Federal Government. If everything has been condoned to them by the Federal Government, and if their relations to that Government preclude Great Britain from having recourse to them for the indemnity which would otherwise be justly due to her, it is surely impossible to conceive a case in which there would be less justification for a discretionary and penal augmentation of damages, such as an allowance in respect of interest, in a proceeding for unliquidated damages, always is.

Another argument, arising from the peculiar circumstances of the present case, and which has also a strong bearing in favour of a reasonable modification of the liability of Great Britain, and, at all events, against any aggravation of that liability by the addition of interest as an element of damages, is thus stated in the British Counter-Case (p. 132):—

"When any vessels, whether procured from Great Britain, or otherwise obtained, had become Confederate ships of war, the duty of repelling their hostile proceedings by all proper and efficient means (like the rest of the operations necessary for the conduct of the war), devolved exclusively upon the United States, and not upon the British Government. Over the measures taken by the United States for that purpose, Great Britain could exercise no influence or control; nor can she be held responsible in any degree, for their delay, their neglect, or their insufficiency. Any want of skill or success, even in the operations by land, would have the effect of prolonging the period during which cruizes of this nature could be continued. All losses, which might have been prevented by the use of more skilful or more energetic means, ought justly to be ascribed to a want of due diligence on the part of the Government of the United States, and not to any error, at any earlier stage, of the British Government. *Causa proxima, non remota spectatur.*"

In support of this reasoning, various facts are referred to, at pages 138-140 of the same Counter-Case, which show that numerous opportunities of arresting the progress of the Confederate cruizers were actually lost, through the remissness or fault (according to the judgment of their own official superiors) of the officers who ought to have performed that duty; and that the means employed by the Government of the United States for that object were on the whole inadequate for its energetic accomplishment. It would surely be of very dangerous example to hold that a belligerent power is at liberty (upon such an occurrence, *e.g.*, as the enlistment of forty men of the Shenandoah on the night of her leaving Melbourne), to leave a vessel which has abused the hospitality of a neutral State, to harass the commerce of its citizens without the use of efficient means of prevention; relying upon an eventual pecuniary claim against the neutral State for the value of all the subsequent captures of that vessel, with interest to the day of payment.

12. Even if it were possible that interest could be held due, on account of delay of payment, in a case of unliquidated and unascertained claims of this nature, between nation and nation, it is obvious that the United States, and not Great Britain, are exclusively responsible for so much, at least, of the delay, as has been due to the rejection by the Senate of the United States of the Convention signed by Mr. Reverdy Johnson and the Earl of Clarendon on the 14th January, 1869. (British Appendix, vol. iv, part 9, pp. 36-38.) That Convention provided for a reference to arbitration of all the claims of American citizens, arising out of the acts of the several vessels to which the present controversy relates.

It was the result of a careful negotiation, expressly authorized from the beginning to the end by the Government of the United States. Its form was several times altered to meet suggestions proceeding from that Government; and no such suggestion was made, before the final signature, which was not met by a practical concession on the part of Great Britain. If that Convention had been ratified in 1869, a settlement of all these claims would have taken place either three, or at least two, years since. It was, however, rejected by the Senate of the United States without so much as the communication, at the time, of any reason or explanation whatever to the British Government (British Appendix, vol. iv, part 9, page 10, *ad finem*). No reason or explanation has ever been offered which can alter the significance of this fact, or make it reconcileable with any conceivable view of justice, that, as against a Government which has never derived any profit or benefit, either directly or through its citizens, from any of the captures in question, the United States should claim interest for a delay due only to themselves. Great Britain, from the commencement of the negotiations between Lord Stanley and Mr. Reverdy Johnson in 1866, was always willing that these claims should be settled by arbitration; the difficulty (which appears to have originated in the suggestion by Mr. Sumner of those indirect claims, which are now excluded from the consideration of the Tribunal) was on the part of the United States alone. Can it be said that, if the delay, so caused, had lasted for twenty or for ten years, a claim by the United States for interest during that period could still have been maintained? If not, it cannot be maintained now; whether the delay is twenty years or two years, can make no difference in principle.

13. All the foregoing reasons belong to the general equity of the case, and are inde-