

**INTERNATIONAL
COURTS OF
ARBITRATION, PP. 1-39**

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COURTS OF ARBITRATION

BY

THOMAS BALCH

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PRELIMINARY NOTE.

This pamphlet was first published in *The Law Magazine and Review* (London) for November, 1874 (page 1026), and afterwards printed in this country. In the present reprint I have incorporated some changes in the phraseology that I found in the annotations in my father's own copy, on which he had written "author's copy"; I have added also notes 11 and 14, taken from the same source.

THOMAS WILLING BALCH.

PHILADELPHIA, February 22d, 1896.

INTERNATIONAL COURTS OF ARBITRATION.

TEN years ago the grave questions involved in the escape of the *Alabama* and her subsequent depredations were the subject of much thought and anxiety, and many were the suggestions made by the friends of peace as to a possible disposition of the controversy without resort to war. The situation had no encouraging aspect. Indeed, it is difficult to realize to-day how very hostile and angry were the two parties. The attitude assumed throughout by the English Government was such as to preclude apparently any hope of adjustment, and the American Minister at London was obliged to content himself at last with merely sending in a fresh claim for damages in a stereotyped phraseology. As the war for secession approached its close the Americans began to realize somewhat the enormous losses attendant upon it, not the least of which was the absolute

destruction of their commerce. The temper of the people was thoroughly roused, and any hostile demonstration at Washington would have met with a hearty and unanimous response throughout the country. President Lincoln not only remained calm himself, but wisely calmed, as far as he could, the popular excitement.

The most common method of settling national disputes, in modern times, where resort was had to arbitration, had been a reference to a monarch selected by the contending parties. But this plan was open to serious objections. Experience had disclosed that sovereigns were not free from the weaknesses of less exalted persons, and that prince and peasant alike, when once appointed sole arbiter, cannot resist man's innate tendency to find some award which will "split the difference," and which usually leaves the respective disputants equally dissatisfied. The United States had refused some years previously to accept such an award. A similar experience would have merely further exasperated a contest already sufficiently inflamed and embittered.

Another objection was in the great difficulty of finding a reigning sovereign who would prove acceptable to both parties. Napoleon III. was of a restless, yet dreamy character. He was not a statesman, scarcely

even a politician. He was not satisfied with mere political intrigue, for it was his nature to conspire. In 1859, therefore, obeying in part the behests of his temperament, he undoubtedly held guilty relations with some of the Southern gentlemen then in Paris, afterwards very prominent in the Confederate Councils. At the time, these relations were more or less matters of surmise or report. Later, they were stated in detail in the *Indépendance Belge*, in the winter of 1860-61, and were said to have been in substance, that an appeal had been made to the Emperor as head of the French race, on the ground that the larger part of the white inhabitants of Louisiana, of Florida, and South Carolina, and a portion of them in the other States, were of French extraction; that thereupon had been promised to these self-constituted plenipotentiaries an immediate recognition by France and England of the Seceding States, in case the separation was peaceably effected, and a prompt recognition as belligerents in case of an armed struggle.¹ Some not very obscure intimations were given that at need something more than moral and political support might

¹ It has been recently stated in the newspapers that the Comte de Paris, in the forthcoming volumes of *La Guerre Civile en Amérique*, will demonstrate that the French and English proclamations to this effect were premature, and contrary to the recognized usages of amical nations.