or indirectly be concerned in carrying on the business of trade or commerce." Grant wished congress to exempt Stewart from this provision. Sumner led the opposition in the Senate to setting the law aside. By increasing this animosity Fish was later able to influence Grant to support negotiations of a conciliatory nature with Great Britain.

Motley, a close friend of Sumner, was nominated as minister to England. Sumner had recommended Motley's appointment at least twice. Sumner's biographer maintains that the appoint-
ment was not made because of Sumner's influence. Partisans of
Fish and Grant said that the appointment was made only on Sumner's
insistence, since Motley was scheduled to return to Vienna, where
he had served during the previous administration. The truth
doubtless lies between these two statements, and the appointment
was probably made as a concession to Sumner in order to maintain
harmony with the party.

The preparation of the instructions for Motley again brought
out the difficulty of reconciling Sumner's views with the general
policies of the administration. When it became necessary to make
a statement in regard to the proclamation of belligerency, some­
thing must be said which would not clash with the president's
desire to recognize the Cuban insurgents as belligerents. On
the other hand the statement must contain nothing which might
impair Sumner's position that the recognition of the Southern
States as belligerents during the Civil War had converted a mere
rebellion into a prolonged war.

The Cuban insurrection had inspired considerable sympathy
in our country especially in New York. Appeals were made to the
government of the United States to aid the Cubans. Those who
sympathized with the Cubans had enlisted the support of Rawlins,
the Secretary of War, who had great influence over Grant. Rawlins
had early converted Grant to his views and the President desired
to aid the Cubans. Such action would have been in direct conflict
with the attitude which the United States government had taken
with reference to the British proclamation of an earlier period.

Sumner was consulted in preparing the instructions. He sug-
gested that Motley prepare a statement of his views concerning
the controversy with England. Motley's statement was rejected by
Fish without any protest from Sumner. Sumner also prepared a
memorandum which he proposed as the basis for Motley's instructions.
In it he said that it was not advisable at present to attempt any
renewed negotiations. He then stressed the wrong which the people
of Great Britain had committed by the proclamation of 1861. The
sense of wrong he said had now been declared gravely, solemnly,
and without passion. He said also that the sense of wrong was not
to be expunged by a mere money payment to reimburse our losses at
sea. This statement hinted strongly at the annexation of Canada
as a method of reparation. He said that the time would come when
Great Britain would see her fault, and be disposed to confess it,
and reparations of some sort would naturally follow. Obviously
Sumner's idea was to delay a settlement as long as possible. Fish
now prepared his first draft of the instructions, in which he avoid­
ed mentioning the proclamation of belligerency as a point in our
case against England. Sumner stood strongly in his position against
the waiver of this point. As soon as he learned of the substance
of this first draft he became highly excited and rushed to Ban­
croft, Davis and exclaimed: "Is it the purpose of the adminis­
tration to sacrifice me -- me, a senator from Massachusetts?"
Two days later he went to Fish, still highly excited and threaten­
ed he would make Motley resign. To this Fish replied, "Let him
resign. I will put a better man in his place." This put Summer
in a more reasonable frame of mind, and he prepared another state­
ment of the case in which he was less positive and exacting in
his views, but this statement he withdrew as being inadequate.
He wrote to Motley: "Your instructions can not reach you until Tuesday. I have called in C. C. (Caleb Cushing), who has just come from the secretary. The first draft was fatal -- very. I protested, and wrote a substitute. Last evening I dined at Fish's."

The next morning he again wrote to Motley: "I wrote a note to Fish withdrawing my draft, and at the same time expressing my dissent from the draft he proposed. My purpose was to leave him make his own statement, for which I should in no way be responsible." This note pointed to the coming conflict which would ensue if the negotiations were not carried out according to the views of the Chairman of Foreign Relations Committee.

What occurred when Fish dined with Sumner is not in evidence, but evidently the two disagreed. When Fish received the note which was referred to above, he wrote to the Senator:

"General Cushing called on me...... as I understood on your suggestion.... I had determined to ask to introduce your suggestions.... I am sorry to receive your note this morn­ing. I think that you are scarcely doing justice to me or to the Administration. We have but one object, and differ only as to some incidents, -- they may be of more importance than I suppose, or of less than you think, but can hardly be of sufficient importance to break up an effort at negotiation or to break down the Administration. I trust, therefore, that you will reconsider the intimations of your letter.""ll

That Sumner did reconsider is shown by the fact that when Cushing drew up a compromise statement during a conference with Fish, Sumner expressed his approval of them. He then said that he did not believe that our foreign policy would justify a more vigorous statement at that time.

In preparing the instructions to Motley, Fish had three objects in view. First, he wished to show that the rejection of the claims convention by the Senate was not an act of unfriendliness.
Secondly, he wished to suggest a suspension of negotiations until the prevailing irritation should subside. Thirdly, he wished to make clear that the government of the United States did not base its claims on the British recognition of belligerent rights to the Southern States. Of these points the last was the most important as well as the most troublesome. This point vitally affected the course of future negotiations, and also because it involved a sovereign right which it was the interest of all nations to preserve. Furthermore, the United States now wished to be in a position to exercise that right in the insurrection prevailing in Cuba. It was this third point which would bring the administration into conflict with those who, like Summer, considered the concession of belligerency a ground for claims against a government.

The views of Fish on the question of belligerency were expressed in the instructions as follows:

"The President recognizes the right of every power, when a civil conflict has arisen within another state, and has attained a sufficient complexity, magnitude, and completeness, to define its own relations and those of its citizens and subjects toward the parties to the conflict.

"The necessity and propriety of the original concession of belligerency by Great Britain at the time it was made have been contested and are not admitted... The President regards that concession as a part of the case only so far as it shows the beginning and the animus of that course of conduct which resulted so disastrously to the United States. It is important in that it foreshadows subsequent events.

"There were other powers that were contemporaneous with England in similar concession, but it was in England only that the concession was supplemented by acts causing direct damage to the United States. The President is careful to make this discrimination, because he is anxious as much as possible to simplify the case, and to bring into view these subsequent acts, which are so important in determining the question between the two countries."

In regard to the future course of the negotiations, Fish said:
"This government, in rejecting the recent convention, aban-
dons neither its own claims nor those of its citizens, nor
the hope of an early, satisfactory, and friendly settlement
of the questions... The time and circumstances under which
the convention was negotiated were very unfavorable to its
acceptance either by the people or the Senate. The nation
had just emerged from its periodical choice of a Chief Magis-
trate, and having changed the depository of its confidence
.....looked with no favor on an attempt at settlement of the
great and grave questions depending by those on the eve of
retiring from power without consulting..... the views of the
ruler recently intrusted with their confidence....(The Sen-
ate's) refusal can be no subject of complaint, and can give
no occasion for dissatisfaction or criticism. ...... A sus-
pension of the discussion on these questions for a short
time... will allow the subsidence of any excitement or irri-
tation growing out of the negotiation or of the rejection of
the treaty -- will enable the two governments to approach
the more readily to a solution of their differences. ......
(The President) hopes that when the question shall again
be considered it may comport with the views of Her Majesty's
Government to embrace within the scope of the negotiations
some agreement by the two governments, defining their re-
spective rights and duties as neutrals."14

In communicating these instructions to Lord Clarendon,
Motley very decidedly departed from their spirit. His tone
showed that he was inclined to follow Sumner's reasoning on the
question. He said that he was fully sensible of the gravity of
the questions involved and of the contingencies that would de-
pend upon the negotiations concerning such burning questions as
those comprehended under the simple title of a convention for
the settlement of all outstanding claims. These questions he
said hinged on great principles of law and involved the welfare
of nations and the contingencies of war and peace. Of the re-
jected convention he said: "(It would have) covered up a griev-
ance which most certainly would have continued to rankle and to
fester beneath the surface and (those wounds) must be probed
before they could be healed." In regard to the recognition of
belligerency, Motley said that the President recognized the right
of a sovereign power to issue proclamations of neutrality under
proper conditions, but that such measures must always be taken with a full view of the grave responsibilities assumed. In conclusion Motley said that he meant to do his best to bring about better relations, but he thought the path was surrounded by perils. He said that enlightened statesmen like those of England would not forget that grave and disastrous misunderstandings and cruel wars resulted as often in history from passionately excited emotions and injured feelings as from cabinet deliberations and political combinations. He said he sometimes confessed to a despondent feeling as to the possibility of the two nations ever understanding each other.\textsuperscript{15}

Grant was angry when this report was received in Washington. Such an interpretation as Motley gave to the Queen's proclamation would have supplied Spain good grounds for action in the event that the President issued the Cuban proclamation. Grant did not want any such statement endorsed by his administration, and he requested Fish to recall Motley. Fish, wishing to avoid an open breach with Sumner, persuaded Grant to allow Motley to continue at his post, but with the understanding that any further negotiations in regard to the Alabama claims would be conducted in Washington.\textsuperscript{16}

During June 1869, the newspapers were circulating rumors that there were differences between Sumner and Fish. Sumner feared the effect of such reports on our case with England. He wrote to Cushing, "There should be union at home."\textsuperscript{17} Fish and Sumner agreed that something must be done to stop the rumor. With the consent of Sumner, Fish sent a dispatch to the press in which he said that Sumner had been consulted while the instructions
were being prepared, and that Sumner had approved of the course which Motley was directed to pursue. Fish said further that Sumner thought that the instructions were as firm and as vigorous as our foreign policy would justify at the time. He concluded by saying: "At no time has Mr. Sumner been in closer accord or in more direct sympathy with the policy of President Grant than at present." Cushing reported that that statement had its desired effect, and that the comments in the press had ceased.

Throughout the summer of 1869 Sumner corresponded frequently with Motley. A letter of June 15 stated his position on the controversy with England. He said:

"England must listen, and at last yield. I do not despair seeing the debate end—(1) In the withdrawal of England from this hemisphere; (2) In remodelling maritime international law. Such a consummation would place our republic at the head of the civilized world.""18"

During the same summer and for a year thereafter, Fish attempted to start negotiations on the basis of Sumner's view in regard to Canada. The same views were endorsed by Grant. On June 11 Thornton attempted to obtain a definite statement of the basis upon which the American government was prepared to resume efforts towards a settlement. The exchange of views took a form which remained virtually unchanged for many months. Sumner reported what Fish had told him. He said to Motley:

"Fish said to him (Thornton) that our claims were too large to be settled pecuniarily, and sounded him about Canada, to which he (Thornton) replied that England did not wish to keep Canada, but could not part with it without the consent of the population."20

In later conversations with Thornton, Fish continued to mention the question of Canada. Thornton always replied in a similar vein: "The Canadians find fault with me for saying so openly as
I do that we are ready to let them go whenever they shall wish; but they do not desire it." 21 Fish had even suggested to Thorne-
ton that he ascertain whether Her Majesty's Government would offer any objection to a free vote being taken in Canada to de-
cide whether the people desire to join with the United States or not.22

In a cabinet meeting in November 1869, Grant suggested the possibility of Great Britain quitting Canada and intimated that in that event we should be satisfied with the payment for losses actually sustained, combined with a settlement of satisfactory principles of maritime law. He was unwilling to adjust the claims until Great Britain was ready to give up Canada. Certain cabinet members assured Grant that Great Britain looked up on Canada as a weakness. Grant replied, "If that be so, I would be willing to settle at once."23

Early in the summer, Sir John Rose, a member of the commission which had been appointed to settle the claims of the Hudson's Bay and Puget Sound companies against the United States arrived in Washington. He was in the confidence of Lord Clarendon and the real object of his visit was to sound the government on the sub-
ject of the Alabama claims. Fish had already intimated that the views as expressed by Sumner on the annexation of Canada were not in accord with his own views as to the best means of arriving at an agreement.24

On the 26th of June, Cushing wrote to Rose saying that he had seen Fish and had arranged for a meeting of the two. Cushing wrote to Rose: "I am not sanguine of immediate conclusion of..... a treaty as either you or I might desire, but I think the time
has arrived to commence, trusting that discretion, patience, and
good-will on both sides may eventuate, in this important matter,
satisfactorily to the two governments."\(^{25}\)

On the 8th of July Rose met Fish and on the next day at din-
ner, the first interview took place. Already Fish expressed a
willingness to depart from Sumner's demands. Bancroft Davis, the
assistant secretary of state, made this record of the interview:

"Mr. Fish said that the time had not arrived; that the
British people were too much irritated by the rejection
of the treaty, and by Mr. Sumner's speech, and that our
people were too much carried away with the idea of paying
off the cost of the war with the amount of damages that
Mr. Sumner's speech had made out against Great Britain.
He said that when the excitement subsided, the appointment
as special envoy of man of high rank, authorized to express
some kind word of regret, would pave the way for a settle­
ment; and he outlined to Sir Sohn the exact scheme for
settlement which was adopted a year and a half later."\(^{26}\)

Sumner's views at this same time were not so conciliatory.
On July 19 he wrote to Cushing:

"There is a lull in our relations with England, which.....
will continue until broken by Congress.....It seems best
that our case....with all details, should be stated to
England without any demand of any kind. England must know
our grievances before any demand can be presented. When
this is comprehended, a settlement will be easy."\(^{27}\)

Sumner visited Fish in August, 1869 and advised him to renew
the discussion with the British government by a fresh and vigor­
ous statement of our case. Sumner thought that unless something
were done before Congress assembled, there would be dissatisfac­
tion in that body, and there might something occur which would be
unfavorable to a peaceful settlement. Butler had hinted to him
that such an occurrence would be quite likely.\(^{28}\) In a letter to
Motley Sumner said:

"I.....advised (Fish) strongly to present our case before
the meeting of Congress..... Or there would be dissatisfac­
tion. I think I made an impression on him, for he invited
me to prepare such a paper. This I declined...... I am
pained at the attacks I fear (Fish) must encounter. A vig­
orous presentment of our case will take from critics one of
their weapons."29

In a private letter Fish again expressed his views on the
question of a settlement with England. These views again show the
wide divergence from those of Sumner. Fish wrote:

"I should esteem it the greatest glory, and greatest happi­
ness of my life, if it could be settled while I remain in
official position; and I should esteem it the greatest
benefit to my country to bring it to an early settlement....
I want to have the question settled, I would not if I could,
 impose any humiliating condition on Great Britain, I would
not be a party to anything that proposes to 'threaten her',
I believe that she is great enough to be just; and I trust
that she is wise enough to maintain her own greatness. No
greatness is inconsistent with some errors.... Mr. Bright
thinks she was drawn into errors--so do we. If she can be
brought to think so, it will not be necessary for her to say
so--at least not very loudly. It may be said by a defini­
tion of what shall be Maritime International Law in the
future, and a few kind words. She will want in the future
what we have claimed. Thus she will be benefited--we satis­
fied."30

Sumner, in an address delivered before the Republican State
Convention, on September 22, 1869, restated his views on the re­
cognition of belligerency, and went on to urge the cession of
Canada as compensation for our claims. He said that the union of
Canada with the United States was an appointed destiny, but that
it must come about be peaceful means and with the consent of the
Canadian people.31 In view of a later statement made by him,
this last point is very significant.

By the autumn of 1869 the waning fortunes of the Cuban in­
surgents and the death of Rawlins, the chief supporter of the
Cubans, had pushed that issue into the background of the adminis­
tration's foreign policy. It was now possible for the Secretary
of State to state Sumner's view on the question of belligerency
which was also Grant's position. Fish took Sumner's advice of the month before, and with the help of Cushing, he wrote in the instructions of September 25, a vigorous statement of our case without any demand. These instructions adopted more of the views of Sumner as the policy of the administration, even including the "indirect damages." Lord Clarendon remarked that it was Sumner's speech all over again. In these instructions Fish said:

"The President is not yet prepared to pronounce on the question of the indemnities which he thinks due from Great Britain to the individual citizen of the United States for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain. Nor is he now prepared to speak of the reparation which he thinks due by the British government for the larger accounts of national injuries it has inflicted on the United States. Nor does he attempt now to measure the relative effects of the various causes of injury; as, whether by the untimely recognition of belligerency; by suffering the fitting out of rebel cruisers; or by the supply of ships, arms, and munitions of war to the Confederates. All these subjects are for future consideration.

"At the present stage of the controversy the sole object of the president is to state the position of the United States in the various relations and aspects of this grave controversy with Great Britain. It is the object of this paper... to state calmly and dispassionately... what this government seriously considers the injuries it has suffered. It is not written as in the nature of a claim, for the United States now make no demand against Her Majesty's Government on account of the injuries they feel they have sustained."

Motley was instructed to read these instructions to Lord Clarendon but not to leave a written copy unless it was particularly requested by him.

In the autumn of 1869 Rose was again heard from. He said that he had had conversations in more than one quarter in which he conveyed his belief that a kindly word, or an expression of regret, such as would not involve the acknowledgement of wrong, was likely to be more potential than the most irrefragable
reasoning on principles of international law. Rose thought that Motley had tried not to be too friendly so as to avoid the error which Johnson had made. He thought that Motley was unsatisfactory as a representative. He wrote to Fish: "If I am right in my impression that you would prefer Washington and a new man, and you think it worth while (for) me to repeat that suggestion as one from myself in the proper quarter, a line from you will enable me to do so." 34

After the British had received Fish's instructions of September 25, Thornton was instructed to get an intimation of what would be accepted by the United States government as a settlement for the claims. Both Fish and Thornton agreed that it would be unwise to attempt any negotiations unless there was reasonable assurance that an agreement was reached. Fish was at the time not prepared to give a definite statement since, as he wrote to Summer, he was not willing to do any thing until he had a chance to learn what the Senate and the Committee for Foreign Affairs would agree to. Fish was anxious to know just what the Senate and Sumner would accept, and he wrote to the Senator on November 16: "Will you either note what you think will be sufficient to meet the views of the Senate and of the country, or will you formulate such proposition? Let me hear from you as soon as you can, and I should like to confer with you at the earliest convenient time." 35

During the summer of 1869 another situation was developing which was to have important influence on the negotiations with England. Grant became interested in San Domingo and made the
annexation of that island a policy of his administration. Civil war was being waged on the island, and the leaders of one of the factions had enlisted Grant's support. Grant sent Babcock, his private secretary, to the island to inquire into the resources, and the social and political conditions. Two warships were also sent to the island. Backed by this show of force, Babcock signed with authorized agents a protocol stipulating that for $1,500,000 to pay the debt of the island, the agents would turn the country over to the United States. It was also stipulated in the protocol that Grant would use his private influence in the United States to secure the acceptance of the scheme in that country. When the protocol was brought up in the cabinet, no member offered to approve of it. Fish wished to resign, but upon Grant's insistence he reconsidered, and reluctantly gave his support to the enterprise with the understanding that Grant would give Fish a free hand in other matters relating to the State Department. Babcock was sent to the island again and negotiated two more treaties, one for annexation and the other for the lease of the Bay of Samana. In order to get the treaties before the Senate, Grant called at Sumner's home to discuss them. When the President left, Sumner told him: "Mr. President, I am an administration man and what ever you do will always find in me the most careful and candid consideration." Grant understood this statement as a pledge of support while Sumner meant just what he said—that he would give the treaties most careful and candid consideration.

Fish did not intend to yield to Great Britain at all points. Through his agreement with Grant in the San Domingo affair, Fish
was able to induce the President to make a statement in his annual message in December 1869 which would allow the secretary to maintain the case against Great Britain on the basis of his first instructions to Motley. The President said that while the Government maintained it should be its own judge when to accord the rights of belligerency to the Cuban insurgents, it did not believe that they had yet developed a *de facto* political organization sufficient to justify a recognition of belligerency. In this message Grant also spoke of the indirect injuries which resulted from the course pursued by Great Britain during the war. Speaking of these injuries in reference to the Johnson-Clarendon Convention he said:

"The convention treated them simply as such ordinary claims, from which they differ more widely in their character than in the magnitude of their amount, great even as is that difference. Not a word was found in the treaty, and not an inference could be drawn from it, to remove the sense of the unfriendliness of the course of Great Britain...."

He said he believed that the rejection of the convention by the Senate was a step in the direction of a perfect and cordial friendship between the two countries.

In January the San Domingo treaties were submitted to the committee. On March 15 the committee reported adversely, only Morton and Harlan being in favor of annexation. Grant suspected the adverse report was due to Sumner's influence. He felt that the Senator had been faithless, for Grant had understood him to promise support to the treaty. Sumner insisted that he had merely promised to give the treaty his careful and candid consideration, which he did. Harlan, who favored annexation, later made a statement in the Senate, and which went uncontested, that Sumner
had withheld his opinions of the treaty when it was discussed in the committee so that he might not unduly influence the judgment of his associates. Sumner felt all along that the treaty would never receive the consent of the committee. Such was the statement which he made to the press in 1871. Grant's feelings were described by Forney in a letter to Sumner February 22 while the treaty was still before the committee: "The President had evidently determined to stand by the Republican Party and to strike down the Republican statesmen. The idea has got abroad here that he has marked you out for sacrifice..."

When the treaty was discussed in executive session, Sumner spoke against it. Morton wrote in a private letter:

"In the progress of the discussion on the treaty Sumner became much excited and talked freely against the manner of its negotiation and bitterly assailed Babcock in a way which could only reflect on the President. Charges of fraud and corruption were sent from here (Washington) over the country which the President believed emanated indirectly from Sumner."

Finally Fish became assured that the treaty could not pass the Senate. A private count of the likely vote showed that the requisite two-thirds could not be obtained in favor of it. Fish urged Sumner, who, as chairman of the committee, could control the situation, to bring the matter to a vote and have it disposed of. This Sumner refused to do.

Fish hinted at Sumner's appointment as minister to England in Motley's place if he would change his attitude. Grant, it was known had such a scheme in mind to get rid of Sumner in the Senate, but he declared he would make the appointment only with the understanding that the Senator should be removed from his new
office as soon as his name should be confirmed. Such schemes were not successful. The vote was taken in the Senate on June 30, and the treaty was rejected by a vote of 28 to 28, two-thirds being necessary to ratify.

The breach between Grant and Sumner was now definitely marked. Motley, who was considered unsatisfactory as a minister in London, was asked to resign the day following the rejection of the treaty. All but the routine duties had been taken from him as a result of his departure from instructions in the summer of 1869. Now that the administration rupture had occurred, there was no longer any need to allow Motley to remain at his post. However, Motley refused to resign, and was recalled later in the year.

The material results of this incident as it is related to the controversy with Great Britain are that it gave Fish an opportunity to carry his Cuban policy through and keep his position on the belligerency proclamation uncompromised. Furthermore, it assured him of the President's support in putting through a settlement with Great Britain over any difficulties which Summer might raise. President Grant, he was sure, would favor anything which Summer might now oppose.

Fish was steadily increasing in his influence over the President. During the summer of 1870 the Cuban affair again came up to perplex the administration. Lobbyists were active in Washington and promises of Cuban recognition were secured. Cuban bonds, the value of which was contingent upon the action of this government, were distributed. Pressure was brought to bear on the House Committee on Foreign Relations whose chairman was Banks. It
was well known that this committee planned to take action favorable
to the Cuban independence. Fish had made every effort during the
preceding months to set the administration right on this question.
He had prepared a message for Grant, but the latter had refused to
let it go out. When action by the House seemed imminent, he pre­
pared another report on the subject which was the basis of the presi­
dent's message to Congress. With the aid of Hoar, Cox, and Robeson,
President Grant was induced to approve it but with great hesita­
tion and with much reluctance.⁴⁵ The message was issued just the
day before the committee was to report. In this message the Presi­
dent was made to repeat what he said about Cuban belligerency in
December 1869. He then exposed the plot of the Cubans, pointing
out that they were speculating on their ability to involve the
United States in the contest. He made clear what dangers were in­
volved in supporting such a revolution.⁴⁶

Banks introduced the majority resolution which favored re­
cognizing the insurgents. Orth of Indiana introduced a minority
report opposing such action. In the debate which followed the
President and the Secretary of State were severely criticized for
influencing legislation. Fish particularly was made the object of
abuse, but he won a complete victory for his policy. The minority
resolutions were adopted by the House in an amended form so that
they were a mere authorization to protest against the barbarous
conduct of hostilities. In the Senate, Sumner opposed the admin­
istration and spoke of the "unnatural jurisdiction in the New
World" and spoke of similar aspirations for independence in the
colonies of Great Britain. The resolutions were not brought to
a vote in the Senate. Sumner's influence was thus much lessened and Fish was vindicated in his stand in the Cuban question.

Foreign affairs in Europe during 1870 were far from reassuring for Great Britain. The international situation was becoming complicated and the future was uncertain. The influence of the Franco-Prussian War upon the progress for settlement was indicated by a response of Thornton when Fish had once more mentioned Canadian independence as a condition. Thornton said: "Europe may at any moment be convulsed; and if England became involved, it would be impossible to prevent retaliation, and the ocean would swarm with Alabamas. England would then be compelled to declare war." Fish replied that commerce destroyers would be fitted out in American ports by England's enemies in spite of anything the Government could do to prevent it. Notwithstanding this gloomy outlook, the British government showed no signs of relinquishing Canada.

During the summer of 1870 the idea of Canadian annexation was losing popularity in the United States due to the decline of Sumner's influence, since he had been the principal champion of the policy. He had discredited himself with the administration by blocking all expansionist plans while pushing his own favorite project. Grant, in spite of his hostility to Sumner, still clung to the policy of exacting Canada as a condition for settlement. In September he prevailed upon Fish to mention the policy once more to Thornton. By this time the Franco-Prussian War had passed the stage where England was likely to become involved in it. Thornton now replied to Fish: "It is impossible to connect the
question of Canadian independence with the Alabama claims."49

By October the international situation had taken a new turn once more. Russia had taken advantage of the general disturbances in Europe to renounce a provision of the Treaty of 1856 which had been forced upon her and which excluded warships from the Black Sea. England denied the right of Russia to repudiate the treaty and a menace of war existed for a month or more.

In view of these international complications, Lord Granville's point was well taken, when, later, he was defending the settlement with the United States before the House of Lords. He said that it was necessary to look at international relations of Great Britain from a new standpoint, and added that it was impossible to say that the British relations with the United States were on a satisfactory footing.50

During November when the tension in European affairs was highest, the Russian minister in Washington suggested to Fish that the time was most opportune to press the Alabama claims. Fish had already come to the same decision. He had, however, made changes in his policy. He realized the futility of further negotiations on the basis of Canadian independence. While he knew that a settlement on any other basis would be opposed by Sumner, Fish decided to depend upon the President's animosity towards the Senator to assure the necessary support.

On November 20, 1870, Fish had an interview with Thornton in which he alluded to the suggestion of the Russian minister. Thornton then asked what the United States wanted. Fish replied that this government asked merely an expression of regret on the
part of Great Britain, an acceptable declaration of principles of international law, and payment of claims. This was a great concession on the part of Fish, and he proposed to have the negotiations on his terms. The time was propitious, and the President's message to Congress made recommendations which might prove embarrassing to Great Britain.

The President and his adviser had evidently decided that the government would not allow the pressing need of private claimants to operate in any degree upon public opinion in the United States so as to create a demand for settlement with England on any basis below that which the national dignity required. He said in the message:

"I regret to say that no conclusion has been reached for the adjustment of the claims against Great Britain growing out of the course adopted by that Government during the rebellion. The cabinet of London, so far as its views have been expressed, does not appear to be willing to concede that Her Majesty's Government was guilty of any negligence or did or permitted any act by which the United States has just cause of complaint. Our firm and unalterable convictions are directly the reverse. I therefore recommend to Congress to authorize the appointment of a commission to take proof of the amount and ownership of these several claims, on notice to the representative of Her Majesty at Washington, and that the authority be given for the settlement of these claims by the United States, so that the Government shall have ownership of the private claims as well as the responsible control of all the demands against Great Britain. It cannot be necessary to add that whenever Her Majesty's Government shall entertain a desire for a full and friendly adjustment of these claims the United States will enter upon their consideration with an earnest desire for a conclusion consistent with the honor and dignity of both nations."

This veiled threat occasioned indignation in Great Britain and the London Times declared his tone menacing. It asserted that Grant's tone held out no hope for a friendly settlement. It was
thought in some quarters that the words were designed for political effect at home, but the message came at the psychological moment to induce Great Britain to act. It was realized in that country that the Grant administration had no desire to push the settlement of the Alabama question. Grant wrote to Badeau: "It is not half so important that the Alabama Claims should be settled as it is that when they are settled it should be in terms creditable to this nation. I do not see that any harm is to arise from the matter standing in an unsettled state."54

During the latter part of 1870 the administration attempted to distract attention from domestic affairs by turning to foreign affairs. Ben Butler demanded that the government take a bold stand with Great Britain. He demanded that a portion of Canada be ceded in settlement of the Alabama claims.55

In December 1870 the breach between Grant and Sumner became wider. Attempts were made by leaders of the administration to bring about a reconciliation between the two. The President manifested a good deal of hard feeling and refused to be persuaded that their differences could be reconciled. Grant charged that Sumner had attacked him in executive session of the Senate and that Sumner had attributed dishonest motives to him. Sumner denied all these charges publicly, and said that the president had threatened to take him personally to account.56

The renewal of the San Domingo controversy gave Sumner an opportunity to arouse the administration still further against him. The President had requested in his message that a joint resolution be introduced to bring about the annexation of the island. During the summer Grant had strengthened his hold on those
who had supported him, and at the same time had manifested an
intense personal bitterness toward Sumner, whom he held chiefly
responsible for the failure of the treaty. Sumner had conceived
a cordial contempt for Grant which was a matter of general know­
ledge. When the San Domingo question was again brought forward,
a clash of greater proportions than before was expected, and duly
came. A joint resolution for annexation was further than even
the most ardent supporters of the President were willing to go.
Instead a resolution was introduced to appoint a commission to
investigate conditions on the island. Morton, who sponsored this
resolution, assured Sumner that this was only a way of dropping
the matter in a manner which would not be discourteous to the
President. Sumner was not convinced that this was so, and in­
stead of letting the matter pass without remark and so close the
issue, he opened the debate by saying, "The resolution before
the Senate commits Congress to a dance of blood." In a violent
speech he uttered most offensive imputations against the President
and his advisers. He said the president had usurped the powers
of Congress, and had committed an act of war without its consent.
He intimated that Grant was following the footsteps of Pierce,
Buchanan, and Johnson. He compared the murderer president Saget
of San Domingo in a favorable light with Grant. He called the
whole scheme the purchase of a bloody lawsuit. He went on to
charge that attempts had been made to change the membership of
the Committee for Foreign Affairs when it was felt that the
scheme would not pass. Morton made a dignified reply. He de­
fended the President and the administration. He accused Sumner
of taking this opportunity to attack the President. Morton main­
tained that the treaty was dead and the need for discussing it did not exist. Chandler made personal attacks on Sumner. Chandler demanded he name the persons who had divulged the secrets of the caucus to which Sumner had referred. Conkling threatened Sumner with party discipline. He said:

"The Committee on Foreign Relations should not be composed of those who have added insult to injury, and arrayed themselves not only in opposition to the Administration, but so arrayed themselves in manner and substance as to make it impossible for the Administration to confer with all the committees of this body."59

The resolution passed the Senate by a vote of 32 to 9, 30 members being absent from the chamber. The bill was sent to the House where it was passed only after an amendment was added which distinctly provided that the appointment of the commission should not in any way commit the administration to annexation.60

The speech of Sumner on this occasion was not approved by Sumner's friends. It had diverted the attention from the issue of annexation to that of the personal animosity between the Senator and the President. The people of the country still strongly sympathized with Grant and it was impossible for the oratory of Sumner to swing their sympathies from the military hero. 61

On January 9, 1871 Rose was again at Washington. Ostensibly he came on private business, but in reality he had authority to open informal negotiations for an immediate settlement. Granville, who was then Secretary of State for Foreign Affairs, wrote to Bright:

"I have sent Sir John Rose to New York and Washington to do that which is difficult for Thornton without committing us. ....He is to ascertain from the Government and from the opposition what chance there is of our simultaneously agreeing to some beginning of a negotiation, if it were only to assent to a joint commission, who, without being commissioned to settle anything, might arrange in what
On the evening when Rose arrived at Washington, he dined with Fish and Bancroft Davis. Davis kept an account of the interview which took place. Rose stated that he had been requested by the British government to ascertain what could be done for settling the pending questions between the two governments. He said he was authorized to say that the British government would be willing to refer the subject to a joint commission, if such a plan would be acceptable to the United States. Fish replied that before agreeing to go into such a commission, there should be certainty of success. He asked whether the British government would be prepared to admit a liability for what were known as the Alabama claims. Rose replied that such a concession would not be made. He said that while he thought that the British government would be found liable for the damages committed by the Alabama, the cases of the other vessels would be doubtful. He said the British government was willing to submit to arbitration either to continental jurists, or to any other tribunal that the two governments might agree upon. He added that Parliament would not support any government which would admit the liability for the acts of the Alabama. Fish replied that the Senate would not ratify a treaty which did not recognize that liability. Most of the Senators had opposed the Johnson-Clarendon Convention, and the changes in the personnel of the Senate due to the recent elections would not be enough to secure the ratification of a new treaty on the same basis. Rose urged that if a commission once met, they would not part without coming to some settlement. Fish insisted that the admission of liability as to the Alabama was necessary. He said he did not ask England to humiliate herself, but that she should
feel that, due to the neglect of a local officer, the vessel had been allowed to escape and the government so became liable. This admission with an expression of regret for what had taken place to disturb the relations of the two countries would be sufficient as a preliminary. Rose said that England could not take the initiative in the question of the Alabama claims. He suggested that, if the way for settlement seemed clear, the British government should propose a commission for the settlement of the San Juan boundary, the fisheries, and other Canadian questions. The United States could then accede to the proposal provided that the claims for the acts of the vessels should be also considered.

After this interview Sir John Rose prepared a paper in which he made certain observations and recommendations which became the basis for the negotiations. First, the commissioners should provide protocols or treaties by means of which a full and final adjustment might take place. Second, the preamble should express the desire of Her Majesty to put an end to all differences and to lay the foundation of lasting bonds of amity between the two countries. Third, the sending of High Commissioners to Washington would be accepted as a friendly advance, and the terms made through such a body would be more likely to be acceptable than any arranged through ordinary diplomatic channels. The commissioners should not decide questions themselves, but merely arrange the machinery of doing so. Fourth, the commissioners would be subject to daily instruction from their governments, and mutual concessions could be made as the need arose. Fifth, it would be desirable to have the opinion of the Senate before it adjourned, so it was highly desirable to begin the negotiations immediately.
Fish decided that before proceeding further with the negotiation it would be advisable to lay the memorandum of Rose directly before Sumner and obtain either an approval of the new basis of negotiations or an outright statement of his objections. Friendly relations between the Senator and the Secretary had been broken by further developments in the Motley affair. When Motley had been asked to resign, he refused. When, in November 1870, Fish decided to drop all mention of Canadian independence from the negotiations, he was preparing to discount all objections which Sumner might raise and depend upon the President's animosity towards the Senator to insure support for his negotiations. The recall of Motley marked another step in that decision. When Motley attempted to defend himself and Sumner, Fish was prompted to cover up any responsibility of the President, and the motives of the case. He wrote a lengthy despatch to the legation in which he disclaimed that there was any connection between Motley's removal and the San Domingo controversy. He gave as the reason that Motley was misrepresenting the administration's policy. Without saying so, he implied that Motley represented Sumner rather than the President. Fish concluded with a thinly veiled accusation against Sumner of dishonesty towards the President in connection with the San Domingo Affair. Undoubtedly the San Domingo controversy hastened the recall of Motley, but Cox reported that Grant said, "I had made up my mind to remove Motley before there was any quarrel with Sumner." Grant had also written to Badeau: "Mr. Motley's removal was long in contemplation,.... and he was only left in England as long as he was out of deference to Governor Fish, who is averse to changes, or to doing anything which gives inconvenience to others." Fish's action in the re-
moval of Motley and in writing the accusation to the legation marks definitely his decision to remain loyal to the Administration at the expense of a rupture with his life-long friend, Sumner. While he took the step reluctantly, he must have realized that his ambition to effect a settlement with England could not be accomplished while Sumner remained at the head of the Committee on Foreign Relations. Whether he so intended or not, the veiled insult in his despatch paved the way for his removal from that position.

Since the Secretary and Sumner were no longer on speaking terms, a friend arranged for an interview on January 15. Two days later Sumner sent this message to Fish:

"(1) The idea of Sir John Rose is that all questions and sources of irritation between England and the United States should be removed absolutely and forever. ... Nothing could be better than this initial idea. It should be the starting point."

"(2) The greatest trouble, if not peril, being a constant source of anxiety and disturbance is from Fenianism, which is excited by the proximity of the British flag in Canada. Therefore, the withdrawal of the British flag cannot be abandoned."

This was an ultimatum. Sumner must have realized that such a demand would have broken off the negotiations. It is difficult to reconcile that demand with a previous statement of Sumner when he said that annexation should come only by peaceful means and with the consent of the population. It was well known in January 1871 that England would not give up Canada, and that the population had no desire for annexation with the United States.

Fish spent a week consulting Senators of both parties and received assurances of support in his efforts to bring about amicable settlement. With this assurance he continued the negotiations along the lines already begun.
On January 24 Fish again had an interview with Rose at which time he read his answer to Rose. To show how great a concession he was about to make, Fish showed Sumner's message to Rose. Fish then stated that it had been decided by this government that the best interests of both countries demanded that, should England agree to send out commissioners on the basis which had previously been indicated, no effort would be spared to secure a favorable result even if it involved a conflict with the Chairman of the Committee of Foreign Relations of the Senate.  

The accord reached after twenty months of secret diplomacy was expressed in regular diplomatic form in four notes which passed between Fish and Thornton.

On February 8, 1871 at the opening of Parliament the Queen said in her speech, "I have suggested the appointment of a joint commission and I have agreed to a proposal of the President that this commission shall be authorized at the same time and in the same manner to resume the consideration of the American claims growing out of the circumstances of the late war."  

The instructions to the commissioners directed them to discuss in a friendly spirit the various questions on which differences had arisen. The further purpose of the commission was to decide on a method for the settlement of the questions. The arrangement was to include all claims for compensation which may be agreed upon by the two governments.

Commissioners were promptly appointed by both countries. The commissioners who acted on the behalf of the United States were Secretary Fish, General Schenck, who had been appointed to succeed Motley, Justice Nelson of the Supreme Court, Judge Hoar,
and ex-Senator Williams of Oregon. The British commissioners were Earl de Grey and Ripon, Sir Stafford Henry Northcote, Sir Edward Thornton, minister to the United States, Sir John Macdonald, premier of Canada, and Montague Bernard, Professor of International Law at Oxford. They met in Washington on February 27 and continued their sessions for six weeks. At the first meeting it was decided to keep secret the discussions and communicate only with their governments.

It was now made to appear that no settlement with England would be possible with Sumner at the head of the Committee on Foreign Affairs. Newspapers were circulating a rumor that the British Foreign Office had informed our minister that there could be no settlement of our differences with England as long as Sumner remained chairman of the committee. The same opinion was voiced in Parliament. Fish was able to use the animosity of Grant toward Sumner to make the success of his treaty certain, and the Senator's statements in regard to the withdrawal of the British flag from the continent were used against him, even though the idea had earlier been as much Grant's as it was Sumner's. When Congress met in March, 1871, it took steps necessary to further decrease Sumner's influence. When the list of committee members was presented, Sumner's name did not appear on the Committee on Foreign Relations. Howe of Wisconsin said: "The personal relations existing between Sumner and the President and the Secretary of State are such as preclude all social intercourse between them." He said it was deemed best that the head of that committee be on speaking terms with those officers in order to discharge his duties. Schurz denied that Sumner refused
to enter into official relations with either the Secretary or the
President. He reported that Sumner had agreed to receive Fish as
an old friend, and would be willing and glad to discuss such ques-
tions as came up for consideration. Wilson of Massachusetts said
the reason was insufficient, for Sumner's ability was needed in
the position. He felt there was no need to have social inter-
course in order to transact business. Edmunds declared that the
question was whether the Senate and the Republican party were
ready to sacrifice their sense of duty to the whims of one single
man. To him the transaction was merely a business affair of
changing a member from one committee to another to suit the conven-
ience of the Senate. Steward said the President had a right to
expect respect in the committees, and he thought that business
could be better transacted if the change were made. Schurz blamed
the President for the action of the caucus, and criticized him
for using pressure on the senators to make the change. Morton,
the party leader, insisted that the vote of the caucus be abided
by and charged that it was the duty of every republican to sup-
port it. The Administration could take no chances of having
the negotiations on the treaty fail, since the successes had not
been as great as might have been expected.

Even though Sumner was removed from the committee, the com-
missioners were anxious in regard to the attitude he would take.
They paid him a good deal of attention. Northcote wrote:

"We remain here.... because they (the government) think
we may be able to influence particular senators, such as
the Democrats and still more Sumner, over whom they have
no party control. I had a long talk with Sumner yester-
day.... he is very cautious, but I do not think him un-
friendly. He is very anxious to stand well with England;
but, on the other hand, he would dearly like to have a
slap at Grant. We have paid him a great deal of atten-
tion since he has been deposed, and I think he is much
pleased at being still recognized as a power. He certainly is one, for, though I think the Government could beat him in the Senate, he could stir up a great deal of bad feeling in the country."

Sumner's position was described by Henry Adams, as follows: "If he resists and fails, he is done for. If he resists and succeeds, he will break himself down here. If he accedes and votes for the treaty, Grant drags him in triumph at his chariot wheels."

That the treaty had a deep political significance is shown by a letter from Sickles to Chandler in which he said: "If Grant settles the English question satisfactorily, it will save his foreign policy, and if he wipes out the Ku Klux his record, including the excellent treasury exhibit, will carry him through safely."

Sir Stafford Northcote observed that the re-election of Grant appeared to depend much upon the successful conduct of the Commission on the part of the Americans. He said that the American government wanted as great a triumph as possible and as conspicuous a defeat of England as would be possible without the disturbance and discomfort of actual hostilities.

On May 10 the treaty was sent to the Senate and at once referred to the Committee on Foreign Relations. When it was reported out, Sumner made the principal speech in which he discussed fully the respects in which this treaty met the objections which had been raised to the rejected Johnson-Clarendon Convention. He moved some amendments, but did not press them. On May 24 the treaty was ratified by the Senate by a vote of fifty to twelve, Sumner voting with the majority. The twelve who opposed the treaty were 10 Democrats and 2 Republicans, which bears out the fact that the treaty was accepted as a party measure.
Footnotes
Footnotes for Chapter III.


2. C. F. Adams, Lee at Appomattox and Other Papers, Boston, 1903, pp. 113-114.


5. Ibid., IV., p. 404.

6. Bancroft Davis, Mr. Fish and the Alabama Claims, Boston, 1893, p. 35.


11. Ibid., IV., p. 405.


15. Ibid., pp. 5-10.


18. Ibid., IV., p. 407.

19. Ibid., IV., p. 410.

20. Ibid., IV., p. 409.


24. Ibid., p. 125.
25. Ibid., p. 123.
29. Ibid., IV., pp. 412-415.
31. E. T. Pierce, op. cit., IV., p. 413.
32. Ibid., IV., p. 413.
34. Lee at Appomattox, op. cit., p. 127.
36. Ibid., IV., p. 435.
38. J. D. Richardson, Messages and Papers of the Presidents, Washington, 1896-1899, VII., p. 23-34.
41. Ibid., IV., p. 439.
44. E. T. Pierce, op. cit., IV., p. 444. Also Lee at Appomattox, op. cit., p. 137.


47. Ibid., pt. 5, pp. 4445, 4458, 4506-4507, and pt. 6, p. 4806, and Appendix, p. 541.


49. Ibid., p. 160.


53. Richardson, op. cit., VII., p. 102.


60. Ibid., pt. 1, p. 416.


63. Davis, op. cit., p. 59.

64. J. B. Moore, Digest of International Arbitration, Washington, 1898, I., pp. 523-525.


68. Davis, op. cit., p. 65.
69. E. T. Pierce, op. cit., IV. p. 413.
70. Davis, op. cit., p. 137.
73. Hansard, op. cit., Vol. 204, p. 5.
74. Ibid., Vol. 204, p. 5 and Appendix.
77. Ibid., pt. 1, pp. 33-53.
81. Andrew Lang, op. cit., II., p. 4.
Chapter IV.

EXPRESSION OF PUBLIC OPINION

The available evidence supports the conclusion that the Senate regarded the Treaty of Washington with favor. Amendments were made in executive session to change some articles and to add others, but each proposal was rejected by a decisive vote. Vickers proposed an amendment which would allow the building of ships of war and manufacturing munitions for the purpose of selling them to belligerents. The amendment would also have permitted the right to asylum and hospitality to armed belligerent vessels which entered ports. Such a proposal would have destroyed any value which the treaty possessed as a means of preserving peace. The proposal was rejected without calling for the yeas and nays, which shows an earnest desire on the part of the Senate as a whole to establish cordial relations with Great Britain. Sumner proposed a series of amendments to bring about certain results he deemed important. First, he desired the security of private property at sea, not including contraband of war, and, second, the abolition of commercial blockades. He next asked for the denial of a national or belligerent character to vessels not holding a commission given at a port in the actual occupation of the commissioning government, and the treatment as pirates of vessels employed in burning prizes at sea. Lastly he contended for the use of a more definite term than 'due diligence' in the statement of the duty of neutral powers to prevent the fitting out of ships in their ports to aid a belligerent. These amendments were all rejected as the Senate thought that it
would not be prudent to open negotiations anew, and the treaty was ratified without change. ¹

When the Queen's speech was delivered to Parliament on February 9, 1671, it announced the appointment of the joint commission to devise a method of settling existing differences between the United States and Great Britain. The general opinion in both houses was decidedly in favor of some form of settlement. Disraeli pointed out the complicated state of affairs in Europe and said that there were possible dangers which had arisen by the Franco-Prussian War. The balance of power on the continent had been destroyed, and it was realized that friendly relations with the United States would help to create a new balance of power. While Disraeli favored immediate settlement with the United States, he thought that a hostile attitude was assumed by that government when it addressed Russia or Prussia. He thought the President's message was neither friendly nor respectful. He then referred to what he called an electioneering game in America in which animosity toward England was stirred up to attract the Irish vote. He thought that the "rowdy rhetoric which is addressed to irresponsible millions" which was used to excite political passions by abusing England would cease if England would maintain a more adequate army and navy. ²

The successful conclusion of the negotiations brought a sensation of relief in England as well as in the United States. Moran wrote that there was a wide spread feeling that the treaty would be a measure to close all sources of dispute between the two countries. He added that there would be some opposition to the treaty on the part of Lord Russell, but that his opposition would be on personal
grounds rather than on a matter of principle. Moran added that nothing Russell could say would prevent the acceptance of the treaty in England.2

The treaty consisted of forty-three articles, the first eleven of which dealt with the settlement of the Alabama claims. It provided that the claims be referred to a tribunal of five arbitrators who were to meet in Geneva. Each of the parties was to prepare its case and other evidence, and four months later each party was to present a counter case and any additional evidence.

In deciding the matters submitted to the arbitrators, they were to be governed by three rules which had been agreed upon by the joint high commissioners:

"A neutral Government is bound--
"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above.........."

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other........."

"Thirdly, to exercise due diligence in its own ports and waters,....... to prevent any violation of the foregoing obligations and duties."4

A very important part of the treaty was Article 1, in which Great Britain expressed "in friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels."5

On June 11, 1871 Russell in the House of Lords moved that the treaty be not sanctioned. He had changed his opinion very decidedly since 1865. In 1871 he said that he had no objections to
offer to the appointment of arbitrators, or even to asking the arbitrators whether he was justified in not detaining the Alabama while he had waited for a decision from the law officers. His greatest objection was to the three rules which he regarded as an ex post facto law. He thought the first rule would render Great Britain liable for the escape of the vessels. The duty of neutrals he thought should be confined to the obligation of preventing an armed vessel from leaving a port to make war on a friendly nation. It looked to him he said like paying a tribute to buy peace. He remarked further, "There is no saying to what extent these rules will make us liable." He pointed out that a vessel might leave a port with the secret intention of making war against a friendly power, and that the rules would hold the government liable even though they had used due diligence as far as they possibly could. His objections were increased by the fact that the British commissioners had ignored the claims which Canada made against the United States. He thought the British commissioners had yielded to the demands of the American commissioners too easily. He said:

"Everything has been concession on our side, and assertion.... without argument on the part of the United States. Our commissioners did not trouble the American commissioners to go into any argument; they merely....accepted the assertion that they could not entertain the question of compensating the Canadians for the Fenian outrages....So to with regard to the Fisheries."*

In defense of the treaty Lord Granville said that no admission of liability because of negligence had been made. In regard to the claims which Canada made, he said that they were taken care of to the satisfaction of the Canadian representative on the commission, and that claims for the Fenian raids had not been insisted
upon because it was known that they would not be allowed by the American commissioners. It was thought better to yield that point than to destroy the fruits of the entire negotiations, but he added that the Fenian claims had been by no means abandoned. Lord Granville said he thought the treaty was decidedly in favor of Great Britain since so many of the claims against Great Britain had already been settled. The great concession on the part of the United States was the withdrawal of the indirect claims. Lord Granville said: "They entirely disappear under the limited reference ....which includes merely complaints arising out of the escape of the Alabama." It was the desire of the commission he said to provide rules for the future. In his opinion a great advantage would accrue to Great Britain by having the United States agree to abide by the three rules. He said they were no more stringent than their own Foreign Enlistment Act since it was amended. He concluded:

"I defy any one to say there is any country which has a greater interest than we have in escaping such depredations as were committed by the Alabama. We have agreed to principles which we think are just and right..... and we have agreed that our subsequent legislation shall be judged by them."9

Earl de Grey also considered that the government had accomplished a signal benefit in binding the American government by rules which were just and reasonable in themselves, and from which England herself would derive much benefit in the event of future wars.10 Lord Cairns saw great merit in the expression of sorrow for the acts committed. He said the treaty was binding upon the country even though ratifications had not yet been exchanged. The three rules he felt were important guides for future conduct.11 The Earl of Kimberly saw great advantages for Canada in the agreement made in
regard to the fisheries. Earl Derby thought that the treaty was a poor one, but that it should be accepted as an accomplished fact. He said that the expression of regret might prejudice the British case before the arbitrators.

On the other hand, Earl Carnarvon thought that the treaty was a bad bargain. He thought the claims for the Fenian raids should have been included in the arbitration to balance the Alabama claims. The Marquess of Salisbury thought the treaty gave Great Britain nothing but "the advantage of calming the susceptibilities of the American people." The Duke of Argyll, however, said that the advantages gained by the acknowledgement of the three great rules of international law for the future would off-set any concessions that were made. After the debate Lord Russell's motion was defeated by an almost unanimous vote.

On August 4 the merits of the treaty were debated in the House of Commons when Sir Charles Adderley moved to lay the correspondence before the House. He repeated the same objections to the treaty which had been made in the House of Lords previously, but he closed his speech by expressing a hope that the general result would be favorable to good will, peace, and international cordiality.

Sir Roundell Palmer, who was a member of the cabinet, when Adams was building up his case, defended the treaty by saying that the most satisfactory part of it was that which set down rules for the future and allowed them to be applied as rules to judge the past. He said that it was not admitted that the government had actually failed to perform its public duty. Whatever might be the imperfections of the treaty, he felt that if it resulted in permanent peace and good will, he would be willing to pay any amount which could be assessed against England as a
result of the treaty.\footnote{19}

Sir Stafford Northcote defended the work of the commissioners. He denied Lord Russell's contention that the British commissioners had agreed to whatever was proposed by the American commissioners and declared that national honor justified the treaty. The treaty he said excluded the question of the recognition of belligerency and the indirect claims, and the rules which were set down would be for the benefit of peace of the whole world. He said that in any case where England was concerned, it was important to consider whether America would be friendly or hostile. He closed by saying:

"There never was a time when it was more desirable for the maintenance of the foremost position of England in the councils of Europe... with respect to the maintenance of peace... There never was a time when they (the government) had a greater opportunity, and at which a greater responsibility rested upon them than at that moment, and he firmly believed that the Treaty of Washington, although it might be open to captious observations, and might possibly contain some real defects, was... a great step in the promotion and toward the attainment of that desirable end."\footnote{20}

Hathbone said he knew what the feelings of the British merchants were on this matter: "That feeling was one of gratitude to the Government and the Commissioners for what they had done in effecting the Treaty."\footnote{21} He went on to say that the opinion in Liverpool was that it would be utterly impossible to maintain commerce if Alabama could be fitted out in neutral ports. He added that the commissioners had laid aside mere technicalities and had looked to great principles of justice and national morality.\footnote{21}

Gladstone pointed out that the duties of neutrals were becoming more and more difficult, and that England's position was especially peculiar in that respect because of the large amount of
her foreign commerce. With Gladstone the desire to end the quarrel with the United States was not a consequence of the possible troubles with foreign nations. His view was wider and less specific. He realized also that the power of Great Britain in Europe was lessened by the bad feeling existing with the United States, but he took a higher ground than this in his appreciation of the benefit to the world arising from an absolute reconciliation in good faith between the two English speaking nations.\(^{22}\) He said the great concession was to have consented to go to arbitration as to whether there was any defect in the administration of their own municipal law, and he hoped that the three rules would widen into an international law for the benefit of the whole world.\(^{23}\)

After the debate, the motion of Sir Charles Adderley was withdrawn.

The work of the tribunal seemed to be following a smooth course until it was learned that the formal American statement of the case put before the arbitrators included not only losses suffered by individual citizens, but also the indirect and national claims were included in the final chapter of the American case, which had not been sent in for criticism by Fish and Hoar as had the other chapters. The American counsel maintained that by the language of the treaty, those claims were legitimately included, while the British government took the opposite view and stood firmly upon their position.

There was a general feeling of alarm and surprise in England to find that the indirect claims were again brought forward. The press and members of Parliament immediately demanded that either these claims be repudiated or England would withdraw from the
convention. The Queen's speech on February 3, 1872 announced that the indirect claims were not within the province of the arbitrators. Gladstone was in favor of breaking off the arbitration rather than to agree to submit the indirect claims to arbitration. Disraeli spoke of the indirect claims as preposterous and wild. Gladstone thought that this was rather an understatement than an exaggeration and went on to say, "We must be insane to accede to demands which no nation with a spark of honour or spirit left could submit even at the point of death." Lord De La Warr declared in the debate that the indirect claims were utterly inadmissible and could not for a moment be entertained. Lord Granville referred to a previous statement in which he said, "They (the indirect claims) entirely disappear under the limited reference... which includes merely complaints arising out of the escape of the Alabama." Now he said he trusted he should be able to show by reference to the wording of the treaty, to the statements of the commissioners, and to the correspondence, that both governments felt that these claims were excluded by the words of the treaty.

On the same day in the House of Commons, Disraeli said that he had always been in favor of maintaining friendly relations with the United States. He thought that the indirect claims demanded a tribute greater than could be exacted by conquest. He said, "We cannot, in justice to ourselves......consent to propositions too enormous for practical purposes.... which, if persisted in, can only lead to an alienation of feelings." Those who had opposed the treaty accused the government of acceding to an instrument in which the indirect claims could be legitimately produced and sustained. Gladstone declared that the
interpretation put upon the treaty by the British government was
the true and unambiguous meaning of the words, and not one of sever­al conflicting meanings which could be attached to the treaty. He
said that the indirect claims were excluded by any test of the
treaty, whether it be by grammar, by reason, by policy, or by any
other standard. He expressed his hope that friendly relations
could be restored, and he hoped to make it as easy as possible for
the United States to meet their demand. He was clearly disappointed
that the United States had again advanced the indirect claims after
Great Britain had made such extensive concession. He said, "We
are determined to stretch to the utmost all considerations which
are capable of such a process; that everything except national honor
and national safety would be risked for the object we prize so
dearly—namely the re-establishment of cordial relations with the
United States."27

The differences as to whether the indirect claims were includ­
ed was the result of a misunderstanding. All members of the British
cabinet accepted the view that if a direct repudiation of those
claims had been insisted upon by the British Commissioners, no
treaty would have been possible. Both sides in the Washington con­
ference had been more anxious to submit the claims to the arbitra­
tors rather than to settle the principle involved themselves. The
American commissioners knew their position to be unsound, but they
also knew that their own people expected the claims to be referred.
It would have been unpoltic to waive them entirely. The British
commissioners were willing to waive an express renunciation of them,
being confident that the terms of the protocols and the language of
the treaty would be so construed by the arbitrators to exclude the
indirect claims. The cabinet agreed that a virtual waiver of the claims was to be found both in the protocols and in the treaty. Lord Ripon and Forster thought it would be safe to go on at Geneva in the assurance that the arbitrators would be certain to rule the indirect claims out.28

The difficulty of the government of the United States in dealing with the Alabama claims was not due to any faith in their soundness but to the difficulty in getting rid of them. Fish had written to Schenck on April 23, 1672 that the United States would at any time have waived the indirect claims for any equivalent, or in connection with any settlement, had they been asked so to do during the negotiation of the treaty. Fish also told Adams that he was willing to have the indirect claims decided adversely, but that he thought they ought to be disposed in one way or another. Through the good offices of Adams the tribunal made an extrajudicial statement which excluded the indirect claims from further consideration.29

In May 1673 after the tribunal had made the award, the treaty came up for discussion during a debate on the supply report. Bentinck criticized the government violently. He said that the government had followed an unconstitutional course by not submitting the treaty to Parliament for ratification after it had been accepted by the cabinet. Gregory, who had been a partisan of the South during the Civil War, said the House of Commons should enter a protest against the principles on which the treaty was based.

All the previous arguments were advanced, but no new or significant point was raised. Clearly it was a move against the ministry since the payment of the award on the part of Great Britain was a fore-
gone conclusion. Gladstone defended his government and the treaty. He said that the three rules were already a part of international law at the time the claims arose, and maintained that the municipal law covered the same points. He declared that those rules had played no part in the decision of the tribunal. Of the treaty in general he had this to say:

"Any amount of disappointment we may feel at the result is but a considerable deduction for the satisfaction attendant upon such an arrangement which removes such causes of difference between two great countries like England and America, and does so much....for mankind at large by the example it sets for a peaceful settlement of disputes as a substitute for the bloody arbitrament of war."
Footnotes
Footnotes for Chapter IV.


5. Ibid., I., p. 701.


7. Ibid., Vol. 206, p. 1839.

8. Ibid., Vol. 206, p. 1852.


10. Ibid., Vol. 206, pp. 1864-1871.

11. Ibid., Vol. 206, pp. 1881-1890.

12. Ibid., Vol. 206, pp. 1877-1881.


15. Ibid., Vol. 206, p. 1893.


17. Ibid., Vol. 207, p. 740.


19. Ibid., Vol. 208, pp. 874, 896.

20. Ibid., Vol. 208, pp. 897-908.


25. Ibid., Vol. 206, p. 1852.
27. Ibid., Vol. 209, pp. 78-86.
29. Ibid., I., pp. 642-646.
Appendix
Appendix A

Queen's Proclamation of Neutrality

"...whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America;
"And whereas we, being at peace with the Government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties;
"We therefore have thought fit....to issue this....proclamation.
"......it is, among other things, declared...as follows:
"That if any natural-born subject of His Majesty.....shall take or accept.....any military commission or shall otherwise enter into military service.....in any warlike or military operation in the service of.....any foreign prince, state, potentate,..........or of any person or persons exercising or assuming to exercise the powers of government in...any foreign country......; or if any natural-born subject....shall.....agree to enlist or enter himself to serve as sailor or marine, or to be employed.....on board any ship......intended to be used for any warlike purpose.......; or if any natural-born subject.... shall....go... to any foreign state ...... with the intent to serve in any warlike or military operation; or if any person whatever, within the United Kingdom of Great Britain and Ireland shall hire, retain, engage, or procure, or shall attempt to hire, retain, engage, or procure, any person... to enlist or to enter...... in any such service or employments as aforesaid..........; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punished by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

"And it is .....further enacted:
"That if any person.....shall.....equip, furnish, fit out, or arm,...... or be concerned in the equipping, furnishing, fitting out, or arming, of any ship or vessel, with intent.....that such ship or vessel shall be employed in the service of any.... foreign state..... or of any persons exercising or assuming to exercise any powers of government in...any foreign state....as a transport of store-ship, or with intent to cruise or commit hostilities against any....state, or against the persons exercising or assuming to exercise the powers of government in any .....part of any.....country, with whom His Majesty shall not then be at war, or shall, upon conviction thereof upon any information or indictment, be punishable by fine and imprisonment, or either of them, ......; and every such ship or vessel.....together with all the materials, arms, ammunition, and stores......shall be forfeited; and it shall be lawful for any officer of His Majesty's customs or excise, or any officer of His Majesty's navy to seize such ships and vessels......under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel.....may be prosecuted and condemned...in such courts
for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.

"And it is.......further enacted:

"That if any person.......shall ......increase or augment...

the warlike force of any ship or vessel of war, ...... every such

person so offending shall be deemed guilty of a misdemeanor, and

shall, upon being convicted thereof....... be punishable by fine

and imprisonment, or either of them..........

"Now in order that none of our subjects may unwarily

render themselves liable to the penalties imposed by the said

statute, we do hereby strictly command, that no person.......do

commit any act.......contrary to the provisions of the said statute,

upon pain of the several penalties....., and of our high displeasure.

"And we do hereby further warn .... our....subjects......

that if any of them shall presume.......to do any acts in deroga-

tion of their duty as subjects of a neutral sovereign in the said

contest.......all persons so offending will incur and be liable to

the several penalties and penal consequences by the said statute

or by the law of nations..........

"And we do hereby declare, that all our subjects.......;

who may misconduct themselves.......will do so at their peril.....

and they will in nowise obtain any protection from us against

any liabilities or displeasure by such misconduct."

\footnote{Papers Relating to the Treaty of Washington, 42 Cong., 3rd Sess.,
APPENDIX B

Our Claims on England

Speech of Charles Sumner in Executive Session of the Senate, April 13, 1869, on the Johnson-Clarendon Treaty for the settlement of Claims.

"...In the interest of peace, which everyone should have at heart, the treaty must be rejected. A treaty which, instead of removing an existing grievance, leaves it for heartburning and rancor, cannot be considered a settlement of pending questions between two nations. It may seem to settle them, but does not. It is nothing but a snare. And such is the character of the treaty now before us. The massive grievance under which our country suffered for years is left untouched; the painful sense of wrong planted in the national heart is allowed to remain. For all this there is not one word of regret or even of recognition; nor is there any semblance of compensation.........."

The Case Against England

"Close upon the outbreak of our troubles, just one month after the bombardment of Fort Sumter, when the rebellion was still undeveloped when the National Government was beginning those gigantic efforts which ended so triumphantly, the country was startled by the news that the British Government had intervened by a proclamation, which accorded belligerent rights to the rebels. At the early date when this was done the rebels were, as they remained to the close, without ships on the ocean, without Prize Courts or other tribunals for the administration of justice on the ocean, without any of those conditions which are the essential prerequisites to such a concession.....In the swiftness of this bestowal there was very little consideration for a friendly Power; nor does it appear that there was any inquiry into those conditions precedent on which it must depend. Ocean belligerency being a 'fact' and not a 'principle' can be recognized only on evidence showing its actual existence........

"Unfriendly in the precipitancy with which it was launched, this concession was more unfriendly in substance. It was the first stage in the depredations on our commerce. Had it not been made no rebel ship could have been built in England. Every step in her building would have been piracy. Nor could any munitions of war have been furnished. The direct consequence of this concession was to place the rebels on an equality with ourselves in all British markets, whether of ships or munitions of war.....

"Then came the building of the pirate ships, one after another.....Here beyond all question was negligence, or according to the language of Lord Broughan on another occasion, 'crass negligence', making England justly responsible for all that ensued.....There was negligence in allowing the building to pro-
oeed, negligence in allowing the escape from Liverpool, and negligence in allowing the final escape from the British coast....

"The enlistment of the crew was not less obnoxious to censure than the building of the ship and her escape....The dedication of the ship to the rebel service....made her departure as much a hostile expedition, as if she had sailed forth from her Majesty's dock-yard. At a moment of profound peace, between the United States and England, there was a hostile expedition against the United States. It was in no sense a commercial transaction, but an act of war.......

"......Thus at three different stages, the British Government is compromised, first in the concession of ocean belligerency, on which all depended; secondly in the negligence which allowed the evasion of the ships in order to enter upon the hostile expedition for which she was built, manned, armed, and equipped; and, thirdly, in the open complicity, which, after this evasion, gave her welcome hospitality and supplies in British ports......To England must be traced also all the widespread consequences which ensued.......

Reparations from England

"At last the rebellion succumbed. British ships and British supplies had done their work, but they failed. And now the day of reckoning has come; but with little apparent sense of what is due on the part of England. Without one soothing word for a friendly Power deeply aggrieved, without a single word of regret England simply proposes to submit the question of liability for 'individual losses' to an anomalous tribunal, where chance plays its part......Nothing is admitted even on this question; no rule for the future is established; while nothing is said of the indignity to the nation, nor of the damages to the nation......."

The Extent of Our Losses

"Individual losses may be estimated with reasonable accuracy. Ships burned or sunk with their cargoes may be counted and their value determined; but this leaves without recognition the vaster damage to commerce driven from the ocean, and that other damage, immense and infinite, caused by the prolongation of the war, all of which may be called national in contradistinction to individual.

"Our national losses have been frankly conceded by eminent Englishmen. (Sumner quoting Mr. Gobden) 'You have been', said he, 'carrying on war from these shores with the United States,' and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars. It is estimated that the loss sustained by the capture and burning of American vessels has been about $15,000,000.........But this is a small part of the injury which has been inflicted on the American marine. We have rendered the rest of her vast mercantile property useless.'.........
The loss may be seen in various circumstances, as in the rise of insurance on all American vessels; the fate of the carrying trade, which was one of the great resources of our country; the diminution of our tonnage with the corresponding increase of British tonnage; the falling off in our exports and imports, with due allowance for our abnormal currency and the diversion of war.

Beyond the actual loss in the national tonnage, there was a further loss in the arrest of our natural increase in this branch of industry, which an intelligent statistician puts at five per cent. annually,......

These (losses) are large enough; but there is another chapter, where they are larger far. I refer, of course, to the national losses caused by the prolongation of the war and traceable directly to England. Not weeks or months, but years were added......to our war.

The sacrifice of precious life is beyond human compensation; but there may be an approximate estimate of the national loss in money. The Rebellion was suppressed at a cost of more than four thousand million dollars, a considerable portion of which has been already paid, leaving twenty-five hundred millions as a national debt to burden the people. If, through British intervention, the war was doubled in duration, or in any way extended, as cannot be doubted, then is England justly responsible for the additional expenditure to which our country was doomed; and, whatever may be the final settlement of these great accounts, such must be the judgment in any chancery which consults the simple equity of the case.

Conclusion

If the case against England is strong, and if our claims against England are unprecedented in magnitude, it is only because the conduct of this Power at a trying period was most unfriendly, and the injurious consequences of this conduct were on a scale corresponding to the theater of action. Life and property were both swallowed up, leaving behind a deep-seated sense of enormous wrong, as yet unatonked and even unacknowledged, which is one of the chief factors in the problem now presented to the statesmen of both countries.

There are many among us who, taking counsel of a sense of national wrong, would leave them to rest without settlement, so as to furnish a precedent for retaliation in kind, should England find herself at war. It is not difficult to imagine one of our countrymen saying with Shakespeare's Jew, 'The villainy you teach me I will execute, and it shall go hard, but I will better the instruction;' nor is it difficult to imagine an Englishman firm in his conceit, that no apology can be made and nothing paid."

"In Great Britain the exclusive prerogative of making treaties is in the Crown, and so in most other countries it is in the executive; but I need not remind you that in our country it is otherwise. The exclusive prerogative here is not in the Executive; it is in the President, by and with the advice and consent of the Senate and until that advice and consent have been given he can exercise no power under that treaty. Those waters were as sacred as the waters about France and England. He might as well have penetrated the ports of either of those countries and launched his menace there as have penetrated the waters of this weak Power and launched his menace.

"I have called it an act of war—war, sir, made by the Executive without the consent of Congress............

"If Congress had declared war against this feeble republic, then it would have been the part of the Executive to carry that declaration into effect; but until then what right had our Executive to do this thing? None which can be vindicated by the laws of our country, none except what is found in the law of force.

"This outrage by our Navy upon a sister republic is aggravated by the issue which the President of the United States in his annual message has directly made with the President of Hayti--mark my words--with the president of Hayti............. And now, sir, listen to what the president of Hayti in this annual message says of the project of annexation, and then in one moment listen to the issue which the President of the United States has joined with this president.......'The project of annexation of the Dominican part has been rejected by the American Senate. The anxieties which this annexation caused to spring up have been dissipated before the good sense and the wisdom of the Senate at Washington.'

"Of course the President of the United States was intimate with this document. He could not have undertaken to launch his bolt against this feeble republic without knowing at least what their president had said. I will not do him wrong to suppose him ignorant. His Secretary of State must have informed him. He must have known the precise words that President Saget had employed when he said that the anxieties caused by this annexation were dissipated before the good sense and wisdom of the Senate at Washington. Our President joins issue with President Saget; he says that the rejection of the treaty was a'folly!' There you have it. The president of one republic calls the rejection an act of 'good sense and wisdom'; the President of the United States calls it an act of 'folly.' Am I wrong? Let me read from the message of our President: 'A large commercial city will spring up, to which we will be tributary without receiving corresponding benefits, and then will be
seen the folly of our rejecting so great a prize.'

"There you have it. President Saget and President Grant; President Grant speaking with the voice of forty million, and this other president who has only eight hundred thousand people, all black.

"If the President of the United States had contented himself with thus joining issue with the president of Hayti I should have left the two face to face; but not content with making this issue, the President of the United States proceeds to menace the independence of Hayti. Sir, the case is serious.....

"History is often said to repeat itself. More or less it does......This whole measure of annexation, and the spirit with which it is pressed find a parallel in the Kansas and Nebraska bill, and in the Lecompton constitution, by which it was sought to subjugate a distant territory to slavery..... and now we witness the same things--violence in a distant island, as there was in Kansas; also the same presidential appliances; and, shall I add, the same menace of personal assault?

"In other days, to carry a project, a President has tried to change a committee. It was James Buchanan. And now we have been called this session to witness a similar endeavor by our President. He was not satisfied with the Committee on Foreign Relations as constituted for years. He wished a change. He asked first for the removal of the chairman. Somebody told him that this would not be convenient. He then asked for the removal of the Senator from Missouri, and he was told that this could not be done without affecting the German vote. He then called for the removal of my friend the Senator from New Hampshire, who unhappily was not a German. It was finally settled that this could not be done.

"I allude to these things reluctantly and only as part of the case. They illustrate the spirit we are called to encounter. They illustrate the extent to which the President has fallen into the line of bad examples."1

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