said:—'The plaintiff ought not to be deprived of his property for years without compensation for the loss of the use of it; and the jury had a discretion to allow interest in this case as damages. It has been allowed in actions of trover, and the same rule applies to *trespass when brought for the recovery of property.*' So in Kentucky, in case of a fraudulent refusal to convey land; and so declared also in North Carolina in cases of trover and trespass."*

It is to be observed that the action of "trover" here mentioned is a form of remedy under American and English law, for the conversion by a defendant to his own use of the plaintiff's property; and the action of "trespass" is another form of remedy, under the same laws, when a defendant has intruded, without right, upon the property of the plaintiff. In all the cases here contemplated, the liability to be mulcted in interest as damages arises out of the exclusion of the owner from the enjoyment of his own property, by the direct act of the person from whom the damages are recovered, and who, by reason thereof has himself enjoyed (or, but for his own wilful default, might have enjoyed) that benefit of the property, from which the owner has been so excluded. The principle on which a jury ought to proceed in giving, or not giving, interest by way of damages, was thus explained by the Court of New York:—"In two actions against a master of a ship for non-delivery of goods, it was held in New York that the jury might give damages *if the conduct of the defendant was improper; i.e., where fraud or gross misconduct could be imputed to him:* but it appearing that such was not the fact, it was not allowed."†

The principle, thus laid down, is in strict conformity with that stated in another American treatise of reputation, upon the "Law of Negligence," by Messrs. Shearman and Redfield:—

"§ 600. Exemplary, vindictive, or punitive damages can never be recovered in actions upon anything less than *gross negligence.* Of this there can be no doubt. . . . . It is often said that exemplary damages may be awarded for gross negligence. But it should be distinctly understood that *gross negligence means such entire want of care as to raise a presumption that the person in fault is conscious of the probable consequences of his carelessness, and is indifferent, or worse, to the danger of injury to the persons or property of others;* and such appears to us to be the construction put upon these words by the Courts, in the cases referred to. *It is only in cases of such recklessness* that, in our opinion, exemplary damages should be allowed."

7. Let us now, with these principles of general jurisprudence in view, examine the circumstances of the present case, in order to see whether they present any just and equitable grounds, or any sufficient materials, on which interest by way of damages can be included by the Tribunal in any gross sum, which they may think proper to award against Great Britain.

8. In the first place, this is not the case of a detention or delay in the payment of a liquidated debt or ascertained liability, payable at a period which has elapsed; there was, in fact, no liability at all, independently of the exercise of the judgment of Arbitrators upon a very novel, entangled, and difficult state of facts and public law. The claims made by the United States extended to many matters for which the Arbitrators have found Great Britain not responsible. The decisions of the Arbitrators against Great Britain have been mainly founded upon the conventional rules of judgment first introduced, as between the two nations, by the Treaty of 1871, though agreed by that Treaty to be retrospectively applied; and there are, down to this moment, no means of ascertaining, by any method of computation whatever, the actual amount of the liability properly resulting from those decisions.

9. The observations of Professor Bluntschli, in his paper on these claims ("Revue de Droit International," 1870, p. 474), are material in this respect:—

"A en croire," he says, "plusieurs orateurs et écrivains Américains, il irait de soi que le Gouvernement de la Grande Bretagne serait obligé de dédommager au moins les particuliers, dont la propriété aurait été détruite par *l'Alabama* (ainsi que par la *Floride*, ou d'autres corsaires Sudistes). A mon avis, ce point est loin d'être entièrement évident; et l'on pourrait singulièrement se tromper, en se fiant trop au succès réservé à ces réclamations privées, devant un Tribunal Arbitral. Si l'Union ne prend pas, comme Etat, ces réclamations privées sous sa protection, et si elle ne fait pas consister dans leur équitable apaisement la satisfaction que les Etats Unis ont droit de réclamer de la Grande Bretagne, dans ce cas les particuliers intéressés n'ont absolument aucune perspective de dédommagement. D'après les règles du droit privé ordinaire, leurs prétentions seraient tout-à-fait vaines. Nulle part ils ne trouveraient un juge qui condamnerait le Gouvernement Anglais à payer une indemnité. . . . . D'après les observations qui précèdent, tout le débat se résume, non pas en un litige entre des particuliers auxquels la guerre a causé des pertes, et l'Etat de la Grande Bretagne que l'on veut rendre responsable de celles-ci, mais en un litige entre la fédération des Etats Unis d'un côté, et

* Page 385. † Page 386.