

(Translation.)

Argument of Mr. Cushing, Counsel of the United States, before the Tribunal of Arbitration at Geneva, in reply to the Argument of Her Britannic Majesty's Counsel.

Mr. President and Gentlemen of the Tribunal,—

We are approaching, at least I hope so, the close of this lengthy discussion.

The two Governments had presented their Cases and Counter-Cases, supported by voluminous documents. They had also presented their respective Arguments, the whole in conformity with the stipulations of the Treaty of Washington (Articles IV and V).

Thus the regular arguments prescribed by the Treaty have been closed.

Now, at the request of one of the honourable Arbitrators, the Tribunal has requested from England, as it had the right to do, explanations on certain definite points, namely :—

1. The question of due diligence, generally considered.
2. The special question as to the effect of the commissions of Confederate ships of war entering British ports.
3. The special question as to supplies of coal in British ports to Confederate ships.

The Counsel of Great Britain has taken advantage of this opportunity to discuss the points laid down, and in reference to them to comment on the Argument of the United States.

I do not complain of this, but I state the fact.

We, the Counsel of the United States, accept the situation as prepared for us : for we had no desire further to occupy the attention of the Tribunal.

My two colleagues have discussed fully the second and third points. Scarcely have they left me a few words to say on the subject of the first point.

In fact, the task which has devolved on me is merely that of summing up the question, and adding some special observations.

I venture to address the Tribunal in French, in order to economize its precious time, and to reach the close of the discussion as soon as possible. For this object I willingly sacrifice all oratorical pretensions ; I endeavour to make myself understood ; that is all I aspire to.

The Question of Due Diligence.

We have now to discuss the question of due diligence generally considered.

What does this expression mean ? Does the Tribunal require a theoretical and professorial lecture on due diligence. I do not think so. Such a discussion would be perfectly idle, for the following reasons :—

1. This theoretical question has already been discussed to satiety. Great Britain has discussed it three times in her Case, Counter-Case, and Argument, and she has allowed herself twelve whole months to reflect on it, and accumulate arguments and quotations for the instruction of the Tribunal. We, in the name of the United States, have not expended so many words, but we have said all we wished and desired to bring before the honourable Arbitrators.

2. The two Parties were agreed that the theoretical question no longer deserved their attention.

“ Her Majesty's Government,” says the British Counter-Case (page 22), “ has not attempted a task which has baffled, as it believes, the ingenuity of jurists of all times and countries—that of defining with any approach to precision, apart from the circumstances of any particular case, what shall be deemed due diligence or reasonable care.”

And the Counter-Case quotes and adopts the following passage (page 22, note) :—