

Argument of Mr. Evarts, one of the Counsel of the United States, addressed to the Tribunal of Arbitration at Geneva, on the 5th and 6th August, 1872, in reply to the Special Argument of the Counsel of Her Britannic Majesty.

AT the Conference held on the 5th day of August, Mr. Evarts addressed the Tribunal as follows:—

In the course of the deliberations of the Tribunal, it has seemed good to the Arbitrators, in pursuance of the provision of the Vth Article of the Treaty of Washington, to intimate that on certain specific points they would desire a further discussion on the part of the Counsel of Her Britannic Majesty, for the elucidation of those points in the consideration of the Tribunal. Under that invitation, the eminent Counsel for the British Government has presented an Argument which distributes itself, as it seems to us, while dealing with the three points suggested, over a very general examination of the Argument which has already been presented on the part of the United States.

In availing ourselves of the right, under the Treaty, of replying to this special Argument upon the points named by the Tribunal, it has been a matter of some embarrassment to determine exactly how far this discussion on our part might properly go. In one sense, our deliberate judgment is, that this new discussion has really added but little to the views or the Argument which had already been presented on behalf of the British Government, and that it has not disturbed the positions which had been insisted upon, on the part of the United States, in answer to the previous discussions on the part of the British Government, contained in its Case, Counter-Case, and Argument.

But to have treated the matter in this way, and left our previous Argument to be itself such an answer as we were satisfied to rely upon to the new developments of contrary views that were presented in this special argument of the British Government, would have seemed to assume too confidently in favour of our Argument, that it was an adequate response in itself, and would have been not altogether respectful to the very able, very comprehensive, and very thorough criticism upon the main points of that Argument, which the eminent Counsel of Her Majesty has now presented. Nevertheless, it seems quite foreign from our duty, and quite unnecessary for any great service to the Tribunal, to pursue in detail every point and suggestion, however pertinent and however skilfully applied, that is raised in this new Argument of the eminent Counsel. We shall endeavour, therefore, to present such views as seem to us useful and valuable, and as tend in their general bearing to dispose of the difficulties and counter-propositions opposed to our views in the learned Counsel's present criticism upon them.

The American Argument, presented on the 15th of June, as bearing upon these three points now under discussion, had distributed the subject under the general heads of the measure of international duties; of the means which Great Britain possessed for the performance of those duties; of the true scope and meaning of the phrase "due diligence," as used in the Treaty; of the particular application of the duties of the Treaty to the case of cruizers on their subsequent visits to British ports; and then, of the faults, or failures, or shortcomings of Great Britain in its actual conduct of the transactions under review in reference to these measures of duty, and this exaction of due diligence.

The special topic now raised for discussion, in the matter of "due diligence" generally considered, has been regarded by the Counsel of the British Government as involving a consideration, not only of the measure of diligence required for the discharge