

nothing whatever in this proposition of the first five sections of the new special Argument. If there were anything in it, it would go to the rupture, almost, of the Treaty; for the language is plain, the motive is declared, the force in future is not in dispute, and, for the consideration of that force in the future, the same force is to be applied in the judgment of this Tribunal upon the past. Now, it is said that this declaration of the binding authority of these Rules is to read in the sense of this very complicated, somewhat unintelligible, proposition of the learned Counsel. Compare his words with the declaration of the binding authority of these Rules, as rules of international law, actually found in the Treaty, and judge for yourselves whether the two forms of expression are equivalent and interchangeable.

Can any one imagine that the United States would have agreed that the construction, in its application to the past, was to be of this modified, uncertain, optional character, while, in the future, the Rules were to be authoritative, binding rules of the law of nations? When the United States had given an assent, by convention, to the law that was to govern this Tribunal, was it intended that that law should be construed, as to the past, differently from what it was to be construed in reference to the future?

I apprehend that this learned Tribunal will at once dismiss this consideration, with all its important influence upon the whole subsequent Argument of the eminent Counsel, which an attentive examination of that Argument will disclose.

With this proposition falls the farther proposition, already met in our former Argument, that it is material to go into the region of debate as to what the law of nations upon these subjects, now under review, was or is. So far as it falls within the range covered by these Rules of the Treaty, their provisions have concluded the controversy. To what purpose, then, pursue an inquiry and a course of argument which, whatever way in the balance of your conclusions it may be determined, cannot affect your judgment or your award? If these Rules are found to be conformed to the law of nations in the principles which it held antecedent to their adoption, the Rules cannot have for that reason any greater force than by their own simple, unconfirmed authority. If they differ from, if they exceed, if they transgress the requirements of the law of nations, as it stood antecedent to the Treaty, by so much the greater force does the convention of the parties require that, for this trial and for this judgment, these Rules are to be the law of this Tribunal. This argument is hinted at in the Counter-Case of the British Government; it has been the subject of some public discussion in the press of Great Britain. But the most authoritative expression of opinion upon this point from the press of that country has not failed to stigmatize this suggestion as bringing the obligation of the Rules of this Treaty down to "the vanishing point."*

At the close of the special Argument we find a general presentation of canons for the construction of Treaties, and some general observations as to the light or the controlling reason under which these Rules of the Treaty should be construed. These suggestions may be briefly dismissed.

It certainly would be a very great reproach to these nations, which had deliberately fixed upon three propositions as expressive of the law of nations, in their judgment, for the purposes of this trial, that a resort to general instructions, for the purpose of interpretation, was necessary. Eleven canons of interpretation drawn from Vattel are presented in order, and then several of them, as the case suits, are applied as valuable in elucidating this or that point of the Rules. But the learned Counsel has omitted to bring to your notice the first and most general rule of Vattel, which, being once understood, would, as we think, dispense with any consideration of these subordinate canons which Vattel has introduced to be used only in case his first general rule does not apply. This first proposition is, that "it is not allowable to interpret what has no need of interpretation."

Now these Rules of the Treaty are the deliberate and careful expression of the will of the two nations in establishing the LAW for the government of this Tribunal, which the Treaty calls into existence. These Rules need no interpretation in any general sense. Undoubtedly there may be phrases which may receive some illustration or elucidation from the history and from the principles of the law of nations; and to that we have no objection. Instances of very proper application to that resort occur in the Argument to which I am now replying. But there can be no possible need to resort to any general rules, such as those most favoured and insisted upon by the learned Counsel, viz., the sixth proposition of Vattel, that you never should accept an interpretation that leads to an absurdity; or the tenth, that you never should accept an interpretation that leads to a

* London "Times," February 1872.