



SUPPLEMENT
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MONDAY, SEPTEMBER 16, 1872.

Foreign Office, September 16, 1872.

THE following Despatch, with its inclosures, has this day been received from Lord Tenterden:—

Lord Tenterden to Earl Granville.

Geneva,

September 14, 1872.

MY LORD,

I HAVE the honour to transmit to your Lordship herewith a copy of the Protocol of the proceedings of the Tribunal of Arbitration this day, to which is annexed a copy of the Decision and Award of the Arbitrators.

A copy of this Decision and Award, signed by the Arbitrators assenting to it, has also been delivered to me in accordance with the provisions of the 7th Article of the Treaty of Washington, and is forwarded to your Lordship with this Despatch.

After the Decision and Award of the majority of the Arbitrators had been read and signed, the Chief Justice presented to the Tribunal a statement of his reasons for dissenting from it.

A copy of this statement is also annexed to the Protocol.*

I have, &c.,
(Signed) TENTERDEN.

Inclosure 1.

PROTOCOL XXXII.

Record of the Proceedings of the Tribunal of Arbitration at the thirty-second Conference held at Geneva, in Switzerland, on the 14th of September, 1872.

The Conference was held with open doors, pursuant to adjournment. All the Arbitrators and the Agents of the two Governments were present.

The Protocol of the last Conference was read and approved, and was signed by the President and Secretary of the Tribunal.

The President then presented the Decision of the Tribunal on the question of the "Alabama Claims," and directed the Secretary to read it; which was done, and the Decision was signed by Mr. Charles Francis Adams, Count Frederic Sclopis, Mr. Jacques Stämpfli, and Viscount d'Itajubá, Arbitrators, in the presence of the Agents of the two Governments.

A copy of the Decision thus signed, was delivered to each of the Agents of the two Governments respectively, and the Tribunal decided to have a third copy placed upon record; they further decided that the Decision should be printed and annexed to the present Protocol.

Sir Alexander Cockburn, as one of the Arbitrators, having declined to assent to the Decision, stated the grounds of his own decision, which the Tribunal ordered to be recorded as an annex to the present Protocol.

The Tribunal resolved to request the Council of State of Geneva to receive the archives of the Tribunal and to place them among its own archives.

The President, Count Sclopis, then directed the Secretary to make up the record of the proceedings of the Tribunal at this XXXII and last Conference, as far as completed; which was done, and the record having been read and approved, was signed by the President and Secretary of the Tribunal and the Agents of the two Governments.

Thereupon the President declared the labours of the Arbitrators to be finished and the Tribunal to be dissolved.

(Signed) FREDERIC SCLOPIS.
J. C. BANCROFT DAVIS.
TENTERDEN.
ALEX. FAVROT, Secretary.

* This will be published in a future Supplement.

Inclosure 2.

DECISION AND AWARD.

Made by the Tribunal of Arbitration constituted by virtue of the first Article of the Treaty concluded at Washington the 8th of May, 1871, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America.

HER Britannic Majesty and the United States of America having agreed by Article I of the Treaty concluded and signed at Washington the 8th of May, 1871, to refer all the claims "generically known as the Alabama claims" to a Tribunal of Arbitration to be composed of five Arbitrators named :

one by Her Britannic Majesty,
one by the President of the United States,
one by His Majesty the King of Italy,
one by the President of the Swiss Confederation,
one by His Majesty the Emperor of Brazil ;
and

Her Britannic Majesty, the President of the United States, H.M. the King of Italy, the President of the Swiss Confederation, and H.M. the Emperor of Brazil, having respectively named their Arbitrators, to wit :

Her Britannic Majesty :
Sir Alexander James Edmund Cockburn, Baronet,
a Member of Her Majesty's Privy Council,
Lord Chief Justice of England ;

The President of the United States :
Charles Francis Adams, Esquire ;

His Majesty the King of Italy :
His Excellency Count Frederic Sclopis of
Salerano, a Knight of the Order of the
Annunciata, Minister of State, Senator of the
Kingdom of Italy ;

The President of the Swiss Confederation :
Mr. James Stämpfli ;

His Majesty the Emperor of Brazil :
His Excellency Marcos Antonio d'Araujo,
Viscount d'Itajubá, a Grandee of the Empire
of Brazil, Member of the Council of H.M.
the Emperor of Brazil, and his Envoy Extra-
ordinary and Minister Plenipotentiary in
France ;

And the five Arbitrators above named having assembled at Geneva in (Switzerland) in one of the Chambers of the Hotel de Ville on the 15th of December, 1871, in conformity with the terms of the IInd Article of the Treaty of Washington, of the 8th of May of that year, and having proceeded to the inspection and verification of their respective powers, which were found duly authenticated, the Tribunal of Arbitration was declared duly organized.

The Agents named by each of the High Contracting Parties, by virtue of the same Article II, to wit :

For Her Britannic Majesty :
Charles Stuart Aubrey, Lord Tenterden, a Peer
of the United Kingdom, Companion of the
Most Honourable Order of the Bath, Assis-
tant Under-Secretary of State for Foreign
Affairs,

and for the United States of America :
John C. Bancroft Davis, Esquire ;
whose powers were found likewise duly authenti-
cated, then delivered to each of the Arbitrators

the printed Case prepared by each of the two Parties, accompanied by the documents, the official correspondence and other evidence on which each relied, in conformity with the terms of the IIIrd Article of the said Treaty.

In virtue of the decision made by the Tribunal at its first session, the Counter-Case and additional documents, correspondence, and evidence, referred to in Article IV of the said Treaty, were delivered by the respective Agents of the two Parties to the Secretary of the Tribunal on the 15th of April, 1872, at the Chamber of Conference, at the Hotel de Ville of Geneva.

The Tribunal in accordance with the vote of adjournment passed at their second session, held on the 16th of December, 1871, reassembled at Geneva on the 15th of June, 1872 ; and the Agent of each of the Parties duly delivered to each of the Arbitrators and to the Agent of the other Party the printed argument referred to in Article IV of the said Treaty.

The Tribunal having since fully taken into their consideration the Treaty and also the Cases, Counter-Cases, documents, evidence, and arguments, and likewise all other communications made to them by the two Parties during the progress of their sittings, and having impartially and carefully examined the same,

Has arrived at the decision embodied in the present award :

Whereas, having regard to the VIth and VIIth Articles of the said Treaty, the Arbitrators are bound under the terms of the said VIth Article, "in deciding the matters submitted to them, to be governed by the three Rules therein specified and by such principles of International Law not inconsistent therewith, as the Arbitrators shall determine to have been applicable to the case ;"

And whereas the "due diligence" referred to in the first and third of the said Rules ought to be exercised by neutral Governments in exact proportion to the risks to which either of the belligerents may be exposed, from a failure to fulfil the obligations of neutrality on their part ;

And whereas the circumstances out of which the facts constituting the subject matter of the present controversy arose, were of a nature to call for the exercise on the part of Her Britannic Majesty's Government of all possible solicitude for the observance of the rights and the duties involved in the Proclamation of Neutrality issued by Her Majesty on the 13th day of May, 1861 ;

And whereas the effects of a violation of neutrality committed by means of the construction, equipment, and armament of a vessel are not done away with by any commission which the Government of the belligerent Power benefitted by the violation of neutrality may afterwards have granted to that vessel : and the ultimate step, by which the offence is completed, cannot be admissible as a ground for the absolution of the offender, nor can the consummation of his fraud become the means of establishing his innocence ;

And whereas the privilege of exterritoriality accorded to vessels of war has been admitted into the law of nations, not as an absolute right, but solely as a proceeding founded on the principle of courtesy and mutual deference between different nations, and therefore can never be appealed to for the protection of acts done in violation of neutrality ;

And whereas the absence of a previous notice cannot be regarded as a failure in any consideration required by the law of nations, in those cases in which a vessel carries with it its own condem-
nation ;

And whereas, in order to impart to any supplies of coal a character inconsistent with the second Rule, prohibiting the use of neutral ports or waters, as a base of naval operations for a belligerent, it is necessary that the said supplies should be connected with special circumstances of time, of persons, or of place, which may combine to give them such character ;

And whereas, with respect to the vessel called the "*Alabama*," it clearly results from all the facts relative to the construction of the ship at first designated by the Number "290" in the port of Liverpool, and its equipment and armament in the vicinity of Terceira through the agency of the vessels called the "*Agrippina*" and the "*Bahama*," dispatched from Great Britain to that end, that the British Government failed to use due diligence in the performance of its neutral obligations ; and especially that it omitted, notwithstanding the warnings and official representations made by the diplomatic agents of the United States during the construction of the said "Number 290" to take in due time any effective measures of prevention, and that those orders which it did give at last, for the detention of the vessel, were issued so late that their execution was not practicable ;

And whereas, after the escape of that vessel, the measures taken for its pursuit and arrest were so imperfect as to lead to no result, and therefore cannot be considered sufficient to release Great Britain from the responsibility already incurred ;

And whereas in despite of the violations of the neutrality of Great Britain committed by the "290," this same vessel, later known as the Confederate cruiser *Alabama*, was on several occasions freely admitted into the ports of Colonies of Great Britain, instead of being proceeded against as it ought to have been in any and every port within British jurisdiction in which it might have been found ;

And whereas the Government of Her Britannic Majesty cannot justify itself for a failure in due diligence on the plea of the insufficiency of the legal means of action which it possessed ;

Four of the Arbitrators for the reasons above assigned, and the fifth for reasons separately assigned by him,

Are of opinion,

That Great Britain has in this case failed, by omission, to fulfil the duties prescribed in the first and the third of the Rules established by the VI Article of the Treaty of Washington.

And whereas with respect to the vessel called the "*Florida*," it results from all the facts relative to the construction of the "*Oreto*" in the port of Liverpool, and to its issue therefrom, which facts failed to induce the Authorities in Great Britain to resort to measures adequate to prevent the violation of the neutrality of that nation, notwithstanding the warnings and repeated representations of the Agents of the United States, that Her Majesty's Government has failed to use due diligence to fulfil the duties of neutrality ;

And whereas it likewise results from all the facts relative to the stay of the "*Oreto*" at Nassau, to her issue from that port, to her enlistment of men, to her supplies, and to her armament, with the co-operation of the British vessel "*Prince Alfred*," at Green Cay, that there was negligence on the part of the British Colonial Authorities ;

And whereas, notwithstanding the violation of the neutrality of Great Britain committed by the *Oreto*, this same vessel, later known as the Confederate cruiser "*Florida*," was nevertheless on several occasions freely admitted into the ports of British Colonies ;

And whereas the judicial acquittal of the *Oreto* at Nassau cannot relieve Great Britain from the responsibility incurred by her under the principles of International Law ; nor can the fact of the entry of the *Florida* into the Confederate port of Mobile, and of its stay there during four months, extinguish the responsibility previously to that time incurred by Great Britain ;

For these reasons,

The Tribunal by a majority of four voices to one, Is of opinion,

That Great Britain has in this case failed, by omission to fulfil the duties prescribed in the first, in the second, and in the third of the Rules established by Article VI of the Treaty of Washington.

And whereas, with respect to the vessel called the "*Shenandoah*," it results from all the facts relative to the departure from London of the merchant vessel the "*Seu-King*" and to the transformation of that ship into a Confederate cruiser under the name of the "*Shenandoah*," near the Island of Madeira, that the Government of Her Britannic Majesty is not chargeable with any failure, down to that date, in the use of due diligence to fulfil the duties of neutrality ;

But whereas it results from all the facts connected with the stay of the *Shenandoah* at Melbourne, and especially with the augmentation which the British Government itself admits to have been clandestinely effected of her force by the enlistment of men within that port, that there was negligence on the part of the Authorities at that place.

For these reasons,

The Tribunal is unanimously of opinion,

That Great Britain has not failed, by any act or omission, to fulfil any of the duties prescribed by the three Rules of Article VI in the Treaty of Washington, or by the principles of International Law not inconsistent therewith, in respect to the vessel called the *Shenandoah*, during the period of time anterior to her entry into the port of Melbourne.

And by a majority of three to two voices, the Tribunal decides that Great Britain has failed, by omission, to fulfil the duties prescribed, by the second and third of the Rules aforesaid, in the case of this same vessel, from and after her entry into Hobson's Bay, and is therefore responsible for all acts committed by that vessel after her departure from Melbourne, on the 18th day of February, 1865.

And so far as relates to the vessels called

The *Tuscaloosa*,

(Tender to the *Alabama*)

The *Clarence*,

The *Tacony*,

and The *Archer*,

(Tenders to the *Florida*),

The Tribunal is unanimously of opinion,

That such Tenders or auxiliary vessels, being properly regarded as accessories, must necessarily follow the lot of their Principals, and be submitted to the same decision which applies to them respectively.

And so far as relates to the vessel called "*Retribution*,"

The Tribunal, by a majority of three to two voices, is of opinion,

That Great Britain has not failed by any act or omission to fulfil any of the duties prescribed by the three Rules of Article VI in the Treaty of Washington, or by the principles of International Law not inconsistent therewith.

And so far as relates to the vessels called

The *Georgia*,
The *Sumter*,
The *Nashville*,
The *Tallahassee*,

and The *Chickamauga*, respectively.

The Tribunal is unanimously of opinion,

That Great Britain has not failed, by any act or omission, to fulfil any of the duties prescribed by the three Rules of Article VI in the Treaty of Washington, or by the principles of International Law not inconsistent therewith.

And so far as relates to the vessels called

The *Sallie*,
The *Jefferson Davis*,
The *Music*,
The *Boston*,

and the *V. H. Joy*, respectively,

The Tribunal is unanimously of opinion,

That they ought to be excluded from consideration, for want of evidence.

And whereas, so far as relates to the particulars of the indemnity claimed by the United States, the costs of pursuit of the Confederate cruisers are not, in the judgment of the Tribunal, properly distinguishable from the general expenses of the war carried on by the United States.

The Tribunal is, therefore, of opinion, by a majority of three to two voices,

That there is no ground for awarding to the United States any sum by way of indemnity under this head.

And whereas prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies,

The Tribunal is unanimously of opinion,

That there is no ground for awarding to the United States any sum by way of indemnity under this head.

And whereas in order to arrive at an equitable compensation for the damages which have been sustained, it is necessary to set aside all double claims for the same losses, and all claims for

“gross freights” so far as they exceed “nett freights;”

And whereas it is just and reasonable to allow interest at a reasonable rate:

And whereas, in accordance with the spirit and letter of the Treaty of Washington, it is preferable to adopt the form of adjudication of a sum in gross, rather than to refer the subject of compensation for further discussion and deliberation to a Board of Assessors, as provided by Article X of the said Treaty;

The Tribunal, making use of the authority conferred upon it by Article VII of the said Treaty, by a majority of four voices to one, awards to the United States the sum of fifteen millions five hundred thousand Dollars in gold as the indemnity to be paid by Great Britain to the United States for the satisfaction of all the claims referred to the consideration of the Tribunal, conformably to the provisions contained in Article VII of the aforesaid Treaty.

And in accordance with the terms of Article XI of the said Treaty, the Tribunal declares that “all the claims referred to in the Treaty as submitted to the Tribunal are hereby fully, perfectly, and finally settled.”

Furthermore it declares, that “each and everyone of the said claims, whether the same may or may not have been presented to the notice of, or made, preferred, or laid before the Tribunal, shall henceforth be considered and treated as finally settled, barred, and inadmissible.”

In testimony whereof this present Decision and Award has been made in duplicate, and signed by the Arbitrators who have given their assent thereto, the whole being in exact conformity with the provisions of Article VII of the said Treaty of Washington.

Made and concluded at the Hotel de Ville of Geneva, in Switzerland, the 14th day of the month of September, in the year of our Lord one thousand eight hundred and seventy-two.

(Signed)

C. F. ADAMS.
FREDERIC SCLOPIS.
STAEMPFLI.
VICOMTE D'ITAJUBA.