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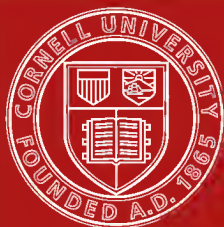
appendix 1

The Alsop claim. The case of the United S



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THE ALSOP CLAIM

Appendix to the Case of
The United States of America

FOR AND IN BEHALF OF THE
ORIGINAL AMERICAN CLAIMANTS IN THIS CASE
THEIR HEIRS, ASSIGNS, REPRESENTATIVES, AND DEVISEES

VERSUS

The Republic of Chile

BEFORE

HIS MAJESTY GEORGE V

OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND, AND OF THE
BRITISH DOMINIONS BEYOND THE SEAS, KING, AND EMPEROR OF INDIA

Under the Protocol of December 1, 1909

IN TWO VOLUMES

Vol. I

WASHINGTON
GOVERNMENT PRINTING OFFICE

1910

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APPENDIX TO THE CASE OF THE UNITED STATES.

PROTOCOL OF SUBMISSION, SIGNED AT SANTIAGO, DECEMBER 1, 1909.

The Government of the United States of America and the Government of the Republic of Chile, through their respective Plenipotentiaries, to-wit: •

Seth Low Pierrepont, Chargé d'Affaires of the United States of America and Agustin Edwards, Minister of Foreign Affairs of Chile, who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following

PROTOCOL OF SUBMISSION.

Whereas the Government of the United States of America and the Government of the Republic of Chile have not been able to agree as to the amount equitably due the claimants in the Alsop claim;

Therefore, the two Governments have resolved to submit the whole controversy to His Britannic Majesty Edward VII who as an "amiable compositeur" shall determine what amount, if any, is, under all the

El Gobierno de los Estados Unidos de América i el Gobierno de la República de Chile, por medio de sus respectivos Plenipotenciarios, a saber:

El Señor Seth Low Pierrepont, Encargado de Negocios de los Estados Unidos de América, i el Señor Agustín Edwards, Ministro de Relaciones de Chile, quienes, despues de comunicarse sus respectivos plenos poderes, encontrados en buena i debida forma, han acordado i concluido el siguiente

PROTOCOLO DE COMPROMISO.

Por cuanto el Gobierno de los Estados Unidos de América i el Gobierno de la República de Chile no han podido ponerse de acuerdo sobre la suma que en equidad se adeuda a los reclamantes en la reclamacion Alsop:

Han resuelto deferir toda la controversia a Su Majestad Británica Eduardo VII, quien, en calidad de "amigable componedor", determinará qué suma, si hubiere lugar a ello, se debe en equidad a los reclamantes, en

facts and circumstances of the case, and taking into consideration all documents, evidence, correspondence, allegations, and arguments which may be presented by either Government, equitably due said claimants.

The full case of each Government shall be submitted to His Britannic Majesty, and to the other Government through its duly accredited representative at St. James, within six months from the date of this agreement; each Government shall then have four months in which to submit a counter case to His Britannic Majesty, and to the other Government as above provided, which counter case shall contain only matters in defense of the other's case.

The case shall then be closed unless His Britannic Majesty shall call for further documents, evidence, correspondence, or arguments from either Government, in which case such further documents, evidence, correspondence, or arguments shall be furnished within sixty days from the date of the call. If not so furnished within the time specified, a decision in the case shall be given as if such documents, evidence, correspondence, or arguments did not exist.

The decision by His Britannic Majesty shall be accepted as

virtud de todos los hechos i circunstancias del caso, i tomando en consideracion todos los documentos, pruebas correspondencia, alegaciones i argumentaciones que se presenten por uno i otro Gobierno.

Una esposicion completa de la cuestion será presentada por cada Gobierno a Su Majestad Británica i al Gobierno contrario por el órgano de su representante debidamente acreditado en St. James, dentro de seis meses contados desde la fecha de este convenio; cada Gobierno dispondrá en seguida de cuatro meses para presentar, en la forma ya indicada, su contestacion a Su Majestad Británica i al otro Gobierno, i en ella solo podrá referirse a las alegaciones contenidas en la esposicion de la parte contraria.

El debate quedará con esto cerrado, a ménos que Su Majestad Británica requiriere nuevos documentos, pruebas, correspondencia o alegaciones de uno i otro Gobierno, en cuyo caso esos documentos, pruebas, correspondencia o alegaciones se suministrarán dentro de sesenta días a contar de la fecha del requerimiento. Si no fuesen presentados dentro del plazo indicado, se pronunciará el fallo en la causa como si tales documentos, pruebas, correspondencia i alegaciones no existiesen.

El laudo de Su Majestad Británica será aceptado como defi-

final and binding upon the two Governments.

In witness whereof, the undersigned Plenipotentiaries of the United States and Chile have signed the above Protocol both in the English and Spanish languages, and hereunto affixed their seals.

Done in duplicate, at the City of Santiago, this 1st day of December, 1909.

[L. S.]

[L. S.]

nitivo i obligatorio para los dos Gobiernos.

En fé de lo cual, los infrascritos Plenipotenciarios de los Estados Unidos i Chile han firmado el precedente Protocolo en los idiomas ingles i castellano, i selládolo con sus sellos.

Hecho en doble ejemplar, en la ciudad de Santiago, a 1 de Diciembre de 1909.

SETH LOW PIERREPONT.

AGUSTIN EDWARDS.

**CONTRACT BETWEEN GOVERNMENT OF BOLIVIA AND
JOHN WHEELWRIGHT, DEC. 26, 1876.**

Numero 410.

Corresponde

Testimonio de la transaccion otorgada entre el señor Ministro de Hacienda é Industria doctor Manuel Ignacio Salvatierra en representacion de los intereses nacionales y el señor Juan Wheelwright, socio y representante de los señores Alsop y Compañia de Valparaiso, para consolidar y amortizar sus créditos pendientes con el Estado.

En la ciudad de La Paz de Ayacucho, a horas once del dia veinte y seis del mes Diciembre de mil ochocientos setenta y seis años. Ante mi el ciudadano Patricio Barrera, Notario de Hacienda, Gobierno y Guerra y testigos infrascritos, fueron presentes, de una parte el señor doctor Manuel Ignacio Salvatierra, Ministro de Hacienda é Industria, en representacion de los intereses, Nacionales, natural de la ciudad de Santa Cruz, con residencia en esta capital, de profesion abogado, casada; y de otra el señor don Juan Wheelwright, socio y representante de los señores Alsop y Compañia de Valparaiso, natural de los Estados Unidos de Norte-América, comerciante, con residencia en Valparaiso, República de Chile y de tránsito en esta, tambien casado; mayores de edad, é ideoneos para este otorgamiento, a quienes de conocerlos doy fé y dijeron: Que para consolidar y amortizar sus créditos pendientes con el Estado por trasferencia de los derechos que fueron reconocidos en favor de don Pedro Lopez Gama, se ha espedido con fecha veinte y cuatros de los corrientes la resolucion Suprema en que consta la transaccion definitiva, ordenándose la estension de la escritura, y es como sigue. Ministerio de Resolucion suprema. Hacienda é Industria, La Paz, Diciembre 24, 1876.

Teniendo en consideracion la propuesta del señor don Juan Wheelwright, socio y representante de los señores Alsop y Compañia de Valparaiso en liquidacion para consolidar y amortizar sus créditos pendientes con el Estado por trasferencia de los derechos que fueron reconocidos en favor de don Pedro López Gama, se ha acordado en Consejo de Gabinete, con el citado señor Wheelwright una nueva transaccion que

termina definitivamente este asunto, formalizada en los términos siguientes. Primero. Se reconoce al espresado representante de la casa Alsop y Compañía el capital de ochocientos treinta y cinco mil bolivianos con el interés anual del cinco por ciento, no capitalizable, que correrá desde la fecha del otorgamiento de la escritura de este contrato. Segundo: Dicho capital é interés será amortizado con letras jiradas en su totalidad en proporciones trimestrales sobre el exedente que desde la fecha en que termine el actual contrato Aduanero con el Perú, haya en la percepcion de derechos de la Aduana del Norte, correspondiente á Bolivia, sobre los cuatro cientos cinco mil bolivianos que ahora abona el Gobierno del Perú, sea que se renueve el tratado aduanero con esa República, ó sea que se restablezca la Aduana Nacional.

1° Tercero: Se adjudican á la misma amortizacion todas las estaca minas de plata del Estado en el Departamento Litoral, debiendo verificarse ella con un cuarenta por ciento de la utilidad líquida menos de la estaca denominada "Flor del Desierto," de que se dispone en el artículo siguiente. Cuarto: Se adjudica la dicha estaca "Flor del Desierto" y otra de las del Estado que elejirá el interesado, al pago de los intereses devengados que se reclaman, y son ciento sesenta mil setecientos bolivianos, anteriores al 18 de Diciembre de 1875, y setenta mil bolivianos correspondientes al año que espira. En la estaca "Flor del Desierto" la cuota correspondiente al Estado, y aplicable á esta amortizacion será el cincuenta por ciento del producto neto, y en la otra el cuarenta por ciento—40 %—, como en las demás estacas concedidas. El sobrante despues de hecha la amortizacion de estos intereses, será aplicable al pago del capital reconocido, como se dispone en la cláusula 3ª; siendo condicion que si una ó ámbas estacas no producen nada, ó producen poco, quedarán definitivamente cancelados, este cargo y toda reclamacion por dichos intereses devengados. Quinto: La explotacion de las estaca minas del Estado adjudicadas en los artículos anteriores queda sujeta al contrato que en esta misma fecha se celebra sobre la materia, pudiendo ser trasferidos esos derechos y esta transaccion á las personas ó sociedades que crea conveniente el interesado, dando de ello aviso al Gobierno. Sexto: En todos los casos de entrega ó recibo de cantidades, se considerará el peso chileno ó sol peruano de plata sellada, equivalente

2°

3°

4°

5°

6°

al boliviano; sea en este contrato ó en el de estaca minas. Otórguese la correspondiente escritura incertándose en ella esta transaccion y el contrato relativo de que se hace mérito.—Rejístrese.—

Aceptación.

Daza. — Oblitas. — Carpio. — Villegas. — Salvatierra.—En veinte y seis de los corrientes, horas

once, hice saber la resolucion Suprema que antecede al señor don Juan Wheelwright, socio y representante de los señores Alsop y Compañía, quien enterado de su contenido aceptó en legal forma el contrato por ante mi el Notario de Hacienda y firmó: de que doy fé.—Juan Wheelwright.—Patricio Barrera.—Notario de Ha-

Resolución Suprema.

cienda, Gobierno y Guerra—Ministerio de Hacienda é Industria.—La Paz Diciembre veinte y

tres de mil ochocientos setenta y seis.

En conformidad a la transaccion de la fecha se ha convenido por el Gobierno en Consejo de Gabinete con el señor don Juan Wheelwright, representante de la casa Alsop y Compañía que la explotacion de las estaca minas del Estado, que en aquella han sido adjudicadas á dicha casa, se haga bajo las bases y condiciones

siguientes:—Primera. El señor Juan Wheelwright tendrá el termino de tres años para hacer los estudios de las minas de plata del Estado, y buscar los capitales necesarios para ponerlos en trabajo, debiendo apresurarse á adoptar en el menor tiempo posible las medidas y disposiciones preliminares conducentes á ello. Durante estos tres años las minas quedarán á disposicion del empresario, facilitándole el Gobierno, con su recomendacion á las autoridades su posesion efectiva.

2ª Segunda:—En virtud de la adjudicacion que se tiene hecha al empresario está en su derecho para organizar, ya sea en la costa ó en el extranjero, sociedades colectivas ó anónimas para la explotacion de una i mas estacas; i bien para contratar los medios mas seguros de explotacion con los propietarios de minas colindantes, á efecto de trabajar todas ó cualquiera de dichas estacas, que á juicio de la empresa ó sociedades organizadas, sean provechosas, ó por lo menos costeen los gastos de su lavoreo, en las vetas descubiertas, ó que se descubrieren durante los tres años del término asignado en la base

3ª primera.—Tercera. Los empresarios podran contratar y ocupar en sus trabajos de minas, ingenieros, empleados y trabajadores, extranjeros ó nacionales, quienes durante el tiempo de su compromiso serán exceptuados de todo servicio militar, y de todo cargo civil ó concejil, salvos los

casos de atencion a la tranquilidad y orden público.—Cuarto.—

4^a La empresa ó sociedades encargadas del trabajo presentaran balances semestrales, para en virtud de ellos y de lo que conste en los libros, hacer la distribucion del producto neto en un cuarenta por-ciento que se aplicará por parte del Estado á la amortizacion de la deuda en los terminos convenidos en la transaccion de esta fecha, y un sesenta por-ciento á favor del peticionario.—Quinta. El

5^a Gobierno pondrá en todos los trabajos que se formalicen el Interventor ó interventores necesarios, los que seran dotados con el fondo comun de la empresa.—Sexta. Este contrato durará por veinte y cinco años; en cuyo tiempo si hubiere sobrante despues de amortizada la deuda del Estado en los terminos de la transaccion se entregará al mismo Estado.—Septima. Si en los primeros

7^a tres años ó en adelante hasta el vecimiento de los veinte y cinco espresados en el articulo anterior, hubiere individuos ó sociedades que se propongan explotar alguna ó algunas estacas de las contenidas en este contrato, prodran hacerlo, si la empresa no tiene por conveniente encargarse de la explotacion, manifestandolo por escrito ante el Gobierno, ú omitiendo deliberadamente esta manifestacion.—Oçtava. El

8^a Gobierno Supremo cederá á favor del peticionario y gratuitamente, mientras dure este contrato los terrenos del Estado que sean necesarios para la plantacion de sus casas y establecimientos de sus minas.—Daza—Salvatiera—Oblitas—

Aceptacion. Carpio — Villegas — Manuel Peñafiel — oficial Mayor—En veinte y seis del que rije horas once hice saber la resolucion Suprema que precede al señor don Juan Wheelwright, socio y representante de los señores Alsop y Compañia, quien enterado de su contenido, accepto en legal forma: doy fé.—Juan Wheelwright—Patricio Barrera,—

Prosigue. Notario de Hacienda, Gobierno y Guerra.—En cuya conformidad, ratificandose respectivamente, en las dos resoluciones supremas, preincertas, que orijinales quedan retenidas en la coleccion minutaria, bajo número cuatrocientos diez, despues de rubricadas por mi el Notario, por el tenor de la presente y en la forma que mas haya lugar en derecho, otorgan: que se compromenten y obligan á nombre de sus representados, y por si el último como socio á la observancia y cumplimiento de todas y cada una de las clausulas contenidas en ambas supremas resoluciones.

En su testimonio, así dije, la otorgaron y firmaron ante los testigos que presentes se hallaron los doctores Manuel Vargas P. y Benjamin Martines, vecinos de esta, solteros, abogados y mayores de edad, ante quienes y los señores otorgantes se leyó de principio a fin y no se opuso reparo alguno contra su tenor, de que signando doy fé. Manuel I. Salvatierra—Juan Wheelwright—Manuel Vargas P.—Benjamin Martinez. Aquí un signo. Ante mi Patricio Barrera,—Notario de Hacienda, Gobierno y Guerra.

[Translation.]

Settlement executed between the Minister of Finance and Industry, Doctor Manuel Ignacio Salvatierra, in representation of the National interests, and John Wheelwright, partner and representative of Messrs. Alsop and Company of Valparaiso, for the consolidation and amortization of the credits which he has pending against the State.

In the City of La Paz of Ayacucho, at eleven o'clock of the 26th of December, 1876, before me citizen Patricio Barrera, Notary of Finance, Government and War, and the undersigned witnesses, there appeared, on the one part, Doctor Manuel Ignacio Salvatierra, Minister of Finance and Industry, as representative of the National interests, native of the City of Santa Cruz, resident in this capital, married, and of the legal profession; and of the other part, John Wheelwright, partner and representative of Messrs. Alsop and Company of Valparaiso, a native of the United States of North America, a merchant, residing in Valparaiso, Republic of Chili, also married, and transitorily in this city, both being of full age and competent to execute this deed, and whom I certify that I know, and they stated, that in order to consolidate and liquidate the credits pending against the State, arising out of the transfer of rights which were recognized in favor of Don Pedro Lopez Gama, a Supreme Decree has been issued, dated on the 24th of the present month, in which is embodied the definite settlement for which this deed is ordered to be drawn out, and which is as follows:

Resolution of December 24, 1876.

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, December 24, 1876.

In view of a proposition made by Mr. John Wheelwright, a member and representative of the firm of Alsop and Company of

Valparaiso, in liquidation, for the purpose of providing for the consolidation and payment of the claims against the Government by an assignment of the rights which were acknowledged in favor of Pedro Lopez Gama, a new compromise has been concluded in a cabinet meeting with Mr. Wheelwright which finally terminates this matter. It is drawn up in the following terms.

First. The sum of 835,000 bolivianos is acknowledged as due the aforesaid representative of the firm of Alsop and Company, together with interest at the rate of 5 per cent per annum, not addable to the principal, and to be reckoned from the date on which this contract is duly executed.

Second. The said principal and interest shall be amortized by means of drafts all of which are to be drawn in quarterly installments on the surplus which, from the date on which the present customs contract with Peru terminates, shall arise, from the quota due Bolivia in the collection of duties in the Northern custom house, over and above the 405,000 bolivianos which the Peruvian government now pays,—whether the customs treaty with that Republic is renewed or whether the National custom house is reestablished.

Third. All of the silver mines of the government in the department along the coast are hereby devoted to the payment of the said amortization for which purpose 40 per cent of the net profit shall be utilized, except in the mine known as “Flor del Desierto,” concerning which provision is made in the ensuing article.

Fourth. The aforesaid mine called “Flor del Desierto,” together with one other of the government mines to be selected by the party concerned, are hereby devoted to the payment of the interest claimed as due, amounting to 170,700 bolivianos prior to December 18, 1875, and 70,000 bolivianos for the year now expiring. In the mine called “Flor del Desierto” the quota due the government and applicable to the payment of this amortization shall be 50 per cent of the net proceeds, and in the other mine it shall be 40 per cent, as in the remaining mines granted. The surplus remaining after the payments of this interest shall be applicable to the amortization of the capital acknowledged as due, as provided in clause 3, it being a condition that if one or both of the concessions produce nothing or little, then this obligation and every claim to said interest due shall be finally canceled.

Fifth. The operation of the mines of the Government let as concessions in the foregoing articles shall be subject to the contract concluded this date on the subject, the interested party being per-

mitted to assign these rights and this compromise to such persons or companies as he may deem suitable, giving notice thereof to the Government.

Sixth. In all cases in which sums of money are paid or received, the Chilean peso or the Peruvian sol of stamped silver shall be considered equivalent to the boliviano, either in this contract or in that regarding the mining concessions.

Let the proper document be executed, inserting therein this compromise and the contract connected therewith which is mentioned above. Let this be recorded.

[SEAL.]

DAZA.
OBLITAS.
CARPIO.
VILLEGAS.
SALVATIERRA.

Acceptance.

On the 26th of the current month, at eleven o'clock, I made known this supreme decree which precedes, to Mr. John Wheelwright, representative and partner of Messrs. Alsop and Company, who, fully informed of its contents, accepted the contract in legal form, before me, the notary of Finance, of which,

I hereby certify.

JOHN WHEELWRIGHT.

PATRICIO BARRERA,

Notary of Finance, Government and War.

Resolution of December 23, 1876.

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, December 23, 1876.

™ In accordance with the compromise made this day it has been agreed by the Government in Cabinet Council with Mr. John Wheelwright, representative of the firm of Alsop and Company, that the operation of the Government mines which have been let out as a concession to said firm on the same date shall be subject to the following clauses and conditions:

1. Mr. John Wheelwright shall have a period of three years within which to examine the Government silver mines and find the necessary capital with which to put them into operation, it being

his duty to take the necessary preliminary measures to this end as soon as possible. The mines shall remain at the disposal of the concessionary during these three years, and the Government shall enable it to gain actual possession thereof by giving the proper instructions to the authorities.

2. By virtue of the concession which had been made to him the concessionary shall be entitled to organize joint stock companies for the operation of one or more claims, either on the coast or abroad; or else to conclude contracts with the owners of adjacent mines in order to secure the most certain means of operating all or any of the said concessions which in the opinion of the concessionary or companies organized are profitable or will at least pay the cost of working them where veins are already discovered or may be discovered during the three years assigned in the first clause.

3. The concessionaries may hire and employ in their mining work either foreign or native engineers, employees, or laborers, who shall, during the period for which they are hired, be exempt from all military service as well as every civil or municipal office, except in cases of necessity in order to preserve public order and peace.

4. The concessionary or companies in charge of the work shall present semi-annual balances, on the strength of which, together with the records of the books, the distribution shall be made of the net proceeds, 40 per cent being applied by the Government to the paying off of the debt according to the terms agreed upon in the compromise of this date, and sixty per cent going to the petitioner.

5. The Government shall appoint one or more agents to superintend the work performed, who shall be compensated out of the common funds of the enterprise.

6. This contract shall last for 25 years, after which time, if there is any residue after paying off the Government's debt in accordance with the compromise, it shall be turned over to the Government.

7. If, within the first three years or thereafter until the expiration of the 25 years mentioned in the foregoing article, any persons or companies should offer to operate one or more of the mines included in this contract, they may do so provided the present concessionary does not care to undertake the operation thereof and so states in writing to the Government, or else deliberately neglects to make such statement.

8. The Supreme Government shall grant to the petitioner free of charge, during the continuance of this contract, such lands of the Government as may be necessary for the erection of his buildings and mining establishments.

DAZA.
OBLITAS.
CARPIO.
VILLEGAS.
SALVATIERRA.

Acceptance.

On the 26th of the present month, at eleven o'clock, I made known the Supreme Decree which precedes to Mr. John Wheelwright, partner and representative of Messrs. Alsop and Company, who, being notified of its purport, accepted it in legal form, of which I certify.

JOHN WHEELWRIGHT.

PATRICIO BARRERA,

Notary of Finance, Government and War.

Continuation.

In conformity with which, ratifying respectively the two Supreme Decrees embodied herein, which, in the original, exist in the archives of the collection under number 410, after being legalized by me, the Notary, in conformity with the present and in the most legal form, they covenant: that they oblige and compromise themselves in the name of those they represent, the party of the second part for himself as partner, to the observance and fulfilment of all and every clause contained in both Supreme Decrees. In witness thereof they affirmed, sealed and signed before the witnesses who were present, Doctors Manuel Vargas P. and Benjamin Martinez, residents of this City, single men, both lawyers and of full age, before whom and the signatories this was read from beginning to end, no objection of any kind being made to the tenor of it, and of which I give faith by signing.

MANUEL I. SALVATIERRA,
JOHN WHEELWRIGHT,
MANUEL VARGAS, P.
BENJAMIN MARTINEZ.

Before me,

PATRICIO BARRERA,

Notary of Finance, Government and War.

DIPLOMATIC CORRESPONDENCE.

BOLIVIA.

Minister Gibbs to the Secretary of State.

No. 61.

LEGATION OF THE UNITED STATES TO BOLIVIA,

Lima, July 2, 1884.

SIR: I enclose herewith various documents of Mr. John Wheelwright an American citizen, of claims against Bolivia. In looking over the documents, I think the claim should now be against Chile as they have seized on the property that was a security for the just claim of Mr. Wheelwright, not only taking the property, but also the income of the Custom house, which was set aside or to be paid in installments on the claim acknowledged by the Bolivian Government.

I am, etc,

RICHARD GIBBS.

[Enclosure in Mr. Gibb's No. 61.]

Mr. Wheelwright to the American Minister to Bolivia.

Lima, 28th June 1884.

SIR: Learning of your residence in this city as representative of the United States Government during the temporary absence of Hon. S. L. Phelps, I came hence from Chile, and now have the honor to address your Excellency as United States Minister Resident to Bolivia, craving your good offices in that capacity, for the reasons hereinafter given.

The undersigned, as liquidating partner of the firm of Alsop and Company of Valparaiso, Chile, entered into a solemn contract with the Supreme Government of Bolivia, the non-fulfilment of which, after a long period of time, necessitates an earnest appeal through the United States Legation, in order to protect from further prejudice the interests of the firm alluded to, whose members are American citizens; and some of whom reside permanently in the United States.

Permit me to submit a brief summary of the origin of the large indebtedness by Bolivia to the aforesaid firm in liquidation, so that the question may be more clearly understood and appreciated.

In the year 1862, an agreement was made with Mr. Pedro Lopez Gama, a subject of Brazil, for the purpose of facilitating him with means for the extraction and shipment of Guano from the northern portion of the littoral (coast department) of Bolivia, under a privilege granted on the 28th of August 1858, and purchased by him of its holder. This was subsequently renewed.

As the work progressed, additional financial aid was required for the acquisition of expensive machinery, and other facilities, as well as for the general administration of the business. Early in the year 1866, further concessions of like character, extending over the entire coast-range of Bolivia, were secured from that Government through heavy advances paid thereto, the funds being provided by Alsop and Company and Mr. Gama made to said firm an assignment of same in guarantee.

Towards the close of the year (1866) a proposal was made by Monsieur Arnault de la Riviere for the exclusive right of exploring the territory of Mejillones (Bolivia) and extracting the Guano therefrom.

Questions had arisen between Bolivia and Chile respecting this locality, previously considered as belonging to the former, but the alliance of these Republics and others on this coast, with the intent of warlike measures against Spain, led to an amicable adjustment of the dispute. This originated a treaty between Bolivia and Chile, which decided said territory, as belonging to Bolivia.

A contract between Monsieur Arnault de la Riviere and the Chilian and Bolivian Governments was shortly after made, signed and approved by all parties concerned, notwithstanding that they were informally notified by Mr. Gama in the city of Santiago, Chile (where there resided a Bolivian Minister duly accredited and empowered) of the infringement of his contract with the Government of Bolivia.

Thus the rights of Mr. Gama, to the prejudice of Alsop & Co., were practically set aside. A representation was made by him in defense of his concessions, but was denied on account of the impossibility of annulling the compact just referred to.

Considering that the privileges held by Alsop & Co. under assignment from Mr. Gama were for twenty years from the fifteenth of April 1862, with a preference as regards renewal; and that the ninth article of his contract stipulated that Bolivia could not meanwhile

celebrate any other, nor explore on its own account any Guano, the injury suffered can be somewhat estimated.

It seemed to be a case where the weaker Power (Boliyia) had to succumb to the stronger (Chile), as the first-named protested against the pretended claim of the other nation to that territory. This took place prior to the amicable arrangement of 1866, and in that treaty, Bolivia does not recognize nor does Chile exact a cession of territory, but merely restricted to a demarcation of limits, thereby declaring, as it would seem, the unquestionable right of Bolivia.

Owing to ineffectual efforts for a considerable period, arising in part from the disturbed political condition of Bolivia, the indebtedness of Mr. Gama, in place of being diminished, was gradually and unavoidably augmenting.

A further recital of the whys and wherefores would unnecessarily occupy your time and I will therefore limit myself to state that on the twenty-sixth day of October, 1870, it was arranged between the Supreme Government of Bolivia and Mr. Gama, that, in cancellation of concessions and the like in his favor up to that date, extending over the entire coast range of that country, and for prejudices experienced, the sum of (\$1,087,500) one million eighty seven thousand five hundred dollars should be awarded him, as set forth in a contract signed and sealed to that effect.

The next essential step was to make same available in some tangible shape, which was of *vital* importance, not only to Mr. Gama, who was so large a debtor, but also to his creditors, Mess. Alsop & Co., whose liquidation was precipitated by the untoward circumstances related herein.

It unfortunately resulted that Mr. Gama was utterly unable to effect payment and this obligated the transfer to the afore-mentioned firm, of all the rights derived by Mr. Gama from the Supreme Government of Bolivia, in virtue of a public document to that effect, executed in Valparaiso.

This was consummated on the fourteenth day of April 1875 before the Notary, Mr. J. C. Escala of that city and was received in exchange of an indebtedness, amounting to rather more than (\$1,200,000) One million two hundred thousand dollars, including accrued interest. The exact amount was acknowledged by Mr. Gama in a separate statement, signed by him week previously witnessed by two parties, whose signatures were certified to by the United States Consul at Valparaiso.

Provided with legalized copies of these documents, and of the articles of copartnership of the firm that I was a partner of, as well as liquidator, I at once proceeded to La Paz, Bolivia, with the exclusive object of obtaining from that Government a recognition of this assignment, as also an effective adjustment of this claim in the best form possible.

Arriving there, I awaited upon Hon. R. B. Reynolds, then representing the United States of America in that Republic, and during his stay in that city, he favored me with his counsel, and rendered me all the assistance in his power.

After repeated interviews with President Frias and the Ministers of Foreign Relations and Finance, I succeeded in securing a recognition in my favor of the sum of (\$870,000) Eight hundred and seventy thousand Bolivianos (hard dollars) leaving open to legal resource the claim for interest amounting to (\$200,000) Two hundred thousand dollars, more or less. This agreement was duly executed between the contracting parties, under date of the eighth of February 1876.

The reduction of the indemnity from \$1,087,500 to the sum of 870,000 Bolivianos was occasioned by the word "pesos" (dollars) being tenaciously construed by that Government as "febles" (a depreciated coin), and this being demanded as an initiatory proceeding, I was reluctantly forced to acceded thereto. Interest for six months at the rate of eight per cent per annum was paid me in Government drafts, which were duly honored in this city.

But a brief period elapsed before the Frias Administration was overthrown and General Hilarion Daza became Provisional President. Shortly after, quiet was restored and I returned to La Paz to watch the progress of events, remaining there for some months, until a Cabinet was organized under the new Government.

This being effected, I sought a conference with the Ministers of Foreign Relations and Finance, during which I was informed by the latter that the acts of the Frias Administration would not be recognized by that of Daza; that any contract of February preceding was null and void; and that, as a preliminary proceeding, the (\$35,000) Thirty five thousand Bolivianos (hard dollars) received by me for interest must be refunded. These dissenting points were discussed at length and finding that no advancement could be made while same were pending, I was compelled to conform thereto, with the compromise however that, instead of returning the (\$35,000) Thirty five thousand dollars (Bolivianos)

in money that sum should be deducted from the principal, and under the dilemma in which I was placed, this seemed in every respect expedient.

Taking (\$835,000) Eight hundred and thirty five thousand Bolivianos (hard dollars) as a basis of negotiation, and after prolonged discussions, another contract was signed in due form on the twenty-sixth day of December, 1876, and this being the one referred to in the first page of this memorial as that actually binding, I take the liberty of accompanying for your government a translated copy thereof Marked A. Subsequently, administrative authorizations, in support of the "Estacas de Instruccion Publica," i. e., the Government Silver mines, were, at my solicitation, issued, but being subsidiary, I merely advert to same herein, although copies can be presented, if deemed advisable.

As will be seen by perusal of the translated document alluded to, there exist two forms of security, from which payment is to be realized, the *first* and *most important* of which relates to Custom House revenue; and more especially so, as not having been able to induce Chile to give me undisturbed possession of the mines, in conformity with the Bolivian decree of twenty third of December 1876, only heavy expenses in maintenance of my rights instead of benefit have been the consequence of my efforts.

In view of these two pledges, not only entirely distinct, but affecting the territory of both Peru and Bolivia, I suggested to the Minister of Finance that separate decrees be made, and he yielded to my request after being urged, but I regret to say that the separation of guarantees was not made with sufficient clearness as to treat them in the way desired.

I was actuated thereto, so as to be prepared for the opportunity of, in the first place, negotiating the debts that, for the total amount of indebtedness and interest, were to be delivered me, and which course a liquidating firm would most naturally prefer to pursue.

Likewise, in the event of organizing a Company or Companies for the working of the government mining sets, termed "Estacas de Instruccion Publica," less explanation would be necessary for the granting of leases, etc., in accordance with the rights acquired by the undersigned.

Most unfortunately as a result of warlike attitude since the fourteenth of February 1879, neither of the foregoing could be carried into effect, but I deem it proper to submit these explanations to

Your Excellency, so that the past as well as actual situation may be the more easily comprehended. It is to be hoped this will really be the case.

With regard to the excess of Customs House revenue from what was styled the "Aduana del norte" (the Arica Custom House and dependencies) which surplus over (\$405,000) Four hundred and five thousand dollars in silver annually, was to paid me; I would remark that at the time, no immediate returns could be expected therefrom, as the contract between Peru and Bolivia had not expired, thus precluding any action meanwhile in the premises.

Consequently my early attention was turned to a preliminary study of the "Estacas de Instrucion Publica," or mining sets appertaining to the Government of Bolivia, situated a considerable distance inland from the port of Antofagasta and in separate mineral districts, the *most* extensive and promising of which was Caracoles. Agents were appointed there and in El Inca; and in order to better ascertain the importance of the mining properties acquired, as also to adopt such preparatory measures as would be likely to conduce to the more systematic development of these estaca-minas, or government mines, I remained there for some time.

It will not be amiss to say that prior to my departure from La Paz, the Government of Bolivia caused to appear in their official organ "La Reforma" No. 691 of the twenty-eighth of December 1876 the decrees mentioned in the contract, duly executed before the Notary two days previously; and I had same reproduced in a daily paper, called "El Titicaca."

At the same time, I had inserted, with the verbal approval of the Minister of Finance a notice, under the heading of "Estaca-Minas del Estado en el Littoral," signified government mines in the coast-range or department, informing various miners and others, that, in virtue of the decree of twenty-third of December, 1876, I was placed in possession of the silver mining-sets on the Littoral, that belonged to the said Government; and that all future arrangements connected therewith should be conducted through the writer.

The same decree and notice were published in a newspaper of the Littoral called "El Caracolino," and publication was made in "El Mercurio" of Valparaiso, Chile, of the decrees referred to. In consequence of both Bolivians and Chileans were publicly informed of the nature of the contract, to which the mining community of

Chileans mainly made open opposition, with but few honorable exceptions. In fact, there was very manifest, an undercurrent of public opinion, indicative of extreme animosity; and apparently instigated by some turbulent Chilean residents, which nationality, being in the majority, tended to produce alarm, and materially retarded my progress from the outset.

In the latter part of the year 1878, Hon. E. D. Medino, Minister of Finance of Bolivia, went to the Littoral, as delegate from the Government, for the purpose of investigating and arranging some matters, respecting which complaint had been made.

Avaling of his presence in Antofagasta, I conferred with him about certain difficulties encountered in the favorable prosecution of my enterprise, and which I, to a considerable extent attributed to intimidation, thus giving rise to fear on the part of the Bolivian sub-authorities, or through undue influences, hostile to my interests, being exercised. Owing to this unlooked-for drawback and the general distrust in Chile, arising from the paralyzed state of commerce, it had been impossible to encourage the investment of capital in mining ventures in that locality.

Mr. Medina seemed to be convinced thereof, and in response to my verbal, and subsequent written solicitation for an extension of the three years expressed in the first clause of the decree of twenty-third of December of 1876, without invalidating in the least the tenor of my contract, did not disapprove of my application to him, as aforesaid, and promised to further my wishes to the best of his ability. However, before he had time to return to the seat of government, and obtain a hearing of my petition war between Chile and Bolivia was declared.

To retrace a little my statement, I beg to say that the national congress assembled in La Paz unanimously approved, under date of twelfth of February 1878, as per translated copy herewith, marked "B", all these acts of the Provisional Government and special mention of my contract was made by the Minister of Finance in his report to that assembly, as per accompanying translations marked "C". This approval was made public in a small pamphlet, of which the only copy in my possession had to be presented to the tribunals of Chile in defense of my rights.

When the Chilean military forces occupied the Littoral, I was in Caracoles, doing all that could be done towards the development of the "Estacas de Instruções Publicas," taking into account the hostility with which I was assailed.

The Bolivian authorities and residents, almost to a man, fled at once, the principal notary, taking with him the archives of his office, thus causing great inconvenience in many cases, and no inconsiderable prejudice in others, especially in mine.

Finding that no headway could be made in a mineral district, recently occupied militarily, I left my Agent (a German) in Caracoles, and went to Antofagasta. This was in the latter part of February, 1879, and I have there since resided, beset by numerous expensive and annoying lawsuits, emanating from unfriendly action in general, when the reverse, or at least neutrality, should have been the case. To such an extent was this carried, that I was called a Bolivian spy, merely because I held a contract pledging to me property belonging to that government which had been until within a short period on friendly relations with Chile, and an ally during the Spanish war.

Notwithstanding this memorable and almost untenable position, I continued to exercise endeavors, attended by outlay and vexations, towards maintaining the indisputable rights ceded in my favor, as liquidating partner of the firm herein mentioned. This has been prolonged with more or less activity up to the present time, as can, if requisite, be attested to by competent witnesses, and proven by documentary evidence.

My pleadings before the Chilean tribunal of Antofagasta were in some instances partially favorable, but the suits were generally carried to the Court of Appeals in Serena, in which, I was obliged to employ legal counsel as well.

Before that tribunal I met with adverse decisions thro' an unwarranted display of patriotism, or other incomprehensible reason, which gave additional courage to my opponents, and increased my embarrassment. Without doubt, the main points at issue were evaded by the judges completely ignoring the Bolivian laws, as well as what might have been expected on International grounds, judging from numerous precedents.

During the year following the occupation already cited, it might be said that there existed uncertainty, varying according to circumstances, whether the Littoral of Bolivia would remain in the hands of the Chileans, or be retaken by the allies; and, as a matter of course, that part of the country was kept in a continual state of ferment, which only began to calm down after the capture of the Peruvian ironclad "Huascar" on the eighth of October 1879.

Even then, some time elapsed before tranquility was restored, and meanwhile although fiscal and other regulations prevailed in

conformity with instructions from the Chilean Government, municipal and other laws were left in abeyance thus manifesting some doubts on the part of the victor. According to my way of thinking, it would strike the most casual observer, that during that period, many of the Bolivian laws, inclusive of the mining code, should have reigned supreme. Such a measure would have been at all events less prejudicial, even under the otherwise unfavorable surroundings, such as scarcity of labor, high prices of provisions, etc., than the arbitrary course pursued regarding the Estacas.

As the naval and land forces moved northward, Chile took possession of various ports along the coast, and I was, consequently, unable to initiate any action, connected with the second clause of the Bolivian Government's decree of 24th of December 1876, as Arica and other ports were under Chilean control, by their military occupation of same.

On account of all these drawbacks, which tested one's patience almost beyond endurance, I became wearied as to hoping for any effectual remedy from informal intimations, relative to my harassing position; and addressed the Government of Chile under date of 11th of September, 1882, as per translated copy, marked D, which is accompanied, for the information of Your Excellency as regards the purport of the original petition presented as above. Spanish copies of my contract with Bolivia, and other documents relating thereto were appended, and these in translation take their appropriate places in this detailed representation for Your Excellency's consideration and attention, as respectfully solicited.

As for a very long period after the declaration of war by Chile, my efforts were so seriously hampered, as to prevent the fulfilment of any project regarding the organization of a company or companies for the development of the government mines ceded by Bolivia, I could but feel that *then* if not before, the time had certainly arrived for a ready response, and that Chile would willingly discountenance a further unjustifiable invasion of my rights, so uninterruptedly defended without success before the Chilean Tribunals.

But no! there was neither applied the "in statu quo" principle, until the belligerent horizon should be more clearly defined, nor did the supreme government of Chile think fit to give a decisive reply to my appeal. My petition would appear to have unnoticedly passed from one Ministry to another until reaching that of justice, when its incumbent waived the essential points and entirely eluded

their importance in the question at issue, by a groundless insinuation touching diplomatic intervention. Accompanied under mark E, Your Excellency will please find a translated copy of the decree of the Minister of Finance, dated Santiago, the eighteenth of October 1882. As far as I have been able to learn, the usual custom of publication in the bulletin was not followed in this instance.

The allusion therein to a presumed diplomatic course was without foundation, and only tends to show what subterfuges are resorted to, in order to evade direct responsibility; this method may serve for a time, but the day of straightforward, undisguised reckoning should, and, I think, will come.

My subsequent abstention from an appeal to my Government for protection is ample proof of my pacifically inclined intentions and I continued on, confiding in the reiterated declarations of Chile about honorable dealings, which I charitably thought would be adopted, and that perhaps the opportune moment had not come. It resulted that new Cabinets were formed and their incumbents gave promises that were never fulfilled.

Though "patience ceased to be a virtue," still I persevered, under the cherished belief that as the war approached its end, I would be fairly and mayhaps generously treated in recompense for my quiet adherence to the rights involved. Most wofully was I disappointed, and thus compelled to make a journey here, it being well known that even the worm, when trampled upon, will turn. This absence from my post could moreover not be avoided, as the United States Minister to Chile had not been there since February last, and the occasion was *pressing*, as will be hereinafter stated.

The prejudices from the commencement arose from the frequent evidence of undue encroachments on, and disappearance of many of the boundaries of my mining sets, as well as on the interior workings, that it irremediably deteriorated their actual, and also their prospective value. Moreover, the Chilean mining jurisdiction, so distinct from that of Bolivia, caused serious inroads, which it was beyond my power to counteract, and interminable lawsuits gave scope for usurpation, robbery of metal, etc. These evils could not be controlled as the Government of Chile would not be induced to listen to my just solicitations; and during all these years, I had not arrived at the desired goal of being able to offer to the public for investment therein, the mining properties referred to, free from incumbrance, and in the certainty of retaining undisputed possession of same.

At last, hearing that two Bolivian Envoys, Hons. Belisario Salinas and Belisario Boeto had been named to proceed to Chile to treat about peace, I felt somewhat encouraged, as regards an early solution of this long-pending question, and in order to facilitate same, prepared the following:

First—A representation addressed to the Government of Bolivia, which, together with Power of Attorney in favor of a person of my confidence, was sent in ample time to La Paz.

Second—One of like tenor, to the gentlemen named above.

Third—To the Government of Chile was directed one of almost indetical purport, each and all of the three respectfully urging the *full* recognition of my contract of twenty-sixth of December 1876 already cited.

This was rendered necessary, as Chile had control of the former coast department of Bolivia, as well as of the port of Arica (Peru) but I deemed it advisable to recapitulate to some extent in my renewed appeal to Chile, the origin and special privileges—of the “*Estacas de Instruccion Publica*,” or Government silver mines, belonging to Bolivia, and of my ineffectual efforts hitherto, so that my unsatisfactory position might be properly considered and remedied, now that a treaty of peace or some other pacific arrangement was possibly to be determined between Chile and Bolivia.

The petition to Messrs. Salinas and Boeto was placed in their hands on their arrival at Valparaiso, by J. Stewart Jackson, Esq., my attorney in Chili, and at the same time, he handed to Hon. Belisario Salinas, with whom I was acquainted, my letter of twenty-fifth of November, 1883. So that your Excellency may see the futile result of my endeavors in that quarter, I append under marks F and G translated copies of this missive and its reply of 11th of December following, to be compared with the agreement of truce of 4th and 8th of April last, undoubtedly on file in your Legation.

In due course, my agent in Bolivia acknowledged receipt of the representation sent forward for that government informing me at the same time of his prompt attention thereto in the form requested.

That transmitted to my attorney in Valparaiso for the Government of Chile was, I believe, personally delivered to the respective Minister. At that season of the year, President Santa Maria, and the members of his Cabinet were in that city, and there, as I understand, took place most of the conferences with the Bolivian envoys, which expedited the opportunities of giving reminders to the gentlemen mentioned, which I feel assured were availed of.

Later on, my agent in Bolivia advised that no progress had been made, on account of recent changes in the Ministry.

I most confidently relied upon definite and favorable action being taken by the Chilian Government and Bolivian Envoys unitedly; and the more so, as whatever might have been viewed or alleged as the motive for unfriendly attitude on the part of Chile, and so persistently maintained hitherto, my renewed solicitation could not, on any plausible pretext pass unheeded.

Therefore, with what appeared to me as well-founded reasoning, I awaited the entire recognition of the contract of the date herein specified *in the same manner and to like extent* as if there had not been any military occupation by Chili, nor change of domination of territory on and since the fourteenth day of February 1879, which is what I asked for. The time was very appropriate for the consummation of this act of mere equity, and not having been arranged before, could most fitly have formed part of the treaty agreement between the two nations, about to suspend or terminate hostilities.

This was undeniably so, from its very nature and validity, and as the contract alluded to expresses, not only the mode of payment but also the amount to be paid; and in addition, as the sanction of the Bolivian Congress, which should be treated from a decidedly more favorable standpoint in my humble opinion, than an undefined claim. The serious loss entailed on me, through not respecting rights legally acquired prior to the declaration of war, also merits compensation in some shape or other.

Your Excellency can perhaps imagine my surprise and disappointment when I was the recipient of a printed copy of the treaty agreement of the fourth of April last, and shortly afterwards, learned of the modifications entered into on the eighth of same month, neither of same denoting any reference to the said contract. My attorney in Valparaiso, informed me that, noticing this omission the Chilian Minister with whom he spoke on the subject attributed the blame to the Bolivian envoys for not having alluded to the matter during their conferences. On the other hand, Hons. Belisario Salinas and Belisario Boeto promised to make amends by having, on their arrival at La Paz, a special clause inserted in the treaty agreement to the end desired. Thus, relying both upon Chile and Bolivia jointly, as well as separately, naught whatever was accomplished.

It is apparent that, on account of the war, neither a renewal of the customs house contract with Peru, nor the establishment, on a

suitable basis, of the national (Bolivian) Custom House, has been practicable. In consequence, and notwithstanding my vigilance, it has been utterly out of my power to render in any way effective, as a whole, my contract with Bolivia.

Yet it will be seen that Chile has taken *excessive* care, while disregarding *my* rights to protect such of her citizens as may have been prejudiced, and which losses originated mainly from mines in Bolivia. Not only so, but to provide therefor has been stipulated in the treaty agreement that *forty per cent* of the Arica Custom House revenue be appropriated to this purpose. In adopting this measure, Bolivia may have been unavoidably obligated, under pressure from the conquerer, but Chile, already aware of the pledge given in 1876 by the former, becomes a participant, to the exclusion of my previously acquired rights as far as that percentage of revenue could be applied.

The proportion of thirty-five per cent of the entire receipts from the same source is to be appropriated by Bolivia *with the consent of Chile*, both being stolidly indifferent to what transpired nearly eight years since, and in consequence of belligerent acts until recently, has never been made effective, much to the detriment of neutrals, who, as before stated, compose the American firm of Alsop & Co. formerly transacting business in Chile.

The annual return from the aforesaid Custom House is estimated by the Chilian press not to fall short of 1,500,000, taking as a basis of calculations the receipts of the years 1882 and 1883.

Supposing that a minimum of (\$1,000,000) one million dollars in silver be realized, there would result an excess of (\$505,000) five hundred and ninety-five thousand dollars over and above the amount formerly paid by Peru to Bolivia. Or, granting to Chile, if need be, for indemnity, the twenty-five per cent allotted thereto, and deducting from the remainder on the same basis, the (\$405,000) four hundred and five thousand dollars specified in the contract of 26th of December, 1876 it would appear that *Chile should* pay to the undersigned instead of to Bolivia, the sum of (\$345,000) three hundred and forty-five thousand dollars in silver yearly, or in like proportion, as the said Custom House duties may result to be more or less than the one million dollars in silver, taken as the annual estimate.

Likewise, it would seem but perfectly equitable that Chile should continue to pay in the manner aforesaid until the sum of (\$835,000) eight hundred and thirty-five thousand dollars in silver, distinctly expressed in the contract of 26th December, 1876, and interest

thereupon from that date at the rate of five per cent per annum, should cancel the indebtedness of Bolivia to the liquidating firm of Alsop & Co., represented by the undersigned, and formally acknowledged by the aforesaid Government of Bolivia. The foregoing views are humbly submitted as a candid opinion of the case in point, and in view of all that has been experienced hitherto in the way of prejudices, disappointments, evasions, and unjust treatment, but without taking into account adequate compensation for all such during the period of years.

At the same time, not being versed in international law, I confess myself incompetent to determine how far *Chile* may, and should be accountable for such acts towards neutrals, as are truthfully related herein, and as regards the reprehensible conduct of Bolivia in this important matter there cannot exist any doubt. I feel thoroughly convinced, however, that there are those connected with the United States Government, and more especially with the State Department, who, being fully conversant therein, can and will instruct that entire justice be done in a case so equitable as is the one, for which your good offices are herein soliticed as a medium of transmission and recommendation.

As a link, not heretofore mentioned in the unwarranted proceedings of Chile, I beg to say to Your Excellency that my petition sent *last year* to that Government has been placed in the hands of the "Fiscal" (Attorney General) and the Minister of Foreign Affairs informed my representative in Valparaiso that no progress could be looked for until his opinion was submitted to the Government for the elightenment of the same.

That was *months* since, and judging from past inexcusable delay, I hardly know what to expect; and when resolved upon, the decision will perhaps have the non-committal significance that was predominant in the decree of the Minister of Justice, as per copy marked "E," dated the 18th of October 1882, and already referred to.

Notwithstanding the pending reply to that petition and actuated by an earnest desire to hasten a solution of these difficulties, so detrimental to my interests as to be almost unbearable, I sent to Valparaiso, shortly after the publication of the treaty agreement of last April, another, referring to the surprising circumstance that my rights were not considered, when discussing and framing the treaty agreement with Bolivia. Its presentation was left subject to the discretion of my attorney as he was near to the seat of Gov-

ernment and having facility for obtaining late information, would know best how to proceed. Consequently, I can only say, that if presented, no response has been given, and according to late advices from my attorney, the "Fiscal" had not yet reported. For the perusal of Your Excellency I accompany a translated copy marked H of the document, to which reference has been made.

The question might be asked why under such conflicting and disastrous reverses I should have been induced, during the period of five years, to give my exclusive attention at considerable personal sacrifice, to this harrassing business.

In brief, permit me to state in explanation thereof, under five headings, to wit:

1st. That as the indebtedness, giving rise to the contract, *was large*, and its recovery in some available shape was of immense import to the members of the firm in liquidation, I had devoted my time since 1874 to the accomplishment of this wished for object, visiting La Paz three times, and spending nearly six consecutive years in the desert of Atacama, on the northern confines of which are located the government's silver mines.

2d. That the acquisition of equitable rights from the Government of Bolivia in 1876, recoverable as follows:

1st. From the excess of custom house revenue, as already stated.

2d. From the product of numerous silver mines, created by a special law, dated the 23d of July 1852, and with certain valuable privilegese, which mining sets were termed "Éstacas de Instrucion Publica", and belonged to the Government.

These securities, and especially the first, which then appeared to be *easy* of realization, afforded me encouragement that ere long the principle and interest would be converted into a tangible shape.

3d. That war did not exist and even when hostilities began, I never believed that Chile would act with such gross injustice. A conflict that was calculated to terminate within six months was prolonged until recently; and not anticipating this, I contended tenaciously, awaiting brighter days; and little dreaming of the trifling, evasive conduct of a Nation, partial to lauding its own honor, and strict integrity, but not always acting thereto, as is manifested in the foregoing statement. Latterly, I have become satisfied that had I not proceeded with tenacity and perseverance, hardly a vestige of the Éstacas would be now traceable.

4th. That referring to the preceding clause, I am enabled to acquit myself before Bolivia of any blame connected with the "Estacas de Instruccion Publica" or Government silver mines.

Chile could not but have been aware that had I not exercised this constant watchfulness, and care, Bolivia, with the intent of evading responsibility, might have called attention to and may-haps claimed that, through neglect of said mines, a portion of the indebtedness from their probable yield during such a lapse of time might have been covered, thus diminishing the obligation to like extent that rests on the source of customs house revenues.

5th. That, failing to secure from the Government of Chile (as is the case) an acknowledgement of the rights embraced in the contract of twenty-sixth of December 1876, notwithstanding my very earnest and continued zeal to that end, I was buoyed up by the knowledge that recourse could be had in a direction, not contemplated, or heretofore thought, so as not to occasion unnecessary trouble. I should not omit to say under this heading that at the end of 1883, my long sustained hopes were considerably on the wane, and when Hon. Cornelius A. Logan passed Antofagasta in February last, I had an interview with him and verbally explained my uncertain position. When the treaty agreement of April last was carried out, as a preliminary peace measure, and was to be shortly ratified, I addressed him at Washington, stating the facts that my legally acquired rights and, methinks, intentionally disregarded, as asking if aught could be done in my behalf. On my return to Chile I may find his reply:—

A short time afterwards, I was informed of your probable stay in this city of some weeks and not knowing when the United States Legation in Santiago would be again opened I determined to come here for the purpose of seeking an interview with Your Excellency touching this important case as apparently no time should be lost.

Gratified to find that Your Excellency is not only alive to American interests in this part of the world, and that as far as I am enabled to judge that after your patient hearing, of my explanation and examination of documents placed in your hands, has formed a favorable opinion of my rights, I resolved to address this representation as mentioned on the opening page.

If I have been too diffuse pray pardon for any intentional error, but the meaningless assurances received in the prosecution of my arduous labors seemed to render indispensable a detailed recital,

and may have led me to say more than was actually necessary. As Your Excellency will observe my repeated appeals have not been noticed by the respective Governments cited herein, and that as it has not only been impossible to obtain definite replies, but because coming events, connected with the treaty agreement will evidently not warrant further delay, their action, or rather inaction, up to this critical moment, may, as candidly thought by me, be construed into a negative.

In conclusion, I venture to hope that the perusal of the preceding general statement of my case, and of the documents which are accompanied, will serve to convince your Excellency even more fully than before, that I, as liquidating partner of the American firm of Alsop & Co., have acquired legally and immovably, the following rights:

First. To recover from the Custom House at *Arica*, now in possession of the Chilean authorities, and to remain thus, in lieu of those of Peru, (to which that port belongs) for the period of ten years, in conformity with a treaty to that effect, the sum of (\$835,000) eight hundred and thirty-five thousand dollars in silver, with simple interest thereupon at the rate of five per cent per annum, since the twenty-sixth day of December, 1876.

Second. That all the revenues obtained from the *Arica* Custom House in excess of (\$405,000) four hundred and five thousand dollars per annum, as mentioned and stipulated in the second article of the contract referred to in the preceding clause are due and payable to me in preference to any other credit, and especially prior to those created in any shape or form subsequent to the twenty-sixth day of December, 1876, and shall so continue being appropriated, as aforesaid, *until* the final extinction of the indebtedness, by payment of the capital and interest recognized as due to me as above.

Third. That as the war declared by Chile in 1879, and continued until recently, has been the preventative cause of the actual situation, as regards recovery of indebtedness under the stipulations of the contract mentioned herein; and, as *Chile* retained possession, both of the *Arica* Custom House, and of the Coast Department of Bolivia, the payment of the capital and interest in the manner aforesaid, should be paid by *Chile*, to the undersigned.

Fourth. That I am the cessionary of all the Estacas de Instruccion Publica (belonging to the Bolivian Government) on the

twenty-sixth of December, 1876, and of all estacas of like character in silver mines, which should be discovered and adjudicated within the (Littoral) Coast Department of Bolivia within three years from that date.

Fifth. That I am also entitled to work the Estacas, referred to in the foregoing clauses, on the conditions referred to in the Supreme Resolution of the twenty-third of December, 1876, which is inserted in and forms part of the contract of the twenty-sixth of December, 1876, before alluded to, and which was supported and strengthened up to the fourteenth of February, 1879 by subsidiary decrees of the Supreme Government of Bolivia.

Sixth. That as cessionaire of the Estacas de Instruccion Publica of the mine "Flor del Desierto" and of one other mine, which may be herein designated as the mine "Disputa," I have worked and retained the privilege of working same, conformably to the stipulation of the fourth article of the Supreme Resolution of twenty-four of December 1876, inserted also in the Deed of Contract already cited.

As my rights are still seriously jeopardized, in spite of my strenuous efforts to the contrary, and for the aforementioned reasons connected therewith, as well as to bring this clear and definite case to a speedy, definite and favorable issue, I am obliged to look to the protection of my Government, feeling assured that the indisputable rights of American citizens, composing the firm of Alsop & Co. will be *fully cared for*.

The already acquired pledges and the specified form of payment, through the sources designated, seem to render *easy* of application and enforcement the International laws and requirements, in treating this question, so that Chile can, with but little delay, be requested to comply with the terms of the contract of twenty-sixth of December, 1876, and that Bolivia should have to conform thereto, being, as would appear up to this date, the only channel open to secure re-imbusement.

Trusting that the above, with appended translations of documents, marked A to H inclusive, and relating to same, will be sufficiently explanatory, I have respectfully to request your Excellency to be good enough to bring this matter under the immediate consideration of the United States Government at Washington.

As your Excellency is aware, the Bolivian Congress is to meet in Sucre on the *sixth of August* next, and it is generally thought that

attention will be first given to the discussion and probable ratification of the treaty agreement of the fourth and eighth of April of the present year, with or without such modifications as may be indicated by that Assembly.

If not deemed inexpedient to express my views on one apparently essential point, I beg to remark to your Excellency, that being informed that Hon. Eusebio Letto has started from Chile on a special mission to Bolivia, it is currently believed that his object is to arrange with that Government about the distribution of the forty per cent to be retained from the Arica Custom House revenue for the benefit of prejudiced Chilean citizens.

Moreover, the cause of the treaty agreement that apportions to Bolivia thirty-five per cent of the said revenue expressly states that it is to be paid "des de luego," i. e. *immediately*.

Somewhat apprehensive of additional complications arising from the circumstances just mentioned, may I be excused for intimating to your Excellency, both as United States Minister resident to Bolivia, and in the absence of the United States Minister to Chile, that it is very desirable to guard against the detrimental effects that would inevitably result therefrom, if allowed to be carried into execution.

To this end, I trust that as early as may be practicable, the Governments of Chile and Bolivia will be officially notified that any part of the Arica Custom House revenue destined to satisfy the claims of Chilean citizens, or to be appropriated by Bolivia, is *not to be disposed of* by Chile, but retained by same meanwhile, in deference to my previously acquired rights, and until the capital and interest, already specified herein, be provided for from the said revenue.

I avail of this occasion to tender my sincere thanks to your Excellency for listening so attentively to my verbal statements, and for perusing so carefully the several documents left in your hand for that purpose, thereby encroaching considerably on your valuable time.

Wishing that I could have, to my own satisfaction, addressed this representation in a more concise form, I have the honor to remain, Sir,

Your most obedient servant,

JOHN WHEELWRIGHT.

The Secretary of State to Minister Sorsby.

No. 45.

DEPARTMENT OF STATE,

Washington, August 9, 1904.

SIR: I enclose copies of a letter from Mr. Nathaniel A. Prentiss and its enclosures, relating to the claim of Alsop and Company.

You will present the claim to the Bolivian Government and ask for its prompt and careful consideration and for the payment of a just and equitable indemnity to the claimants.

I am, etc.

JOHN HAY.

The American Minister to the Minister of Foreign Relations of Bolivia.

LEGATION OF THE UNITED STATES

La Paz, Bolivia, July 31st. 1906.

SIR: Referring to this Legation's Despatch of September 27th. 1904, relative to the Claim of Alsop & Co., and acting upon instructions of June 15. 1906, from my Government, I have the honor to say that although Chile in the Treaty of October 20, 1904, assumed and agrees to satisfy this Claim (See Art. V. of the Treaty of October 20. 1904, and the notes between Bolivian Minister Dr. Gutierrez, and the Chilean Minister of Foreign Affairs, Dr. Bello Codecido, of October 21st. 1904, interpreting Art. V. of said Treaty) such assumption and agreement does not release Bolivia from her original liability, should Chile default in the performance of her obligation; and, in this connection, I have the honor to invite Your Excellency's attention to the following facts: (1) that the Alsop Claim has not been paid or satisfied; (2) That the Chilean Government inquired through the American Minister at Santiago, Mr. Wilson, on the 4th. of December 1903, whether an offer of 954,285 Chilean Dollars, would be accepted in settlement of the Claim; (3) That the Department of State at Washington replied on the 17th. of December 1903, that the offer was declined as inadequate; (4) That subsequently the American Minister Mr. Wilson, was informed by the Chilean Government that as soon as the pending treaty between Chile and Bolivia was concluded it would take up the Alsop Claim and give it particular and generous consideration; (5) That after the ratification of the Treaty of October 20. 1904, the Chilean Minister at Washington made an offer of 524,333 Chilean Pesos in settlement of the Claim, which the Department of State, in a despatch of January 10. 1905, characterized as "entirely inadequate to the just satisfaction of the Claim and not in accord with

the previous assurance given by the Chilean Government to the American Minister at Santiago, that the Alsop Claim should receive just and even generous treatment."

No further offer having been received from the Chilean Government, and the Claim being still unsettled, in order to assist my Government in arriving at a just estimate of the amount of money which Chile ought to pay on account of Bolivia in final liquidation of the Claim, if Bolivia is to be released from the original liability, I am further instructed by my Government to request that Your Excellency kindly furnish this Legation, for transmission to the Department of State at Washington, with duplicates of the following documents:

1. "All of the accounts of the Alsop or Pedro Lopez Gama Claim which was the basis and subject of the liquidation of December 26, 1876; (See Supreme Decree of December 24, 1876).
2. "All of the documents relating to the liquidation previous to that of December 26, 1876;
3. "All, or the part of the 'Memoria' of Dr. Manuel Ignacio Salvatierra, Bolivian Minister of Hacienda, of November 20, 1877, relative to the liquidation, or Decree of December 26, 1876, and also, the part of the said 'Memoria' relating to the liquidation of the Alsop Claim, as approved by the Constitutional Congress of 1876; (See Decree of February 12th, 1878);
4. "All of the representations which Bolivia has made with respect to the Alsop Claim to the Chilean Government;
5. "A full copy of the Protocol of May 19, 1891, relating to the principal and interests of the 'Pedro Lopez Gama credit';
6. "A full copy of the Protocol of May 28, 1895, providing that certain credits, including those of Pedro Lopez Gama (of whom Alsop & Co. were assignees) should be examined by the Government of Chile in order to fix the definite amount due;
7. "A full copy of the 'Antecedents' as countersigned by the Minister of Bolivia in Chile in his Memorandum of May 23, 1895; and
8. "A Memorandum showing what liquidation if any, have been made between Chile and the Claimants, other than those of Alsop & Co. contemplated in Art. V. of the Treaty of October 20, 1904, and if any liquidations have been made, upon what basis".

It gives, etc.

WILLIAM B. SORSBY.

Minister of Foreign Relations of Bolivia to the American Minister.

No. 24.

MINISTERIO DE RELACIONES EXTERIORES,

La Paz, 21 de Septiembre de 1906.

SEÑOR MINISTRO: Tengo en mi poder el apreciable oficio de esa Legación fecha 31 de Julio próximo pasado, manifestando que sin embargo de que Chile asumió en el tratado de Paz celebrado

con esta Republica la obligacion de satisfacer entre otros el crédito de los Señores Alsop y Co. dicha suposicion y convenio no exime á Bolivia de su primitiva responsabilidad, en el caso de que Chile faltase al cumplimiento de su obligacion, en cuya virtud V. E. se permite llamar la atencion de este Ministerio sobre varios incidentes de la gestion iniciada para hacer efectivo el mencionado pago y concluye por pedir se proporcione á esa Legacion, para ser enviadas al Departamento de Estado en Washington, copias dúplicas de varios documentos relacionados con el asunto.

En respuesta me cumple manifestar á V. E. que mi Gobierno ha estimado siempre que las responsabilidades derivadas de obligaciones afectas al territorio litoral han seguido la suerte de este y han debido ser solventadas por el tenor de dicho territorio, cuyos rendimientos aprovechaba exclusivamente, y que esa responsabilidad genérica fundada en las enseñanzas generales del Derecho, han asumido un caracter positivo por el ajuste del Tratado de 20 de Octubre de 1904, celebrado precisamente con el objeto de liquidar todas las emergencias de la cesion territorial allí contemplada, y entre ellas de un modo determinado, el crédito de los Señores Alsop y Co.

En esa virtud, las mismas gestiones de que V. E. hace merito en el despacho á que contesto, son la prueba de la perfecta y absoluta inteligencia atribuida á la estipulacion recordada, gestiones que llegarán seguramente á un resultado satisfactorio dada la justificacion y ecuanimidad de los Excmos. Gobiernos de Chile y los Estados Unidos.

Por tales motivos y en la esperanza de contribuir á una facil inteligencia de los expresados Gobiernos, el de Bolivia no tiene inconveniente en suministrar á esa Legacion las copias solicitadas por V. E. que existan en sus archivos, con excepcion unicamente del marcado con el No. 8 cuyos antecedentes no nos han sido remitidos por Chile, en atencion á que la liquidacion y pago de los créditos que como el de los Señores Alsop y Co. pasaban antes sobre Bolivia, son en la actualidad y por efecto del Convenio de 20 de Octubre, de la exclusiva responsabilidad y competencia de dicha República.

Con este motivo me es grato reiterarle, las seguridades de mi mas alta y distinguida consideracion.

CLAUDIO PINILLA.

[Translation.]

No. 24.

MINISTRY OF FOREIGN RELATIONS,

La Paz, September 21st. 1906.

Mr. MINISTER: I have in my power, your appreciated communication of July 31st. last, calling attention to the fact that although Chile assumed in the Treaty of Peace celebrated with this Republic the obligation to satisfy among others the credit of Messrs Alsop & Co. this assumption and agreement does not free Bolivia from the original responsibility should Chile default in its obligation, and in view of which you deem fit to call the attention of this Ministry to various incidents of the negotiations initiated to bring about the above mentioned payment and asks that there be supplied to that Legation, to be forwarded to the Department of State at Washington, duplicate copies of various documents relating to the matter. In reply I beg to advise Your Excellency that my Government has always considered that the responsibilities derived from obligations affecting the coast territory have followed the fortune of that territory and should be assumed by the holder thereof, the products of which have been enjoyed exclusively thereby, and that the generic responsibility founded on the general principles of law has assumed a positive character by the consummation of the Treaty of October 20. 1904 celebrated precisely with the object of settling all questions arising out of the cession of territory there contemplated and among them in a specific manner the credit of Messrs Alsop & Co. By virtue of which, the same efforts which Your Excellency mentions in the Despatch under reply are proofs of the perfect and absolute understanding of the stipulation referred to, efforts which will surely result satisfactorily in view of the justice and equanimity of the Governments of Chile and the United States.

For these reasons and in the hope of contributing to a prompt understanding between the Governments mentioned, the Government of Bolivia does not find it improper to supply your Legation with the copies requested by Your Excellency, the originals of which are on file with the sole exception of that indicated by the Number 8, whose antecedents have not been made known to my Government by that of Chile, and in view of which the liquidation and payment of the credits which, like that of Messrs Alsop & Co. previously devolved on Bolivia, are now and as a result of the arrangement of October 20th. of the sole responsibility and province of the former Republic.

I renew, etc.,

CLAUDIO PINILLA.

Minister Sorsby to the Secretary of State.

[Telegram—Paraphrase.]

La Paz, Bolivia (Recd. Sept. 28, 1906).

Minister for Foreign Affairs of Bolivia, in connection with the Alsop claim, states that the copies requested will be furnished within two weeks, but considers that the liquidation of all the claims referred to in the treaty of October 20, 1904, pertains exclusively to Chile, as a result of such treaty. He verbally refers to the notes exchanged at Santiago, October 21, 1904 between Señor Gutierrez, (Bolivian Minister to Chile) and the Chilean Minister for Foreign Affairs defining the purport of Article 5 of the treaty, in defence of his position. Minister for Foreign Affairs verbally says it is his understanding that Chilean claims have been settled, but does not know basis as Chile has not advised.

SORSBY.

Minister of Foreign Relations of Bolivia to the American Minister.

No. 30.

MINISTERIO DE RELACIONES EXTERIORES DE BOLIVIA,

La Paz, Octubre 6 de 1906.

SEÑOR MINISTRO: Refiriendome á la estimable comunicacion de V. E. de 31 de Julio ultimo, en la que se sirvió solicitar le fueran franqueados varios documentos, tengo el agrado de remitir á esa Legacion, juntamente con este oficio, los siguientes:

“Resolucion de 21 de Diciembre de 1872 reconociendo en favor de Pedro Lopez Gama, el derecho al valor de ciento cincuenta mil toneladas de huano de registro.”

“Resolucion de 18 de Diciembre de 1875 declarando á D. Pedro Lopez Gama inculpable de las faltas de explotacion que entorpecieron el pago del crédito.”

“Resolucion de 22 de Enero de 1876 manteniendo la de 18 de Diciembre de 1875.”

“Resolucion de 7 de Febrero de 1876, ordenando se proceda al otorgamiento de la respectiva escritura.”

“Resolucion de 23 de Diciembre de 1876, estableciendo las condiciones de la explotacion de las estaca-minas adjudicadas á la casa Alsop & Co.”

“Resolucion de 24 de Diciembre de 1876, acordando una transaccion con el representante de los Señores Alsop & Co.”

“Protocolo sobre créditos firmado en Mayo de 1895, por D. Heriberto Gutierrez y D. Luis Barros Borgoño.”

“Memorandum de 23 de Mayo de 1895, á que se refiere el Protocolo anterior.”

Los documentos enumerados van por duplicado, de acuerdo con lo manifestado por V. E.

Al expresarle que tan pronto como se terminen las copias de los restantes seran remitidas á esa Legacion, me es honroso renovarle las seguridades de mi mas alta y distinguida consideracion.

CLAUDIO PINILLA.

[Translation.]

No. 30. MINISTRY OF FOREIGN RELATIONS OF BOLIVIA,

La Paz, October 6th 1906.

Mr. MINISTER: Referring to your estimable communication of July 31st. last, in which you request to be furnished with various documents, I have the pleasure of remitting to your Legation, together with this despatch, the following:

“Resolution of December 21. 1872, recognizing in favor of Pedro Lopez Gama the right to the value of One hundred and fifty thousand registered tons of Guano.”^a

“Resolution of December 18. 1875 declaring Pedro Lopez Gama not responsible for the failure of exploitation that paralyzed the payment of the credit.”^b

“Resolution of January 22. 1876, supporting that of December 18. 1875.”^c

“Resolution of February 7. 1876, ordering the authorization of the respective public documents.”^d

“Resolution of December 23. 1876, establishing the conditions of the exploitation of the estaca-minas adjudicated to the house of Alsop & Co.”^e

“Resolution of December 24. 1876 agreeing to an adjustment with the representative of Messrs. Alsop & Co.”^f

“Protocol with respect to creditors signed May 28. 1895, by Senor Heriberto Gutierrez and Senor Luis Barros Borgoño.”^g

“Memorandum of May 23. 1895, to which the foregoing protocol refers.”^h

The documents enumerated are in duplicate, as per your request.

I have to say that as soon as the other copies are finished they will be remitted to your Legation.

I have, etc.,

CLAUDIO PINILLA.

^a See p. 303, *infra*.

^b See p. 332, *infra*.

^c See p. 335, *infra*.

^d See p. 336, *infra*.

^e See p. 10, *supra*.

^f See p. 8, *supra*.

^g II Appendix, p. 451.

^h See p. 372, *infra*.

Minister Sorsby to the Secretary of State.

[Telegram—Paraphrase.]

La Paz, Bolivia, July 16, 1907.

The Government of Bolivia insists that clause 5 of the Bolivian-Chilean treaty of October 20, 1904, when taken in connection with the explanatory notes of October 21, 1904, which were exchanged at Santiago between the Minister of Foreign Relations of Chile and the Bolivian Minister at Santiago, relieves Bolivia from its responsibility upon the claims specified in the treaty. The Acting Minister for Foreign Affairs of Bolivia makes an offer to represent to Chile that the Government of Bolivia has received notice from the Government of the United States of the non-fulfillment of its obligation under treaty to settle the Alsop claim.

SORSBY.

Minister Sorsby to the Secretary of State.

[Telegram—Paraphrase.]

La Paz, Bolivia, July 22, 1907.

Minister of Bolivia to Santiago is in La Paz on leave of absence until September. Minister for Foreign Affairs of Bolivia has promised me that the non-compliance by Chile with the treaty obligations with respect to the settlement of the Alsop claim will be made the subject of representations by the Bolivian Minister upon his return to Santiago. He believes that a better method than to make the representation through the Bolivian Secretary of Legation.

SORSBY.

The Minister for Foreign Affairs of Bolivia to the American Minister.

No. 91.

La Paz, 10 de Setiembre de 1907.

SEÑOR: He tenido la honra de recibir su atenta comunicación de 25 de Julio último, en la que V. E. se sirve manifestar que su Gobierno le ha instruido para llamar la atención de esta Cancillería hacia el hecho de que el Gobierno de Chile, sin embargo de los compromisos contraídos con Bolivia en el Tratado de Paz de 20 Octubre de 1904 para el pago de los créditos que pesaban sobre el litoral boliviano ha cancelado aún el de Alsop y Cia. Añade V. E. que al efectuar ambos países el referido arreglo no consultaron la voluntad del acreedor Alsop y Cia. y que por tanto lo estipulado en el Artículo 5 del Tratado de Paz no exime á Bolivia de las obligaciones que contrajo con dicho acreedor.

Finalmente V. E. se sirve insinuar que mi Gobierno haga gestiones ante el de Chile á fin de obtener el pago del supradicho crédito, en ejecución de lo convenido tanto en el Tratado de Paz, como en las reversales de 21 de Octubre de 1904. En respuesta me cumple manifestar que mi Gobierno, siente en esta ocasión, no apreciar de la misma manera que V. E. la responsabilidad de Bolivia en lo que se refiere al crédito de los Señores Alsop & Cia, por que tratándose de obligaciones reales, cualquiera que sea el poseedor de la cosa, ésta continua afectada siempre á la obligacion. En el presente caso conoce V. E. que el pago del crédito reconocido á los Señores Alsop y Cia se hallaban afectadas varias estaca minas del litoral boliviano, constituyendo asi una verdadera hipoteca, que aun subsiste, no solo de acuerdo con los principios del derecho civil, sinó por que en el Tratado de Paz, el Gobierno de Chile reconoce expresamente este credito, como que recae sobre dicho litoral, que ha pasado á formar parte de su territorio. Asi parece haberlo reconocido tambien el acreedor por el hecho de tener ya iniciadas sus gestiones ante aquel Gobierno para obtener el pago de su credito.

Sin embargo, deferiendo gustoso al deseo de V. E. he dirigido las instrucciones convenientes á la Legacion de Bolivia en Chile, para que mediante sus amistosos oficios ante ese Gobierno procure el arreglo de este asunto en la mejor forma posible.

Quiera V. E. aceptar con este motivo, las seguridades de mi más alta y distinguida consideración.

J. M. SARACHO.

[Translation.]

No. 91.

La Paz, September 10th, 1907.

SIR: I have had the honor to receive your despatch of July 25th, last, in which Your Excellency states that your Government has instructed you to call the attention of this Chancery to the fact that the Government of Chile, notwithstanding the agreements made with Bolivia in the Treaty of Peace of October 20, 1904, for the payment of the credits that weighed upon the litoral of Bolivia, has not yet cancelled that of Alsop & Co.

Your Excellency adds that when the two countries made the agreement referred to they did not consult the wish of the creditor, Alsop & Co, and therefore, in accordance with Article No 5 of the Treaty of Peace, Bolivia is not free from the obligations that it contracted with the said creditor. Finally, Your Excellency desires that my Government discuss the matter with that of Chile

in order to obtain the payment of the aforesaid credit, and thus complete that which was agreed upon in the Treaty of Peace and in the repetitions of October 21, 1904.

In reply, I wish to state that on this occasion my Government does not estimate in the same manner as Your Excellency the responsibility of Bolivia relative to the credit of Messers Alsop & Co, because, when we are treating of real obligations, the possessor of an object, whoever he may be, continues to be always attached to the obligation. In the present case, Your Excellency may remember that at the payment of the credit acknowledged as due Messers Alsop & Co, various mines in the litoral of Bolivia were concerned, thereby constituting a true pledge, which still subsists not only in accordance with the principles of civil law, but also because of the fact that in the Treaty of Peace, the Government of Chile expressly recognized this credit which falls on the said litoral, and which has become part of its territory. It seems that the creditor has also recognized it in a similar manner, because of the fact that he has already taken steps to obtain payment of the claim from that Government. Nevertheless, submitting with pleasure to the desire of Your Excellency, I have addressed the Legation of Bolivia in Chile the proper instructions, in order that by means of its friendly offices with that Government it may obtain an adjustment of this matter in the best possible way.

I trust, etc.

J. M. SARACHO.

CHILE.

Minister Logan to the Secretary of State.

No. 121.

LEGATION OF THE UNITED STATES,

Santiago, August 9, 1883.

SIR:—Referring to your dispatch No. 52, requesting information concerning the claims of American citizens against the Chilean Government, growing out of the present war, I have to say, that a list of such claims was furnished to the Department in my "Inventory of the Legation Property and Archives," enclosed under cover of my dispatch No. 97.

In order, however that you may have a more detailed statement of them, I beg to present the following:

1st. John Wheelwright, for breaking of mining contract with Bolivian Government, through Chilean occupation. No sum specified.

* * * * *

Our claims as compared with those of other nations, seem quite small, though others may and probably will be presented upon the termination of the war, particularly by Americans resident in Peru.

If it be the purpose of the Department to consider the propriety of making a claims treaty similar to those entered into between the Government of Chile and those of France, Great Britain and Italy, I may ask your attention to my dispatch No. 74, under date of March 26th ult., enclosing the treaty made with France, together with a translation thereof. The treaties are identical, with the necessary changes of names etc.

My No. 74 states that a treaty had also been made with Germany, which I have since learned is not the case, the latter Government having taken no action as yet.

I have, etc.,

C. A. LOGAN.

Minister Logan to the Secretary of State.

No. 174.

LEGATION OF THE UNITED STATES,

Valparaiso, February 4, 1884.

SIR: Desiring to place the claim of Mr. E. C. Du Bois, who is at present in this city, in some definite shape if possible, before

leaving for Washington, I solicited the opportunity of talking personally with President Santa Maria upon it, Señor Aldunate having left the cabinet, and his successor being as yet unacquainted with the business in detail. This opportunity was given me by the President, who said that he was ignorant of the details of Mr. Du Bois' claim.

Thereupon I proceeded to lay it before him, while he gave me a patient hearing. After I had concluded, the President said that the Government of Chile would honorably settle every claim upon it, which might be shown to be founded in justice, and entail an obligation upon the Government under the laws of nations; that as regarded claims in particular, other than those provided for by special claims conventions, he did not think they ought to be pressed until Chile had actually closed the war; that as yet the Peruvians had not ratified the treaty of peace, and Bolivia would make no definite treaty until after the pending Presidential election; that everything promised a permanent settlement within the next four or five months, between all the belligerents, and that then the real business of arranging accounts, etc., should properly begin. In conclusion he requested me to postpone any further action in the case, until such time as the definite arrangement with her opponents, would leave Chile free to consider the questions growing out of the rights of neutrals, which as before said, cannot be very long. The President was very cordial, and I left with the conviction that his government would honorably arrange the claim in accordance with the principles of law and equity.

Under the circumstances and in view of the situation, there seems to be much reason in the President's request; and in any event there is nothing further to be done until the time indicated shall have expired.

I have, etc.,

C. A. LOGAN.

The American Minister to the Minister of Foreign Relations of Chile.

LEGATION OF THE UNITED STATES,

Santiago, Oct. 6th, 1884.

SIR: I have the honor to inform Y. E. that I have received an instruction from my Government upon the general subject of claims; by which I am requested to inform Y. E.'s Government of the disposition of the United States to agree with the Government of Chile; upon some method of arbitration which will commend itself to the interested parties; that in case the amount

involved justifies the expenditure, it is suggested that all claims on the part of either Government be submitted to an international commission.

In case such agreement be reached, it is the desire of my Government to include in the list of claims to be considered and adjudicated, not only those growing out of the late war between Chili and the allies, but also certain claims of American citizens arising out of the occurrences of 1858 and 1859, in Chili; as also, in a few cases, both before and after those dates. These claims have been carefully considered by my Government upon several occasions, and have been deemed sufficiently meritorious to justify the latter in presenting them.

With a feeling of profound friendship for Chili and appreciating the difficulties in which the Government was placed during the earlier part of the last quarter of a century, my Government has contented itself with simply presenting them to Y. E.'s Government for consideration, feeling entirely satisfied to await the arrival of a more auspicious moment, when the high sense of justice which has always characterized Y. E.'s Government, would certainly bring about their settlement upon an equitable basis.

These claims are some eighteen or twenty in number, and do not cover in the total, a large sum of money. They are on file in Y. E.'s Department; and to enable you to call them more readily to mind, I take the liberty of simply naming the principle of them, in their order.

1. Claim of Philander Rice.
2. " " Retan and Cohen.
3. " " Maurice Levick.
4. " " W. H. Swain.
5. " " B. F. Mahan.
6. " " Bowne and Cole.
7. " " Dr. John Whipple.
8. " " Rev. J. A. Swaney.
9. " " The Townsend Jones.
10. " " The Florida.
11. " " Polynesian.
12. " " The Barque Eliza.
13. " " The Sportsman.
14. " " Alsop & Co.
15. " " The Barque Mariana.

In addition to the older claims just mentioned, there are on file in this Legation certain others growing out of the late war, which

happily, as at present reported, do not cover any large number, nor considerable amount of money. Should it meet the views of Y. E.'s Government to agree upon some friendly method of considering and disposing of the claims held by citizens of the United States against Chili; as well as any which possibly might be held by citizens of the latter against the former, I am authorized to agree with Y. E. upon such method, and submit a draft of any claims convention we may make, to my Government for its approval.

I embrace the present opportunity, etc.,

C. A. LOGAN.

Minister Logan to the Secretary of State.

No. 214.

LEGATION OF THE UNITED STATES,

Santiago, December 10th, 1884.

SIR:—On Saturday evening the 6th inst., I received a cablegram from you, which I deciphered as follows: "Learn informally whether Chile will entertain our presentation of war claims for Chinese residing in Peru as in case Swiss".

Sunday and Monday being feast days, and all business suspended in consequence thereof, I was unable to reply to your cablegram until yesterday, when I sent you the following message:

"FRELINGHUYSEN, *Washington.*

On account of speculative claim abuses, Chile has adopted an unalterable rule to admit no claim presented by other nations. Germany has been denied representation of Swiss, and our Government of Swiss or Chinese; particulars will be sent by next mail."

In explanation of the causes which have induced Chile to arrive at the decision indicated in the foregoing cablegram, I may repeat to you the information which has been conveyed to me upon the subject, by this Government.

In a lengthy interview with the Minister of Foreign Relations, yesterday, he stated to me that the attempted depredation upon the Chilean Treasury, had become so flagrant and serious in character, as to render it absolutely necessary, that the Chilean Government should adopt the most rigid measures in the protection of its own interests. He said that the presentation of claims against the Government, had become a settled matter of business. That, through the tribunals of arbitration, now in session in this city, the Treasury of Chile had been besieged by hundreds of the most unheard of and unfounded claims. That in reference to the Chinese, it is well known that but very few of them were engaged

in any reputable business, whatever; and that so far from having suffered injury, either personally or pecuniarily at the hands of the Chileans, it was an indisputable fact, that the Chileans had protected them in both. He said further, that the Government had information of the present attempt to make a raid upon the Chilean Treasury, by certain foreign claims speculators, using the thousands of unknown and irresponsible Chinese residents of Peru as the means of accomplishing their purposes. To my inquiry as to how the Chinese residents of Peru, who might possibly have some meritorious claim against the Government of Chile, could be enabled to obtain justice, if unable to present their claim through the intervention of a friendly government, he replied, that it was the plain duty of the Chinese, or any other government, having no representative at this capital, to accredit a Minister especially for the purpose. He repeated to me what I already was aware of, that in the recent claims treaty between Chile and Germany, the former had refused to allow the latter to present the claims of Swiss citizens.

The Minister further informed me, that his government had refused to make a claims treaty with the Government of Spain, having resolved, in order to relieve itself of the present attacks of claim speculators, to make no more claims-treaties with any other government. Upon this statement being made to me by Señor Vergara, the Foreign Minister, I immediately said, "in that case, Mr. Minister, the note addressed by myself to you, under date of October 6th, proposing a claims convention upon the stipulations mentioned in my note of that date, and to which I have been expecting a reply, is already answered." He quickly said to me, "no! I have not had time to study those cases, and with your Government it is altogether a different thing, as I am quite confident that none but legitimate claims will be tolerated by your Government."

In this connection, I may appropriately refer to Mr. Hunter's instruction, number 121, in reference to the inclusion of claims of Swiss Citizens on Chile in the Treaty, which may be negotiated between the United States and the Government of Chile. You will perceive from the foregoing statement of the situation, that it will be impossible to secure a presentation of the claims of the Swiss or Chinese by the United States, in any treaty which we may possibly negotiate.

I have, etc.,

C. A. LOGAN.

Minister Logan to the Secretary of State.

No. 220.

LEGATION OF THE UNITED STATES,

Santiago, January 5th, 1885.

SIR: I have to acknowledge the receipt of your instruction number 125, under date of November 21st ultimo, containing a copy of ——— despatch No. 151, of my colleague in Lima, with its enclosure, all relating to the subject of the settlement of claims, by arbitration.

Concerning the probabilities of a claims-convention between the United States and Chile, I have but little to add to the information rendered you in my despatch No. 211. In the despatch alluded to, I informed you of the statement of the Minister of Foreign Relations, made to me, to the effect that the Government would make no more claims conventions; but would proceed to consider the claims upon the old basis of direct diplomatic negotiation. In reply to my inquiry of the Minister, as to whether I might consider that decision as an answer to my official note of October 6th ultimo, proposing a claims-convention he replied that it was not, and that as soon as he had time to study the old cases of 1859, he would make me an official answer.

Upon any developments occurring in the case, I shall promptly notify you.

I have, etc.,

C. A. LOGAN.

Minister Logan to the Secretary of State.

No. 239.

LEGATION OF THE UNITED STATES,

Santiago, March 16, 1885.

SIR: Referring to your instruction No. 139, requesting me to include the claims of American citizens resident in Bolivia, in the terms of the Convention now in progress of negotiation with Chile, I have to say that your instruction shall be complied with, should a claims-convention be negotiated by myself. Apart from any instruction in the premises, I should have included the claims of all Americans, wherever resident, growing out of the late war.

Upon the general subject of our claims, I have to report, that since the middle of January, the capital has been deserted, and everybody, including officials, has fled to the coast. It is a custom of the Government to establish during the summer vacation, temporary offices at Valparaiso, but none save the most routine busi-

ness, is expected to be done. Upon account of the lack of all news I have not addressed you by the last two mails.

Feeling uneasy about the unusual delay in replying to my note of Oct. 6th, ult., proposing a Convention, I went to Valparaiso during the latter part of February, to seek an interview with the Foreign Minister upon the subject of our claims. I found that the latter gentleman had gone to the southern part of Chile, and that he would not return for a month. I then called upon the President, and also upon Señor Balmaceda, Minister of the Interior, who, under the Chilean law and usage, is the premier of the Cabinet, taking the Presidential office temporarily, in case of the death of the Chief Magistrate of the nation. Both promised me that, immediately upon their return to Santiago, some definite shape should be given to our matter. Señor Balmaceda went farther than this, and said that, he was confident his Government would consent to an amicable arrangement which would result in naming a round sum to indemnify our claimants, and at the same time avert the expensive machinery of a formal claims-tribunal.

I am quite sure that the Chilean Government is not at all satisfied with its recent experience of claims-commissions. The danger of the nomination of an incompetent or partial man as the third commissioner or of both has determined the Government, I think, to make no more claims-conventions.

I have some reason for believing that Chile would prefer cancelling all of the treaties, and to arrange all claims by direct negotiation between the Foreign Office and the diplomatic representatives of the claiming countries.

When the Executive again returns to Santiago, which cannot be later than the first of April, I shall press our matter to some sort of conclusion; and if the idea submitted to me, by Señor Balmaceda, herein alluded to, shall be put in a formal shape, I may communicate it to the Department by cable.

I have, etc.

C. A. LOGAN.

The Secretary of State to Minister Roberts.

No. 24.

DEPARTMENT OF STATE,

Washington, March 20, 1886.

SIR: I transmit herewith, enclosed, the documents presenting and substantiating a claim of Mr. John Wheelwright, an American citizen now residing in Antofagasta, against the Chilian government for wrongs done him as partner of the firm of Alsop & Co.

by its non-fulfilment of obligations growing out of the transactions of the Bolivian government with Pedro Lopez Gama of whom Alsop & Co. became assignees in April 1875.

The petitioner states that while he was proceeding to carry out the terms of a contract made December 24, 1876, between himself and the Bolivian Government, on the basis of the above assignment, his work was interrupted by the war between Bolivia and Chile, which broke out in 1879, and lasted till April 1884. The "estacas" comprising Mr. Wheelwright's mining operations are included in the territories conquered by Chili and have been occupied by various persons, mostly of Chilian nationality, in violation of his vested rights. Against these persons, Mr. Wheelwright has brought several suits, the first of which was decided in his favor, but the judgment was reversed in a Superior court of appeal at Serena on the 19th May 1882, by a decision given in Section VI of Mr. Wheelwright's printed petition.

This adverse decision takes the ground that the terms of the contract with the Bolivian Government under which Mr. Wheelwright claims, ought to be adjudicated in subjection to the laws of Chili, and not to those of Bolivia; that the estates claimed by the plaintiff under the Bolivian contract not having been delivered to him during the Bolivian dominion that contract remained without effect with respect to them, and that in conformity with these bases and certain articles of the civil code and laws of Chili here cited, Mr. Wheelwright's demand is without foundation and the previous decision is repealed.

Mr. Wheelwright claims that this and other similar decisions are tantamount to an actual seizure and confiscation of his property, for which he is entitled to compensation, the measure of which is to be determined by his contract with Bolivia of Dec. 24, 1876, with interest added.

The question that first presented itself, on the hearing in this case, was as to Mr. Wheelwright's nationality. The length of time during which he had been absent from the United States raised in my mind doubts which led me to call for additional proof. I am bound to say that by the proof consequently adduced these doubts have been dispelled. Mr. Wheelwright has undoubtedly been for a series of years resident, from time to time, in South America, as the representative of large business interests in the United States, and employed on duties which required from him such residence as a confidential agent. Possessed as he

was of the system and details of vast mercantile transactions conducted by a house of long-continued and wide-spread activity, and of high business credit, it was natural that during these years his visits to his home should have been occasional and brief. But there is abundant evidence that he always maintained his position as a citizen of the United States and that he paid an income tax to the United States. There is no proof of any renunciation of his allegiance to the United States, or of his becoming naturalized or nationalized in either of the South American States in which he was from time to time resident. Were we to hold that citizens of the United States cannot, without forfeiting their nationality, reside from time to time in South American States as agents of their countrymen, the business of both continents would receive a heavy blow. In affairs so vast, so intricate and so continuous as those of Alsop and Company, for instance, there could be neither consistency nor responsibility of action except through trusted agents, who, while taking up continuous abode in their places of business action in South America, would, from early personal relations be in the confidence of their chiefs, making their central business in this country the place to which their domiciliary duties would relate, and continuing to subject themselves to the laws of the country in which the firm was domiciled. As a matter of public policy, therefore, as well as of international law, I cannot but conclude that Mr. Wheelwright's domicile and nationality are in the United States.

As to his claim for redress for the wrongs which the present memorial narrates, I have also little doubt. The immense interests he held, in 1879, in his representative, as well as individual capacity, under Bolivian laws, were virtually confiscated, under form of a judicial decision, by the government of Chili, in 1882. Were this confiscation put on grounds of municipal law, or of revolt against municipal authority, it might be argued that the decision is one as to which we cannot sit in appeal. But the decision rests on an alleged rule of international law which, assumed, as it now is, by the government of Chili, becomes a proper matter of discussion between ourselves and that government. It is asserted by the government of Chili (for, in international relations, and the maintenance of international duties, the action of the judiciary in Chili is to be treated, when assumed by the government, as the act of the government) that a sovereign, when occupying a conquered territory, has, by international law,

the right to test titles acquired under his predecessor by applying to them his own municipal law, and not the municipal law of his predecessor under which they vested. The true principle, however, is expressed in the following passage cited in the memorialists brief.

“But the right of conquest cannot affect the property of private persons; war being only a relation of State to State, it follows that one of the belligerents who makes conquests in the territory of the other cannot acquire more rights than the one for whom he is substituted; and that thus, as the invaded or conquered State did not possess any right over private property, so also the invader or conqueror cannot legitimately exercise any right over that property. Such is to-day the public law of Europe, whose nations have corrected the barbarism of ancient practices which placed private as well as public property under military law.” (C. Masse, *Rapports du droit des gens avec le droit civil*, Vol. I, p. 123, §148-149.)

This doctrine has frequently been acted on in the United States. Thus it has been held by the Supreme Court that when New Mexico was conquered by the United States, it was only the allegiance of the people that was changed; their relation to each other, and their rights of property, remained undisturbed—*Leitensdorfer v. Webb*, 20 How. 176. The same has been held as to California. The rights acquired under the prior Mexican and Spanish law, so it was decided, were “consecrated by the law of nations.” *U. S. v. Moreno*, 1 Wall. 400; see *U. S. v. Anguisola*, 1 Wall. 352; *Townsend v. Greely*, 5 Wall. 326; *Dent v. Emmeger*, 14 Wall. 308; *Airhart v. Massiew*, 98 U. S. 491; *Mutual Assurance Soc. v. Watts*, 1 Wheat. 279; *Delassus v. U. S.* 9 Peters, 117; *Mitchell v. U. S.* 12 Peters, 410; *U. S. v. Repertigny*, 5 Wall. 211.

The government of the United States therefore holds that titles derived from a duly constituted prior foreign government to which it has succeeded are “consecrated by the law of nations” even as against titles claimed under its own subsequent laws. The rights of a resident neutral—having become fixed and vested by the law of the country—cannot be denied or injuriously affected by a change in the sovereignty or public control of that country by transfer to another government. His remedies may be affected by the change of sovereignty but his *rights* at the time of change must be measured and determined by the law under which he acquired them. War is between States, and forms of government may thus be changed, and laws are forms of government, but cannot act retroactively to destroy neutral rights. The government of the United States is therefore prepared to

insist on the continued validity of such titles, as held by citizens of the United States, when attacked by foreign governments succeeding that by which they (were) granted. Title to land and landed improvements, is, by the law of nations, a continuous right, not subject to be divested by any retroactive legislation of new governments taking the place of that by which such title was lawfully granted. Of course it is not intended here to deny the prerogative of a conqueror to confiscate for political offenses, or to withdraw franchises which by the law of nations can be withdrawn by governments for the time being. Such prerogatives have been conceded by the United States as well as by other members of the family of nations by which international law is constituted. What, however, is here denied, is the right of any government to declare titles lawfully granted by its predecessor to be vacated because they could not have been lawfully granted if its own law had, at the time in question, prevailed. This pretension strikes at that principle of historical municipal continuity of governments which is at the basis of international law. Holding as I do that the action of the government of Chili here complained of, by which citizens of the United States have been divested of their property, is in violation of this principle.

I am, etc.,

T. F. BAYARD.

Minister Roberts to the Secretary of State.

No. 192.

UNITED STATES LEGATION,

Santiago, May 3d 1888.

SIR: The President and cabinet returned to Santiago on the first of April, a special session of Congress having been called for the 2nd, to ratify an amendment to the Constitution, permitting the free exercise of all religious creeds, which was approved of three years previously by Congress, as recognized by the Constitution. There was but one month remaining of the time in which it had to be ratified.

Scarcely had the discussion in Congress commenced, when a rupture occurred in the Cabinet; Señor Zañartu, Minister of Interior resigned in consequence of some misunderstanding with the President. Within a few days the entire Cabinet retired from office, and a few weeks more passed before a new Cabinet was announced.

In the meantime the proposed amendment to the Constitution was abandoned for the present.

As soon as I received official notice of the appointment of the new Cabinet from Señor Demetrio Lastarrio, the Minister of Foreign Relations, I called to pay my respects, but he not being in his office, I then called upon President Balmaceda, who received me very cordially as usual. I was accompanied by the Secretary of Legation and Señor Quadra, Minister of Interior, was with the President and remained during the interview.

After some general conversation, I said: Mr. President, I called to pay my respects to the new Minister of the Exterior, Señor Lastarria, at whose appointment I am very much gratified, but was not fortunate in finding him in his office, my intention was to have a conversation with him on the subject of the claims of American citizens resulting from the war with Peru. It was also my intention to mention the matter to Your Excellency, in order that you might learn directly the views of my Government, with the hope that the new Minister might be prepared to discuss the matter fully, when I should have the honor to call on him for that purpose.

The Administration of President Cleveland, I said, has abstained from presenting these claims for consideration, from a desire not to embarrass the Government of Chile while negotiations were pending with European Governments for the settlement of similar claims, but now that these have terminated by settlement, my Government, naturally solicitous for the interests of its citizens, who for some time have been pressing their claims upon its attention, would like to negotiate for the appointment of a Commission for their adjustment believing also that such a settlement would promote the good relations existing between the two Governments.

The President replied that he was very glad to hear what I said, but that Tribunals were a very expensive means of settlement. I replied that I did not see how a Convention for the settlement of our claims could be very costly, that our claims were few and that the gross amount was not large, the President replied, yes, I understand that. Continuing I said, and the questions that would necessarily arise in the adjustment, were not likely to lead to protracted discussion, and that for many reasons, which doubtless the President could well understand, my Government preferred to settle them through a convention.

I said, Mr. President, I hope before I leave Chile, to be instrumental in settling all questions in dispute between the United States and Chile, so that there will be no questions pending which could possibly interfere with the continuance of the most cordial

and friendly relations between the two countries. To which he replied that he hoped it would be so.

I shall adhere strictly, as instructed, to the Convention.

I have, etc.,

WILLIAM S ROBERTS

Minister Egan to the Secretary of State.

No 93

LEGATION OF THE UNITED STATES,

Santiago Chile September 13th 1890.

SIR. I have the honor to refer to your despatch of 25th January 1890, No 22, on the subject of the claims of Mr E C Du Bois and other American citizens, against the Government of Chile, and to say that on account of the strained relations which existed between the executive and legislative powers here, from the receipt of your instructions until about a month ago, to which I have already referred in my No 88, it would have been entirely useless to have attempted to take any steps in the matter.

Mr Du Bois has recently come to Santiago and after consultation with him, and after a full investigation of his case, I have forwarded to the Minister of Foreign Relations of Chili, under date of 30th August ultimo, a full statement, of which I enclose copy herewith. I had previously, during the days when the change of Ministry was taking place, spoken to H. E. the President of the Republic on this case, and received his permission to see him again upon the matter. Accordingly, on 9th instant, I waited upon him, handed him translation of the despatch which I had addressed to the Minister of Foreign Relations, of 30th ultimo, and entered into an explanation of the important points of the case. I also mentioned to him the claims of the Representatives of the late Mr John Wheelwright, of Messrs Wells Fargo & Co, of Mr John L Thorndike, and others, and expressed the strong desire of the United States Government to have all those cases arranged so that there might be no unsettled questions standing between the two countries.

President Balmaceda, who is thoroughly familiar with this claims question, met me on the whole matter in the most frank and friendly manner. He, too, expressed, very earnestly, the desire to have these pending claims arranged; and assured me of the readiness of Chili to fairly meet every just and reasonable claim, and her willingness to arrange, if possible, without the intervention of judicial forms, and so as to avoid the heavy legal

expenses attending on an arbitration commission. The President expressed the desire that I should forward to the Minister of Foreign Relations a full statement of all United States' claims against Chili, which would be investigated without delay, and he hoped we would be able to arrive at a settlement within the term of the approaching special session of Congress, which opens on 1st October and will probably close about 20th December next. He strongly expressed the desire that all pending claims should be settled at the same time.

I have at great personal labor, made all the more heavy by reason of not having a Secretary of Legation, investigated the various claims, have gone back through all the correspondence which passed upon the subject, and I believe I am now fully conversant with the merits of each.

In a few days I will forward to the Chilian Government the statement suggested by the President, and, as there will take place next year a change of administration, I shall do everything possible to bring the question to a settlement before the end of the present year.

Some of the foregoing cases have entailed great damage and great hardship upon the parties interested, and it would be a great boon to them, as well as being conducive to the harmony and friendship which should prevail between the two governments to have all these claims finally disposed of.

I have, etc.,

PATRICK EGAN.

The American Minister to the Minister of Foreign Relations of Chile.

LEGATION OF THE UNITED STATES,

Santiago, August 30th 1890.

SIR: I have the honor to inform Your Excellency that I am in receipt of instructions from my Government to bring to the notice of the Government of Chile the claim of Mr. Edward C. Du Bois, a citizen of the United States of America, for loss and damage suffered by him through the seizure and removal, and the destruction, of his property, at Chimbote, Perú, by the Chilian forces under General Patricio Lynch, in the months of September 1880, December 1881, and January 1882, and to express the hope that the case may be considered and adjusted at an early day.

The case of Mr. Du Bois was brought to the notice of the Honorable Minister of Foreign Relations of Chili in the year 1883 by the

Minister of the United States Mr. Logan, but at the request of the Minister of Foreign Relations action on the matter was deferred; and in February 1884, in deference to the suggestion of His Excellency President Santa Maria, conveyed to Mr. Logan, its consideration was again postponed "until such time as a definite arrangement with her opponents would leave Chili free to consider the questions growing out of the rights of neutrals," which time His Excellency the President considered would not be very long.

Actuated by those sentiments of profound friendship which have ever characterized the relations of the United States of America with her sister Republic of Chili and with the most entire confidence in the honor and sense of justice of the Chilian people, my Government has been satisfied to wait until a favorable opportunity for a satisfactory arrangement should present itself. Mr. Du Bois has now come to Chili seeking to obtain a settlement of his claim and is at present in this city. He has already suffered very heavy losses and great injury and mental strain, the savings of a lifetime of honorable industry having disappeared in the destruction and seizure of his valuable property at Chimbote. Under those circumstances, I sincerely and respectfully express the hope that Your Excellency's Government may regard the present as a not unfavorable time to take his case into its consideration with a view to a friendly and mutually satisfactory adjustment.

I avail with much pleasure of the present occasion to reiterate to Your Excellency the cordial feelings of friendship and respect which the Government and people of the United States entertain for Chile, her Government and her people, and to renew, etc.

PATRICK EGAN.

Minister Egan to the Secretary of State.

No. 98.

LEGATION OF THE UNITED STATES,

Santiago, Chile, October 6th, 1890.

SIR: I have the honor to refer to my No. 93, of 13th September ultimo, and now beg to enclose, for your information, copy of a letter dated 30th September 1890, which I addressed to the Minister of Foreign Relations, giving, what I believe to be, a full list of the claims of citizens of the United States against the Government of Chile; with a short statement of the nature of each.

I have, etc.,

PATRICK EGAN.

[Enclosure.]

The American Minister to the Minister of Foreign Relations of Chile.

LEGATION OF THE UNITED STATES OF AMERICA,

Santiago, September 30th, 1890.

SIR: In an interview which I had the honor to have with His Excellency the President of the Republic, on the subject of the claims of citizens of the United States against the Government of Chili, His Excellency suggested the propriety of furnishing particulars of all such claims, with a view to an early investigation of their merits and a friendly arrangement, either by way of direct settlement, or by arbitration.

In compliance with this suggestion, and in that spirit of sincere friendship which so happily characterizes the relations of the two nations, I have now the honor to give you, for the information of Your Excellency's Government, a list of the claims, with a short statement of the nature of each.

* * * * *

No. 2. *Representatives of the late John Wheelwright*—(Liquidator of Alsop & Co. of Valparaiso.)—For a debt of \$835,000 Bolivian Dollars, admitted and agreed by contract of 24th December 1876, as being due from the Government of Bolivia to said claimants, and secured by mortgage upon the excess of proceeds from the Northern Custom House, over and above the sum of \$405,000 Bolivian Dollars each year; and also by an agreement on the part of the Bolivian Government to lease to Mr. Wheelwright, as representative of Alsop & Co., for a term of twenty five years, all the Government Estaca mines on the coast of Bolivia; giving him three years to select those which he might consider worth working; which contract has been set aside by the Government of Chili.

Amount of Debt: *Bolivian Dollars*: \$835,000

With interest thereon at the rate of five per cent per annum, from the 24th December 1876.

Also for loss of mine known as "La Flor del Desierto", which, with the right to select another mine not named, was conceded to Mr. Wheelwright by the Government of Bolivia in discharge of the sum of \$230,700 for interest admitted to be due on the before mentioned debt up to end of year 1876; his right in the said mine "La Flor del Desierto" and to the selection of an additional mine under his said contract having been denied by Chili—*Bolivian Dollars*: \$230,700.

With interest on same from 1st January 1877, at the rate of five per cent per annum.

It is not, I assure your Excellency, the desire of my Government to support any claim that shall not appear to be founded upon right and justice; and it entertains the most entire confidence that the Government of Chile will fairly meet, and fully

satisfy, every just and meritorious demand. I therefore desire to say that whenever it shall be the convenience of your Government to investigate these cases, I shall feel it a pleasure, as well as a duty, to aid, with documents and otherwise, in throwing the fullest possible light upon the merits of each.

I embrace, etc.,

PATRICK EGAN.

Minister Egan to the Secretary of State.

No. 110.

LEGATION OF THE UNITED STATES,

Santiago, Chili, November 26th, 1890.

SIR: In an interview which I had a few days ago with Senor don Domingo Godoy, Minister of Foreign Relations, upon the subject of the claims of United States citizens, he informed me that the ministerio had already arranged all its datum in opposition to the claims, and requested that I should furnish the proofs in all of the cases so that they might be sent to the Fiscal or law adviser of the Government for his examination and report, after which, he said, his Government would be prepared to enter into an arrangement for the settlement of such of them as might appear to possess merit. I contended for an opportunity to present each one of the claims to the Fiscal, in person, but the Minister would not consent to this, upon the grounds that such course would hamper the freedom of the Fiscal in the discharge of his duty towards his own Government. He, however, arranged that the Fiscal should be authorized to meet me and to receive from me such general statement as I may deem necessary to make.

In accordance with this arrangement I am now preparing, and will in a few days present, all the proofs in the first batch of claims, including all those anterior to the war between Chili and Peru. Those arising out of the war I will present as soon as practicable afterwards. Today I forwarded to you a cablegram as follows: "Please forward original documents claims Wheelwright Wells Fargo" and I hope to receive the necessary documents as soon as may be convenient.

There will be a change of administration in the Government of Chili in September of next year and, in order to avoid further wearisome delays, it is important that these claims be arranged, if possible, within the term of the next Congress which meets on 1st June next. I am doing everything possible towards this end.

I have, etc.,

PATRICK EGAN.

Minister Egan to the Secretary of State.

No. 306.

LEGATION OF THE UNITED STATES,

Santiago, Chile, 3d June, 1892.

SIR: In view of the reference in the Message of H. E. the President of Chili to Congress (see page 4 of Message herewith) to the proposed definite treaty of peace between Chili and Bolivia and from other information that has reached me on same subject I considered it my duty to call the attention of the Chilian Government to the claim of the representatives of the United States Commercial House of Alsop and Company, known as the Wheelwright Claim, which had its origin in the arbitrary setting aside, by Chili, at the termination of the war between Chili and Peru and Bolivia of a certain legal contract solemnly entered into between the government of Bolivia and the said House of Alsop and Company.

I accordingly did so to-day in a note addressed to the Minister of Foreign Relations of which I have the honor to hand copy herewith, enclosure No. 1. As you will perceive this claim is for a debt of \$835,000. Bolivian pesos, and interest from the year 1876, solemnly admitted by the government of Bolivia and secured on the income of the Northern Custom House over and above the sum of \$405,000 Bolivian pesos, and also by the concession of certain mining property. This contract was set aside by Chili without, as appears by the proofs, any justification, and solely by right of force, entailing upon the surviving partners and other representatives of the House of Alsop and Company great loss and hardships. It would therefore seem but just and reasonable that in any final arrangement made between the two countries provision should be made for the definite and early liquidation of this debt. I shall follow this matter up closely.

I have, etc.,

PATRICK EGAN.

[Enclosure.]

The American Minister to the Minister of Foreign Relations of Chile.

LEGATION OF THE UNITED STATES,

Santiago, Chile, 3d June, 1892.

SIR: In view of the pending negotiations between the government of Y. E. and that of the Republic of Bolivia with the object of establishing and confirming between the two countries a definite treaty of peace, a result which, on the part of my government, I

sincerely hope may be speedily arrived at, to the mutual and entire satisfaction of both Chili and Bolivia, I trust Y. E. will not consider it inopportune to call the attention of Y. E. government to the claim of the representatives of the United States Commercial House of Alsop and Company, formerly of Valparaiso, the particulars of which Y. E. will find set out in my note of 30th September 1890, addressed to the Ministerio of Y. E. The claim is marked No. 2 in the second series of claims mentioned in said note and is described as the claim of the "Representatives of the late John Wheelwright, liquidator of Messrs Alsop and Company of Valparaiso."

As Y. E. will perceive the claim is for a debt of eight hundred and thirty-five thousand Bolivian soles (\$835,000) with interest at the rate of five per cent per annum from the year 1876; which debt was solemnly acknowledged by the government of Bolivia and the payment secured by lien upon the income of the Northern Custom House over and above the sum of four hundred and five thousand soles (\$405,000) per year.

Upon the occupation of Tacna and Arica as the consequence of the war between Chili, and Peru and Bolivia, this arrangement was arbitrarily set aside by the government of Chili to the great loss and suffering of the surviving partners and other representatives of the House of Alsop and Company.

There are also questions with regard to rights in certain mining property, situated in the territory occupied as above stated, and transferred by the government of Bolivia to the representatives of Alsop and Company as further security in connection with same debt and interest thereon which rights have been refused recognition by the Tribunals of Chili.

Of these rights under a lawful contract the government of Y. E. was duly informed, anterior to the signing of the convention of truce with Bolivia, in a petition presented to Y. E. government by Mr John Stewart Jackson, attorney for the claimants, dated Valparaiso, September 11th 1882.

At the urgent request of His Excellency President Santa Maria conveyed to the United States Minister, Mr Logan, in February 1884, the consideration of the claims of United States citizens arising out of the conflict between Chili, Peru and Bolivia, was deferred, in the words of His Excellency: "Until such time as a definite arrangement with her opponents would leave Chili free to consider the questions growing out of the rights of neutrals."

From considerations of profound friendship toward the Chilian Government and the Chilian people my government has, from time to time up to the present, postponed these claims although many of the claimants have been suffering great hardships on account of their losses, including some of those interested in this particular one. In view of these considerations I submit to Y. E. that in whatever definite arrangement may be made between the government of Chili and that of Bolivia this clearly acknowledged liability to the Representatives of the House of Alsop and Company should in right and justice, be taken into account and definite provision be made for its early liquidation a result which, in full reliance upon the high appreciation of international honor which characterizes the government of Y. E. I sincerely hope to see accomplished.

I shall be prepared to submit to Y. E. in the course of a very few days all of the documents in the case.

Renewing, etc.,

PATRICK EGAN.

Minister Egan to the Secretary of State.

No. 310.

LEGATION OF THE UNITED STATES,

Santiago, Chile, 11th June, 1892.

SIR: I have the honor to refer to my No. 306 of 3d instant enclosing a note addressed by me to the Minister of Foreign Relations in regard to the claim of the Representatives of the United States Commercial House of Alsop and Company, otherwise known as the "Wheelwright Claim," and I beg to say that on yesterday I had an interview on the matter with the Sub-Secretary of Foreign Relations, when he told me that in consequence of the change of Ministry it was not possible, up to that time, to send a written reply to my note of the 3d instant. He assured me, however, that in the definite treaty of peace now being negotiated between Chili and Bolivia, under which Bolivia will cede to Chili all territorial claims upon Arica and Tacna and Chili will undertake the payment of certain of the exterior debts of Bolivia, the payment of this debt to the Representatives of Alsop and Company will be undertaken by Chili. The validity of the debt to Alsop and Company has been fully admitted by the Bolivian Government in a memorandum with the Junto de Gobierno in Iquique, and in the course of the present negotiation I shall endeavor to obtain an undertaking for its payment within a specified time by the government of Chili.

In a very short time more I will be able to place before the Chilean Government all the proofs in the remaining claims arising out of the war between Chili and Peru.

I have, etc.,

PATRICK EGAN.

Minister Egan to the Secretary of State.

No. 314.

LEGATION OF THE UNITED STATES,

Santiago, Chile, 22nd June 1892.

SIR: I have the honor to refer to my Nos. 306 and 310 of 3rd and 11th instants in reference to the claim of the representatives of Alsop and Company formerly of Valparaiso, known as the "Wheelwright Claim," and now beg to enclose copy and translation of a note received from the Minister of Foreign Relations (enclosures Nos 1 and 2) dated 18th instant in which on the part of his government he practically assumes responsibility for the payment of the principal debt \$835,000 Bolivianos in accordance with a protocol entered into in Iquique in May 1891; but inasmuch as Bolivia had not in said protocol recognized the question of interest due on said debt from 26th December 1876 at the rate of five per cent per annum, amounting to \$650,000 Bolivianos, he leaves the payment of said interest an open question. I have accordingly addressed a note under this date, enclosure No. 3, giving for the information of the Minister particulars of the contract entered into by the government of Bolivia and reduced to public record in La Paz the 26th December 1876 recognizing this interest in the same way as the principal debt which the Sub-Secretary of Foreign Relations assured me would be entirely satisfactory.

In my No. 310 of 11th instant I said that in the definite treaty of peace now being negotiated between Chili and Bolivia the latter would cede to the former all territorial claims upon Arica and Tacna. This I beg to correct. In the proposed treaty Bolivia will cede to Chili all territorial claims upon the province of Antofagasta. Inasmuch as the definite ownership of Tacna and Arica will only be decided by vote of the people next year in accordance with the treaty between Chili and Peru, nothing can now be done with regard to them but it is understood that Chili has held out hopes that should these provinces be definitely annexed to Chili she will then cede to Bolivia some portions of the territory in order to give to the latter an outlet to the sea.

I remain, etc.,

PATRICK EGAN.

The Minister of Foreign Relations of Chile to the American Minister.

No. 1284.

REPÚBLICA DE CHILE,
 MINISTERIO DE RELACIONES ESTERIORES,
Santiago, 18 de Junio de 1892.

SEÑOR: He tenido el honor de recibir la comunicación de U. S. fecha 3 del presente en la cual U. S., "en vista de las negociaciones pendientes entre los Gobiernos de Bolivia i Chile para llegar a un tratado definitivo de paz, entre ambos países," llama la atención del Gobierno de Chile hácia la reclamación de los representantes de la casa comercial americana de Alsop i Cia., esperando que ello no será considerado inoportuno por el infrascrito.

Alude U. S. a su comunicación de 30 de Setiembre de 1890 en la cual figura este reclamo ocupando el No. 2, entre todos aquellos a que se refiere dicha nota, bajo el nombre del finado John Wheelwright, liquidador que fué de la citada casa de Alsop i Cia. que exige el pago de una suma ascendiente a 835,000 pesos bolivianos con un interés anual del 5% a partir de 1876.

Manifiesta que esta deuda fué solemnemente reconocida por el Gobierno de Bolivia en la forma que U. S. indica i que, a consecuencia de la ocupación de Tacna i Arica por las fuerzas chilenas los convenios celebrados con Bolivia fueron "arbitrariamente desconocidos por el Gobierno de Chile."

Agrega U. S. algunos antecedentes de este asunto, cuya solución, según U. S. se sirve espresarlo, el Gobierno de U. S. ha retardado varias veces por consideraciones de amistad hácia el Gobierno i pueblo chilenos i termina pidiendo al Gobierno de Chile que tome en consideración este reclamo en cualquier arreglo que celebre con Bolivia.

En respuesta, tengo el agrado de manifestar a U. S., que en el Protocolo preliminar de un Tratado de Paz entre Chile i Bolivia, ratificado por el infrascrito en la ciudad de Iquique, como Ministro de Relaciones Exteriores del Gobierno Constitucional, figura entre los créditos que el Gobierno de Chile se compromete a pagar por cuenta de Bolivia el reclamo de Alsop i Cia., que U. S. amparaba por la suma indicada por U. S. o sea la de \$835,000 bolivianos.

En cuanto al pago de interés a que U. S. hace referencia, el Gobierno del infrascrito espera que la negociación secundaria se haga ante el Gobierno que reconoció la obligación principal; el Gobierno de Chile que no hace sino subrogarse en obligaciones

de un pais vecino i amigo, procurará atender igualmente esta parte del reclamo una vez que el Gobierno de Bolivia se haya pronunciado sobre la legitimidad ó validez de el, limitandome como una prueba de deferencia hacia el Gobierno de U. S., a ofrecer que tomaré mui en cuenta la resolucion que adopte el Gobierno boliviano acerca de este punto.

Al consignar lo anteriormente espuesto, el infrascrito se felicita de que en el Protocolo celebrado en Iquique en Mayo de 1891 el Gobierno de Chile hubiera ya tomado en cuenta el asunto a que se refiere la comunicacion de U. S. a que tengo la honra de dar respuesta.

Aprovecho, Señor Ministro, esta oportunidad de presentar a U. S. las seguridades de mi alta consideracion.

ISIDORO ERRAZURIZ.

[Translation.]

No. 1284.

REPUBLIC OF CHILE,
MINISTRY OF FOREIGN RELATIONS,

Santiago 18th June 1892.

SIR: I have had the honor to receive Y. E.'s communication dated 3d instant in which Y. E. "in view of the pending negotiations between the government of Bolivia and that of Chile to establish a definite treaty of peace between the two countries" calls the attention of the government of Chile to the claim of the representatives of the American Commercial House of Alsop and Company, hoping it will not be considered inopportune by the undersigned.

Y. E. refers to your communication of 30th September 1890, in which this claim is numbered 2 among those mentioned in said note, under the name of the late John Wheelwright, Liquidator of the said House of Alsop & Co asking the payment of a sum amounting to \$835,000 Bolivian pesòs with an annual interest of 5 per cent. from 1876.

Y. E. states that this debt was solemnly ratified by the government of Bolivia in the form mentioned and that, as a consequence of the occupation of Tacna and Arica by the Chilian forces the agreement celebrated with Bolivia "was arbitrarily set aside by the government of Chile".

Y. E. adds some data relating to the matter, the settlement of which Y. E. has been pleased to state the government of Y. E. has several times postponed out of considerations of friendship for the government and people of Chile, and closes asking the

government of Chile to take the claim into consideration in whatever arrangement may be concluded with Bolivia.

In reply I have the pleasure to inform Y. E. that in the preliminary Protocol of a Treaty of Peace between Chile and Bolivia, ratified by the undersigned in the city of Iquique, as Minister of Foreign Relations of the Constitutional Government, the claim of Alsop and Company, which Y. E. has supported, for the sum indicated by Y. E.—\$835,000 Bolivian pesos—figured among the liabilities that the government of Chile engaged to pay for account of Bolivia.

Regarding the payment of interest to which Y. E. refers, the government of the undersigned awaits what may be done in the negotiation that is to follow by the government that recognized the principal obligation; the government of Chile, which only assumes the obligations of a neighboring and friendly country will endeavor to attend to this part of the claim once the government of Bolivia pronounces upon its legitimacy or validity, confining myself, as a proof of deference to the government of Y. E. to offering the assurance that I will carefully take into account the resolution that may be adopted by the government of Bolivia in relation to this point.

Upon forwarding what has already been stated the undersigned is pleased that in the Protocol celebrated in Iquique in May 1891 the government of Chile had already taken into account the matter referred to in the esteemed communication of Y. E. to which I have the honor to reply.

I avail, etc.,

ISIDOR ERRAZURIZ.

The American Minister to the Minister of Foreign Relations of Chile.

LEGATION OF THE UNITED STATES,

Santiago, Chili, 22nd June 1892.

SIR: I have the honor to acknowledge the receipt of the attentive note of Y. E. dated 18th instant, in reply to mine of 3rd instant on the subject of the debt due from the government of Bolivia to the Representatives of the United States Commercial House of Alsop and Company, and I beg to express the sincere pleasure that it has afforded me to learn the cordial manner in which the indications conveyed in my note have been received in the Ministerio of Your Excellency and of the inclusion of the debt referred to in the preliminary Protocol entered into in Iquique between

Chile and Bolivia, participated in by Y. E. as Minister of Foreign Relations of the Constitutional Government.

For the purpose of enabling Y. E. to fix with precision this debt and to fully appreciate the validity of the claim for the interest thereupon at the rate of five per cent per annum from the 26th of December 1876 I have the honor to quote for the information of Y. E. the following passage from the Supreme Decree of the Bolivian Government made 24th December 1876, which is as follows:

“Primero—Se reconoce al expresado (Juan Wheelwright) representante de la casa Alsop y Compania el capital de ochocientos treinta y cinco mil bolivianos con el interes anual del cinco por ciento, no capitalizable, que carrera desde la fecha del otorgamiento de la escritura de este contrato.”

This contract was reduced to escritura publica in La Paz the 26th December 1876 before Patricio Barrera, “Notario de Hacienda Gobierno i Guerra,” under the following title: “Numero cuatro cientos diez—Transacion entre el Senor Ministro de Hacienda i industria, Doctor Manuel Ignacio Salvatierra, en representacion de los intereses nacionales y el Senor Juan Wheelwright, socio i representante de los Senores Alsop y Compania de Valparaiso, para consolidar y amortizar sus creditos pendientes con el estado,” and a full and certified copy of said Supreme Decree of 24th December 1876 and said escritura publica of the contract of 26th December 1876 is deposited in the archives of the Ministerio of Hacienda of Y. E. Government attached to a solicitude of John Stewart Jackson dated 11th September 1882 presented to said Ministerio in connection with this same case.

Availing of this opportunity to renew to Y. E. the assurance of my distinguished consideration

I have, etc.,

PATRICK EGAN.

Minister Strobel to the Acting Secretary of State.

No. 30.

LEGATION OF THE UNITED STATES,

Santiago, June 22, 1895.

SIR: Referring to my No. 22 of May 25th last, reporting the signature of a treaty of peace and a treaty of commerce between Chile and Bolivia, I have the honor to report that I have received letters from Mr. John Stewart Jackson, of Valparaiso, and Mr. Henry S. Prevost, of Lima, representatives of the Alsop

claim against Chile, calling my attention to the fact that the Government of Chile had promised to settle this claim on the conclusion of a treaty of peace with Bolivia, and requesting me to take some action to find out whether the treaty of peace signed between the two countries provided for the payment of the claim. The statement made by these gentlemen is borne out by a note dated June 18th, 1892, from Senor Errazuriz, the Minister of Foreign Relations, to Mr. Egan, which was transmitted to the Department in Mr. Egan's No. 314 of June 22nd, 1892.

As the question of the settlement of claims of American citizens against Chile has been transferred from this Legation to Washington, I have not thought it proper to approach the Chilean Government regarding this claim until authorized to do so by the Department. I have, however, in conversation with Senor Gutierrez, the Bolivian Minister, called his attention to the note of Senor Errazuriz, and enquired whether provision had been made for the payment of the claim as promised in that note. It was my intention, if he replied in the negative, to report to the Department for the purpose of enquiring whether it was desired that the attention of this Government should be called to the omission. The Bolivian Minister, however, informed me that the payment of a number of claims had been provided for, and that among these, the claim of Alsop & Co. was explicitly mentioned, and that the amount fixed in settlement was eight hundred and thirty-five thousand Bolivianos, the same as stated in the note of Senor Errazuriz referred to above.

In reply to a further enquiry as to whether there was any understanding as to payment of interest, he stated that the question of interest had not been considered in connection with any of the claims provided for by the treaties.

The Minister also said he hoped the treaties would be ratified by the Congresses of both countries in August; but that the question of ratification was, of course, not one of absolute certainty.

I have thought it not improper to communicate the above information, secured in this informal way, to Messrs. Jackson and Prevost, whom the records of this Legation show to be the representatives of the claim in South America, and who have been in continual correspondence with this Legation on the subject.

I have, etc.

EDWARD H STROBEL.

Minister Strobel to the Secretary of State.

No. 104.

LEGATION OF THE UNITED STATES,

Santiago, October 10th, 1896.

SIR: In reply to the Department's No. 99, of August 10th last, enclosing a letter from the Hon. G. S. Boutwell, and instructing me to ascertain from the Government of Chile the proposed date of settlement of the claim of Alsop & Company, and whether by a treaty or by an understanding between the Governments of Chile and Bolivia the amount to be paid had been fixed, I have the honor to report that yesterday I had a conversation on the subject with Senor Eduardo Phillips, the Under-Secretary of Foreign Relations, who gave me the following information:

On May 28th, 1895, a protocol, supplementary to the treaties between Chile and Bolivia forwarded to the Department with my No. 85, of May 6th last, was signed. This protocol was approved by the Chilean Congress, in secret session, but is still awaiting the approval of the Congress of Bolivia, and has, therefore, not been published. It has an important bearing upon the claims assumed by the Chilean Government in accordance with the provisions of article 2 of the Treaty of Peace and Amity, of May 18th, 1895.

According to the Memorandum presented by the Bolivian Minister of this capital, which is regarded as part of the protocol, the amount proposed as a settlement of the claim of Alsop & Company is, without calculating interest (*sin computar intereses*) eight hundred and thirty-five thousand Bolivianos, of twenty pence, or nine hundred and fifty-four thousand, two hundred and eighty-five Chilean pesos.

By article 3 of the protocol, the Government of Chile, in order to settle the definite amounts to be paid, shall take into account the origin of the claims allowed (*el origin de cada credito*) as well as the data furnished by the Bolivian Minister in his memorandum.

It is hoped that the protocol will be approved by the Bolivian Congress, which is now in session, in a few weeks. The Chilean Government cannot take up the question of the payment of the claims until this protocol has been approved and promulgated.

On receiving the above information, I enquired of Senor Phillips whether it was to be understood that the terms of article 3 of the protocol gave to his Government the right of making a re-examination of the claims; and I stated that if this was the case, it was contrary to the impression existing in the minds of the claim-

ants as well as to my own understanding of the matter. He replied that, in view of the large amounts to be paid, it was natural that his Government should desire to examine the papers on which the claims were based; but that he thought that as soon as the protocol was approved and promulgated, there would be no disposition to delay a settlement.

The Bolivian Minister here, Senor Gutierrez, whom I saw this afternoon, and with whom I spoke upon the subject, also seemed to be of this opinion.

As soon as the protocol is approved by the Bolivian Congress, I will again call the attention of the Chilean Foreign Office to the claim, with a view to obtaining some more definite assurance regarding its payment.

In the meantime, I should be glad to be informed as to what attitude is to be taken upon the payment of interest, which, from the terms of Mr. Boutwell's letter, seems to be included in the claim.

I have, etc.,

EDWARD H STROBEL.

The Minister of Foreign Relations of Chile to the American Minister.

REPÚBLICA DE CHILE,
MINISTERIO DE RELACIONES EXTERIORES,

Sanitago, 13 de octubre de 1897.

SEÑOR: Oportunamente tuve la honra de recibir la estimable nota de V. S. de fecha 28 de setiembre próximo pasado, cuya repuesta he debido demerar hasta ahora á causa de atenciones de carácter impostergable.

En dicha comunicación V. S., refiriendose al Memorandum que el Señor Simpkins, á la sazón Encargado de *ad interim* de los Estados Unidos de América, entregó al Sub Secretario de este Departamento, Señor Don Eduardo Phillips, solicita V. S. que la haga conocer la actitud que mi Gobierno se propone asumir al presente respecto de la reclamación Alsop, y si la inteligencia que mi Gobierno dá á sus compromisos con Bolivia es de naturaleza tal que permita á los reclamantes Alsop llegar á un arreglo directo con Chile sobre la base de la liquidación chileno-boliviana.

Me agrega V. S. que, al hacer esta consulta, el Gobierno de los Estados Unidos no tiene el deseo de que se entienda que sujere la celebración de un arreglo de ese género entre Chile y los reclamantes Alsop, y termina expresándome que, como el Gobierno de

los Estados Unidos juzga que ningún procedimiento fundado en los tratados chileno-bolivianos puede menoscabar la jurisdicción de la proyectada Comisión arbitral chileno-americano para apreciar el caso, me observa V. S. que su nota es de carácter meramente interrogativo.

En respuesta, Señor Ministro, cúpleme expresar á V. S. que, á pesar de mi buen deseo por satisfacer la consulta que V. S. se ha servido traer á mi consideración, me encuentra por ahora absolutamente imposibilitado para avanzar opinión á su respecto.

Chile, por el Tratado de Paz que firmó con Bolivia el 18 de mayo de 1895, se ha obligado á satisfacer varios créditos que existen en contra de Bolivia, y entre los cuales se encuentra el de la casa de Alsop y Compañía.

Esa obligación contraída por Chile, carece de fuerza alguna mientras el tratado por medio del cual la contrae no esté definitivamente perfeccionado. Y, como tal condicion no esta satisfecha, por cuanto ese perfeccionamiento no se producirá mientras no se aprueben por nuestro Congreso y se ratifiquen por el Ejecutivo los protocolos chileno-bolivianos que penden de la consideración de aquel, facilmente se concibe que seria inoportuna e ineficaz cualquiera resolución que mi Gobierno tomase respecto de esos créditos.

Por otra parte, Señor Ministro, el crédito de Alsop y Compañía, como varios enumerados en el tratado de 18 de mayo de 1895, habrán de ser objeto—según se establece expresamente en dicho pacto—“de particular liquidación y una especificación detallada en un protocolo complementario.”

Esta circunstancia por sí sola no me permitiría adelantar opinion de ninguna especie sobre un crédito que que está sujeto á una liquidación posterior.

Dígnese V. S. aceptar mis sentimientos de alta y distinguida consideración.

R. SILVA CRUZ.

[Translation.]

REPUBLIC OF CHILE,
MINISTRY OF FOREIGN RELATIONS,

Santiago, October 13, 1897.

SIR: I have duly had the honor to receive Your Excellency's esteemed note of September 28th last, my reply to which I have delayed until now as I had to attend to matters which I could not postpone.

In the said communication, referring to the memorandum which Mr. Simpkins, at that time Charge d'Affaires ad interim of the United States of America, delivered to the Sub-Secretary of this Department, Mr. Edward Phillips, Your Excellency requests me to advise you as to the attitude my Government at present proposes to assume towards the Alsop claim, and whether the understanding of my Government of its engagements with Bolivia is of such a nature as to enable the Alsop claimants to come to a direct agreement with Chile on the basis of the Chilean-Bolivian liquidation.

You add that, while making this enquiry, it is not the wish of the Government of the United States to be understood as suggesting that an arrangement of the kind indicated be entered into between Chile and the Alsop claimants; and you conclude by stating that as the United States holds that no proceedings under the Chilean-Bolivian Treaty can impair the jurisdiction of the proposed American-Chilean Commission of Arbitration to deal with the case on its merits, you advise me that your note is merely interrogatory in character.

In reply, Mr. Minister, I have to say to Your Excellency, that notwithstanding my desire to reply to the questions which you have put to me, I find it absolutely impossible for me to advance any opinion on the subject.

Chile, by the Treaty of Peace with Bolivia of May 18, 1895, bound herself to satisfy various credits which were pending against Bolivia, amongst which was that of the house of Alsop and Company.

That obligation contracted by Chile has no force, however, as long as the treaty by virtue of which it was contracted is not definitely perfected. And as this requisite has not been complied with, inasmuch as the treaty cannot be perfected as long as our Congress does not approve, nor the Executive ratify, the Chilean-Bolivian protocols which have been submitted to the consideration of the former, it will easily be seen that any resolution that my Government might take regarding these credits would be inopportune and inefficacious.

On the other hand, Mr. Minister, the credit of Alsop and Company, like several others enumerated in the Treaty of May 18, 1895, will have to be the subject—as expressly established in the said Treaty—“of a special liquidation and detailed specification in a supplementary protocol.”

This circumstance alone would not permit me to advance an opinion of any kind regarding a credit which is subject to an ulterior liquidation.

Please accept, etc.

R., SILVA CRUZ.

The Secretary of State to Minister Wilson.

No. 227.

DEPARTMENT OF STATE,
Washington, November 8, 1902.

SIR: I enclose herewith copy of a letter, with its enclosure, from Mr. Nathaniel A. Prentiss, of New York, in regard to the Alsop claim.

You may bring the subject of this claim of Alsop and Company, otherwise known as the claim of Henry Chauncey against Chile, to the attention of the Chilean Government.

This claim was one among others under consideration by the Chilean Claims Commission of 1901, and was dismissed by a majority decision of the Commission.

The agent of Chile in his brief before the Commission stated that this claim "is among the liabilities that the Government of Chile engage to pay for the account of Bolivia", as a consideration for the signature of Bolivia of the definitive treaty of peace. He further stated that if Bolivia signs the treaty, the claim will be promptly paid under the treaty engagement as a relief to Bolivia.

The Department reserves for further consideration the determination of the question of the absolute liability of Chile, as alleged by Mr. Prentiss; but inasmuch as the Agent for the Chilean Government admitted the absolute liability of Bolivia and the conditional liability of Chile which would become absolute on the signature of the treaty, the Department feels that the necessitous condition of the claimants and their acknowledged equities, justify an appeal to the sense of justice and especially to the comity of the Chilean Government to take some action looking to the relief of the claimants.

This view, is moreover, sustained by the language of the majority opinion dismissing the appeal, to wit:

"The case is dismissed therefore without prejudice, however to any rights which the claimant or claimants or Alsop and Company or its liquidation may have, either by diplomatic intervention, or before the Government of Chile, or the courts of Chile. Nor are the merits of the claim in any way prejudiced by this decision."

This language was supplemented by and is to be construed and taken in connection with the final sentence of the decision that "the claimant is therefore remitted for relief to the Government of Chile, whose assurances are thus given and the case is dismissed."

While the claimants were remitted for relief to the Government of Chile, the opinion expressly points out the different channels through which the claimants are allowed to seek that relief, that is to say, the case was dismissed "without prejudice to any rights which the claimants may have either by diplomatic intervention, or before the Government of Chile or the courts of Chile."

I am, &c.

JOHN HAY.

The American Minister to the Minister of Foreign Relations of Chile.

LEGATION OF THE UNITED STATES,

Santiago, December 29th, 1902.

MR. MINISTER: In view of an appeal addressed to the Department of State, at Washington, D. C., by Mr. Nathaniel A. Prentiss, of New York, in regard to the Alsop claim, I am authorized, in the form of good offices, to bring the subject of this claim, otherwise known as the claim of Henry Chauncey against Chile, to the attention of Your Excellency's Government.

This claim was one among others under consideration by the Chilean Claims Commission of 1901, and was dismissed by a majority decision of the Commission.

The Agent of Chile in his brief before the Commission stated that this claim "is among the liabilities that the Government of Chile engages to pay for the account of Bolivia" as a consideration for the signature of Bolivia to the definitive treaty of peace. He further stated that if Bolivia signs the treaty, the claim will be promptly paid under the treaty engagements as a relief to Bolivia.

My Government reserves for further consideration its opinion as to the question of the absolute liability of Chile as alleged by Mr. Prentiss; but inasmuch as the Agent of the Chilean Government admitted the absolute liability of Bolivia and the conditional liability of Chile which would become absolute on the signature of the treaty, my Government feels that the necessitous condition of the claimants and their acknowledged equities, justify an appeal to the sense of justice and especially to the comity of the Chilean Government to take some action looking to the relief of the claimants.

This view, is moreover, sustained by the language of the majority opinion dismissing the appeal, to wit:

“The cause is dismissed therefore without prejudice, however, to any rights which the claimant or claimants or Alsop and Company, or its liquidation may have, either by diplomatic intervention, or before the Government of Chile or the Courts of Chile. Nor are the merits of the claim in any way prejudiced by this decision.”

This language was supplemented by and is to be construed and taken in connection with the final sentence of the decision that “the claimant is therefore remitted for relief to the Government of Chile, whose assurances are thus given and the case is dismissed.”

While the claimants were remitted for relief to the Government of Chile, the opinion expressly points out the different channels through which the claimants are allowed to seek that relief, that is to say, the case was dismissed “without prejudice to any rights which the claimants may have either by diplomatic intervention, or before the Government of Chile or the Courts of Chile.”

The claimants have appealed for relief through the diplomatic channel; and while my Government reserves for determination the ulterior question whether the case is one that justifies diplomatic intervention, it feels, in view of the premises, that it properly calls at least for the use of good offices, which I am authorized to exercise.

I therefore would be greatly pleased if Your Excellency would be good enough to inform me whether your Government is disposed, at this time to take up the consideration of this claim.

I gladly avail myself of the opportunity to renew to Your Excellency the assurances of my highest consideration and esteem.

HENRY L. WILSON.

The Minister of Foreign Relations of Chile to the American Minister.

No. 57.

REPUBLICA DE CHILE,
MINISTERIO DE RELACIONES EXTERIORES,
Santiago 17 de enero de 1903.

Señor MINISTRO: Se recibió oportunamente en esta cancillería la atenta nota de 29 de diciembre próximo pasado, que trata de una solicitud del Señor Nataniel A. Prentiss, de Nueva York, dirigida al Departamento de Estado en Washington, D. C., y que á V. E. se há autorizado para someter amistosamente á la consideración de mi Gobierno. Agrega V. E. que la reclamación

incorporada en esa solicitud, es la misma que fué deducida bajo el rubro de Henry Chauncey ante el Tribunal Arbitral de Wáshington y también rechazada por este Tribunal.

Prima facie, dados los términos del tratado de 1892 que organizó el Tribunal Arbitral de Wáshington, parece indudable que fuera inadmisibile toda discusión entre el Gobierno de Estados Unidos de América y el de Chile acerca de reclamaciones sobre sucesos acaecidos antes de la fecha del espresado tratado, que intentaran introducir súbditos de ambos países en contra de los Gobiernos contratantes, mayormente si esas reclamaciones han sido ya falladas por el Honorable Tribunal de Wáshington.

Sinembargo, como V. E. considera que de las afirmaciones del ex-ajente de Chile ante el Tribunal recordado y de las reservas que éste hizo en su fallo, talvez quisiera mi Gobierno inclinarse á favorecer á personas que, por circunstancias ajenas á la reclamación, se encuentran mui necesitadas, por deferencia á V. E. no tendrá esta cancillería inconveniente para investigar si hai algo en los antecedentes aludidos que permita modificar el alcance del Tratado de 1892.

Como los antecedentes de mi referencia están en tránsito, remitidos por la Legación de Chile en Wáshington, tan luego como ellos lleguen al Departamento, el infrascrito tendrá el honor de contestar de una manera concreta la nota de esa Legación de diciembre próximo pasado.

Sírvase V. E. aceptar las seguridades de mi mayor consideracion.

HORACIO PINTO AGUERO,

[Translation.]

No. 57

REPUBLIC OF CHILE,
MINISTRY OF FOREIGN RELATIONS,

Santiago, 17th January, 1903.

MR. MINISTER:—In due time this Department received the note dated December 29th last, which is about an appeal addressed by Mr. Nathaniel A. Prentiss of New York, to the Department of State Washington D. C., and that Y. E. has been authorized to submit it amicably to the consideration of my Government. Y. E. further states that the claim incorporated in this appeal, is the same one which was presented under the name of Henry Chauncey to the Court of Arbitration of Washington, and was also dismissed by this Court.

Prima facie, given the terms of the treaty of 1892 which organized the Court of Arbitration of Washington, there seems to be no

doubt that all discussion should be inadmissible between the Government of the United States of America and that of Chile with regard to claims about things which have happened before the date of the treaty cited, which subjects of both countries should try to present against the contracting Governments, much more so if sentence has already been rendered on these claims by the Hon. Court of Washington.

Notwithstanding, as Y. E. considers that the statements of the ex-agent of Chile before the cited Court, and the reservations made by it in its sentence, my Government might perhaps desire to favor persons who owing to circumstances foreign to the claim, are very badly off, as deference to Y. E. this Department will have no objection to investigating whether there is something in the antecedents referred to, which would allow a modification of the spirit of the Treaty of 1892.

As the antecedents I refer to are in transit remitted by the Chilean Legation in Washington, as soon as they are received in this Department, the undersigned will have the honor to answer the note of that Legation of December last in a more concrete manner. I ask Y. E. to accept the assurances of my highest consideration.

HORACIO PINTO AGUERO.

The American Minister to the Minister of Foreign Relations of Chile.

Santiago, January 25th, 1903

MR. MINISTER:—I have the honor to acknowledge Your Excellency's note of the 17th instant, in which proper acknowledgement is made of my note of December 29th, and in which Your Excellency further indicates a willingness to take up and consider the Alsop claim against the Government of Chile, as soon as the papers in the case shall be remitted by the Chilean Legation at Washington to Your Excellency's Department.

I thank Your Excellency for your considerate courtesy, but, in doing so, I am obliged to ask your attention to two apparent errors made in the Spanish rendering of the English text of my note of December 27th.

The word "dismissed" as it appears in the English text, has been translated in your note "rechazado". This I believe not to be a correct translation of the legal meaning of the word "dismissed". The true translation of the word, as employed in this case, might, I believe, be rendered by "descartado", or by the expression so often employed "el tribunal se abstuvo de conocer el asunto".

The decision of the Commission was that it had no proper jurisdiction for the consideration of the claimants case; but at the same time it clearly recognized the justice of the claim, and the representative of the Chilean Government before the tribunal acknowledged the moral responsibility of his Government to pay the same at some future time.

I have also to ask Your Excellency's attention to the interpolated phrase in your note "por circunstancias ajenas a la reclamacion" which is not in my original, and which does not correctly describe the character of the claim.

I have ventured to call Your Excellency's attention to these two points presuming them to be simple clerical errors, which Your Excellency will desire to rectify.

I avail, etc.,

HENRY L. WILSON.

The Minister of Foreign Relations of Chile to the American Minister.

No. 141]

REPÚBLICA DE CHILE,
MINISTERIO DE RELACIONES ESTERIORES,

Santiago, 9 de febrero de 1903.

SEÑOR MINISTRO: Oportunamente tuve el honor de recibir la atenta nota de V. E. de fecha 25 de enero último, por la que, refiriéndose á la nota de este Departamento fechada en 17 del mismo mes y relativa á la reclamación Alsop, V. E. há creído conveniente llamar mi atención hácia dos errores hechos talvez por los empleados al traducir al español el testo inglés de la nota de V. E. fecha 27 de diciembre último.

Desde luego me es grato manifestar á V. E. que hé tomado debida nota de las rectificaciones de V. E., estimando que el propio autor es el mejor interprete de lo que escribe y considerando que realmente hubo en mi recordada nota de 17 de enero una no intencionada intercalación de la frase que V. E. señala.

Debo sí manifestar á V. E. respetando como acabo de decirlo, la intención de V. E., que, al traducir la palabra inglesa "dismissed" por la española "rechazada" los empleados de este Departamento se han ajustado á la opinión de autoridades tan respetables como las de Webster y el Century Dictionary (edición Whitney), que dan para la acepción legal del verbo "to dismiss" el sinónimo "to reject," en español "rechazar."

Podría también hacer alguna rectificación de concepto que me sujere la lectura de las dos notas de V. E. relativas á este asunto;

pero hé estimado más conveniente esperar la llegada de los documentos necesarios para apreciar debidamente la cuestión, documentos cuyo envío nos há sido ya anunciado por nuestro representante diplomático en Washington.

Esperando haber dejado satisfechos los deseos de V. E., aprovecho la oportunidad para renovar á V. E. las seguridades de mi alta consideración.

HORACIO PINTO AGUERO.

[Translation.]

REPUBLIC OF CHILE,
MINISTRY OF FOREIGN REALTIONS,

Santiago, February 9th, 1903

MR. MINISTER: I have had the honor to receiving Y. E. note of January 25th last in which, referring to this Department's note dated the 17th of the same month which related to the Alsop claim, Y. E. has thought it convenient to draw my attention to two errors which may have been made by the employees on translating into Spanish the English text of your note of December 27th last.

I have pleasure in communicating to Y. E. that I have taken due note of the corrections made, esteeming that the author himself is the best interpreter of what he writes, and considering that in my note referred to of 17th January, there was really an unintentional interpolation of the sentence Y. E. points out.

I feel however bound to state, as I have already said, that on translating the English word "dismissed" with the Spanish one "rechazado", the employees of this Department have taken the opinion of authorities on the matter such as Webster and the Century Dictionary (Whitney Edition), which give for the legal acceptation of the verb "To dismiss" the sinonimous "to reject": in Spanish "rechazar".

I might also make some rectifications of concept which are suggested to me by reading the two notes of Y. E. about this matter; but I have considered it more convenient to await the arrival of the necessary documents in order to appreciate the matter in due form, the remittance of which documents has already been announced to us by our diplomatic representative in Washington.

Hoping to have fulfilled the desires of Y. E., I avail myself of this opportunity of renewing to Y. E. the assurances of my high consideration.

HORACIO PINTO AGUERO.

The Secretary of State to Minister Wilson.

No. 238.

DEPARTMENT OF STATE,

Washington, May 13, 1903.

SIR: Unless you have already done so, you will present the Alsop claim to the Chilean Government, in accordance with the Department's previous instructions. You will also report to the Department the status of the negotiations, and if necessary to do so, you may press the Chilean Government, for an answer to the representations you will make as previously instructed.

The equity of the claim is established, nay, is even admitted, and the Department feels that a generous sum should at least as an act of consideration for the necessities of the claimant, be advanced by the Government of Chile. Such considerate action would be greatly appreciated by the Government of the United States, and you will so advise the Chilean Government.

I am, &c.

JOHN HAY.

The Secretary of State to Minister Wilson.

[Telegram—Paraphrase.]

Washington, June 11, 1903.

Are you in position to report concerning progress made in Alsop case?

HAY

Minister Wilson to the Secretary of State.

[Telegram—Paraphrase.]

Santiago, June 12, 1903.

My number 231 of May 19th. Liquidation of all claims against Bolivia is assumed by Chile under the treaty, the signature of which is assured.

WILSON.

Minister Wilson to the Secretary of State.

No. 328.

LEGATION OF THE UNITED STATES,

Santiago, June 13th, 1903.

SIR: I have the honor to acknowledge the Department's telegram of June 11th, which is confirmed as follows:

"Can you report progress in Alsop case?"

"(Signed) HAY."

As upon the evening of the date of the Department's telegram, I was expecting the Bolivian Minister to dine with me, I deferred

a reply until the day following, in order that I might ascertain from him the latest phase of the situation. In this I was not disappointed, as Senor Gutierrez informed me, that all differences and difficulties in the way of the conclusion of the Treaty had been eliminated, and that the two Governments were in practical accord. He further informed me that the Alsop claim was one of those which according to the stipulation of the Treaty of Peace and Amity, between Chile and Bolivia, would be assumed and paid by Chile.

This information confirmed what had already been said to me, relative to the matter, by the Chilean Sub-Secretary of Foreign Relations, Senor Foster, and, also the particulars contained in my despatch No. 321, of May 19th, 1903.

I accordingly cabled the Department on June 12th, as follows:

“See my 321 May nineteenth. Under the treaty, Chile assumes liquidation of all claims against Bolivia. Signing of this treaty quite assured.

“(Signed) WILSON.”

I have the additional assurance of the Bolivian Minister, that I will be advised of the future trend of the negotiations, in order that the Alsop claim may be legally represented, whenever such action may become necessary. I regret to say, that so far as I can ascertain, this claim has, at present, no legal representative in Santiago, though the attorney, Mr. Prevost, at Lima, has been advised of the need for one. The action which the Chilean Congress will take, with reference to the treaty, is naturally not yet clearly defined; but I believe the sentiment to be favorable.

I have, etc.,

HENRY L. WILSON.

The Secretary of State to Minister Wilson.

DEPARTMENT OF STATE,
Washington, September 5, 1903.

No. 247.

SIR: A report is current that the pending negotiations between Chile and Bolivia have been broken off or postponed indefinitely owing to unwillingness on the part of Chile to assume all that is demanded by Bolivia in the way of money indemnity.

The Department would like to be advised whether the report is well founded.

I am, etc.,

JOHN HAY.

Minister Wilson to the Secretary of State.

339.

LEGATION OF THE UNITED STATES,

Santiago, October 27th., 1903.

SIR: I have the honor to acknowledge the receipt of the Department's No. 247, asking to be advised of the truth of the report, that the pending negotiations between Chile and Bolivia have been broken off, or postponed indefinitely, owing to the unwillingness on the part of Chile to assume all that is demanded by Bolivia in the way of indemnity.

The report which reached the Department is not based upon facts. The negotiations are still pending, with every prospect of satisfactory exit, and I was advised, no longer ago than three days, by the Minister of Foreign Relations, that he would soon be in a position to make a cash offer to the claimants of Alsop and Company, in satisfaction of this long pending claim. The Minister informed me that he would make the tender directly to me, and that if the same was not accepted, the amount tendered would be handed over to Bolivia, and, the Alsop creditors, together with such others as might decline to accept a direct cash settlement with Chile, would be remanded to La Paz for the consideration of the Bolivian Government.

Whenever such tender is made, I will communicate with the Department by telegraph, asking for authority from the Alsop claimants to make settlement.

I have, etc.,

HENRY L. WILSON.

Minister Wilson to the Secretary of State.

[Telegram—Paraphrase.]

Santiago, Chile, December 4, 1903.

The Minister for Foreign Affairs of Chile desires to know whether an offer of 954,285 Chilean pesos of 18 pence would be accepted in settlement of the Alsop claim, payment to be made at the option of the Chilean Government either in Chilean gold dollars of 18 pence, or in 5 per cent Chilean bonds, at the rate of 18 pence per Chilean dollar reduced to pounds sterling. Should the claimants decline this offer the Government of Chile will pay this sum in Chilean bonds to the Bolivian Government, which will then assume responsibility and settle with the claimants.

WILSON.

The Acting Secretary of State to Minister Wilson.

[Telegram—Paraphrase.]

Washington, December 17, 1903.

Offer deemed inadequate by Alsop claimants, who decline to accept. The Department does not find itself in a position to recommend the acceptance of it and is considering the question of intervention. The Department hopes however that a just settlement will be reached before it becomes necessary to decide this question. Instruction follows.

LOOMIS.

The American Minister to the Minister of Foreign Relations of Chile.

LEGATION OF THE UNITED STATES,

Santiago, March 1st. 1904.

MR. MINISTER: Referring to my note of December 21st. 1903, relative to the Alsop claim against the Government of Chile, I have now the honor to submit, in detail, the views of my Government, relative to said claim.

The claim against Bolivia based upon its Governmental Decree of December 26th. 1876, was for the following sums:

1. The principal sum of 835,000 Bolivianos with interest at 5 per cent.

2. 160,700 Bolivianos, being interest already accrued prior to December 18th, 1875.

3. 70,000 Bolivianos, being interest due for the year ending December 26th, 1876.

At the date of this Decree the Boliviano was of the value in United States money of about 83 cents.

Leaving out of consideration for the present the two latter sums representing deferred interest, the amount due on the principal sum (reckoning interest to the 26th of December) is as follows:

835,000 Bolivianos at 83 cents	\$693,050
Interest at 5 per cent for 27 years	935,617
Total	<u>\$1,628,667</u>

In payment of this sum Chile offers, 954,253 Chilean Dollars at 18 Pence, or 36 cents to the dollar, that is \$343,542, or \$1,285,125, less than the amount of the claim without considering the deferred interest.

The Claimants respectfully submit that there is abundant authority for holding that a claim of this kind is payable in the

currency stated in the agreement and at the value of said currency at the time of the agreement, disregarding any depreciation which that currency may have undergone in the meantime.

The offer of Chile is, as I understand it, practically an offer of payment in another currency than that mentioned in the agreement and of an amount (probably allowing for the difference between the value of the Boliviano and the Chilean Dollar at the present time) of about the sum of 835,000 Bolivianos at their present depreciated valuation.

The Claimants are therefore not only asked to waive interest during the Twenty-seven years of delay, but also to accept the depreciation in the value of the Boliviano during that delay, the Government of Chile profiting by its own neglect and delay, to the detriment of these Claimants.

In the decision of the Revived Commission in this matter occurs the following:

“According to the Brief of the Honorable Agent of Chile, it is declared that this claim is among the liabilities that the Government of Chile is engaged to pay for the account of Bolivia. The Chilean Government offers to meet this and other claims as part of the payment or consideration which it offers to Bolivia for the signature of the Treaty. This has always been the position of Chile and is its position today, and if Bolivia signs the Treaty, the claim of Alsop & Co., as well as the other claimants mentioned will be promptly paid under the Treaty engagement as a relief to Bolivia from the liabilities which that Government has incurred and for the account of Bolivia.”

As Chile admits that the claim against Bolivia is a just one, and that claim is for principal and interest at 5 per cent, and she admits that she has agreed to pay the claim for a consideration, namely, the signing of the Treaty by Bolivia, there seems to be no reason in equity why she should ask the claimants to accept less than the amount she has agreed to pay.

Furthermore, the Bolivian Governmental Decree of December 26, 1876, contained a provision in substance, that the principal sum, namely, 835,000 Bolivianos, and interest, should be liquidated by tri-monthly drafts on any excess of the customs duties belonging to Bolivia in the Northern Custom House (at Arica) over and above the annual sum of \$405,000, such drafts to begin from the date of the termination of the then Customs Treaty between Bolivia and Peru. That Treaty expired on or about May, 1879. About February, 1879, Chile declared war against Bolivia and proceeded to take military occupation, thus preventing the receipt of any part of said customs by Bolivia or these Claimants.

On or about June, 1880, Chile seized the Custom House at Arica, and has ever since retained control of it, and none of the Custom receipts whatever have at any time been paid by her to or received by these Claimants.

It is respectfully submitted to Your Excellency that it is a principle of International Law now well established that where public property of one Nation which has been assigned, transferred or pledged to neutral Claimants for the security of a debt has been seized and appropriated by a hostile Nation as an act of war, that the belligerent Nation so seizing and appropriating such property holds it subject to the lien or pledge in favor of the neutral Claimants. On this point I call Your Excellency's attention to the action of the United States Government in the matter of the Texan Bonds at the time of the acquisition of Texas by the United States. A similar position, it is understood, is now being taken by Great Britain in regard to the Republic of Panama, she claiming that that Republic is liable for a pro ratum share of the public debt of the Republic of Columbia held by British Claimants.

The statements, which were I believe on file as evidence before the late revived United States and Chilean Claims Commission, and which were, I think, taken from the official memoria, show that the receipts of the Arica Custom House after its seizure by Chile were substantially as follows:

For 1880 (second six months)	\$287, 315. 00
“ 1881	1, 278, 488. 00
“ 1882	1, 622, 323. 50
“ 1883	1, 463, 201. 22
“ 1884	837, 764. 56

All of these sums, so far as appears, were received by Chile but on or about April 4th, 1884, by the terms of the Pact of Truce between Chile and Bolivia, Twenty-five per cent of these Customs receipts were to be applied for the expenses of the Custom House; 40 per cent to the payment of Chilean creditors of Bolivia, and 35 per cent to be turned over to Bolivia, but no provision whatever was made for the payment of any sum to the Claimants, Alsop & Co.

During the following years of 1885 to 1892, both included, the data submitted to the late Commission show that in no year were the receipts of the Custom House less than one million dollars.

In view of the fact, therefore, that out of the funds and revenues solemnly pledged by Bolivia to Alsop & Co., or those representing them, an amount of money very largely in excess of the total claim

for principal and interest and deferred interest has come into the possession of Chile, there seems to be no good ground in law or equity why the Claimants should now be expected to settle their claim for an amount which at best is about one-fifth of what is called for by the agreement with Bolivia, which Chile says she feels obliged to pay.

In conclusion, I have the honor to call Your Excellency's attention to the frequent official recognition by your Government, of the justice of this claim, and to express the hope that it may be found possible to make such an arrangement with these creditors, and such an offer in settlement of their claims as the Government of the United States, may with due regard for their just interest, recommend the acceptance of.

I avail etc.,

HENRY L. WILSON.

The Secretary of State to Minister Wilson.

No. 256.

DEPARTMENT OF STATE,

Washington, May 6, 1904.

SIR: I have to acknowledge the receipt of your No. 349 of March 7 last in further regard to the claim of Alsop and Company.

Referring to your interpretation of the Department's telegraphic instruction of December 17 last and its No. 253 of January 8, 1904, the Department would observe that the telegraphic instruction of December 17 stated that it has holding the question of intervention under consideration, and expressed the hope that a just settlement would be reached without having to decide the question. The instruction of January 8 encloses a copy of a letter from Mr. Prentiss, attorney for the claimants, declining to accept the offer made by Chile. This instruction stated that the claimants regarded the offer as inadequate and that the grounds of their opinion were stated in Mr. Prentiss's letter. You were then instructed to continue the use of your urgent good offices with the Chilean Government with a view to obtaining an amicable and equitable adjustment of the claim. The Department then finally expressed its hope that the Government of Chile would find its way to making a satisfactory adjustment of the claim.

It will be seen by the above recital that the two instructions of the Department above referred to were in complete harmony. The latter instruction simply enclosed a copy of the letter of Mr. Prentiss. The Department in its instruction nowhere stated that

it either adopted or rejected the arguments and statements contained in the letter of Mr. Prentiss; but inasmuch as it appeared from the letter that the offer was not acceptable to the claimants; you were instructed to continue to use your urgent good offices with the Chilean Government with a view to obtaining an amicable and equitable adjustment of the claim. In fact the Department has not yet passed on some of the contentions made by Mr. Prentiss as shown by his letter. Among these contentions not yet passed on by the Department is the one that the claim "is payable in the currency stated in the agreement and at the value of the said currency at the time of the agreement, disregarding any depreciation that currency may have undergone in the meantime." Certain other contentions made in Mr. Prentiss' letter have not yet been approved by the Department; and a copy of the letter was enclosed with the Department's No. 253 in order that you might be advised of the views of the claimants' attorney and of the grounds for the rejection of the offer.

The Department frequently transmits to the representatives of the United States copies of letters and briefs submitted by claimants, in order that the representative may be fully informed of the claimant's attitude and may communicate the same to the government against which the claim is presented; but in the absence of express adoption by the Department of such briefs and arguments, which it very rarely does, in that form, they are intended simply to put the representative in possession of the views urged by the claimant.

The Department is constrained to make the foregoing observations in order that it may clearly appear that it has not yet passed on and adopted the contentions referred to; but it is desirous that you should continue the use of your urgent good offices with the Chilean Government with a view to obtaining an amicable and equitable adjustment of the claim.

The Department is unable to entertain the opinion that the Chilean Government has so far made an equitable offer of settlement, which should include substantial compensation for the damages suffered by the claimants. An equitable liability has been admitted by the Chilean Government, and the Department hopes that the latter will graciously consider and determine the matter in the light of substantial justice and equity.

I am, &c.

JOHN HAY.

The Secretary of State to Minister Wilson.

[Telegram—Paraphrase.]

Washington, June 9, 1904.

Advise Government of Chile the Government of United States expects that government promptly to pay a just and reasonable indemnity in the Alsop claim, constituting an equitable payment adequate to the losses sustained by the claimants, some of whom are in great need. Such a payment would be appreciated by Government of United States and would not be unjust to Chile. Cable results.

HAY

Minister Wilson to the Secretary of State.

[Telegram—Paraphrase.]

Santiago, Chile, June 14, 1904.

The Chilean Minister for Foreign Relations stated that the Chilean Government would become responsible for the settlement of the Alsop claim after and following the ratification of the definitive treaty of peace and amity between the Governments of Chile and Bolivia. The Minister also authorizes me to say that the treaty is assured and will be completed within three months, and that immediately thereafter he will take up the Alsop claim, giving it special, just and even generous consideration.

WILSON.

The Secretary of State to Minister Wilson.

[Telegram—Paraphrase.]

Washington, June 15, 1904.

You will express to the Minister for Foreign Affairs the appreciation of the President for the assurances given and which you communicate in your cablegram. The Department is confident that, on this basis, the matter will be adjusted in a satisfactory manner at the time mentioned.

HAY

Minister Wilson to the Secretary of State.

No. 366.

LEGATION OF THE UNITED STATES.

Santiago, June 18th, 1904.

SIR: I have the honor to confirm the receipt of the Department's telegram of June 9th, as follows:

“Advise Chilean Government that the Government of the United States expects that just and reasonable indemnity be made in Alsop claim. Some of claimants in great need. The Government of the

United States expects prompt and equitable payment adequate to losses sustained by claimants. This could not be unjust to the Government of Chile and would be much appreciated by the Government of the United States. Cable results.

(Signed.) HAY."

At the date of the receipt of this telegram, I was suffering from an indisposition which made it a physical impossibility for me to execute the commands of the Department with the diligence and promptitude which I knew was expected, and as the Legation is at present without a secretary, I was compelled to wait some days, before it was possible to present the matter properly to the Minister of Foreign Relations. In explanation of the delay, however, I sent the Department, on the 11th. inst., the following telegram:—

"On account of sickness it is impossible to present Alsop matter to Chilean Minister of Foreign Relations for a few days.

(Signed.) WILSON."

Upon the 13th, having recovered sufficiently to attend to business, I visited the Minister, Señor Don Emilio Bello Codecido, and in the interview which took place, I called his attention to the urgent telegram which I had just received from the Department, relative to the Alsop claim. I recited to him, the history of the case, and called his attention to the long continued injustice, to which the claimants had been obliged to submit, and to the patience of the Government of the United States, in dealing with the claim before the Chilean Government. I said to the Minister, clearly and emphatically, that these continuous delays, and manifest neglect of international obligations, had made a very bad impression in Washington, and I hoped that His Excellency would join with me in removing that impression, by satisfying the demands of the Alsop claimants, justly and promptly.

The Minister replied, that he had every disposition to meet the demands of the claimants, and to gratify the expressed wish of the Government of the United States, but that the Government of Chile could not depart from the position which it had taken, and to which it still adhered, i. e., that the payment of these claims was assumed by Chile contingent upon the signing of the definite Treaty of peace and amity with Bolivia. According to the views of the Chilean Government, this is the strict and just construction of the Treaty of Ancon.

The Minister stated, however, that the treaty with Bolivia would be signed and ratified within three months, and that he would authorize me to state as much to my Government. He added, moreover, that as an evidence of his Government's desire to gratify the desires of the Government of the United States, the Alsop claim would be taken up immediately after the ratification of the Treaty with Bolivia, and given special, and even generous consideration. I replied, that while my Government did not accept the views of the Chilean Government, relative to its obligations in the premises, the expression of its intentions for the future, would be highly appreciated.

At the conclusion of this interview, I sent the Department the following cablegram:

“Chilean Minister of Foreign Relations says Chilean Government will become responsible for just settlement of Alsop claim after and following the ratifications of definite treaty of peace and amity with Bolivia. Chilean Minister of Foreign Relations authorizes me to say that the treaty is assured and will be concluded within three months, that immediately thereafter he will take up Alsop claim giving it special, just, and even generous consideration. I have used all my influence to obtain an early settlement, but usual methods are of no avail.

(Signed.) WILSON.”

I have, etc.,

HENRY LANE WILSON

The American Minister to the Minister of Foreign Relations of Chile.

June 21st, 1904.

MR. MINISTER: Upon the 13th inst., I had the honor to confer with Your Excellency relative to the Alsop claim, and expressed to you, after having submitted to your inspection the urgent telegram concerning the claim, just received from my Government, the pressing necessity for early consideration of this long pending obligation, and how greatly, decisive action by Your Excellency's Government, would be appreciated by the Government of the United States.

Your Excellency's reply to the observations which I had the honor to make on this occasion was, briefly, that the Chilean Government had held, and continued to hold, the claim of Alsop and Company, as an obligation payable by the Chilean Government, contingent only upon the signing of the definite treaty of peace and amity with Bolivia, Your Excellency adding moreover, that this treaty would, without any doubt, be signed and ratified

by the Governments of Bolivia and Chile, within the term of three months, and that I might consider myself authorized to convey information to this effect, to my Government. Continuing, Your Excellency was good enough to add, that immediately following the ratifications of the treaty, the Chilean Government would address itself to the consideration of the Alsop claim, and out of deference to the expressed wish of the Government of the United States, and the necessitous condition of the claimants, would give to it, special, just, and even generous consideration.

Upon the same date of my interview with Your Excellency, I conveyed, by cablegram, to my Government, the substance of your statement, as recited above, and upon the 15th, I received the following reply:—

“Express to Minister for Foreign affairs the President’s appreciation of assurances given and communicated by your cablegram. On this basis Department is confident the matter will be satisfactorily adjusted at the period named.”

I avail myself of this opportunity, to renew to Your Excellency, the assurances of my most distinguished consideration and esteem, and beg to subscribe myself,

Your Excellency’s obedient servant,

HENRY L. WILSON.

His Excellency,

Señor Don EMILIO BELLO CODECIDO,

Minister of Foreign Relations.

The Minister of Foreign Relations of Chile to the American Minister.

Santiago, 2 de Julio de 1904.

SEÑOR MINISTRO: Tengo la honra de acusar a Vuestra Excelencia recibo de su nota de fecha 21 del mes próximo pasado, en la que, refiriéndose a la conferencia verbal que celebró Vuestra Excelencia con el infrascrito acerca de la reclamación Alsop, me trascribe el siguiente cablegrama dirigido por su Gobierno a esa Legacion el día 15 de dicho mes:

“Espresad al Ministro de Relaciones Exteriores el aprecio en que el Presidente tiene las seguridades dadas i transmitidas en vuestro cablegrama. Sobre esta base, el Departamento confía en que el asunto será satisfactoriamente arreglado en la época indicada.”

A este respecto, cúpleme reiterar a Vuestra Excelencia que la reclamación Alsop se encuentra incluida entre las demas reclamaciones por créditos que pesan sobre el litoral boliviano, cuyo pago

asumirá el Gobierno de Chile en los terminos que han de establecerse en el tratado respectivo cuando lleguen a su fin las negociaciones que con tal objeto se prosiguen actualmente entre los Gobiernos de Chile i Bolivia. Solo entónces le será posible al infrascrito prestar a la espresada reclamacion Alsop la atencion que merece.

Aprovecho esta oportunidad para renovar a Vuestra Excelencia las seguridades de mi alta consideracion.

EMILIO BELLO C.

[Translation.]

Santiago, July 2nd, 1904.

MR. MINISTER: I have the honor to acknowledge the receipt of Your Excellency's note dated 21st ult., in which Your Excellency, referring to the conversation with the undersigned respecting the Alsop claim, transcribes to me the following cablegram sent by your Government to that Legation on the 15th of said month:

“Express to Minister for Foreign Affairs the President's appreciation of assurances given and communicated by your cablegram. On this basis Department is confident the matter will be satisfactorily adjusted at the period named.”

In this respect, it corresponds to me to reiterate to Your Excellency that the Alsop claim is included among the other claims for credits weighing on the Bolivian coast, the payment of which will be assumed by Chile on the terms to be established in the respective treaty at the close of the negotiations at present going on towards that object between the Governments of Chile and Bolivia. Only then will it be possible for the undersigned to give to the said Alsop claim the attention it deserves.

I avail. etc.

EMILIO BELLO C.

LEGACIÓN DE CHILE,

Washington.

DEUDAS DE BOLIVIA.

Bonos del Empréstito para construir un ferrocarril en Mejillones.....	2, 190, 000
Crédito Alsop.....	835, 000
“ Meiggs.....	120, 000
“ Garday.....	40, 000
Total en moneda de plata de Bolivia.....	3, 185, 000

para cancelar los cuales Chile ofrece a Bolivia entregar 2,000,000 pesos oro de Chile (18d por peso) que se distribuirian a prorrata. Corresponderia al crédito Alsop, en pesos chilenos, 524,333, o sea, 39,325 libras esterlinas.

[Translation.]

DEBTS OF BOLIVIA.

Bonds of the loan for the construction of a Railway in Mejillones.....	2, 190, 000
Alsop Claim.....	835, 000
Meiggs “.....	120, 000
Carday “.....	40, 000

Total in the silver currency of Bolivia 3, 185, 000

for the satisfaction of which Chile offers to Bolivia to deliver 2,000,000 gold pesos of Chile (18 pence to the peso) which would be distributed pro rata, 524333 Chilean pesos or 39,325 pounds sterling would go to the Alsop claim.

(The above memorandum was handed to the Solicitor for the Department of State by the Chilean Minister December 9, 1904.)

The Secretary of State to the Minister of Chile.

No. 27.

DEPARTMENT OF STATE,
Washington, January 10, 1905.

SIR:

Referring to the verbal note which you handed to the Department on December 9th last, proposing to pay on the Alsop claim 524,333 pesos chileanos, or 39,325 libras esterlinas, the Department begs to say that the amount appears to be entirely inadequate to the just satisfaction of the claim, and not in correspondence with the previous assurances given by the Chilean Minister of Foreign Affairs to the United States Minister at Santiago that the Alsop claim should receive just and even generous treatment. The amount offered appears to be disproportionate to the claimant's equity, considered in itself, to which consideration should be added that the claimants have waited a very long time in the vain hope that substantial compensation would be rendered to them for the obligation which accrued against Bolivia, and which, it is understood, was incurred by the Government of Chile.

In view of the foregoing, the Department would be pleased to receive a further offer from your Government corresponding to the expectations raised by its assurances and by the equity of the claimants.

Accept, etc.

JOHN HAY.

The Minister of Chile to the Secretary of State.

LEGACION DE CHILE,

Washington, 30 de Enero de 1905.

SEÑOR: He tenido el honor de recibir la nota en que Vuestra Excelencia, con fecha 10 del presente, me espresa el juicio adverso que le merece la proposición que el infrascrito hizo al abogado en Nueva York de la sociedad comercial de Valparaiso Alsop i Cia., para cancelarle por cuenta del Gobierno de Chile su crédito contra el Gobierno de Bolivia; proposicion que di a conocer confidencialmente al Departamento de Estado como una manifestacion de deferencia, por haber su representante en mi pais recomendado al Ministerio de Relaciones Exteriores ese negocio que afecta los intereses de algunas familias americanas.

Lamento que aquella proposicion, que estimó jenerosa mi Gobierno, pues por ella ofrecia asumir la responsabilidad de deudas que no son suyas, sea considerada por el Departamento de Estado como inadecuada para satisfacer las aspiraciones de los interesados. Mas lamento aun la apreciacion de que ella no corresponde a las prévias seguridades que se dieran al Ministro de los Estados Unidos en Santiago, i en la esperanza de modificar esos juicios, quiero someter a la alta equidad de Vuestra Excelencia algunos antecedentes i consideraciones que señalan la exacta posicion de mi Gobierno en este negocio.

El crédito de que se trata tuvo su orijen en largas negociaciones habidas durante un período desgraciado de la vida política de Bolivia—1860 a 1875—entre diversos caudillos de esa República i el ciudadano brasilero don Pedro López Gama.

En 1875 la sociedad comercial chilena de Alsop i Cia. compró sus derechos, o sus litijios contra Bolivia a aquel ciudadano brasilero.

En 1876 el Gobierno de Bolivia reconoció a Alsop i Cia. como cesionarios de López Gama i les otorgó ciertas concesiones que permitieron a aquellos recibir injentes sumas de dinero, pero que complicaron al mismo tiempo sus cuentas con ese Gobierno; cuentas que no han sido hasta ahora rendidas; cuentas que no han podido, por eso, ser examinadas; cuentas sin cuya liquidacion es i será imposible apreciar la justicia ni la cuantia del crédito reclamado por Alsop i Cia.

Cuando había trascurrido mucho tiempo sin que Alsop i Cia. se preocuparan de liquidar sus cuentas con el Gobierno de quien se

reputaban acreedores, optaron por la pretension de reclamar de Chile lo que cobraban à la Republica vecina.

Los azares de la guerra de 1879 dejaron en posesion de mi pais una parte del litoral boliviano; pere esa circunstancia no podia amparar la pretension de Alsop i Cia., como no autorizaria la de un acreedor del Gobierno Español que pretendiera cobrar sus créditos al Gobierno de Vuestra Excelencia porque los azares de la guerra de 1898 dejaron en su poder las Filipinas i Puerto Rico.

No obstante, Alsop i Cia. acudieron al Tribunal Arbitral que dirimia en 1900 las reclamaciones pendientes entre los Estados Unidos i Chile, i presentaron su crédito contra Bolivia bajo la forma de una reclamacion contra la República que represento. El Tribunal no resolvió el punto, ni podia resolverlo por falta de competencia. Llamado a considerar las reclamaciones de ciudadanos de los Estados Unidos contra Chile, o vice versa no podia considerar como lo declaró, la que presentaba contra mi pais una sociedad comercial establecida en él, incorporada i registrada conforme a sus leyes, i, por consiguiente, chilena.

Miéntas ésta fue la conducta de los reclamantes, mi Gobierno asumia una de extrema benevolencia para con ellos.

Atribuyendo al crédito Alsop, no obstante la falta de datos i de una liquidacion que permitiera apreciar equitativamente su monto, la importancia de una obligacion que podia llegar a pesar contra Bolivia, se propuso tomarlo en cuenta entre las demas obligaciones que afectaban a esa República i en cuya cancelacion mi Gobierno le habia ofrecido ayudarla, como una de las compensaciones con que deseaba borrar los recuerdos de una guerra que siempre ha lamentado.

Por eso cuando Alsop i Cia. llevaron su reclamo al Tribunal Arbitral que funcionaba en Washington, el representante de Chile expresó, espontánea i francamente, los buenos deseos de mi Gobierno i lo que tenia estipulado en el proyecto de tratado entónces pendiente. Si ese tratado se aprueba, dijo nuestro representante, el crédito Alsop i los demas créditos contra Bolivia serán pagados por Chile "con arreglo al compromiso del Tratado."

Llamo la atencion de Vuestra Excelencia a las últimas palabras, porque para ser completamente exacto en los datos que doi a Vuestra Excelencia, debo decir que si fue el ánimo de mi Gobierno cancelar deudas ajenas i apartar dificultades en términos razonables, no entró jamas en sus propósitos asumir ilimitadas responsa-

bilidades ni someterse a exajeradas exigencias de reclamantes que no consideraran la estension de sus sacrificios.

El “compromiso del Tratado de 1895” a que se referia el representante de Chile ante el Tribunal Arbitral de Washington, consistia en que Chile someteria a una *liquidacion* los créditos cuya responsabilidad asumia. Sin que esa liquidacion se hiciera, mi Gobierno de nada responderia.

El proyecto de tratado de que vengo hablando no fue perfeccionado constitucionalmente i nuevas negociaciones se entablaron el año pasado para llegar a una paz definitiva con Bolivia.

Mi Gobierno no olvidó en estas nuevas negociaciones su anterior i voluntario anhelo de cancelar las reclamaciones contra Bolivia, i asi, cuando en Julio último el Ministro de los Estados Unidos en Santiago recomendó amistosamente a su atención la reclamación Alsop, el Ministro de Relaciones Exteriores de mi pais pudo asegurarle que él seria considerado entre aquellos “cuyo pago asumiria el Gobierno de Chile en los términos que han de establecerse en el tratado respectivo cuando lleguen a su fin las negociaciones que con tal objeto se persiguen actualmente entre los Gobiernos de Chile i Bolivia”. (Nota de, 2 de Julio de 1904.)

Este ofrecimiento del Ministro de Relaciones Exteriores de Chile al Ministro de los Estados Unidos en Santiago, que era una nueva espresion de deseos muchas veces manifestados, ha tenido su realizacion en el Tratado de Paz que se suscribió en Octubre último.

Chile tomó a su cargo segun “los términos que se establecieron en ese tratado” cierta responsabilidad para cancelar los créditos contra Bolivia; pero ella fue, como no podia dejar de serlo, una responsabilidad limitada. Con buena voluntad hacia un sacrificio jeneroso; pero lo hacia en la intelijencia de que con ello, sino adquiria un título al agradecimiento de los reclamantes, en manera alguna les concedia un derecho para pretender de él mayores concesiones que las que espresa i voluntariamente les acordaba.

Entre varias responsabilidades que Chile asume por el Tratado de Octubre último está la de destinar dos millones de pesos oro chileno para cancelar, a prorrata, el siguiente grupo de créditos contra Bolivia:

Bonos del Empréstito para la construccion del Ferrocarril de Mejillones	2, 190, 000 Bls.
Crédito Alsop i Cia.	835, 000 “
Crédito Meiggs.	120, 000 “
Crédito Garday.	40, 000 “
	<hr/>
Pesos bolivianos.	3, 185, 000

Todos estos créditos figuran por su capital nominal en pesos bolivianos. Sabe Vuestra Excelencia que esta unidad monetaria es de plata, i pesa 25 gramos, con nueve décimos de fino. En 1876 el fino de esa moneda era solo de siete décimos.

Debiendo mi Gobierno destinar, como dejo dicho, para su distribucion a prorrata entre los créditos arriba enumerados dos millones de pesos oro chileno, apénas hubo firmado el Tratado con Bolivia ordenó ofrecer a los interesados las respectivas cantidades.

Los tenedores de los otros tres créditos aceptaron gustosos la parte que les correspondia en la distribucion. Cualesquiera que hubieran sido sus aspiraciones, reconocieron que debian sacrificarlas, en parte, haciendo honor a la jenerosidad con que Chile les ofrecia una razonable indemnizacion. I eso que se trataba de deudas no cuestionadas, no sujetas a una liquidacion pendiente. Una de ellas, la mayor, consistia en bonos en circulacion.

Tocóme a mi hacer el ofrecimiento respectivo al representante del crédito Alsop. Le expliqué los antecedentes i la naturaleza del compromiso contraido por Chile. Llamé su atencion a que mi Gobierno, al proponer ese arreglo, lo hacia por acto de espontánea voluntad, i que si era aceptado no exigiria la liquidacion pendiente, ni entrarla en el análisis de los títulos, ni de la personeria de la actual representacion de la sociedad comercial Alsop i Cia.

El representante de esta sociedad no aceptó el arreglo que han mirado como mui satisfactorio i equitativo los demas acreedores bolivianos, todos los cuales hacen un igual sacrificio de intereses i de una parte del capital que aspiraban a percibir.

Cuando el infrascrito se encontró en presencia de esa situacion, creyó de su deber darle a conocer al Departamento de Estado. Desde que el Departamento habia recomendado el asunto a mi Gobierno, debia informarle de lo que este habia hecho en favor de todos los acreedores bolivianos en jeneral, asi como de los inconvenientes que encontraba para satisfacer a sus recomendados en particular.

Vuestra Excelencia trató de inducir al representante de la sociedad Alsop i Cia. a un arreglo. De alli las conferencias a que nos citó, a aquél i al infrascrito, el Solicitor del Departamento. Mas, esas conferencias fueron infructuosas. Rechazó el abogado de la sociedad Alsop i Cia. insistentemente mi proposicion i no hizo, por su parte, proposicion alguna que no hubiera podido

elevar al conocimiento de mi Gobierno cuando el tratado estaba pendiente en el Congreso. Hoi ese tratado está aprobado en los dos ramas de la Representacion Nacional de mi pais i mi Gobierno no puede hacer otra cosa que mantener su ofrecimiento en los términos que le prescribe el Tratado de Paz con Bolivia, que es ya Lei de la República.

Reitero a Vuestra Excelencia, en conclusion, mi ruego de que, para apreciar la actitud de mi Gobierno en este asunto, considere que la justicia de las pretensiones de la sociedad comercial Alsop i Cia. no puede estimarse mientras no se haga una liquidacion de sus negocios con Bolivia, i aun entónces, lo que en equidad pudieran pretender de esa República no pueden exijirlo de Chile; i que la promesa de incluir el de Alsop i Cia. entre los demas créditos contra Bolivia en la negociacion del Tratado de Paz, que hizo el Ministro de Relaciones Exteriores de mi pais al Ministro de los Estados Unidos en Santiago, fue por mi Gobierno cumplida al firmar el Tratado de Octubre último i al poner a disposicion de Alsop i Cia. la cuota proporcional de los dos millones que por aquel se destinan a la concelacion del grupo de créditos ántes enumerado.

Me es grato renovar a Vuestra Excelencia las seguridades de mi mas alta consideracion.

J. WALKER MARTINEZ.

[Translation.]

LEGATION OF CHILE,

Washington, January 30, 1905.

SIR: I have had the honor to receive the note in which, Your Excellency, under date of the 10th instant, expresses the adverse opinion you have reached in regard to the proposition made by the undersigned to the Counsel in New York of the Commercial firm of Alsop and Co. of Valparaiso, by which the Government of Chile was to cancel the debt owed to the firm by the Government of Bolivia; which proposition I made known to the Department of State, confidentially and as an act of deference, this matter, in which the interests of some American families are concerned having been recommended to the Ministry of Foreign Relations by your representative in my country.

I am sorry that the proposition which my Government deemed generous since it offered thereby to assume responsibility for debts it had not incurred, is considered by the Department of State as inadequate to meet the expectations of the interested

party. I still more regret the impression that it is not in keeping with the assurances heretofore given to the Minister of the United States at Santiago, and, hoping to modify those views, I wish to submit to Your Excellency's high sense of equity some antecedents and considerations which define the exact position of my Government in this matter.

The debt in question sprang from prolonged negotiations conducted during an unfortunate period of the political life of Bolivia—from 1860 to 1875—between various leaders of that Republic and a Brazilian citizen Don Pedro López Gama.

In 1875, the Chilean Commercial Company, Alsop & Co., acquired by purchase from the said Brazilian citizen his rights or claims against Bolivia.

In 1876 the Government of Bolivia recognized Alsop & Co. as assigns of López Gama and granted them certain concessions which allowed them to receive an enormous amount of money but at the same time complicated their accounts with that Government. Those accounts have not yet been rendered; it has in consequence been impossible to audit them, and without a liquidation of those accounts no correct estimate of the justice or amount of the debt claimed by Alsop and Co. can be formed.

After a long lapse of time during which Alsop & Co. did not take any pains to settle their accounts with the Government of which they professed to be creditors, they elected to allege a claim against Chile for what was owed to them by the neighboring Republic.

The fortunes of the war of 1879 left a part of the Bolivian Coast in the possession of my country; but this circumstance could not sustain the pretension of Alsop & Co., just as a creditor of the Spanish Government would not be justified in claiming the debt from Your Excellency's Government because the fortunes of the war of 1898 left the Philippines and Porto Rico in its possession.

Alsop & Co. nevertheless went before the Arbitration Tribunal which passed in 1900 upon the claims pending between the United States and Chile, and presented their claim against Bolivia as a claim against the Republic which I represent. The Tribunal did not decide the point, nor could it decide it, for want of jurisdiction. Having been called to examine the claims of citizens of the United States against Chile, and *vice versa*, it could not, as it declared, take into consideration a claim preferred against my

country by a commercial Company established in the said country, incorporated and registered in conformity to its laws, and, therefore, Chilean.

While the claimants followed such a course, that adopted towards them by my Government was, one of extreme benevolence.

Notwithstanding the lack of data and of such a liquidation as would permit of a correct estimate of its amount, it attached to the claim the importance of an obligation that might eventually become a burden to Bolivia, and offered to assume it among the other liabilities that weighed upon that Republic and for the discharge of which my Government had tendered its assistance as one of the compensations with which it desired to wipe out the remembrances of a war it has always deplored.

Therefore, when Alsop & Co. laid their claim before the Arbitration Tribunal then sitting at Washington, the representative of Chile spontaneously and frankly stated the kindly purposes of my Government and the stipulations it had introduced in the project of treaty then pending. If the treaty is approved, said our representative, the Alsop and other claims against Bolivia will be paid by Chile "in accordance with the treaty engagement."

I call your Excellency's attention to these last words because in order to be completely accurate in the data I am giving to Your Excellency, I must say that while my Government earnestly desired to cancel foreign debts and avert difficulties on reasonable terms, it never proposed to assume unlimited liabilities or to submit to exaggerated demands of claimants who would not take the greatness of its sacrifices into consideration.

The "engagement of the Treaty of 1895" to which the representative of Chile referred before the Arbitration Tribunal of Washington, was to the effect that Chile would subject the debts for which it assumed responsibility to a *liquidation*: without such a liquidation, my Government would be responsible for nothing.

The projected treaty just mentioned never was constitutionally perfected and fresh negotiations were entered upon last year to establish peace definitively with Bolivia.

My Government did not forget in these renewed negotiations its previous and spontaneous desire of canceling the claims against Bolivia and when, in July last, the Minister of the United States at Santiago commended, in a friendly manner the Alsop claim to the attention of the Minister for Foreign Relations of my country who was in a position to assure him that it would be considered

among those "the payment of which would be assumed by the Government of Chile under the conditions to be established in the treaty when the negotiations now in progress between the Governments of Chile and Bolivia should be concluded" (Note of July 2, 1904).

This offer of the Minister of Foreign Relations of Chile to the Minister of the United States at Santiago, which was a renewed utterance of wishes repeatedly announced, was substantiated in the Treaty of Peace signed in October last.

Chile assumed under the "conditions established in that treaty" a certain responsibility for the settlement of claims against Bolivia; but that responsibility was limited and could not be otherwise. Chile freely made a generous sacrifice; but did so with the understanding that if it did not thereby acquire a lien on the claimants' gratitude, it, in no wise, conceded to them the right to claim from it concessions greater than those which it explicitly and spontaneously vouchsafed to them.

Among the various liabilities assumed by Chile in the Treaty of October last was that of applying two million pesos in Chilean Gold to a pro rata settlement of the following group of claims against Bolivia.

Bonds of the loan for the construction of the Mijillones Railway.	2, 190, 000	Bolivianos.
Claim of Alsop & Co.	835, 000	
Meiggs Claim	120, 000	
Garday Claim	40, 000	
	<hr/>	
Pesos of Bolivia	3, 185, 000	

All these claims are stated in their nominal amount in Bolivian pesos. Your Excellency knows that that monetary unit is of silver, weighs 25 grammes, and that its fineness is nine tenths. In 1876 it was only seven tenths.

As above stated, my Government was to distribute, pro rata, two million pesos in Chilean gold among the claimants above enumerated and immediately upon the signature of the Treaty, it ordered a tender to the interested parties of the amounts respectively coming to them.

The parties to the three other claims gladly accepted the share allotted to them in the distribution. Whatever might their expectations have been, they recognized the necessity of sacrificing them in part and thus did honor to the generosity with which Chile offered them a reasonable indemnity. And in their case the liabilities were not disputed nor the subject of pending liquidation. One of them, the heaviest, consisted in current bonds.

It became my duty to make the tender to the representative of the Alsop Claim. I explained to him the antecedents and the character of the engagement made by Chile. I called his attention to the fact that my Government was proposing this arrangement of its own free will, and that, in case of acceptance, it would waive the pending liquidation and would not undertake to scrutinize the titles nor the powers of the present representatives of the Commercial house of Alsop & Co.

The representative of the Company did not accept the settlement, which, the other creditors of Bolivia, all of whom sacrificed their interests in the same degree and forewent a part of the capital they expected to recover, considered to be quite satisfactory and equitable.

When the undersigned confronted this situation, he deemed it his duty to make it known to the Department of State. Since the Department had commended this matter to my Government I was bound to inform it of what had been done by my Government in favor of all the creditors of Bolivia generally, as well as of the difficulties met in giving satisfaction to those it had recommended, in particular.

Your Excellency endeavored to bring about an arrangement with the representative of the firm of Alsop and Co. Hence the conferences to which he and I, the undersigned, were invited by the Solicitor of the Department. But these conferences were fruitless. The Counsel of the firm of Alsop & Co. persistently rejected my proposition but made for his part no counter proposition that I could have submitted to my Government while the treaty was pending in Congress. Now the treaty has been approved by the two Houses of the National Legislature of my country and my Government can do no more than to adhere to its offer under the conditions set forth in the Treaty of Peace with Bolivia, which has now become the law of the Republic.

I renew to Your Excellency, in conclusion, my request that in order to appreciate my Government's attitude on this question, you will consider that the justice of the claims of the Commercial firm of Alsop & Co. cannot be ascertained until a liquidation of its transactions with Bolivia shall have taken place, and even then, that they could not demand of Chile that which they might in equity claim from Bolivia; and that the promise of including the claim of Alsop and Co. with the other claims against Bolivia in the Peace Treaty negotiations, as made by the Minister of Foreign

Relations of my country to the Minister of the United States at Santiago, was fulfilled by my Government when it signed the Treaty and placed at the disposal of Alsop and Co. their prorata share of the two millions it has set apart for the settlement of the group of claims above enumerated.

It affords me pleasure to renew, etc.

J. WALKER MARTINEZ.

The Secretary of State to Minister Hicks.

DEPARTMENT OF STATE,

Washington, D. C., April 30, 1907.

SIR: The Department is earnestly desirous that you take up once more with the Chilean Government a matter which has been outstanding for a considerable period of years, and to recommend to the well-known sense of that Government a claim the circumstances of which have appealed strongly to the Department and towards which it has very great sympathy and concern. The reference is to the Alsop claim.

The object of this communication is to lay certain pertinent facts which are believed to be controlling before the Chilean Government, and to obtain from it, in the light of fairness and justice, the best offer of settlement which commends itself to Chile as just and right. With this end in view, you are instructed to present the matter to the Chilean Minister of Foreign Affairs and express the hope and belief of this Department that the claim may have the just and even generous consideration of the Chilean Government which it has been led to expect from the favorable assurances heretofore given by Chile in this regard.

It will be remembered that as far back as 1872, an obligation existed on the part of Bolivia to pay to Don Pedro Lopez Gama (to whom the claimants advanced large sums of money and of whom they became assignees in 1875) the value of 200,000 tons of guano. In virtue of the compromise authorized by the Bolivian law of November 22, 1872, it was agreed in Cabinet Council on December 21, 1872, to recognize the claimant's right to the value of 150,000 tons at the rate of 7 pesos and 2 reales per ton, equivalent to 1,087,500 pesos. A later Cabinet resolution of December 18, 1875, recognized the principal sum of 870,000 bolivianos, which seems to have been equivalent to 1,087,500 pesos, as the amount due, with interest at 8 per cent. These resolutions likewise contained provisions for the manner in which the debt was to be paid.

The subsequent Cabinet resolutions of January 22nd and February 7, 1876, confirmed the amount of the principal sum due. Finally, a definitive settlement was reached which is set forth in the supreme decree of December 24, 1876, ratified December 26, 1876, by John Wheelwright, liquidator of the firm of Alsop and Company, and confirmed by the decree of the National Bolivian Congress February 12, 1878. By the terms of this settlement the principal sum was reduced from 870,000 bolivianos to 835,000 bolivianos; the sum of 230,000 bolivianos was allowed for unpaid interest; and the interest upon the new principal sum was reduced from 8 per cent to .5 per cent. Special provision was made for the payment of the interest account and a considerable percentage thereof was paid.

For the payment of the principal sum of 835,000 bolivianos (the Bolivian silver dollar then being worth $96\frac{1}{2}$ cents) two kinds of security were given: (1) A charge was created upon the custom house at Arica, in which Bolivia then had an interest; and (2) a share was granted in the rich Government mines of Caracoles along the Bolivian littoral. The precise nature of these charges it is perhaps not necessary to discuss, but the important fact is that after the war between Chile and Peru and Bolivia in 1879 and 1880, the territory which had been charged with the payment of these obligations passed into the hands of Chile and the claimants, deprived of their security, have never been able to recover their debt.

It is not proposed to consider at present the broad question as to whether territory acquired by conquest is acquired *cum onere*—indeed, such a discussion is quite unnecessary in view of Chile's action in this case; for, in the negotiations prior to the definitive treaty of peace between Chile and Bolivia, the question of the charges upon the Bolivian littoral which passed to Chile was fully considered, and it was finally agreed that Chile should assume and satisfy them. It is understood that the delay in the conclusion of the treaty was for years made by Chile the reason for withholding action in favor of the claimants, and meanwhile many assurances were given that eventually their interests would be justly provided for. It has been the confident reliance upon these expectations which has led the Department to hope that in the final consideration of the matter full justice would be done, and though disappointed until now, it still has strong grounds for believing that the Chilean sense of fair play will assert itself in a satisfactory settlement of the claim of Alsop and Company.

It will be recalled that as far back as 1891 a preliminary engagement was signed looking to the payment of this claim, for in the preliminary protocol of a treaty of peace between Bolivia and Chile, signed May 9, 1891, known as the Matta-Reyes Protocol, in which the definitive transfer of the Bolivian littoral to Chile was provided for, Chile agreed to assume the Bolivian foreign debt, including the credit in favor of Alsop and Company, to the amount of 850,000 dollars with interest; and although the treaty was not perfected, the Chilean Minister for Foreign Affairs stated to the American Minister the following year, June 18, 1892, that the Alsop claim amounting to 835,000 dollars, as of December 26, 1876, had been mentioned in the protocol as "among the liabilities that the Government of Chile engaged to pay for account of Bolivia." The correspondence of this period, and of the few succeeding years, between our diplomatic representatives at Santiago and the Chilean Minister of Foreign Affairs, to which you are referred for fuller information, will show the considerate forbearance with which the Legation refrained from any action on behalf of American claimants which would in any way tend further to embarrass Chile at a time when, in addition to her domestic troubles, other foreign countries were pressing her for satisfaction of their demands. Again in 1895, when the treaty of peace and friendship was signed on May 18th, it was provided that Chile should be bound to pay, in a manner subsequently to be agreed upon, the debts which incumbered the Bolivian littoral, among them being: "the credit of Don Pedro Lopez Gama, now represented by the firm of Alsop and Company, of Valparaiso." The proposed treaty, however, appears to have failed of ratification.

In 1900 the claim was again taken up by the Chilean Minister at Le Paz, who had proposed to the Bolivian Government the bases for a definitive treaty of peace. The Alsop claim was described as one of those "affecting the Bolivian littoral" and a stipulation was included for its settlement similar to that contained in the unperfected treaty of May 18, 1895.

The claim was presented to the United States and Chilean Claims Commission in 1901 and dismissed by that Commission for want of jurisdiction. The Chilean Agent, in support of his motion to dismiss the claim, stated:

"It (the claim of Alsop and Company) is among the liabilities that the Government of Chile engaged to pay *for the account of Bolivia*. This explains exactly the situation of the claim. The Chilean

Government has always regarded it and does still regard it as a liability on the part of Bolivia towards the claimant, and in order to induce the Bolivian Government to sign the definitive treaty of peace which has been negotiated for many years, the Chilean Government offers to meet this and other claims as part of the payment or consideration which it offers to Bolivia for the signature of the treaty. This has always been the position of the Chilean Government and is its position today, and if Bolivia signs the treaty the claim of Alsop and Company, as well as the other claims mentioned, will be promptly paid under the treaty engagement as a relief to Bolivia from the liabilities which that Government has incurred and for the account of Bolivia.

"The claimant is therefore," said the Commissioners in their decision, "remitted for relief to the Government of Chile, whose assurances are thus given, and the case is dismissed."

The claim was again brought by the Department to the attention of the Chilean Government through our Minister at Santiago during 1903. On December 4th of that year the Department received from its Minister at Santiago a telegram in which he stated that the Chilean Minister of Foreign Affairs wished to know if an offer would be accepted in settlement of the claim of 954,285 Chilean dollars of 18 pence, and that in case the claimants declined this offer the sum in Chilean bonds would be paid to Bolivia, who would assume responsibility and settle with the claimants. The Department telegraphed in reply that the Alsop claimants declined the offer as inadequate, and that the Department was unable to recommend its acceptance. It may be stated with regard to the refusal of Chile's proposition that, irrespective of the enormous depreciation in the value of the coin in which the original indebtedness should have been paid, the offer of December 4, 1903 was less than one-half of the amount to which the claimants were entitled under their agreement of December 26, 1876, with the Bolivian Government.

In view of the disposition of the claim that was afterward made by Chile, it would seem that that Government's intention as expressed in the telegram of December 4, 1903 to convert her offer of 954,285 dollars into Chilean bonds and turn them over to the Bolivian Government in case of the refusal by the claimants of her offer of cash payment, was never carried into effect.

Not many months after the correspondence by cable in December, 1903, the Department received from Minister Wilson a cablegram to the effect that the definitive treaty of peace between Chile and Bolivia would surely be concluded in the course of a few months, and that the Chilean Government would then take

up the Alsop claim and give it particular and generous consideration. The Department accordingly awaited the action of the Chilean Government with much expectancy. Its disappointment was not little, therefore, when, after the conclusion of the treaty, it was found that the provision for the payment of the Alsop claim would amount to only 525,332 Chilean pesos. Notwithstanding the early negotiations from 1891 to 1900 looking to the conclusion of the treaty of peace, the assurances of payment given by the Chilean Agent, to the United States and Chilean Claims Commission in 1901, the reliance by the Commissioners upon these assurances, which are quoted by them in their judgment dismissing the claim, and the promise of "particular and generous consideration" given by the Chilean Minister of Foreign Affairs to Minister Wilson in the summer of 1904, the arrangement made by the treaty contemplated a settlement with the claimants at a little more than half of the amount previously offered through Minister Wilson by cable of December 4, 1903 to the Secretary of State. The Department, therefore, in a note of January 10, 1905, informed the Chilean Minister at Washington that the amount appeared to be "entirely inadequate to the just satisfaction of the claim, and not in correspondence with the previous assurances given by the Chilean Minister of Foreign Affairs to the United States Minister at Santiago that the Alsop claim should receive just and even generous treatment." The Department in conclusion stated that it would be pleased, in view of the foregoing, to receive a further offer from Chile corresponding to the expectations raised by its assurances and by the equity of the claimants.

There has recently been brought to the attention of the Department the fact that, in addition to article 5 of the treaty of October 20, 1904, providing for the assumption by Chile of the claim of Alsop and Company and others, and the appropriation of the sum of 2,000,000 Chilean dollars in liquidation of these debts, further memoranda were exchanged between the representatives of the two Governments on the day after the signature of the treaty defining the extent of the responsibility which was laid upon Chile by the assumption of these credits. The Bolivian plenipotentiary enquired whether the purport of the article was to eliminate entirely Bolivia's liability in the premises, and he requested that the Chilean plenipotentiary state on behalf of his Government whether such was the purport to be given to that article of the treaty.

The Bolivian representative expressed his Government's understanding of the agreement as follows:

"It has been agreed that the Government of Chile shall permanently cancel all of them, so that Bolivia shall be relieved of all liability, the Government of Chile being obligated to answer every subsequent claim presented either by private means or through Diplomatic channels, and considering itself liable for every obligation, bond, or document of the Government of Bolivia relating to any of the claims enumerated, Bolivia's liability being entirely eliminated for all time and the Government of Chile assuming all liabilities to their full extent."

The Chilean plenipotentiary replied as follows:

"My Government considers that the obligation which Chile contracts by article 5 of the said treaty comprises that of arranging directlyfor the permanent cancellation of each of the claims mentioned in said article, thus relieving Bolivia of all subsequent liabilities.

"It is consequently understood that Chile, as assignee of all the obligations and rights which might be incumbent on or appurtenant to Bolivia in connection with those claims, shall answer any reclamation which may be presented to Your Excellency's Government by any of the parties interested in the said claims."

The Department considers that this language contains ample justification for the ground that, as between Chile and Bolivia, the latter country is relieved of entire responsibility for the payment of the claim of Alsop and Company in the full amount that may have been due. It does not feel that the offer made in pursuance of the treaty in which their claims are disposed of at a fraction of their original value is a satisfactory settlement of the matter, and it would urge upon that government in consideration of all the equities involved, again to submit an offer of settlement.

It must be stated, however, that while as between Chile and Bolivia the former is bound to pay whatever the latter owes to the claimants, the Department does not understand that this obligation of Chile to Bolivia, if unsatisfied by Chile, will operate to release Bolivia from her obligation to the claimants concerning unpaid balance of the debt.

It would seem that the various agreements entered into between the two governments supplementary to and in explanation of the treaty of October 20, 1904, had a peculiarly unfortunate effect upon the interests of the Alsop claimants. It will be recalled that article 5 of the treaty providing for the assumption of the Alsop and certain other debts, which was a part of the consideration moving from Chile in return for the cession of Bolivia's coast-line, appropriated only 2,000,000 dollars to the payment of

these debts, whereas it was well known that their face value without interest, was 3,185,000 dollars.

Some disappointment arising on account of this apparently unjustifiable reduction, the plenipotentiaries on November 15th following signed a protocol which was made public, stating the mutual understanding of the parties as to the meaning of article 5 of the treaty. This understanding as embodied in the protocol, was that Chile had the right under article 5 of the treaty to reduce the amount of the claims as she might deem proper. The immediate effect of this action upon the claimants whose rights were to be satisfied was to make them feel that they were in the power of the Chilean Government and that they might better take what was offered them than stand out for their rights. It was a prospect full of discouragement to those who had been waiting so long to have justice done them. It did not come to their knowledge or to the knowledge of the Department until a comparatively recent date that there had been a further and prior unpublished agreement for a complete assumption of the claims by Chile.

Another consideration which should not be overlooked in the contingency of an inadequate offer of settlement on Chile's part is the fact that while, as between Chile and Bolivia, the former is bound to pay whatever the latter owes to the claimants, the Department does not understand that this obligation of Chile to Bolivia, if unsatisfied by Chile, will operate to release Bolivia from her obligation to the claimants with respect to the unpaid balance of the debt, if the amount accepted cannot justly be regarded as a satisfaction of the entire claim. The latter view has already been brought to the attention of the Bolivian Government by the American Minister at La Paz, and a copy of this instruction will also be sent to him for his information and guidance as to his future attitude toward the claim.

The phases of the case have been so various that much time has necessarily been consumed by the Department in their examination—hence the delay in sending this instruction—and meanwhile the claimants have been patiently waiting for a conclusion to be reached. No attempt is made herein to review the claim from its many standpoints, but it is submitted that enough is set forth to appeal to the high sense of justice of Chile, and in this sense you are directed to lay the matter before the Chilean Government, and to leave with the Minister of Foreign Affairs a copy of this instruction.

I am, etc.,

E. Roor.

Chargé Janes to the Secretary of State.

[Telegram.—Paraphrase.]

*Santiago, Chile,**August 1, 1907.*

The Minister for Foreign Relations authorizes me to say that the obligation of the Chilean Government toward Alsop and Co. is limited by Article 5 of the treaty with the Bolivian Government. An offer is made of 568,192.67 Chilean pesos in gold, which amount is retained in the Treasury by Judicial Order pending the decision designating real claimant, at which time the sum will be paid upon the express condition that acknowledgement of the full amount of the claim be made by claimant, thus canceling the indebtedness of both the Government of Chile and that of Bolivia.

JANES.

Chargé Janes to the Secretary of State.

No. 163

LEGATION OF THE UNITED STATES,

Santiago, Chile, August 5, 1907.

SIR: In accordance with the instructions of the Department, numbered 60 and dated April 30th, 1907, the Alsop claim has again been presented to the Chilean government.

On the 27th of June last, a copy of the above instructions was delivered by me personally into the hands of the Chilean Minister of Foreign Affairs.

Since that time I made several enquiries at the Foreign Office as to the progress of the matter. After the delay of the translation had been overcome, the claim was placed in the hands of the solicitor of the Department who was obliged to undertake an unexpected journey to the north in response to a telegram announcing the dangerous illness of a parent. During the absence of this official I was told at the Foreign Office that the Minister desired further to submit the Legation note to the President before taking the matter up with me. After more than a month had elapsed since the transmittal of the Legation note, I obtained an interview with Senor Puga Borne on the subject in hand, who treated me most courteously and discussed the matter in the most friendly spirit.

The Minister stated that Chile considered her obligations in the matter of the Alsop claim reduced to the narrow limits fixed by article V. of the treaty with Bolivia of October 20th, 1904. Chile there promised Bolivia to pay certain debts which had been contracted by Bolivia and which at the time were Bolivia's own.

Chile, the Minister declares, bound herself only for a certain sum and as to certain specified claims. At the same time, Chile reserved to herself the right to examine the claims and to place upon them a value according to her best judgment; she may reconsider them *ab initio*, lay aside all acknowledgments of indebtedness made in the past by Bolivia and obtain whatever terms she can from the creditors.

At this point, a curious situation presents itself. Though Chile asserts she has not assumed in toto the debts that the claims enumerated import, having bound herself only in a certain sum, yet the treaty does not permit a partial payment of these claims. The governments of Chile and Bolivia carried on a correspondence which had the object of making this clear. This correspondence was made public against the will and without the consent of the parties concerned. These notes of the Foreign Offices aimed to emphasize the phrase in the treaty "cancelacion definitiva" (full payment) and Mr. Puga Borne states that Chile promises Bolivia there that she will not pay a centavo of the 2,000,000 pesos unless the creditors relinquish all their rights so that not only the indebtedness of Chile under the treaty but the original indebtedness of Bolivia as well will be completely wiped out and the creditors stopped from further proceedings on the debt.

Bolivia clearly feared that the creditors after accepting whatever amounts the treaty allowed them would then turn to that country and demand the difference of what Bolivia previously had acknowledged as a just debt. Mr. Puga Borne declares that the creditors must accept the treaty allowance as fully satisfying all demands.

The Minister was asked if it did not appear worthy of remark that Chile should now offer as just compensation some 500,000 pesos, when only a few years ago over 800,000 pesos had been tendered without acceptance to the same parties in payment of the same debt. Just how the difference in the equitable valuations at the two distinct periods has crept in was hard to understand. This point the Minister said he was not ready to discuss.

As the Alsop debt as it had been acknowledged by Bolivia was far in excess of 2,000,000 pesos, the Minister was told it appeared that a pro rata division of such a sum among several claimants could hardly be considered a method growing out of a just appreciation of their separate merits. Mr. Puga Borne said that the sum stipulated did not measure *merely* the amount Chile was willing to advance for certain rights and privileges given her by Bolivia.

This sum, he said, has been fixed for the satisfaction of the claims *after a study* of each one of these claims had been made. Then it was decided to provide for the *pro rata* division because it was discovered that the real value of the claim bore a fixed relation to the face value of the claim, which relation was equivalent to that borne by the 2,000,000 pesos to the sum total of the face value of the claims. Therefore, the sum which fell to Alsop and Company in satisfaction of their claim was believed by Chile to be the amount to which the claimant was entitled according to the dictates of justice.

On the day following this interview, I visited Mr. Pugna Borne again and showed him the telegram which I was about to send to you, containing the terms of the offer Chile was ready to make the Alsop claimants. The telegram as approved by the Minister is as follows:

[Paraphrase.]

Santiago, Chile, August 1, 1907.

“The Minister for Foreign Relations authorizes me to say that the obligation of the Chilean Government toward Alsop and Co. is limited by Article 5 of the treaty with the Bolivian Government. An offer is made of 568,192.67 Chilean pesos in gold, which amount is retained in the Treasury by Judicial Order pending the decision designating real claimant, at which time the sum will be paid upon the express condition that acknowledgement of the full amount of the claim be made by claimant, thus canceling the indebtedness of both the Government of Chile and that of Bolivia.

“JANES.”

In the meanwhile, the Foreign Office is still engaged in the study of the antecedents of the claim.

The Minister states that the amount above given constitutes the final offer of Chile. If the claimants are unwilling to accept it in full satisfaction they are invited to turn for payment to Bolivia.

I have tried to give all the details of the interview with Mr. Puga Borne in order that the case in its present status may be seen from the standpoint of the Chilean government.

I have, etc.,

HENRY L. JANES.

Minister Hicks to the Secretary of State.

LEGATION OF THE UNITED STATES,
Santiago, Chile, November 11, 1907.

SIR: I find on my return to the Legation that the subject of the Alsop claim has been revived and that in my absence Department's despatch No. 60, dated April 30, 1907, was received bearing instructions to take it up once more with the Chilean Government and attempt to have it finally settled.

Again on June 26 of this year, Department cabled to this Legation, "Cable any offer of settlement that may be made by Chile."

Acting on this suggestion, Mr. Janes, the chargé d'Affaires, waited on the Minister of Foreign Affairs several times, trying to get from him some proposition looking to a settlement of the long-standing account.

At length, on August 1st, as detailed in Mr. Janes' despatch No. 163 dated August 5th, the Minister of Foreign Affairs authorized an offer of \$568,192.67 (Chilean gold pesos.)

On October 29th I received Department's unnumbered despatch dated September 19th confirming Department's alleged telegram of Sept. 12th notifying me that claimants declined to accept the sum tendered by Chile. No such telegram was ever received at this Legation or in the Santiago office of the Cable company, but I immediately notified Department of the fact by cable dated October 31st and added that I would at once act upon the instructions in the despatch.

Accordingly on the 2nd instant I sent to the Foreign Office a note informing the Minister that the proposition could not be accepted and asking him for a reply to Mr. Janes's communication of June 27th which up to that time had been answered only by an impersonal note simply acknowledging its receipt.

I have another matter of some importance to communicate to the Department. The Minister for Foreign Affairs informed me today that in the special report from the Director of the Treasury notifying him of the exact amount on hand to settle the Alsop claim a slight mistake was made. As I understood him, certain items of accrued interest had been omitted and the net amount on hand to pay the claim of Alsop & Co. instead of \$568,192.67 (Chilean gold pesos) was \$589,870.30 (Chilean gold pesos at 18 pence). I enquired again when this amount could be paid and the Minister replied that the sum could be paid at once, if the garnishee suit of Juana Lopez Gama was settled.

I would suggest that action be taken on this matter as quickly as possible in order that, if anything is to be done, it shall be done quickly. A change of administration might seriously interfere with the arrangements and indefinitely postpone any action.

Your obedient servant,

JOHN HICKS.

The Chargé d'Affaires ad interim of Chile to the Assistant Secretary of State.

No. 122.

LEGACIÓN DE CHILE,

Washington, 31 de julio de 1908.

SEÑOR: Tengo la honra de informar á V. E. que he recibido instrucciones de mi Gobierno para hacer llegar al alto conocimiento de V. E. copia de la nota que el Sr. Ministro de Relaciones Exteriores de Chile dirijió al Ministro Plenipotenciario Sr. Hicks el 9 de abril del año en curso relativa al reclamo de Alsop y Cia.

El Honorable Sr. Hicks, al acusar recibo de esa comunicaci3n, ha manifestado que le parece ser un documento de mucha fuerza y que no duda merecerá la benévola y cuidadosa atenci3n de V. E.

El Gobierno de Chile, por su parte, penetrado de la justicia de su causa y del elevado y recto criterio que predomina en la Cancillería de los Estados Unidos, tiene un especial interés en que S. E. el Secretario de Estado se imponga de esa comunicaci3n que estudia y analiza la reclamaci3n que desde años atrás ha presentado la firma Alsop y Cia.

Es también mi deber comunicar á V. E., en obediencia á instrucciones recibidas, que esta Legaci3n tiene únicamente encargo de proporcionar al Departamento de Estado, si así V. E. lo estimare conveniente, antecedentes é informaciones sobre este asunto, cuya negociaci3n ha estado y está radicada en Santiago.

Al acompañar á V. E. adjunta á esta comunicaci3n la nota á que me he referido, tengo el honor de renovar á V. E. las seguridades de mi más distinguida consideraci3n.

A. YOACHAM.

[Translation.]

No. 122.

CHILEAN LEGATION,

Washington, July 31, 1908.

SIR: I have the honor to inform Your Excellency that I have received instructions from my Government to transmit to Your Excellency a copy of a note which the Minister of Foreign Relations of Chile addressed to Minister Hicks on April 9, of this year, regarding the claim of Alsop & Co.

The Honorable Mr. Hicks, in acknowledging the receipt of that communication, stated that it appears to him to be a document of much force and that he does not doubt it will receive your kind and careful attention.

The Government of Chile, on its part, being convinced of the justice of its cause and of the lofty and upright judgment of the State Department of the United States, is particularly desirous that His Excellency, the Secretary of State, should become acquainted with this communication, which examines and analyzes the claim which the firm of Alsop & Co. presented some years ago.

It is also my duty to inform Your Excellency, in pursuance to instructions received, that this Legation is only authorized to furnish to the State Department, if Your Excellency should deem desirable, antecedents and information regarding this case, the negotiations regarding which have been and are still being conducted in Santiago.

While enclosing to Your Excellency, herewith, the note to which I referred, I have the honor to renew to Your Excellency the assurance of my most distinguished consideration.

A. YOACHAM.

[Enclosure in note of Legation of Chile, July 31, 1908.]

The Minister of Foreign Relations of Chile to the Minister of the United States.

No. 636.

REPÚBLICA DE CHILE,
MINISTERIO DE RELACIONES EXTERIORES,
Santiago, 9 de Abril de 1908.

SEÑOR MINISTRO: A fines de julio del año próximo pasado el Encargado de Negocios ad-interim de la Legación de los Estados Unidos celebró conmigo una entrevista y puso en mis manos una nota fechada el 27 de junio, en la cual espresaba que el Departamento de Estado le encarga con empeño que vuelva á tratar con el Gobierno de Chile y que recomiende á sus bien conocidos sentimientos de justicia un negocio que ha estado pendiente durante muchos años y cuyas condiciones han hecho mucha fuerza en el ánimo de su Gobierno y por el cual aquél siente muy grande simpatía é interés, el crédito Alsop.

Trasmitía en seguida una copia de las instrucciones recibidas de la Secretaría de Estado por la Legación á propósito de esta materia.

En ellas se espresa que "esta comunicación tiene por objeto esponer al Gobierno Chileno ciertos hechos pertinentes que se

creen decisivos y obtener de él en obsequio á la buena fé y justicia la mejor oferta de arreglo que por sí misma se recomiende á Chile como justa y recta.”

Terminan las instrucciones con la declaración de que “el Departamento no entiende que esta obligación de Chile para con Bolivia, caso de no ser satisfecha por Chile, tenga el efecto de desligar á Bolivia de su obligación para con los reclamantes con respecto al saldo insoluto de la deuda, si la cantidad aceptada no pudiera mirarse como una satisfacción del cobro éntero.”

Acompañaba la nota del Encargado de Negocios una cuenta y razón del crédito Alsop, tal como fué presentado ante el Tribunal de Washington en 1900, que arroja un total de dos millones quinientos sesenta y cinco mil doscientos cuarenta y seis 15-00 en moneda de los Estados Unidos.

En el curso de la misma entrevista y apenas impuesto del asunto, tuve el honor de manifestar al Señor Encargado de Negocios que, en cumplimiento de las obligaciones contraídas en el Tratado de Paz con Bolivia, el Gobierno de Chile estaba dispuesto á pagar la suma que según el artículo 5°. correspondía á Alsop y Cía.; que esta suma sería pagada con los bonos emitidos especialmente para el objeto, con más el valor de los cupones vencidos, que se pagarían en oro; que el pago se haría contra cancelación total del crédito, y agregué que por el momento esta suma se hallaba retenida por orden judicial á petición de una hija del primitivo acreedor de Bolivia, señor Lopez Gama.

El señor Encargado de Negocios me anunció que deseaba comunicar inmediatamente esta respuesta y yo le ofrecí visar el cablegrama que dirigiría al Departamento de Estado comunicándosela.

Así lo hice.

El cablegrama, fechado el 1°. de agosto de 1907, dijo así: “El Ministerio de Relaciones Exteriores autorisa la siguiente información: Chile sostiene que su obligación para con el crédito de Alsop y Cía. está limitada por el Art. 5°. del Tratado con Bolivia y ofrece 568,192.57 pesos oro chileno pero el pago se hará solamente á condición de que el reclamante se dé por pagado de la totalidad de la reclamación, quedando así concluida tanto la deuda de Bolivia como la de Chile. Dicha suma se halla retenida en arcas fiscales por orden judicial, mientras se decidan las pretensiones contenciosas de las partes.”

Con fecha 2 de noviembre tuvo á bien V. E. pasar al Ministerio de Relaciones Exteriores á informarme por encargo de su Gobierno

de que la cantidad ofrecida en cancelación del reclamo Alsop no puede ser aceptada.

Así lo hizo presente también en una nota de la misma fecha, en la cual llamaba además la atención á la circunstancia de que no se ha contestado á su Legación la nota de Mr. Janes de 27 de junio, escepto con un acuse de recibo impersonal.

Los días 9 y 12 de noviembre V. E. pasó al Ministerio de Relaciones Exteriores á renovar su recomendación en favor de los herederos de Alsop y á pedir ciertas informaciones sobre la forma en que Chile estaba dispuesta á satisfacerlos.

En la última de estas conferencias tuve el honor de espresar que tomando en cuenta el producto de los cupones devengados por los bonos desde el 10 de diciembre de 1905 hasta el mismo día del año corriente, la suma total que existe destinada á este objeto será en la última fecha 589,870.30 pesos de 18 d. en bonos y en oro.

Puse también á la disposición de V. E. una copia del escrito y la providencia que se referían á la retención judicial decretada.

El 19 de noviembre V. E. envió á este Departamento una nueva comunicación que parecía destinada á acusar recibo de las copias entregadas, pero que no entraba en otras consideraciones con motivo de las cuales me permití pedirle celebráramos una nueva entrevista.

Esta tuvo lugar el día 23.

En ella espresé á V. E. el vivo sentimiento que me había producido su nota última, la cual no podía ser recibida sin esplicaciones; entre [o]tras razones, porque ella parecía naturalizar el carácter de mera jestión oficiosa que hasta ahora ha tenido la injerencia del Gobierno de los Estados Unidos á favor de los herederos de Alsop, y parecía tender á convertirla en una reclamación diplomática, siendo que ha quedado perfectamente establecido por nota de este Departamento que sólo en aquel carácter la ha aceptado; además, porque no es admisible que un representante extranjero indique la tramitación administrativa que ha de dar el Departamento á un negocio sometido á su estudio, ni mucho menos que indique la conducta que ha de observarse en un juicio pendiente de los Tribunales de Justicia.

Agregué, siempre en los términos más conciliadores y benévolos, que era incomprensible el empeño de los herederos Alsop por el alzamiento inmediato de la retención judicial de los bonos que les están destinados, en el momento mismo en que se han negado á aceptarlos en pago de su crédito; y observé que era profundamente

injusta su queja contra la actitud observada por el Gobierno de Chile ante la demanda entablada por Doña Juana López Gama cuando precisamente lo que el representante del Fisco ante los Tribunales es la incompetencia de la justicia ordinaria para conocer en ella.

V. E. tuvo á bien asegurarme que sus insinuaciones, inspiradas en el mejor espíritu, cual era el de facilitar la solución de la cuestión Alsop, tendían á ese fin únicamente, pero que si se consideraba inusitada é inconveniente alguna de dichas insinuaciones, no tenía inconveniente en retirarlas, y ofreció manifestarlo así en un nuevo oficio.

Con este motivo V. E. dirigió á este Departamento su nota de 25 de noviembre cuya hidalguía no puedo menos de reconocer en esta ocasión, agradeciéndola.

El infrascrito, partiendo de la base de que la naturaleza de los pasos dados por el Gobierno de los Estados Unidos á favor de Alsop, es la de una mera jestión oficiosa, entendía que la respuesta verbal dada al Señor Janes dejaba satisfecha la petición contenida en su nota de 27 de junio; pero los incidentes posteriormente ocurridos y que acabo de apuntar, aconsejan, por el contrario, adoptar el procedimiento de esponer ante V. E. en toda su plenitud el concepto que á este Departamento merece la cuestión.

He debido imponerme con todo detenimiento de los antecedentes del asunto y de las múltiples ramificaciones que lo caracterizan y lo complican; permítame V. E. resumirlas en seguida con la brevedad posible.

En 1875, Don Pedro López Gama, acreedor del Gobierno de Bolivia por contratos celebrados con el para la explotación y esportación del huano del litoral de esta República, cedió sus derechos á la firma social Alsop y Cía., de Valparaíso.

Era esta firma una sociedad civil en comandita, constituída y registrada en esa ciudad en 1870 y en la cual figuraban tres socios jerentes de nacionalidad norte-americana, dos de ellos residentes en Valparaíso y otro en Estados Unidos, y siete socios comanditarios, nacionales también de Estados Unidos y residentes en este país.

Sobrevino la guerra del Pacífico; ocupados por las armas chilenas los territorios de Perú y Bolivia en que estaban los bienes cuyos productos constituían la garantía de ese crédito, los liquidadores de Alsop y Cía creyeron que Chile les debía su cancelación. Al efecto, ocurrieron la [al] Tribunal Arbitral que funcionó en Washington en 1894 y que, en virtud de la convención chileno-norte-

americana de 7 de agosto de 1892, debía resolver todos los reclamos hechos por nacionales de cualquiera de los dos países contra el Gobierno del otro,

Este Tribunal declaró que por falta de tiempo no podía pronunciarse sobre tal reclamación.

Al año siguiente, 1895, mi Gobierno ajustó con el de Bolivia un Tratado de Paz que no alcanzó á ratificarse. En su Art. 2º, Chile contraía la obligación de satisfacer algunos de los créditos que pesaban sobre el litoral boliviano, y entre ellos se comprendía “el crédito á favor de Don Pedro López Gama, representado en la actualidad por la casa Alsop y Cía. de Valparaíso.” En seguida se dejaba establecido que esos créditos serían objeto de particular liquidación y de una especificación detallada en un protocolo complementario.

Antes de someter ese Tratado á la aprobación del Congreso Nacional, mi Gobierno decidió inquirir del representante de Alsop y Cía. en qué condiciones estaría dispuesto á cancelar el crédito. Y al efecto envió á su Plenipotenciario en Washington las correspondientes instrucciones, espresándole que se activaría el despacho del Tratado si aquella firma social reducía sus exigencias en términos que pudieran ser aceptables.

El plenipotenciario chileno celebró con el representante de ese crédito varias entrevistas, después de las cuales comunicó á este Departamento que Alsop y Cía. exijía para la cancelación solo el pago del capital adeudado, ascendente á trescientos sesenta mil pesos oro americano.

Mi Gobierno declinó esta proposición.

A virtud del convenio de 24 de mayo de 1897, se reunió en Washington en 1900 un Segundo Tribunal Arbitral, para conocer de aquellas reclamaciones que no alcanzó á fallar el primero.

La reclamación de Alsop fué allí presentada.

El ajente de Chile alegó la incompetencia del Tribunal para conocer de ella, fundado en que la sociedad Alsop y Cía. era una persona jurídica chilena, porque tenía su domicilio en Valparaíso y estaba inscrito en los registros de comercio de esa ciudad.

El Tribunal espidió su sentencia con fecha 8 de febrero de 1901.

Es oportuno transcribir aquí los considerandos y la parte dispositiva de ese fallo.

En la versión española suscrita por los árbitros se lee:

“Considerando:

“Que Alsop y Cía. es una compañía en comandita simple debidamente formada, incorporada y registrada con arreglo á la ley de Chile, con todas las formalidades de dicha ley y domiciliada en Chile;

“Que una sociedad en comandita simple (precisamente lo mismo que una sociedad anónima) constituye una persona jurídica distinta de los socios considerados individualmente;

“Que con arreglo á los principios de la ley civil, tal como se aplican á las sociedades comerciales, dichas sociedades continúan existiendo durante su liquidación;

“Que siendo Alsop y Cía. una sociedad chilena, es por consecuencia un ciudadano de Chile;

“Por consiguiente, con arreglo al Art. 1.º de la convención de 1892, esta Comisión no tiene jurisdicción en esta reclamación.”

Y más adelante se agrega:

“Por consiguiente, el caso se da por terminado, sin perjuicio de cualquiera de los derechos que el reclamante ó reclamantes, ó Alsop y Cía., ó su liquidador, puedan tener, ya sea mediante una intervención diplomática ó ante el Gobierno de Chile, ó los Tribunales de Chile. Ni tampoco se perjudican en ningún sentido los méritos de esta reclamación por virtud de este fallo. Según el alegato del Honorable agente de Chile, se declara que esta reclamación ‘está comprendida en las obligaciones que el Gobierno de Chile se comprometió á pagar por cuenta de Bolivia. El Gobierno de Chile siempre la ha considerado y todavía la considera como una obligación por parte de Bolivia hacia el reclamante; y á fin de inducir al Gobierno de Bolivia para que firme el Tratado definitivo de Paz que se ha estado negociando por muchos años, el Gobierno de Chile promete satisfacer ésta y otras reclamaciones como una parte del pago ó consideración que ofrece á Bolivia en recompensa por la firma del Tratado. Esta ha sido siempre la actitud del Gobierno de Chile y es su actitud en la actualidad, y si Bolivia firma el Tratado, la reclamación de Alsop y Cía. así como las otras reclamaciones mencionadas, se pagarán prontamente con arreglo al compromiso del Tratado, como una exención á Bolivia de las obligaciones que aquél Gobierno ha contraído y por cuenta de Bolivia.

“Por consiguiente,” termina la sentencia, “el reclamante queda referido para la protección del Gobierno de Chile, cuyas afirmaciones quedan así espresadas, y el caso es desechado.”

Y no fué ésta la única ocasión en que el Tribunal Arbitral declaró que la firma de Alsop y Cía. era de nacionalidad chilena.

Basado en esta misma consideración, desestimó también el reclamo No. 26, presentado por esa firma social conjuntamente con la No. 31, de Grant-Walker, reclamaciones ambas en las cuales se exijía indemnización de perjuicios al Gobierno de Chile, á causa de la captura del buque norteamericano “Sportsman” por una nave de guerra chilena, en julio de 1857.

La sentencia del Tribunal de Washington que obliga la fé de nuestros respectivos Gobiernos contiene, en resumen, las siguientes explícitas declaraciones:

1.º. La sociedad Alsop y Cía. es una persona jurídica chilena, cualquiera que sea la nacionalidad de los individuos que la cons-

tituyen, y, por consiguiente, no ha podido presentarse contra el Gobierno de Chile en el carácter de nacional de Estados Unidos.

2º. Esta resolución no priva á Alsop y Cía. del derecho de hacer valer su crédito contra el Gobierno que estuviese obligado á satisfacerle.

3º. El Tribunal toma nota de la declaración hecha por el Ajente chileno, de que, aún cuando su Gobierno considera que el crédito de Alsop y Cía. debe ser pagado por el Bolivia, Chile se ofrece á cancelarlo por la suma que se fije en el Tratado de Paz con ese país, como compensación por las cesiones de territorio que habrá de hacerle.

4º. Como consecuencia de las declaraciones anteriores, el reclamante sólo puede ser amparado diplomáticamente por el Gobierno de Chile.

Y esta última declaración se halla sostenida espresamente en la nota que el Plenipotenciario Chileno en los Estados Unidos dirigió al Departamento de mi cargo, con fecha 25 de febrero de 1901, nota tanto más autorizada, cuanto que ese Plenipotenciario, en unión con el Ministro de Suiza en Washington, formó la mayoría del Tribunal que acordó la sentencia.

Por otra parte, en lo que á la protección diplomática se refiere, esa declaración se encuentra en perfecto acuerdo con la práctica uniformemente seguida al respecto por el Departamento de Estado, según la cual, una sociedad tiene, para esos fines, la nacionalidad del país en que se [ha] constituido. (Véase Moore, A. Digest of International Law, Washington, 1906, vol. VI, par. 984, pag. 641, y par. 985, pag. 646. Véase también pars. 982 y 983.)

La sola esposición de los hechos anteriores permitirá al elevado espíritu de V. E. apreciar hasta qué punto mi Gobierno se manifestó deferente con la firma Alsop y Cía. Si no le admitió que se presentara en su contra, investida del carácter de acreedor norteamericano, le prometió, en cambio, atender debidamente su crédito al firmarse el Tratado de Paz.

Y deseoso de arreglar con facilidades este asunto, á la vez que por especial deferencia á los Estados Unidos, en donde residían los socios de esa firma chilena, aceptó gustoso los buenos oficios del Gobierno de V. E.

Al proceder de esta manera, abrigaba la esperanza de ese Gobierno contribuiría á persuadir á los reclamantes de que les convenía moderar sus pretensiones en orden á la cuantía del crédito, asegurando así una cancelación que no les había sido posible obtener del Gobierno de Bolivia.

De ahí que á los diversos empeños oficiosos de los honorables antecesores de V. E., este Departamento contestara haciendo propo-

siciones de pago que estimaba adecuadas y equitativas, pero que no fueron aceptadas, y reiterando, en todo caso, su anterior promesa de tomar debida y liberalmente en cuenta el crédito de Alsop al firmarse el Tratado de Paz.

Este Tratado se firmó efectivamente el 20 de Octubre de 1904, y en su artículo 5.º se estipuló que Chile destinaba la cantidad de dos millones de pesos oro de 18 d. á la cancelación de algunos de los créditos de Bolivia en él determinados. Entre estaba "la deuda reconocida á favor de Don Pedro López Gama, representado por los Sres. Alsop y Cía., subrogatorios de los derechos de aquél."

En acta protocolizada de 15 de noviembre del mismo año, se dejó constancia de que, en conformidad con el espíritu de dicho Tratado y los antecedentes que le habían dado oríjen, el Gobierno de Chile se reservaba ampliamente libertad "para estudiar calificar y liquidar los créditos enumerados en el artículo 5.º", como así mismo de que fuera de estas obligaciones, no tomaba á su cargo ningún otro crédito del Gobierno de Bolivia, cualquiera que fuese su naturaleza y procedencia.

Mi Gobierno, que de este modo dejaba cumplida su promesa, creyó conveniente, antes de someter este pacto á la aprobación del Congreso Nacional, obtener de todos los acreedores enumerados en el artículo 5.º que aceptaran en cancelación de sus créditos las sumas que en virtud de él les correspondían. Y para conseguirlo de Alsop y Cía. encargó al Plenipotenciario en Washington ponerse al habla con su representante.

Pendiente aún esta jestión, sorprendió á este Departamento una nota del señor Ministro de Estados Unidos, con fecha 2 de febrero de 1905, en la cual, á propósito de la ratificación del Tratado de Paz por el Congreso Boliviano, le pedía cumplimiento de la promesa que antes le hiciera de atender la reclamación Alsop con especial y aún generosa consideración.

Esa nota fué contestada el 21 de marzo del mismo año, haciendo presente al distinguido antecesor de V. E. que, por intermedio de la Legación de Chile en Washington, se habían hecho á los interesados en dicha reclamación proposiciones que se esperaba condujeran á un próximo avenimiento.

Poco antes, el 11 de febrero de 1905, se iniciaba en Santiago por el curador de una hija demente de Don Pedro López Gama un juicio contra todos los socios de la firma Alsop y Cía., pidiéndose se declarara nula la cesión que, en 1875, aquél había hecho á esta sociedad del crédito contra el Gobierno de Bolivia.

En el mismo escrito de demanda se pedía la retención en poder del Ministerio de Hacienda, y á la orden del Juzgado, de los bonos destinados á la cancelación de ese crédito.

Con motivo de este juicio, el señor Encargado de Negocios de Estados Unidos dirijió al Departamento de mi cargo, el 12 de agosto de 1905, una comunicación en la cual pedía informaciones sobre varios puntos relacionados con aquel embargo.

En ella hacía notar que la aceptación que de los bonos había hecho su Gobierno “no constituía *per se* una renuncia á su derecho de continuar interponiendo sus buenos oficios ante el Gobierno de Chile para con Alsop y Cía.”

Este Departamento, en su contestación de 4 de setiembre siguiente, manifestó al Señor Encargado de Negocios que se haría un deber en solicitar del Ministerio de Hacienda los datos á que se refería la indicada nota á fin de transmitírselos oportunamente.

Al mismo tiempo, para evitar dudas sobre el alcance y naturaleza de estas jestioniones (y este es un punto al cual mi Gobierno atribuye una importancia capital) estimó necesario observar al Señor Encargado de Negocios que, dada la circunstancia de haber declarado el Tribunal Arbitral de Washington que Alsop y Cía. era una sociedad chilena, no podía atribuir á los pasos dados por esa Legación en este asunto otro carácter que el de una “simple injerencia conciliadora,” encaminada á producir el acuerdo que se buscaba para darle término, dentro de la cláusula 5.^a del Tratado de Paz.

Además de precisar el carácter en que aceptaba las jestioniones hechas en favor de este crédito por la Legación de los Estados Unidos, la referida nota de esta Cancillería dejaba establecido que el Gobierno de Chile sólo por consideraciones de buena amistad para con el de V. E. se allanó á incluir el crédito de Alsop y Cía entre aquellos á cuya cancelación destinó una suma dentro de los términos limitados que estipuló con el Gobierno de Bolivia en el Tratado de 20 de octubre de 1904.

Tal era, Señor Ministro, el estado en que se encontraban estas jestioniones cuando el Señor Encargado de Negocios ad interim de la Legación de V. E. me presentó su comunicación de 27 de junio del año próximo pasado.

En ella se limitaba, como lo he hecho presente más arriba, á recomendar el asunto á este Gobierno y á transcribir las instrucciones que el suyo le había dirijido acerca del asunto Alsop, instrucciones en las cuales se hace la esposición de sus principales

antecedentes y de las gestiones que al respecto han mediado entre los Gobiernos de Chile y Estados Unidos.

Espuesto así, en sus rasgos fundamentales, el oríjen, desarrollo y naturaleza de las gestiones oficiosas del Gobierno de V. E. en favor de Alsop y Cía., cábeme ahora manifestar hasta qué punto mi Gobierno ha cumplido su propósito de atender el crédito de esa firma social en forma satisfactoria.

Ninguna obligación tenía Chile de tomar sobre sí el pago de ese crédito, ni siquiera en parte, desde que es un principio de Derecho Internacional apoyado por numerosos precedentes diplomáticos el de que, en casos de anexiones ó cesiones de territorio, no pasa de pleno derecho al Estado cesionario ó anexante ninguna deuda del otro Estado, y que, para que alguna pase, es menester que se haya estipulado espresamente su reconocimiento, lo que con frecuencia se hace por obvias consideraciones de equidad.

Y en el presente caso la buena voluntad de mi Gobierno aparece más de manifiesto si se toma en consideración que el crédito Alsop había sido objeto de litijios y de transacciones de parte del Gobierno de Bolivia, porque su liquidación lo hacía susceptible de muy fundadas observaciones.

Pero la liberalidad con que procedía mi Gobierno al hacerse cargo de la cancelación de ese crédito, mediante el pago de una parte considerable de él, no fué debidamente apreciada por el representante de esta firma social: no conforme con la suma que se le asignaba en el Tratado de Paz, pretendió, según en más de una ocasión tuvo á bien espresarlo el Plenipotenciario Chileno en Washington, que la circunstancia de tener ese crédito afectos á su cumplimiento bienes situados en el territorio adquirido por Chile á virtud del mismo Tratado, imponía á mi Gobierno la obligación de pagarlo en su totalidad.

V. E. comprenderá cuan inadmisibile es semejante pretensión, si considera que la garantía del crédito de Alsop es, como la de muchos acreedores del Gobierno de Bolivia, nó una hipoteca de Derecho Civil, sino únicamente una garantía financiera dada por el Estado para asegurar el cumplimiento de un contrato.

Inoficioso creo determe á esponer á V. E. la opinión casi unánime, de los publicistas con respecto al alcance de esta especie de garantías. Ellos están de acuerdo en que ellas no pueden subsistir ni hacerse efectivas sino mientras el Estado que las otorgó ejerza su soberanía sobre el territorio en que se encuentran los bienes que la constituyen, perdiendo todo su valor cuando ese territorio pasa á la soberanía de otro Estado.

Me parece sí oportuno llamar la atención de V. E. hacia ciertos importantes precedentes diplomáticos sobre esta materia y en los cuales mi Gobierno ha sido parte directamente interesada.

Los acreedores del Perú á cuyos créditos estaban afectos depósitos de guano que, después de la guerra del Pacífico pasaron á poder de Chile, han discutido ampliamente ante Tribunales extranjeros la naturaleza y alcance de esta materia.

En la sentencia de la Corte Suprema de Justicia de Inglaterra, de 18 de abril de 1877, sobre el litijio Twycross contra Dreyfus; en la espedida por la Corte de Apelaciones de París el 25 de junio del mismo año, en la causa Domis y consocios contra Dreyfus Hermanos y Compañía; y en la dictada por la Corte de Apelaciones de Bruselas, con fecha 4 de agosto siguiente; se ha declarado que los demandantes no tenían en realidad el carácter de acreedores hipotecarios que se atribuían, y que la garantía que alegaban no era sino una obligación personal del Gobierno del Perú, sin importancia alguna desde el punto de vista internacional.

Por otra parte, el Tribunal Arbitral Franco-Chileno que funcionó en Lausana con el objeto de distribuir el 50% del producto neto de la venta de un millón de toneladas de guano entre los acreedores del Perú cuyos títulos de crédito estaban sustentados por la garantía de este producto, dió completa razón á Chile en cuanto al valor y alcance que atribuía á esta garantía. En el considerando D, No. 2, de su sentencia de 5 de julio de 1901, espedida en Rapperschwyl, declara que la existencia del derecho real que los acreedores del Perú pretendían tener garantido por el guano "no está confirmada ni por la doctrina ni por la práctica del Derecho Internacional, y que dicha pretensión se apoya en una inexacta apreciación jurídica de las relaciones existentes entre el Estado prestatario y los particulares tomadores del empréstito."

Y en el No. 3 del mismo considerando D, se declara "que queda establecido que en el momento de la ocupación chilena los yacimientos de guano del Perú no estaban gravados con ningún derecho real en provecho de los acreedores de este Estado."

Si la doctrina antes espuesta ha sido establecida con relación á créditos que tenían afectos á su cumplimiento de modo tan especial y absoluto depósitos de guano y de salitre situados en el territorio peruano, con cuánta mayor razón deberá ella aplicarse á las garantías constituídas por el Gobierno de Bolivia á favor de Alsop y Cía., que no tenían esos caracteres.

Pero no es esto sólo.

Esas garantías eran tanto menos dignas de consideración del Gobierno de Chile cuanto que la mayor parte de ellas había sido constituídas sobre bienes situados en territorio chileno, que mi país reivindicó de Bolivia con motivo de la guerra del Pacífico (minas de Caracoles) y el resto sobre bienes cuyo producto pasaba en sus tres cuartas partes á Bolivia en virtud del Pacto de Tregua (derecho sobre ciertas entradas de la Aduana de Arica, en que Bolivia tenía interés), destinándose lo demás al mantenimiento del mismo servicio aduanero.

De manera, pues, que de las garantías del crédito de Alsop, una fué constituída por Bolivia en territorio que era en realidad chileno, y la otra ha sido usufructuada casi en su totalidad por el mismo país desde 1884.

Paso á otro punto.

Es apreciación que me creo en el deber de rectificar la formulada por el Departamento de Estado en las instrucciones impartidas al Señor Encargado de Negocios de la Legación de V. E. y trascritas en su nota de 27 de junio antes citada, al espresar que su Gobierno está convencido de que el de Chile debe pagar íntegramente el crédito de Alsop y Cía., por haberlo así prometido al Gobierno de Bolivia en las comunicaciones reservadas que se cambiaron entre el Plenipotenciario de este país y el Ministro Chileno de Relaciones Exteriores, con fecha 21 de octubre de 1904.

Confía este Departamento en que el Gobierno de V. E. no habrá de hacer caudal de esta circunstancia, ya que el carácter reservado de esas comunicaciones impide cerciorarse de su autenticidad y apreciar hasta qué punto ellas han podido reflejar el verdadero pensamiento de ambos Gobiernos.

Pero esas comunicaciones confidenciales, aún suponiéndolas auténticas, no tienen el alcance que el Gobierno de V. E. les ha atribuído.

En su comunicación de 21 de octubre de 1904, el Plenipotenciario boliviano manifestó á nuestro Ministro de Relaciones Exteriores que el alcance que su Gobierno daba al Art. 5.º del Tratado de Paz era "que ha sido convenido que el Gobierno de Chile hará la cancelación definitiva de todos los créditos indicados en ese artículo, sin quede responsabilidad alguna para Bolivia, debiendo el Gobierno de Chile responder á toda reclamación ulterior presentada por medios privados ó por acción diplomática, considerándose responsable de toda obligación, bono ó documento de Bolivia en todo tiempo y haciéndose cargo de todas y en su amplitud el Gobierno de Chile."

Y á su pregunta sobre si ese era también el alcance que el Gobierno de Chile daba á este artículo, nuestro Ministro de Relaciones Exteriores contestó no asintiendo lisa y llanamente, es decir, reproduciendo las palabras del Ministro Boliviano, como es costumbre cuando hay plena concordancia de ideas, sino en una forma distinta, declarando que en su concepto “la obligación que Chile contrae por el Art. 5.º del referido Tratado comprende la de arreglar directamente con los dos grupos de acreedores reconocidos por Bolivia la cancelación definitiva de cada uno de los créditos que en dicho artículo se mencionan, libertando á Bolivia de toda responsabilidad ulterior.

“En consecuencia”—agrega—“es entidido que Chile subrogado en todas las obligaciones y derechos que pudieran corresponder á Bolivia en lo que con estos créditos se relaciona, responderá de cualquier cobro ó reclamación que se pretendiera formular por el Gobierno de V. E. por alguno de los interesados en los referidos créditos.”

Hay una diferencia fundamental entre una y otra comunicación: Nuestro Ministro no declaró que Chile se obligaba á *pagar íntegramente* todos los créditos enunciados en el art. 5.º como lo pretendía el Plenipotenciario Boliviano, sino á *arreglar directamente con los acreedores la cancelación definitiva de cada uno de sus créditos*, libertando así á Bolivia de toda responsabilidad ulterior.

Y no es lo mismo obligarse á satisfacer íntegramente un crédito que obligarse á arreglar su cancelación definitiva, ya que ésta puede conseguirse no sólo por medio del pago total sino también por medio de una transacción ó acuerdo análogo.

Y esto último fué, efectivamente, lo que hizo el Gobierno de Chile.

Antes de ratificar el Tratado de Paz, procuró obtener, y lo obtuvo, que todos los acreedores enumerados en el artículo 5.º, á escepción únicamente de Don Juan Gardaix y de Alsop y Cía., aceptaran las sumas que les acordaba el tratado y otorgaran finiquito de cancelación total.

Si no aguardó á que aquellos acreedores suscribieran también ese acuerdo, fué, con respecto al primero, porque su crédito era muy exíguo, y, con respecto al segundo, porque les asistía la confianza de que darían un resultado favorable las jestionés iniciadas al efecto, ya que no había razón alguna atendible para que sea firma chilena se negara á admitir una reducción que los demás acreedores no habían tenido inconveniente en aceptar.

El alcance de la nota referida no podría ser otro del que he tenido el honor de manifestar; y pretender lo contrario, pretender, como parece, deducirse de la comunicación del Señor Encargado de Negocios de los Estados Unidos, que su alcance es de reconocerse obligado el Gobierno de Chile á pagar en su integridad los créditos enumerados en el Art. 5.º del Tratado, eso importa suponer que el Ministro de Relaciones Exteriores que la suscribió habría estralimitado sus atribuciones alterando de un modo sustancial, por comunicaciones confidenciales, desconocidas del Congreso Nacional, una de las cláusulas fundamentales de un Tratado celebrado con todas las solemnidades que la Constitución del Estado y el Derecho de Jentes prescriben.

Tal suposición importaría un cargo contra un honorable antecesor mío que no es presumible haya querido V. E. formular.

En todo caso, V. E. habrá de convenir conmigo en que compromisos contraídos en forma irregular y contrarios á las disposiciones claras y terminantes de un Tratado, son nulas y de ningún valor.

De modo, pues, que el alcance natural y legal de la comunicación reservada de mi honorable antecesor, sólo podrá interpretarse en el sentido de que mi Gobierno satisfará los créditos indicados en el Art. 5.º del Tratado con Bolivia; pero, bien entendido, sólo basta la cuantía en él indicada.

En resumen, no tengo para qué pronunciarme sobre la autenticidad de las referidas comunicaciones, desde que ellas no modifican la línea de conducta que ha impuesto á este Gobierno el texto del Tratado; pero debo ratificar á V. E. la declaración que he anticipado al Señor Encargado de Negocios de que Chile no ha hecho [el pago] á ninguno de los acreedores contemplados en el Tratado de Paz con Bolivia, ni podrá hacerlo en adelante á favor de ningún otro sino en cambio de la cancelación total de su crédito.

Estimo que las consideraciones anteriores dejarán en el ánimo de V. E. la impresión de que la liberalidad con que mi Gobierno ha procurado atender hasta ahora el crédito de Alsop y Cía. no le permite asignarle mayor suma que la que por el Tratado de Paz le ha sido impuesta.

En consecuencia, tengo el honor de reiterar á V. E. que mi Gobierno está dispuesto á pagar, en bonos, para la cancelación total de dicho crédito, la suma de quinientos veinticuatro mil trescientos treinta y dos pesos ochenta y un centavos oro de 18 d. por capital, ——— y la de setenta y ocho mil seiscientos cuarenta y nueve pesos noventa y dos centavos en moneda de oro de 18 d. por cupones vencidos de los mismos (incluso el próximo cupón, que

vencerá el 10 de junio). Los bonos gana 5 % de interés y tienen una amortización acumulativa de 1 % anual.

Estoy convencido de que una bien entendida conveniencia aconseja á los herederos de Alsop y Cía. acoger esta proposición.

Su aceptación, juntamente con permitirles obtener el pago inmediato de su crédito tanto tiempo pendiente, los libertaría de la revisión y liquidación que de él está facultado para hacer el Gobierno de Chile, á virtud de una de las actas complementarias de Tratado de Paz, facultad que, ejercida con estrictez, podría menoscabarle en proporción considerable.

Dejaría también de afectarles el juicio que los herederos de Don Pedro López Gama tienen instaurado contra ellos ante los tribunales chilenos y á consecuencia del cual están retenidos los bonos destinados al pago del crédito.

Más, si mi Gobierno demuestra así un celo que podría calificarse de exajerado por resolver pronto y liberalmente este asunto, no le es posible dejar pasar sin observación la reserva que ha hecho la Legación del cargo de V. E., especialmente en sus comunicaciones de 27 de junio y de 25 de noviembre del año próximo pasado, del derecho de cobrar á Bolivia la parte insoluta del crédito de Alsop y Cía. que no fuere satisfecha por Chile.

Aunque el caso no puede llegar, desde que Chile está resuelto á no efectuar pago alguno sin que se dé por totalmente cancelado el crédito, confío que el Gobierno de V. E. no habrá de adoptar esa actitud, ya que ella estaría en abierta contradicción con la sentencia del Tribunal de Washington que declaró a Alsop y Cía. sociedad chilena y con derecho á ser patrocinada diplomáticamente sólo por el Gobierno de Chile; pero si, por circunstancias que nó diviso, tal evento llegara á realizarse, este Ministerio se creería en el deber de comunicarlo oportunamente al Gobierno de Bolivia, declinando toda responsabilidad por los pagos que él pudiera hacer en beneficio de aquella firma mercantil.

Tampoco espera mi Gobierno que, en el caso de que el arreglo que he tenido el honor de proponer sea rehusado por los interesados, el Gobierno de los Estados Unidos interponga reclamación diplomática en favor de Alsop y Cía.

Este procedimiento, no sólo iría contra lo resuelto por la referida sentencia arbitral, sino que contradiría doctrinas de Derecho Internacional claramente establecidas.

Es, en efecto, un principio que todo el mundo reconoce, el de que, cuando un extranjero tiene derechos que hacer valer ó perjuicios que reclamar contra un Estado, debe ocurrir á la autoridad

judicial ó administrativa del mismo, y el Estado á que pertenece no puede ampararle diplomáticamente sino después de agotados todos los recursos legales, y solo en casos muy justificados, especialmente en el caso de denegación de justicia.

Estados Unidos mismo ha reconocido, como no podía menos de hacerlo, la efectividad de este principio en numerosas ocasiones, ya como reclamante, ya como reclamado; y ha dirigido á sus agentes la recomendación de que, cuando se trate de hechos de esta naturaleza, respeten las leyes y autoridades del país en que ocurriere el hecho (Moore, op. cit., vol. VI, par. 971, pags. 609, 610, par. 986 y 987, pags. 651-677; y par. 995, pag. 708).

No obstante, si, á pesar de todas esas razones, los herederos de la firma social chilena Alsop y Cía. rechazaran el arreglo propuesto, y el Gobierno de V. E., á intento de procurarles condiciones más ventajosas, resolviera convertir los buenos oficios interpuestos hasta ahora en favor de ellos en una reclamación diplomática, mi Gobierno se anticipa á declarar á V. E. que no podría aceptarla, y al mismo tiempo á declarar á V. E. que tiene de antemano tomada la resolución, si tal evento allegara de invitar inmediatamente al de V. E. á someter el caso á arbitraje; está bien cierto mi Gobierno de que por este procedimiento no podrá menos de ser reconocida la justicia que le asiste y está cierto también de que así se evitará que controversias orijinadas por cuestiones de mero carácter pecuniario puedan alterar la armonía que deseamos presida siempre á las relaciones entre nuestros países.

Aprovecho la ocasión para reiterar á V. E. las seguridades de mi consideración más distinguida.

(firmado)

F. PUGA BORNE.

“Conforme con el orijinal:

“A. YOACHAM.”

[Translation.]

No. 636

REPUBLIC OF CHILI,
MINISTRY OF FOREIGN RELATIONS.

Santiago, April 9, 1908.

MR. MINISTER: Toward the end of July of last year the Charge d'Affaires ad interim of the United States Legation held an interview with me and placed in my hands a note dated June 27, in which he stated that the State Department had given him urgent instructions to resume negotiations with the Chilian Government and commend to its well known sentiment of justice a case which has been pending for many years and the circumstances of which have appealed forcibly to the mind of his Government, just

as it has enlisted great sympathy and interest on the part of the Chilean Government namely, the Alsop claim.

He afterwards transmitted a copy of the instructions received by the Legation from the State Department in regard to this matter.

In these instructions it is stated that "the object of this communication is to set forth to the Chilean Government certain pertinent facts which are believed to be decisive, and to obtain from it, in consideration of good faith and justice, the best offer of a settlement that suggests itself to Chile as just and right."

These instructions end with the declaration that "the Department does not understand that this obligation of Chile towards Bolivia, in case it is not satisfied by Chile shall have the effect of relieving Bolivia from her obligation towards the claimants with regard to the settlement of the debt (which is still unmade), provided the amount accepted can not be regarded as a settlement of the entire claim."

Accompanying the note of the Charge d'Affaires was an account and itemized statement of the Alsop claim, as it was presented before the tribunal at Washington in 1900, the total amount of the claim being \$2,565,246.15 in money of the United States.

During the course of the aforesaid interview and being hardly acquainted with the subject, I had the honor to state to the Charge d'Affaires that, in compliance with the obligations contracted in the treaty of peace with Bolivia, the Chilean Government was willing to pay the amount which belonged to Alsop & Co. according to Article V; that this sum would be paid by means of the bonds issued especially for this purpose, to which would be added the amount of the coupons due, which would be paid in gold; that the payment would be made in consideration of the total cancellation of the debt, and I added that, for the time being, this sum was being retained by an order of the court issued at the request of the daughter of Bolivia's original creditor, Mr. Lopez Gama.

The Charge d'Affaires told me that he desired to communicate this reply immediately, and I offered to vise the cablegram which he would send to the State Department communicating the reply.

I did this.

The cablegram, dated August 1, 1907, read as follows:

"The Ministry of Foreign Relations authorizes the following information: Chile maintains that her obligation with regard to the claim of Alsop & Co. is limited by Article V of the Treaty with Bolivia, and

offers 568,192.57 pesos Chilian gold, but the payment will be made only on condition that the claimant acknowledge the payment of the claim in full, so that the debt of Bolivia as well as that of Chili will be canceled. This sum is being retained in the Government Treasury by judicial order pending a settlement of the contending claims between the parties."

On November 2, Your Excellency saw fit to come to the Ministry of Foreign Relations and inform me by instructions from your Government that the amount offered in settlement of the Alsop claim could not be accepted.

You also call attention to this in a note of the same date, in which you furthermore pointed to the circumstances that your Legation had received no answer to the note of Mr. Janes of June 27, with the exception of an impersonal acknowledgment of receipt.

On the 9th and 12th of November Your Excellency came to the Ministry of Foreign Relations to renew your recommendation in favor of the Alsop heirs and to ask certain information as to the manner in which Chili was willing to satisfy them.

In the last of these conferences I had the honor to state that, taking into account the proceeds of the coupons accrued on the bonds from December 10, 1905, up to the same day of the present year, the total amount available for this purpose on the latter date would be 589,870.30 pesos of 18d each in bonds and in gold.

I also furnished Your Excellency with a copy of the document and decree relating to the judicial retention which had been ordered.

On November 19, Your Excellency sent to the Department another communication which appeared to be intended for an acknowledgment of receipt of the copies delivered but which did not enter into any other consideration in regard to which I took the liberty to ask you to hold another interview.

This interview took place on the 23rd.

In it I expressed to Your Excellency the keen regret which I had felt at your last note, which could not be received without explanations, among other reasons because it appeared to change the character of the intervention of the United States Government in behalf of the Alsop heirs which had hitherto been in the nature of a mere exercise of good offices, and seemed to desire to convert it into a diplomatic claim, although it was clearly set forth in a note of this Department that the intervention had only been accepted in the former form; and besides, because it is

not permissible for a foreign representative to suggest the administrative procedure through which the Department shall put a case submitted to its examination, and much less is it permissible that he shall suggest the course to be followed in a law suit pending before the courts.

I added, still in the most kindly and conciliatory terms, that it was incomprehensible why the Alsop heirs were so anxious to have the distraint removed which had been placed by the court on the bonds intended for them, while at the very same time they had refused to accept them in payment of their claim, and I observed that their complaint against the attitude assumed by the Chilian Government with respect to the action begun by Mrs. Juana Lopez Gama was very unjust, when precisely that which the representative of the Government before the courts is the incompetency of ordinary justice to take cognizance of the complaint.

Your Excellency saw fit to assure me that your insinuations, which were made in the best intention, viz., that of facilitating the settlement of the Alsop question, were directed solely toward this end, but that if any of these considerations were considered out of the way or objectionable, you had no objection to withdrawing them, and you offered to make a statement to this effect in a new note.

Your Excellency then sent to this Department your note of November 25th, the courtesy of which I cannot help acknowledging on this occasion and thanking you for it.

The undersigned, acting on the assumption that the steps taken by the United States Government in behalf of Alsop were merely in the nature of an exercise of good offices, thought that the oral reply given to Mr. Janes satisfied the petition contained in his note of June 27th, but the incidents which have occurred subsequently and which I have just pointed out, make it advisable, on the contrary, to adopt the course of explaining to Your Excellency in full the opinion which this Department entertains of the question.

I have had to acquaint myself thoroughly with the whole history of the case and with the numerous ramifications which characterize and complicate it. Your Excellency will permit me to summarize them herein-below as briefly as possible.

In 1875 Mr. Pedro Lopez Gama, a creditor of the Bolivian Government by virtue of contracts made with him for the exploitation and exportation of the guano existing on the coast of said

Republic, transferred his rights to the business firm of Alsop & Co., of Valparaiso.

This firm was a civil corporation *in commendam*, organized and registered in the said City in 1870, having three active members of North American nationality, two of them residing in Valparaiso and the other in the United States, and seven silent partners, who are also citizens of the United States residing in this country.

The War of the Pacific came on, and the regions in Peru and Bolivia in which was situated the property whose product constituted the security for this loan (claim), having been occupied by the Chilian arms, the liquidators of Alsop & Co. thought that Chili was responsible to them for its settlement. For this purpose they went before the Court of Arbitration, which sat at Washington in 1894, and which, by virtue of the convention between Chili and North America of August 7, 1892, was to decide all claims made by the citizens of the two countries against the Government of the other.

This Court declared that it could not pass on this claim owing to lack of time.

During the following year, 1895, my Government arranged the Treaty of Peace with Bolivia, which was not ratified. In Article 2 of this Treaty Chili undertook the obligation to satisfy some of the debts which incumbered the Bolivian coast region, among them being included "the debt due Mr. Pedro Lopez Gama, represented at present by the firm of Alsop & Co. of Valparaiso." It was afterward agreed that these claims or debts should form the subject of a special settlement and be specified in detail in a supplementary protocol.

Before submitting this Treaty to the approval of the National Congress, my Government decided to inquire of the representative of Alsop & Co. under what conditions he would be willing to cancel the claim. For this purpose it sent the necessary instructions to its Minister at Washington, stating to him that the approval of the Treaty would be hastened if the aforesaid firm would reduce its demands to proportions which would be acceptable.

The Chilean Minister held several interviews with the representative of the claim, after which he communicated to this Department that Alsop & Co. demanded in settlement only the payment of the principal due, which amounted to \$360,000 American gold.

My Government declined this proposition.

By virtue of the agreement of May 24, 1897, a second Court of Arbitration convened at Washington in 1900 for the purpose of considering the claims which the first court had not reached.

The Alsop claim was presented to this court.

The agent of Chili alleged the incompetency of the court to consider the claim, by reason of the fact that the partnership of Alsop & Co. was a Chilian corporation (legal entity), because it had its domicile at Valparaiso and was recorded on the commercial registers of that City.

The Court rendered its award on February 8, 1901.

It is appropriate to transcribe here the considerations and the decision of this award.

In the Spanish version signed by the arbitrators we read:

“Considering:

“That Alsop & Co. is a society, ‘*en comandita simple*,’ duly organized, incorporated, and registered under the law of Chili, with all the formalities of said law and domiciled in Chili;

“That a society ‘*en comandita simple*’ (exactly the same as a *society anonima*) constitutes a juridical person distinct from the partners considered individually;

“That in accordance with the principles of the civil law, as they are applied to commercial societies, such societies continue to exist during liquidation;

“That Alsop & Co. being a Chilian society, is a citizen of Chili;

“Therefore, in accordance with Article 1 of the Convention of 1892, this Commission has no jurisdiction over this claim.”

And further on it is added:

“Therefore, the case is dismissed without prejudice, however, to any rights which the claimant, or claimants, or Alsop & Co., or its liquidator may have, either through diplomatic intervention or before the Government of Chile, or the courts of Chili. Nor are the merits of this claim impaired in any way by virtue of this decision. According to the brief of the Honorable Agent of Chili, it is declared that this claim is comprised among the obligations which the Chilean Government agrees to pay on account of Bolivia. The Chilian Government has always considered it and still does consider it as an obligation on the part of Bolivia towards the claimant; and in order to induce the Bolivian Government to sign the permanent Treaty of Peace which has been under negotiation for many years, the Government of Chili promises to satisfy this and other claims as a part of the payment or consideration which it offers to Bolivia in exchange for the signature of the Treaty. This has always been the attitude of the Chilean Government and is its attitude at present, and if Bolivia signs the Treaty, the claim of Alsop & Co., as well as the other claims mentioned, will be paid promptly in accordance with the Treaty agreements, as a relief to Bolivia from the obligations which that Government has contracted and for the account of Bolivia.”

“Consequently,” concludes the award, “the claimant is referred to the protection of the Chilean Government, whose statements are thus expressed, and the case is rejected.”

This was not the only case in which the Court of Arbitration declared that the firm of Alsop & Co. was of Chilean nationality.

Based on this same consideration, it also rejected claim No. 26, presented by this firm in conjunction with claim No. 31 of Grant-Walker, both being claims in which damages were demanded from the Chilean Government on account of the capture of the North American vessel “Sportsman” (by a Chilean war vessel in July, 1857).

The award of the Washington tribunal which involves the good faith of our respective Governments, contains, in summarized form, the following explicit declarations:

1. The firm of Alsop & Co. is a Chilean person whatever be the nationality of the individuals composing it, and therefore it could not appear against the Chilean Government as a citizen of the United States.

2. This decision does not deprive Alsop & Co. of the right to assert their claims against the Government which is under obligation to satisfy them.

3. The tribunal takes note of the declaration made by the Chilean agent to the effect that, although his Government considers that the claim of Alsop & Co. ought to be paid by Bolivia, Chili offers to settle it by means of the sum which is specified in the Treaty of Peace with that country as a compensation for the cessions of territory which Bolivia is to make to Chili.

4. In consequence of the foregoing declaration the claimant can only be protected diplomatically by the Government of Chili.

And this latter declaration is expressly corroborated in the note which the Chilean Minister to the United States addressed to the Department under my charge on February 25, 1901, which note is all the more authoritative because this Minister, together with the Minister of Switzerland at Washington, formed the majority of the tribunal which rendered the award.

On the other hand, as regards that part which refers to diplomatic protection, the aforesaid declaration is in perfect accord with the practice uniformly followed in this respect by the Department of State, according to which practice a corporation has, for these purposes, the nationality of the country in which it is constituted (see Moore, *A Digest of International Law*, Washington, 1906, vol. VI, par. 984, page 641 and par. 985, page 646. See also pars. 982 and 983).

The mere statement of the foregoing facts will enable Your Excellency's enlightened mind to appreciate the extent to which

my Government deferred to the firm of Alsop & Co. If it did not permit this firm to appear against it, as a North American creditor, it nevertheless promised, in exchange, to give due attention to its claim on signing the treaty of peace.

And, being desirous of settling this matter with facility as well as out of special deference to the United States, where the members of this Chilian firm resided, it gladly accepted the good offices of Your Excellency's Government.

In acting thus it cherished the hope that your Government would help to persuade the claimants that it was best for them to moderate their demands with regard to the amount of the debt, thus insuring a settlement which it had not been possible for them to obtain from the Government of Bolivia.

Hence this Department, in reply to the various propositions made by your honorable predecessors, made offers of payment which it deemed adequate and just, but which were not accepted, and it reiterated in every case its previous promise to take duly and liberally into account the Alsop claim upon signing the Treaty of Peace.

The Treaty was signed on October 20, 1904, and in Article V it was stipulated that Chili should devote the sum of 2,000,000 pesos gold of 18d. each to the settlement of some of Bolivia's debts specified in said Article. Among them was the "debt acknowledged in favor of Mr. Pedro Lopez Gama represented by Messrs. Alsop & Co., who had acquired the rights of the former."

In a document duly recorded on November 15, of the same year, it was set forth that, in accordance with the spirit of said Treaty and with the facts which had given rise to it, the Government of Chili reserved full liberty "to examine, classify, and settle the claims enumerated in Article V," and also that, outside of these obligations, the said Government did not undertake the settlement of any other claim against the Bolivian Government, whatever, might be its nature and origin.

My Government, which thus fulfilled its promise, thought it suitable, before submitting this compact to the approval of the National Congress, to induce all the creditors enumerated in Article V, to accept, in payment of their claims, the amount which belonged to them by virtue of said article. And in order to secure this acceptance on the part of Alsop & Co., my Government instructed its Minister at Washington to have a talk with their representative.

While this negotiation was still pending, this Department was surprised by a note from the United States Minister under date of February 2, 1905, in which, in connection with the ratification of the Treaty of Peace by the Bolivian Congress, he asked the Department to fulfill the promise which it had previously made to give special and even generous consideration to the Alsop claim.

This note was answered on March 21, of the same year, Your Excellency's distinguished predecessor being reminded that, through the medium of the Chilean Legation in Washington, propositions had been made to the interested parties in said claim which it was hoped would lead to an early settlement.

Shortly before, on February 11, 1905, a suit was begun in Santiago by the guardian of a demented daughter of Mr. Pedro Lopez Gama against all the members of the firm of Alsop & Co., praying that the transfer be declared null and void which the said Gama had made in 1875 to this firm of the claim against the Bolivian Government.

In the complaint instituting suit it was requested that the bonds intended for the settlement of this claim be retained in possession of the Treasury Department at the order of the court.

In regard to this suit the Charge d' Affaires of the United States sent a communication to my Department on August 12, 1905, asking information on several points connected with the aforesaid distraint.

In this note he remarked that the acceptance of the bonds on the part of his Government "did not constitute *per se* a waiver of its right to continue interposing its good offices before the Chilean Government in behalf of Alsop & Co."

This Department, in its reply of September 4, following, stated to the Charge d' Affaires that it would make it a point to ask the Treasury Department for the data referred to in the said note in order to transmit them in due course.

At the same time, in order to obviate any doubts as to the scope and nature of these negotiations (and this is a point to which my Government ascribes special importance), it deemed it necessary to observe to the Charge d' Affaires that, in view of the fact that the court of Arbitration at Washington had declared Alsop & Co. to be a Chilean corporation, it could not assign any other character to the steps taken by said Legation in this matter than that of a "simple conciliatory exercise of good offices" (*injerencia*), undertaken for the purpose of bringing about the agreement which was

sought in order to terminate the matter within the limitation of Article V of the Treaty of Peace.

Besides stating the form in which it accepted the action being taken in behalf of this claim by the United States Legation, the aforesaid note of this Department declared that it was only out of consideration toward Your Excellency's Government that the Chilian Government condescended to include the claim of Alsop & Co. among those to the settlement of which it had devoted a sum within the restricted limitations set forth in the Treaty of October 20, 1904, with the Bolivian Government.

This was, Mr. Minister, the status of these negotiations when the Charge d' Affaires ad interim of Your Excellency's Legation presented to me his communication of June 27, of last year.

In this note he confined himself, as I mentioned above, to commending the matter to this Government and to transmitting the instructions which his Government had sent him in regard to the Alsop case, in which instructions the principle points in the history of the case are set forth as well as the negotiations which have taken place in regard to it between the Chilian and United States Governments.

The origin, progress, and nature of the negotiations of Your Excellency's Government in behalf of Alsop & Co. being thus set forth in their fundamental outlines, it behooves me now to mention the extent to which my Government has fulfilled its purpose to attend to the claim of this commercial firm in a satisfactory manner.

Chili was under no obligation to take upon herself the payment of this claim, even in part, since it is a principle of International Law, supported by numerous diplomatic precedents that, in cases of annexations or cessions of territory, there does not, pass as of right, to the cessionary or annexing nation, any debt of the other nation, and that, in order that any debt may thus pass, it is necessary that it shall have been expressly acknowledged by stipulation, which is frequently done out of obvious considerations of equity.

And in the present case the good will of my Government becomes more than manifest if we take into consideration that the Alsop Claim had been the object of litigations and compromises on the part of the Boliviaian Government, because its settlement rendered it susceptible of very well founded criticism.

However, the liberality of my Government in assuming the settlement of this claim by paying a considerable part of it was

not duly appreciated by the representative of this firm, who, not being satisfied with the amount assigned to him in the Treaty of Peace, claimed, as the Chilean Minister at Washington saw fit to express it on more than one occasion, that by reason of the fact that this debt was secured by property situated in the Territory acquired by Chili in virtue of this same Treaty, my Government was under obligation to pay it in its entirety.

Your Excellency will realize how inadmissible such an argument is if you consider the fact that the security for the Alsop claim is, like that of many creditors of the Bolivian Government, not a civil law mortgage, but simply a financial guaranty given by the nation for the purpose of insuring the fulfillment of a contract.

I think it would be a waste of time to stop and explain to Your Excellency the almost unanimous opinion of publicists with regard to the significance or purport of this class of guaranties. They agree that they can neither exist nor be enforced except as long as the nation which gave them exercises its sovereignty over the Territory in which the property is situated which constitutes the guaranty or security, the latter losing all its value when the Territory passes over to the sovereignty of another nation.

I do deem it opportune, however, to call Your Excellency's attention to certain important diplomatic precedents in connection with this subject, in which my Government was a directly interested party.

The creditors of Peru whose claims were secured by Guano deposits which passed over to the possession of Chili after the War of the Pacific have fully discussed the nature of this subject before foreign courts.

In the decision of the Supreme Court of England of April 18, 1877, in the suit of Twycross vs. Dreyfus; in the decision rendered by the Court of Appeals of Paris on June 25, of the same year in the case of Domis and associates vs. Dreyfus & Co.; and in the decision rendered in the Court of Appeals of Brussels on the fourth of August following, it was declared that the plaintiffs were not in reality mortgage creditors as they claimed to be, and that the guaranty which they set up, was nothing more than a personal obligation on the part of the Peruvian Government, without any importance from an international standpoint.

On the other hand, the Franco Chilean Court of Arbitration which sat at Lusanne for the purpose of distributing 50% of the net proceeds from the sale of a million tons of guano among the

creditors of Peru whose claims were secured by this product, declared Chili to be entirely in the right as regards the value and purport which it ascribed to this guaranty. In consideration D, No. 2, of this award of July 5, 1901, rendered at Rapperschwyl, is declared that the existence of the real right which the creditors of Peru claimed to be guaranteed by the guano "is not upheld by the doctrine or the practice of International Law, and that this contention is based on an inaccurate juridicial understanding of the relations existing between the borrowing nation and the private parties who take the loan."

Furthermore, in No. 3 of Consideration D, it is declared "that it is proven that at the time of the Chilian occupation the guano deposits of Peru were not incumbered by any real right (lien) in favor of the creditors of the latter nation."

If the doctrine above set forth was substantiated with regard to claims which were secured in so special and absolute a manner by guano and saltpeter deposits situated in Peruvian Territory, with how much more reason should this doctrine be applied to the guaranties given by the Bolivian Government in favor of Alsop & Co. which did not possess these characteristics

But this is not the only thing.

These guaranties were all the less worthy of consideration on the part of the Chilian Government for the reason that the greater part of them had been given in the form of security on property situated in Chilian Territory which my country regained from Bolivia during the War of the Pacific (Caracoles Mines), while the remaining security was on property three-fourths of the proceeds of which went to Bolivia by virtue of the Truce Agreement (right to certain revenues of the Arica Custom House in which Bolivia had an interest), the remainder being devoted to the maintenance of the Customs service itself.

Therefore, one of these securities of the Alsop claim was given by Bolivia on Territory which was really Chilian, while Bolivia has had almost the entire usufruct of the other since 1884.

I will take up another point.

I believe it my duty to rectify the idea expressed by the State Department in the instructions sent to the Charge d'Affaires of Your Excellency's Legation and transmitted in your afore-mentioned note of June 27, when it states that your Government is convinced that the Chilean Government ought to pay the claim of Alsop & Co. in full because it so promised the Bolivian Govern-

ment in the confidential communications exchanged between the Plenipotentiary of the latter country and the Chilean Minister of Foreign Relations on October 21, 1904.

This Department trusts that Your Excellency's Government will not attach great weight to this circumstance, since the confidential character of those communications render it impossible to ascertain their authenticity and to estimate to what extent they reflected the real thought of both governments.

But even supposing that these confidential communications were authoritative, they have not the significance which Your Excellency's Government has ascribed to them.

In his communication of October 21, 1904, the Bolivian Plenipotentiary stated to our Minister of Foreign Relations that the purport which his Government assigned to Article V of the Treaty of Peace was "that it has been agreed that the Chilean Government shall finally settle all the claims mentioned in that Article, so that Bolivia shall have no further responsibility, it being the duty of the Chilean Government to meet every subsequent claim presented by private means or through diplomatic action, considering itself responsible for every obligation bond, or document of Bolivia at all times, the Chilean Government undertaking to pay them all in their entirety."

And to his question as to whether this was also the purport which the Chilean Government ascribed to this Article, our Minister of Foreign Relations did not answer by assenting plainly and frankly, that is to say, by repeating the words of the Bolivian Minister, as is customary when there is a full concordance of ideas, but in a distinct form, declaring that in his opinion "the obligation which Chili contracts by Article V of the aforesaid Treaty comprises that of adjusting directly with the two groups of creditors, recognized by Bolivia, the final settlement of each of the claims mentioned in said Article, relieving Bolivia of all further responsibility.

"Consequently," he adds, "it is understood that Chili, assuming and acquiring all the obligations and rights which may be incumbent upon or due Bolivia in connection with these claims, will satisfy any demand or claim which may be presented by Your Excellency's Government on behalf of any of the parties interested in said claims."

There is a radical difference between these two communications: Our Minister did not declare that Chili obligated herself to

pay in full all the claims mentioned in Article V, as the Bolivian Plenipotentiary expresses it, but to *adjust directly with the creditors the final settlement of each one of its claims*, thus relieving Bolivia of all further responsibility.

It is not the same thing to obligate oneself to satisfy a claim in full as to obligate oneself to arrange its final settlement, since the latter can be secured not only by means of full payment but also by means of a compromise or similar agreement.

And this latter was what the Chilian Government really did.

Before ratifying the Treaty of Peace, it endeavored to bring about, and it succeeded in bringing about, that all the creditors enumerated in Article V, with the sole exception of Mr. Juan Garday and Alsop and Co., should accept the sums allowed them by the Treaty and that they sign the full acquittance.

If it did not wait until the creditors mentioned also signed this agreement, the reason was, as far as the former was concerned, that his claim was very small, and, as regards the latter, because it was confident that the negotiations begun for the purpose would result favorably, in as much as there was no reason to expect that this Chilian Firm would refuse to accept a reduction which the other creditors had no objection to accepting.

The purport of the note in question could be no other than what I have had the honor to state, and to maintain the contrary, that is, as one is led to infer from the communication of the Chargé des Affaires of the United States, that its meaning is that the Chilian Government acknowledges its obligation to pay in full the claims enumerated in Article V of the Treaty—this would be tantamount to supposing that the Minister of Foreign Relations who signed it had exceeded his powers by substantially altering, in confidential communications unknown to the National Congress, one of the fundamental articles of a Treaty concluded with all the formalities prescribed by the Constitution of the Nation and by the Law of Nations.

Such a supposition would amount to a charge against one of my honorable predecessors which it can not be presumed that Your Excellency intended to make.

At all events Your Excellency will agree with me that agreements contracted in an irregular manner and contrary to the clear and explicit stipulations of a Treaty are null and void.

Therefore, the natural and lawful purport of the confidential communications of my honorable predecessor can only be inter-

preted to mean that my Government will satisfy the claims mentioned in Article V of the Treaty with Bolivia, but, of course, only to the extent of the sum therein specified.

Finally, I have no reason for expressing my opinion as to the authenticity of the aforesaid communication, since they do not modify the line of conduct imposed on this Government by the text of the Treaty, but I must confirm to Your Excellency the declaration which I previously made to the Charge d'Affaires, to wit, that Chili has made no payment to any of the creditors contemplated in the Treaty of Peace with Bolivia, nor can she make such payment in future to any other creditor otherwise than in consideration of the total cancellation of the claim.

I consider that the foregoing considerations will leave in Your Excellency's mind the impression that the liberality with which my Government has thus far sought to treat the claim of Alsop & Co. does not permit it to assign thereto any larger sum than that to which it has been restricted by the Treaty of Peace.

Therefore, I have the honor to repeat to Your Excellency that my Government is ready to pay, in bonds, and in consideration of the total cancellation of the claim, the sum of 524,332.81 pesos gold of 18d. each as principal, and 78,649.92 pesos in gold coin at 18d. each as interest on coupons due thereon (including the coming coupons which will be due June 10). The bonds earn 5% interest and have an accumulative sinking fund of 1% per annum.

I am sure that upon mature reflection it will appear advisable to the heirs of Alsop and Co. to accept this proposition

By accepting it they would not only be enabled to obtain the immediate payment of their claims which has been pending so long, but they would be exempted from having it revised and liquidated, as the Chilian Government is authorized to do by virtue of one of the supplementary acts of the treaty of Peace, which privilege, if strictly exercised, might result in a considerable reduction of the claim.

Then again, they would also escape the effect of the action which the heirs of Pedro Lopez Gama have instituted against them, and as the result of which the bonds intended for the payment of the claim are being retained.

But, although my Government shows what might be called an excessive anxiety to settle this matter promptly and liberally it cannot leave unnoticed the fact that Your Excellency's Legation reserved the right, notably in its communications of June 27 and

November 25 of last year, to collect from Bolivia the part of the claim of Alsop & Co. which is not paid by Chili.

Although this case cannot happen since Chili is resolved to make no payment whatever unless full settlement of the claim is acknowledged, I trust that Your Excellency's Government will not take this stand, since it would be in open contradiction to the award of the tribunal at Washington which declared Alsop & Co. to be a Chilian corporation entitled to diplomatic protection on the part of the Chilian Government only. However, if such an eventuality should occur, for reasons which I cannot foresee, this Ministry would deem it its duty to communicate in due time with the Bolivian Government, declining all responsibility for any payments which the latter might make in behalf of the aforesaid firm.

My Government does not expect, either, that the United States Government would interpose a diplomatic claim in favor of Alsop & Co. in case the settlement which I have had the honor to propose is refused by the interested parties.

Such a course would not only be contrary to the decision of the aforementioned arbitral award, but it would be in opposition to clearly established doctrines of International Law.

It is, in fact, a principle recognized the world over that when a foreigner has rights to assert or damages to claim against a nation, he must appeal to the judicial or administrative authorities of the latter and the nation to which he belongs cannot afford him diplomatic protection until after all the legal remedies are exhausted, and then only in very well warranted cases, notably in case of a denial of justice.

The United States has itself recognized the validity of this principle, as it could not help doing, in many instances, sometimes as claimant and sometimes as the party against whom the claim was presented; and it has advised its representatives, in cases of this nature, to respect the laws and authorities of the country in which the event occurs. (Moore, *op. cit.*, vol. VI, par. 971, pags. 609, 610; par. 986 and 987, pags. 651-677; and par. 995, pag. 708).

However, if, in spite of all these reasons, the heirs of the Chilian firm of Alsop & Co. should reject the proposed settlement, and if Your Excellency's Government, in the intention for procuring for them more favorable conditions, should decide to, turn the good offices which it has hitherto been exercising in their behalf into a diplomatic claim, my Government declares before hand to Your

Excellency, that it could not receive such a claim, and at the same time it declares to Your Excellency that, in case such an event should occur, it has resolved in advance to invite Your Excellency's Government at once to submit the case to arbitration. My Government is very certain that the justice of its contention can not help being recognized by this procedure and it is also certain that this will prevent controversies originating from purely pecuniary questions from disturbing the harmony which we wish always to prevail in the relations between our countries.

I avail myself of the opportunity to reiterate to Your Excellency the assurances of my most distinguished consideration.

F. PUGA BORNE.

The Acting Secretary of State to the Minister of Chile.

DEPARTMENT OF STATE,

Washington August 29, 1908.

SIR: I have the honor to acknowledge the receipt of your note of the 31st ultimo, transmitting a copy of a note which the Minister of Foreign Relations of Chile addressed to the American Minister at Santiago on April 9 last, regarding the claim of Alsop and Company.

The enclosed report from the Chilean Foreign Office will receive full consideration by this Department.

The Department is pleased to observe in your courteous offer to furnish this Department with antecedents and information regarding this case, that spirit of equity and justice which should characterize the intercourse of two sovereign powers, and desires to extend to you its assurances that it has no other wish than to secure a fair and honorable adjustment of this longstanding difficulty. To the end that it may be in a position to arrange for such a settlement, the Department has recently undertaken again to examine, elaborately and carefully, the whole history of the claim with a view to securing a definite understanding of its merits. In the course of this examination, now almost completed, it has observed that the sum offered by Chile in settlement of the Alsop claim, not only fails to include an amount to cover the interest that was stipulated for in the agreement between Mr. Wheelwright and the Bolivian Government, but that the sum is less, by a large amount, than the mere principal of the debt which Bolivia in that same agreement acknowledged to be lawfully and legally due. The

Department has found nothing in its own archives which appears to justify any such reduction of the amount due under that agreement, and for this reason presumes that it has not before it all of the evidence upon which your Government relies for its guidance. Therefore, animated by a desire to make as to this matter, no request which equity and justice does not support, the Department is pleased to avail itself of your courteous offer to furnish to it antecedents and information regarding the case, and respectfully requests that you procure for it, as soon as your convenience will permit, copies of the documents and statements of the evidence which your Government regards as justifying the reduction which it proposes.

Accept, etc.

ALVEY A. ADEE.

The Acting Secretary of State to the Minister of Chile.

DEPARTMENT OF STATE,

Washington, November 24, 1908.

Serial No. 17.

SIR: Referring to Your Legation's Note of July 31, 1908, transmitting a copy of the note which the Minister for Foreign Affairs of Chile addressed to the American Minister on April 9 last, regarding the claim of Alsop and Company; and referring also to the Department's reply to your Legation's said note, under date of August 29, 1908; I have the honor to say that the Department would be glad to receive at as early a date as practicable the information and antecedents regarding this case offered by the Government of Chile through your Legation's note mentioned above, and which the Department, in its said note of August 29, 1908, expressed its wish to receive, on the ground that, as nothing in its own archives appeared to justify the reduction proposed by Chile in the amount due under the agreement between Mr. Wheelwright and the Bolivian Government it was desirous of examining, as soon as your Legation's convenience would permit, copies of the documents and statements of evidence which your Government regards as justifying such a reduction.

The Department desires to reach an early conclusion of its renewed examination into the merits of this long standing difficulty, and it is for this reason that it begs to renew its request for the information so courteously offered by your Government, in

order that by having before it all the documents the Department may be fully informed concerning all matters that have a bearing upon the merits of the claim.

Accept, etc.,

ROBERT BACON,
Acting Secretary.

The Minister of Chile to the Secretary of State.

Nº 7.

LEGACIÓN DE CHILE,
Washington, Noviembre 26 de 1908.

SEÑOR: He tenido la honra de recibir la atenta nota de Vuestra Excelencia de 24 del presente en la que, refiriéndose á la comunicación de esta Legación al Departamento de 31 de Julio y á la del Departamento á la Legación de 29 de Agosto, relativas ambas á la reclamación de Alsop & Co., se sirve Vuestra Excelencia manifestarme que al Departamento le agradaría recibir los datos y antecedentes que haya tenido el Gobierno de Chile que justifiquen la reducción propuesta en la suma debida según el acuerdo entre Mr. Wheelright y el Gobierno de Bolivia.

En contestación, tengo el honor de espresar á Vuestra Excelencia que la Legación oportunamente informó á su Gobierno del deseo espresado por Vuestra Excelencia en la referida nota de 29 de Agosto, y que por el próximo correo le hace saber igualmente el contenido de la nota de Vuestra Excelencia de 24 del presente que contesto. Cualquier dato ó antecedente que reciba de mi Gobierno con relación á este asunto, me apresuraré á comunicarlo á Vuestra Excelencia.

Mientras tanto, me permito reiterar á Vuestra Excelencia el deseo que he tenido la honra de significarle anteriormente en el sentido de que el Gobierno de Chile, penetrado de la justicia de su causa y del elevado y recto criterio que predomina en la Cancillería de los Estados Unidos, tiene especial interés en que S. E. el Secretario de Estado se imponga personalmente de los antecedentes de este asunto, en especial de la nota al Ministro Americano en Santiago de 9 de Abril, en la cual se analiza la reclamación de la firma chilena Alsop & Co. y se define la actitud de nuestra Cancillería con relación á ella.

Me aprovecho de esta oportunidad para reiterar á Vuestra Excelencia las seguridades de mi más distinguida consideración.

ANIBAL CRUZ.

[Translation.]

No. 7.

LEGATION OF CHILE

Washington, November 26, 1908.

SIR: I have had the honor to receive Your Excellency's courteous note of the 24th instant in which, referring to this legation's communication of July 31 to the Department and to the Department's note of August 28, both relative to the claim of Alsop & Co., Your Excellency is pleased to say that the Department would be glad to receive the information and antecedents held by the Government of Chile that would justify the reduction proposed in the amount due under the agreement between Mr. Wheelwright and the Government of Bolivia.

In reply, I have the honor to say to Your Excellency that the legation duly informed its Government of the wish expressed by Your Excellency in the said note of August 29 and that it will also acquaint it, by the next mail, with the contents of Your Excellency's note of the 24th instant to which this is an answer. I will promptly communicate to Your Excellency whatever information or antecedent I may receive, from my Government regarding this matter.

In the meanwhile I venture to repeat to Your Excellency the wish I have had the honor to express to Your Excellency on a previous occasion to the effect that the Government of Chile, sensible of the justice of its cause and of the elevated and upright discernment which prevails in the Chancellery of the United States, attaches special interest to His Excellency the Secretary of State taking personal cognizance of the antecedents of the case and especially of the note of April 9 to the American Minister at Santiago in which the claim of the Chilean firm of Alsop and Co., is analyzed and the attitude of our Chancellery towards it defined.

I avail, etc.,

ANIBAL CRUZ.

The Secretary of State to Minister Hicks.

[Telegram—Paraphrase.]

Washington, January 24, 1909.

Department's number one thirty-nine of November thirty. On July thirty-one, nineteen eight, Minister of Chile affirmed authority to furnish Department antecedents Alsop claim when he transmitted a copy of Puga Borne's note of April nine. On August twenty-nine the Minister was requested by Department to furnish

antecedents justifying Chile's reduction of the Alsop claim. A reply not having been received Department renewed its request on November twenty-four. On the 26th of November Minister of Chile stated that he had informed his Government of this request. Nothing further has been heard. Inform Government of Chile of this and say that the Department is most desirous of reaching a fair and equitable determination upon this matter and awaits the antecedents mentioned by Government of Chile and requested by Department. Further delay deprecated. Cable results.

BACON.

Minister Hicks to the Secretary of State.

[Telegram—Paraphrase.]

Santiago, Chile, [Undated.]

(Rec'd Feb. 26, 1909.)

In regard to the matter of the Alsop claim, I have received a reply from the Chilean Foreign Office stating that the antecedents which were called for by the Department have been sent to the Minister of Chile at Washington, same date. Foreign Office adds that principal part of antecedents was stated in communication sent to me by Puga Borne April 9th last, a copy of which I forwarded to the Department.

HICKS.

The Secretary of State to the Minister of Chile.

Serial No. 22.

March 18, 1909.

SIR: Referring to previous correspondence regarding the Alsop claim, and particularly to the notes specified as follows:

Your note of July 31, 1908, which transmitted one addressed by the Chilean Foreign Office to the American Minister at Santiago, and in which you stated that you were authorized to furnish to the Department of State antecedents and information regarding the case; the Department's note of August 29, 1908, in which the Department accepted this offer and requested copies of the documents and statements of the evidence on which the Government of Chile relied to justify the reduction of the amount which it proposed to pay to the Alsop claimants; the Department's note of November 24, 1908, referring to its earlier note and stating that the Department would be glad to receive the information offered by the Chilean Government; and your note of November 26, 1908, stating that this Government's request had been communi-

cated to your Government, and that, upon the receipt of the information requested, it would be transmitted to the Department, I have the honor to inform you that the Department received a telegram last month from the American Minister at Santiago, stating that he had been informed by the Chilean Foreign Office that the antecedents requested had been sent to your Legation.

The Department has for many years urged upon the Chilean Government the equity of the Alsop claim, but thus far it has been unable to induce that Government to suggest any settlement which seemed at all adequate to the merits of the claim. The Department is most desirous of reaching a final determination, at an early date, concerning the amount which in its judgment is properly due to the claimants in this case, and begs to express the hope that you will communicate to it, at your earliest convenience, the documents which your Government is now forwarding to you.

Accept, etc.,

P. C. KNOX.

The Minister of Chile to the Secretary of State.

No. 14.]

LEGACIÓN DE CHILE,

Washington, marzo 19 de 1909.

SEÑOR: He tenido la honra de recibir la atenta comunicación de Vuestra Excelencia, fecha de ayer (File No. 1154-100), en la que Vuestra Excelencia, después de referirse á las notas cambiadas entre el Departamento de Estado y esta Legación á propósito de la reclamación "Alsop & Co.," me hace saber que el Ministro Americano en Santiago ha comunicado por telégrafo al Departamento que en el Ministerio de Relaciones Exteriores de Chile la habían informado que los antecedentes sobre aquella reclamación á que se refiere la nota de Vuestra Excelencia habían sido enviados á esta Legación; y en la que me significa el deseo de que tan pronto como pueda trasmita al Departamento aquellos antecedentes.

En contestación, puedo manifestar á Vuestra Excelencia que por el próximo correo impondré á mi Gobierno del contenido de aquella nota; que hasta el presente no he recibido los antecedentes á que alude el telegrama del Ministro Americano en Santiago; y que cualquiera información que reciba reacionada con ese asunto, me apresuraré á trasmitirla á Vuestra Excelencia.

Aprovecho esta oportunidad para reiterar á Vuestra Excelencia lo que en ocasiones anteriores he manifestado al Depar-

tamento de Estado, ó sea, el deseo de mi Gobierno de que las negociaciones acerca de esta reclamación continúen redicadas en Santiago.

Dígnese Vuestra Excelencia aceptar las seguridades de mi más alta y distinguida consideración.

ANIBAL CRUZ.

[Translation.]

No. 14.

LEGATION OF CHILE

Washington, March 19, 1909.

SIR: I have had the honor to receive Your Excellency's courteous communication, dated yesterday (File No 1154-100) by which, after referring to the notes exchanged between the Department of State and this legation in regard to the claim of "Alsop & Co.", Your Excellency informs me that the American Minister at Santiago reported by cable to the Department that he had been informed at the Ministry of Foreign Relations of Chile that the antecedents in the claim referred to in Your Excellency's note had been forwarded to this legation, and in which you express a desire that the said antecedents be transmitted to the Department by me as soon as possible.

In reply I may say to Your Excellency that I shall communicate the contents of your note to my Government by the next mail; that I have not yet received the antecedents alluded to in the telegram of the American Minister at Santiago, and that I shall hasten to transmit to your Excellency whatever information bearing on the subject I may receive.

I avail myself of this opportunity to repeat to Your Excellency what I had to say to the Department of State on previous occasions, that is that my Government desires that the negotiations relative to that claim continue to be conducted at Santiago.

I beg, etc.,

ANIBAL CRUZ.

Memorandum of an interview between Assistant Secretary Wilson and Minister Cruz concerning the Alsop case, Mr. Clark of the Solicitor's Office being present.

April 15/09.

The Secretary having brought to the attention of Minister Cruz the matter of the long delayed antecedents promised by the Chilean Government concerning the Alsop case, Minister Cruz was requested to take up the question with Assistant Secretary Wilson. Mr. Clark, having been called, was requested by Mr.

Wilson to state briefly what it was the Department had requested of the Chilean Government. Mr. Clark stated that almost a year ago the Department had, pursuant to an offer contained in a note received from the Chilean Legation, requested the Chilean Government to furnish to the Department the evidence in the possession of the Chilean Government upon which that Government relied to justify its course in offering in settlement of the Alsop claim a sum so much smaller than the amount called for by the contract between the Alsop Company and the Bolivian Government. Mr. Clark also stated that the Department had requested this information in order that it might reach a just determination as to the amount of money equitably due the claimants under the contract in order that it might not be put in the position of requesting an inequitable settlement.

To this statement Minister Cruz responded that Chile had no evidence going to show that the amount called for by the contract was not really due the claimants, but that Chile's offer was based upon the following considerations:

In the treaty of peace between Chile and Bolivia, Chile agreed to appropriate two million pesos for the settlement of five claims against Bolivia, among them the Alsop claim; that this sum was insufficient to pay all of the claims in full; that, therefore, there had to be a pro rata reduction on each claim; and that the amount offered to Alsop & Company was the company's share of the two million pesos according to this pro rata arrangement.

Later in the interview Minister Cruz again stated in response to an inquiry addressed to him that Chile had no evidence whatsoever that would justify a reduction of the claim upon its merits, Chile's whole position being based upon the treaty and the resulting considerations as above set forth.

During the conversation Minister Cruz also stated that he was not informed as to the secret notes said to have been passed between Chile and Bolivia at or about the time of the signing of the treaty, by which notes it was agreed that Chile should save Bolivia harmless in the matter of these claims.

Minister Cruz also said that he was certain the United States would not intervene diplomatically in this case, but that if it did, the Chilean Government would insist upon an arbitration of the matter and that the question which would have to be submitted to arbitration in such an event would be whether or not the United States and Chilean Claims Commission of 1901 was correct in its decision to the effect that Alsop & Company, being a Chilean

entity, could not sustain a diplomatic claim against the Government of Chile. Minister Cruz called repeated attention to the fact that he himself had argued the case for three days before this United States and Chilean Claims Commission, and that he had finally won the case upon a demurrer.

The Minister further said that he had not looked into the merits of the case.

In the course of the interview Mr. Clark called the Minister's attention to the fact that the representatives of Chile stated to the members of the tribunal that Chile intended to pay the claim, and, moreover, that prior to this arbitration Chile had definitely promised our Minister to pay not only the principal due under the contract but the interest called for as well.

Mr. Wilson then requested the Minister to state in writing the fact that Chile had no evidence going to show that the amount due under the contract was not equitably due; that Chile relied for her position upon the treaty arrangement between Bolivia and Chile by which Chile was to satisfy the demands of five claimants out of two million pesos; that this being insufficient to meet the face value of all of the claims, it had been necessary to make a pro rata reduction of each; and that the amount offered was Alsop & Company's pro rata share of the two million pesos. Mr. Cruz said that he would write such a note to the Department.

(Signed) J. R. C.

The Minister of Chile to the Secretary of State.

No. 18.

LEGACION DE CHILE,
Washington, Abril 16 de 1909.

SEÑOR: Refiriéndome á la conversación que tuve ayer con Vuestra Excelencia y á los deseos manifestados por el Honorable Señor Wilson de conocer los antecedentes de que había partido el Gobierno de Chile para reducir el monto de la reclamación de Alsop y Cia., y dejando constancia de que el Gobierno de Chile estima que esa reclamación es de una firma declarada chilena por un Tribunal Internacional y reconocida como tal por el Presidente de Bolivia en su ultimo Mensaje y que en consecuencia, no puede ser amparada diplomáticamente por el Gobierno de Vuestra Excelencia; y sin el propósito de analizar los méritos de dicha reclamación ya que la discusión acerca de este asunto está radicada en Santiago; tengo la honra de dar á Vuestra Excelencia la siguiente explicación:

El Tratado de Paz firmado entre Chile y Bolivia el 20 de Octubre de 1904 dispuso en su artículo 5° que el Gobierno de Chile destinaría la cantidad de dos millones de pesos oro de 18 peniques á la cancelación de algunos de los créditos de Bolivia, ahí determinados, y entre ellos el de Don Pedro López Gama, representado por los Señores Alsop y Cia.

Con esa suma de dos millones de pesos oro de 18 peniques se cancelaron á prorrata aquellos créditos, correspondiéndole al de Alsop & Co. la cantidad que Vuestra Excelencia se servirá encontrar en la nota que con fecha 9 de Abril del año último envió el Ministro de Relaciones Exteriores de Chile al Ministro Americano en Santiago. Los demás acreedores se dieron por satisfechos y recibieron la cuota que les correspondió, otorgando un finiquito total. Espera mi Gobierno que los representantes de Alsop y Cia. procedan de igual manera.

El Gobierno de Chile tiene absoluta confianza en el espíritu de justicia del Gobierno de los Estados Unidos y abraza la firme convicción de que Vuestra Excelencia encontrará justificada la actitud asumida por nuestra Cancillería en la nota al Ministro Americano á que he hecho referencia.

Renuevo a Vuestra Excelencia con este motivo las seguridades de mi más alta y distinguida consideración.

ANIBAL CRUZ.

[Translation.]

CHILEAN LEGATION,
Washington, April 16, 1909.

No. 18.

SIR: Referring to the conversation which I had with Your Excellency yesterday, and to the desire expressed by the Honorable Mr. Wilson to know the circumstances on which the Chilean Government based its action in reducing the amount of the claim of Alsop & Co.; premising the remark that the Chilean Government considers this claim to be that of a firm declared to be Chilean by an International Tribunal and recognized as such by the President of Bolivia in his last message, and that, consequently, it can not be defended diplomatically by Your Excellency's Government; and without any intention of analysing the merits of said claim, since the locus of the discussion of the subject is in Santiago, I have the honor to give to Your Excellency the following explanation:

The Treaty of Peace concluded between Chile and Bolivia on October 20, 1904, provided in Article 5 that the Government of

Chile should devote the sum of two millions of gold pesos of 18 pence to the cancellation of some of the debts of Bolivia, therein, determined, among them being that of Mr. Pedro López Gama, represented by Messrs. Alsop & Co.

With this sum of two millions of gold pesos of 18 pence the said debts were canceled pro rata, the amount corresponding to Alsop & Co. being indicated in the note sent by the Minister of Foreign Relations of Chile to the American Minister at Santiago, where Your Excellency will find it. The other creditors declared that they were satisfied and received the quota corresponding to them, executing an acknowledgement of receipt in full. My Government hopes that the representatives of Alsop & Co. will do likewise.

The Government of Chile has absolute confidence in the spirit of justice of the Government of the United States, and is firmly convinced that Your Excellency will consider warranted the attitude assumed by our Chancery in the note to the American Minister to which I referred.

I avail, etc.

ANIBAL CRUZ.

The Acting Secretary of State to the Minister of Chile.

Serial No. 23

Washington, April 22, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 16th instant, stating that your Government's offer of a reduced amount in settlement of the Alsop claim was due to the fact that the amount provided for the payment of certain debts of Bolivia by the Treaty of Peace concluded by Chile and Bolivia on October 20, 1904, was sufficient to pay only a *pro rata* to each creditor, and expressing the opinion that the claim of Alsop and Company cannot be defended diplomatically by the United States, for the reason that the firm is Chilean.

Referring to your note of July 31, 1908, in which was stated the offer of your Government to furnish to this Department antecedents and information regarding the Alsop claim; to the Department's reply thereto of August 29, 1909, in which the Department, accepting and relying upon that offer, requested that it be furnished with the evidence concerning the Alsop claim upon which the Government of Chile depended to justify its offer in settlement of the claim of a sum so much reduced from that due under the contract; and to your note of March 19th in which, in ac-

knowledging Department's inquiry of March 18th, you stated that as soon as the evidence called for had been received it would be forwarded to this Department, the Department desires now to call attention to the fact that it has not as yet received these documents.

The Department regards this circumstance as confirmatory of your statement, made to Assistant Secretary Wilson during a conversation between Mr. Wilson and yourself on April 15, 1909, that the Government of Chile has no evidence concerning the merits of the Alsop claim which would justify that Government in offering to the Alsop claimants in settlement of their claim any sum less than that called for by the terms of the contract of 1876 with the Bolivian Government.

Accept, etc.,

HUNTINGTON WILSON,
Acting Secretary.

The Minister of Chile to the Secretary of State.

No. 20.

LEGACIÓN DE CHILE,
Washington, 23 de Abril de 1909.

SEÑOR: He tenido el honor de recibir la nota del Departamento de ayer (File No. 1154-124), en la que me acusa recibo de la comunicación que dirijí á V. E. con fecha 16 del corriente, y en la que, refiriéndose á las comunicaciones cambiadas entre el Departamento y esta Legación, á propósito de la reclamación de Alsop y Cia., llama V. E. mi atención al hecho de no haberse recibido todavía los documentos solicitados. Agrega la nota de V. E. que el Departamento considera esa circunstancia como confirmación de lo que manifesté al Honorable Señor Wilson el 15 de Abril, ó sea, que el Gobierno de Chile no tiene antecedentes relacionados con los méritos de la reclamación, que justifiquen la oferta á los reclamantes Alsop en cancelación de su reclamo de una suma menor que la que indica el contrato de 1875 con el Gobierno de Bolivia.

Como lo he hecho con las notas anteriores del Departamento, por el próximo correo impondré á mi Gobierno del contenido de la comunicación de V. E. que contesto. Mientras tanto, y renovando á V. E. las salvedades de mi nota de 16 del presente en el sentido de que se trata de una firma chilena y que mi Gobierno desea que la discusión de este asunto continúe radicada en Santiago, me permito llamar la atención de Vuestra Excelencia á la sentencia pronunciada por el Tribunal Chileno-Americano que rechazó aquella reclamación por los fundamentos que ahí se consignan, que remitió

á los reclamantes al Gobierno de Chile para su protección, y que aceptó é hizo suya la declaración del Ajente de Chile ante aquel Tribunal, según la cual "if Bolivia signs the treaty, the claim of Alsop & Co. as well as the other claims mentioned, will be promptly paid *under the treaty engagement*, as a relief to Bolivia from the liabilities which that Government has incurred and for the account of Bolivia."

El Tratado de Paz con Bolivia que es de donde se deriva unicamente la obligación de Chile de atender este crédito; el texto de la Sentencia Arbitral á que he aludido, que declaró chilena la firma de Alsop y Cia.; el último Mensaje del Presidente de Bolivia, que reconoció ese carácter á aquella firma; y los demás documentos invocados en la nota del Ministro de Reclaciones Exteriores de Chile al Ministro Americano en Santiago con fecha 9 de Abril de 1908, son los principales antecedentes á que mi Gobierno se refiere y á que atribuye capital importancia en la apreciación de este reclamo, y confía fundadamente en que V. E. concurrirá en esa apreciación.

Dígnese Vuestra Excelencia aceptar las seguridades de mi más alta y distinguida consideración,

ANIBAL CRUZ.

[Translation.]

LEGATION OF CHILE,
Washington, April 23, 1909.

No. 20

SIR: I have had the honor to receive the Department's note of yesterday (File No. 1154-124) in which the receipt of the Communication I addressed to Your Excellency under date of the 16th instant is acknowledged and Your Excellency, referring to the correspondence exchanged between the Department and this legation in regard to the claim of Alsop and Co, calls my attention to the fact that the desired documents have not yet been received. Your Excellency's note adds that the Department regards this circumstance as confirmatory of my statement to the Honorable Mr. Wilson made on the 15th April, viz. that the Government of Chile has no evidence concerning the merits of the claim which would justify the offer made to the Alsop claimants in settlement of their claim of a sum less than that called for by the contract of 1875 with the Government of Bolivia.

I shall, as I did in the case of the Department's previous notes, acquaint my Government with the contents of Your Excellency's

communication under reply by the next mail. In the meanwhile, and again presenting to Your Excellency the plea offered in my note of the 16th instant to the effect that the case is that of a Chilean firm and that my Government desires that it continue to be discussed at Santiago, I beg leave to draw Your Excellency's attention to the award rendered by the Chilean American Tribunal which rejected this claim on the grounds therein set forth, turned over the claimants to the protection of the Government of Chile, and accepted and adopted as its own the declaration made before it by the Agent of Chile, in this sense: "if Bolivia signs the treaty, the claim of Alsop & Co, as well as the other claims mentioned, will be promptly paid *under the treaty engagement*, as a relief to Bolivia from the liabilities which that Government has incurred and for the account of Bolivia."

The treaty of peace with Bolivia, from which alone flows Chile's obligation to meet this claim; the last of the awards above referred to which declares Alsop & Co. to be a Chilean firm; the last message of the President of Bolivia which recognized it as such, and the other documents adduced in the note of the Minister of Foreign Relations of Chile to the American Minister at Santiago under date of April 9, 1908, are the principal antecedents which my Government stands upon and which it regards as highly important in the estimation of this claim, in which estimation it has reason to feel assured that Your Excellency will concur.

I beg, etc.

ANIBAL CRUZ.

The Secretary of State to Minister Dawson.

No. 5.

August 5, 1909.

SIR: As soon as practicable after your formal reception by the President of Chile you will present to the Minister for Foreign Affairs a note as follows:

The undersigned Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has, by direction of his Government, the honor to bring anew to the attention of the Government of Chile, the claim of the firm of Alsop & Company, in the expectation that that Government, animated by a spirit of plain justice, will accept one or the other of the two proposals herein set forth for the settlement of a controversy which has for so inordinate a length of time been dragging on as a disturbing factor in the relations of the two Governments.

The recent correspondence regarding this claim which has passed between the United States and Chile would tend to reveal the extraordinary situation that, notwithstanding the numerous promises and undertakings of the Government of Chile to meet the claim as hereinafter set forth, and notwithstanding, as will also be shown, the fact that the Government of Chile now admits that it has no evidence going to show that the full sum called for by the terms of the contract was not equitably due, the Government of Chile is nevertheless now prepared to suggest a doubt as to the right of the Government of the United States formally to espouse this claim and diplomatically to request its settlement.

This seeming attitude of the Government of Chile has been observed with surprise by the Government of the United States which regards the claim as the claim of American citizens, equitable and just in its nature, and valid and subsisting as against the Government of Chile. Feeling, therefore, that this attitude of the Government of Chile must, if assumed at all, have been taken without careful and attentive consideration of the facts and circumstances connected with the case, the Government of the United States, in order that the matter shall be fully and properly presented to the attention of the Government of Chile, has instructed the undersigned to lay before his Excellency the Minister of Foreign Affairs for the Republic of Chile, the following statement of the jurisdictional facts, as shown by the records of the Department of State of the United States, upon which the claims against the Government of Chile is based.

For a period of years prior to 1874, one Pedro Lopez Gama, advanced to the Government of Bolivia large sums of money which, as evidenced by appropriate documents in writing, that Government became indebted to Gama to the value of one hundred and fifty thousand tons of guano. Gama was in turn indebted in large amounts to Alsop and Company, who had loaned him the money which he had advanced to the Government of Bolivia. To meet this indebtedness to Alsop and Company for actual money thus loaned (which at that time amounted to more than one and one quarter millions of dollars) Gama, in 1875, assigned to that Company his rights against the Government of Bolivia, the assignment being by an express declaration approved and ratified by the Government of Bolivia.

In 1876 a special contract for the settlement of this debt was made between the Government of Bolivia and Alsop and Company,

the latter acting through its Liquidator, John Wheelwright, the firm of Alsop and Company being an Association of American financiers doing business with American capital in Chile and adjacent countries. This contract fixed the principal then due upon the debt at eight hundred and thirty-five thousand Bolivianos (at that time worth about \$805,775.00 American gold) and provided that this sum was to bear interest at five per cent from the date of the contract. The same contract also stipulated for the payment by the Government of Bolivia to Alsop and Company of interest then due, amounting to two hundred and forty thousand and seven hundred Bolivianos (at that time worth about \$232,375.50 American gold).

This agreement, which the Government of Chile and that of Bolivia have both repeatedly recognized as legally valid and binding, specified two sources from which the debt was to be paid:

1. Bolivia's share of the customs receipts levied in the Peruvian Port of Arica or (under a specified contingency) from a re-established National Custom House of Bolivia;

2. The proceeds from certain state mines or estacas granted to Alsop and Company for a period of twenty-five years, the estacas thus leased being located in the Bolivian Littoral.

Before Alsop and Company had received any payment upon account from the customs receipts and before the expiration of the period within which Wheelwright was to make his selection of the Government estacas which he would work under his lease, war broke out between Chile on the one side and Peru and Bolivia on the other. The war closed with the Bolivian Littoral, as well as the custom house of Arica, in the possession of the Government of Chile, under whose provisional control and jurisdiction they have ever since remained.

This occupation injuriously affected the Alsop Company in two ways. In the first place, it resulted in depriving it of any income whatsoever from the customs receipts of Arica which had been pledged to the payment of the sums due Alsop and Company, owing to the fact that the Governments of Chile and Bolivia, by a series of treaties and protocols negotiated after the war, provided for a distribution of the proceeds in a way entirely ignoring the rights thereto which were possessed by Alsop and Company, and it may be observed incidentally in this connection that a considerable portion (forty per cent of the total amount collected, after deducting twenty-five per cent for expenses of collection)

was by this agreement devoted to the payment of claims held by citizens of Chile against the Government of Bolivia. In the next place, upon taking possession and assuming control of the Bolivian Littoral, the Government of Chile, in non-observance of the well-established principle of international law that all private rights and property must be respected and protected by a government assuming jurisdiction and control over territory in which such rights exist, applied to the Littoral and to the Alsop mineral holdings therein, certain provisions of Chilean law which not only materially derogated from the definite rights which Alsop and Company had acquired from the Government of Bolivia under the Wheelwright contract, but also required that Alsop and Company, in order to retain their title to and possession of the mines, should expend large sums of money not necessary under Bolivian law. Alsop and Company applied both to the courts and to the Executive of Chile to correct this trouble, but were able to obtain no relief from either. The Company then referred this phase of the matter to the Department of State of the United States, which, after an examination of the questions involved, declared that the proceedings of the Chilean courts and the Chilean Executive were contrary to the principles of international law and amounted to a confiscation of property.

The undersigned begs further to point out regarding the other phase of this controversy, that the Government of Chile, having taken from Bolivia the sources from which the Government of Bolivia planned to get the funds to meet the debt due under the contract, it was very early agreed and has since been formally incorporated in numerous protocols and treaties between Chile and Bolivia, that the Government of Chile should assume and pay Bolivia's obligation as specified in the Wheelwright contract.

From 1885, until the present, the rights of Alsop and Company have been the subject of correspondence between the Government of the United States and that of Chile. The questions involved have gone before two claims commissions, the first of which found itself unable to pass upon the merits of the claim on account of the expiration of the time limit for its existence, and the second of which, dismissed the claim for want of jurisdiction, owing to the peculiar wording of the protocol under which the claims were submitted.

Discussing first the liability of the Government of Chile for the amount called for by the Wheelwright contract, the undersigned deems it proper to preface the discussion with the remark that in

all the correspondence which has taken place concerning this matter, the Government of Bolivia has not only never questioned, but has never even suggested that the contract was not valid or that the whole amount called for by the contract, both principal and interest, was not justly and equitably due. Moreover, the Government of Chile has never questioned the legality of the contract; and while more recently it has been suggested by certain officials of the Government of Chile that the full amount of the claim, principal and interest, was not in equity due the claimants, yet the Government of Chile has failed even though specifically requested so to do, to furnish to the Government of the United States any evidence which justified the position regarding this matter taken by the Government of Chile. Indeed, the present Minister of Chile at Washington, Mr. Cruz, has expressly affirmed that the Government of Chile has no such evidence to offer.

Inasmuch, therefore, as the Government of Bolivia, which made the contract, and the Government of Chile which has assumed the payment thereof, have never questioned the legality of the contract; and inasmuch as the Government of Bolivia has never questioned that the amount called for by the contract was justly and equitably due; and inasmuch as while certain officials of the Government of Chile have suggested that the full amount called for by the contract was not properly due the claimants, yet the Government of Chile has failed, though repeatedly and specifically requested so to do, to furnish any evidence in support of this suggestion by its officials; and inasmuch as the Minister of Chile at Washington states on this point that the reason that the Government of Chile has not submitted the evidence is that it has none such in its possession,—the Government of the United States is unable to perceive wherein there is any ground sufficient to justify a further refusal upon the part of the Government of Chile to pay to the claimants the full amount called for by their contract of 1876 with the Government of Bolivia. Indeed, in this connection, the Government of the United States has not forgotten and the Government of Chile cannot fail to remember the many and repeated promises of the Government of Chile to pay this debt due from the Government of Bolivia to Alsop and Company and assumed by the Government of Chile. These promises appear in the diplomatic correspondence between the United States and Chile, in the formal treaties negotiated between Bolivia and Chile, and in the formal assurance made by the present Minister of Chile

at Washington, as agent for the Government of Chile, before the second United States and Chilean Claims Commission.

It is also within the knowledge of the Government of Chile that very soon after the outbreak of the war between Chile on the one hand and Bolivia and Peru on the other, the Minister of Foreign Affairs for Chile, addressed to the various foreign ministers at Santiago a circular in which he used the following language:

“I need not assure your honor that your countrymen will find every description of guarantee for their persons and interests in the territory in which Chilean law has now resumed its sway.”

The records of the Chilean Ministry of Foreign Affairs will bear out the statement that relying upon this formal declaration by the Government of Chile, the Government of the United States, notwithstanding numbers of its citizens found themselves deprived of their rights and property, refrained from making any urgent representations in their behalf, secure in the belief that, pursuant to the high purpose it had announced, the Government of Chile would voluntarily, upon the cessation of hostilities, restore such citizens to the rights and property of which they had been deprived. Inasmuch, however, as there was some delay in carrying out this guarantee thus formally given, the Minister of the United States at Santiago, early in 1884, took up the matter of the payment of certain American claims then pending, with His Excellency the President of Chile, whereupon President Santa Maria assured the Minister of the United States that the Government of Chile would honorably settle every just claim upon it, but requested that the Government of the United States “postpone any further action in the case until such time as the definite arrangement with her opponents would leave Chile free to consider the questions growing out of the rights of neutrals.” The Minister of the United States at Santiago, in reporting this conversation, stated that the President of Chile was very cordial, and that the Minister left with the conviction that the Government of Chile would honorably arrange for the settlement of American claims in accordance with the principles of law and equity.

With appropriate deference to the request of President Santa Maria that the matter of a settlement of American claims be not at that time pressed, nothing further was done until October, 1884, when the Minister of the United States at Santiago again addressed a note to the Foreign Office of Chile regarding the settlement of

American claims, in the course of which he made the following statement:

“With a feeling of profound friendship for Chile, and appreciating the difficulties in which the Government was placed during the earlier part of the last quarter of a century, my Government has contented itself with simply presenting them to Your Excellency’s Government for consideration, feeling entirely satisfied to await the arrival of a more auspicious moment when the high sense of justice which has always characterized Your Excellency’s Government, would certainly bring about their settlement upon an equitable basis.”

In January, 1885, the Minister of the United States informed the Department of State of his Government that in the course of an interview regarding the settlement of American claims, the Chilean Foreign Office informed him that it had decided not to enter into any other claims commissions than those already agreed upon, and that the Government of Chile would consider all claims upon the old basis of direct diplomatic negotiations. In 1887 His Excellency the Minister of Foreign Affairs for the Republic of Chile, in response to an inquiry made by him of the Minister of the United States at Santiago (Mr. Roberts) as to whether or not he had received instruction in regard to American claims, was informed by the American Minister that such instructions had been received, but that a “desire not to embarrass Chile in her negotiations with European powers, has kept me from presenting the matter to your Government.” In May, 1888, the Minister of the United States at Santiago, again informed the President of Chile that the Government of the United States had abstained from presenting these claims for consideration from a desire not to embarrass the Government of Chile while that Government was engaged in settling similar claims with European governments, but now that the European claims had been settled, the Government of the United States, “naturally solicitous for the interests of its citizens, who for some time have been presenting their claims upon its attention, would like to negotiate for the appointment of a commission for their adjustment.”

The Minister of the United States was, however, unable at that time to arrange for the settlement of American claims.

In September, 1890, the Minister of the United States to Chile, at that time Mr. Egan, informed the Department of State of the United States that he had refrained from taking up the question of the claims of American citizens against Chile because of certain

strained relations which then seemed to exist between the legislative and executive branches of the Government of Chile. At about the same time the Minister also reported an interview with President Balmaceda, in which he specifically mentioned the claim of the "late John Wheelwright," and in which the President of Chile assured him "of the readiness of Chile to fairly meet every just and reasonable claim;" and requested the Minister of the United States to furnish to the Minister of Foreign Relations of Chile "a full statement of all United States claims against Chile." Accordingly, in a note addressed to the Chilean Foreign Office under date of August 30, 1890, The Minister of the United States, after calling attention to certain American claims, and after briefly reviewing the postponements which had been made in the matter of their settlement, stated "that in 1884 President Santa Maria had conveyed to Minister Logan the request that the consideration be postponed until "such time as a definite arrangement with her opponents would leave Chile free to consider the questions growing out of the rights of neutrals, which time, His Excellency the President, considered would not be very long."

The Minister of the United States then expressed himself upon this matter as follows:

"Actuated by those sentiments of profound friendship which have ever characterized the relations of the United States of America with her sister republics of Chile, and with the most entire confidence in the honor and sense of justice of the Chilean people, my government has been satisfied to wait until a favorable opportunity for a satisfactory arrangement should present itself."

In a note dated September 30, 1890, the Minister of the United States, in accordance with the suggestion of the President of Chile, furnished to the Chilean Foreign Office a list of the American claims against Chile. Among the claims submitted at this time was that of Alsop and Company, which was set forth as follows:

"No. 2. *Representatives of the late John Wheelwright (the liquidator of Alsop and Company, of Valparaiso)* for a debt of eight hundred and thirty-five thousand Bolivian dollars, admitted and agreed by contract of the 24th of December, 1876, as being due from the Government of Bolivia to said claimants, and secured by mortgage upon the excess of proceeds from the Northern Customs House, over and above the sum of four hundred and five thousand Bolivian dollars each year; and also by an agreement on the part of the Bolivian Government to lease to Mr. Wheelwright, as representative of the Alsop Company for a term of twenty-five years all the Government Estaca mines on the coast of Bolivia; giving him three years to select those which he might consider worth working; which contract has been set aside by the Government of Chile."

On June 3, 1892, the Minister of the United States, strictly confining himself to the Alsop and Company claim, addressed a note to the Chilean Minister of Foreign Affairs which the undersigned begs to quote in full:

“Sir: In view of the pending negotiations between the Government of Y. E. and that of the Republic of Bolivia with the object of establishing and confirming between the two countries a definite treaty of peace, a result which, on the part of my Government, I sincerely hope may be speedily arrived at, to the mutual and entire satisfaction of both Chile and Bolivia, I trust Y. E. will not consider it inopportune to call the attention of Y. E. Government to the claim of the representatives of the United States Commercial House of Alsop and Company, formerly of Valparaiso, the particulars of which Y. E. will find set out in my note of 30 September 1890, addressed to the Minister of Y. E. The claim is marked No. 2 in the second series of claims mentioned in said note, and is described as the claim of the ‘Representatives of the late John Wheelwright, Liquidator of Messrs. Alsop and Company of Valparaiso.’

“As Y. E. will perceive the claim is for a debt of eight hundred and thirty-five thousand Bolivian soles (\$835,000) with interest at the rate of five per cent per annum from the year 1876; which debt was solemnly acknowledged by the Government of Bolivia and the payment secured by lien upon the income of the Northern Custom House over and above the sum of four hundred and five thousand soles (\$405,000) per year.

“Upon the occupation of Tacna and Arica as the consequence of the war between Chile, and Peru and Bolivia, this arrangement was arbitrarily set aside by the Government of Chile to the great loss and suffering of the surviving partners and other representatives of the House of Alsop and Company.

“There are also questions with regard to rights in certain mining property, situated in the territory occupied as above stated, and transferred by the Government of Bolivia to the representatives of Alsop and Company as further security in connection with same debt and interest thereon which rights have been refused recognition by the tribunals of Chile.

“Of these rights under a lawful contract the Government of Y. E. was duly informed, anterior to the signing of the convention of truce with Bolivia, in a petition presented to Y. E. Government by Mr. John Stewart Jackson, attorney for the claimants, dated Valparaiso, September 11, 1882.

“At the urgent request of His Excellency President Santa Maria, conveyed to the United States Minister, Mr. Logan, in February 1884, the consideration of the claims of United States citizens arising out of the conflict between Chile, Peru, and Bolivia, was deferred, in the words of His Excellency: ‘Until such time as a definite arrangement with her opponents would leave Chile free to consider the questions growing out of the rights of neutrals.’ From considerations of profound friendship toward the Chilean Government and the Chilean people, my government, has, from time to time, up to the present, postponed these claims although many of the claimants have been suffering great hardships on account of their losses, including some

of those interested in this particular one. In view of these considerations I submit to Y. E. that in whatever definite arrangement may be made between the Government of Chile and that of Bolivia, this clearly acknowledged liability to the representatives of the House of Alsop and Company should in right and justice, be taken into account and definite provision be made for its early liquidation, a result which, in full reliance upon the high appreciation of international honor which characterizes the Government of Y. E., I sincerely hope to see accomplished.

"I shall be prepared to submit to Y. E. in the course of a very few days all of the documents in the case.

"Renewing to Y. E. the assurances of my high consideration and esteem I have the honor to remain,

Y. E. obedient servant,

PATRICK EGAN."

A copy of this note the Minister of the United States communicated to his Government on the same day, and on June 11, 1892, referring to his transmitting despatch, he reported to the Secretary of State of the United States as follows:

"I have the honor to refer to my No. 306 of third instant, enclosing a note addressed by me to the Minister of Foreign Relations in regard to the claim of the representatives of the United States Commercial House of Alsop and Company, otherwise known as the 'Wheelwright claim' and I beg to say that on yesterday I had an interview on the matter with the Sub-Secretary of Foreign Relations and he told me that in consequence of the changes of ministry it was not possible up to that time to send a written reply to my note of the third instant. He assured me, however, that in the definite (definitive) treaty of peace now being negotiated between Chile and Bolivia, under which Bolivia will cede to Chile all territorial claims upon Arica and Tacna, and Chile will undertake the payment of certain of the exterior debts of Bolivia, the payment of this debt to the representatives of Alsop and Company will be undertaken by Chile."

The reply of the Chilean Foreign Office to the Note addressed by the Minister of the United States to it, on June 3, 1892, was made on June 18, 1892, and reads in translation as follows:

"I have had the honor to receive Y. E.'s communication dated 3rd instant and in which Y. E. 'in view of the pending negotiations between the Government of Bolivia and that of Chile to establish a definite treaty of peace between the two countries' calls the attention of the Government of Chile to the claim of the representatives of the American commercial house of Alsop and Company, hoping it will not be considered inopportune by the undersigned.

"Y. E. refers to your communication of 30th September 1890, in which this claim is number two among those mentioned in said note, under the name of the late John Wheelwright, Liquidator of the said House of Alsop and Company, asking the payment of a sum amounting to 835,000 Bolivian pesos with an annual interest of five per cent from 1876.

"Y. E. states that this debt was solemnly ratified by the government of Bolivia in the form mentioned and that, as a consequence of

the occupation of Tacna and Arica by the Chilean forces the agreement celebrated with Bolivia 'was arbitrarily set aside by the Government of Chile.'

"Y. E. adds some data relating to the matter, the settlement of which Y. E. has been pleased to state the Government of Y. E. has several times postponed out of considerations of friendship for the government and people of Chile, and closes asking the Government of Chile to take the claim into consideration in whatever arrangement may be celebrated with Bolivia.

"In reply I have the pleasure to inform Y. E. that in the preliminary protocol of a treaty of peace between Chile and Bolivia, ratified by the undersigned in the City of Iquique, as Minister of Foreign Relations of the Constitutional Government, the claim of Alsop and Company which Y. E. has supported, for the sum indicated by Y. E.—835,000 Bolivian pesos—figured among the liabilities that the Government of Chile engaged to pay for account of Bolivia.

"Regarding the payment of *interest* to which Y. E. refers, the Government of the undersigned awaits what may be done in the negotiations that are to follow by the government that recognized the principal obligation; the Government of Chile, which only assumed the obligations of a neighboring and friendly country will endeavor to attend to this part of the claim once the Government of Bolivia pronounces upon its legitimacy or validity, confining myself, as a proof of deference to the Government of Y. E. to offering the assurance that I will carefully take into account the resolution that may be adopted by the Government of Bolivia in relation to this point.

"Upon forwarding what has already been stated the undersigned is pleased that in the protocol celebrated in Iquique in May 1891, the Government of Chile had already taken into account the matter referred to in the esteemed communication of Y. E. to which I have the honor to reply.

"I avail myself of the opportunity, Mr. Minister, to offer to Y. E. the assurance of my high consideration.

ISIDORO ERRAZURIZ."

Under date of June 22, 1892, the Minister of the United States to Chile reported to his Government that he had forwarded to the Minister of Foreign Affairs for Chile,

"particulars of the contracts entered into by the Government of Bolivia and reduced to public record in La Paz, the 26th December 1876, recognizing this interest (the interest upon the debt due under the Alsop contract) in the same way as the principal debt, which the Sub-Secretary of Foreign Relations assured me would be entirely satisfactory."

Three years later, under date of June 22, 1895, Mr. Stroebel, who had then become the Minister of the United States, reported to the Department of State a conversation between himself and Sonor Gutierrez, the Bolivian Minister at Santiago, in which Mr. Stroebel

"called his attention to the note of Senor Errazuriz (of June 18, 1892) and inquired whether provision had been made for the payment of the claim as promised in that note. * * * The Bolivian

Minister, however, informed me that the payment of a number of claims had been provided for (in the treaties pending between Chile and Bolivia) and that among these the claim of Alsop and Company was explicitly mentioned and that the amount fixed in settlement was eight hundred and thirty-five thousand Bolivianos, the same as stated in the note of Senor Errazuriz referred to above."

Under date of October 10, 1896, Mr. Stroebel made the following report to the Department of State:

"Sir: In reply to the Department's No. 99 of August 10th last, enclosing a letter from the Honorable G. S. Boutwell, and instructing me to ascertain from the Government of Chile the proposed date of settlement of the claim of Alsop and Company, and whether by a treaty or by an understanding between the Governments of Chile and Bolivia the amount to be paid had been fixed, I have the honor to report that yesterday I had a conversation on the subject with Senor Eduardo Phillips, the Under Secretary of Foreign Relations, who gave me the following information:

"On May 28, 1895, a protocol, supplementary to the treaties between Chile and Bolivia forwarded to the Department with my No. 85 of May 6 last, was signed. This protocol was approved by the Chilean Congress, in secret session, but is still awaiting the approval of the Congress of Bolivia, and has, therefore, not been published. It has an important bearing upon the claims assumed by the Chilean Government in accordance with the provisions of Article 2 of the Treaty of Peace and Amity of May 18, 1895.

"According to the memorandum presented by the Bolivian Minister at this capital, which is regarded as part of the protocol, the amount proposed as a settlement of the claim of Alsop and Company is, without calculating interest (*sin computar intereses*) eight hundred and thirty-five thousand Bolivianos of twenty pence, or nine hundred and fifty-four thousand, two hundred and eighty-five Chilean pesos.

"By article 3 of the protocol, the Government of Chile, in order to settle the definite amounts to be paid, shall take into account the origin of the claims allowed, (*el origen de cada credito*) as well as the data furnished by the Bolivian Minister in his memorandum.

"It is hoped that the protocol will be approved by the Bolivian Congress which is now in session, in a few weeks. The Chilean Government cannot take up the question of the payment of the claims until this protocol has been approved and promulgated.

"On receiving the above information, I inquired of Senor Phillips whether it was to be understood that the terms of Article 3 of the protocol gave to his government the right of making a re-examination of the claims; and I stated that if this was the case, it was contrary to the impression existing in the minds of the claimants as well as to my own understanding of the matter. He replied that, in view of the large amounts to be paid, it was natural that his government should desire to examine the papers on which the claims were based, but that he thought that as soon as the protocol was approved and promulgated, there would be no disposition to delay a settlement.

"The Bolivian Minister here, Senor Gutierrez, whom I saw this afternoon, and with whom I spoke upon the subject, also seemed to be of this opinion.

“As soon as the protocol is approved by the Bolivian Congress, I will again call the attention of the Chilean Foreign Office to the claim, with a view to obtaining some more definite assurance regarding payment.”

It will be seen from the above narration of facts and correspondence that from 1884 to 1890, the Government of the United States, relying upon assurances of the Government of Chile that all equitable claims against the Government of Chile would in due time be met, and deferring to the expressed desire of that Government that the United States should postpone a settlement of the claims of its citizens until Chile should have been able to settle with her European claimants, refrained from pressing upon the attention of the Government of Chile the just claims of American citizens. It will, moreover, be observed that in June 1892, as the result of representations made by the Minister of the United States at Santiago, the Government of Chile definitely promised to pay both the principal and the interest of the debt as provided for in the contract. This promise to settle the claim was renewed in an assurance given to the Minister of the United States in 1896.

There was at the time of the making of these claims and representations no question raised as to the legality of the contract, the amount of the claim, nor the obligation of the Government of Chile to pay the same upon the completion of the treaty arrangements with the Government of Bolivia; and the promises thus definitely made were conditioned only upon the negotiation of these treaties, which has been long since effected.

But the undertaking of the Government of Chile to pay this Bolivian debt appears no less clearly in the various treaties and protocols which from time to time have been negotiated and signed by the Governments of Bolivia and of Chile. In the protocol of May 19, 1891, between Chile and Bolivia, it is provided in Article 2:

“The Government of Chile will take charge of and assume the payment of the obligations recognized by that of Bolivia in favor of the mineral enterprises of Huanchaca or Corocoro and Oruro, deducting the amounts in accordance with the Compact of Truce, as well as the credits which encumbered the income from the Littoral by reason thereof and which are that of * * * the credit acknowledged in favor of Lopez Gama, representing the house of Alsop and Company of Valparaiso, * * *

“Article 3 of the same protocol provided that ‘the sums which make up the credits referred to above as taken from the books of the National Treasurer of Bolivia are as follows:

*	*	*	*	*
Lopez Gama credit	\$835,000			
*	*	*	*	*

The sums approximated are considered without interest; and, with which, according to the liquidation made, reach the amount of six million, six hundred and four thousand pesos."

This statement, when taken in connection with that which was made by the Chilean Sub-Secretary of Foreign Affairs, to the Minister of the United States when, in June 1892, the latter submitted to the former the contract of December 26, 1876, recognizing the interest due upon the Alsop contract, clearly shows that at this time the Government of Chile acknowledged as due, not only the principal sum called for by the Wheelwright contract of 1876, but the interest due under said contract as well.

Further, on May 18, 1895, there was signed at Santiago a treaty of Peace and Friendship between the Governments of Bolivia and of Chile. It was provided in Article 2 of this treaty that

"It (the government of Chile) binds itself furthermore to pay the following debts which encumbered the Bolivian Littoral, namely:
* * * The Credit of Don Pedro Lopez Gama, now represented by the firm of Alsop and Company of Valparaiso."

And again in a supplementary protocol signed at Santiago on May 28, 1895, it was provided in Article 3 that

"those credits which are not included in the declaration aforesaid and which are those of * * * Pedro Lopez Gama * * * shall be examined by the Government of Chile, which government in order to fix the definite amount due, and to agree as to the form of payment thereof, will take into account the origin of each credit, and also the antecedents of the same consigned by the Minister of Bolivia in Chile in his memorandum of the 23rd of the present month."

In a protocol between the Republics of Chile and Bolivia, signed at Santiago April 30, 1896, explanatory of the protocol of the 9th of December 1895, the above arrangement for the liquidation of the debts therein named was recognized and there was imposed upon the Government of Bolivia the duty of submitting for the approval of the Congress of that Republic the protocol of May 28, 1895.

And finally on October 20, 1904, the Governments of Chile and of Bolivia entered into a general treaty, Article 5 of which provides as follows:

"* * * and the sum of two million pesos in gold of eighteen pence in the same form as the preceding for the cancellation of the credits arising from the following obligations of Bolivia: * * * the debt recognized to Don Pedro Lopez Gama, represented by Messrs. Alsop and Company; subrogates of the former's rights * * *."

Regarding the extent to which the Government of Chile had by this undertaking obligated herself to meet Bolivia's debts it appears as His Excellency the Minister of Foreign Affairs for Chile is aware, that the Government of Bolivia, fearing that some doubt might in the future arise, set forth its understanding of the undertaking of the Government of Chile in the following note:

“LEGATION OF BOLIVIA,
Santiago, October 21, 1904.

“MR. MINISTER: The Government of Bolivia agrees with Your Excellency's Government on the necessity of determining the purport of the wording of Article 5 of the Treaty of Peace and Friendship signed today by Your Excellency on behalf of the Government of Chile and by the undersigned in representation of the Government of Bolivia.

“Both in regard to the claims of the Corocoro, Huanchaca, and Oruro companies and of the bond holders of the Bolivian loan of 1867 which were being paid out of 40% of the receipts of the Arica Custom House, and in regard to the claims against Bolivia of the Bond holders of the Mejillones railroad, of Alsop and Co., (assignees of Pedro Lopez Gama), of the estate of Juan Garday, and of Edward Squire (representing the rights of John C. Meiggs), it has been agreed that the Government of Chile shall permanently cancel all of them, so that Bolivia shall be relieved of all liability, the Government of Chile being obligated to answer every subsequent claim presented either by private means or through diplomatic channels, and considering itself liable for every obligation, bond, or document of the Government of Bolivia relating to any of the claims enumerated; Bolivia's liability being entirely eliminated for all time and the Government of Chile assuming all liabilities to their full extent.

“My Government desires that Your Excellency may be pleased to state to me, on behalf of the Government of Chile, whether this is the purport which it has given to article 5 of the Treaty of Peace and Friendship signed today between the representatives of the two Governments.

“I avail myself of this opportunity to renew to Your Excellency, the assurances of my high and distinguished consideration.

(Signed.) A. GUTIERREZ.

“To His Excellency Dr. EMILIO BELLO C.,
Minister of Foreign Relations, City.”

To this the representative of the Government of Chile replied as follows:

“REPUBLIC OF CHILE,
MINISTER OF FOREIGN RELATIONS,

No. 1008.

Santiago, October 21, 1904.

“MR. MINISTER: In reply to the note which Your Excellency addressed to me on this day I take pleasure, in compliance with your request, in defining the purport which this Chancellery assigns to clause 5 of the Treaty of Peace and Friendship signed today by Your Excellency in representation of the Government of Bolivia and by the undersigned on behalf of the Government of Chile.

“My Government considers that the obligation which Chile contracts by Article 5 of the said Treaty comprise that of arranging directly, with the two groups of creditors recognized by Bolivia, for the permanent cancellation of each of the claims mentioned in said article, thus relieving Bolivia of all subsequent liabilities.

“It is consequently understood that Chile, as assignee of all the obligations and rights which might be incumbent on or pertain to Bolivia in connection with these claims, shall answer any reclamation which may be presented to Your Excellency’s Government by any of the parties interested in the said claims.

“I renew to Your Excellency the assurances of my highest and most distinguished consideration.

(Signed.) EMILIO BELLO C.

To his Excellency Mr. ALBERTO GUTIERREZ,
E. E. & M. P. of Bolivia,

[L s.]

These notes seem clearly to establish that, although if read alone, the treaty provisions might perhaps be construed to place a limitation upon the amount which the Government of Chile was to pay upon the debts recognized as existing against the Government of Bolivia, yet that in reality the Government of Chile obligated itself to pay the entire amount which should be found due upon these debts, irrespective of the question as to whether or not it was able to do so from the sum specifically named in the treaty.

It would thus appear that the Republic of Chile has repeatedly obligated itself to the Government of Bolivia to pay the Alsop debt—a debt which the Governments of both of these Republics have again and again recognized in these protocols as a valid and existing obligation. This obligation of payment was first assumed in express words by the Government of Chile in the Protocol of May 19, 1891, in which not only was the principal of the debt as specified in the Wheelwright contract, named, but the interest which it was to draw, recognized. The obligation was expressly renewed by the Government of Chile in the treaty of Peace and Friendship signed at Santiago on May 18, 1895, and this was reaffirmed in the supplementary protocol signed in Santiago between the same parties on May 28, 1895. Subsequently, on December 9, 1895, the obligations recognized in the preceding treaties were by express terms again reaffirmed. Finally, on October 20, 1904, the Republic of Chile in a general treaty again assumed the obligation to pay the Alsop claim; and while the treaty itself specified a lump sum from which the indebtedness was to be met, thus perhaps lending some color to a suggestion that there might be a reduction from the full value of the claim,

with interest, yet the aforesaid secret notes exchanged at the same time specifically provided that the obligation of the Government of Chile was full and complete, as to whatever sum should be found due upon the debts which that Government assumed to pay.

But not only has the Government of Chile thus promised diplomatically as between the United States and the Republic of Chile to pay the sum called for by the formal contract of 1876, between John Wheelwright and the Government of Bolivia; and not only has the Government of Chile repeatedly obligated itself in formal and solemn treaties negotiated between the Governments of Chile and of Bolivia to pay this debt, but that Government has renewed and affirmed this undertaking in a most formal promise made to a high international tribunal.

In the course of the arguments before the second United States-Chilean Claims Commission in 1901, the present Minister of Chile to the United States, acting then as agent and Counsel for Chile, conjointly with the Honorable Edward H. Stroebel, formerly accredited by the Government of the United States as its minister near the Government of Chile (during which time, as has already been pointed out, he carried on certain diplomatic correspondence concerning this claim) the latter in his capacity as Special Counsel, made the following declaration to the Alsop claimants and to the Commissioners in regard to this claim:

“As is stated in the claimant’s brief, it is among the liabilities that the Government of Chile engaged to pay for the account of Bolivia. This explains exactly the situation of the claim. The Chilean Government has always regarded it, and does still regard it, as a liability on the part of Bolivia, towards the claimant; and in order to induce the Bolivian Government to sign the definite treaty of peace which has been negotiated for many years, the Chilean Government offers to meet this and other claims, as part of the payment or consideration which it offers to Bolivia for the signature of the treaty. This has always been the position of the Chilean Government, and is its position today, and if Bolivia signs the treaty, the claim of Alsop and Company, as well as the other claims mentioned, will be promptly paid under the treaty engagement as a relief to Bolivia from the liabilities which that Government has incurred and for the account of Bolivia.”

After a careful consideration of the purely technical defense offered at that time, a majority of the Commission, that is, the Commissioner for the Republic of Chile and the Umpire, decided that, under the protocol of submission, the commission was authorized to consider merely the claims of “citizens of the United States,” and that therefore they could not consider this claim

upon its merits. In dismissing the case, however, these same members of the commission said:

“By this conclusion it is not denied that certain cases may arise (like the Cerruti case) in which redress may justly be granted by means of diplomatic intervention to an individual member of a society for injury to the partnership property. The demurrer is sustained wholly upon the ground that Alsop and Company, in liquidation, being a citizen of Chile, this Commission, under Article I of the Convention of 1892, has no jurisdiction to entertain the claim. The case is dismissed, therefore, without prejudice, however, to any rights which the claimant, or claimants, or Alsop and Company, or its liquidator may have, either by diplomatic intervention or before the Government of Chile, or the courts of Chile. Nor are the merits of the claim in any way prejudiced by this decision. According to the brief of the Honorable Agent of Chile, it is declared that this claim ‘is among the liabilities that the Government of Chile engage to pay for the account of Bolivia. * * * The Chilean Government has always regarded it, and does still regard it, as a liability on the part of Bolivia towards the claimant; and in order to induce the Bolivian Government to sign the definite treaty of peace, which has been negotiated for many years, the Chilean Government offers to meet this and other claims as part of the payment or consideration which it offers to Bolivia for the signature of the treaty. This has always been the position of the Chilean Government, and is its position to-day, and if Bolivia signs the treaty, the claim of Alsop and Company, as well as the other claims mentioned, will be promptly paid under the treaty engagement, as a relief to Bolivia from the liabilities which that Government has incurred and for the account of Bolivia.’

“The claimant is, therefore, remitted for relief to the Government of Chile, whose assurances are thus given, and the case is dismissed.”

Thus it is seen, the undersigned submits, that Chile has by repeated diplomatic promise, by solemn treaty obligation, and lastly by formal assurance given by the Agent, and the Special Counsel of the Government of Chile before a high International Tribunal and incorporated by the Commissioners in their decision, again and again obligated itself to satisfy this Alsop debt.

To meet the obligation thus repeatedly and voluntarily assumed, the Government of Chile offered in settlement, in December, 1903, through the Minister of the United States at Santiago, 954,285 Chilean dollars of 18 pence, or about \$343,542 American money. His Excellency the Minister of Foreign Affairs of Chile will permit it to be pointed out that the value of the mere principal of the debt, without interest, amounted to \$805,775 American gold, while the interest due under the contract, at the time this offer was made, would amount to a further sum of \$1,087,796.25, the two sums due, at that time, totalling \$1,893,571.25; and that this does not take into consideration the amount still

due upon the \$232,275.50 American gold which the contract recognized as interest due at the date of its making. As the Minister for Foreign Affairs of Chile is aware this offer was declined by the claimants, and the Department of State of the United States pronounced the proposal as not in accordance with the equity of the claimants.

As the result of the renewed representations of the Government of the United States, the Government of Chile in December, 1904, made a second offer of settlement, this time, however, offering but 524,333 Chilean dollars, equivalent to about \$190,647 American gold. At the time this offer was made, the value of the debt, principal and interest, had been increased from the figure last given by \$40,288.75. The Department of State of the United States having already characterized as inequitable an earlier offer which was almost as large again as this second offer, at once declined to accept the proposed sum, stating that the amount offered "appears to be disproportionate to the claimant's equity." The Government of Chile was invited to make a further offer.

On August 1, 1907, the Government of Chile made a third proposition in settlement of the claim, this time offering 568,192 Chilean dollars, equal to about \$200,000 American gold. At the time of this offer, the debt, principal and interest, exclusive of the original interest acknowledged as due by the contract itself amounted to \$2,287,481.25. Obviously the Department of State could not, and it did not, consider this proposed settlement as satisfactory and so informed the Government of Chile. Notwithstanding this, the last offer was renewed by the Government of Chile in April 1908.

Moved to feel by these persistent offers of a sum apparently so inadequate to the equities of the claimants under their contract, that perhaps the Government of Chile was in possession of facts which the Government of the United States was ignorant and which would justify the reduction proposed by the Government of Chile, and taking advantage of the kindly offer of the Chilean Legation at Washington, in its note of July 31, 1908 (transmitting a copy of the note of the Minister of Foreign Affairs of Chile to the Minister of the United States at Santiago) to furnish to the Department of State antecedents and information regarding the case, the Department of State, under date of August 29, 1908, requested the Minister of the Republic of Chile at Washington to furnish to that Department "copies of the documents and statements of the

evidence which your (the Chilean) Government regards as justifying the reduction which it proposes." In making this request, the Department of State indicated that it did so because it was animated by a desire to make as to the matter of the settlement of this claim, no request which equity and justice did not support. No reply having been received by it to this note, the Department of State repeated its request on November 24, 1908. On November 26, 1908, the Minister of the Republic of Chile at Washington stated that he had informed his Government of the request and that he would communicate with the Department of State upon receiving the documents asked for. On January 24, 1909, the Department of State, still not having received the documents promised, instructed the Minister of the United States at Santiago, by cable, to inform the Government of Chile that the Department of State, being most desirous of reaching a fair and equitable determination upon this whole matter, awaited the antecedents mentioned by the Minister of Chile and requested by the Department of State. On February 26, 1909, the Minister of the United States at Santiago cabled the Department of State that he had received a reply from the Office of Foreign Affairs of the Government of Chile in which it was stated that the antecedents called for by the Department of State had on the same date been sent to the Minister of Chile at Washington. On March 18th the Department of State communicated the substance of this telegram to the Minister of Chile at Washington and requested that he forward to it at his earliest convenience the documents which his Government was then forwarding to him. This note the Minister of Chile acknowledged under date of March 19th, and assured the Department of State that he would hasten to transmit to it whatever information he might receive bearing upon the subject. Nothing having been heard in the meanwhile, and the evidence which the Chilean Foreign Office stated had been forwarded to the Legation of Chile at Washington not having been received, the Secretary of State of the United States, on April 15th took up the matter personally with the Minister of Chile at Washington. In the course of an interview which followed the Minister of Chile stated that the Government of Chile had no evidence such as that called for, that is, evidence going to show that the amount due under the contract was not really due the claimants, and that to justify its reduction the Government of Chile relied upon the fact that the sums specified in the treaty between the Governments of Chile and of Bolivia for the settlement of this and other claims was not sufficient to meet

in full the demands of all the claimants, and that the amount offered Alsop and Company was its pro rata share of the sums so stipulated to be paid. It would thus appear from this correspondence and from this statement made orally by the Minister of Chile at Washington that the Government of Chile has no evidence going to show that the amount called for, principal and interest, by the contract between John Wheelwright as liquidator for Alsop and Company, and the Government of Bolivia, is not legally and equitably due the claimants.

In this connection the undersigned is directed to declare that in the mind of the Government of the United States there is no doubt that the Government of Chile is legally bound to pay this debt due Alsop and Company, and that to the Government of the United States it seems clear that the various promises and undertakings of the Government of Chile to the Government of the United States to pay this claim, are of such character as would, if made between two private parties, constitute a valid and existing contract, not only under the rules of common law in force in the United States, but also under the provisions of the civil law as it exists under the Government of Chile; and this being so, the Government of the United States considers that these promises and undertakings create an obligation as between the Government of Chile and the Government of the United States. That the various transactions constitute a contract under the technical principles of the common law appears evident, because the promise given by the Government of Chile was based upon ample consideration, that is, the promised and long continued forbearance of the Government of the United States to press upon the attention of the Government of Chile the settlement of this and other claims, predicated as it was upon the promise of the Chilean Minister of Foreign Affairs, that upon the happening of certain events, the Government of Chile would honorably settle all such claims. Moreover, under the doctrines of the common law which empower a beneficiary to sue upon a contract made for his interest and benefit, it would appear that as the result of the repeated undertakings between the Government of Bolivia and the Government of Chile, Alsop and Company has acquired certain rights against the Government of Chile which the Government of the United States may well request the Government of Chile to observe.

And not only do these transactions thus constitute a contract within the meaning of the common law, but they are clearly such

as would raise an obligation under the provisions of the civil law, and more specifically under the provisions of the Chilean code which expressly recognizes the validity of such promises where the parties making them have legal capacity and the motive inducing the contract is not illegal. It appears no less certain that under Chilean law the various treaty obligations between the Government of Chile and the Government of Bolivia also give to Alsop and Company certain rights as beneficiaries, of which the Government of the United States may, if it sees fit, take advantage.

Thus, that under the various promises made by the Government of Chile to the Government of the United States, the obligation of the Government of Chile to pay the Alsop Claim is full and complete, even when tested by the rigorous technicalities of the private law of both countries, can admit of but little doubt. But even if it should be contended that the obligation is under the private law of the two countries not as complete as has been contended, still every doubt as to the extent of the obligation disappears and the undertaking becomes clearly perfect, when it is considered as it must be, that the repeated promises, set forth above, upon which reliance in this case is placed, are the promises freely and spontaneously made by one sovereign state to another the latter placing thereon full and complete reliance. Such a promise by which the faith of a nation is pledged, demands that it be not disregarded or evaded, and that it be squarely met and fully discharged. To consider otherwise the promise of a sovereign nation, would be to deprive international obligations of that dignity and sacredness which are absolutely essential to the continued maintenance of those feelings of mutual respect and confidence which must of necessity exist between two friendly and independent states desiring to continue in their friendly relations and intercourse.

In this connection the undersigned begs to invite attention to the note, dated April 9, 1908, addressed by the Minister of Foreign Affairs of Chile to the Minister of the United States at Santiago in which the following language was used:

“At the same time, in order to obviate any doubts as to the scope and nature of these negotiations (and this is a point to which my Government ascribes special importance), it deemed it necessary to observe to the Chargé d’Affaires that, in view of the fact that the Court of Arbitration at Washington had declared Alsop and Company to be a Chilean Corporation, it could not assign any other character to the steps taken by said legation in this matter than that

of a 'simple conciliatory exercise of good offices (injerencial)', undertaken for the purpose of bringing about the agreement which was sought in order to terminate the matter within the limitations of Clause 5 of the Treaty of Peace."

The Government of the United States has been at some loss to understand precisely the meaning which this expression of the Government of Chile is intended to convey, and has found itself unwilling to believe that the suggestion which may be gathered from the mere language itself is the meaning which the Government of Chile desired to express.

It is indeed true that Alsop and Company, in order that it might do business in Chile, registered under the Chilean law, and in this sense became a Chilean partnership; but it should be remembered that the partners were all American citizens, that they were investing in their enterprise American capital, that the losses suffered have fallen upon American citizens and that such losses have involved the destruction of American capital and enterprise. Moreover, it should also be recalled that the partnership has long since ceased to do business in Chile, and that it has, so far as was possible, wound up its partnership affairs. It has, as a practical matter, ceased to exist. To contest the right of the Government of the United States to intervene in behalf of the injured American partners in such a partnership, under such conditions, for the loss of American capital, would be to contest the fundamental sovereign right of the Government of the United States to intervene in behalf of its citizens,—a proposition for which the Government of Chile would not, the Government of the United States feels, for a moment contend.

The Government of the United States has in the past asserted its rights to intervene in behalf of its citizens who occupied, with reference to foreign corporations, positions analagous to that held by the partners in this case, as is particularly and precisely illustrated by the famous MacMurdo or Delagoa Bay case in which the Government of the United States joined with the Government of Great Britain in intervening in behalf of American and British stockholders in a Portuguese corporation. Moreover, the famous Cerruti case, to which a majority of the members of the United States-Chilean Claims Commission, in dismissing the Alsop claim without prejudice, referred, and with the justice and equity of the determination of which the same commissioners agreed, seems squarely in point. That case, like the present, was a case in which there was an intervention on behalf of a national in a foreign part-

nership firm. Concerning this case the Chilean Commissioner and the Umpire said:

“At first objection was made by Colombia to the effect that E. Cerruti and Company being a society *en commandita simple*, having a juridical entity, was, in fact, a Colombian citizen, and therefore that no indemnity could be demanded by Cerruti personally for damages sustained by the property of Cerruti and Company. This position was practically abandoned, for Colombia had, in equity at least, forfeited the right to such a position by injuring Cerruti, for political and individual reasons, not only in all his private interests but also in all his interests in the partnership property as well.”

These precedents would justify, if indeed precedents were needed, the Government of the United States in intervening in behalf of the American partners of Alsop and Company. This is peculiarly true since this case, like the Cerruti case, has, as it was expressed by the Commissioners, been one “in which the preliminary questions have been discussed for years,” during which time, it should be remarked, the Government of Chile never made or even suggested any objection to the various intercessions of the Government of the United States in behalf of these American citizens, but on the other hand, acquiesced in and recognized the right of the Government of the United States to present to the Government of Chile for settlement, this claim which the Government of the United States again finds it necessary to urge upon the attention of His Excellency, the Minister of Foreign Affairs for Chile.

Thus is the liability of the Government of Chile shown upon the Wheelwright contract.

But not only have the claimants suffered great injury because of their inability to collect the amount due them under the Wheelwright contract, but they have also, as stated above, suffered great injury because of the application of Chilean mining law to the Bolivian Littoral. In connection with this point, the Minister of Foreign Affairs of Chile will recall that the contract between Wheelwright and the Government of Bolivia provided for the leasing to Wheelwright of the Government estacas located in the Bolivian Littoral. The Lessee's interest under this contract was absolute, was entirely independent of the debt due from Alsop and Company, and under the Bolivian law no obligation existed on Alsop and Company to perform any stated amount of work upon these estacas in order that title thereto might be unimpaired. However, upon the taking of the Littoral, the Government of Chile applied to these estacas, thus held absolutely in leasehold by Alsop and Company from the Government of Bolivia, the provisions of

Chilean law which, among other things, differed from the Bolivian law as to the manner in which the estacas must be chosen, as well as in requiring that a certain amount of assessment work should be carried on each year in order that title thereto might be retained. The application of these provisions of the Chilean law inflicted two sorts of injuries upon the claimants. In the first place it deprived Alsop and Company of certain estacas as to which their lease was perfect under the Bolivian law, but which was imperfect, (at least so declared the courts and the Executive of Chile) under the provisions of the Chilean law. In the next place, it required, contrary to the Bolivian law, that Alsop and Company should do a certain amount of work each year upon each estaca, in order to retain it; and this, the claimants allege, has necessitated the expenditure of very large sums of money in order that they might retain the title to mines which at the moment they were not prepared systematically to exploit. These questions were tested in the Chilean courts which decided that the Chilean law applied. The authorities of the Chilean Executive were then appealed to, but they stated that no relief could be given by the Executive, the matter being one for the jurisdiction of the Chilean courts.

As early as 1886, the claimants brought this matter to the attention of the Government of the United States, at which time the Secretary of State of the United States, Mr. Bayard, commenting upon the matter, laid down the law as follows:

“As to his claim for redress for the wrongs which the present memorial narrates, I have also little doubt. The immense interests he held, in 1879, in his representative, as well as individual capacity, under Bolivian laws, were virtually confiscated, under form of a judicial decision, by the government of Chili, in 1882. Were this confiscation put on grounds of municipal law, or of revolt against municipal authority, it might be argued that the decision is one as to which we cannot sit in appeal. But the decision rests on an alleged rule of international law which, assumed, as it now is, by the government of Chili, becomes a proper matter of discussion between ourselves and that government. It is asserted by the government of Chili (for, in international relations, and the maintenance of international duties, the action of the judiciary in Chili is to be treated, when assumed by the government as the act of the government) that a sovereign, when occupying a conquered territory, has, by international law, the right to test titles acquired under his predecessor by applying to them his own municipal law, and not the municipal law of his predecessor under which they vested. The true principle however, is expressed in the following passage cited in the memorialist’s brief:

“But the right of conquest cannot affect the property of private persons; war being only a relation of State to State, it follows that one of the belligerents who makes conquests in the territory of the

other cannot acquire more rights than the one for whom he is substituted; and that thus, as the invaded or conquered State did not possess any right over private property, so also the invader or conqueror cannot legitimately exercise any right over that property. Such is to-day the public law of Europe, whose nations have corrected the barbarism of ancient practices which placed private as well as public property under military law.' (C. Masse, *Rapports du droit des gens avec le droit civil*, Vol. I, p. 123, Sec. 148-149).

"This doctrine has frequently been acted on in the United States. Thus it has been held by the Supreme Court that when New Mexico was conquered by the United States, it was only the allegiance of the people that was changed; their relation to each other, and their rights of property, remained undisturbed—*Leitensdorfer v. Webb*, 20 How. 176. The same has been held as to California. The rights acquired under the prior Mexican and Spanish law, so it was decided, were 'consecrated by the law of nations.' *U. S. v. Moreno*, 1 Wall. 460; see *U. S. v. Augisola*, 1. Wall. 352; *Townsend v. Greeley*, 5 Wall. 326; *Dent v. Emmeger*, 14 Wall. 308; *Airhart v. Massieu*, 98 U. S. 491; *Mutual Assurance soc. v. Watts & Wheat*, 279; *Delassus v. U. S.* 9 Peters, 117; *Mitchell v. U. S.* 12 Peters, 410; *U. S. v. Repentigny*, 5 Wall. 211.

"The Government of the United States therefore holds that titles derived from a duly constituted prior foreign government to which it has succeeded are 'consecrated by the law of nations' even as against the titles claimed under its own subsequent laws. The rights of a resident neutral having become fixed and vested by the law of the country cannot be denied or injuriously affected by a change in the sovereignty or public control of that country by transfer to another government. His remedies may be affected by the change of sovereignty but his rights at the time of change must be measured and determined by the law under which he acquired them. War is between States, and forms of government may thus be changed and laws are forms of government, but cannot act retroactively to destroy neutral rights. The government of the United States is therefore prepared to insist on the continued validity of such titles, as held by citizens of the United States, when attacked by foreign governments succeeding that by which they granted. Title to land and landed improvements, is, by the law of nations, a continuous right, not subject to be divested by any retroactive legislation of new governments taking the place of that by which such title was lawfully granted. Of course it is not intended here to deny the prerogative of a conqueror to confiscate for political offences, or to withdraw franchises which by the law of nations can be withdrawn by governments for the time being. Such prerogatives have been conceded by the United States as well as by other members of the family of nations by which international law is constituted. What, however, is here denied, is the right of any government to declare titles lawfully granted by its predecessor to be vacated because they could not have been lawfully granted if its own law had, at the time in question, prevailed. This pretention strikes at that principle of historical municipal continuity of governments which is at the basis of international law, holding as I do that the action of the government of Chili here complained of, by which citizens of the United States have been divested of their property, is in violation of this principle."

The Government of the United States still maintains this opinion. It must, therefore, regard the action of the Government of Chile in applying to the holdings of Alsop and Company in the Bolivian Littoral the provisions of the Chilean law, which derogated so greatly from the rights enjoyed by and the obligations imposed upon Alsop and Company by the law of Bolivia, as wholly unwarranted by the rules of international law, and therefore as affording a just ground for a demand for damages in favor of Alsop and Company.

The undersigned is further instructed to say to His Excellency the Minister of Foreign Affairs of Chile, that, in view of the jurisdictional facts of this case thus fully set forth, which facts stand not only uncontroverted and unimpeached, but admitted by the Governments of Bolivia and Chile, and in view of the well founded liability of the Government of Chile to settle this claim in accordance with the numerous promises and undertakings made and given by that Government, the Government of the United States confidently expects that the Government of Chile will at once either make such a settlement on this controversy as shall comport with the equity of the claimants and with the dignity and the international integrity of Chile, or, as has been suggested by the Government of Chile, immediately agree with the Government of the United States upon a protocol submitting the entire controversy to an arbitral tribunal, for a decision upon the merits, in accordance with the broad principles of equity and international law; though it should be understood at the same time, that the Government of the United States feels most deeply that the added expense and delay which this latter course will entail upon the claimants, are, under the existing circumstances, without warrant and not to be justified.

In the event that the Government of Chile elects to arbitrate rather than to settle this claim in accordance with the many promises and undertakings as above set forth, the undersigned, on behalf of the Government of the United States, proposes the following protocol of submission, to conclude which the undersigned is duly and fully authorized:

PROTOCOL OF AGREEMENT.

The United States of America and the Republic of Chile, through their respective plenipotentiaries, Thomas C. Dawson, Envoy Extraordinary and Minister Plenipotentiary of the United States to the Republic of Chile, and

Secretary

of Foreign Affairs of the Republic of Chile, being duly authorized thereto, have agreed upon and concluded the following protocol:

WHEREAS the governments of the United States and Chile have not been able to reach an agreement as to the amount equitably due from Chile to Mr. John Wheelwright, Mr. George Frederick Hoppin, Mr. Joseph W. Alsop, Mr. Edward McCall, Mr. George J. Foster, Mr. Theodore W. Riley, Mr. Henry Chauncey and Mr. Henry S. Prevost (their heirs, assigns, representatives, and devisees) American citizens doing business in Chile under the firm name of Alsop and Company, for an indebtedness arising,—(1) under and by virtue of a certain contract dated December 26, 1876, made by and between the Government of Bolivia and John Wheelwright, acting as liquidator for Alsop and Company, which contract, ratified by both parties, included and incorporated therein certain public decrees of the Government of Bolivia dated December 23, 1876, and December 24, 1876, a copy of which contract is hereunto annexed and made a part of this protocol; (2) from the non-participation by Alsop and Company in the distribution of the Arica Custom House receipts as provided for in the second paragraph of the decree of December 24, 1876, incorporated as aforesaid in said contract of December 26th, 1876; (3) from the deprivation of certain mines held under the lease granted in and by the public decrees of December 23rd and 24th, 1876, and incorporated as aforesaid in said contract of December 26, 1876, said deprivation resulting from the application to the mines, of the provisions of the Chilean law by the Chilean authorities at and since the military occupation by Chile of the Bolivian Littoral in which the said mines were located; and (4) from certain exceptional and additional expenditures necessary in order to retain possession of other of the said mines, said expenditure being necessary because of the application to the mines of the provisions of the Chilean law as aforesaid,—the Government of the United States contending that the obligation of the Government of Chile to pay the various sums because of these circumstances is perfect, (1) by reason of the promises of settlement made on various occasions by the Government of Chile to the Government of the United States; (2) by virtue of the several formal treaty undertakings between the Governments of Chile and Bolivia, in which the Government of Chile obligated itself to pay for account of Bolivia certain debts owing by the Government of Bolivia, and specifically the amount which the Government of Bolivia was obligated to

pay the said Mr. John Wheelwright, Mr. George Frederick Hoppin, Mr. Joseph W. Alsop, Mr. Edward McCall, Mr. George J. Foster, Mr. Theodore W. Riley, Mr. Henry Chauncey and Mr. Henry S. Prevost (their heirs, assigns, representatives, and devisees) under the contract aforesaid and hereto annexed; (3) by reason of the promises formally made by the duly accredited agent of the Government of Chile before the American Chilean Claims Commission of 1900; and (4) by reason of the general rules and principles of international law governing vested rights and the performance of obligations arising from the occupation, control and government of acquired territory;—the Government of Chile on the other hand, denying such full responsibility; and

WHEREAS the Government of Chile has on various occasions offered in full and final settlement of this claim different sums of money which the Government of the United States has declared inadequate and disproportionate to the claimant's equity;

THEREFORE: the two governments have agreed to submit the controversy to an international arbitration tribunal to be constituted as hereinafter provided, for a determination of the matters involved, upon the merits, in accord with the broad principles of equity, justice and international law, and to submit for such determination to the above named arbitration tribunal, to be so constituted, the following questions:

1. What sum, if any, is under all the circumstances equitably due from the Government of Chile to the claimants Mr. John Wheelwright, Mr. George Frederick Hoppin, Mr. Joseph W. Alsop, Mr. Edward McCall, Mr. George J. Foster, Mr. Theodore W. Riley, Mr. Henry Chauncey and Mr. Henry S. Prevost (their heirs, assigns, representatives, and devisees) under the aforesaid contract of December 26th, 1876, made by and between the Government of Bolivia and John Wheelwright as liquidator for the claimants, by reason of the various undertakings of the Government of Chile to discharge the obligations of the said contract for account of Bolivia as hereinbefore indicated.

2. What sum, if any, is under all the circumstances equitably due said claimants Mr. John Wheelwright, Mr. George Frederick Hoppin, Mr. Joseph W. Alsop, Mr. Edward McCall, Mr. George J. Foster, Mr. Theodore W. Riley, Mr. Henry Chauncey and Mr. Henry S. Prevost (their heirs, assigns, representatives, and devisees) from the Government of Chile by reason of the action of the Chilean Government which resulted in depriving Alsop and Com-

pany of any share in the customs receipts from the Port of Arica; and in applying as hereinbefore stated to the mines and mining rights of Alsop and Company the provisions of the Chilean law, the application of such law having resulted in the loss of certain of the mines, and in the expenditure of large amounts of money, not necessary under the Bolivian law, for the retention of others of the mines.

ARTICLE I.

These questions shall be referred for determination to a special tribunal which shall sit at the Hague and shall be composed of two arbitrators (one to be named by each of the contracting powers within three months from the signing of this protocol) and an umpire who is to be chosen by the two arbitrators so appointed, or in the event they are unable to agree upon a choice within thirty days from the date of their first meeting as hereinafter provided, then by mutual agreement between His Britannic Majesty and the President of France. The two arbitrators and the umpire shall be chosen from among the members of the Permanent Court of Arbitration at the Hague, and none of them shall be a citizen or a native of either the United States or Chile, or a member of the panel of arbitrators selected or designated by either government.

ARTICLE II.

The choice and appointment of the two arbitrators must be notified by each government to the other and to the International Bureau of the Permanent Court within three months from the signing of this protocol. The said arbitrators so chosen shall meet at the Hague within four months from the date of the signing of this protocol, and shall at once proceed to the choice of an umpire. In the event that the said arbitrators are unable to choose an umpire within thirty days from the date of their first meeting as hereinbefore provided, the umpire shall be chosen by agreement between His Britannic Majesty and the President of France as provided in Article I of this protocol. The choice of an umpire by either alternative above provided shall be notified to the respective governments and to the International Bureau at the Hague, within thirty days from the date of said choice. In case of the death, or the incapacity from any cause, or the refusal to act, of either of the arbitrators or of the umpire, the vacancy thus created shall, within thirty days from the happening of said vacancy, be filled in the manner in which the original appointment was made.

ARTICLE III.

Within sixty days from the date of the notification of the choice of the umpire, each government shall deliver to the International Bureau four copies of its case, one copy for each of the arbitrators, including the umpire, and one copy for the opposing government. Immediately upon the expiration of the above specified sixty days, these copies shall at once and simultaneously be distributed by said Bureau to the arbitrators, the Umpire, and the respective powers, as hereinbefore provided, the copies for the two governments being delivered to their respective legations at the Hague. The cases so delivered shall contain a full presentation of the claims and contentions of each government against the other with respect to its case, and shall be accompanied by all documents, affidavits, and other evidence upon which reliance is placed in support of the respective claims and contentions, of fact or law.

Within four months from the date of distribution of such cases, each government shall in like manner deliver to the International Bureau, four copies of its counter-case, to be distributed by said Bureau in like manner as the cases, immediately upon the expiration of the said four months. Each counter-case must contain only matters in answer and defense to the other's case, and must be accompanied by the affidavits, documents, and other evidence relied upon in support thereof.

The period for the submission of evidence shall thereupon be closed; provided that the tribunal may, however, allow or require either government to furnish such additional evidence or information as may be deemed requisite in the interests of justice, said evidence or information to be furnished within a time to be specified by the Tribunal.

The Tribunal shall be at liberty to employ for its information all manner of documents and statements, whether submitted by the parties or called for by the Tribunal, which it shall consider necessary and proper, without being bound by strict judicial rules of evidence.

ARTICLE IV.

Within thirty days from the distribution of the counter-cases, the two arbitrators and the umpire shall meet at the Hague and shall proceed to the organization of the arbitration tribunal, and shall formulate all necessary rules and regulations, not inconsistent with the provisions of this protocol, for the government of the tribunal and the presentation and argument of the case.

The members of the tribunal shall however, as their first act, take a formal and solemn oath that they will determine this case upon its merits in accordance with the broad principles of equity, justice and international law. In all the deliberations of the tribunal the umpire shall be the President or presiding officer, and the concurrent action of any two members of the tribunal shall be adequate for a decision upon all points necessary to determine the questions involved.

ARTICLE V.

In the presentation of the case to the arbitral tribunal either party may use the English or the Spanish language. The Tribunal shall hear one person as agent on behalf of each government and shall consider such arguments, written or oral, as said agent may present. The Tribunal will also hear in argument, written or oral, such counsel on either side as either government may designate, provided that in no case shall either of the agents or any of the counsel be chosen from among the members of the Permanent Court.

ARTICLE VI.

The Tribunal shall decide the case by taking into consideration every circumstance connected with the controversy, including the original contract, and the decrees included therein, between the Government of Bolivia and John Wheelwright as liquidator for Alsop and Company; the various treaties, protocols and negotiations between the Governments of Chile and Bolivia which affect in any way the subject matter of the controversy or the questions herein submitted for final determination; the diplomatic correspondence between the Government of the United States and the Governments of Chile and Bolivia, respectively; the proceedings before the two American Chilean Claims Commissions of 1894 and 1900; and any other documents, affidavits, or evidence whatsoever, which may be submitted by either of the high contracting parties, or required by the tribunal. The decision of the tribunal upon the matters in controversy shall be final and conclusive as between the parties, and shall be rendered within sixty days from the date of the first meeting, unless deferred by the tribunal for the purpose either of allowing or obtaining further evidence or of filling a vacancy in the tribunal.

ARTICLE VII.

Any award which may be made by the Arbitral Tribunal, shall be payable in gold coin of the United States of America or its equivalent in the gold coin of the Government of Chile, and the Arbitral Tribunal shall fix the time and the conditions of payment after consultation with the representatives of the two governments.

ARTICLE VIII.

The expenses of the Arbitral Tribunal shall be paid in equal moieties by the two high contracting parties, provided that within thirty days from the date of notification of the appointment of the umpire, each party will deposit with the International Bureau the sum of fifteen thousand francs on account of the expenses of the tribunal and from time to time thereafter they shall, in like manner, deposit such further sums as may be necessary to defray said expenses.

ARTICLE IX.

Except as hereinbefore provided the arbitral procedure shall conform to the provisions of the Convention for the Peaceful Settlement of International Disputes, signed at the Hague on October 18, 1907, to which both parties are signatory and especially to the provisions of Part IV, Chapter III, of the said Convention.

APPENDIX TO PROTOCOL.

Contract between the Government of Bolivia and John Wheelwright, partner and representative of Alsop and Company.

[Translation.]

Settlement executed between the Minister of Finance and Industry, Doctor Manuel Ignacio Salvatierra, in representation of the National interests, and John Wheelwright, partner and representative of Messrs. Alsop and Company of Valparaiso, for the consolidation and amortization of the credits which he has pending against the State.

In the City of La Paz of Ayacucho, at eleven o'clock of the 26th of December, 1876, before me citizen Patricio Barrera, Notary of Finance, Government and War, and the undersigned witnesses,

there appeared, on the one part, Doctor Manuel Ignacio Salvatierra, Minister of Finance and Industry, as representative of the National interests, native of the City of Santa Cruz, resident in this capital, married, and of the legal profession; and of the other part, John Wheelwright, partner and representative of Messrs. Alsop and Company of Valparaiso, Republic of Chili, also married, and transitorily in this city, both being of full age and competent to execute this deed, and whom I certify that I know, and they stated, that in order to consolidate and liquidate the credits pending against the State, arising out of the transfer of rights which were recognized in favor of Don Pedro Lopez Gama, a Supreme Decree has been issued, dated on the 24th of the present month, in which is embodied the definite settlement for which this deed is ordered to be drawn out, and which is as follows:

Resolution of December 24, 1876.

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, December 24, 1876.

In view of a proposition made by Mr. John Wheelwright, a member and representative of the firm of Alsop and Company of Valparaiso, in liquidation, for the purpose of providing for the payment of the claims against the Government by an assignment of the rights which were acknowledged in favor of Pedro Lopez Gama, a new compromise has been concluded in a cabinet meeting with Mr. Wheelwright which finally terminates this matter. It is drawn up in the following terms.

First. The sum of 835,000 bolivianos is acknowledged as due the aforesaid representative of the firm of Alsop and Company, together with interest at the rate of 5 per cent per annum, not addable to the principal, and to be reckoned from the date on which this contract is duly executed.

Second. The said principal and interest shall be amortized by means of drafts all of which are to be drawn in quarterly installments on the surplus which, from the date on which the present customs contract with Peru terminates, shall arise, from the quota due Bolivia in the collection of duties in the Northern custom house, over and above the 405,000 bolivianos which the Peruvian government now pays,—whether the customs treaty with that Republic is renewed or whether the National custom house is reestablished.

Third. All of the silver mines of the government in the department along the coast are hereby devoted to the payment of the said amortization for which purpose 40 per cent of the net profit shall be utilized, except in the mine known as "Flor del Desierto," concerning which provision is made in the ensuing article.

Fourth. The aforesaid mine called "Flor del Desierto," together with one other of the government mines to be selected by the party concerned, are hereby devoted to the payment of the interest claimed as due, amounting to 170,700 bolivianos prior to December 18, 1875, and 70,000 bolivianos for the year now expiring. In the mine called "Flor del Desierto" the quota due the government and applicable to the payment of this amortization shall be 50 per cent of the net proceeds, and in the other mine it shall be 40 per cent, as in the remaining mines granted. The surplus remaining after the payments of this interest shall be applicable to the amortization of the capital acknowledged as due, as provided in clause 3, it being a condition that if one or both of the concessions produce nothing or little, then this obligation and every claim to said interest due shall be finally canceled.

Fifth. The operation of the mines of the Government let as concessions in the foregoing articles shall be subject to the contract concluded this date on the subject, the interested party being permitted to assign these rights and this compromise to such persons or companies as he may deem suitable, giving notice thereof to the Government.

Sixth. In all cases in which sums of money are paid or received, the Chilean peso or the Peruvian sol of stamped silver shall be considered equivalent to the boliviano, either in this contract or in that regarding the mining concessions.

Let the proper document be executed, inserting therein this compromise and the contract connected therewith which is mentioned above. Let this be recorded.

[SEAL]. *A true copy.*

JOSE SALINAS,
Chief Clerk of Foreign Relations.

Acceptance.

On the 26th of the current month, at eleven o'clock, I made known this supreme decree which precedes, to Mr. John Wheelwright, representative partner of Messrs. Alsop and Company,

who, fully informed of its contents, accepted the contract in legal form, before me, of which

I hereby certify.

(Signed.) JOHN WHEELWRIGHT.

PATRICIO BARRERA,

Notary of Finance, Government and War.

Resolution of December 23, 1876.

MINISTRY OF FINANCE AND INDUSTRY.

La Paz, December 23, 1876.

In accordance with the compromise made this day it has been agreed by the Government in Cabinet Council with Mr. John Wheelwright, representative of the firm of Alsop and Company, that the operation of the Government mines which have been let out as a concession to said firm on the same date shall be subject to the following clauses and conditions:

1. Mr. John Wheelwright shall have a period of three years within which to examine the Government silver mines and find the necessary capital with which to put them into operation, it being his duty to take the necessary preliminary measures to this end as soon as possible. The mines shall remain at the disposal of the concessionary during these three years, and the Government shall enable it to gain actual possession thereof by giving the proper instructions to the authorities.

2. By virtue of the concession which has been made to him the concessionary shall be entitled to organize joint stock companies for the operation of one or more concessions, either on the coast or abroad; or else to conclude contracts with the owners of adjacent mines in order to secure the most certain means of operating all or any of the said concessions which in the opinion of the concessionary or companies organized are profitable or will at least pay the cost of working them where veins are already discovered or may be discovered during the three years assigned in the first clause.

3. The concessionaries may hire and employ in their mining work either foreign or native engineers, employees, or laborers, who shall, during the period for which they are hired, be exempt from all military service as well as every civil or municipal office, except in cases of necessity in order to preserve public order and peace.

4. The concessionary or companies in charge of the work shall present semi-annual balances, on the strength of which, together with the records of the books, the distribution shall be made of the net proceeds, 40 per cent being applied by the Government to the paying off of the debt according to the terms agreed upon in the compromise of this date, and sixty per cent going to the petitioner.

5. The Government shall appoint one or more agents to superintend the work performed, who shall be compensated out of the common funds of the enterprise.

6. This contract shall last for 25 years, after which time, if there is any residue after paying off the Government's debt in accordance with the compromise, it shall be turned over to the Government.

7. If, within the first three years or thereafter until the expiration of the 25 years mentioned in the foregoing article, any persons or companies should offer to operate one or more of the mines included in this contract, they may do so provided the present concessionary does not care to undertake the operation thereof and so states in writing to the Government, or else deliberately neglects to make such statement.

8. The Supreme Government shall grant to the petitioner free of charge, during the continuance of this contract, such lands of the Government as may be necessary for the erection of his buildings and mining establishments. Let this be recorded.

DAZA.

OBLITAS.

CARPIO.

VILLEGAS.

SALVATIERRA.

[L. s.] A true copy.

JOSE SALINAS.

Chief Clerk of Foreign Relations.

Acceptance.

On the 26th of the present month, at eleven o'clock, I made known the Supreme Decree which precedes to Mr. John Wheelwright, partner and representative of Messrs. Alsop and Company, who, being notified of its purport, accepted it in legal form, of which I certify.

JOHN WHEELWRIGHT.

PATRICIO BARRERA,

Notary of Finance, Government and War.

Continuation.

In conformity with which, ratifying respectively the two Supreme Decrees embodied herein, which, in the original, exist in the archives of the collection under number 410, after being legalized by me, the Notary, in conformity with the present and in the most legal form, they covenant: that they oblige and compromise themselves in the name of those they represent, the party of the second part for himself as partner, to the observance and fulfilment of all and every clause contained in both Supreme Decrees. In witness thereof they affirmed, sealed and signed before the witnesses who were present, Doctors Manuel Vargas and Benjamin Martinez, residents of this City, single men, both lawyers and of full age, before whom this was read from beginning to end, no objection of any kind being made to the tenor of it, and of which I give faith by signing.

MANUEL I. SALVATIERRA,
JOHN WHEELWRIGHT,
MANUEL VARGAS,
BENJAMIN MARTINEZ.

[SEAL.] Before me,

PATRICIO BARRERA,

Notary of Finance, Government and War.

Drawn up and filed at page 1098 of my twenty-second Register of Deeds and Public Contracts.

I deliver this original copy at the verbal request of Mr. John Wheelwright, the party of the second part, in conformity with the law of March 5th, 1858, respecting notaries, after being duly and faithfully compared and corrected. In witness whereof I authorize, seal and sign it in the City of La Paz, of Ayacucho, at four o'clock of the 27th day of December, 1876.

[SEAL.]

PATRICIO BARRERA,

Notary of Finance, Government and War.

The undersigned notaries of the first class, of this Judicial District, hereby certify and witness: That citizen, Patricio Barrera, who authorizes the foregoing deed, is such Notary of Finance, Government and War as he styles himself, and actually in the exercise of such duties; that the deeds which he authorizes and

are drawn up before him, merit entire credit and judicial and extra judicial faith.

In witness whereof we sign, seal and deliver.

La Paz, December the 28th, 1876.

[L. S.] BASILIO FCO. GUACHALLAS,
Notary of the First Class.
[L. S.] FRANCISCO LUIS BALLON,
Notary of the First Class.

The citizen, Pedro Villamil, General of Brigade of the Bolivian Army, and Prefect of the Department, etc., certifies that the declaration which precedes is legal.

DECEMBER the 28th, of 1876.

[L. S.] PEDRO VILLAMIL,
Ministry of Foreign Relations.
La Paz, December 29th, 1876.

Legalized.

J. OBLITAS.
Consulate General of the Argentine Republic.

I hereby certify to the authenticity of the preceding signature of J. Oblitas.

La Paz, December 29th, 1876.

[SEAL.] GEORGE M. BOWEN,
Chancellor of the Consulate.

In conclusion the undersigned begs to state that he cannot entertain a doubt but that when the Government of Chile shall have fully considered this claim of Alsop and Company broadly upon its merits, as above set forth, that Government will be convinced that the principles of equity justice and international law demand as to this long standing and vexatious controversy, a prompt settlement that shall accord with the views of the Government of the United States which the undersigned now has the honor again to present

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, avails himself of this opportunity to renew to His Excellency, the Minister of Foreign Affairs, the assurance of his most distinguished consideration.

I am, etc.,

P. C. KNOX

Minister of Foreign Relations of Chile to the American Minister.

REPÚBLICA DE CHILE MINISTERIO
DE RELACIONES ESTERIORES,

Santiago, 15 de Octubre de 1909.^a

SEÑOR MINISTRO: Se ha recibido en este Departamento la comunicacion de Vuestra Excelencia de fecha 17 de setiembre del presente año. En ella se sirve Vuestra Excelencia manifestar que, cumpliendo instrucciones que ha recibido, llama de nuevo la atencion del Gobierno de Chile sobre la reclamacion Alsop i Compañia, i espera que animada esta Cancilleria de espíritu de sincera justicia, aceptará una de las dos proposiciones que presenta Vuestra Excelencia, a nombre de su Gobierno, para poner término a dicha reclamacion que es un elemento perturbador de las buenas relaciones entre los dos paises.

Para fundar esas proposiciones, Vuestra Excelencia hace, en cumplimiento de instrucciones del Departamento de Estado, una prolija esposicion de las circunstancias de hecho i de derecho que, en concepto de ese Departamento, abonan la reclamacion de Alsop i Compañia i establecen la consiguiente obligacion del Gobierno de Chile de atenderla a la mayor brevedad.

Con fecha 9 de marzo de 1908, mi honorable antecesor, Excmo. Señor Federico Puga Borne, dirijió al honorable antecesor de Vuestra Excelencia, Excmo. señor John Hicks, una nota en que esponia los antecedentes i aducia diversas consideraciones i precedentes diplomáticos que justificaban la actitud del Gobierno de Chile para declinar su responsabilidad en la reclamacion de Alsop i Compañia en los términos en que la presentaba el Gobierno de Vuestra Excelencia. I para que una reclamacion de carácter jurídico i meramente pecuniario no fuera en manera alguna óbice

^a This note, though dated as above, was not actually delivered until November 27, 1909, as indicated by the following telegrams:

The Secretary of State to Chargé Pierrepont.

[Telegram—Paraphrase.]

WASHINGTON, *May 4, 1910.*

Cable exact date the note written by the Minister of Foreign Relations on October fifteenth last was delivered to you.

KNOX.

Chargé Pierrepont to the Secretary of State.

[Telegram—Paraphrase.]

SANTIAGO, CHILE, *May 4, 1910.*

Note written October fifteenth was delivered to me personally on the twenty-seventh of last November.

PIERREPONT.

a las cordiales relaciones de amistad que mi país ha cultivado con el de Vuestra Excelencia, proponía el señor Puga Borne en su citada comunicacion de 9 de marzo que, en vista de la diversidad de apreciaciones de ambas Cancillerías, fuera deferida la solución del reclamo de Alsop i Compañía al arbitraje.

Es sobre manera grato a este Departamento tomar conocimiento de que la proposición de resolver el diferendo pendiente por medio del arbitraje, ha sido aceptada por el Gobierno de Vuestra Excelencia.

Perseverando esta Cancillería en el propósito de que no se alteren jamás las tradicionales relaciones de cordialidad que siempre han existido entre Chile i los Estados Unidos, debo manifestar a Vuestra Excelencia, en contestación a su nota de fecha 17 de setiembre, que a juicio del infrascrito, la mejor manera de dejar establecido que la discusión relativa a la reclamación de Alsop i Compañía puede por su naturaleza ser resuelta por el arbitraje, es bosquejar rápidamente la manera cómo nuestros Gobiernos estiman la citada reclamación, según consta de la comunicacion de este Ministerio de 9 de Marzo de 1908 i de las notas de la Legación del digno cargo de Vuestra Excelencia de fechas 27 de junio de 1907 i 17 de setiembre del presente año.

No creo necesario, en esta ocasión manifestar los antecedentes del crédito de Alsop i Compañía, ya que este punto es de mui lato conocimiento i no afecta de un modo directo a la controversia suscitada.

Juzgo, por la inversa, que hai manifiesta interés en dejar constancia de los motivos que alega el Gobierno de Vuestra Excelencia para patrocinar, por la vía diplomática, un crédito de particulares contra Bolivia, i para sostener que nuestro país esta obligado a solucionarlo, porque estos son los puntos fundamentales en que estriba precisamente la diverjencia entre ambas Cancillerías.

Sostiene el Gobierno de Vuestra Excelencia que los representantes de la firma social de Alsop i Compañía son ciudadanos de los Estados Unidos i con derecho, en consecuencia, a la protección diplomática de ese país.

El Departamento de Estado cree llegado el momento de prestar esa protección, fundado en que el Gobierno de Chile, al ocupar el territorio de Bolivia, vulneró con la aplicación de la ley chilena, en esa región, las garantías que el Gobierno de Bolivia habia constituido en favor del crédito de Alsop i Compañía. Esta firma social, dice Vuestra Excelencia, hizo gestiones ante el Gobierno i tribu-

nales de Chile a fin de poner a salvo sus derechos, sin obtener satisfaccion, motivo por el cual ocurrió al Departamento, quien despues de examinar el asunto, declaró que el procedimiento del Gobierno i tribunales de Chile era contrario a los principios del Derecho Internacional e importaba confiscacion de propiedad.

Por lo que respecto a la obligacion de mi pais de cancelar totalmente el crédito de Alsop i Compañia, ella tiene, segun el Gobierno de Vuestra Excelencia, un doble fundamento. Por una parte, la circunstancia de que las garantias que el Gobierno de Bolivia habia constituido por convenio de 26 de diciembre de 1876, para asegurar el citado crédito, se hicieron ilusorias, porque los bienes que las constituyen estan en poder de Chile a consecuencia de la guerra con Bolivia, i el Gobierno de Vuestra Excelencia estima que en conformidad a los principios jenerales del Derecho Internacional nuestro pais debe respetar esas garantias; i por otra parte, la circunstancia de que el Gobierno de Chile ha reconocido en repetidas ocasiones la obligacion que sobre él pesa de pagar ese crédito, principalmente en los proyectos de protocolo celebrados entre Chile i Bolivia, en promesas repetidas hechas por mi pais al Gobierno de Vuestra Excelencia de que ese crédito seria debidamente atendido, i en la declaracion del Ajente del Gobierno de Chile ante la Segunda Comision Arbitral reunida en Washington en 1900 para conocer de las reclamaciones de los nacionales de cada uno de los dos paises contra el Gobierno del otro.

De todos estos antecedentes concluye Vuestra Excelencia que el Gobierno de los Estados Unidos no alcanza a comprender el motivo de la negativa del de mi pais para pagar el monto completo del crédito de Alsop i Compañia.

Este Departamento aprecia de mui diversa manera la reclamacion.

Desde luego, i como Vuestra Excelencia oportunamente lo recuerda, por Convencion chileno-norteamericano de 7 de agosto de 1892, se constituyó en Washington un Tribunal Arbitral. Ante ese Tribunal ocurrieron los liquidadores de Alsop i Compañia, pidiendo que se declarara que el Gobierno de Chile estaba obligado a solucionar íntegramente el monto del crédito. La Comision Arbitral declaró que por falta de tiempo no podia pronunciarse sobre la reclamacion. Por convenio de 24 de mayo de 1897 se acordó constituir un Segundo Tribunal Arbitral, a fin de que resolviese las reclamaciones que no alcanzó a fallar el Primero. Los liquidadores de Alsop i Compañia se presentaron ahí nuevamente. El Ajente de Chile alegó la incompetencia del Tribunal,

fundado en que esa Sociedad no era de nacionalidad de los Estados Unidos sino una persona jurídica chilena, porque se habia constituido i tenia su domicilio en Valparaiso i estaba inscrita en los registros comerciales de esa ciudad.

El Tribunal, por sentencia de 8 de febrero de 1901, declaró que la firma de Alsop i Compañia era una Sociedad Comercial chilena i que el reclamante tenia derecho a la proteccion diplomática del Gobierno de Chile. I no sólo en este caso la Comision Arbitral declaró que la firma de Alsop i Compañia tenia nacionalidad de nuestro pais. El reclamo No. 26 presentado por dicha firma social, conjuntamente con el No. 31, fueron desestimados por igual motivo.

Las observaciones contenidas sobre este punto en la nota del Departamento de mi cargo de fecha 9 de marzo de 1908, me escusan de entrar en mayores consideraciones. Me permitiré tan solo insistir en que la declaracion contenida en la sentencia del Tribunal Arbitral de Washington se encuentra en perfecto acuerdo con la práctica uniformemente seguida por el Departamento de Estado, a virtud de la cual una sociedad tiene, para los fines de la proteccion diplomática, la nacionalidad del pais en que se ha constituido, (Véase Moore: "A Digest of International Law", Washington, 1906, Tomo VI, Párrafo 984, Pájina 641 i Párrafo 985, Pájina 646. Véanse tambien Párrafos 982 i 983). No hai duda alguna, en consecuencia, que, despues de la sentencia del Tribunal de Washington, el crédito de Alsop i Compañia no puede ser patrocinado diplomáticamente contra el Gobierno de Chile, debiendo los interesados ejercitar, en forma amistosa o ante las autoridades judiciales chilenas, los derechos que creyeren tener contra nuestro pais. Este es el procedimiento establecido por el Gobierno de Estados Unidos en numerosas casos, ya como reclamante ya como reclamado, cuando ha dirigido a sus Agentes la recomendacion de que, cada vez que se trata de hechos de esta naturaleza, respeten las leyes i autoridades del pais respectivo, (Véase Moore: op. cit., Tomo VI, Párrafo 912, Pájina 248-249; Párrafo 971, Pájina 909-910; Párrafo 986 i 987, Pájjinas 651-677. Véase tambien Párrafo 995, Pájina 705). Solamente en el caso de que una reclamacion no sea atendida sin causas justificadas o en el de denegársele justicia, puede el Gobierno del pais a que pertenecen los interesados reclamar por la via diplomática.

El Gobierno de Bolivia aprecia del mismo modo que el mio la improcedencia de la proteccion diplomática que alega el Gobierno de Estados Unidos. La última Memoria presentada al Congreso

de Bolivia en 1908 por el señor Ministro de Relaciones Exteriores, Don Claudio Pinilla, dice así en sus páginas 16 i siguientes: “ * * * En efecto, el Gobierno de Bolivia se halla acorde con el de Chile en considerar que la Cancilleria de los Estados Unidos no tiene facultad, dentro de los principios del Derecho Internacional, para apoyar diplomáticamente a los acreedores señores Alsop i Compañia, por las siguientes razones:

1°—Por que la suma destinada al pago de dicho crédito se halla retenida por orden judicial, con motivo del juicio de nulidad del contrato instaurado contra los señores Alsop i Compañia ante los Tribunales chilenos, por una heredera del señor Pedro Lopez Gama, no siendo en este caso dable proceder diplomáticamente, alterando las leyes jurisdiccionales de un país i en perjuicio de derechos particulares.

2°—Por que la firma social Alsop i Compañia constituye una personalidad moral chilena segun lo declara la sentencia del Tribunal Arbitral Chileno-Americano reunido en Washington el año 1900, que en uno de los considerandos de su fallo, espresa:

“Que Alsop i Compañia es una sociedad, en comandita simple debidamente formada, incorporada i registrada con arreglo a la lei de Chile, con todas las formalidades de dicha lei i domiciliada en Chile.

“Por consiguiente, siendo la firma social de Alsop i Compañia una personalidad jurídica chilena, mui distinta de la personalidad de los individuos que la componen, se halla sujeta a las leyes chilenas, sin que el Gobierno de los Estados Unidos de América pueda prestarle su amparo por el hecho de que los individuos que componen esa Sociedad sean sus nacionales, pues no se puede destruir el carácter jurídico que tienen los señores Alsop i Compañia dentro de las leyes chilenas.”^a

El Presidente de Bolivia, a su vez, en el Mensaje presentado al Congreso Nacional de 1908, se espresa de este modo:

“Por lo demas, suscrito como está el Protocolo destinado a arreglar la forma de pago de las garantias de nuestros ferrocarriles interiores; practicada la delimitacion de la frontera i celebrado el arreglo para el canje de unos territorios cuyos propietarios indíjenas deseaban continuar en la jurisdiccion de Bolivia, sólo resta que el Honorable Congreso preste su aprobacion a estos actos, para que el Tratado de Paz se vea cumplida en todos sus partes, inclusa la de la cancelacion de los créditos en él enumerados, pues, tales créditos han sido ya pagados, cual constá de los finiquitos existentes en el Archivo de nuestra Cancilleria, con escepcion del de Alsop, *que por ser firma chilena, no puede obrar sino dentro i conforme a las leyes de Chile, ni recibir otra proteccion diplomatica que la que le correspondiera a la Cancilleria de este país*, segun lo ha declarado, conforme a las

^a See note, p. 214, infra

reglas i principios del Derecho Internacional, el Tribunal Arbitral de Washington en su sentencia de 8 de febrero de 1901. Dicho crédito será cancelado cuando sus representantes quieran recojer los fondos depositados para su pago i últimamente secuestrados por órden judicial, con motivo de la demanda iniciada contra Alsop por la heredera de Lopez Gama.

A pesar de la fuerza incontrovertible de los antecedentes espuestos, el Gobierno de Vuestra Excelencia estima que la sentencia del Tribunal de Washington no le impide prestar proteccion diplomática a la firma de Alsop i Compañía.

Antes de suponer que el Gobierno de Vuestra Excelencia no se manifieste dispuesto a acatar esa sentencia, me pongo en el caso de admitir que no le atribuya el alcance que le dá mi Gobierno i el de Bolivia, sino otro diverso. En tal evento, este desacuerdo que es de mero carácter jurídico puede ser satisfactoriamente resuelto por el arbitraje.

Me es sensible manifestar a Vuestra Excelencia que, aun colocándonos en el terreno meramente hipotético de que la sentencia del Tribunal de Washington no tuviera valor alguno, no le seria posible a este Gobierno admitir las razones aducidas por el de Vuestra Excelencia para amparar diplomáticamente la citada reclamacion.

Las alegaciones de Vuestra Excelencia se encuentran relacionadas con las relativas a la obligacion que, segun la Cancilleria de Washington, tiene mi pais de cancelar en su totalidad el crédito de Alsop i Compañía. Las examinaré conjuntamente.

Una de esas razones es que el Gobierno de Chile por haber ocupado, temporalmente primero, i adquirido despues de modo definitivo, el territorio en que se encuentran los bienes que constituyen dicha garantia, es, por esta circunstancia, responsable del citado crédito como lo era el Gobierno de Bolivia.

Estas seguridades, en conformidad al convenio del reclamante con el Gobierno boliviano de fecha 26 de diciembre de 1876, eran de dos clases; afectacion de una parte de las entradas de la Aduana de Arica que percibia Bolivia en virtud del convenio aduanero suscrito por el Perú, i un tanto por ciento del producto neto de algunas minas de plata pertenecientes a Bolivia i situadas en el departamento litoral.

Las garantias de que se trata no tienen en manera alguna el carácter de *derecho real*; por ellas lo único que se hizo fué afectar el producto de ciertos bienes al pago del crédito.

En la comunicacion de este Departamento a la Legacion del cargo de Vuestra Excelencia, de fecha 9 de marzo de 1908, se

manifiesta que en conformidad no sólo a la opinion de los publicistas sino principalmente a resoluciones de tribunales nacionales e internacionales, las garantías que tienen la naturaleza de las constituidas a favor del crédito de Alsop i Compañía, no asumen el carácter de gravámenes que deban ser respetados por el Estado anexo ni tienen importancia alguna internacional.

Permítame Vuestra Excelencia que consigne aquí las principales resoluciones judiciales a que acabo de hacer alusion.

En la sentencia pronunciada el 18 de abril de 1877 por la Corte Suprema de Justicia de Inglaterra, en el litijio Twycross contra Dreyfus, se declara que es imposible considerar seriamente como un derecho de hipoteca o prenda el que otorgó el Gobierno del Perú, al dar en garantía sus depósitos de guano.

En la sentencia que, en 25 de junio de 1877, espidió la Corte de Apelaciones de Paris en la causa de Domis i consocios contra Dreyfus Hermanos i Compañía, se encuentra el siguiente considerando:

“Considerando que, a pesar de las espresiones, a menudo empleadas, de compromiso, afectacion, asignacion, hipoteca jeneral i especial, consta qua el Gobierno peruano no ha hecho mas que afectar de une manera jeneral, como un deudor ordinario, al servicio de cada uno de sus empréstitos, las entradas i facultades que él mismo designa, sin escluir las de cualquiera otra naturaleza que pudieran pertenecerle.”

La Corte de Casacion, con fecha 14 de agosto de 1878, declaró inadmisibile el recurso interpuesto contra aquella sentencia, (Sirey, año 1878, I, Pájinas 345 i siguientes)

La Corte de Apelaciones de Bruselas, en sentencia dictada el 4 de agosto de 1877, se espresa de este modo:

“Considerando que las obligaciones contraidas per el Gobierno del Perú, segun el artículo 6° de la obligacion jeneral, en el cual, despues de indicar todas sus entradas, declara, bajo la fé nacional, que obliga los productos netos provenientes de las remesas de guano, no son evidentemente otra cosa que compromisos de honor, como lo decidió la Corte Suprema de Inglaterra en 18 de abril de 1877.”

El Tribunal Arbitral Franco-Chileno que funcionó en Lausanne en conformidad al decreto chileno de 9 de febrero de 1882 i a los artículos IV i VI del Pacto de Ancon, i cuyo cometido era distribuir el 50% del producto neto de la venta de un millon de toneladas de guano entre los acreedores del Perú, cuyos títulos de créditos estaban sustentados con el guano, dió completa razon a nuestro pais con respeto al valor i alcance que éste atribuía a esa garantía. En el considerando D. No. 2, de su sentencia de 5 de julio de 1901 espedida en Rapperschwyl, declara que la existencia del derecho

real que pretenden tener los acreedores del Perú garantido con el guano, “no está confirmado ni por la doctrina ni por la practica del Derecho Internacional: i què dicha pretension se apoya en una inexacta apreciacion jurídica de las relaciones existentes entre el Estado prestario i los particulares tomadores del empréstito”. I mas adelante agrega que en el testo de la obligacion jeneral del empréstito de 1870, “el término muchas veces repetido de *hipoteca* está manifiestamente empleado de una manera impropia, en el sentido jeneral de *compromiso* o de *garantia*” i que, “la pretendida *hipoteca* de los tenedores de títulos de 1870, consistia únicamente en la obligacion adquirida por el Gobierno de afectar los productos de la esportacion del guano al servicio de la deuda”. I en el No. 3 del mismo considerando D declara “que queda establecida que, en el momento de la ocupacion chilena, los yacimientos de guano del Perú no estaban gravados con ningun derecho real en provecho de los acreedores de este Estado.” En fin, en el mismo número i considerando, constaba tambien que el gobierno françes, en comunicacion dirigida el 12 de marzo de 1881 al Ministro de Chile en Paris, participaba respeto de dicha materia de la manera de ver de Chile.

El Gobierno de Vuestra Excelencia, en un caso reciente i de gran importancia internacional, ha aplicado la misma doctrina que se consigna en las resoluciones judiciales que acabo de transcribir. En las Conferencias celebradas en Paris en 1898 para fijar las condiciones de paz entre Estados Unidos i España, los Comisionados del Gobierno de Vuestra Excelencia. se negaron a aceptar responsabilidad por parte alguna de la deuda española que gravaba a Cuba o Puerto Rico, aunque tuviera el caracter hipotecaria, (Véase Moore: op. cit., Tomo I, Párrafo 97, Páginas 351-385).

No es esto tan solo. Las seguridades constituidas por el Gobierno de Bolivia, en favor del crédito Alsop i Compañia, son tanto ménos dignas de consideracion del Gobierno de mi pais, cuanto que la mayor parte de ellas habia sido constituida sobre bienes situados en territorio chileno, que mi pais reivindicó de Bolivia con motivo de la guerra del Pacífico (mínas de Caracoles) i el resto sobre bienes cuyo producto pasaba en sus tres cuartas partes a Bolivia en virtud del Pacto de Tregua (derecho sobre ciertas entradas de la Aduana de Arica en que Bolivia tenia interes), destinándose la otra cuarta parte al mantenimiento del mismo servicio aduanero. De manera, pues, que las garantias del crédito de Alsop, una fué constituida por Bolivia en territorio que era en realidad chileno, i la otra ha sido usufrutuada casi en su totalidad por el mismo pais desde 1884.

Dados estos antecedentes, fácil es establecer que a Chile no afecta ninguna responsabilidad por causa de las garantías que el Gobierno de Bolivia constituyó a favor del crédito de Alsop i Compañía.

Nuevamente, señor Ministro, nos encontramos en presencia de cuestiones de derecho puro en que las apreciaciones de las dos Cancillerías son contradictorias, i cuyo controversia puede terminar por decision de una autoridad imparcial que establezca si la tésis sustentada por el Gobierno de Vuestra Excelencia o la defendida por el de mi país, es la que se ajusta mas a la doctrina i práctica comunmente admitida en el Derecho Internacional.

Estima este Departamento que no tiene mas fuerza jurídica que el anterior, el segundo motivo espresado por Vuestra Excelencia para sostener que mi país está obligado a pagar en su integridad el crédito de Alsop i Compañía. Paso a ocuparme de él.

Vuestra Excelencia, en su comunicacion de 17 de setiembre, reconoce que el Gobierno de Chile en los proyectos de tratados de paz con Bolivia i en otros actos de esta Cancillería, se ha manifestado dispuesto a cancelar el crédito de Alsop i Compañía. Me complazco en reconocer la efectividad de este aserto, agregando que, al proceder mi Gobierno en esta forma, lo hacia, no porque reconociera que estaba obligada a pagar ese crédito, sinó por especial deferencia al Gobierno de Vuestra Excelencia, i por cuenta de Bolivia.

A pesar de que Chile, haciendo uso de su derecho, resistió tenazmente ante el Tribunal Arbitral de Washington que la firma social de Alsop se presentara en su contra investida del carácter de acreedor norte-americano, no por eso dejó de estar siempre dispuesto a tomar en consideracion este crédito que no le afectaba, los acreedores i el Gobierno de Vuestra Excelencia habian manifestado especial interes de que Chile se hiciera cargo de él, incluyéndolo entre los créditos que estaba dispuesto a pagar, por cuenta de Bolivia, hasta cierta suma i como parte de la indemnizacion que daría a ese país por las cesiones de territorio.

Mi Gobierno nunca ha aceptado, pues, el satisfacer ese crédito en su totalidad, limitándose a hacer al respecto las proposiciones que ha estimado mas oportunas. Así se esplica porqué, en los diversos proyectos de tratados de paz con Bolivia, aparece siempre el crédito de Alsop i Compañía con cuantías diferentes. Chile no tenia motivo alguno para asignarle invariablemente en esos proyectos una cantidad determinada; lo único que ha admitido

fué que ese crédito se comprendiera entre aquellos que él tomaba a su cargo, dentro de ciertos límites, en sus arreglos con Bolivia.

En el Tratado de Paz de 1904, el Gobierno de Chile destinó la cantidad de dos millones de pesos oro de dieciocho peniques para pagar con ella, a prorrata, los créditos que en dicho Tratado se indican, entre los cuales se incluye el de Alsop i Compañía. Ningun motivo atendible podia justificar el que ese crédito quedara en una situacion privilegiada, con respecto a los otros, i se pagara íntegramente o por una suma mayor que la que le correspondia en el prorrateo.

Lo mismo debe decirse de las diversas promesas u ofertas hechas por mi Gobierno al de Vuestra Excelencia para terminar este reclamo. A este objeto mi pais, sin hacer mérito de la sentencia del Tribunal Arbitral de 1901, ha aceptada siempre gustoso los buenos oficios del de Vuestra Excelencia para procurar un advenimiento con Alsop i Compañía; pero siempre ha protestado tambien que, desconociéndose el alcance de esa sentencia, se pretenda patrocinar por la via diplomática esta firma chilena. Todas las cuestiones habidas al respecto entre ambos Gobiernos no han tenido nunca, en concepto del mio, mas alcance que el de diligencias amigables.

Los ofrecimientos hechos por mi Gobierno en repetidas ocasiones para cancelar el crédito de Alsop, en la forma en que siempre ha entendido tomarlo a su cargo, no han sido jamas de pagarlo íntegramente, sino de satisfacerlo con una cantidad menor o con la que se indica en el Tratado de Paz con Bolivia. El Gobierno de Vuestra Excelencia nunca ha aceptado esos ofrecimientos. En consecuencia, esas diversas proposiciones unilaterales no pueden tener el carácter de obligacion contractual que Vuestra Excelencia les atribuye. Es imposible, pues, considerar esas promesas, constantemente rechazadas, como fuente de obligaciones de carácter internacional o civil.

La declaracion que el Ajente de Chile hizo ante el Tribunal Arbitral de Washington al impugnar la nacionalidad de Alsop i Compañía i a la que el Gobierno de Vuestra Excelencia, con razon, dá tanta importancia, es terminante en el sentido que dejo indicado.

Esa declaracion es del tenor siguiente, segun constante de la sentencia del Tribunal:

“Se declara que esta reclamacion (la de Alsop i Compañía) está comprendida en las obligaciones que el Gobierno de Chile se compromete a pagar por cuenta de Bolivia. El Gobierno de Chile siempre la ha considerado, i todavia la considera, como una obliga-

cion por parte de Bolivia hacia el reclamante; i a fin de inducir al Gobierno de Bolivia para que firme el Tratado definitivo de paz que se ha estado negociando por muchos años, el Gobierno de Chile promete satisfacer ésta i otras reclamaciones como una parte del pago o consideracion que ofrece a Bolivia en recompensa por la firma del Tratado. Esta ha sido siempre la actitud del Gobierno de Chile i es su actitud en la actualidad, i si Bolivia firma el Tratado, la reclamacion de Alsop i Compañía, así como las otras reclamaciones mencionadas, se pagarán prontamente *con arreglo al compromiso del Tratado*, como una exencion a Bolivia de las obligaciones que aquel Gobierno ha contraido i por cuenta de Bolivia.”

Chile no ha desatendido, ni ménos eludido, su promesa a la Cancilleria de Washington de contemplar debidamente, en el Tratado de Paz con Bolivia, el crédito de Alsop i Compañía; por la inversa, ha hecho cumplido honor a su palabra, i desde que se firmó ese Tratado ha puesto en conocimiento del Gobierno de Vuestra Excelencia que tiene a disposicion de los reclamantes la suma que por dicho Tratado les corresponde.

Estimo señor Ministro, que en obsequio de la brevedad, debo omitir otras consideraciones que colocan a este Departamento en el caso de no poder aceptar las afirmaciones del de Vuestra Excelencia de que el Gobierno de Chile está personalmente obligado a satisfacer en su totalidad el crédito de Alsop i Compañía. Me refiero a este respecto a la citada comunicacion de fecha 9 de marzo del año próximo pasado.

Permítame, igualmente, Excelentísimo señor, que levante un cargo o mas bien desvanezca un equívoco, contenido en la comunicacion de Vuestra Excelencia, relativo a que esta Cancilleria ha ofrecido a la de Washington, en repetidas ocasiones, sin enviarlos jamas, documentos que justifican la actitud que ha asumido en este asunto. Esos documentos no se refieren, como un pasaje de la nota de Vuestra Excelencia parece indicarlo, a poner de manifiesto que el crédito de Alsop i Compañía no sea efectivo, sino a demostrar, como se indica en otro pasaje de la misma comunicacion, que nuestro Gobierno no está jurídica ni convencionalmente obligado a pagar la totalidad del citado crédito.

Todos los documentos a que se refiere la comunicacion de este Departamento de 9 de marzo de 1908 i la presente nota, son antecedentes que justifican de manera mui amplia, no sólo que mi Gobierno no tiene tal obligacion jurídica ni convencional, sino que ha sido por demas deferente con el de Vuestra Excelencia i por demas equitativo con los reclamantes, allanándose a pagar inmediatamente la suma que al crédito de Alsop i Compañía le corresponde por el Tratado de Paz chileno-boliviano de 1904, i (que)

los otros acreedores, cuyos créditos han sido también contemplados en ese Tratado, han aceptado gustosos la parte que les corresponde, a pesar de tener igual o mejor derecho que aquella firma social.

Este Departamento siempre ha confiado que esos antecedentes llevarían a la Cancillería de Washington la convicción de la hidalguía de nuestros procedimientos i que, como Vuestra Excelencia lo dice con tanta exactitud, esa Cancillería, impuesta de ellos, no insistiría en su reclamación.

Me halaga, señor Ministro, la idea de haber llevado, con esta comunicación, al ánimo imparcial i justiciero del Departamento de Estado, la convicción de la justicia de nuestra causa i la sinceridad con que la defendemos.

En todo caso, lo que aparece de manifiesto, con una evidencia indiscutible, es que hai en esta materia, entre los dos Gobiernos, una diverjencia de vista en cuestiones de hecho i de derecho que es de carácter esencialmente jurídico, que no tiene nada de político ni es relativa a intereses vitales ni al honor nacional i que, en consecuencia, admite la solución satisfactoria del arbitraje, como tuvo oportunidad de proponerlo a esa Legación mi honorable antecesor, Excmo. señor Puga Borne.

El arbitraje debe ser amplio i absoluto como corresponde a lealtad i buena fé con que ambas partes sostienen sus pretensiones i, en consecuencia, deben resolver efectivamente todas las cuestiones que nos dividen en esta materia.

Al efecto, me permito someter a la consideración de Vuestra Excelencia el siguiente proyecto de Protocolo que, en el fondo, está de acuerdo con el que Vuestra Excelencia se ha servido comunicar a este Departamento en su nota de fecha 17 de setiembre del presente año:

El Gobierno de la República de Chile i el de los Estados Unidos de América, no habiendo llegado a determinar la situación en que se encuentran respectivamente colocados en orden a la reclamación que deriva del crédito de la firma Alsop i Compañía, (como subrogataria de los derechos de don Pedro Lopez Gama) contra el Gobierno de Bolivia, cuyo pago el Gobierno de Chile tomó a su cargo en conformidad al Tratado de Paz i Amistad chileno-boliviano de 20 de Octubre de 1904; han convenido en someter la cuestión a un tribunal de arbitraje que se organizará conforme a las reglas jenerales establecidas en la Convención relativa al Arreglo Pacífico de los Conflictos Internacionales, suscrita en La Haya, i a las que se establecen en este Convenio, i han designado como sus Plenipotenciarios, a saber:

El Presidente de la República de Chile, al Ministro de Relaciones Exteriores, don Agustín Edwards, i

El Presidente de los Estados Unidos de América, al señor Thomas C. Dawson, Enviado Extraordinario i Ministro Plenipotenciario de dicho país en Chile;

Los cuales Plenipotenciarios, despues de comunicarse sus respectivos poderes, que encontraron bastantes, han acordado las estipulaciones contenidas en los siguientes artículos:

ARTÍCULO I.

El Tribunal Arbitral funcionará en La Haya i se compondrá de dos jueces que nombrarán respectivamente las Altas Partes Contratantes dentro de los tres meses siguientes a la promulgacion de este Convenio, i de un tercero designado por ellos de comun acuerdo.

Si treinta dias despues de la fecha de su primera reunion dicho acuerdo no se produce, el tercer juez será designado conjuntamente por su Majestad Británica i el Presidente de la República francesa.

Los tres jueces deberán ser Miembros de la Corte Permanente de Arbitraje de La Haya, pero no podrán ser designados para formar parte de este Tribunal los nacionales de las Altas Partes en litijio.

ARTÍCULO II.

Las Altas Partes Contratantes se notificarán recíprocamente la designacion de los dos jueces i ella será comunicada tambien a la Oficina Internacional de la Corte Permanente de La Haya dentro de los tres meses siguientes a la promulgacion de este Convenio. Los dos jueces designados se reunirán en dicha ciudad dentro de los sesenta dias siguientes a dicha notificacion i procederán a designar el tercero.

La designacion de éste por cualquiera de los medios estipulados en el Artículo precedente será notificada a las Altas Partes Contratantes i a la Oficina Internacional de la Corte Permanente de Arbitraje de La Haya, en el plazo de treinta dias.

En caso de fallecimiento, inhabilitacion temporal o definitiva o de negativa de ejercer sus funciones de cualquiera de los tres jueces, la vacante se llenará dentro de los treinta dias despues de producida, siguiéndose el mismo procedimiento i observándose las mismas reglas adoptadas para la designacion primitiva.

ARTÍCULO III.

Noventa dias despues de notificadas las Altas Partes Contratantes de la designacion del tercer juez, cada Gobierno presentará a la Oficina Internacional cuatro copias de su alegato que ésta distribuirá entre los jueces i las Altas Partes en litijio, representadas por sus respectivas Legaciones en La Haya.

Dentro de los cuatro meses siguientes a dicha presentacion, cada Gobierno entregará a la Oficina Internacional cuatro copias de su contestacion, i éste las distribuirá en la misma forma que los alegatos, a la espiracion de dicho plazo.

En la contestacion sólo se aducirán argumentos i antecedentes para contestar los que recíprocamente hayan hecho valer las Altas Partes Contratantes en sus respectivos alegatos.

El periodo de prueba espirará con la presentacion de la réplica, salvo que el Tribunal resuelva permitir a cualquiera de los Gobiernos

o requerir de ellos el suministro de cuantas pruebas adicionales o informaciones estime conducentes a hacer justicia.

El Tribunal fijará el plazo en que tales pruebas adicionales e informaciones deban presentarse.

El Tribunal tendrá plena libertad de considerar, a fin de formar su juicio, todos los documentos e informaciones que estime necesarios ó útiles a este objeto, ya sea que hayan sido o no sometidos a su conocimiento por las Altas Partes Contratantes i sin sujecion a las reglas jurídicas de la prueba.

ARTÍCULO IV.

Dentro de los treinta dias siguientes a la distribucion de la contestacion, los jueces se reunirán en La Haya i procederán a la constitucion del Tribunal Arbitral, estableciendo las reglas i formalidades a que hayan de sujetar sus procedimientos.

Actuará como Presidente del Tribunal el tercer juez i bastará la simple mayoría para dictar resolucion en cualquiera de los puntos sometidos a su conocimiento.

ARTÍCULO V.

Las Altas Partes Contratantes podrán usar el idioma ingles o castellano.

El Tribunal oirá a un Ajente de cada uno de los Gobiernos, i la defensa podrá hacerse por escrito o verbalmente. Oirá, asimismo, a los Consultores que cada Gobierno quiera designar; pero ni aquellos ni estos podrán ser Miembros de la Corte Permanente de Arbitraje de La Haya.

ARTÍCULO VI.

El Tribunal resolverá la cuestion tomando en consideracion todas las circunstancias que han rodeado la controversia, los procedimientos i resoluciones del Tribunal Arbitral chileno-americano que funcionó en Washington en 1894 i en 1900, los diversos Tratados, Protocolos i documentos canjeados entre los Gobiernos de Chile i Bolivia i que de algun modo la afecten, la correspondencia diplomática cambiada entre el Gobierno de Chile i el de los Estados Unidos de América i de Bolivia respectivamente i cualquier otro antecedente, documento o informacion suministrados por alguna de las Altas Partes Contratantes o pedido por el Tribunal.

Las resoluciones del Tribunal serán definitivas i obligatorias para las Altas Partes Contratantes, i se dictarán dentro del plazo de sesenta dias contados desde la fecha de su constitucion, salvo que éste prorrogue dicho plazo a fin de permitir o requerir la presentacion de nuevas pruebas o de llenar una vacante que se produzca en el Tribunal.

ARTÍCULO VII.

El Tribunal Arbitral llevará un registro de las tramitaciones i actas de los procedimientos i podrá nombrar un Secretario versado en los idiomas castellano e ingles i los demas empleados que juzgue necesarios para el despacho de la cuestion sometida a su conocimiento i fallo.

ARTÍCULO VIII.

La cantidad que pueda resultar adeudada por el Gobierno de Chile se computará por el Tribunal Arbitral en moneda chilena de oro, i éste determinará asimismo el plazo i las condiciones de pago, previa consulta a los representantes de ambos Gobiernos.

ARTÍCULO IX.

Los gastos que demande el funcionamiento del Tribunal Arbitral serán cubiertas por mitad entre las Altas Partes Contratantes, i dentro de los treinta días siguientes a la constitucion del Tribunal, cada Gobierno depositará a la órden de la Oficina Internacional la suma de quince mil francos a cuenta de dichos gastos. Periódicamente depositará despues de la misma manera las cantidades que demande el funcionamiento del Tribunal.

ARTÍCULO X.

Fuera de las estipulaciones de este Convenio, los procedimientos arbitrales se ajustarán a lo prescrito por la Convencion para el Arreglo Pacífico de los Conflictos Internacionales, suscrita en La Haya el 18 de octubre de 1907, a la cual estan adjeridas las Altas Partes Contratantes, i especialmente a lo dispuesto en el Título IV, Capítulo 2º, de la citada Convencion.

En fé de lo cual, los infrascritos Plenipotenciarios de Chile i de los Estados Unidos de América firman i sellan con sus respectivos sellos i por duplicado el presente Convenio en la ciudad de Santiago, a días del mes de de mil novecientos nueve.

Aprovecho esta oportunidad para reiterar a Vuestra Excelencia las seguridades de mi distinguida consideracion.

AGUSTÍN EDWARDS.

[Translation.]

REPUBLIC OF CHILE,
MINISTRY OF FOREIGN AFFAIRS,

Santiago, October 15, 1909.

MR. MINISTER: Your note of September 17, 1909 has been received at this office. In it you state that, in compliance with instructions received, you must again call the attention of the Government of Chile to the claim of Alsop & Co., and that you hope that this Government, animated by a spirit of sincere justice, will accept one of the two propositions that you present, in the name of your Government, in order to put an end to this claim which is a disturbing factor in the good relations between the two Governments.

To justify these propositions, in compliance with instructions from the Department of State, you state the facts and rights which,

in the estimation of your Government, support the claim of Alsop & Co. and establish the obligation of the Government of Chile to settle it as soon as possible.

My honorable predecessor, the Honorable Federico Puga Borne, sent a note, dated March 9, 1908, to your predecessor, the Honorable John Hicks, in which he set out the antecedents and cited different cases and diplomatic precedents which justified the attitude of the Government of Chile in denying her responsibility in the Alsop claim in the terms in which your Government presented it. And because a legal claim and one merely pecuniary was in no way a hindrance to the good and friendly relations that my country had cultivated with yours and sincerely desired to continue cultivating, Señor Puga Borne, in the above mentioned note of March 9, proposed that, on account of the different views of the two Governments, the solution of the Alsop claim should be submitted to arbitration.

It is indeed gratifying to this Department to know that your Government has accepted the proposition to have the question decided by arbitration.

Since this Government is striving to maintain the traditional cordial relations that have always existed between Chile and the United States, I should inform you, in answer to your note of September 17th, that in the opinion of the undersigned, the best manner of proving that the discussion about the Alsop claim can be settled by arbitration, is to review rapidly the estimation that our Governments have of the said claim, according to the note of this Ministry of March 9, 1908, and the notes of your Legation of June 27, 1907 and September 17, of this year.

I do not believe it necessary, at present, to discuss the antecedents of the claim of Alsop & Co. since this point is very widely known and does not in any way directly affect the controversy that has arisen.

On the contrary, I judge that there is manifest interest in explaining the reasons that your Government sets up for supporting, through diplomatic channels, a credit of private parties against Bolivia, and for claiming that our country is obliged to pay it, for these are the fundamental points from which the difference arises between the two Governments.

Your Government maintains that the representatives of the firm of Alsop & Co. are citizens of the United States, and consequently have a right to the diplomatic protection of that country.

The Department of State believes that the time has come to offer this protection, basing it on the fact that the Government of Chile, on taking possession of the territory of Bolivia, injured by the application of the Chilean law in that region, the guarantees that the Government of Bolivia had given in favor of the credit of Alsop & Co. This firm, you state, took measures before the Government and Courts of Chile in order to save its rights, and since they did not receive satisfaction appealed to the Department, which after examining the affair, declared that the proceeding of the Government and Courts of Chile was contrary to the principles of International Law and amounted to confiscation of property.

According to your Government, the obligation of my country to cancel entirely the credit of Alsop & Co., has a double foundation. On the one hand, the fact that the guarantee which the Government of Bolivia had given by the agreement of December, 26, 1876, to insure the said credit, became vain, because the property on which they were given came into possession of Chile as a result of the war with Bolivia, and your Government believes that in conformity to the general principles of International Law our country should respect those guarantees; and on the other hand, the fact that the Government of Chile has recognized on repeated occasions the obligation that it has to pay this sum, principally in the projects of protocols concluded between Chile and Bolivia, in repeated promises made by my country to your Government that this credit would be duly dealt with, and in the declaration of the Agent of the Chilean Government before the Second Arbitral Commission in Washington in 1900 to consider the claims that citizens of each country might have against the Government of the other.

From all these antecedents Your Excellency concludes that the Government of the United States cannot understand the motive of my Government in refusing to pay the entire sum of the credit of Alsop & Co.

This Department views the claim in a different light altogether.

A short time ago, and as Your Excellency remembers, by the Chilean-North-American Convention of August 7, 1892, an Arbitral Tribunal was formed in Washington. The liquidators of Alsop & Co. appeared before that Tribunal, asking that it declare that the Government of Chile was obliged to cancel entirely the amount of the credit. The Arbitral Commission declared that

for lack of time it could not decide upon the claim. By the Convention of May 24, 1897 it was agreed to form a Second Arbitral Tribunal for the purpose of settling the claims left over from the First. The liquidators of Alsop & Co. again presented themselves. The Agent for Chile maintained that the Tribunal could not settle the claim since it was not a United States firm but a Chilean entity (*persona juridica chilena*), because it had been formed and was domiciled in Valparaiso and was registered in that city.

The Tribunal, by its decision of February 8, 1901, declared that the firm of Alsop & Co. was a Chilean commercial partnership and that the claimants had a right to the diplomatic protection of the Government of Chile. And not only in this case did the Arbitral Commission declare that the firm of Alsop & Co. had the nationality of our country. The claim No. 26 presented by the said firm, together with No. 31, were rejected for the same reason.

The observations on this point contained in the note of the Department dated March 9, 1908, excuse me from entering into fuller details. You will only allow me to insist that the declaration contained in the decision of the Arbitral Tribunal of Washington is in perfect accord with the practice followed by the Department of State, by virtue of which a society has, for the purpose of diplomatic protection, the nationality of the country in which it was formed. (See Moore: "A Digest of International Law," Washington, 1906, Vol. VI, § 984, page 641, and § 985, page 646. See also paragraphs 982 and 983.)

Consequently, there is no doubt that, after the decision of the Tribunal of Washington, the credit of Alsop & Co. cannot be taken up diplomatically against the Government of Chile. The interested parties should present, in a friendly manner, the rights they believe themselves to have against our country, or bring them before the Chilean judicial authorities. This is the form of procedure established by International Law and the one recognized by the Government of the United States in various cases, sometimes in pressing claims and sometimes in meeting them, where it has recommended its Agents, in treating the facts of this kind to respect the laws and authority of the respective countries. (See Moore; work cited; Vol. VI § 912, page 248-249; § 971, page 909-910; § 986 and 987 page 651-677. See also § 995, page 705.) Only in case where a claim is, without justifiable reasons, not

attended to, or of denial of justice, can the Government of the country to which the interested parties belong make a claim through diplomatic channels.

The Government of Bolivia regards in the same light as my own the futility of the protection alleged by the Government of the United States. The last memorial presented to the Congress of Bolivia in 1908 by the Minister of Foreign Affairs, Don Claudio Pinilla, on pages 16 and those following, says as follows: "In fact the Government of Bolivia agrees with that of Chile in considering that the Foreign Office of the United States has not the right, according to the principles of International Law, to support diplomatically the creditors, Messrs. Alsop & Co., for the following reasons:

1. Because the sum destined to the payment of the said credit was retained by a judicial order by reason of the suit to nullify the contract instituted against Messrs. Alsop & Co. before Chilean Courts, by an heiress of Señor Pedro Lopez Gama, it not being practicable in this case to proceed diplomatically, disturbing the jurisdictional laws of a country and in prejudice of private rights.

2. Because the firm of Alsop & Co. constitutes a moral Chilean personality, as the decision of the Chilean-American Arbitral Tribunal convened in Washington in the year 1900 states, which in one of the considerations of its decision, says:

"that Alsop & Co. is a Society *en commandita Simple* duly formed, incorporated and registered in accordance with the law of Chile and with all the formalities of the said law and domiciled in Chile."

"Consequently, the social firm of Alsop & Co. being a juridical Chilean personality, quite distinct from the personality of its members, is subject to the laws of Chile, the Government of the United States of America not being able to lend it its support in virtue of the fact that the individuals who compose this Society are its citizens, since it cannot destroy the juridical character which Messrs. Alsop & Co. hold under the laws of Chile."^a

^a The exact text of this decision, beginning with the paragraph printed, as signed by the two commissioners delivering the majority decision, reads as follows:

"That Alsop & Company is a society '*en comandita simple*,' duly created, incorporated, and registered under the Chilean law with all the formalities of that law, and domiciled in Chile;

"That a society '*en comandita simple*' (precisely like a society anonima) forms a juridical person distinct from the members considered individually;

"That under the recognized principles of international law, a juridical or moral person borrows nationality of the State or legislature from which it has received its existence;

"That under the recognized principles of civil law, as applied to commercial societies, such societies continue to exist during liquidation;

The President of Bolivia, in his turn, in the message delivered to the National Congress of 1908, expressed himself as follows:

“As regards the rest, signed as has been the Protocol which looks to the adjustment of the form of the payment of the guarantees of our inland railroads; the frontier having been marked and the adjustment concluded for the exchange of some territories whose native proprietors desired to continue in the jurisdiction of Bolivia, there only remains that the honorable Congress should give its approval to these acts in order that the treaty of peace shall be fulfilled in all its parts, including the cancellation of the credits therein enumerated, since such credits have already been paid as appears from the acquittances existing in the archives of our State Department, with the exception of that of Alsop, *which, because it is a Chilean firm, cannot move except within and in conformity with the laws of Chile nor receive other diplomatic protection than that which belongs to the Department of Foreign Relations of that country*, as in conformity with the rules and principles of international law the arbitral tribunal declared in its decision of February 8, 1901. Said credit will be cancelled when its representatives desire to receive the funds deposited for its payment and lately attached by judicial order because of a suit instituted against Alsop by an heir of Lopez Gama.”

“That Alsop & Company in liquidation is still Alsop & Company;

“That Alsop & Company being a Chilean society is a citizen of Chile;

“And, therefore, that under Article 1 of the Convention of 1892, this Commission has no jurisdiction over this claim.

“By this conclusion it is not denied that certain cases may arise (like the Cerruti case) in which redress may justly be granted by means of diplomatic intervention to an individual member of a society for injury to the partnership property. The demurrer is sustained wholly upon the ground that Alsop & Company, in liquidation, being a citizen of Chile, this Commission, under Article 1 of the Convention of 1892, has no jurisdiction to entertain the claim. The case is dismissed, therefore, without prejudice, however, to any rights which the claimant, or claimants, or Alsop & Company, or its liquidator may have, either by diplomatic intervention or before the Government of Chile, or the courts of Chile. Nor are the merits of the claim in any way prejudiced by this decision. According to the brief of the Honorable Agent of Chile, it is declared that this claim

“Is among the liabilities that the Government of Chile engage to pay for the account of Bolivia. * * * The Chilean Government has always regarded it, and does still regard it, as a liability on the part of Bolivia towards the claimant; and in order to induce the Bolivian government to sign the definite treaty of peace, which has been negotiated for many years, the Chilean Government offers to meet this and other claims as part of the payment or consideration which it offers to Bolivia for the signature of the treaty. This has always been the position of the Chilean Government, and is its position to-day, and if Bolivia signs the treaty, the claim of Alsop & Company, as well as the other claims mentioned, will be promptly paid under the treaty engagement, as a relief to Bolivia from the liabilities which that government has incurred and for the account of Bolivia.”

“The claimant is, therefore, remitted for relief to the Government of Chile, whose assurances are thus given, and the case is dismissed.

“J. B. PIODA,

“The Commissioner for Switzerland.

“C. MORLA VICUÑA,

“The Commissioner for Chile”

Notwithstanding the incontrovertible force of the aforesaid antecedents, Your Excellency's Government considers that the decision of the Tribunal of Washington does not prevent it from affording diplomatic protection to the firm of Alsop & Co.

Before supposing that the Government of Your Excellency does not show a disposition to respect this decision, I put myself in the position of admitting that it does not attribute to it the interpretation which my Government and that of Bolivia give to it, but a different one. In such an event this disaccord which is merely of a juridical character can be satisfactorily solved by arbitration.

Putting ourselves under the merely hypothetical supposition that the decision of the Tribunal of Washington should not be of any force, I am sorry to point out to Your Excellency that it would not be possible for this Government to admit the reasons alleged by that of Your Excellency for diplomatically supporting the aforesaid claim.

The allegations of Your Excellency are related with those relative to the obligation which, according to the Government at Washington, my country is under to cancel the entire credit of Alsop & Co. I shall examine them jointly.

One of these reasons is that the Government of Chile having occupied, at first temporarily, and afterwards having definitely acquired the territory in which the property constituting the said guarantee was situated, is, because of that, responsible for the said credit just as was the Government of Bolivia.

These securities, according to the agreement of December 26, 1876, between the claimant and the Bolivian Government, were of two classes: a part of the receipts of the Arica Custom house which Bolivia received by virtue of the agreement signed by Peru, and a certain percentage of the proceeds of some silver mines belonging to Bolivia and situated on the coast.

The guarantees in question have in no way the character of actual right (*derecho real*); by them the only act done was to assign the proceeds of certain property to the payment of the credit.

In the note from this Department to your Legation, dated March 9, 1908, it is stated that not only the opinion of public men but principally in the decisions of national and international tribunals, guarantees like those given in favor of Alsop & Co., do not partake of such a mortgage character as to cause them to be respected by the annexing State and have no international importance.

Your Excellency will allow me to state here the principal judicial decisions which I have just alluded to.

In the decision pronounced on April 18, 1877 by the Supreme Court of Justice of England, in the suit of Twycross vs. Dreyfus, it is declared that it is impossible to consider seriously as a mortgage or security that which the Government of Peru agreed to, on giving as a guarantee her deposits of guano.

In the decision that the Court of Appeals of Paris passed on the case of Domis and associates vs. Dreyfus Bros. & Co., June 25, 1877, the following reason is found:

“Considering that in spite of the expressions, frequently employed, of agreement, pledge, assignment, general and special mortgage, it appears that the Government of Peru has done no more than to pledge in a general manner, as an ordinary debtor, to the service of each one of its loans, the receipts and rights that it designated itself, without excluding those of any other nature that might belong to it.”

The Court of Cassation, August 24, 1878, declared the appeal made against that judgment inadmissible. (Sirey, year 1878, I pages 345 and following.)

The Court of Appeals of Brussels, in a judgment rendered August 4, 1877, expressed itself as follows:

“Considering that the obligations contracted by the Government of Peru, according to Article VI of the General Undertaking, in which, after indicating all its receipts, it declares under the pledge of the national honor, that it pledges the net proceeds arising out of the sale of guano, are evidently nothing else than pledges of honor as the Supreme Court of England decided on April 18, 1877.”

The Franco-Chilean Arbitral Tribunal that sat at Lausanne in conformity to the Chilean decree of February 9, 1882 and Articles IV and VI of the Pact of Ancon, and whose task was to distribute 50 % of the net proceeds of the sale of a million tons of guano among the creditors of Peru, whose credits and titles were sustained by the guano, decided that our country was entirely right with respect to the force and scope that she attributed to that guarantee. Resolution D No. 2 of the decision of July 5, 1901 rendered at Rapperschwyl, declares that the existence of the right that the creditors of Peru pretend to have guaranteed by the guano, “is not confirmed by doctrine nor practice of International Law; and said pretention is supported by an inexact juridical appreciation of the relations existing between the State debtor and the parties taking the loan.” And further on it adds that in the text of the general obligation of the loan of 1870, “the term mortgage often repeated is manifestly employed in an

improper manner, in the general meaning of promise or guarantee"; and that, "the pretended mortgage of the holders of titles of 1870, only consisted in the obligation acquired by the Government to affect the proceeds of the exportation of guano to the cancelling of the debt." And in No. 3 of the same resolution D it declares "that it remains established that, at the time of the Chilean occupation, the guano fields of Peru were not burdened with any real right in favor of the creditors of the State." Finally, in the same number and resolution it also made evident that the French Government, in a note directed to the Chilean Minister at Paris, March 12, 1881, took the same view as Chile with respect to said material.

Your Excellency's Government, in a recent case of great international importance, has applied the same doctrine as that contained in the judicial decisions that I have just cited. In the conference held in Paris in 1898 to settle the conditions of peace between the United States and Spain, the commissioners of your Government refused to accept the responsibility for any part of the Spanish debt in Cuba or Puerto Rico, although it might have the character of a mortgage. (See Moore: *op. cit.*, Vol. I §97, p. 351-385).

That is not all. The assurances constituted by the Government of Bolivia, in favor of the credit of Alsop & Co., are so much less worthy of the consideration of the government of my country, since the greater part of them had been constituted on property situated in Chilean territory, that my country recovered from Bolivia in the Pacific War (Caracoles Mines) and the rest from property three fourths of the proceeds of which went to Bolivia in virtue of the Truce Covenant (the right to certain receipts of the Arica Custom House in which Bolivia had an interest), the other fourth part being destined to the maintenance of the service in the same custom house. So that of the guarantees of the credit of Alsop & Co., one was granted by Bolivia in territory that was really Chilean, and the other has been enjoyed almost entirely by the former country since the year 1884.

With these antecedents given it is easy to prove that Chile does not affect any responsibility for the guarantees which the Government of Bolivia granted in favor of the credit of Alsop & Co.

Again, Mr. Minister, we are facing questions of pure law concerning which the appreciations of the two Governments are contradictory, which controversy can be ended by the decision of

an impartial authority who may decide whether the theory sustained by your Government or that defended by my country, is the one that comes nearest the doctrine and practice commonly admitted by International Law.

This Department believes that the second reason expressed by Your Excellency to maintain that my country is obliged to pay the entire credit of Alsop & Co. has no more judicial force than the former. I shall pass on to it.

In the note of the 17th Your Excellency states that the Government of Chile in the draft treaties of peace with Bolivia and other acts of this Government, has manifested itself disposed to cancel the credit of Alsop & Co. I am glad to recognize the effectiveness of that assertion, adding that my Government proceeding in this form, did it, not because it recognized that it was obliged to pay that credit, but through special deference to the Government of Your Excellency, and on the account of Bolivia.

In spite of this, Chile, making use of her privileges, resisted tenaciously before the Arbitral Tribunal in Washington the appearance of the Alsop firm against her as a North-American creditor, by that she did not cease to be always ready to take into consideration this credit which did not bind her. The creditors and your Government had manifested special interest that Chile should take charge of it, including it among the creditors that she was disposed to pay on the account of Bolivia, up to a certain amount, and as a part of the indemnization that she would give to that country for the grants of territory.

My Government, then, has never offered to pay this credit in full, but has always limited itself to the propositions it considered most fit. Thus it is explained because, in the different projects of treaties of Peace with Bolivia, the credit of Alsop & Co. has always appeared with different sums. Chile had no motive for assigning invariably in these projects a fixed quantity; the only thing that she has admitted was that she would consider this credit among those that she had taken in charge, within certain limits, in her arrangements with Bolivia.

In the Treaty of Peace of 1904, the Government of Chile destined the sum of two million pesos gold at 18d to pay therewith, pro-rata, the credits indicated in said treaty among which that of Alsop & Co. was included.

There is no reason whatever why this credit should be privileged with respect to the others, and should be paid entirely or

by a sum greater than that which corresponds to it in the prorata distribution.

The same should be said of the different promises or offers made by my Government to yours for settling this claim. For that purpose, my country, without giving weight to the decision of the Arbitral Tribunal of 1901, has gladly accepted the good offices of Your Excellency's Government to come to an agreement with Alsop & Co.; but she has always protested that, your Government not recognizing the weight of that decision, has always protected this Chilean firm through diplomatic channels. In the estimation of my Government all the questions that have come up between the two Governments concerning this case have never been more than friendly efforts.

The efforts made by my Government on various occasions to cancel the credit of Alsop, in the way in which it has always intended to do it, have never been to pay it entirely, but to cancel it with a smaller sum or with that which was indicated in the Treaty of Peace with Bolivia. Your Government has never accepted these offers. Consequently, these different unilateral propositions cannot have the character of contractual obligations that Your Excellency attributes to them. It is impossible, then to consider offers, constantly refused, as a source of obligation of civil or international character.

The declaration which the Agent of Chile made before the Arbitral Tribunal at Washington to oppose the nationality of Alsop & Co. and to which your Government, with reason, gives so much importance, is conclusive in the sense which I have indicated.

That declaration is of the following tenor, according to the decision of the Tribunal:

“It is declared that this claim (that of Alsop & Co.) is among the liabilities which the Government of Chile engaged to pay for the account of Bolivia. The Government of Chile has always considered it, and still considers it, an obligation on the part of Bolivia towards the claimant, and in order to induce the Government of Bolivia to sign the definite Treaty of Peace which has been negotiated for many years, the Government of Chile promises to settle this and other claims as a part of the payment or consideration which it offers to Bolivia as a recompense for the signing of the treaty. This has always been the position of the Government of Chile and is its position to-day, and if Bolivia signs the treaty, the claim of Alsop & Co., as well as the other claims mentioned, will be promptly paid according to the treaty engagement as a relief to Bolivia from the liabilities which that Government has incurred, and for the account of Bolivia.”

Chile has not disregarded, much less eluded, her promise to the Government at Washington to contemplate justly, in the Treaty of Peace with Bolivia, the credit of Alsop & Co.; on the contrary, she has honored her word, and since that Treaty was signed has informed Your Excellency's Government that she has at the disposition of the claimant's the amount belonging to them according to said Treaty.

I esteem, Mr. Minister, that for brevity's sake, I should omit other reasons that this Department has for not being able to accept the assertions of your Government that the Government of Chile is personally obliged to cancel the entire credit of Alsop & Co. In this respect I refer to the cited note of March 9, of the past year.

Permit me, also, Honorable Sir, to correct a mistake contained in your note relating that this Government has offered the Government at Washington, on various occasions, without ever sending them, documents that justify the attitude it has assumed in this affair. These documents do not refer, as a passage of the note of Your Excellency seems to indicate, to any proof that the credit of Alsop & Co. is not effective, but to demonstrate, as is indicated in another passage of the same note, that our Government is not juridically nor conventionally obliged to pay the whole of the said credit.

All the documents to which this Department's note of March [April] 9, 1908, and the present one refer, are documents which amply justify the position, not only that my Government has not such judicial nor conventional obligation, but also that it has been considerate in vain of your Government and just in vain to the claimants, being ready to pay immediately the sum which, by the Chilean-Bolivian Treaty of Peace of 1904 belonged to the credit of Alsop & Co., and that the other creditors, whose credits have been settled by that Treaty, have gladly accepted their share, in spite of having equal or better right than the firm of Alsop & Co.

This Department has always believed that those antecedents would convince the Government at Washington of the rectitude of our proceedings, and as Your Excellency so truthfully says, that Government, understanding things, would not insist on pressing the claim.

I sincerely hope, Mr. Minister, that with this note I have convinced the just and impartial mind of the Department of State of the justice of our cause and the sincerity with which we defend it.

In any case it appears undeniably evident that there is a difference of opinion between the two Governments as to the judicial rights in this case, a difference that is not political, not of vital interest and in which the national honor is not at stake, and consequently, may be satisfactorily settled by arbitration, as my honorable predecessor, Señor Puga Borne, proposed to your Legation.

The arbitration should be broad and thorough, corresponding to the loyalty and good faith with which both parties support their convictions, consequently, all questions that divide us on the subject should be effectively solved.

To that effect, allow me to submit to Your Excellency's consideration the following project of protocol which, in essence, agrees with the one which Your Excellency sent to this Department in your note of September 17th of the present year:

The Government of the Republic of Chile and that of the United States of America, not having been able to determine the situation in which they are respectively placed on account of the claim arising from the credit of the firm of Alsop & Co., (as substitute for the rights of Pedro Lopez Gama) against the Government of Bolivia, which payment the Government of Chile took over in the Chilean-Bolivian Treaty of Peace and Friendship of October 20, 1904: have agreed to submit the question to an arbitral tribunal that shall be organized according to the general rules established by the Hague Convention for the Peaceful Settlement of International Disputes, and to those that shall be established by this Agreement, and have named as their Plenipotentiaries, to wit:

The President of the Republic of Chile has named the Minister of Foreign Affairs, Don Augustin Edwards, and

The President of the United States of America has named the Honorable Thomas C. Dawson, Envoy Extraordinary and Minister Plenipotentiary of said country in Chile;

The said Plenipotentiaries, after communicating their respective powers, which they found sufficient, have agreed upon the stipulations contained in the following articles:

ARTICLE I.

The Arbitral Tribunal shall sit at the Hague and shall be composed of two judges named respectively by the High Contracting Parties within the three months following the promulgation of this Agreement and an umpire to be chosen in common accord by them.

If they do not agree upon the choice of an umpire within thirty days of the date of their first meeting, the umpire shall be chosen jointly by His Britannic Majesty and the President of France.

The three judges must be members of the Permanent Court of the Arbitration of the Hague, but no one shall be named for this Tribunal who is a citizen of either of the countries of the High Contracting Parties.

ARTICLE II.

The High Contracting Parties shall notify each other of the choice of the judges and they shall notify also the International Office of the Permanent Court of the Hague within three months of the promulgation of this Agreement. The two judges named shall meet in said city within the sixty days following said notification and shall proceed to the choice of an umpire.

The choice of an umpire by either of the two means stated in the preceding Article shall be communicated to the High Contracting Parties and to the International Office of the Permanent Court of Arbitration of the Hague within thirty days.

In case of death, temporary or permanent inability, or refusal to serve of any of the three judges, the vacancy shall be filled within thirty days of the time it occurs, following the same proceedings and observing the same rules adopted for the first choice.

ARTICLE III.

Ninety days after the High Contracting Parties receive notice of the choice of an umpire, each Government shall present to the International Office four copies of its case which said Office shall distribute among the judges and the High Parties represented by their Legations at the Hague.

Within the four months following the said promulgation, each Government shall deliver to the International Office four copies of its answers, and said Office shall distribute them in the same way as the allegations, at the expiration of said time.

The counter case shall contain only arguments and antecedents in answer to those contained in the allegations of the High Contracting Parties.

With the submission of the counter case the case shall close unless the Tribunal shall decide to allow either of the two Governments or shall require of them the submission of additional proofs or information necessary to do justice to the case.

The Tribunal shall fix the time in which such additional proofs and information shall be presented.

The Tribunal shall be free to consider, in order to decide the case, all the documents and information that it esteems necessary or useful for that purpose, whether they may have been submitted or not by the High Contracting Parties and without subjection to the juridical rules of evidence.

ARTICLE IV.

Within the thirty days following the distribution of the counter-case, the judges shall meet at the Hague and shall proceed to the formation of the Arbitral Tribunal, establishing the rules and formalities to which their proceedings must be subjected.

The umpire shall act as President of the Tribunal and a simple majority shall be sufficient to decide any point in question.

ARTICLE V.

The High Contracting Parties may use the English or Spanish language.

The Tribunal shall hear one Agent for each of the two Governments, and the argument may be made verbally or in writing. It shall also hear the Counsels that each Government may choose to appoint; but neither the Agents or Counsels may be chosen from the Members of the Permanent Court of Arbitration of the Hague.

ARTICLE VI.

The Tribunal shall settle the question, taking into consideration all the circumstances connected with the controversy, the proceedings and decisions of the Chilean-American Arbitral Tribunal that sat in Washington in 1894 and 1900, and the different Treaties, Protocols, and documents exchanged between the Governments of Chile and Bolivia and that in any way affect the case, the diplomatic correspondence between the Government of Chile and that of the United States of America and Bolivia respectively, and any other antecedents, documents or information submitted by either of the High Contracting Parties or asked for by the Tribunal.

The decision of the Tribunal shall be final and binding for the High Contracting Parties, and shall be given within sixty days of the date of its formation, unless the said Tribunal extend the time in order to permit or require the presentation of new proof or to fill a vacancy that may have occurred in the Tribunal.

ARTICLE VII.

The Arbitral Tribunal shall keep a record of the acts and proceedings and shall name a Secretary versed in the English and Spanish languages and other employees that it may consider necessary for the settlement of the question submitted for its award.

ARTICLE VIII.

The Arbitral Tribunal shall compute the amount owed by the Government of Chile in Chilean gold, and at the same time shall determine the time and conditions of payment after consultation with the representatives of both Governments.

ARTICLE IX.

The expenses of the Arbitral Tribunal shall be met equally by the High Contracting Parties, and within the thirty days following the formation of the Tribunal, each Government shall deposit to the order of the International Office the sum of fifteen thousand francs to the account of said expenses. Periodically afterwards they shall deposit in the same way the amounts necessary for the running expenses of the Tribunal.

ARTICLE X.

Beyond the stipulations of this Agreement, the Arbitral proceedings shall be adjusted according to the Convention for the Peaceful settlement of International Disputes, subscribed to at the Hague on October 18, 1907, and to which the two High Contracting Parties adhere, especially to Title IV Chapter 2 of the said Convention.

In testimony of which the undersigned Plenipotentiaries of Chile and the United States of America have signed, in duplicate, and sealed with their respective seals the present Agreement in the city of Santiago, this day of month of one thousand nine hundred and nine.

I take, etc.,

(Signed)

AUGUSTIN EDWARDS.

MISCELLANEOUS CORRESPONDENCE.

The Chilean Chargé to Minister of Foreign Relations of Bolivia.

La Paz, Julio 2 de 1878.

SEÑOR: En los primeros dias de Abril del corriente año tuve la ocasion de conferenciar con el honorable señor Salvatierra, ministro entonces de hacienda, a virtud de un reclamo de la Compañía Chilena de Salitres de Antofagasta, que me fué comunicado por mi gobierno con el encargo espreso de apoyarlo.

El 14 de Febrero de 1878 la asamblea nacional constituyente decretó, como minimum, un impuesto de diez centavos en quintal de salitre esportado por la Compañía anónima de Salitres i Ferrocarril de Antofagasta, i el Supremo Gobierno ordenó con fecha 23 del mismo mes la ejecucion de ese decreto, lo que se hizo publicar por bando en la ciudad de Antofagasta.

La Compañía Salitrera se consideraba tranquila en su propiedad i en sus derechos adquiridos despues de varias vicisitudes i perturbaciones sufridas desde 1868 hasta el decreto de 31 de Diciembre 1872, las que motivaron la transaccion de 27 de Noviembre de 1873 registrada en el Anuario Oficial de Leyes de Bolivia de aquel año, página 185, e incorporada en un protocolo publico.

Esa transaccion, reducida a escritura publica en Sucre el 29 de Noviembre de 1873 ante el notario de gobierno don José Félix Oña, no deja nada pendiente, por haberla aceptada el gobierno en virtud de la autorizacion conferida por la lei de 22 de Noviembre de 1872 inserta en la página 220 del Anuario de leyes i supremas disposiciones de aquel año i cuyo artículo 2º dice terminantemente como sigue:

“Se autoriza al poder ejecutivo para transar sobre indemnizaciones i otros reclamos pendientes en la actualidad contra el Estado, ya sea por nacionales o estranjeros, i para acordar con las partes interesadas la forma mas conveniente en que han de llenarse sus obligaciones respectivas, difiriéndose estos asuntos, *solo en caso de no avenimiento*, a la decision de la Corte Suprema, con cargo de dar cuenta a la proxima asamblea.”

La lei era esplicita: conferia al Ejectivo poderes absolutos, sin necesidad de nuevas revisiones ni aprobaciones, sino de dar simplemente cuenta de lo obrado en los casos en que interviniese decision de la Corte Suprema. En consecuencia, se redujo en el acto a escritura pública la transaccion i fué inserta en el Anuario i puesta en ejecucion sin ser ántes sometida a la aprobacion de la asamblea, a la cual el señor Ministro de Hacienda se limitó a darle conocimiento de haberse celebrado en el informe oficial de 1874. En dicho informe el señor Ministro de Hacienda, refiriéndose a la Compañia de Salitres, manifestó haber dejado terminada con la transaccion “una cuestion odiosa que por largo tiempo *ha comprometido ante la probidad del Gobierno*, teniendo pendiente su decision la suerte de los gruesos capitales que los impresarios desembolsaron para establecer en el desierto de Atacama la industria salitrera en grande escala.”

Hago tambien memoria de otro antecedente: habiéndose dirigido la Municipalidad de Antofagasta al señor presidente del Consejo de Estado, por oficio de 4 de Mayo de 1875, solicitando se impusiera a la Compañia Salitrera una contribucion municipal de tres centavos por quintal de salitre esportado i fundándose para ello, entre otras consideraciones, en que el Supremo Gobierno habia declarado que la Compañia no estaba exenta de derechos municipales, esa solicitud fué remitida en informe al Consejo Departamental de Cobija, por decreto de 9 de Junio del mismo año, fechado en Sucre i firmado por el señor Reyes Ortiz, hoi Ministro de Justicia i entónces Presidente del Consejo de Estado. El Consejo Departamental informó que debia rechazarse la solicitud porque estaba “en contradiccion con el art. 4º de la transaccion celebrada entre el Supremo Gobierno i la Compañia en 27 de Noviembre de 1873, en la que se estipula que el salitre que se esporte queda libre de todo derecho de esportacion i de cualquiera otro gravámen fiscal o municipal,” i ademas porque “existe tambien el tratado de límites con Chile vijente, por el que no pueden cobrarse en el litoral nuevas contribuciones. En vista de este informe i de las razones en que él se apoya, se dió en Sucre el decreto de 27 de Agosto que declara ilegal la contribucion que se trataba de establecer.

A estas someras consideraciones me toca agregar otra de carácter mas sério e ineludible. La Compañia Anónima de Salitres i Ferrocarril de Antofagasta es chilena, tiene su domicilio legal en Valparaiso i es casi en su totalidad compuesta de capitalistas chilenos. En virtud de la transaccion con el Supremo Gobierno,

en 27 de Noviembre de 1873, reducida a escritura pública i registrada en el Anuario Oficial de leyes de Bolivia la Compañía chilena está bajo el amparo i garantía del tratado firmado en Sucre el 6 de Agosto de 1875, porque a la fecha de este tratado la Compañía explotaba quieta i tranquilamente las salitreras que se le habian concedido por esa transaccion, siendo libre de los derechos de esportacion de salitre, como asimismo exentos de los de internacion los artículos que introdujese por el puerto de Antofagasta para la conservacion i servicio de las lineas férreas i de sus oficinas de elaboracion de salitres.

De consiguiente la contribucion mínima de diez centavos por quintal de salitre esportado, con que ahora se intenta gravar a la Compañía, importaria una violacion del tratado vijente con Chile, i mi Gobierno no encontraria antecedentes que pudieran justificar su establecimiento. Si la Compañía Salitrera es dueño de una propiedad garantida por la lei i por un contrato solemne i ademas amparada por un tratado internacional ¿como puede una lei posterior de la República echar por tierra ese contrato debidamente celebrado por la autoridad soberana i romper sin el acuerdo ni el consentimiento de la otra parte contratante ese pacto internacional?

Yo fio, señor Ministro, en que estas breves consideraciones, a las que creo innecesario darles mas estension las que creo innecesario darles mas estension por ser ellas tan obvias i tan claras, bastarán para que V. E. se penetre de la necesidad ineludible en que se halla el Gobierno de V. E. de dictar una medida que deje a salvo los derechos i propiedades de la Compañía Salitrera de Antofagasta, vulnerados por la lei de 14 de Febrero de 1878. Desatender un reclamo de tan evidente justicia i legalidad, poniendo en tela de juicio el tratado de 1874, seria llevar la cuestion a un terreno delicado i resbaladizo que uno i otro Gobierno deben evitar. Así lo comprendió el Ministro de Hacienda del anterior Gabinete, señor doctor Salvatierra, con quien inicié verbalmente este reclamo, cuando de acuerdo conmigo i para evitar consecuencias de grave trascendencia ordenó la suspension indefinida de la lei aludida de 14 de Febrero de 1878, mientras el Gobierno de V. E. encontraba una solucion prudente que pusiera a salvo los intereses de la Compañía Salitrera.

La Compañía anónima de Salitres i Ferrocarril de Antofagasta, con los injentes capitales invertidos en la industria de explotacion i elaboracion de salitres, los que suben a cuatro millones de pesos

fuertes, da vida i trabajo a las poblaciones de Antofagasta i Salinas; si por una medida inconsulta se atacan sus derechos de propiedad, podria ella verse obligada a suspender o levantar parcialmente sus trabajos, dejando millares de pobladores i operarios en la ociosidad i entónces seria de temer una sublevacion que ni el Gobierno de Chile ni el de Bolivia podrian mirar con indiferencia.

Con sentimiento de elevada consideracion i estima, tengo el honor de suscribirme de V. E. atento i seguro servidor.

P. N. VIDELA.

Al Excelentísimo señor MINISTRO DE RELACIONES ESTERIORES DE BOLIVIA.

[Translation.]

La Paz, July 2, 1878.

SIR: At the beginning of April of the present year I had occasion to hold a conference with the Honorable Señor Salvatierra, then Minister of Hacienda, concerning a claim of the Chilean Nitrate Company of Antofagasta which had been communicated to me by my Government with the express instructions to support it.

On February 14, 1878, the National Constituent Assembly decreed as a minimum a tax of ten cents per quintal on salt petre exported by the Antofagasta Nitrate and Railroad Company and the supreme Government ordered under date of the 23d of said month the execution of that decree which was made public by a circular in the city of Antofagasta.

The Nitrate Company had considered itself tranquil in its property and its rights acquired after various vicissitudes and disturbances suffered from 1868 until the decree of December 31, 1872, which caused the Settlement of November 27, 1873, registered in the Official Annual of the laws of Bolivia of that year, page 185, and incorporated in a political agreement. That transaction, reduced to a public instrument in Sucre, November 29, 1873, before the Government Notary Jose Felix Oña, left nothing pending because the Government accepted it by virtue of the authorization conferred upon the executive power by the law of November 22, 1872, inserted at page 220 of the Annual of Laws and Supreme Decrees of that year, article two whereof provides definitely as follows:

“The executive power is authorized to compromise concerning indemnities and other claims at present pending against the state, be they national or foreign, and to agree with the interested parties

on the most convenient form in which it will fulfill its respective obligations, referring these matters only in case of disagreement, to the decision of the Supreme Court with the duty of rendering an account to the next Assembly."

The law was explicit: It conferred upon the executive absolute powers without the necessity of new revisions or applications, except to simply render an account of the action in the cases in which the decision of the Supreme Court should be invoked. Therefore the transaction was immediately reduced to a public instrument and was inserted in the Annual and put into execution without first being submitted to the approval of the Assembly, to which the Minister of Hacienda limited himself to rendering an account of its execution in his official report of 1874. In said report the Minister of Hacienda, referring to the Nitrate Company, stated that there had been settled by adjustment "an odious question which, for a long time, had compromised, before public opinion, the integrity of the Government. Its decision held in suspense the fate of great capitals which the investors had expended to establish on a large scale in the desert of Atacoma the nitrate industry."

I also recall a further antecedent; the municipality of Antofagasta addressed itself to the President of the State by note of May 4, 1875, asking that there be imposed upon the Nitrate Company a municipal tax of three cents per quintal on nitrate exported; and giving as a reason therefor, among other considerations, that the Supreme Government had declared that the company was not exempt from municipal taxes. This petition was sent as a report to the Departmental Council by decree of June 9th of the same year, dated at Sucre, and signed by Señor Reyes Ortiz, at present Minister of Justice, and at that time President of the Council of State. The Departmental Council reported that the petition had been rejected because it was "in conflict with Article 4 of the agreement made between the Supreme Government and the company on November 27, 1873, in which it was stipulated that the nitrate which might be exported should be free from taxes of exportation or other fiscal or municipal duty" and besides "because there also existed in force a boundary treaty with Chile by which new contributions could not be collected in the litoral. In view of this report and of the reasons upon which it was founded the decree of August 27th was issued at Sucre which declared illegal the contribution which it was attempted to enforce.

To these summary considerations it remains for me to add another of a more serious and indisputable character. The Antofagasta Nitrate and Railroad Corporation is Chilean, it has its legal domicile in Valparaiso and it is almost in its entirety composed of Chilean capitalists. By virtue of the compromise with the Supreme Government on November 27th, 1873, reduced to a public instrument and recorded in the Official Annual of the laws of Bolivia, the Chilean company is under the protection and guarantee of the treaty signed at Sucre on August 6, 1875, because at the date of this treaty the company was quietly and peacefully exploiting the nitrates which had been granted it by that transaction, being free from the export duty on nitrate, as it was also exempt from duties of importation on articles which it might introduce through the port of Antofagasta for the preservation and operation of the railway lines and its offices for working the nitrates.

Therefore, the minimum contribution of ten cents per quintal on salt petre exported, with which an attempt is now being made to tax the company, would involve a violation of the existing treaty with Chile and my Government cannot find any reasons which could justify its establishment. If the nitrate company is the owner of a property guaranteed by the law and by a solemn contract and is, moreover, protected by an international treaty, how can a later law of the republic throw to the ground that contract properly executed by the sovereign authority and break that international agreement without the consent of the other contracting party?

I rely, Mr. Minister, upon these brief considerations to which I believe it unnecessary to give more extent because being so obvious and so clear they will suffice to enable your Excellency to see the inevitable necessity in which the Government of Your Excellency finds itself of enacting a measure which shall safeguard the rights and properties of the Nitrate Company of Antofagasta which have been encroached upon by the law of February 14, 1878. To disregard a claim of such evident justice and legality, questioning the treaty of 1874, would be to bring the question to a delicate and hazardous situation which both Governments should avoid. The Minister of the former Cabinet, Dr. Salvatierra, thus understood it, with whom I verbally took up this claim when, in agreement with me and in order to avoid consequences of grave importance, he ordered the indefinite suspension of the aforesaid

law of February 14, 1878, until the Government of Your Excellency should be able to find a reasonable solution which would safeguard the interests of the Nitrate Company. The Nitrate and Railroad Corporation of Antofagasta, with the immense capital invested in the industry of exploiting and working the nitrates, which amounts to four million pesos, furnishes subsistence and employment to the population of Antofagasta and Salinas; if by an ill advised measure its rights of property are assailed, it might find itself obliged to suspend or partially give up its operations, leaving all the population and workmen unemployed, and then an uprising might be feared which neither the Government of Chile nor that of Bolivia could look upon with indifference.

With sentiments of high consideration and esteem, I have the honor to subscribe myself, your Excellency's obedient servant
(Signed) P N VIDELA.

To His Excellency The MINISTER OF FOREIGN RELATIONS OF BOLIVIA.

Circular á los Honorables Ministros Diplomáticos acreditados en Chile.

Santiago, marzo 3 de 1879.

SEÑOR: Tengo la honra de acompañar a V. S. una Esposicion de los motivos que justifican la reivindicacion que Chile ha hecho de los territorios que poseia en el Desierto de Atacama, entre los paralelos 23 y 24 de latitud Sur.

Me asiste la confianza de que la lectura de esa sencilla narracion llevará al espíritu de V. S. el convencimiento de que Chile, en sus relaciones con Bolivia, no ha abandonado la política de moderacion y templanza, con que tanto simpatiza, sino cuando vió agotados todos los caminos que ella franquea, y puestos en peligro la dignidad del país y valiosos intereses de sus nacionales residentes en aquel territorio.

Al alto y lejítimo interes que el Gobierno de Chile cifra en que su política internacional sea debidamente apreciada por los Gobiernos con cuya amistad se honra y cuya estimacion procura con incesante anhelo merecer, me ha inducido a consignar por escrito la esposicion que ahora pongo en manos de V. S., rogándole se digne elevarla al conocimiento de su ilustrado Gobierno.

No necesito asegurar a V. S. que sus nacionales hallarán en el territorio en que ahora ha vuelto a imperar la lei chilena toda clase de garantías en sus personas e intereses.

Aprovecho esta ocasion para reiterar a V. S. la expresion de mis sentimientos de elevada consideracion con que soi de V. S.

Atento y seguro servidor,

ALEJANDRO FIERRO.

REPÚBLICA DE CHILE.

MINISTERIO DE RELACIONES EXTERIORES,

Santiago, febrero 18 de 1879.

SEÑOR MINISTRO: El 12 del presente mes, S. E. el presidente de la República ordenó que fuerzas nacionales se trasladaran a las costas del desierto de Atacama para reivindicar y ocupar en nombre de Chile los territorios que poseia ántes de ajustar con Bolivia los Tratados de límites de 1866 y 1874.

El Tratado de 1866 fué anulado y desapareció con la celebracion del que lleva la fecha del 6 de agosto de 1874, y este último acaba de ser abrogado por actos deliberados y persistentes del Gobierno de Bolivia, que importan, no sólo el desconocimiento completo de las obligaciones que aquel pacto solemne le imponia, sino tambien una injuria a la lealtad y espíritu conciliador de Chile, que el honor nacional no podia consentir.

Agotados los espedientes de conciliacion que su anhelo por la tranquilidad de la América hacia a Chile poner en incesante ejercicio; desoidos y desdeñados por Bolivia todos los llamamientos que se le dirijian al cumplimiento de obligaciones legalmente pactadas en el Tratado de 1874, no quedaba a Chile otro camino que colocar nuevamente su bandera en los territorios de que era dueño y devolver con ella a la numerosa poblacion chilena y extranjera, a sus industrias y capitales allí radicados, la tranquilidad, la confianza y el bienestar de que la administracion boliviana les habia hecho carecer.

Chile, que ama la paz de la América casi tanto como la tranquilidad de su propio hogar y cuya tradicional conducta ha sido siempre caracterizada por la moderacion y templanza, ha tenido el pesar de ver, en sus relaciones con Bolivia, destruirse una a una sus esperanzas de arreglo amistoso, e imponerse, por último, la dolorosa necesidad de acudir a un desenlace con apoyo de la fuerza.

No estaria, sin embargo, enteramente tranquilo si al dar este paso, que a la vez demandaban su conciencia, sus derechos y su propia dignidad, no abrigase Chile la íntima persuasion de hallar en el espíritu sereno e ilustrado de V. E. la mas ámplia y cumplida justificacion de su conducta.

A este efecto, he recibido de S. E. el Presidente de la República instrucciones de presentar al Gobierno de V. E. una breve y compendiosa reseña de los antecedentes de la cuestion y de las causas que han determinado los últimos acontecimientos.

I

Consolidada la emancipacion política de la América española, las nuevas repúblicas no tardaron en fijar su atencion en los territorios que abrazaban sus respectivas nacionalidades y sobre los cuales debia rejir el imperio de sus leyes. Aceptada por las diversas secciones de América el principio de que “las repúblicas americanas tenian por límites los mismos que correspondian a las demarcaciones coloniales de que se formaron,” fué fácil para Chile saber hasta dónde se estendia por el Norte el campo en que debia ejercitarse su actividad nacional.

Bastaba para ello interrogar a la historia, consultar el pensamiento escrito de los soberanos españoles y examinar los actos jurisdiccionales que habia sido la consecuencia de esa manifestacion de la voluntad suprema.

Este triple testimonio no permite abrigar dudas de que el límite boreal de Chile era al ménos el paralelo 23 de latitud sur, o lo que es lo mismo, que el litoral y desierto de Atacama hasta la bahia de Mejillones inclusive, formaba parte del territorio de la República.

Con esta conviccion, el Presidente de la República dirijió al Cuerpo Lejislativo un mensaje, fechado el 13 de julio de 1842, en el cual se leen las siguientes palabras:

“Reconocida en Europa la utilidad de la sustancia denominada huano, que desde tiempo inmemorial se usa como abono para la labranza de tierras en la costa del Perú, juzgué necesario mandar una comision esplotadora a examinar *el Litoral comprendido entre el puerto de Coquimbo y el morro de Mejillones*, con el fin de descubrir si *en el territorio de la República* existian algunas huaneras cuyo beneficio pudiera proporcionar un ramo nuevo de ingreso a la Hacienda Pública; y aunque el resultado de la espedicion no correspondió plenamente a las esperanzas que se habian concebido, sin embargo, desde los 29° 35' hasta los 23° 6' de latitud se halló huano en diez y seis puntos de la costa e islas inmediatas, con mas o menos abundancia, segun la naturaleza de las localidades en que existen estos depósitos.”

Acompañaba a este mensaje un proyecto de lei declarando de propiedad nacional las huaneras y señalando algunas reglas para su esplotacion.

Aprobado ese proyecto y convertido en lei de la República el 31 de diciembre del mismo año, supo el Gobierno de Chile con sorpresa mas tarde, que el de Bolivia exhibia pretensiones por primera vez al desierto de Atacama. Tales pretensiones habian sido desautorizadas de antemano por el primer majistrado de aquella República, sin protesta alguna de los otros poderes. El Jeneral Santa Cruz habia, en efecto, dictado el siguiente decreto refiriéndose a Cobija, pocos años ántes:

“La necesidad de fomentar *el único puerto* de la República y atendiendo a que la falta de numerario para costear los gastos que demandan las obras proyectadas hace infructuosa todas las medidas que el Gobierno ha adoptado para la pronta realizacion de tan interesantes objetos, decreto: Se autoriza al coronel Manuel Amaya para levantar un empréstito de cien mil pesos . . .”

Mas tarde, en un mensaje de fecha 6 de agosto de 1833, decia el Presidente, Jeneral Santa Cruz, a los representantes de Bolivia lo que sigue:

“Despues de vuestro receso en la anterior lejislatura, he cumplido con la promesa que os hice entónces de visitar en persona la provincia Litoral, queriendo llenar debidamente vuestros deseos y la lei de 12 de octubre del año próximo pasado *en favor de nuestro único puerto de Cobija.*”

Con tales antecedentes no podia mirarse sin cierta estrañeza la manifestacion por parte de Bolivia de pretensiones y exigencias que estaban en pugna con los claros derechos de Chile al dominio del desierto de Atacama, y que eran, al mismo, tiempo incompatibles con la conviccion del jefe supremo de aquella República, inequívocamente espresada en los documentos que acabo de citar.

Deseando, sin embargo, el Gobierno de Chile formar acerca de esta cuestion importante una opinion que estuviera completamente escenta de las influencias perturbadoras que suele crear el interes nacional, emprendió un estudio cuidadoso de los archivos, sometió a prolijo exámen los documentos que se exhibian de una y otra parte, e hizo un frió paralelo de los títulos con que cada nacion sostenia sus respectivos derechos.

Esta grata tarea sirvió para acentuar y robustecer la conviccion que le asistia de que la costa y desierto de Atacama hasta el paralelo 23 eran evidentemente parte integrante del territorio nacional.

Deplorando el error en que incurria el Gobierno de Bolivia cuando pretendia fijar el límite divisorio de ambas Repúblicas en la desembocadura de un rio que se llamó Salado, y cuyo curso los

mismos jeógrafos que llamó en su apoyo señalan con curiosa variedad ya en el grado 25 30', ya en el 26 y aun en el 27, el Gobierno de Chile manifestó, al frente de esas pruebas vagas, indecisas, y no pocas veces contradictorias, títulos de un valor incontestable y a cuya fuerza probatoria creyó difícil que pudiera sustraerse algún espíritu desapasionado.

Fué, en efecto, fácil de mostrar que desde mediados del siglo XV hasta mediados del siglo siguiente, los escritores de mas respetabilidad y que mas crédito podian inspirar, tales como Pedro Cieza de Leon, en su obra titulada *Primera parte de la crónica del Perú*, dada a luz en 1553, el inca Garcilazo de la Vega, célebre compilador de las tradiciones de aquel país, en sus *Comentarios reales*, que aparecieron en 1609 y 1616; el jesuita Anello Oliva, que publicó una historia del Perú, y otros de igual nombradía están de acuerdo en afirmar que el desierto de Atacama formaba parte de Chile.

Pero, y aparte de testimonios de esta naturaleza, hai documentos oficiales que comprueban que el territorio de la República llega hasta el paralelo 23 y que en el territorio que se estiende al Sur se ha ejercido jurisdiccion por las autoridades de Chile desde la época del coloniaje. Consta, pues, de esos documentos que descubiertas en el desierto de Atacama algunas porciones de terrenos hábiles para el cultivo hácia el grado 24 30', fueron solicitadas en 1679, a título de merced, ante el Gobernador y Capitan Jeneral de Chile y concedidas por éste a los descubridores. Consta asi mismo, que la bahía de Nuestra Señora, conocida con el nombre de Paposo, situada en el grado 24 30', es decir, en medio del desierto, fué a fines del siglo pasado el centro del comercio en el Litoral de Atacama y el punto de residencia de casi todos los pobladores de aquella rejion. El Paposo era, pues, la cabecera de un distrito que abrazaba toda la comarca en que habia moradores y estaba rejido por un juez nombrado por las autoridades de Chile. Las reales órdenes de 3 de junio de 1801 y 26 de junio de 1803, mas esplicitas todavía, declaran que el Paposo era considerado como la cabecera de toda la costa y desierto de Atacama y que todo aquel territorio estaba sometido a las autoridades de Santiago. La real cédula de 10 de octubre de 1803, ordenó mas tarde que el desierto de Atacama se segregase de Chile y fuera incorporado al Perú; pero esta real cédula no llegó a tener efecto, sirviendo solo para dejar establecido, de un modo mas inequívoco aun, que aquella rejion habia pertenecido a la Capitanía Jeneral de Chile

en tiempo de la colonia y que continuaba despues formando parte de la República.

Es sabido que en 1789 partió de Cádiz una espedicion científica compuesta de las corbetas *Descubierta* y *Atrevida*, mandadas por los capitanes de fragata don Alejandro Malaspina y don José Bustamante. Esta comision, que el soberano español encomendó a personas de notoria competencia, trajo por principal encargo reconocer la costa de la América Meridional. A fin de asegurar la mayor fidelidad y exactitud en los trabajos que le estaban encomendados se puso a disposicion de los jefes de la espedicion todos los documentos de Indias que existian en los archivos de España, y al mismo tiempo se espidió una circular, fechada en Madrid el 5 de febrero de 1789, ordenando a los Vireyes y Capitanes Jenerales del Nuevo Mundo que ayudasen con los elementos de que fuera dado disponer a la mision de los señores Malaspina y Bustamante, facilitándoles el conocimiento de los valiosos archivos de la entónces estinguida Compañía de Jesus.

La espedicion tocó en Montevideo, atravesó el cabo de Hornos y a la altura de Chiloé empezó a reconocer las costas de América hácia el Norte. Fruto de esta espedicion, preparada y provista con esmerada solicitud de todos los elementos necesarios para asegurar el logro de su importante objeto, fué la carta esférica que hasta ahora se conserva, presentada al rei de España en 1799 por don Juan de Lángara, secretario de Estado y del despacho universal de marina. En esa valiosa carta, cuya importancia no podria discutirse, se señalaba como límite boreal de Chile el paralelo 22, y naturalmente se le asigna o reconoce dominio en una estension de territorio mas considerable que aquella que poseia tranquilamente desde la época del coloniaje.

Como uno de los muchos comprobantes que podria aducir en apoyo de la jurisdiccion que Chile ha ejercido siempre en aquella rejion, no considero de mas observar que la sola Aduana de Valparaiso otorgó, en cumplimiento de la lei de 31 de octubre de 1842, en el tiempo trascurrido desde esta fecha hasta el año de 1857, ciento trece licencias a diversos buques de distintas nacionalidades para cargar guano en Mejillones, Angamos, Santa María y demas caletas del Litoral del desierto.

Las manifestaciones de la voluntad soberana y los actos de jurisdiccion ejercidos por Chile en las dos épocas de su existencia política sobre el desierto de Atacama hasta el paralelo 23, no hallarian cabida, si hubiera de referirlos todos, en los estrechos

límites de esta comunicacion. Limitándome a insinuar solo algunos, he tenido mui en cuenta la consideracion de no distraer demasiado la benévola atencion de V. E.

Me halaga, sin embargo, la creencia de que ellos habrán bastado para que V. E. se persuada de que a Chile no le era dado abandonar en obsequio de Bolivia territorios de que se consideraba dueño y lejítimo poseedor.

Al mismo tiempo que Chile sostenia con firmeza sus derechos de dominio y de quieta posesion en el desierto hasta el paralelo 23, no dejaba de tentar con cuidadoso anhelo los arbitrios que le parecian propios para acercar la solucion del desacuerdo existente. Las diversas jestioncs iniciadas con tal propósito no dieron, sin embargo, el resultado que era de esperarse y las dos Repúblicas vieron transcurrir los años y alejarse la cordialidad de sus relaciones.

II

Acontecimientos de suma gravedad, de que fué teatro el Pacífico en 1864, conmovieron hondamente la tranquilidad de una gran parte del Continente sud-americano, despertando un vivo y enérgico sentimiento de estrecha union, ante el cual se apresuraron Chile y Bolivia a deponer sus pasados desacuerdos y a sellar el tratado de límites de 10 de agosto de 1866.

Chile no vaciló en sacrificar jenerosamente parte de sus derechos impulsado por un espíritu de sincera amistad y pensando que Bolivia sabria apreciar y corresponder esos elevados sentimientos. Suscribió un pacto que en su artículo I disponia "que la línea de demarcacion de los límites entre Chile y Bolivia, en el desierto de Atacama, seria en adelante el paralelo 24 de latitud meridional, desde el Litoral del Pacífico hasta los límites Orientales de Chile; de suerte que Chile por el Sur y Bolivia por el Norte tendrian la posesion y dominio de los territorios que se estienden hasta el mencionado paralelo 24, pudiendo ejercer en ellos todos los actos de jurisdiccion y soberanía correspondientes al señor del suelo. La fijacion exacta de la línea de demarcacion entre los dos paises se hará por una comision de personas idóneas y peritas, la mitad de cuyos miembros será nombrada por cada una de las altas partes contratantes."

Por el artículo II se convino que "no obstante la division territorial estipulada en el artículo anterior, la República de Chile y la República de Bolivia se repartirán por mitad los productos provenientes de la explotacion de los depósitos de huano descubiertos

en Mejillones y de los demas del mismo abono que se descubrieren en el territorio comprendido entre los grados 23 y 25 de latitud meridional, *como tambien los derechos de esportacion que se perciban sobre los minerales* estraídos del mismo espacio de territorio que acaba de designarse."

El artículo III establece que "la República de Bolivia se obliga a habilitar la bahía y puerto de Mejillones, estableciendo en aquel punto una aduana con el número de empleados que exija el desarrollo de la industria y del comercio. Esta aduana será la única oficina fiscal que pueda percibir los productos y los derechos de esportacion de metales de que trata el artículo precedente. El Gobierno de Chile podrá nombrar uno o mas empleados fiscales que, investidos de un perfecto derecho de vijilancia, intervengan en las cuentas de las entradas de la referida aduana de Mejillones y perciban de la misma oficina, directamente y por trimestres, o de la manera que se estipulase por ámbos Estados, la parte de beneficios correspondiente a Chile, a que se refiere el citado artículo II. La misma facultad tendrá el Gobierno, de Bolivia, siempre que el de Chile, para la recaudacion y percepcion de los productos de que habla el artículo anterior, estableciere alguna oficina fiscal en el territorio comprendido entre los grados 24 y 25."

El artículo IV dispuso que "serán libres de todo derecho de esportacion los productos del territorio comprendido entre los grados 24 y 25 latitud meridional que se estraigan por el puerto de Mejillones; y tambien serán libres de todo derecho de importacion los productos naturales de Chile que se introduzcan por el mismo puerto."

Por el artículo V se convino "que el sistema de esplotacion o venta del huano y los derechos de esportacion sobre los minerales de que trata el artículo II de este pacto, serian determinados de comun acuerdo por las altas partes contratantes, ya por medio de convenciones especiales o en la forma que estimaren mas conveniente y espedita."

Por el artículo VI, "que las Repúblicas contratantes se obligarian a no enajenar sus derechos a la posesion o dominio del territorio que se dividen entre sí por el presente tratado a favor de otro Estado, sociedad o individuo particular. En caso de desear alguna de ellas hacer tal enajenacion, el comprador no podrá ser sino la otra parte contratante."

Y finalmente, por el artículo VII se convino que "en atencion a los perjuicios que la cuestion de límites entre Chile y Bolivia

han irrogado, según es notorio, a los individuos que asociados fueron los primeros en explotar seriamente las huaneras de Mejillones y cuyos trabajos de explotación se suspendieran por disposición de las autoridades de Chile en 17 de febrero de 1873, las altas partes contratantes se comprometen a dar, por equidad, a los espesados individuos una indemnización de ochenta mil pesos, pagadera con el diez por ciento de los productos líquidos de la aduana de Mejillones.”

Estos siete artículos que formaron el Tratado de 1866 y que he cuidado de transmitir con perfecta exactitud, no fueron, como aguardaba el Gobierno de Chile, otros tantos eslabones de unión entre ambas Repúblicas.

Chile se apresuró a despojarse por su parte de la posesión que mantenía en el grado 23, en la cual le sustituyó Bolivia, y a nombrar el comisionado que en unión con el de esa República debía fijar en el desierto de Atacama el paralelo 24, límite divisorio entre ellas, y los paralelos 23 y 25, que formaban por el Norte y Sur la zona de territorio de cuyos productos tenían participación común.

Al llenar, por su parte, leal y honradamente las obligaciones que le imponían el Tratado de 66, estaba Chile muy lejos de pensar que Bolivia habría de considerarse desligada de cumplir por su parte con las suyas. No trascurrió, sin embargo, largo tiempo sin que una serie de sucesos desagradables se encargara de imponerle este triste convencimiento.

V. E. no ignora acaso que en 1870 un ciudadano chileno, impulsado por el espíritu de empresa y cediendo a una feliz inspiración, penetró en el desierto de Atacama y arrancó de su seno el secreto de riquezas que bien pronto atrajeron hacia ellas un vigoroso y sostenido movimiento de inmigración chilena. Los nuevos colonos no se detuvieron ante las dificultades y sacrificios de la empresa; y al esfuerzo de fatigosa labor vieron surgir las poblaciones, hoy florecientes, de Antofagasta y Caracoles, que el pueblo de Chile puede exhibir como conquistas de su trabajo y de su constancia.

La importancia del mineral nuevamente descubierto correspondió a las primeras esperanzas, y la corriente de capitales chilenos se abrió luego camino hasta el interior del desierto para secundar en diversas formas los propósitos de una iniciativa tan inteligente como enérgica.

Este gran acontecimiento vino a imprimir mayor importancia a las estipulaciones del Tratado de 1866, cuyo cumplimiento empezaba Chile a reclamar sin fruto.

Como he tenido la honra de manifestarlo, transcribiendo el pacto, al hacer Chile voluntario y condicional abandono del grado 23, se le reconoció por parte de Bolivia clara y esplicitamente, entre otros, los siguientes derechos:

1º. A percibir la mitad de los productos provenientes del cobro del impuesto de esportacion sobre los minerales que se estrajesen del territorio comprendido entre los paralelos 23 y 24 (artículo II del tratado), y

2º. A nombrar uno o mas empleados fiscales que, investido de un perfecto derecho de vijilancia, interviniesen en las cuentas de las entradas de la aduana de Mejillones que el Gobierno de Bolivia se obligó a habilitar y mantener con el número correspondiente de empleados, y a percibir directamente y por trimestres la parte de beneficios perteneciente a Chile, de conformidad con el artículo II (artículo III del tratado).

Interpelado el año 1871 el Gobierno de Bolivia para que diera fiel cumplimiento en esta parte al tratado, entregando a Chile la mitad de los derechos ya percibidos y que continuara percibiendo, derechos que, a juicio de Chile, representaban una injente suma, porque era notorio que una sola casa comercial de Valparaiso habia enterado en aduanas de aquella República la suma de 25,000 pesos, negóse con fútiles y estudiados pretextos a acojer la justa demanda que se le hacia. Pretendió desde luego que el mineral de Caracoles no se hallaba en el territorio de participacion comun, sin exhibir consideracion alguna respetable que autorizara tal suposicion, contraria, por lo demas, al dictámen de los comisarios científicos que el año anterior habian determinado, por encargo de ámbos Gobiernos, aquel territorio y comprendido dentro de sus linderos el lugar en que las minas estaban ubicadas.

No fué Chile mas feliz en su exigencia para que se aceptase en la aduana de Antofagasta, de conformidad con el pacto vijente, la intervencion de funcionarios chilenos que vijilaran las operaciones de los empleados de aquella República. So pretesto de que el ejercicio de este derecho lastimaba la soberanía nacional, se hacia letra muerta. de la Convencion de 66, se convertia en irritante burla los derechos de Chile, y se le despojaba sin ambages de su indisputable propiedad.

Los secretos móviles de la resistencia que se oponia a la inspeccion de las oficinas perceptoras de fondos se revelaron mas tarde en las siguientes palabras de un informe que el señor Virreira, empleado de Bolivia, presentó a la autoridad de su país:

“En la aduana de Antofagasta parece que el caos hubiera sido mantenido adrede para evitar un exámen. No ha existido cuenta alguna hasta que a principio de 1873 abrió los primeros libros y cuentas el actual administrador. El primer semestre de 1872 no tiene mas cuenta que un resúmen o cuadro que el administrador don H. Ortíz pasó a su sucesor don E. Zalles; la cuenta del segundo semestre está tambien contenida en otro cuadro igual de unas pocas líneas, y ninguno de ellos puede dar idea de la marcha de la oficina. En Mejillones, aunque se encuentran libros de cuentas, ellos son incompletos y tampoco pueden dar luz en cuanto a las operaciones de aduana, pues carecen de documentacion.”

En presencia de estos hechos, refractarios de obligaciones solemnemente pactadas y hasta cierto punto ofensivos a la dignidad de nuestro país, el Gobierno de Chile habria estado perfectamente justificado retirando su nombre del Tratado de 1866 y recuperando el territorio que cedió, solo a virtud de condiciones que de la otra parte se ponía tenaz empeño en eludir.

Pudo, con todo, mas en los consejos del Gobierno de Chile su decidida inclinacion a la paz y echando en olvido pasadas contrariedades, resolvió tentar de nuevo las soluciones amistosas, para lo cual acreditó otra legacion extraordinaria en Bolivia.

Esta se dirijió el 10 de abril de 1872 al lugar de su destino, y un mes despues dió principio a su mision. No costó gran trabajo al representante chileno patentizar a los ojos del Gobierno de Bolivia la evidente justicia de las reclamaciones de que era portador. A este propósito, y despues de referir al Gabinete de Santiago circunstanciadamente los argumentos espuestos en conferencia celebrada el 18 de mayo, el diplomático chileno agregaba, en despacho del 20 del mismo mes, lo que sigue:

“El señor Ministro conoció la fuerza de esos argumentos y no me dió razon alguna que los destruyera; pero me espuso de una manera clara y terminante que Bolivia, a pesar de todo, no podia aceptar la sociedad pactada en el Tratado. Sobre este punto no cederia en manera alguna. S. E. creia esta comunidad inaceptable bajo todos aspectos, pues ella, sobre ser inusitada, seria causa de constantes desavenencias.”

Se ve, pues, que el Gobierno de Bolivia abrigaba la resolucion firme e indeclinable de no aceptar la comunidad que establecia el Tratado vijente. Era forzoso definir de alguna manera esta situacion que dia a dia iba acumulando en su seno mayores elementos de complicacion. Las jestionés del Ministro chileno, encaminadas a obtener el reconocimiento de los derechos de Chile, hallaban siempre en el Gabinete de La Paz moratorias y estudiadas dilaciones de las cuales usufructuaba aquel Gobierno, pues mediante

a esos arbitrios continuaba percibiendo exclusivamente todos los derechos que el Tratado declaraba partibles por mitad entre las dos naciones.

En fin, despues de ocho meses de estériles y elevados esfuerzos de su diplomacia, el Gobierno de Chile se encontró en la alternativa de ceder una parte de sus derechos para asegurar por este medio el resto o de volver al estado que tenian las cosas ántes de negociarse el referido pacto.

Optó, como otras veces, por el sistema de las concesiones y el 5 de diciembre de 1872 se firmaba en La Paz, entre los plenipotenciarios de Chile y Bolivia, un convenio compuesto de nueve artículos, destinados a resolver, de conformidad con el Tratado de 1866, las cuestiones incidentales a que espíritus predispuestos habian dado lugar.

Por lo demas, el convenio aludido, que no creaba para Chile ventaja alguna, da testimonio de sus benévolos sentimientos hácia Bolivia. Por el artículo VI se estableció, modificando en esta parte el Tratado de 1866, que ántes de entregar a Chile la mitad de las sumas recolectadas por derechos de esportacion de metales, se deduciria el importe del presupuesto de los empléados de hacienda y de justicia que reclamara el buen servicio del territorio formado por los paralelos 23 y 25, lo que equivalia a cubrir con fondos de Chile los sueldos y remuneraciones de empleados, en cuyo nombramiento no tenia parte alguna.

Este convenio fué aprobado por el Gobierno de Chile un mes despues, el 8 de enero de 1873; pero el de Bolivia no lo favoreció con su aceptacion. De este modo se frustraron una vez mas, sin culpa de Chile, las expectativas de arreglo y quedaron esterilizados los elevados y conciliadores propósitos que se tuvieron en vista al acreditar una Legacion Especial.

III

Sin desalentarse todavia por este ingrato resultado y persiguiendo con mas ahinco garantías y seguridad para el desarrollo tranquilo de los injentes intereses chilenos comprometidos en el Litoral y desierto de Atacama, el Gobierno de Chile envia una nueva Legacion a Bolivia, que se aleja de Valparaiso a mediados de 1873.

Hasta entónces el Tratado de 1866 solo habia sido respetado por Chile. Bolivia continuaba, con mengua de los intereses y derechos de esta República, usufructuando del territorio de par-

ticipacion comun, y desconociendo los privilegios y ventajas que aquel pacto consigna en nuestro favor.

La política instable, y no siempre respetuosa del derecho ajeno, que de ordinario domina en el Gabinete de La Paz, hacia temer al Gobierno de Chile que exacciones violentas o tributos exorbitantes se hicieran pesar sobre las personas e industrias chilenas esparcidas en el desierto de Atacama. Evitar este peligro y poner al trabajo honrado a cubierto de espoliaciones innmerecidas, habia llegado a ser a la sazón una de las mas fuertes preocupaciones del Gobierno de Chile y el punto de mira de las negociaciones por entablarse.

La nueva Legacion de Chile, penetrada de aquellos temores, encaminó sus gestiones con afanoso y resuelto empeño a obtener medidas que, asegurando la tranquilidad para las valiosas empresas chilenas, comunicaran al mismo tiempo aliento y vida al espíritu industrial de los hijos de este país.

El Gobierno de Chile logra al fin alcanzar este resultado, haciendo para ello considerables sacrificios.

Condona a Bolivia la mitad de las sumas percibidas por los derechos de esportacion de los metales estraídos del grado 23, que correspondian a Chile segun el Tratado de 1866; la libertad del exámen fiscalizador que tenia derecho a practicar en sus oficinas aduaneras; y, por último, le cede para siempre el goce esclusivo de todos los derechos de esportacion que el Tratado referido declaraba partibles por mitad entre ámbas naciones. En cambio de estas valiosas cesiones, Chile reclamaba y obtenia una sola garantía: la seguridad de que durante 25 años, bajo ningun pretesto, bajo ninguna forma o denominacion, se impondria a las personas, capitales e industriales chilenas otras o mas altas contribuciones que las que al presente existian.

A ese pensamiento obedeció el Tratado que se firmó en Sucre el 6 de agosto de 1874, el cual, entre otras disposiciones inconducentes por ahora al esclarecimiento del conflicto actual, estableció la siguiente:

“Artículo IV. Los derechos de esportacion que se impongan sobre los minerales explotados en la zona de territorio de que hablan los artículos precedentes (la formada por los paralelos 23 y 25), no excederá la cuota que actualmente se cobra, y *las personas, industrias y capitales chilenos* no quedarán sujetos a mas contribuciones *de cualesquiera clase que sean*, que a las que al presente existan. La estipulacion contenida en este artículo durará por el término de 25 años.”

El artículo III dispuso:

“Queda desde esta fecha derogado en todas sus partes el tratado de 10 de agosto de 1866;”

y por un Protocolo anexo, cuyo testo se considera incorporado al Tratado mismo, se consiguió el siguiente precepto:

“Todas las cuestiones a que diere lugar la intelijencia y ejecucion del tratado deberán someterse al arbitraje.”

IV

El Tratado de 1866 acababa de desaparecer sin que sus estipulaciones fundamentales hubieran sido observadas una sola vez por Bolivia, y para que V. E. se persuada todavía del poco respeto que merece a esa República su palabra i su fé empeñadas solemnemente, me bastará recordar a V. E. que durante los ocho años en que rijió aquel pacto, no dió tampoco cumplimiento al compromiso contraido por el artículo VII. V. E. no habrá olvidado quizás que por ese artículo ámbas Repúblicas se obligaron a indemnizar a ciertas personas que trabajando en el desierto habian recibido algunos perjuicios a consecuencia de la controversia sobre límites que existia entre ámbas naciones. De acuerdo con ese compromiso Chile y Bolivia debian entregar por mitad la suma de ochenta mil pesos a los damnificados, suma que se cubriria con el 10 por ciento del producto de la venta de guano. Chile entregó puntualmente aquella suma, pero Bolivia retardó con diversos pretestos su pago, y ahora pretende que no la debe por cuanto su obligacion desapareció desde que el Tratado de 1874 derogó al de 1866, sin tomar en cuenta que un pacto destinado a crear o modificar las obligaciones de dos países, no puede destruir derechos de terceros, que no han sido consultados ni han intervenido en él. No traeria este hecho a la memoria si los perjudicados con esta conducta no hubieran acudido, invocando para ello cierta mancomunidad moral, que el tratado establece en esa parte, solicitando del Gobierno de Chile que hiciera jestioncs amistosas al Gobierno de La Paz para obtener el pago de aquel crédito.

V

El Gobierno de Chile esperaba que el nuevo pacto pondría término definitivo a la série interminable de controversias odiosas, de reclamaciones cotidianas, de dificultades de todo jénero a que el anterior habia dado lugar, y manifestaba complacido esta confianza al Congreso Nacional de 1875 en las siguientes palabras:

“El Tratado de 6 de agosto del año último, cuyos pormenores reputo escusado espresar aquí, habiendo sido aprobado recientemente por el Congreso, revela de la manera mas palmaria, por la liberalidad de sus disposiciones, el espíritu eminentemente cordial y americano de que se sienten animados el Congreso y la Cancillería chilenos respecto de la República de Bolivia, y es una prenda segura de la permanencia de las buenas relaciones entre los dos países. Eliminada en este tratado la comunidad de intereses, con escepcion de la que concierne a los guanos, cuya participacion comun no ha motivado ninguna dificultad, y concluida la intervencion aduanera que será innecesaria, nada vendrá a entorpecer en adelante la cordialidad de las relaciones existentes, ni a dificultar el cumplimiento de las obligaciones contraídas.

“En el ajuste de las nuevas estipulaciones, Chile no ha trepido en ceder parte de su derecho, así para obtener nuevas franquicias en obsequio del comercio e industria de nuestros nacionales, como principalmente para zanjar de una vez por todas cuestiones ingratas que nos alejaban cada día mas de Bolivia, cuya amistad tenemos interes en conservar, y cuyo progreso, unido estrechamente a la solucion de esas dificultades, no puede sernos en ningun caso indiferente.”

VI

Esta confianza, que no reconocia otro fundamento que un sentimiento de natural afeccion de parte de Chile, no tardó en ser burlada por sucesos de otro jénero que se desarrollaban en las poblaciones de Caracoles y Antofagasta. Las autoridades bolivianas que rejian esos pueblos alejadas del centro del Gobierno Nacional, libres de su vijilancia fiscalizadora, se abandonaban sin freno a las inspiraciones de sus caprichos o de su conveniencia y el pueblo, pueblo chileno, era la víctima de constantes desmanes y atropellos injustificables.

El Gobierno recibia casi en cada vapor la protesta de las quejas de sus nacionales, y nada divisaba que le hiciera mirar como probable un cambio inmediato y radical en aquella penosa situacion. Un sentimiento de despecho, que la palabra del Gobierno de Chile y las jestioncs moderadas de sus cónsules no bastaban a reprimir del todo, se dejaba conocer visiblemente en las colonias de Chile, y hacia temer el estallido de conflictos de enojosas consecuencias.

El pueblo de Chile, que habia llevado al desierto el trabajo, la vida y todas sus esperanzas, que instintivamente se inclinaba a considerarse dueño de aquellos territorios por los antiguos derechos de la república y por los títulos que acuerda el jenio y el sacrificio, que componia el noventa y tres por ciento de sus habitantes, apenas podia resignarse a soportar los vejámenes que con ofensiva altanería le prodigaban funcionarios de un órden subalterno.

En tal estado, el Gobierno de Chile creyó de su deber presentar al de Bolivia un ligero cuadro de aquella situacion, y can fecha 31 de enero de 1877, le decia lo siguiente:

“De algun tiempo a esta parte se preocupa mi Gobierno de inquirir con espíritu sereno e imparcial las causas que puedan producir escision entre los hijos de ésta y de esa República, residentes en el Litoral boliviano.

“Animado del propósito mas sincero de destruir todo aquello que se oponga a la union estrecha de ámbas nacionalidades, mi Gobierno no ha cesado de inculcar este sentimiento en los Cónsules que allí ha constituido, encareciéndoles la conveniencia de trasmitirla a nuestros nacionales. Les ha encargado así mismo que nieguen su proteccion a toda peticion o reclamo que no se presente acompañado de evidente justicia, y hasta ahora me complazco en reconocerlo, no han dejado aquellos funcionarios de interpretar fielmente el pensamiento de mi Gobierno.

“Desgraciadamente, esto no ha bastado a contener y evitar la perpetracion de graves y odiosos abusos, de que han sido víctima algunos ciudadanos chilenos, ni las pretensiones exorbitantes de algunos ajentes secundarios de la administracion boliviana, negando las atribuciones mas elementales de nuestros ajentes consulares, como luego tendré ocasion de demostrarlo.

“Mi Gobierno ha llegado, por lo tanto, a persuadirse de que el oríjen del mal se encuentra en la eleccion poco acertada de algunos ajentes investidos de las funciones del poder público en esta parte del territorio boliviano, ajentes que colocados a gran distancia de las autoridades superiores, carecen de la saludable vijilancia y fiscalizacion de ese ilustrado Gobierno que aprecia los sucesos y situaciones por los relatos apasionados e inexactos de esos mismos ajentes, cuyos abusos quedan así sin el necesario correctivo.

“La numerosa colonia chilena ha ido formando el penoso convencimiento de que las liberales instituciones que rijen a Bolivia no alcanzan hasta ella y que sus personas y bienes se hallan a merced del capricho inescrupuloso de ajentes subalternos de la autoridad.

“V. E. debe tener conocimiento de la inhumana flajelacion que aplicó en Tocopilla a un ciudadano chileno un oficial de policía; V. E. debe tener tambien conocimiento de igual flajelacion inflijida recientemente en Mejillones a otro ciudadano chileno por órden del comisario de policía.

“Las respectivas jestioness que en cada caso han dirijido nuestros Cónsules para estimular el celo de las autoridades, en desagravio de la justicia y de la vindicta pública, no han traído otro resultado que un aparato de proceso tan ridículo como ilusorio.

“V. E. no habrá olvidado tampoco el asesinato perpetrado en la persona de Clemente Andrade. Pero, para no citar otros casos, ahí está el homicidio recientemente ejecutado en la persona de Arriagada, que ahora se trata de cohonestar desnaturalizando, a juicio de mi Gobierno, los hechos que lo han producido.

“Ésta série de hechos odiosos que han tenido que sufrir nuestros nacionales, ejecutados por empleados administrativos, sin que éstos hayan recibido en la jeneralidad de los casos la sancion penal que las leyes de Bolivia señalan, cualquiera que sea la nacionalidad del

delincuente y del ofendido, ha ido despertando en la colonia chilena un sentimiento natural de dolor y de despecho, que si no se aviene bien con el respeto y prestigio de que debe verse rodeada la autoridad, no procede en este caso sino de la conducta poco circunspecta y poco regular de esta misma autoridad.

“Y no crea V. E. que solo en los agentes del poder político se hace sentir la falta de vijilancia a que atribuyo la principal parte en la creacion de la situacion que examino. Tambien la administracion de justicia, salvo honrosas escepciones, se halla léjos de inspirar la respetuosa consideracion de que ha debido hacerse merecedora. Diversos hechos que omito consignar aquí, manifiestan que no son infundados los recelos y desconfianzas con que son mirados sus fallos por las personas que se ven obligadas a solicitarlos.”

Despues de relatar los antecedentes de un proceso injustificable, iniciado contra dos ciudadanos chilenos por el juez letrado boliviano en Caracoles, el despacho del Gobierno de Chile agregaba:

“Ahora bien, ¿quiere V. E. conocer los antecedentes del juez que así privaba de su sosten y su reposo a dos familias, que encerraba en una prision a dos hombres honrados, que difundia la inquietud y la zozobra en la numerosa agrupacion de chilenos que da vida a Caracoles?”

“V. E. se impondrá con dolor, por medio de la copia que tengo el honor de acompañar, de que ese juez, a quien se habia creido conveniente hacer depositario de las funciones mas delicadas, funciones que requieren en quien las pone en ejercicio antecedentes intachables y honorabilidad probada, tenia sobre sí el peso de una acusacion criminal por intento de asesinato y consiguientes heridas que infirió el año de 1874 a Sebastian Lopez; y como si esto no fuera todavía bastante, en el año de 1875 se formó contra la persona de ese mismo juez otro proceso criminal por robo de dinero y otras especies de propiedad del doctor Manuel María Berazain.

“Y en este caso, siento decirlo a V. E., ni siquiera encuentro atenuaciones en una supuesta ignorancia de las notas infamantes que hacian de ese juez un juez imposible, porque ellas son de fecha reciente, y porque el nombre del criminal, junto con el de otros delincuentes, se consignaba por mandato del tribunal superior de Cobija en el registro de la Cárcel Pública de aquella ciudad.

“Este hecho y otros que pudiera citar a V. E. le llevarán sin duda el convencimiento de que la situacion de los chilenos en aquella rejion tiene mucho de azarosa e insegura.

No era posible que continuara por mas tiempo un estado de cosas que envolvia para la colonia chilena todo jénero de peligros. Sus peticiones al Gobierno de La Paz, trescientas leguas distante del teatro de los sucesos, no le permitia abrigar fundadas esperanzas de reparacion. Pensóse entónces en la formacion de una sociedad, a que se dió el nombre de “La Patria,” cuyo programa, entregado a la publicidad, resumia los propósitos de los asociados, que no eran otros que asegurarse una proteccion mutua, alivio a los enfermos y ocupacion a los que carecian de ella. Los asociados se compro-

metian, además, a someter cualquiera cuestión comercial, minera o personal, que surgiera entre ellos, al fallo de un jurado de arbitraje, nombrado del seno mismo de la sociedad. Se obligaban también a no mezclarse en la política del país ni en la creencia religiosa de ninguno de sus miembros.

Este programa que, respondiendo a un sentimiento humanitario y fraternal, satisfacía al propio tiempo una necesidad imperiosa, creando una medida salvadora, cuidó muy especialmente de no lastimar la susceptibilidad de los funcionarios de Bolivia. No imprimió a la sociedad el sello de una nacionalidad exclusiva; lejos de ello, llamó a formar parte tanto a los chilenos como a los bolivianos y extranjeros. Mas aun; insinuó al Sub-prefecto que el directorio abrigaba el pensamiento de designarlo en calidad de miembro honorario de la sociedad.

Sensible a estos sentimientos, el Sub-prefecto de Caracoles decía contestando:

“Entusiasta como el que mas por toda sociedad benéfica y moral que se establece, hago votos porque la que se proponen fundar, beneficie a este industrioso mineral.”

Se lisonjaban los chilenos de haber removido una de las causas mas graves de su malestar con la formación de esta sociedad, y nada les hacía presumir que pronto se les haría blanco de una persecución odiosa y severa. Consideraban que el derecho de asociación, que la Constitución de Bolivia otorga, sin excepción ni distinción, a todos sus habitantes, no se les desconocería y que podrían contar con aquella preciosa garantía que los pueblos libres ofrecen siempre a los que pisan su suelo.

“Esta creencia, agregaba el Gobierno de Chile en el referido despacho, ha debido, sin embargo, sentirse considerablemente debilitada, en vista de una nota que V. E. ha dirigido al señor Prefecto del Litoral el 7 de diciembre último, y en la cual recomienda a las autoridades que empleen medidas excepcionales de rigor contra los miembros de la sociedad ‘La Patria,’ en quienes ve seguramente V. E., no individuos honrados que en la medida de sus fuerzas y en el uso de su derecho cooperan al progreso común, sino elementos peligrosos que conviene alejar del territorio boliviano, aun sin forma de juicio, o sometiéndolos a un procedimiento excepcional, como se me asegura que ya ha sucedido. Y esto es tanto mas grave cuanto que para dirigir esa recomendación, V. E. se refiere a simples *tendencias* y no a ningún acto determinado y concreto, como si las intenciones y los propósitos pudieran ser materia de un procedimiento criminal.

“Mi Gobierno no alcanza a explicarse, señor Ministro, que género de consideraciones haya podido aconsejar contra los hijos de esta República semejante línea de conducta, que parece constituir una

hostilidad sistemática dirigida a hacerles, si no imposible, en extremo penosa su permanencia en ese país.

“V. E. ha visto que se ha puesto su fortuna, su honra y su vida en manos criminales, y cuando por este motivo, que no puede ser mas justificado, han resuelto definir sus contiendas por jueces árbitros elejidos por ellos mismos, se les persigue y aun se les amenaza con la espulsion del territorio. Se pretende negar ya a nuestros nacionales no solo el ejercicio lejítimo del derecho de asociacion, sino aun la facultad natural que todos poseen de someter al fallo de terceros sus desacuerdos privados. V. E. convendrá conmigo en que no se puede llevar mas léjos esta prevencion injustificable contra la nacionalidad chilena.

“Para cohonestar este procedimiento, se aparenta ver en la resolucion de los chilenos un agravio a la majistratura boliviana, y no se advierte que ese respeto no se impone por la violencia sino que se conquista por la elevacion, honorabilidad y rectitud del majistrado. El derecho de someter sus juicios y cuestiones al fallo de árbitros, no solo descansa en la legislacion civil de todos los paises, sino que tiene la doble sancion de la práctica y de las leyes internacionales. En algunas naciones hai una jurisdiccion especial para los extranjeros, con el fin de darles una garantía contra la prevencion que pudieran profesarles los naturales. La mayor parte de los reglamentos consulares, como lo sabe V. E., encargan a los Cónsules que amonesten a sus conciudadanos en el sentido de que diriman sus diferencias sin ocurrir a los tribunales locales, y muchos constituyen a los mismos Cónsules en jueces árbitros. No necesito recordar a V. E. que el oríjen mismo de los Cónsules no fué otro que la facultad que voluntariamente concedian algunos soberanos a los extranjeros comerciantes que llegaban a sus puertos o establecimientos, para constituir un juez de su nacion que decidiese sus pleitos, conforme a las leyes patrias.

“Si la sociedad ‘La Patria’ ha podido nacer al amparo de la Constitucion de esa República; si va a ejercer su accion dentro de la esfera permitida y garantida por las leyes, sin inferir agravio a la administracion de justicia, el derecho que tiene para existir, y aun para ser protegida, es todavia mas perfecto, si se recuerdan los antecedentes judiciales que he tenido la honra de esponer.

“Los chilenos, vejados en sus personas, perjudicados en sus intereses, solicitaban en sus angustias la intervencion consular de Chile. El Prefecto de Antofagasta, en su declaracion hostilidad hácia los miembros de la sociedad ‘La Patria,’ hacia citar al presidente y tesorero, que residian en Caracoles, para que abandonando sus negocios se trasladasen, recorriendo un camino de cuarenta leguas, a dar esplicaciones acerca de la sociedad referida, providencia completamente innecesaria, desde que por medio del Sub-prefecto de Caracoles le era fácil obtener todos los datos de que hubiera menester.

“La injerencia consular que estos sucesos hizo necesaria, vino a demostrar tambien que las autoridades subalternas del Litoral desconocieron las atribuciones y deberes de aquellos funcionarios. El Cónsul de Chile en Caracoles preguntaba con delicadeza al Sub-prefecto si era auténtica la órden que se decia haber impartido por su órgano el Prefecto de Antofagasta, disponiendo que el presidente y tesorero de la sociedad ‘La Patria’ se trasladasen a aquel puerto,

y el referido Sub-prefecto, despues de negarse con algunos pretextos a satisfacer la atenta solicitud del Consulado chileno, trascibió a éste, con fecha 11 de diciembre, la siguiente nota del Prefecto de Antofagasta, en que se desconocia a los Cónsules el derecho de amparar a sus nacionales injustamente ofendidos.

“No pudiendo esta Prefectura, decia aquella nota, reconocer en el señor Cónsul de Chile ni aun en el señor Cónsul Jeneral, la facultad de intervenir en asuntos que no sean meramente comerciales, que les estén espresamente encargados en los tratados con el pais en que residen, tengo necesidad de recordar al señor Cónsul de Chile los principios y reglas jenerales del derecho internacional que prohíben a los Cónsules tomar injerencia en asuntos que, como el de los señores Palazuelos y Lichtenstein, chileno el uno y aleman el otro, solo seria materia de una reclamacion diplomática, *puesto que los Cónsules no tienen facultad para admitir protestas de sus conciudadanos contra los actos de una autoridad del país en que serán sometidos a sus leyes.* De este proceder inusitado doi cuenta a mi Gobierno para que, por el órgano correspondiente, pida al de Chile que los señores Cónsules se circunscriban en sus relaciones oficiales con la autoridad política de este departamento a las reglas establecidas por el derecho de jentes para estos casos, y que no salgan de la órbita de las atribuciones que les prescribe el derecho y las prácticas jeneralmente aceptadas entre las naciones.”

Esta conducta del Prefecto de Antofagasta era tanto mas incomprensible, cuanto que el Gabinete de La Paz habia manifestado, un mes ántes, en circular de 16 de noviembre, dirigida a sus Cónsules en el extranjero, teorías completamente contrarias. En esa circular decia:

“El Gobierno no puede ver con indiferencia que sus nacionales residentes en país extranjero sean perseguidos, encarcelados y victimados, sin que para ello, como ha sucedido en ciertos lugares, se observen no solamente los principios de reciprocidad establecidos por el Derecho Internacional, ni aun las leyes de la humanidad, ni las comunes del Estado.”

Y al terminar agregaba:

“Los precedentes enunciados, señor Cónsul, me obligan a dirigirme a usted para recomendarle que en observancia de las convenciones que tiene celebradas Bolivia con los Estados extranjeros, y en vista de las leyes protectoras del derecho internacional que rije a falta de tratados a todos los pueblos civilizados, procure usted *prestar la mas decidida y eficaz proteccion a los nacionales bolivianos residentes en ese punto, haciendo en favor de éstos ante el Gobierno de esa nacion todas las reclamaciones que en su caso fueren necesarias*, dando avisos oportunos al Gobierno de esta República, a fin de que pueda pedir las reparaciones que la justicia exige de los ilustrados gobiernos con los que felizmente Bolivia mantiene relaciones de franca y leal amistad.”

Mientras el Gobierno de Bolivia, en la circular trascrita, declaraba que los cónsules debian prestar decidido amparo a los nacio-

nales lastimados en sus derechos, el Prefecto de Antofagasta declaraba, a su vez, que no tenían facultad ni para aceptar la protesta de sus quejas. El Gobierno de Bolivia les encarecía la conveniencia de reclamar ante el Gobierno mismo de la nación contra las vejaciones de que se les hiciera objeto, y el Prefecto, conecedor del pensamiento de su Gobierno, afirmaba, no obstante, que no les era lícito reclamar siquiera ante las autoridades subalternas.

Estos hechos manifiestan que existía una profunda perturbación en los resortes de la administración de Bolivia, debida, sin duda, como ántes he tenido la honra de esponerlo, a la falta de ilustración de sus agentes y a la inmensa distancia que separaba las autoridades de La Paz de las del Litoral.

El Gobierno de Chile, deplorando la sensible situación que vituperables procedimientos de las autoridades bolivianas habían creado para los hijos de este país, no sentía que ello fuera bastante todavía para debilitar sus sentimientos de conciliación y benevolencia hácia la república de Bolivia.

Al concluir el despacho que contenía la narración de los sucesos de que me estoy ocupando, consignaba estas palabras:

“Por parte del Gobierno de Chile, que no quiere ver en Bolivia sino un país amigo y hermano, y con el cual aspira a mantener siempre y estrechar las relaciones mas cordiales de fraternidad, se harán incessantemente todos los esfuerzos posibles a fin de que la paz y la amistad hasta hoy existentes no se alteren ni debiliten, confiando al mismo tiempo para alcanzar estos propósitos en que sus ciudadanos residentes de Bolivia han de estar sujetos al derecho comun imparcialmente aplicado; en que la sociedad “La Patria,” mientras no salga de la órbita que ella misma se ha trazado en su programa, mientras no infrinja las leyes ni ataque ningun derecho, ha de gozar de la protección que no se le puede negar sin establecer una escepcion odiosa en su contra; en que los funcionarios consulares de Chile no vean entrabada su acción en beneficio de sus nacionales, siempre que ellos sean víctimas de alguna vejación o tropelía. Confía, finalmente, mi Gobierno en que el de V. E. dictará todas las demas medidas de reparación y de estricta vijilancia que este delicado estado de cosas hace indispensable.

“Las fundadas observaciones del Gobierno de Chile no obtuvieron de el de Bolivia respuesta alguna, hasta que despues de muchos meses se hizo necesario enviar un ministro a La Paz, el cual alcanzó siquiera algunas providencias tranquilizadoras y el cambio de varios funcionarios del Litoral. Esto devolvió por el momento parte de su reposo a la colonia chilena.”

VII

Entretanto, desde los primeros meses del año último manifestóse de un modo inequívoco el propósito deliberado que abrigaba el Gobierno de Bolivia de vulnerar y hacer a toda costa ilusorias

las garantías que el artículo IV del Tratado de 1874 aseguraba en el Litoral y desierto de Atacama a los chilenos, sus capitales y sus industrias.

En Antofagasta, a pretesto de atender a servicios de la comunidad, se dictaban o modificaban onerosamente y se ponían en ejercicio contra nuestros nacionales, empleando a veces un excesivo rigor, diversos impuestos, a los cuales se denominaba *derecho adicional*, contribucion de lastre y alumbrado, que violaban abierta y claramente la letra y espíritu de artículo IV del referido Tratado. Al mismo fin de barrenar aquella garantía concurría una lei dictada por la Asamblea de Bolivia el 14 de febrero de 1878 y promulgada por el Gobierno el 23 del mismo mes. Esta lei ordenaba que la Compañía Chilena de Salitres y Ferrocarril de Antofagasta debía pagar un impuesto *minimum* de diez centavos por quintal de salitre esportado. De esta manera, y dejando la Asamblea el camino abierto para subir el impuesto, que ahora se fijaba en 10 centavos, a 20, a 50, al tipo que la codicia o la necesidad indicara, se asestaba un rudo e injusto golpe y se amenazaba para mas tarde de muerte a una de las empresas chilenas que durante diez años habia luchado con mas tenacidad en el desierto, que habia invertido no pocos millones de pesos, y que era el oríjen y la vida de poblaciones en el dia florecientes.

Permítame V. E. referir brevemente el oríjen de los derechos de la Sociedad industrial que se denomina Compañía de Salitres y Ferrocarril de Antofagasta.

Dos ciudadanos chilenos, deseando esplotar ciertos depósitos de bórax y de salitre que habian descubierto en el desierto, solicitaron y obtuvieron del gobierno de Bolivia, en los años 66 y 68, la merced del terreno necesario para el objeto, el privilejio esclusivo por quince años para la elaboracion y libre esportacion del salitre, y otras concesiones relacionadas con el propósito primordial de los empresarios. En compensacion, éstos debían enterar en arcas del Estado la suma de diez mil pesos, construir a sus espensas un muelle en Antofagasta y una carretera de veinticinco leguas, que partiendo de ese puerto debía prolongarse hácia el interior por el despoblado, estableciendo en el trayecto, de distancia en distancia, las convenientes aguadas, alojamientos para viajeros y otras comodidades.

Consta que la suma de diez mil pesos espresada fué puntualmente cubierta en la tesorería de Bolivia, y que tanto el muelle como la carretera con sus adherentes y accesorios fueron entre-

gados ántes del plazo que se fijó para ello, a satisfaccion del Gobierno de aquella república.

Entretanto, un movimiento revolucionario derribó en 1871 a la administracion que habia acordado esas concesiones remuneratorias, y el nuevo Jefe del Estado, a influjo del calor de las pasiones producidas por la lucha, espidió varios decretos tendentes a anular los actos de la administracion caida. Por uno de esos decretos se declaraba ilícitas y de ningun valor las concesiones de terrenos, salitreras y boratos hechas por la administracion anterior; y solo se acordaba el derecho de retracto en favor de las personas que hubieran obtenido tales concesiones, siempre que se presentaran como licitadores en los remates en que, segun ese decreto, debian adjudicarse nuevamente las estacas o lotes de los depósitos que contenian dichas sustancias.

La Legacion de Chile creyó deber reclamar entónces de esta medida que heria intereses de tanta magnitud y que, a su juicio, no podia aplicarse sin manifiesta injusticia a industriales extranjeros que, ajenos a la política interior, consagraban al trabajo pacífico su actividad y sus capitales, confiados en la seriedad y justicia de los Gobiernos. El señor Ministro de Relaciones Exteriores de Bolivia, respondiendo al representante chileno, le decia en marzo de 1872 que aunque el gobierno insistia en la anulacion de los actos oficiales de la pasada administracion, abrigaba tambien “el ánimo de exceptuar de sus efectos equitativamente, prévio conocimiento de causa y por medio de resoluciones particulares, a aquellos concesionarios que *hubieran llevado a efecto su privilegio, que tengan capitales comprometidos en el y que hayan efectuado mejoras y adelantos en beneficio del país en las empresas que hubiesen acometido.*”

La empresa salitrera reunia, pues, todas las condiciones necesarias para garantir su existencia.

Algunos meses mas tarde, la Asamblea Nacional de Bolivia dictaba la lei de 22 de noviembre de 1872, cuya parte dispositiva dice así:

“Art. 1º. Los reclamos de los ciudadanos extranjeros por indemnizaciones provenientes de concesiones o contratos celebrados con el Gobierno, serán entablados ante la Corte Suprema de Justicia, la cual conocerá de ellos en juicio contencioso, representando el ministerio público los intereses nacionales.

Art. 2º. Se autoriza al Ejecutivo para transar sobre indemnizacion y otros reclamos pendientes en la actualidad contra el Estado, ya sea por nacionales o extranjeros; y para acordar con las partes interesadas la forma mas conveniente en que habrán de llenarse sus obligaciones respectivas, defiriéndose estos asuntos, solo en caso de

no avenimiento, a la decision de la Corte Suprema, con cargo de dar cuenta a la *próxima legislatura*.

Art. 3°. Los reclamos que la Corte Suprema encuentre fundados pasarán al Gobierno con la designacion de la cantidad líquida a que asciende el crédito.

Art. 4°. El presupuesto jeneral designará los fondos para el pago de estas indemnizaciones."

De conformidad con el art. 2°. de esta lei, que el ejecutivo se apresuró a promulgar, el Gobierno y el representante autorizado de la Compañía Salitrera ajustaron las bases de una transaccion que pusiera una vez por todas término definitivo a las dificultades existentes. Entre esas bases figuraba el derecho de la empresa para explotar libremente los depósitos de salitres *por el término de quince años*, y el de *esportar por el puerto de Antofagasta los productos de su industria, libre de todo gravámen fiscal o municipal*.

En seguida el Gobierno espidió un decreto con fecha 27 de noviembre de 1873, en el cual se consignaba un testimonio de justicia a la lealtad y buena fé de la Compañía y se disponia en la parte resolutive lo siguiente:

"Se aceptan por vía de transaccion y en uso de la autorizacion que la lei de 22 de noviembre de 1872 confiere al ejecutivo, las ocho bases contenidas en la anterior proposicion, quedando nulo, y sin ningun efecto, los actos anteriores que están en oposicion con ellos."

Dos dias mas tarde, la transaccion aprobada se solemnizó por escritura pública otorgada en Sucre el 29 de noviembre de aquel año y fué registrada en el *Anuario Oficial de Leyes de Bolivia*.

* Definitivamente terminados los arreglos entre la Compañía Salitrera y el Gobierno, éste se apresuró a dar cuenta a la legislatura *inmediata*, como se lo recomendaba la lei de 22 de noviembre de 1872, y lo hizo en los siguientes términos al abrirse las sesiones de 1874:

"Las reclamaciones de esta casa de que se informó en 1872 han sido tambien transijidas bajo condiciones que se resúmen en la convencion de 27 de noviembre de 1873. Los representantes de la casa mencionada las han aceptado. *Queda así definida una cuestion odiosa, que por largo tiempo ha comprometido ante la opinion la probidad del Gobierno, teniendo pendiente de su discusion la suerte de los gruesos capitales que los empresarios desembolsaron para establecer en el desierto de Atacama la industria salitrera en grande escala.*"

La Asamblea Nacional de 1874 se impuso de la transaccion y con este trámite quedó cumplida la obligacion de dar cuenta que la lei recordada impuso al Ejecutivo.

Vino por último el tratado de 6 de agosto de 1874, y en él se estableció, como se ha visto, que las personas, industrias y capi-

tales chilenos no quedarían por el término de 25 años, sujetos a mas contribuciones, de cualquiera clase que fueran, que a las que al presente existían.

Nada podía ya justificar temor alguno y la Compañía Salitrera se entregaba tranquila y sin zozobras a la explotación de la industria a que se había consagrado. Trascurrieron así cuatro años sin que nadie intentara desconocer o desvirtuar los derechos de aquella empresa, la cual solo en la última época empezaba a percibir la retribución material de sus largos sacrificios y de los grandes capitales que había sepultado en el desierto.

De improviso, y cuando ménos podía aguardarlo, se impone con asombro de que la Asamblea de Bolivia ha dictado con fecha 14 de febrero de 1878 una lei concebida en estos términos.

“Artículo único. Se aprueba la transacción celebrada por el ejecutivo en 27 de noviembre de 1873 con el apoderado de la Compañía Anónima de Salitres y Ferrocarril de Antofagasta, a condición de hacer efectivo como *minimum* un impuesto de diez centavos en quintal de salitre esportado. Comuníquese al Poder Ejecutivo para su ejecución y cumplimiento.”

Esta lei fué sancionada por el Gobierno el 23 del mismo mes.

La Legación de Chile se apresuró a representar al gabinete de La Paz las gravísimas observaciones a que se prestaba esa resolución, que no solo venía a herir con notable injusticia intereses pacíficos que vivían al amparo de sus títulos legales y de la probidad del país, sino que era también una abierta y flagrante violación del Tratado vigente entre ambas Repúblicas, y con fecha 2 de julio dirigió una nota consignando por escrito las reflexiones hechas anteriormente en conferencias verbales. Este despacho no fué contestado, pero el Ministro de Chile obtuvo del señor Ministro de Hacienda la seguridad de que la lei, que él mismo hallaba inconveniente, fuera suspendida hasta encontrar una solución correcta y prudente de la dificultad.

Después de varias observaciones, el Ministro chileno llamaba la atención del Gabinete de la Paz a un antecedente importante y decisivo que manifiesta el juicio de ese Gobierno sobre los derechos adquiridos por la Compañía de Salitres y la aplicación práctica del tratado de 1874. Decía nuestro Ministro en la nota espresada:

“Habiéndose dirigido la Municipalidad de Antofagasta al señor Presidente del Consejo de Estado, por oficio de 4 de mayo de 1875, solicitando se impusiera a la Compañía Salitrera una contribución municipal de tres centavos por quintal de salitre esportado y fundándose para ello, entre otras consideraciones, en que el Supremo

Gobierno habia declarado que la Compañía no estaba exenta de derechos municipales, esa solicitud fué remitida en informe al Consejo Departamental de Cobija, por decreto de 9 de junio del mismo año, fechado en Sucre y firmado por el señor Reyes Ortiz, hoi Ministro de Justicia y entónces Presidente del Consejo de Estado. El Consejo Departamental informó que debia rechazarse la solicitud porque estaba en contradiccion con el artículo 4º de la transaccion celebrada entre el Supremo Gobierno y la Compañía en 27 de noviembre de 1873, en la que se estipula que el salitre que se esporte queda libre de todo derecho de esportacion y de cualquier otro gravámen fiscal o municipal y ademas, porque existe tambien el tratado de límites con Chile, vijente, por el que no pueden cobrarse en el Litoral nuevas contribuciones. En vista de este informe y de las razones en que él se apoya, se dió en Sucre el decreto de 27 de agosto que declara ilegal la contribucion que se trataba de establecer."

A principio de noviembre llegan a conocimiento del Gobierno de Chile informes fidedignos de que el de Bolivia persistia nuevamente en llevar a efecto el impuesto en cuestion. Sin pérdida de tiempo y con fecha 8 del mismo mes trasmite estas noticias y temores a la Legacion chilena, encareciéndole la necesidad de evitar que se consume ese acto atentatorio. Despues de insistir en la justicia de nuestros derechos, agregaba aquella nota:

"Se hace, pues, necesario para evitar graves conflictos que V. S. se dirija a ese señor Ministro de Relaciones Exteriores, dándole lectura de la presente nota y dejándole copia de ella si fuere conveniente, y le manifieste que mi Gobierno no cree ni por un solo instante que el de Bolivia persista en el establecimiento de una contribucion como la de que se trata, por cuanto es abiertamente contraria a la letra y al espíritu del pacto de 6 de agosto de 1874.

"Igualmente contrarias a ese pacto son el aumento de la contribucion conocida con el nombre de "derecho adicional" que percibe la compañía de lanchas, las modificaciones onerosas del impuesto de lastre a favor de la Municipalidad, y finalmente la contribucion de alumbrado que en estos momentos se hace efectiva en Antofagasta

"Mi Gobierno, por las consideraciones espuestas, no puede mirar con indiferencia estas trasgresiones del pacto de 1874, y considera conveniente que V. S. pida al de Bolivia la suspension definitiva de toda contribucion posterior a la vijilancia del Tratado, como asimismo de toda modificacion onerosa introducida en las contribuciones existentes con anterioridad a la misma fecha. La negativa del Gobierno de Bolivia a una exigencia tan justa como demostrada, colocaria al mio en el caso de declarar nulo el tratado de límites que nos liga con ese país, y las consecuencias de esta declaracion dolorosa, pero absolutamente justificada y necesaria, serian de la esclusiva responsabilidad de la parte que hubiere dejado de dar cumplimiento a lo pactado."

El Ministro de Chile en La Paz tenia ya conocimiento de los propósitos que abrigaba el Gobierno de Bolivia y ántes de recibir

la nota en parte transcrita anteriormente, habia solicitado y obtenido del señor Ministro de Relaciones Exteriores una conferencia que tuvo lugar el 25 de noviembre. El representante chileno espuso en ella todas las consideraciones que, a juicio del Gobierno de Chile, hacian injustificable el cobro del impuesto, pero el señor Ministro de Relaciones Exteriores y sus colegas del Interior y de Hacienda, que se hallaban presentes, persistian en la resolucion de hacerlo efectivo. Sin haber llegado a ningun acuerdo se dió por terminada la conferencia, quedando de reunirse para tratar del mismo asunto tres dias despues. El 28 de noviembre tuvo lugar en efecto la conferencia proyectada y en ella los mismos señores ministros declararon al representante chileno que despues de haber hablado con S. E. el Presidente se habia convenido en Consejo de Gabinete en cobrar el impuesto desde luego. El diplomático chileno no pudo disimular su estrañeza ante esa resolucion que consideraba inconciliable con la promesa que le habia hecho el Ministro de Hacienda en propiedad, señor Medina, ausente en esa época de que no se procederia al cobro del impuesto hasta que se resolviese la jestion diplomática pendiente, e incompatible con los principios mas elementales del Derecho Internacional y con la cortesía que Chile, país amigo, tenia derecho de aguardar de Bolivia, pues hasta esa fecha no habia recibido siquiera contestacion a la nota que 5 meses ántes presentada manifestando los poderosos fundamentos que impedian a Chile aceptar como lejítima aquella contribucion.

Habiendo insistido el Gabinete de La Paz en hacer efectivo inmediatamente el impuesto, el Ministro de Chile dió lectura a la nota del 8 de noviembre que acababa de recibir, y que se le habia dirigido para ese efecto, y espuso que si se insistia en ejecutar esa resolucion, el Gobierno de Chile creeria que daban por roto el Tratado de 1874 y tomaria por su parte las medidas necesarias a la nueva situacion, que sin culpa suya venia a crearse.

Los señores ministros manifestaron entónces que volverian a hablar con S. E. el Presidente, y como el representante chileno observase que necesitaba una contestacion categórica sobre esta emergencia, ántes de la salida del correo, que tendria lugar cuatro horas mas tarde, se dió por terminada esta segunda conferencia.

Una hora despues el Oficial Mayor de Relaciones Exteriores se presentaba en la Legacion chilena para hacer presente que el Ministerio habia resuelto suspender toda medida hasta que la contestacion a la nota de 2 de julio se hubiera puesto en manos del Ministro de esta República.

El 13 de diciembre nuestro Ministro en La Paz recibia, en respuesta a su despacho de 2 de julio, una nota del señor Ministro de Relaciones Exteriores de Bolivia, destinada a presentarle en copia un informe que el señor Ministro de Hacienda le habia pasado acerca de la reclamacion chilena, y a participarle que en mérito de las consideraciones espuestas en dicho informe, su Gobierno se creia en el deber de ordenar la ejecucion de la lei que gravaba con un impuesto a la Compañía de Salitres.

Interrogado el señor Ministro de Bolivia por el representante chileno acerca de si la órden de ejecutar la lei se habia impartido ya o si se aguardaria para ello a que el Gobierno chileno conociera la nota de 13 de diciembre, contestó, con fecha 18 del mismo mes, que dicha órden se habia espedido y que seria llevada a su destino por el correo del dia siguiente.

Ya no podia quedar duda de que Bolivia estaba resuelta a desconocer sus obligaciones y producir un sério conflicto. Vanos habian sido los esfuerzos del Gobierno y representante chileno para evitarlo. A la reclamacion prudente, templada y amistosa del Ministro de Chile, se contestaba despues de cinco meses con la notificacion estraña y por demas descortés de que lei de 14 de febrero seria puesta inmediatamente en ejecucion. No se consideró propio aguardar siquiera a que el Gobierno de Chile tomara conocimiento de la ofensa que se le hacia, y se procuró con rara precipitacion hacer del todo imposible el empleo de arbitrios conciliadores. El artículo 2º del protocolo adicional al Tratado de 1874 establece el arbitraje para el caso en que surjan dificultades acerca de la intelijencia y aplicacion de sus disposiciones; y el Gobierno de Bolivia, temeroso tal vez de que por parte de Chile se hiciera apelacion a ese arbitrio salvador, se apresura a crear una situacion que lo hiciera inaceptable.

Resuelve, segun las inspiraciones de su propia conveniencia, las obligaciones de un contrato bilateral; siendo parte interesada, se erije en juez esclusivo para interpretar sus disposiciones; desdenea las oþservaciones de su contradictor, y, a despecho de sus reclamos y protestas, ordena que se lleve a efecto su mandato con demostraciones de innecesario rigor.

Solo despues de consumado el atentado y de sacrificadas las mas óbvias consideraciones de justicia y cortesía internacional, el Gobierno de Bolivia trae a la memoria la oportunidad que, a su juicio, habria en buscar la solucion en un arbitraje. El Ministro de Chile, de acuerdo con las instrucciones recibidas en nota de 3

de enero, acepta todavía el arbitraje y reprime, en obsequio a la amistad y a la armonía de dos pueblos hermanos, la natural resistencia a seguir tratando con un Gobierno que olvidaba, al parecer de intento, los respetos que se deben los pueblos cultos. Una sola cosa pedía el representante chileno para aceptar el arbitraje: la suspensión de los procedimientos ejecutivos que se seguían por orden del Gobierno a la Compañía de Salitres, a la cual se le cobraban noventa y tantos mil pesos, suma a que se hacía ascender el importe de la contribución impuesta por la ley de 14 de febrero, y la reposición del estado de cosas que existía antes de la ejecución de esa ley. Sin esta condición, el árbitro no vendría a pronunciarse acerca de la inteligencia y aplicación que debía darse al artículo 4º del Tratado, sino sobre hechos realizados como irrevocables y cuya reparación sería difícil y acaso imposible.

“Mi Gobierno, decía en esa ocasión el Ministro de Chile, me encarga manifestar al de V. E. que aceptando la indicación que se me ha hecho, está dispuesto a continuar la discusión interrumpida por la orden de mandar ejecutar la ley de 14 de febrero, y a constituir el arbitraje en el caso de no ser posible un arreglo directo.

“Pero mi Gobierno obra así en la persuasión de que el de V. E. se propone por su parte dar órdenes inmediatas para que se suspenda la ejecución de la ley y se restablezcan las cosas al estado en que se encontraban antes del decreto de 18 de diciembre, pues esta es una consecuencia lógica de la proposición de arbitraje hecha por V. E. Bolivia ha contrariado las estipulaciones del Tratado de 1874, innovando en 1878 el sistema tributario existente en el Litoral a la fecha de aquel pacto; de consiguiente, la suspensión del decreto que mandó poner en vigencia el nuevo impuesto, es un requisito esencial y previo para reanudar la discusión o para iniciar las gestiones conducentes a la constitución del tribunal arbitral.

“Pero esta situación incierta y llena de peligros no puede prolongarse más tiempo sin ocasionar perjuicios considerables a ambos países; tal incertidumbre debe desaparecer cuanto antes, y para ello es necesario que el Gobierno de Bolivia haga conocer lo más pronto posible su pensamiento. Ruego, pues, a V. E. que cualquiera que sea la resolución definitiva que en vista de la presente nota adopte su Gobierno, se digne comunicármela antes del 23 del corriente, porque en ese día debo yo trasmitirla a mi Gobierno, que con intenso interés espera el desenlace de esta gravísima cuestión.”

El representante chileno aguardó en vano hasta el 24 de diciembre la respuesta solicitada del Gobierno de Bolivia: la aguardó todavía hasta el 30 de ese mes; pero ella no había de llegarle ni entonces ni más tarde. Parecía que reflexivamente se había resuelto llevar hasta un término increíble la serie de procedimientos de provocación contra Chile y ultrajantes a su dignidad.

En vez de acojer con sinceridad el arbitraje o de pronunciarse abiertamente contra él, el Gobierno prefiere mantener al representante de Chile en una duda engañosa que le permita realizar sin estorbos sus planes de despojo en el Litoral, e imparte en ese sentido instrucciones secretas a las autoridades de Antofagasta.

El Gobierno de Chile se impone asombrado de que la sociedad salitrera, que ha visto embargar sus propiedades y establecimientos industriales, paralizar su movimiento, poner en alarma a sus dos mil operarios chilenos, a quienes se amenaza con la privacion del sustento, acaba, por último, de recibir la notificacion de que el 14 de febrero serán puestas en remate público sus valiosas propiedades, fruto de diez años de incesantes y costosos sacrificios.

Por último, un telegrama recibido de la Legacion de Bolivia el 11 del presente, informa al Gobierno de Chile que el de aquella República acaba de expedir un decreto despojando de sus propiedades y derechos a la Compañía Chilena de Salitres, y declarándose dueño esclusivo de aquellos bienes, que importan talvez mas de seis millones de pesos.

A este respecto, V. E. ha de observar y sorprenderse de que al dictar ese decreto verdaderamente atentatorio de todo principio elemental de justicia, el Gabinete de la Paz prescinde en absoluto de la reclamacion deducida por Chile y aparenta creer con maliciosa premeditacion que solo le cumple resolver una cuestion privada entre el Gobierno de Bolivia y la Compañía de Salitres y Ferrocarril de Antofagasta; y todavía, para hacernos mas vivo el agravio, declara ese Gobierno que suspende la lei que impuso a la sociedad recordada un impuesto sobre la esportacion del salitre en el mismo documento en que se hacia dueño de las salitreras.

V. E. ha de sorprenderse otravez reflexionando que el Gobierno de Bolivia ha resuelto político y administrativamente una contension, que en el negado caso de haber sido meramente privada, era y debia ser de la esclusiva competencia de los tribunales de justicia, y cumpla que su resolucion se sujetase a las garantías tutelares del procedimiento judicial. Nada de eso parece respetar el Gabinete de la Paz; y violando las nociones mas primordiales de la jurisprudencia universal, se erije en juez o tribunal de término y pronuncia un veredicto en un contrato bilateral en que figura como parte contratante, y en que hai de por medio una grave cuestion internacional.

La Cancillería chilena reclamaba y pedia la suspension definitiva de los decretos bajo cuyo influjo se pretendia espropiar, a título de

impuesto, la industria y el capital chilenos, en contravencion al pacto de 1874, y el Gobierno de Bolivia suspende el despojo parcial y lo ordena en masa y se declara dueño y poseedor de los bienes de nuestros compatriotas, invocando tan solo la codicia y su poder. Y todavía, despues de resuelto ese acto injustificable, el Ministro chileno, dominando los nobles impulsos de su alma, pide su revocacion y jestionana con solícito empeño para obtener que se someta al juicio de árbitros, sin poderlo conseguir.

En presencia de hechos tan inauditos, que acaso nunca ha registrado ántes la historia de las naciones civilizadas, no quedaba sino un camino que pusiera a salvo los intereses chilenos y la dignidad del país.

S. E. el Presidente ordenó, en consecuencia, que algunas fuerzas de mar y tierra se trasladaran inmediatamente al desierto de Atacama y enarbolaran el estandarte nacional en los territorios que poseia ántes de negociar con Bolivia los Tratados que ésta acaba de romper con propósitos tan vedados como hostiles.

Cincuenta horas mas tarde, la lei chilena imperaba en aquella rejion, colocando bajo su amparo los intereses chilenos y extranjeros, sin derramar una gota de sangre y en medio del entusiasmo patriótico de las poblaciones reunidas.

Ejecutando esa resolucion, Chile piensa que ejercita atribuciones propias e inherentes a su soberanía, sin que por ello puedan considerarse afectados los intereses americanos. Esta República que ha respetado esos intereses con jeneroso empeño, no pretenderá nunca herirlos; pero sostendrá siempre con levantado espíritu sus derechos y prerogativas de pueblo independiente y dueño de sus actos.

La nacion chilena, amiga de la conciliacion, anhelosa por mantener la paz y la union en América, hizo en su obsequio cuanto fué posible y digno: violado un pacto solemne, desoidas sus reclamaciones amistosas de una manera inusitada en las relaciones internacionales, convencida de que Bolivia no habia dado ni podia ofrecer en el porvenir garantías eficaces a la colonia chilena que habia creado pueblos en el desierto, se ha visto en el deber de reivindicar todos los derechos que poseia tranquilamente ántes del pacto de 1866, y sabrá mantenerlos con la entereza que es propia de sus hijos, cualesquiera que sean las emergencias que sobrevengan.

Aprovecho esta oportunidad para ofrecer a V. S. el homenaje de mis sentimientos de elevada consideracion, con que soi de V. S.

Atento y seguro servidor

ALEJANDRO FIERRO.

[Translation.]

Circular to the Honorable Ministers and Diplomatic Agents accredited to Chili.

Santiago, March 3^d 1879.

SIR: I have the honor of enclosing to your Excellency a statement of the motives which justify the recovery effected by Chili of the territory she used to possess in the Desert of Atacama between parallels 23 and 24 of South latitude.

I entertain the confidence that the perusal of this plain narrative will produce in the mind of your Excellency the conviction that Chili in her relations with Bolivia, did not abandon the policy of moderation and considerate conduct, which she so strongly admires, until she had exhausted all the resources in her power and imperilled the dignity of the nation and the valuable interests of her citizens residing in that territory.

The high and legitimate interest to which the Chilian Government aspires, that its international policy may be duly appreciated by those Governments whose friendship is to it an honor, and whose esteem it endeavors by unceasing efforts to deserve, has induced me to put in writing the exposition I now have the honor of placing in your Excellency's hands, begging that you will be pleased to bring the same to the knowledge of your enlightened Government.

I need not assure your Excellency, that your fellow countrymen will find in the territory in which the laws of Chili have once more resumed their sway every guaranty for the protection of their persons and interests.

I avail myself of this opportunity to reiterate to your Excellency the expression of the sentiments of high consideration with which I remain,

Your Excellency's assured and obedient servant.

ALEXANDER FIERRO.

REPUBLIC OF CHILI.

DEPARTMENT OF THE MINISTRY OF FOREIGN AFFAIRS,

Santiago, February 18th, 1879.

•Mr. MINISTER: On the 12th of the present month, his Excellency the President of the Republic, ordered that Chilian forces should be transported to the shores of the Desert of Atacama, in order to recover and occupy in the name of Chili, the territories she used

to possess there before adjusting with Bolivia the boundary treaties of 1866 and 1874.

The treaty of 1866 was annulled and disappeared on the celebration of that which bears the date of the sixth of August, 1874, and this latter has just been abrogated by deliberate and persistent acts of the Government of Bolivia, acts which import not only the complete disregard of the obligations imposed upon her by that solemn compact but likewise an insult to the good faith and conciliatory spirit of Chili to which her national honor could not submit.

Having exhausted all the conciliatory expedients which her earnest desire for the tranquility of South America caused Chili to constantly employ, all the appeals that were directed to her for the fulfilment of obligations legally stipulated in the treaty of 1874, being scorned and disdained by Bolivia, there remained no other resource for Chili but to again plant her flag in the territories of which she had been owner and to return with it to numerous Chilian and foreign population and to their industrial establishments there established that tranquility, that confidence and that welfare, of which they had been deprived by the Bolivian administration.

Chili, who loves the peace of South America almost as much as the tranquility of her own soil, and whose history and conduct has been ever characterized by temperance and moderation, has been grieved to see, in her relations with Bolivia, her hopes of an amicable arrangement destroyed one by one, and herself placed, at last, in the painful necessity of seeking a solution by the aid of force.

She would not be, however, completely at ease, if, on taking this step, exacted at once by her conscience, her rights and her own dignity, she did not entertain the most intimate persuasion of finding in the calm and enlightened mind of your Excellency, the most ample and complete justification of her conduct.

Having received instructions to this effect from his Excellency, the President, I present Your Excellency's Government a brief and compendious review of the antecedents of the question and of the causes which have occasioned the latest events.

I.

The political emancipation of Spanish America having been established, the new republics did not delay in fixing their atten-

tion upon the territories embraced by their respective nationalities and over which the empire of their laws should rule. The principle that the American Republics had for their limits the same which corresponded to the colonial divisions of which they were formed, having been admitted by the various sections of America, it was easy for Chili to know how far toward the North the field extended upon which she should exercise her national activity.

For this purpose it was sufficient to interrogate history, to consult the written thought of the Spanish sovereigns, and to examine the acts of jurisdiction which had been the consequences of this manifestation of the supreme will.

This triple testimony does not permit doubt to be entertained that the northern boundary of Chili was, at least, the 23rd parallel of south latitude, or what is the same thing, that the coast and desert of Atacama to the bay of Mejillones inclusive, formed part of the territory of the Republic.

In this conviction, the President of the Republic sent to the legislative body a message dated the 13th of June 1842, in which the following words occur.

—“The utility of the substance called *guano* which from time immemorial has been used as a fertilizer for working lands on the coast of Perú, being acknowledged in Europe, I have thought it necessary to send a commission of exploration to examine *the coast comprehended between the port of Coquimbo and the hill of Mejillones*, for the purpose of discovering whether *within the territory of the Republic* guano beds exist, the working of which may produce a new branch of income to the public treasury; and although the result of the expedition did not fully meet the hopes that had been conceived, nevertheless from latitude 29° 35' to 23° 6', guano was found at sixteen points along the coast and on the neighboring islands, in more or less abundance, according to the localities in which those deposits exist.”

There accompanied this message a bill declaring the guano-beds national property, and proposing some regulations for their being worked.

The bill having been approved and become a law of the Republic on the 31st of December in the same year, the Government of Chili learned afterwards with surprise that Bolivia exhibited, for the first time, pretensions to the desert of Atacama. Such pretensions had been disclaimed beforehand by the Chief Magistrate of that Republic, without any protest on the part of the other powers. General Santa Cruz had, in effect, said, in dictating the following decree, a few years previously, referring to Cobija:

“The necessity of encouraging the *only port* in the Republic and bearing in mind that the want of funds to cover the expenses demanded by the projected works, renders useless all the means which the Government has adopted for the prompt realization of so interesting an object, I decree: Colonel Manuel Amaya is authorized to raise a loan of one hundred thousand dollars. . . .”

Later on, in a message dated August 6th 1833, General Santa Cruz, the President, said the following to the representatives of Bolivia:

“After your recess during the anterior legislature, I have complied with the promise which I then made you of visiting in person the coast province, wishing to duly fulfil your wishes and the law of the 12th of October of the last year *passed in favor of our only port, Cobija.* . . .”

With antecedents such as these, it could not be regarded without a certain amount of wonder, that Bolivia should on its part manifest pretensions and exactions in direct opposition to the clear rights of Chili to the domain of the desert of Atacama, and which were, at the same time, incompatible with the convictions of the Supreme Magistrate of that Republic unequivocally expressed in the documents I have just cited.

The Government of Chile, however, being desirous of forming, in respect to this important question, an opinion that should be completely exempt from the disturbing influences ordinarily created by national interest, undertook a careful examination of the archives, submitted to a lengthy examination the documents produced on both sides, and made a calm comparison of the titles with which each nation sustained its respective rights.

This agreeable task served to strengthen and confirm the conviction which it had, that the coast and desert of Atacama up to the 23° parallel were evidently an integral part of the national territory.

Deploring the error into which the Government of Bolivia had fallen, when it claimed to fix the dividing limit between both countries at the mouth of a river called the Salado, the course of which, the geographers that it called to its support, mark out with a curious variety, sometimes at latitude 25° 30', sometimes in 26° and even in the 27°, the Government of Chili, produced in answer to this vague, indecisive and, not infrequently, contradictory evidence, titles of unanswerable value, from the probatory force of which it believed it difficult for any dispassionate mind to withdraw itself.

It was, in truth, easy to show that since the middle of the fifteenth century up to the middle of the succeeding century, the most respectable writers and those who inspire the greatest amount of credit, such as Pedro Cieza de Leon in his work entitled "*First part of the Chronicle of Peru* (*Primera parte de la crónica del Perú*) published in 1553, the Inca Garcilasso de la Vega, a celebrated compiler of the traditions of that country, in his *Commentaries*, which appeared in 1609 and 1616; the jesuit Anello Oliva, who published a history of Peru, and others of equal fame,—are of one accord in affirming that the desert of Atacama formed part of Chile.

But, and apart from evidence of this nature, there are official documents which prove that the territory of the Republic extended to the 23rd parallel, and that in the territory extending towards the south, jurisdiction has been exercised by the authorities of Chili since the colonial times. It appears, therefore, from these documents, that some portions of territory in the desert of Atacama having been found fit for cultivation, towards the latitude 24° 30', they were solicited 1879, by way of grant, from the Governor and Captain General of Chili, and by him granted to the discoverers. It also appears that Nuestra Señora bay, known under the name of Paposo, situated in 24° 30', that is to say, in the middle of the desert, was, towards the end of last century, the centre of the commerce of the coast of Atacama and the place of residence for nearly all the inhabitants of that region. Paposo, therefore, was the capital of a district which embraced all the region in which there were inhabitants and was governed by a judge appointed by the authorities of Chili. The royal orders of June 3rd 1801 and June 26th 1803, which are even more explicit, declare that Paposo was considered as the capital of all the coast and desert of Atacama and that all that territory was subjected to the authorities of Santiago. The royal *Adula* of the 10th of October 1803, afterwards ordained that the desert of Atacama should be segregated from Chili and incorporated in Peru, but these letters-patent never took effect, and only served to leave the fact established in a yet more unequivocal manner that that region had pertained to the Captaincy General of Chili in the colonial times, and that it continued afterwards forming part of the Republic.

It is well known that in 1789 there sailed from Cadiz a scientific expedition composed of the corvettes *Descubierta* and *Atrevida* commanded by Captains Malaspina and Bustamante. This com-

mission, which the sovereign of Spain had entrusted to competent persons of well known ability, had for its principal object, the exploration of the coast of South America. To assure the greatest fidelity and exactness in the labors entrusted to their charge, there were placed at the disposition of the chiefs of the expedition all the documents of the Department of the Indies which existed in the Spanish archives, and at the same time a circular was despatched, dated, Madrid, February 5th 1789, giving orders to the Viceroys and Captains General of the New World, to aid and assist with all the elements at their disposal the mission of Captains Malaspina and Bustamante, and to give them free access to the valuable archives of the then suppressed Society of Jesus.

This expedition touched at Montevideo, doubled Cape Horn, and off Chiloe, commenced its survey of the coast of South America, northwards. The result of this expedition, prepared and provided with the most scrupulous care with all the elements necessary to assure the accomplishment of its important object, was the spherical chart,—still preserved,—presented to the King of Spain in 1799 by Don Juan de Lángara, Secretary of State and of Universal Marine Affairs. In this valuable chart, whose importance is beyond discussion, the northern limit of Chili was designated at the 22nd parallel, and naturally assigns her, or recognized her dominion over, an extent of territory, greater than that she had peaceably possessed since the colonial epoch.

As one of the manifold proofs that I could adduce in support of the jurisdiction that Chili has always exercised in that region, I do not consider it too much to observe that the Custom-House of Valparaiso alone, granted, in fulfilment of the law of October 31st 1842, during the period elapsing from that date until the year 1857, one hundred and thirteen permits to different vessels of different nations to load guano in Mejillones, Angamos, Santa-Maria and the other ports of the coast of the Desert.

The manifestations of the sovereign will and the acts of jurisdiction exercised by Chili, during the two epochs of its political existence, over the desert of Atacama up to the 23rd parallel, could not find space, were they all to be set forth, within the narrow limits of this communication. While limiting myself to indicate but a few, I have carefully borne in mind the consideration of not overtaxing the kind attention of your Excellency.

I am flattered, however, by the belief that they will suffice for your Excellency to be persuaded that it was not the part of

Chili to abandon to Bolivia, territories of which she considered herself owner and lawful possessor.

While Chile firmly sustained her rights of dominion and peaceable possession in the Desert up to the 23^d parallel, she did not cease to seek with careful anxiety all the means that appeared becoming for the purpose of approaching a solution of the existing misunderstanding. The different steps taken for that purpose, did not conduce, however, to the desired result which was to have been expected and both Republics saw years pass by and the cordiality of their relations more and more estranged.

II

Events of the deepest gravity, of which the Pacific was the theatre in 1864, profoundly moved the tranquility of a great portion of the South American continent, awakening a lively and energetic sentiment of close union, before which Chili and Bolivia hastened to lay aside their past disagreements and to sign the boundary treaty of August 10, 1866.

Chili did not hesitate to generously sacrifice part of her rights, under the impulse of a spirit of sincere friendship, imagining that Bolivia would know how to appreciate and correspond to these exalted sentiments. She subscribed a compact which by its first article specifies "that the line of demarcation of the limits between Chili and Bolivia in the desert of Atacama, shall henceforward be the 24th parallel of south latitude from the Pacific coast to the eastern limits of Chili, so that Chili on the south and Bolivia on the north, shall have possession and dominion of the territories extending from the beforementioned parallel of 24°, each of them being entitled to exercise in them all the acts of jurisdiction and sovereignty pertaining to the owner of the soil. The exact fixing of the line of demarcation shall be made by a commission of competent and skillful persons, one half of whose members shall be appointed by each one of the high contracting parties."

By the second article it was agreed "that notwithstanding the territorial division stipulated in the preceding article, the Republic of Chili and the Republic of Bolivia shall divide between them by halves the products arising from the exploitation of the guano deposits discovered in Mejillones and such others of the same fertilizer that may be discovered in the territory comprehended between the 23rd and 25th degrees of south latitude, *as also the export duties which may be received upon the ores extracted from the same space of territory which has just been specified.*"

Article III provides that "the Republic of Bolivia obligates itself to habilitate the bay and port of Mejillones by establishing at that point a Custom House with the number of employees required by the developement of industry and commerce. This custom house shall be the only fiscal office entitled to receive the proceeds and export duties on metals treated of in the preceding article. The Government of Chili shall have the right to appoint one or more fiscal employees, who, invested with a perfect right of inspection, may intervene in the accounts of the entries of the aforesaid custom house at Mejillones and may receive directly from the aforesaid office, quarterly or in the way that may be stipulated by both nations, that portion of the profits corresponding to Chili referred to by the said recited article II. The Government of Bolivia shall have the same faculty whenever that of Chili, for the purpose of collecting and receiving the proceeds spoken of by the preceding article, shall establish some fiscal office in the territory included between the 24th and 25th degrees."

Article IV declared that "the products of the territory comprehended between the 24th and 25th degrees of south latitude, which may be taken out through the port of Mejillones, shall be free from all export duty; and the natural produce of Chili that may be introduced by the same port, shall likewise be free from all import duty."

By article V it was agreed that "the system of exploitation or sale of the guano and the export duties on the ores treated of in article II of this compact, shall be determined by mutual agreement of the high contracting parties, either by means of special conventions or in the form they may esteem most expedient and expeditious."

By article VI it was agreed that "the contracting Republics bind themselves not to alienate their rights to the possession or dominion of the territory which they divide between themselves by the present treaty, in favor of any other nation, society or private individual. In case that either of them should desire to effect such alienation, none but the other contracting party can be the purchaser."

And finally, by Article VII it was agreed that "in attention to the damage which the boundary question between Chili and Bolivia has occasioned, as is notorious, to those individuals who, being associated, were the first in seriously working the guano beds of Mejillones, and whose works thereon were suspended by

disposition of the authorities of Chili on the 17th of February 1873, the high contracting parties oblige themselves to give, in equity, to the aforesaid individuals, an indemnity of eighty thousand dollars, payable with the ten per cent of the net products of the custom-house at Mejillones."

These seven articles which form the treaty of 1866, and which I have taken care to transmit with perfect exactness, were not, as the Government of Chili expected, so many further links of union between both Republics.

Chili hastened to divest herself, on her part, of the possession which she had maintained to the 23rd degree, in which she substituted Bolivia, and to appoint the commissioner who, in union with the appointee from that of the latter Republic, should fix in the desert of Atacama, the 24th parallel, the divisory line between them, and the 23rd and 25th which formed by North and South, the zone of territory in the products of which they had a common participation.

While fulfilling loyally and honorably on her part the obligations imposed upon her by the treaty of 1866, Chili was very far from thinking that Bolivia would consider herself freed on her part from her own obligations. Not a long time elapsed, however, before a series of disagreeable events undertook to impress this sad conviction upon her.

Your Excellency is not unaware, perhaps, that in 1870 a Chilian citizen, impelled by the spirit of enterprise and yielding to a happy inspiration, penetrated the desert of Atacama and plucked from its bosom the secret of riches, which very soon attracted towards it a vigorous and sustained movement of Chilian immigration. The new colonists were not daunted by the difficulties and sacrifices of the enterprise; and by dint of fatiguing labor, saw arise the now flourishing populations of Antofagasta and Caracoles, which the people of Chili are able to exhibit as conquests of their labor and their constancy.

The importance of the recently discovered mineral district corresponded to the first expectations, and the current of Chilian capital soon opened a course for itself to the interior of the desert, to assist in divers forms, the purposes of an initiative as intelligent as it was energetic.

This great event impressed a greater importance upon the stipulations of the treaty of 1866, the fulfilment of which Chili commenced to claim unavailingly.

As I have had the honor of showing you by transcribing the compact, of the abandonment by Chili voluntarily and conditionally of the 23rd degree, the following rights, among others, were clearly and explicitly recognized as hers by Bolivia on her part:

1st To receive half of the proceeds derived from the collection of the export-duty upon the ores that should be extracted from the territory embraced between the 23^d and 24th parallels (article II of the treaty), and

2nd To appoint one or more fiscal employees, who, invested with a perfect right of vigilance, should intervene in the accounts of the receipts of the custom house at Mejillones which the Government of Bolivia obligated itself to habilitate and maintain with the corresponding number of employees, and to receive directly and quarterly, that part of the receipts appertaining to Chili, in conformity with article II (article III of the treaty.)

The Government of Bolivia, in 1871, having been called upon to give faithful compliance to the treaty in this part, by handing over to Chili the half of the duties already received and which she might continue to receive, which duties, in the estimation of Chili, represented a prodigious sum, because it was notorious that one single commercial house of Valparaiso, had paid into the custom-houses of the former Republic, the sum of twenty-five thousand pesos, refused under futile and studied pretexts to accept the just demand made upon it, pretended from the first that the mineral district of Caracoles did not lie in territory under the common participation, without producing any respectable reasons which would justify such a supposition, contrary, moreover, to the decision of the scientific commissioners who the year previous had determined that territory by order of both Governments and included within its boundaries the locality in which the mines were situated.

Nor was Chili more successful in her demand that there should be accepted in the Antofagasta custom house in conformity with the existing treaty, the intervention of Chilean functionaries who should watch the operations of the Bolivian employees. Under the pretext that the exercise of this right would infringe upon the national sovereignty, the convention of 1866 became a dead letter, the rights of Chili were converted into an irritating jest and she was openly despoiled of her indisputable property.

The secret causes of the resistance opposed to the inspection of the offices receiving the funds, were revealed later on by the following words of a report which Mr. Virreira, a Bolivian employee, presented to the authorities of his country:—

“In the custom house at Antofagasta it appears that chaos had been maintained purposely to avoid an inspection. No account whatever had existed until the present administrator, in the beginning of 1873, opened the first books and accounts. The first semester of 1872 has no other account than a summary or synopsis which the administrator Mr. H. Ortiz passed to his successor Mr. E. Zalles; the account of the second semester is also contained in another similar synopsis of a few lines, and neither of them conveys an idea of the business of the office. In Mejillones, although books of account are found, they are incomplete and do not even throw light upon the operations of the custom house, for the necessary documents are wanting.”

In the presence of these facts, breaking obligations solemnly agreed upon, and to a certain point offensive to the dignity of our country, the Government of Chili would have been perfectly justified in withdrawing its name from the treaty of 1866 and reoccupying the territory which it ceded only in virtue of conditions which the other party showed the most tenacious perseverance in eluding.

But withal, the decided inclination to peace prevailed in the councils of the Government of Chili, and throwing all past differences into oblivion, it resolved to attempt another amicable solution, and for this purpose accredited another extraordinary legation to Bolivia.

This started on the 10th of April 1872 to the place of its destination, and a month after commenced its mission. It did not cost the Chilian representative much trouble to make palpable to the Government of Bolivia the evident justice of the claims of which he was the bearer. *Apropos* of this, and after relating to the Cabinet of Santiago in detail the arguments adduced in a conference which took place on the 18th of May, the Chilian diplomat added in his despatch of the 20th of the same month, the following:

“His Excellency the Minister recognized the force of these arguments and gave me no reason which destroyed them, but he set forth to me in the clearest and most positive manner that in spite of all, Bolivia could not accept the partnership agreed upon in the treaty. Upon this point he would not yield in any way whatever. His Excellency believed this partnership unacceptable in all respects, for besides being unusual, it would be the cause of continual disagreements.”

It will thus be seen that the Government of Bolivia entertained the firm and unshaken resolution of not accepting the community of interest established by the existing treaty. It was indispensable to define in some method this situation, which, day after day, continued accumulating in itself greater elements of complication. The exertions of the Chilean Minister directed towards obtaining the acknowledgment of the rights of Chili, encountered always in the Cabinet of La Paz, demurrers and studied delays, of which that Government enjoyed the advantage, since by means of these expedients it continued receiving exclusively all the duties which the treaty declared divisible in moieties between the two nations.

Finally, after eight months of lofty but sterile efforts on the part of diplomacy, the Government of Chili found itself reduced to the alternative of yielding a part of its rights in order to secure by these means the rest, or of returning to the *status quo* in which matters existed before the negotiation of the aforementioned compact.

It elected, as at other times, the system of concession, and on the 5th of December 1872, there was signed at La Paz by and between the plenipotentiaries of Chili and Bolivia, a convention composed of nine articles, intended to determine, in conformity with the treaty of 1866, the incidental questions to which prejudiced minds had given origin.

As to the rest, the convention alluded to, which gave to Chili no advantage whatever, bears witness to its kindly sentiments towards Bolivia. By Article VI it was established, modifying in this part the treaty of 1866, that before handing over to Chili the moiety of the sums collected for duties on the export of ores, there should be deducted the amount of the estimate for the employees of the Treasury and Department of Justice necessitated by the proper service of the territory formed by the 23rd and 25th parallels, which was equivalent to paying with the funds of Chili the salaries and remunerations of employees in whose appointment she had no part whatever.

This convention was approved by the Government of Chili a month afterward, on the 8th of January 1873; but that of Bolivia did not favor it with its acceptance. In this way the prospects of an arrangement were once more frustrated through no fault of Chili, and the high and conciliatory purposes which she had in view when accrediting a special legation, were defeated.

III

Without being yet disheartened by this thankless result, and seeking with more earnestness, guaranties and security for the tranquil developement of the large Chilian interests endangered along the coast and desert of Atacama, the Government of Chili sent a new legation to Bolivia, which left Valparaiso about the middle of 1873.

Up to that period the treaty of 1866 had been respected by Chili alone. Bolivia continued, contemptuous of the interests and rights of this Republic, enjoying the usufruct of the territory in common participation, and ignoring the privileges and advantages to which that treaty stipulated in our favor.

The unstable policy, one not always respectful to other's rights which is usually dominant in the Cabinet of La Paz, caused the Government of Chili to fear that violent exactions or exorbitant tributes could make themselves weigh upon the persons and business of Chilians scattered over the desert of Atacama. To avoid this peril and to protect honest labor against unmerited spoliations, had by that time become one of the strongest ruling passions of the Government of Chili and the stand point of the negotiations about to be established.

The new legation of Chili, imbued with these fears, directed its effort with solicitous and resolute earnestness to obtain means, which while assuring the tranquility of the valuable Chilian enterprises, should at the same time communicate life and vigor to the industrial spirit of the citizens of the country.

The Chilian Government succeeded at last in attaining this object, making considerable sacrifices to do so.

She surrendered to Bolivia the moiety of the sums received from the export duties on the ores extracted from the 23rd degree, which belonged to Chile according to the treaty of 1866; the liberty of fiscal examination which she had a right to make in her custom house offices; and lastly, she ceded her forever the exclusive enjoyment of all the export duties which the treaty referred to declared divisible by moieties between both nations. In exchange for these valuable concessions Chili claimed and obtained one single guaranty; the security that during twenty five years, under no pretext, under no form or denomination, should there be imposed upon Chilian citizens, capitals or industries, other or higher contributions than those at that time existing.

It was in obedience to this thought that the treaty which was signed at Sucre on the 6th day of August 1874, among other dispositions at present incongruous to the explanation of the actual conflict, established the following:

“Article IV. The export duties which may be put upon the ores exploited in the zone of territory of which the preceding articles speak (that formed by parallels 23 and 25), shall not exceed the rate now collected, and *Chilian persons, industries and capitals*, shall not be subject to more contributions *of what class soever they may be* than those which now exist. The stipulation in this article contained shall last for the term of twenty five years.”

Article III provided,

“From this date the treaty of the tenth of August 1866 remains annulled in all its parts,”

And by a protocol annexed, the text of which is considered incorporated in the treaty itself, the following precept is set forth:

“All questions to which the understanding and execution of this treaty may give rise, shall be submitted to arbitration.”

IV

The treaty of 1866 had just disappeared without its fundamental stipulations having been for once observed by Bolivia, and in order that your Excellency may still be persuaded of the little respect merited by the word of that Republic, its solemnly pledged faith, it will be sufficient for me to recall to the mind of your Excellency, that during the eight years in which that compact was in force, she did not comply with the obligation contracted by Article VII. Your Excellency will not have forgotten, perhaps, that by this article both Republics obligated themselves to indemnify certain persons who while laboring in the desert had been somewhat injured in consequence of the controversy respecting the limits which existed between both nations. In accordance with this compromise Chili and Bolivia should have each handed, by equal half parts the sum of eighty thousand dollars to the injured parties, which sum should have been raised out of the ten per cent of the product of the guano sales. Chili punctually paid that sum, but Bolivia delayed its payment under various pretexts, and now pretends that she does not owe it because her obligation disappeared since the treaty of 1874 abrogated that of 1866, without taking into account that a compact intended to create or to modify the obligations of two countries, cannot destroy

the rights of third parties who have not been consulted about it nor have intervened in it. I should not bring this fact to memory if the parties injured by this conduct had not presented themselves, invoking therein a certain moral responsibility which the treaty establishes in this part, soliciting of the Chilian Government that it should use its friendly offices with the Government of La Paz in order to obtain payment of that claim.

V.

The Government of Chili hoped that the new compact would put a definitive conclusion to the interminable series of hateful controversies, of daily claims, of difficulties of every kind, to which the previous one had given rise, and evinced itself highly gratified at this confidence, to the National Congress of 1875 in the following words:

“The treaty of the sixth of August of last year, the particulars of which I hold it unnecessary to express here, having been recently approved by Congress, reveals in the clearest manner, by the liberality of its dispositions, the eminently cordial and American spirit by which the Congress and Chancery of Chili are animated with respect to the Republic of Bolivia, and is an assured pledge of the permanence of good relations between the two countries. There being eliminated from this treaty the community of interests, with the exception of that which respects the guano, the common participation in which has not given rise to any difficulties, and the intervention in the custom-house, which will be unnecessary, having been terminated, nothing will henceforward come to dampen the cordiality of existing relations nor to render difficult the fulfilment of the obligations contracted.

“In the adjustments of the new stipulations, Chili has not hesitated to surrender a portion of her rights, as well to obtain new privileges in behalf of the commerce and industry of our fellow-citizens, as principally to amicably settle, once for all, thankless disputes which, day after day, removed it to a greater distance apart from Bolivia, whose friendship it is our interest to preserve, and whose progress intimately connected with the solution of these difficulties, can in no case be indifferent to us.”

VI

This confidence, which had no other foundation than a feeling of natural affection on the part of Chili, was not long in being made a scoff of by events of another character which developed themselves in the towns of Caracoles and Antofagasta. The Bolivian authorities who ruled these places, far from the seat of the National Government, free from its critical vigilance, gave

themselves up without restraint to the dictates of their caprice or of their convenience and the people, a Chilian people, were the victims of continual misconduct and unjustifiable insults.

The Government received by nearly every steamer, the protests and complaints of its citizens, and perceived nothing which induced it to consider as probable, an immediate and radical change in that painful situation. A feeling of contempt, which the word of the Chilian Government and the moderate efforts of its consuls were not sufficient totally to repress, began to make itself visibly known in the Chilian colonies and occasioned fears for the precipitation of conflicts having vexatious consequences.

The Chilian people, who had carried to the desert their labors, their lives and all their hopes, which instinctively inclined towards considering themselves masters of those territories through the ancient rights of the Republic and through the titles which genius and sacrifices accord, and who composed ninety-three per cent of its inhabitants, could scarcely resign themselves to suffer the vexations which were showered upon them with offensive haughtiness by functionaries of a subaltern order.

In this state of circumstances, the Government of Chili believed it to be its duty to present to that of Bolivia, a light sketch of the situation and on the date of January 31, 1877, wrote as follows:

“For some time past, my Government has been preoccupied by inquiring with calmness and impartiality, the causes which can produce a separation between the citizens of this Republic and those of that, residing on the coast of Bolivia.

“Animated by the most sincere purpose of destroying every thing that might be opposed to the close union of both nationalities, my Government has not ceased to inculcate this sentiment in the consuls it has appointed there, pressing upon them the propriety of transmitting it to their fellow citizens. They have been charged likewise that they should deny their protection to any petition or claim which was not presented accompanied by evident justice, and even now, I take pleasure in acknowledging it, those functionaries have not ceased to faithfully interpret the ideas of my Government.

“Unhappily, this has not sufficed to restrain or avoid the perpetration of grave and detestable abuses, of which some Chilian citizens have been victims, nor of the exorbitant pretensions of some secondary agents of the administration, denying the most elementary attributes of our consular agents, as I shall soon have occasion to demonstrate.

“My Government has, therefore, arrived at the persuasion that the origin of the evil is to be found in the improper selection of some agents invested with the functions of public power in this portion of the Bolivian territory, agents, who placed at a great distance from the superior authorities, are deprived of the salutary vigilance and superintendence of that enlightened Government

which judges of the events and situations by the passionate and untrue accounts of these self same agents, whose abuses thus remain without the necessary restraint.

“The numerous Chilian colony has gradually formed the painful conviction that the liberal institutions which govern in Bolivia, do not reach it, and that their persons and goods are at the mercy of the unscrupulous caprice of the subaltern agents of authority.

“Your Excellency must have had knowledge of the inhuman flagellation which was inflicted in Tocopilla, upon a Chilian citizen by an officer of police: Your Excellency must also have knowledge of a similar flagellation recently inflicted in Mejillones, upon another Chilian citizen, by order of the commissioner of police.

“The respective action taken in each case by our consuls, to stimulate the zeal of the authorities in satisfaction of justice and its public vindication, have had no other result than a pompous trial, as ridiculous as it was illusory.

“Neither will Your Excellency have forgotten, the assassination perpetrated upon the person of Clement Andrade. But, in order not to cite other cases, look at the case of the murder recently committed on the person of Arriagada, which it is now endeavored to justify by falsifying, in the judgment of my Government, the facts which have brought it about.

“This series of hateful facts which our citizens have had to suffer, executed by administrative employees, without their having, in the generality of cases, received the penal sanction indicated by the laws of Bolivia, whatever may be the nationality of the delinquent and the injured party, has awakened in the Chilian colony a natural sentiment of grief and indignation, which if it does not reconcile itself with the respect and prestige with which authority should see itself surrounded, does not emanate in this case, except from the want of circumspection and regularity in the conduct of this same authority.

“And, do not believe that the want of vigilance to which I attribute the principal part in the creation of the situation which I am now examining is found only in the agents of political power. Even the administration of justice, saving honorable exceptions, is far from inspiring the respectful consideration of which it should render itself deserving. Various facts, which I omit to state here, manifest that the fears and want of confidence with which their judgments are regarded by the parties who find themselves obliged to apply to them, are not unfounded.

After relating the antecedents of an unjustifiable suit, initiated against two Chilian citizens by the Bolivian law-judge in Caracoles, the despatch of the Government of Chili adds:

“Well then, does your Excellency wish to know the antecedents of the judge who thus deprived two families of their support and their peace, who shut up two honest men in prison, and who has spread unrest and anxiety throughout the numerous group of Chilians who give life to Caracoles?

“Your Excellency will learn with pain, by means of the copy I have the honor to enclose, that this judge, whom it has been thought proper to make the depositary of the most delicate functions, which require of him who puts them in exercise, unas-

sailable antecedents and proved honor, had hanging over him the weight of a criminal accusation for an attempt at assassination and wounds inflicted by him in consequence, on Sebastian Lopez, in the year 1874, and as if this were not yet sufficient, in the year 1875 there was brought against this same judge, another criminal suit for the robbery of money and other effects, the property of Dr. Manuel María Berazain.

“And in this case, I regret to tell your Excellency I cannot even find extenuating circumstances in a supposed ignorance of the infamous stigma which made this judge an impossible judge, because it is of recent date, and because the name of the criminal, together with that of other delinquents was set forth by order of the Superior Tribunal of Cobija in the register of the public prison of that city.

“This, and other facts that I could cite to your Excellency, will doubtless convince you that the situation of the Chilians in that region has in it something ominous and insecure.”

“A state of affairs which contained all kinds of perils for the Chilian colony, was impossible to continue longer. Its petitions to the Government of La Paz, three hundred leagues distant from the theatre of events, did not allow them to indulge in well founded hopes of reparation. The formation of a society was then thought of, to which the name of “La Patria” was given, the programme which was made public, gave a summary of the objects of the members, which were no other than to assure themselves mutual protection, aid to the sick and occupation to those who needed it. The members bound themselves, moreover, to submit whatever question, commercial, mining or personal, which might arise among them, to the decision of a jury of arbitration, appointed from the society. They also bound themselves not to meddle with the politics of the country, nor with the religious belief of any of their members.

This programme, which, responding to a humanitarian and fraternal sentiment, satisfied at the same time an imperious necessity by creating a means of safeguard, took very special care not to wound the susceptibilities of the Bolivian functionaries. The society was not stamped with the seal of an exclusive nationality, far from this, Bolivians and foreigners, as well as Chilians, were called to form a part of it. And yet more, it was hinted to the sub-prefect that the board of directors intended to nominate him as an honorary member of the society.

Sensible to these feelings, the sub-prefect of Caracoles replied in answer:

“Enthusiastic as the most enthusiastic for every beneficial and moral society that may be established, I pray that this which it is proposed to found, may redound to the benefit of this industrious mineral district.”

The Chilians flattered themselves with having removed one of the gravest causes of their evil plight by the formation of this society, and there was nothing to lead them to imagine that it would soon make them the target of a severe and hateful persecution. They considered that the right of association, which the Constitution of Bolivia grants, without exception or distinction, to all its inhabitants, would not be denied them, and that they might count upon that precious guaranty that free people ever offer to those who tread their soil.

“This belief,”

Added the Government of Chili in the despatch hereinbefore referred to,

“must have felt itself, notwithstanding, considerably weakened in view of a note that your Excellency directed to his honor the prefect of the coast on the 7th of last December, in which you recommend to the authorities that they should employ exceptional methods of rigor against the members of the society “*La Patria*” in whom your Excellency, does not see honorable men who to the extent of their means and in use of their rights cooperate for the common progress, but perilous elements that it is convenient to separate from the Bolivian territory even without the form of procedure, or else by submitting them to an exceptional procedure, as I am assured has already happened. And this is so much the more serious because in order to put in force this recommendation, your Excellency refers to simple tendencies and not to any overt and determined act, as if intentions and purposes could be matter for a criminal proceeding.

“My Government does not feel capable of explaining, Mr. Minister, what species of considerations they are which may have councelled such a line of conduct against the natives of this Republic, which appears to create a systematic hostility tending to make their stay in the country, if not impossible, at least painful in the extreme for them.

“Your Excellency has seen that their fortunes, their honor, and their lives have been placed in criminal hands, and when for this motive, which could not be more conformable to justice, they resolve to have their contentions settled solely by judges or arbitrators chosen by themselves, they are persecuted and even threatened with expulsion from the territory. Already it is pretended to deny to our citizens, not only the lawful exercise of the right of association but even the natural faculty which all possess of submitting their private disagreements to the award of third parties. Your Excellency will coincide with me in opinion that this unjustifiable prejudice against the Chilean nationality could not well be carried further.

“To varnish over this proceeding with a gloss of common honesty, you feign to see in the resolution of the Chilians, an insult to the Bolivian magistrate and do not bear in mind that this respect cannot be imposed by violence, but is gained by the high and honorable character and rectitude of the magistrate. The right of submitting

their lawsuits and questions to the decision of arbitrators not only rests upon the civil legislation of all countries, but has the double sanction of international practice and law. In some nations there is a special jurisdiction for foreigners, for the purpose of giving them a guaranty from the prejudice which the natives may have conceived against them. The greater part of the consular regulations, as your Excellency well knows, charges the consuls that they admonish their fellow citizens to the effect that they should settle their controversies without applying to the local tribunals, and many of them constitute the consuls themselves as arbitrators and judges. It is not needful for me to remind your Excellency that the very origin of consuls was no other than the faculty that some sovereigns voluntarily conceded to the foreign merchants who arrived at their ports or establishments, to appoint a judge of their own nation, that he might decide their suits in conformity with the laws of their own countries.

“If the society “*La Patria*” has received its birth under the protection of that Republic, if it be about to exercise its action within the sphere permitted and guaranteed by the laws, without interfering with the administration of justice, its right to exist and even to be protected, is yet more perfect, if the judicial antecedents I have had the honor to set forth, be borne in mind.

“The Chilians vexed in their persons, and damaged in their interests, solicited in their anguish the consular intervention of Chili. The prefect of Antofagasta, in his declared hostility to the members of the society “*La Patria*”, caused the president and treasurer, residing in Caracoles, to be cited, so that, abandoning their business, they should traverse a road of forty leagues to give explanations relative to the said society, a proceeding entirely unnecessary, since it was easy for him to obtain all the data of which he had need, through the sub-prefect of Caracoles.

“The consular interference rendered necessary by these events, also came to demonstrate that the subaltern authorities of the coast were totally ignorant of the attributes and duties of those functionaries. The consul of Chili at Caracoles asked the sub-prefect, delicately, if the order was authentic, that was stated to have been imparted through him by the prefect of Antofagasta, ordering that the president and treasurer of the society “*La Patria*” should travel to that port, and the said sub-prefect, after declining under some pretexts to satisfy the courteous request of the Chilean consulate, transcribed the following note from the prefect of Antofagasta, in which he refused to acknowledge the right of consuls to protect their fellow citizens when unjustly injured.

“‘This prefecture,’” said the note ‘not being able to recognize in the consul of Chili, nor even in the Consul General, the faculty of intervening in matters which are not merely commercial, which are expressly commended to them in the treaties with the countries in which they reside, I am obliged to remind the Consul of Chili of the principles and general rules of international law which prohibit consuls from intermeddling with affairs which, like those of Messrs Palazuelos and Lichtenstein, the one a Chilean and the other a German, should only be matter for a diplomatic reclamation, *since consuls have no faculty to admit protests of their fellow citizens against the acts of an authority of a country to whose laws they are subjected.* Of this

unusual proceeding, I shall give an account to my Government, in order that, through the proper channel, it may ask that of Chili, that the consuls shall confine themselves in their official relations with the political authority of this department, within the rules established by the law of nations in such cases, and that they shall not go out of the sphere of the attributions which is prescribed them by law and the practice generally accepted among nations.'”

This conduct of the prefect of Antofagasta was so much the more incomprehensible, as the Cabinet of La Paz had set out a month before, by a circular, dated the 16th of November, and addressed to its consuls in foreign parts, directly contrary theories. In this circular it was said.

The Government can not view with indifference that its citizens residing in a foreign country shall be persecuted, imprisoned and punished, unless, as has happened in certain places, not only the principles of reciprocity established by international law, but also the laws of humanity and the common law of the State be observed.

And in conclusion it is added.

The enunciated precedents, Mr Consul, oblige me to address myself to you in order to recommend to you that in observance of the conventions which Bolivia has celebrated with foreign states, and in view of the protecting laws of international justice, which govern in defect of treaties, throughout all civilized nations that you will endeavor to give the most decided and efficacious protection to Bolivian citizens resident at this point, making in favor of these before the Government of that nation all the reclamations that in their cases may be necessary, giving timely information to the Government of this Republic, to the end that it may ask the reparation which justice exacts from the enlightened Governments with whom Bolivia happily maintains relations of frank and loyal friendship.

While the Government of Bolivia in the transcribed circular, declared that consuls should give decided protection to its citizens injured in their rights, the prefect of Antofagasta declared, in his turn, that they had no right even to accept the protest of their complaints. The Government of Bolivia recommends to them the propriety of complaining before the Government of the Nation itself against the vexations of which they had been the object, and the prefect, well knowing the thoughts of his Government, affirmed, notwithstanding, that it was not lawful for them to complain even before subaltern authorities.

These facts make it manifest that there existed a deep-seated disturbance among the springs of the Bolivian administration, owing, without a doubt, as I have heretofore had the honor of setting forth, to the want of learning on the part of its agents, and to the immense distance which separates the authorities of La Paz from those of the coast.

The Government of Chili, deploring the painful situation which censurable proceedings of the Bolivian authorities had created for the natives of this country, did not feel that it was yet sufficient to weaken its conciliatory and benevolent sentiments towards the Republic of Bolivia.

At the conclusion of the despatch containing the narrative of the events with which I am now engaged, it set forth these words:

“On the part of the Government of Chili which does not wish to see in Bolivia anything but a friendly and sister nation with whom she aspires to always maintain and draw closer together the most cordial relations of brotherhood, there will be incessantly made all possible efforts in order that the peace and friendship now existing may not be changed or weakened, confiding, at the same time, to accomplish these purposes, in this; that its citizens resident in Bolivia will be subject to the common law impartially administered; that the society “*La Patria*,” while it does not go out of the orbit which it itself has traced out in its programme, while it does not infringe the laws nor attack any right, must enjoy the protection which cannot be denied it without establishing an odious exception against it; that the consular functionaries of Chili shall not see their actions hampered in the benefit of their fellow-citizens, whenever these may be victims of some vexation or injustice. My Government finally confides in the hope that you will dictate all the other means of reparation and of strict vigilance rendered indispensable by the delicate state of affairs.”

These well founded observations of the Government of Chili did not obtain any response from that of Bolivia, until many months after it became necessary to send a minister to La Paz, who obtained, however, some tranquilizing orders and the change of various functionaries along the coast. This returned, for the moment, part of its repose to the Chilian colony.

VII.

In the meantime, from the first months of last year, there was manifested in an unmistakable manner, the deliberate purpose entertained by the Government of Bolivia, of wounding and rendering illusory at any cost, the guaranties which Article IV of the treaty of 1874, assured on the coast and in the desert of Atacama, to Chilians, their capitals and their industries.

In Antofagasta under the pretext of attending to services of the community, there were dictated or harshly modified, and there were put in exercise against our citizens, employing at times an excessive rigor, divers imposts, which were denominated *additional duty*, tax for ballast and lighting, all of which violated openly and clearly the letter and spirit of Article IV of the afore-

said treaty. To the same purpose of undermining that guaranty, a law, dictated by the Bolivian Assembly on the 14th February 1878, and promulgated by the Government on the 23rd of the same month contributed. This law ordained that the Chilian Saltpetre and Antofagasta Railroad Company should pay a minimum impost of ten cents per quintal of saltpetre exported. In this manner and the Assembly leaving open the road to increase the impost which it now fixed at 10 cents, to 20, to 50, to the rate that avarice or necessity should indicate, a rude and unjust blow was aimed and death was threatened, later on, to one of the Chilian enterprises, which during ten years had battled with the utmost tenacity in the desert, which had invested no few millions of pesos, and which was the origin and the life of now flourishing populations.

Permit me, your Excellency, to narrate briefly the origin of the rights of the industrial Society called the Saltpetre and Antofagasta Railroad Company.

Two Chilian citizens desiring to work certain deposits of borax and saltpetre they had discovered in the desert, solicited and obtained from the Government of Bolivia, in the years 1866 and 1868, the concession of the land necessary for that object, the exclusive privilege for fifteen years for the elaboration and free exportation of the saltpetre and other concessions connected with the primordial object of the managers. In compensation, the latter were to pay into the Treasury of the State, the sum of ten thousand pesos, construct at their own expense a mole in Antofagasta and a cart-road twenty five leagues long, which, starting from that port, should be prolonged towards the interior of the wilderness, establishing along the line, from distance to distance, the necessary water-stations, lodgings for travellers and other accommodations.

It is certified that the sum of ten thousand pesos aforementioned, was punctually paid into the treasury of Bolivia, and that the mole as well as the cart-road with its accessories and adjuncts, were delivered before the time fixed, to the satisfaction of the Government of that Republic.

In the meantime, a revolutionary movement in 1871 upset the administration which had granted these remunerative concessions, and the new chief of State, under the heat of passions produced by the struggle, expedited various decrees tending to annul the acts of the fallen administration. By one of these decrees, the concessions of lands, beds of saltpetre and borates, made by the previous administration were declared illegal and of no value; and

the right of retraction was only granted in favor of those persons that should have obtained such concession provided that they presented themselves as bidders at the auctions at which, according to this decree, the portions or lots of the deposits which contained said substances should be newly adjudicated.

The Chilian Legation then realized it their duty to complain against this measure which injured interests of such magnitude and which, in its judgment, could not be applied without manifest injustice to foreign operators who, indifferent to interior politics, devoted their activity and capital to peaceful labour, confident in the seriousness and justice of the governments. The Bolivian Minister of Foreign Affairs replying to the Chilian representative, said in March 1872 that although the government insisted on the official acts of the past administration being cancelled, it held out also "the hope of excepting equitably from their effects, once knowing of the fact and by means of private resolutions, those concessionists, who *might have made effective their privilege, who might have capital involved in it, and who should have effected improvements and advancements to the benefit of the country in the enterprise which they might have directed.*"

The Saltpetre enterprise reunited, therefore, all the conditions necessary to guarantee its existence.

Some months later the National Assembly of Bolivia passed the law of November 22nd 1872, the governing clauses of which read thus:

"Article 1st The claims of foreign citizens for indemnity arising from concessions or contracts celebrated with the Government, shall be brought before the Supreme Court of Justice, which shall take cognizance of them in a contentious suit, the public ministry representing the national interests.

"Art. 2nd The Executive is authorized to arrange about indemnity and other claims now pending against the State, whether they be by citizens or foreigners and to agree with the parties interested upon the form most convenient in which their respective obligations are to be fulfilled, deferring these matters, only in the case of non-agreement, to the decision of the Supreme Court, with the charge to give an account to the next legislature.

"Art. 3rd Those claims which the Supreme Court shall find well founded, shall be passed to the Government with the designation of the net sum to which the credit amounts.

"Art. 4th The general estimates shall designate the funds for the payment of these indemnities."

In conformity with Art. 2nd of this law, which the Executive hastened to promulgate, the Government and the authorized representative of the Saltpetre Company adjusted the bases of a

settlement, which put, once for all, a definitive end to the existing difficulties. Among these bases figured the right of the company to work the saltpetre beds *for the term of fifteen years* and to export through the port of Antofagasta *the produce of their industry, free from every fiscal or municipal charge.*

Immediately afterwards the Government issued a decree dated November 27th 1873, in which it gave testimony in justice to the loyalty and good faith of the Company and in the resolute part ordained as follows:

“There is accepted by way of settlement and in use of the authorization which the law of November 22nd 1872 confers upon the executive authority, the eight bases contained in the preceding proposal, the anterior acts that are in opposition to them, remaining null and of no effect.”

Two days later, the arrangement as approved was solemnized by a public document executed in Sucre, November 29 of that year and was registered in the *Official Annual of Laws of Bolivia.*

The arrangements between the Saltpetre Company and the Government thus being definitively completed, the latter hastened to report to the next legislature, as it had been recommended by the law of November 22nd 1872, and did so in the following terms on the opening of the sessions of 1874:

“The claims of this house, which were reported upon in 1872, have also been arranged upon conditions which are summarized in the agreement of November 27th 1873. The representatives of the said house have accepted them. *Thus is definitively settled a hateful question, which during a long time has compromised the probity of the Government in public opinion, having dependent upon its discussion the fate of the heavy capital which the managers had disbursed to establish in the desert of Atacama the saltpetre industry on a large scale.*”

The National Assembly of 1874 informed itself of the compromise and with this proceeding, the obligation to report, which the recited law imposed on the Executive, remained complied with.

Lastly came the treaty of August 6th 1874, and by it was established as has been seen, that the persons, capital and industries of Chilians, should not for the space of *twenty five years* be subject to more contributions, of what class soever they might be, than those at present existing.

Nothing could now justify any fear, and the Saltpetre Company gave itself up tranquilly and without anxiety to the prosecution of the industry to which it had dedicated itself. Four years had passed without anybody attempting to ignore or attack the

rights of that enterprise, which in the last epoch, began to reap the material reward of its heavy sacrifices and the large capital which it had buried in the desert.

Suddenly, and when least to be expected, it was learned with astonishment that the Assembly of Bolivia had passed on the 14th February, 1878, a law couched in these terms:

“Sole article. The arrangement concluded by the Executive November 27th, 1873, with the agent of the Saltpetre and Antofagasta Railroad Company, is approved on condition of their making as a *minimum* payment of an impost of ten cents per quintal of saltpetre exported. Let it be communicated to the Executive for execution and fulfilment.”

This law was sanctioned by the Government the 23rd of the same month.

The Chilean legation hastened to represent to the cabinet of La Paz the very grave remarks to which this resolution was open, which not only injured with marked injustice pacific interests which existed under the protection of its legal titles and the probity of the nation, but was likewise an open and flagrant violation of the treaty existing between the two Republics; and on the 2nd of July, addressed a note setting forth in writing the observations theretofore made at verbal conferences.

This despatch was not answered, but the Chilean minister obtained from the Minister of the Treasury, an assurance that the law, which he himself found objectionable, should be suspended until a correct and prudent solution of the difficulty could be found.

After various observations, the Chilean Minister called the attention of the Cabinet of La Paz to an important and decisive antecedent which shows the opinion of that Government upon the rights acquired by the Saltpetre Company and the practical application of the treaty of 1874, our Minister in this note said:

“The Municipality of Antofagasta having addressed itself to the President of the Council of State, in an official communication of May 4th of 1875, asking that the Saltpetre Company should be assessed with a municipal contribution of three cents per quintal of saltpetre exported, and relying, among other considerations on the Supreme Government having declared that the Company was not exempt from municipal taxes, this petition was remitted in a report to the Departmental Council of Cobija, by decree of 9th June same year dated at Sucre and signed by Mr Reyes Ortiz, now Minister of Justice and then President of the Council of State. The Departmental Council reported that the petition should be rejected because it was in contradiction with article 4th of the arrangement concluded between the Supreme Government and the Company on Nov^r 27th 1873, on which it is stipulated that the saltpetre

exported shall be free from any export duty and any other municipal or fiscal impost and also because there likewise exists in force the boundary treaty with Chili whereby new contributions cannot be collected on the coast. In view of this report and the reasons upon which it was based, the decree of August 27th was issued in Sucre, by which the contribution sought to be established was declared illegal."

On the beginning of November, there reached the knowledge of the Government of Chili, trustworthy information that the Bolivian Government again persisted in carrying the impost in question into effect. Without loss of time and on the date of the 8th of the same month, these rumors and fears were transmitted to the Chilian legation, earnestly pressing upon it the necessity of preventing this unlawful act from being consummated. After insisting upon the justice of our rights, this note is added:

"It becomes necessary then, to avoid serious conflicts that your Excellency should call upon the Minister of Foreign Relations, reading him the present note and leaving him a copy of it should it be convenient, and make manifest to him that my Government does not believe for one single instant that the Government of Bolivia persists in the establishment of a contribution like that in question, for it is openly contrary to the letter and spirit of the compact of August 6th 1874."

"Equally contrary to this compact, are the augmentation of the contribution known under the name of "additional duty," received by the launch company the onerous modifications of the impost for ballast in favor of the Municipality, and finally the contribution for illumination which is at present being actively collected in Antofagasta. * * *

"My Government, for the reasons set forth, cannot regard with indifference these violations of the treaty of 1874 and considers it necessary that you should ask of that of Bolivia, the definitive suspension of every contribution posterior to the operation of the treaty, as likewise of every onerous modification introduced in those contributions existing prior to same date. The refusal of the Government of Bolivia to comply with a request as just as it is demonstrated, would place my Government under the necessity of declaring null the boundary treaty which unites us with that country, and the consequences of this painful but absolutely justified and necessary declaration will be at the exclusive responsibility of the party ceasing to comply with what has been agreed upon."

The Minister of Chili in La Paz already had knowledge of the purposes entertained by the Government of Bolivia and before his reception of the note above, in part transcribed, had solicited and obtained from the Minister of Foreign Relations a conference which took place on November 25th. The Chilian representative set forth thereat all the reasons which, in the judgment of the Government of Chili, rendered the collection of the impost unjusti-

fiable, but the Minister of Foreign Relations and his colleagues of the Interior and Treasury, who were present, persisted in the resolution to make it effective. Without having come to any agreement the conference broke up, intending to meet again to treat of the same business, three days after. On the 28th of November the projected conference took place in fact, and in it the same ministers declared to the Chilian representative that after having spoken with his Excellency the President, it had been resolved upon at a cabinet-council to collect the impost immediately. The Chilian diplomat could not conceal his surprise at this determination which he considered irreconcilable with the promise which had been made him by the titular Minister of the Treasury, Mr. Medina, absent at that period, that the collection of the impost should not be proceeded with until the pending diplomatic question should be resolved, and incompatible with the most elementary principles of international law and with the courtesy which Chili, a friendly country, had the right to expect of Bolivia, for up to the present date he had not received any answer whatever to the note which he had presented five months previously, manifesting the powerful reasons which prevented Chili from accepting that contribution as legitimate.

The Cabinet of La Paz having insisted upon making the impost immediately collectable, the Minister of Chili read the note of November 8th which he had just received and which had been sent to him for this purpose, and declared that if it were insisted upon in putting that resolution in execution, the Government of Chili would believe that they considered the treaty of 1874 as broken, and would, on its part, take the steps necessary in the new situation which was about to be created without any fault on its part.

The Ministers then stated that they would return to speak with his Excellency the President and as the Chilian representative observed that he needed a categorical answer in this emergency, before the departure of the mail, which would take place four hours later, this second conference was terminated.

An hour afterward the Chief Clerk of the office of Foreign Relations presented himself at the Chilian legation to inform it that the Ministry had resolved to suspend every measure until the answer to the note of July 2nd should be put into the hands of the Minister of this Republic.

On the 13th of December, our Minister at La Paz received, in answer to his despatch of July 2nd a note from the Minister of

Foreign Relations of Bolivia, intended to give him a copy of a report which the Minister of the Treasury had sent him respecting the Chilian claim and to announce to him that in merit of the considerations expressed in the said report, his Government believed it to be its duty to order the execution of the law which affected the Saltpetre Company with an impost.

The Minister of Bolivia, interrogated by the Chilian representative as to whether order to put the law in execution had already been given or whether it would be delayed until the Chilian Government should learn of the note of December 13th, answered, on the date of 18th of same month that said order had been despatched and that it would be carried to its destination by the mail of the following day.

There could no longer be any doubt but that Bolivia was determined upon disavowing her obligations and producing a serious conflict. Vain had been the efforts of the Government and Representative of Chile to avoid it. The prudent, temperate and friendly despatch of the Chilian Minister, had been answered after the lapse of five months by the strange and, moreover, discourteous notification that the law of February 14th would be immediately put in execution. It was not deemed proper to wait even that the Chilian Government should take cognizance of the offence done to her, and it was endeavoured with a rare precipitation, to render it wholly impossible to employ conciliating measures.

Article 2nd of the additional protocol to the treaty of 1874 establishes arbitration for the case of difficulties arising as to the meaning and application of its provisions; and the Government of Bolivia, fearful, perchance, that on the part of Chili an appeal might be made to this saving resource, hastened to create a situation which would render it unacceptable.

It decides, according to the dictates of its own convenience, the obligations of a bilateral contract; an interested party, it constitutes itself an exclusive judge to interpret its provisions; disdains the observations of its opponent and, despite his claims and protests, orders that its mandate shall be executed, with demonstrations of needless rigor.

Only after consummating the attempt and sacrificing the most obvious considerations of justice and international courtesy, the Government of Bolivia calls to memory the opportunity which, in its judgment there would be in seeking a solution in arbitration.

The Minister of Chili, in conformity with the instructions received by note of January 3rd, still accepts the arbitration and represses out of regard for the friendship and harmony of two brother people, his natural repugnance to continue treating with a Government so forgetful, and apparently intentionally so, of the respect that cultivated nations owe each other. One thing alone is asked by the Chilian representative, before accepting the arbitration; the suspension of the executive proceedings which were being followed out by order of the Government against the Saltpetre Company, from which it was sought to recover the sum of ninety odd thousand pesos, to which sum they made out the total of the contribution imposed by the law of February 14th, and the restoration of the *statu quo* previous to the execution of this law. Without this condition the arbitrator could not pronounce upon the meaning and application which should be given to article 4th of the treaty, but upon facts realized as irrevocable and for which, reparation would be difficult, if not impossible.

“My Government”,

said the Chilian Minister on this occasion,

“charges me to manifest to that of Your Excellency, that by accepting the indication which has been made to me, it is disposed to continue the discussion interrupted by the order to execute the law of February 14th, and to form the arbitration in case of a direct agreement not being possible.

“But my Government acts thus in the persuasion that that of Your Excellency proposes, on its part to give immediate orders for the suspension of the execution of the law and that things may be re-established in the state they were in before the decree of December 18th, since this is a logical consequence of the proposal of arbitration made by Your Excellency. Bolivia has violated the stipulations of the treaty of 1874, by making innovations in the tributary system existing on the coast at the date of that compact; consequently, the suspension of the decree which ordained that the new impost should be put into effect, is an essential prerequisite to reassuming the discussion or to initiating the proceedings conducent to the constitution of the arbitral tribunal.

“But this situation, so uncertain and so full of perils cannot be prolonged much more without occasioning considerable injury to both nations; such an uncertainty must disappear as soon as possible and that it may be so done it is necessary that the Government of Bolivia let its thoughts be known as soon as possible. I therefore beg your Excellency, that whatever may be the definitive resolution which your Government may adopt in view of the present note, you will be pleased to communicate it to me before the 23 of the present month, because on that day I must transmit it to my Government, which awaits with intense interest the settlement of this most grave question.”

The Chilean representative waited in vain till the 24th of December, the reply solicited from the Government of Bolivia, he awaited it even until the 30th of that month; but it was not to arrive either then or later. It appears that it had on reflection been resolved to carry out to an incredible extent, the series of proceedings against Chili so provoking and outrageous to her dignity.

· Instead of welcoming the arbitration with sincerity, or of pronouncing openly against it, the Government prefers to maintain the representative of Chili in a deceitful doubt, which will permit them to realize without impediment, their plans of spoliation on the coast, and has sent secret instructions to that effect to the authorities of Antofagasta.

The Government of Chili has learned with astonishment that the Saltpetre Company which has seen its properties and industrial establishments taken in execution, their operations paralyzed, its two thousand Chilean operatives put in alarm, for they are threatened with the deprivation of subsistence, has at last just received a notification that on the 14th of February, its valuable properties, the fruits of ten years of incessant and costly sacrifices, will be put up to public auction.

And lastly, a telegram received from the legation of Bolivia on the 11th instant, the Government of Chili is informed that the Government of that Republic has just issued a decree despoiling the Chilean Saltpetre Company of their rights and properties, and declaring itself exclusive owner of those goods, the value of which probably amounts to more than six millions of pesos.

In respect to this, your Excellency will observe and be surprised to learn, that while issuing this decree, truly in violation of every elementary principle of justice, the Cabinet of La Paz, absolutely ignores the claim set up by Chili and seems to believe, with malicious premeditation that it is only incumbent upon it to settle a private question between the Government of Bolivia and the Saltpetre and Antofagasta Railroad Company, and yet to point the injury more strongly, this Government declares that it suspends the law which imposed upon the above mentioned company an impost upon the same document in which it declares itself owner of the saltpetre beds.

Your Excellency will again have to be surprised reflecting that the Government of Bolivia has politically and administratively decided a controversy, which in the denied case of having been a

mere private matter, was and ought to be in the exclusive jurisdiction of the courts of justice, and care taken that its decisions should be subjected to the tutelary guaranties of judicial procedure. Nothing of this it appears has been respected by the Cabinet of La Paz; which violating the most primordial notions of universal jurisprudence, constitutes itself judge or tribunal of the bounds, and pronounces a verdict upon a bi-lateral contract in which it figures as a contracting party, and in which is involved a grave international question.

The Chilian Chancery protested and asked the definitive suspension of the decrees under the influence of which it was attempted to appropriate, under cover of an impost, Chilian industry and capital, in contravention of the treaty of 1874, and the Government of Bolivia suspends the partial spoliation and enforces it as a whole, and declares itself possessor and owner of the goods of our fellow citizens, invoking only its avarice and its power. And still, after this unjustifiable act is resolved upon, the Chilian Minister, dominating the noble impulses of his soul, asks its revocation, and acts with the most solicitous anxiety to obtain permission that it may be submitted to arbitrators, without being able to attain his object.

In the presence of such unheard-of facts, facts of which the history of civilized nations has, perchance, furnished no example, there remained but one course to place in safety the interests of Chilians and the dignity of their country.

In consequence, his Excellency the President ordered, that some land and naval forces should immediately embark for the desert of Atacama, and hoist the standard of Chili in the territories she possessed prior to negotiating with Bolivia those treaties which she had just broken with purposes as unrighteous as hostile.

Fifty hours later, the Chilian law ruled in that region, placing under its protection the interests of Chilians and foreigners, without the shedding of a single drop of blood and amidst the patriotic enthusiasm of a reunited people.

In executing this resolution, Chile considers that she is putting into practice natural attributes inherent to her sovereignty, without American interests being considered as thereby affected. This Republic which has respected those interests with generous earnestness, will never attempt to injure them; but it will ever maintain with lofty spirit its rights and prerogatives of an independent nation and master of her acts.

¶ The Chilian nation, a lover of conciliation, anxiously desirous of maintaining peace and union in America, did for their sakes all that was possible and as worthy; but a solemn compact being violated, her amicable protests being unheeded in a manner unusual in international relations, and convinced that Bolivia neither had offered nor could offer for the future, efficacious guaranties to the Chilian colony which had created cities in the desert, has considered it as a duty to re-assume all the rights which she peaceably possessed before the compact of 1866, and will know how to maintain them with that firmness which is inherent in her sons, whatever may be the emergencies that may arise.

I avail myself of this opportunity of offering to your Excellency the homage of my sentiments of high consideration, with which I am your Excellency's obedient and humble servant.

ALEJANDRO FIERRO.

LAWS, EXECUTIVE DECREES, ETC.

Decree of March 1, 1860.

Tesorería de Instrucción.—Circular de 1.º de Marzo.—Hágase efectivo el decreto de 23 de Julio de 1852.

“República Boliviana.—Secretaría del Despacho de Instrucción Pública i Culto”.—En la Paz a 1.º de Marzo de 1860.—A S. S. el Jefe Político de. * * *

Señor Jefe Político:

El supremo decreto de 23 de Julio de 1852, aplica a los fondos de Instrucción Pública la cuarta estaca de las minas que se descubrieren, i como por los datos que se tienen en esta Secretaría, no aparece que se haya cumplido dicha disposición, S. E. el Presidente de la República que tiende incesantemente a realizar todo lo que pueda contribuir al progreso de la enseñanza, ordena que desde esta fecha se haga efectiva dicha disposición, para lo cual confía en la actividad i patriotismo de los funcionarios a quienes compete su cumplimiento.

En cuanto a las minas que se hubieren descubierto desde la fecha del citado decreto hasta hoy, mandar US. que los agentes fiscales perciban la estaca correspondiente a la Instrucción Pública, que por la negligencia de las administraciones anteriores no han ingresado a los fondos del ramo.

Lo comunico a US. de orden de S. E. para su exacto cumplimiento. Dios guarde a US.—Evaristo Valle.—Es conforme.—El jefe de la Sección, *Nestor Galindo*.” (Memoria Sobre Las Estacas De Instrucción del Gobierno de Bolivia, p. 14.)

[Translation.]

Treasury of Instruction.—“Circular of March 1.—Let the decree of July 23, 1852, be made effective.

The Republic of Bolivia.—Office of the Department of Public Instruction and Education.—In La Paz, March 1, 1860.—

To the Honorable the Political Chief of * * *

Mr. Political Chief:

The Supreme Decree of July 23, 1852, applies to the funds of Public Instruction the fourth estaca of the mines which may be discovered, and since from information which this Department possesses, it does not appear that said disposition has been complied with, His Excellency the President of the Republic, who incessantly strives to make effective everything which may contribute to the progress of Education, orders that from this date said

disposition be put into effect for which he relies upon the activity and patriotism of the officials to whom its fulfillment pertains.

With regard to the mines which may have been discovered from the date of such decree until the present, you will order that the fiscal agents shall receive the estacas belonging to Public Instruction, which by the negligence of the former administrations, have not been added to the wealth of that Section.

I communicate this to Your Honor by order of His Excellency, for its exact fulfillment.—God guard Your Honor.—Evaristo Valle.—A true copy.—The Chief of the Division, Nestor Galindo.

LAW OF THE 19TH OCTOBER, 1871.

Ejecutivo.

AUTORIZACIONES PARA PROMOVER EL ADELANTO DEL PAIS.

La Asamblea Nacional Constituyente, decreta:

ARTÍCULO UNO. Autorízase al Ejecutivo con cargo de dar cuenta a la próxima Asamblea, para los objetos siguientes:

* * * * *

5. Para celebrar contratos de arrendamiento o explotar en Sociedad, todas las estacas minas pertenecientes al Estado en los minerales de la República.

6. Para reglamentar la exportacion de minerales o sustancias inorgánicas por el litoral o por cualquiera de las fronteras.

* * * * *

Comuníquese al Poder Ejecutivo para su ejecucion y cumplimiento. Sala de sesiones en la ilustre y heroica Capital Sucre, a 19 Octubre de 1871. Tomas Frias, Presidente. Mariano Navarro, Diputado Secretario. Eulojio D. Medina. Diputado Secretario. (Lugar del sello). Palacio del Supremo Gobierno en Sucre, a 19 de Octubre de 1871. Ejecútese. (Firmado) Agustin Morales. Refrendado. El Ministro de Gobierno y Relaciones Exteriores, Casimiro Corral.

[Translation.]

EXECUTIVE.

AUTHORIZATION TO PROMOTE THE PROGRESS OF THE COUNTRY.

The National Constituent Assembly decrees:

ARTICLE I

Let the Executive be authorized under obligation of rendering an account to the next Assembly, to do the following things * * *

5. To enter into contracts for the renting or exploitation in partnership of all estacas mines belonging to the State in the mineral districts of the Republic.

6. To regulate the exportation of minerals or inorganic substances by the Littoral or by any of the frontiers. * * *

Let it be communicated to the Executive Power for execution and fulfillment.

Hall of Sessions in the illustrious and heroic capital of Sucre, October 19, 1871.

TOMAS FRIAS, *President.*

MARIANO NAVARRO, *Deputy Secretary.*

EULOJIO D. MEDINA, *Deputy Secretary.*

[L. S.]

Palace of the Supreme Government in Sucre, October 19, 1871, let it be executed.

(Signed) AGUSTIN MORALES.

(Counter-signed)

Minister of Government and Foreign Relations.

CASIMIRO CORRAL.

Decree of 2nd November, 1871.

MINERIA. ESTACAS DEL ESTADO: SE INVITA Á SU LABOREO EN
COMPAÑÍA.

Agustin Morales, Presidente Provisorio de la República etc.,
Considerando:

Que el Estado debe sacar todo el provecho de la estaca-mina que tiene de su propiedad en cada veta en explotacion.

Que el Gobierno está en el deber de cumplir la ley de 19 de Octubre último, que lo faculta para arrendar ó explotar en sociedad todas las estacas minas pertenecientes al Estado.

Decreto:

ARTÍCULO 1. Se invita a una licitacion para el laboreo de estaca-minas del Estado, en compañía; conceptuandose al Estado como socio industrial.

ARTÍCULO 2. Las própuestas se presentaran en pliego cerrado hasta el 1 de Abril del año entrante, en cuyo dia se abiran en consejo de gabinete, y en presencia del fiscal para hacer la calificacion y aceptar la que ofreciere mas ventaja.

ARTÍCULO 3. El Gobierno como socio industrial, no se obliga a reembolsar pérdidas á los socios capitalistas.

ARTÍCULO 4. La duracion de la sociedad se fijara en el contrato; pero si el Gobierno llegare á vender las estaca-minas en virtud de autorizacion que recibiere del poder lejislativo, la sociedad quedara

disuelta por el hecho de la venta, teniendo los socios el derecho de retracto.

ARTÍCULO 5. El Gobierno constituirá en cada mineral un agente oficial, para que haga personería en todas las operaciones de la sociedad.

ARTÍCULO 6. Los empresarios capitalistas harán la oferta en sus propuestas, de un adelanto sobre el producto neto que debe percibir el Estado. Esta suma se considera como depósito para responder de la realización inmediata del laboreo, y para todo cargo que debiera resultar por las faltas de los empresarios; y su pago se hará con un 6% de amortización deducible del producto neto.

ARTÍCULO 7. La sociedad se organizará con arreglo á las prescripciones de las leyes patrias; y el laboreo se hará con sujeción al código de minería; entendiéndose que el Estado por la parte que tiene como socio, no renuncia los privilegios que goza en asunto de minas.

El Ministro de Hacienda é Industria queda encargado de la ejecución y cumplimiento de este decreto.

Dado en la ilustre y heroica capital Sucre, á 2 de Noviembre de 1871. Firmado—Agustin Morales.

Refrendado. El Ministro de Gobierno y Relaciones Exteriores, encargado del despacho de los demás ramos. Casimiro Corral.

[Translation.]

MINES.—ESTACAS OF THE STATE.—THEIR WORKING IN PARTNERSHIP IS INVITED.

I, Agustin Morales, Provisional President of the Republic, etc., considering that the State should derive every benefit from the estacas mines which it holds as its property in every vein that is being worked; that the Government is bound to fulfill the law of the 19th of October last which authorized it to rent or exploit in partnership all the estacas mines belonging to the State:

Decree

ARTICLE I

That a tender is invited for the working of the estaca mines of the State in partnership, the State being considered as an industrial partner;

ARTICLE II

That the proposals shall present themselves in sealed envelopes until the first of April of the coming year on which day they shall be opened at a meeting of the Cabinet and in the presence of a

Government attorney in order to make an investigation of them and accept the one which offers the greatest advantages;

ARTICLE III

That the Government as an industrial partner does not bind itself to reimburse losses to the partners who furnish the capital;

ARTICLE IV

That the duration of the partnership shall be fixed in the contract; but if the Government accomplishes the sale of the estaca mines by virtue of the authorization which has been received from the legislative power, the company shall be dissolved by the fact of the sale, the partners having the right of retrieval; (NOTE. The right of buying up at the same price).

ARTICLE V

That the Government shall appoint in each mining district an official agent in order that he may represent the Government in all the operations of the company;

ARTICLE VI

That the partners who furnish the capital shall make the offer in their tenders of an advance upon the net proceeds which the State ought to receive. This sum shall be considered as a deposit to guarantee immediate realization of the work and to cover every penalty which might result through fault of the managers; and its payment shall be made with an amortization of 6% which may be deducted from the net proceeds;

ARTICLE VII

The company shall be organized in accordance with the provisions of the laws of the country, and the work shall be subject to the Code of Mines, it being understood that the State, because of the part it takes as a partner, does not waive the privileges which it enjoys in mining matters.

The Minister of Hacienda and Industry shall be charged with the execution and fulfillment of this Decree.

Done at the illustrious and heroic capital of Sucre November 2, 1871.

AGUSTIN MORALES

The Minister of Government and Foreign Relations in charge of the office of the other Departments

CASIMIRO CORRAL.

Decreto de 29 de Mayo de 1872.

ESTACA-MINAS DEL ESTADO.

Se prorroga la licitacion convocada por decreto de 2 de Noviembre de 1871 y prorrogada por el de 7 de Marzo último, para el laboreo de aquellas, hasta el primero de Octubre venidero.

[Translation.]

THE ESTACA MINES OF THE STATE.

The tender called for by the Decree of November 2, 1871, and extended by that of March 7th last, for the working thereof is hereby extended until the first of October next.

Decreto de 19 de Setiembre de 1872.

ESTACA MINAS DEL ESTADO. SE LLAMA NUEVAMENTE A LICITACION PARA EL LABOREO DE ELLAS.

Agustin Morales, Presidente Constitucional de la República, etc.,
Considerando:

Que por obstáculos imprevistos y por los últimos sucesos políticos, no ha podido el Ingeniero del Estado practicar el reconocimiento y mensura de las estaca-minas del Estado en Caracoles.

Que es necesario dar mayor amplitud a los contratos para el laboreo de dichas estacas, y hacer llamamiento a la licitacion a empresarios tanto nacionales como extranjeros;

Que esta próximo el primero de Octubre que se señaló últimamente para la licitacion de las expresadas estacas y el Gobierno ha recibido de diferentes puntos, reclamaciones de interesados por la estrechez del tiempo.

Decreto:

ART. 1. Se llama nuevamente a licitacion para el laboreo de las estaca-minas de plata del Estado en el Litoral en compañía con el, en el concepto de que el Estado será considerado como socio industrial.

ART. 2. Las propuestas se presentarán en pliego cerrado hasta el dia primero de Abril de 1873, en cuyo dia á las doce se abrirán en Consejo de Gabinete, y en presencia del Fiscal y se hará su calificación para aceptar la que fuera mas ventajosa.

ART. 3. El Gobierno, como socio industrial, no so obliga á reembolsar pérdidas de los socios capitalistas.

ART. 4. La duracion de la sociedad se fijara en el contrato, y durante el tiempo que se estipulare no podra el Estado vender las estacas comprometidas.

ART. 5. Los socios capitalistas, haran en sus propuestas una oferta de adelanto sobre el producto neto que debe percibir el

Estado. La suma anticipada se considerara como depósito para responder de la realizacion inmediata de la Empresa, y de todo cargo que pudiere resultar por las faltas de los Empresarios; y su pago se hara con un 6% de amortizacion deducible del producto neto.

ART. 7. La sociedad se organizara con arreglo a las prescripciones de las leyes patrias, y el laboreo se efectuara con sujecion al Codigo de Minería; entendiéndose que el Estado por la parte que tiene, no renuncia a los privilegios de que goza en asunto de minas.

ART. 8. Queda abrogado el Decreto de 2 de Noviembre de 1871.

ART. 9. El Gobierno recomienda á los prefectos y sub-prefectos que tomen las medidas mas eficaces para cautelar las estacas de la Nacion evitando usurpaciones e introducciones de parte de los mineros.

ART. 10. Para el laboreo de las estacas en los minerales de los Departamentos del Interiores el Gobierno convocara nuevamente á licitacion.

Es dado en la ciudad de La Paz, á 19 de Setiembre de 1872.

(Firmado) AGUSTIN MORALES.

(Refrendado)

El Ministro de Gobierno y Relaciones Exteriores encargado del Despacho de Hacienda.

CASIMIRO CORRAL.

[Translation.]

ESTACA MINES OF THE STATE. NEW TENDERS FOR THEIR WORKING CALLED FOR.

I, Agustin Morales, Constitutional President of the Republic, etc., Considering:

That by unforeseen obstacles and the latest political events, the Engineer of the State has not been able to carry out the examination and measurement of the Estaca mines in the State of Caracoles;

That it is necessary to give greater scope to the contracts for the working of the said Estacas, and request tenders not only from national managers, but also from foreign ones;

That the first of October is drawing near which was recently designated for the submission of tenders concerning said Estacas, and the Government has received from different parts complaints by interested parties on account of the shortness of the time, Decree;

ARTICLE 1. A new tender is asked for the working of the Estaca mines of silver of the State of Littoral in association with it in the sense that the State shall be considered as an industrial partner.

ARTICLE 2. The proposals shall be presented in a package sealed until the first day of April, 1873, on which day, at 12 o'clock, they shall be opened at a Cabinet meeting and in the presence of the Government Attorney, and they shall be classified so that the most advantageous one shall be accepted.

ARTICLE 3. The Government, as an industrial partner, shall not be obliged to reimburse losses to the partners who furnish capital.

ARTICLE 4. The duration of the association shall be fixed in the contract, and during the time that may be stipulated the State shall not be able to sell the Estacas involved.

ARTICLE 5. The partners furnishing capital shall make in their proposals an offer in advance on the net proceeds which the State is to receive. The sum advanced shall be considered as a deposit being the guarantee of the immediate commencement of the work and for every charge that might result from the fault of the managers; and its payment shall be made by an amortization of 6 per cent., to be deducted from the net proceeds.

ARTICLE 7. The partnership shall be organized in accordance with the provisions of the national laws, and the working shall be effected in conformity with the mining code, it being understood that the State, by reason of its participation, does not renounce the privileges which it enjoys in mining matters.

ARTICLE 8. The Decree of November 2, 1871, is repealed.

ARTICLE 9. The Government recommends to the Prefects and Sub-Prefects that they take the most efficacious measures to safeguard the Estacas of the nation, avoiding usurpation and trespass on the part of the miners.

ARTICLE 10. For the working of the Estacas in the mineral districts of the interior departments the Government shall again call for tenders.

Done at the City of La Paz, September 19th, 1872.

Signed. AGUSTIN MORALES.

Countersigned:

Minister of Government and Foreign Relations, in charge
of the Office of the Treasury.

CASIMIRO CORRAL.

Resolución de 21 de Diciembre de 1872.

MINISTRO DE HACIENDA É INDUSTRIA,

La Paz, Diciembre 21 de 1872.

Vistos en Consejo de Gabinete: la reclamación del Señor Don Pedro Lopez Gama, sobre indemnización del valor de doscientas

mil toneladas de huano; los contratos, escrituras y resoluciones en que apoya su demanda, la ley de autorización de 22 de Noviembre último dada al Ejecutivo por la Asamblea Constitucional para que pueda transar este asunto. Se resuelve:

1°. Se reconoce en favor del Señor Pedro Lopez Gama el derecho al valor de ciento cincuenta mil toneladas de huano de registro.

2°. El valor indemnizable será el de siete pesos dos reales, como término medio de los cinco pesos seis reales y ocho pesos cuatro reales que debió dicho Señor Gama pagar al Estado por sus diferentes contratos estipulados en los años 60, 62 y 63.

3°. El monto total de *un millon ochenta y siete mil quinientos pesos* que arrojan *ciento cincuenta mil* toneladas al precio medio de los siete pesos dos reales acordados, será pagado al Señor Pedro Lopez Gama con el 25 por ciento del producto neto que tenga el Estado en la explotación de las estaca-minas, cuya adjudicación debe hacerse el 1° de Abril de 1873.

4°. Siempre que por algun incidente, hubiese retardación en el pago, una vez que se hallasen en explotación las citadas estaca-minas, se le abonará á Don Pedro Lopez Gama por el tiempo del retardo y sobre la suma que debió recibir el interés del 8 por ciento anual.

5°. Este interés mismo será cargado sobre la cantidad total de *un millon ochenta y siete mil quinientos pesos* que se le reconoce en el inesperado caso en que el fondo asignado para este pago, no pudiese verificarse y hacerse efectivo por falta de la empresa adjudicatoria, esto es, que no llegase á hacerse la explotación de las estaca-minas.

6°. Una vez que sea hecha la adjudicación en 1° de Abril de mil ochocientos setenta y tres á la Empresa que deba espoltar las mencionadas estaca-minas de Caracoles, será condición espresa de una de las cláusulas del contrato el pago directo á D. Pedro Lopez Gama del 25% que se le asigna sobre el producto neto perteneciente al Estado, á cuyo fin dicho Señor Gama pondrá de su cuenta un Interventor en las labores hasta la completa cancelación de su cuenta.

7°. El Señor Don Pedro Lopez Gama no tendrá derecho á cobrar interés alguno siempre que sea él el adjudicatorio para la explotación de las referidas estaca-minas, ó que las obtenga por compra á los empresarios de alguna ó algunas de sus acciones, ó por sustitución ó por cualquiera de los medios que las leyes permiten adquirir.

Notifíquese al Señor Don Pedro Lopez Gama por el Escribano de Hacienda de esta Capital y prévia su aceptación reduzcase á escritura pública el presente Decreto. A cuyo fin remítanse los obrados al Señor Prefecto del Departamento para que mande cumplir esta última parte.

(Firmado)

FRIAS.
CASIMIRO CORRAL.
PEDRO GARCIA.
MELCHOR TERRAZAS.
ILDEFONSO SANJINES.

Es conforme.

[SEAL]

JOSÉ SALINAS,
Oficial Mayor de Relaciones Exteriores.

[Translation.]

Resolution of December 21, 1872.

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, December 21, 1872.

There having been considered in a Cabinet Council the claim of Mr. Pedro Lopez Gama for indemnity in the value of 200,000 tons of guano; the contracts, documents, and resolutions on which he bases his claim; and the law of November 22 last in which the Constitutional Assembly authorizes the Executive to compromise this matter, it is resolved:

1. The right to the value of 150,000 registered tons of guano is recognized in favor of Mr. Pedro Lopez Gama.

2. The indemnifiable value shall be seven pesos and two reales, which is the average of the five pesos and six reales and the eight pesos and four reales which the said Mr. Gama was to pay to the Government according to his various contracts concluded in the years 1860, 1862, and 1863.

3. The total amount of 1,087,500 pesos, which is the value of 150,000 tons at the average price of 7 pesos, 2 reales as agreed upon, shall be paid to Mr. Pedro Lopez Gama out of 25% of the net proceeds of the Government from the operation of the mines which are to be let out as concessions on April 1, 1873.

4. If, after the said mines have begun to be operated, there should for any reason occur a delay in the payment, Mr. Pedro Lopez Gama shall be paid, for the period of the delay, interest at 8% per annum on the amount which he should have received.

5. This same interest shall be allowed on the total amount of 1,087,500 pesos recognized as due him, in the unexpected case that the fund assigned for this payment should not be available and payable owing to the fault of the concessionary, that is, if the mines should not be operated.

6. Once the concession is made on April 1, 1873, to the company which is to operate the said mines of Caracoles, one of the express conditions of the contract shall be the direct payment to Mr. Pedro Lopez Gama of the 25 per cent which is allotted to him out of the net proceeds due the Government, for which purpose Mr. Gama shall appoint an interventor (agent to inspect the operation of the mine) until his claim is completely satisfied.

7. Mr. Pedro Lopez Gama shall not be entitled to collect any interest provided he is the concessionary for the operation of the said mines, or if he acquires them by purchase of one or more shares from the concessionaries, or by substitution or any other means by which they may be legally acquired.

Let Mr. Pedro Lopez Gama be notified by the Treasury Clerk of this capital of this decree, and upon his accepting it let it be duly executed as a public documents. For which purpose let the documents in the case be transmitted to the Prefect of the Department in order that he may order this last formality fulfilled.

(Signed)

FRIAS.

CASIMIRO CORRAL.

PEDRO GARCIA.

MELCHOR TERRAZAS.

ILDEFONSO SANJINES.

A true copy.

(Seal)

JOSE SALINAS,

Chief Clerk of Foreign Relations.

Propuesta que Pedro Lopez Gama hace al Supremo Gobierno de Bolivia respecto al laboreo y explotación de las Estaca-minas de plata pertenecientes al estado en el litoral de la República, en virtud del Supremo Decreto de 19 de setiembre de 1872

BASES DE LA PRESENTE PROPUESTA

1º. Pedro López Gama, por sí solo, ó por medio de sociedades colectivas ó anónimas, para cuya formación queda debidamente autorizado, toma á su cargo el laboreo y explotación de todas las Estaca-minas pertenecientes al Estado, que á juicio de la empresa

costeen cuando menos los gastos de trabajo en las vetas descubiertas y que en adelante se descubrieren en el Litoral de la República de Bolivia, con sujeción al Código de Minería.

2°. El empresario Pedro López Gama se compromete dar principio á los trabajos, en el término de seis meses después de firmada la escritura del presente contrato, ó antes, si lo tuviere por conveniente, prévia entrega y toma de posesión de las Estacaminas que hayan sido mensuradas por los ingenieros ó ingeniero nacional, en las vetas conocidas y en laboreo, principiando á practicarse esta operación por las Estacaminas que indique la Empresa.

3°. El Supremo Gobierno de Bolivia impartirá las órdenes respectivas á las autoridades del Litoral lo mismo que al ingeniero ó ingenieros de la Nación para que activándose la mensura de las estacas del Estado en las vetas descubiertas, se dé mensualmente posesión al empresario del mayor número posible de ellas. Para facilitar más esta operación y principalmente para los casos en que se hubiese desviado el rumbo de la veta en que esté la Estaca, y que por esta razón se hubiese tomado mal el rumbo de ella, el empresario se obliga á prestar al ingeniero del Estado la cooperación de los ingenieros de la empresa.

4°. El empresario podrá contratar y ocupar para el servicio de los trabajos, ingenieros, empleados y trabajadores ya sean extranjeros ó nacionales; los que durante el tiempo de sus respectivos compromisos con la empresa quedarán exceptuados de todo servicio militar y de todo cargo civil ó concejil.

5°. El empresario Pedro López Gama se obliga á emplear, ó á hacer emplear por las sociedades que pudiere formar, en virtud de la autorización contenida en el artículo 1°. de este Contrato todo el capital que fuere necesario para el desarrollo de los trabajos en grande escala.

6°. El Empresario Pedro López Gama ofrece como garantía del cumplimiento fiel de este contrato, á más del crédito que sobre el producto de dichas Estacaminas le tiene reconocido el Supremo Gobierno de Bolivia, un empréstito de un millon doscientos cincuenta mil pesos al interés del 8% anual, 6% de amortización y 1% de comisión. Dichos 1,250,000 se cobrará por el empresario de la oficina del Banco Nacional de Bolivia en Valparaiso, de la manera siguiente: 250,000 pesos á los tres meses de celebrado este contrato, 500,000 tres meses después, y los 500,000 restantes á los seis meses de pagada la armada anterior.

7°. Las utilidades netas que produzca el laboreo y explotación de las Estaca-minas á que se refiere este contrato, según los balances semestrales que deberá presentar la expresa, se repartirán entre el Gobierno y el empresario en la forma siguiente: 50% (cincuenta por ciento) para el Estado, 50% (cincuenta por ciento) para la empresa.

8°. Del cincuenta por ciento correspondiente al Estado, se deducirá la parte señalada para el pago del crédito que se ha reconocido en favor del proponente según el Supremo Decreto de 21 diciembre de 1872; como igualmente lo que fuese necesario para cubrir el pago de los intereses, comisión y amortización del empréstito expresado en la cláusula 6°. de este contrato; y el saldo que resultare en favor del Estado, quedará á la orden y disposición del Supremo Gobierno.

9°. El Supremo Gobierno podrá nombrar, si lo tuviese por conveniente, un Interventor ó Agente Oficial que haga personería en todas operaciones de la sociedad; siendo entendido que la iniciativa y dirección de los trabajos y manejo de los negocios en jeneral, pertenecen exclusivamente á la Empresa.

10. La empresa queda facultada para vender ó beneficiar los metales que se exploten, en el mercado que más convenga, sea en la República ó fuera de ella.

11. La Empresa disfrutará para hacer efectivos sus derechos, de todos los privilegios de que goza el Fisco.

12. La duración de este contrato será por el término de cincuenta años.

13. El Estado es considerado como socio industrial, y en su calidad de tal, no es responsable por las pérdidas que pudiese tener la empresa.

14. Durante los cincuenta años de la duración de este contrato, el Supremo Gobierno de Bolivia no podrá contratar, vender, arrendar, enajenar ni explotar ninguna de las estacas del Estado que le pertenecen al presente, ó le pertenecieran en lo sucesivo en todo la extensión de territorio conocido hoy con el nombre de Litoral, donde se hallan los asientos minerales de Caracoles y otros.

15. El Supremo Gobierno ordenará á todas las autoridades del Litoral que contribuyan por todos los medios que estén en sus atribuciones, á ayudar al ingeniero ó ingenieros del Estado á resguardar las propiedades y personas de la empresa; y especialmente les recomendará el cumplimiento del Art. 9°. del Supremo

Decreto de 19 setiembre último, en que les recomienda tomar las medidas más eficaces para cautelar las Estacas de la Nación evitando usurpaciones ó introducciones de parte de los mineros.

16. Si la protección que pudiesen prestar las autoridades del Litoral, fuese insuficiente para resguardar las propiedades y personas de la Empresa, atendida la distancia que hay entre una y otra mina, la incompleta organización policial, y tambien la distancia que hay entre la costa y el mineral, la empresa queda autorizada para organizar su propia policia de seguridad y hacer escoltar con ella sus remesas al punto de su destino.

17. Para los casos de usurpación é internación en alguna de las estacas del estado, el Supremo Gobierno al poner en conocimiento de las autoridades del Litoral, la celebración de este contrato, les indicará el medio más corto y más terminante como deban proceder para hacer la entrega de aquellas Estacas que hubiesen sido usurpadas y que se estuvieran trabajando por otro, al tiempo de hacerse la entrega de ellas á la Empresa.

18. El Supremo Gobierno cederá en favor de la empresa para mientras dure este contrato los terrenos de propiedad del Estado que ella necesite para la plantación de sus casas y establecimientos.

19. En el caso inesperado de que sobreviniese algún desacuerdo entre el Supremo Gobierno y la Empresa sobre la inteligencia de este Contrato, se resolverá la cuestión por dos jueces árbitros elejidos por cada parte y si no se aviniesen los árbitros entre sí, las dos partes contratantes nombrarán un tercero en discordia á cuyo inapelable fallo se someten desde ahora los contratantes.

La Paz, Abril 1º de 1873.

(Firmado)

PEDRO LÓPEZ GAMA.

En La Paz de Ayacucho, á 1º de Abril de 1873, horas dos de la tarde; siendo este el dia señalado por el Supremo Decreto de 19 de Setiembre último para adjudicar en licitación la empresa del laboreo y explotación de las Estaca-minas del Estado en Caracoles, se reunió la junta Nacional de almonedas, compuesta de los S. S. Ministros de Estado, menos el de Gobierno, ausente por enfermedad, y con asistencia de los S. S. Presidente y Decano del Consejo de Estado, llamados al efecto, y del Fiscal del Distrito, bajo la presidencia del Señor Presidente de la República, se procedió á la apertura de tres pliegos cerrados, únicos que fueron presentados á la hora designada por el citado decreto, conteniendo el primero: la propuesta de los S. S. George Earl Church, Emilio Erlanger y

Julius Beer; el 2º la del Señor Pedro López Gama; y el 3º la del Señor Narciso Noriega, apoderado del Señor Carlos von der Heyde.

Leídas las tres propuestas y examinadas en el mismo acto, y después de una madura discusión, la junta calificó la del Señor Pedro López Gama como la más ventajosa al Estado y que ofrece la más sencilla combinación; en su consecuencia fué aceptada con preferencia á las otras propuestas, ampliando la Junta el artículo 17 en los siguientes términos:

Artículo 17.—Para los casos de usurpación, introducción en alguna de las estacas del Estado, ó desviación de vetas, el Supremo Gobierno nombrará una comisión de arbitros para que en consorcio con los que nombraren los interesados en igual número, y previa información de los ingenieros ó peritos de ambas partes, resuelva con arreglo á la equidad y á la justicia todas las cuestiones que se suscitaren entre los propietarios mineros y el Estado por razón de dichas estacas.

A este fin el Gobierno obligará á todos los propietarios de minas á que presenten sus títulos en el asiento mineral de Caracoles, para que sean trascritos en los registros públicos, y faciliten las resoluciones de la comisión de árbitros.

Dispuso así mismo la Junta que se pasen las propuestas al Ministro de Hacienda para su publicación, y que mande el otorgamiento de la escritura de contrato con el Sr. López Gama, así como para que libre las órdenes conducentes á su ejecución.

Firman los S. S. concurrentes con el Sr. Presidente de la República.

FRIAS.

P. GARCIA.

JUAN DE DIOS BOSQUE.

ILDEFONSO SANJINÉS.

MARIANO BAPTISTA.

JOSÉ M. DEL CARPIO.

JOSÉ VICTOR PEREZ.

MANUEL VIRREIRA,

Oficial Mayor de Hacienda.

MINISTERIO DE HACIENDA É INDUSTRIA.

La Paz, Abril 2 de 1873.

Remítase al Prefecto del Departamento el Contrato del Señor Pedro López Gama para que ordene se notifique á dicho señor la resolución que antecede, y en consecuencia se extienda la escritura pública ante el Escribano de Hacienda del Departamento: Publíquese las tres propuestas presentadas, juntamente con la acta de aceptación de la del Sr. Pedro López Gama; transcríbese al Pre-

fecto del Departamento de Cobija; y líbrense las órdenes respectivas para al cumplimiento y ejecución del referido contrato.

GARCIA.

[Translation.]

A Proposal which Pedro Lopez Gama makes to the Supreme Government of Bolivia in regard to the work and exploitation of the Estaca-Mines of silver, which belong to the State in the Littoral of the Republic by virtue of the supreme decree of the 19th of September 1872.

BASES OF THE PRESENT PROPOSAL.

First. Pedro Lopez Gama, for himself or through collective or anonymous societies, for the formation of which he is duly authorized, assumes the working and exploitation of all the Estaca Mines which belong to the State, which in the judgment of the management bear at least the cost of working in the veins already discovered or which hereafter shall be discovered in the Littoral of the Republic of Bolivia, subject to the Code of Mining.

Second. The Manager, Pedro Lopez Gama, binds himself to begin work six months after the signing of the instrument of the present contract, or earlier, if he should find it expedient, after the delivery and taking possession of the Estaca-Mines, which have been surveyed by national engineers or engineer, at the veins which are known and worked; the operations to begin in the Estaca-Mines which the Company may indicate.

Third. The Supreme Government of Bolivia shall give the respective orders to the Littoral authorities, as well as to the engineers or engineer of the Nation, so that, expediting the survey of the "Estacas" of the State in the veins already discovered, they may monthly give over possession to the Manager the greatest possible number of them. To better facilitate this operation, and especially in cases where the direction of the veins of the Estaca of the State might have turned off, and where therefore their direction might have been badly taken, the Manager binds himself to lend to the engineer of the State the cooperation of the engineers of the Company.

Fourth. The Manager can contract and employ for the service of the works engineers, employees and working men, be they foreigners or nationals; who during the time of their respective contracts with the Management shall be exempt from all military service and all civil and public demands.

Fifth. The Manager, Pedro Lopez Gama, binds himself to employ or cause to be employed by the Companies which he might form, by virtue of the authority contained in Art. 1 of the contract, all the capital that may be necessary for the development of the enterprise on a great scale.

Sixth. The Manager, Pedro Lopez Gama, offers as a guarantee for the faithful fulfilling of this contract, besides the Credit which the Supreme Government of Bolivia has acknowledged due to him upon the product of said Estaca-Mines, a loan of one million two hundred and fifty thousand pesos at an annual interest of 8%, at 6% amortization and 1% commission. Said 1,250,000 shall be collected by the Manager from the office of the National Bank of Bolivia in Valparaiso in the following manner: 250,000 pesos three months after the ratifying of this contract, 500,000 three months thereafter and the remaining 500,000 six months after the payment of the previous quota.

Seventh. The net profit which the working and exploitation of the Estaca-Mines, to which this contract refers, produce, according to half yearly balances which the Management shall present, shall be distributed between the Government and the Manager in the following manner: fifty per cent (50%) for the State and fifty per cent (50%) for the Management.

Eighth. Of the fifty per cent belonging to the State shall be deducted that part which is destined for the payment of the credit which has been acknowledged in favor of the one making the Proposal, according to the Supreme Decree of the 21st of December 1872; as also that which will be necessary to cover the payment of interests, commission and amortization of the loan expressed in the clause 6 of this contract; and the balance which results in favour of the State, shall be to the order and disposal of the Supreme Government.

Ninth. The Supreme Government may appoint, if it judge expedient, an Interventor or Official Agent, who may act as attorney in all the operations of the Company; it being understood that the initiative and direction of the works and the management of the business in general, pertain exclusively to the Company.

Tenth. The Company is authorized to sell or to utilize the metal which it exploits in the market which best suits it, be it in the Republic or outside of it.

Eleventh. The Company, to make effective its rights, shall enjoy all the privileges which the Fiscal enjoys.

Twelfth. The duration of this contract shall be for the term of fifty years.

Thirteenth. The State shall be considered as an industrial partner, and in its quality as such is not responsible for the losses which the Company might suffer.

Fourteenth. During the fifty years duration of this contract, the Supreme Government of Bolivia can not contract, sell, rent, alienate nor exploit any of the Estacas of the State which it owns at present or may own hereafter in all the territory to-day known as the Littoral, where the mineral deposits of Caracoles and others are found.

Fifteenth. The Supreme Government shall order all the local authorities of the Littoral to contribute by all means in their power, to help the engineer or engineers of the State to safe-guard the property and persons of the Company; and especially it shall recommend them to fulfill Art. 9 of the Supreme Decree of the 19th of September last, in which it recommends the taking of the most efficient means to protect the Estacas of the Nation from usurpations and trespass on the part of miners.

Sixteenth. If the protection which the authorities of the Littoral could give may not be sufficient to safe-guard the properties and persons of the Company, taking into consideration the distance which exists between the mines, the incomplete police organization, and the distance between the coast and the mines, the Company is authorized to organize its own police security and to furnish escort for its shipments to the journey's end.

Seventeenth. To meet cases of usurpation or operation upon any of the Estaca-Mines of the State, the Supreme Government, at the time of notification to the authorities of the Littoral of the celebration of this contract, shall indicate to them the shortest and most decisive means how they should proceed to effect the handing over of such estacas as should have been usurped or worked by others at the time of the giving over of them to the Company.

Eighteenth. The Supreme Government grants in favour of the Company during the term of this Contract such land, property of the State, as it may need for the erection of its houses and establishments.

Nineteenth. In the unexpected case that there should be any difference of opinion between the Supreme Government and the Company as to the interpretation of this contract, the question shall be resolved by two arbitral judges, selected by each party, but if the

referees should not agree between themselves, the two contracting parties shall elect an umpire to whose decision both contracting parties shall submit themselves without appeal.

La-Paz, April 1st. 1873.

PEDRO LOPEZ GAMA.

In La-Paz de Ayacucho, on the 1st of April 1873, at 2 p. m., this being the day appointed by the Supreme Decree of the 19th of September ultimo to consider the bids for the Company to work and exploit the Estaca Mines of the State in Caracoles, the Board of National Auctioneers, composed of the Ministers of State, with the exception of the Minister of Government, who was absent on account of sickness, and in the presence of the President and Dean of the Council of State, who were called for that purpose, and of the Fiscal (Attorney) of the District, the President of the Republic presiding, proceeded to the opening of three sealed papers, the only ones that were presented at the hour appointed by the aforementioned decree, the first one containing: the proposal of Messrs. George Earl Church, Emile Erlanger and Julius Beer; the second that of Mr. Pedro Lopez Gama; and the third that of Mr. Narciso Noriega, attorney for Mr. Carlos von der Heyde.

The three proposals having been read and examined at the same time, and after mature discussion, the Board selected the one of Mr. Pedro Lopez Gama as the one most advantageous to the State and which offered the most simple combination; in consequence, it was accepted in preference to the other proposals, the Board enlarging Art. 17 in the following terms:

“Article 17. In case of usurpation, penetration into any of the estacas of State, or of deviation of the veins, the Supreme Government shall name a commission of judges, who in consort with those whom in equal number the interested parties shall nominate, and after previous information to the engineers or specialists of both parties, shall resolve according to equity and justice all questions which shall arise between the mining proprietors and the State by reason of said estacas.

“To this end the Government demands of all mine proprietors to present their titles in the mining District of Caracoles, to the end that they may be transcribed into the public registers, and thus facilitate the decisions of the arbitration-committee.”

The Board also ordered that the proposals should be handed to the Minister of Finance for their publication, and that he order the execution of the writing of the contract with Mr. Lopez Gama, as also that he give the orders which would lead to its execution.

Signed by the gentlemen present and by the President of the Republic.

FRIAS.

P. GARCIA.

JUAN DE DIOS BOSQUE.

ILDEFONSO SANJINES.

MARIANO BAPTISTA.

JOSE M. DEL CARPIO.

JOSE VICTOR PEREZ.

MANUEL VIRREIRA,

Chief Clerk of the Treasury.

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, April 2, 1873.

Send to the Prefect of the Department the contract of Mr. Pedro Lopez Gama, that he cause the said gentleman to be notified of the preceding resolution, and in consequence the public instrument be made out before the Notary Public of Finance of the Department: Publish the three proposals which have been presented, together with the minutes of acceptance of that of Mr. Pedro Lopez Gama; transcribe to the Prefect of the Department of Cobija, and give the respective orders for the fulfillment and execution of the referred contract.

GARCIA.

Extract from "Mensaje del Presidente de la República, a la Asamblea Extraordinaria de 1873."

Estaca-minas del Estado en Caracoles.—El 1.º de abril se ha hecho la licitacion para el laboreo y explotacion de estas estacas ante la junta compuesta de los miembros del Gobierno y del Presidente y un miembro del Consejo de Estado y el Fiscal de distrito.—El Señor Pedro Lopez Gama concesionario hace un anticipo de 1.250,000 bolivianos con un interes de 8%, la amortizacion del 6% y la comision de 1% á pagarse con los productos de la explotacion, de la cual recibe el estado una mitad del neto.—Estas bases y el de tal del contrato los vereis en la publicacion que se ha hecho de él.

[Translation.]

Estacas mines of the State in Caracoles.—

The first of April an auction was held for the working and the exploitation of these estacas before the Board composed of the

President and the members of the Council of State and the Fiscal of the District. Señor Lopez Gama, concessionary, made an advance of 1,250,000 Bolivianos with interest at 8%, the amortization of 6%, the commission of 1%, to be paid out of the proceeds of the exploitation of which the State shall receive one-half of the net proceeds.

These bases and the details of the contract you will find in the publication which has been made thereof.

Declaration of the Government of Bolivia as to the location of the estacas belonging to the Treasury.

La situacion de cada una de las estacas de interés fiscal en los diferentes registros de vetas de plata que han tenido lugar en ese departamento, se halla determinada por la lei con toda precision. *El Supremo Decreto de 23 de Julio de 1852, reconocido por actos legislativos como lei del Estado, aplica la Tesoro de Instruccion Pública la estaca siguiente a las que corresponden al descubridor o denunciante en toda veta de plata o cualquiera otro metal.* Partiendo de este antecedente i teniendo en vista las disposiciones del Código de Minería concernientes a este objeto, no debe ofrecer duda la designacion de las pertenencias fiscales de que el Señor Pedro López Gama ha de tomar posesion. *Por el art. 16 del mencionado Código, el que se refiere tambien el art. 19, los descubridores, mediante cateo de vetas en cerro virjen, gozan de tres estacas, i en ellas corresponden al Estado la cuarta. Por el art. 20, los descubridores de veta en asiento mineral conocido i en otras partes trabajado, gozan solamente dos estacas, siendo en estas la tercera la que corresponde al Estado.* La aplicacion exacta de las citados disposiciones en los minerales del Litoral, destruye cualquiera objection o dificultad que pueda oponer el interes individual.

Si algunos empresarios de ese distrito, que se creen con derecho a las terceras estacas invocan el decreto de 29 de Septiembre de 1871, que por equivocacion espreso ser siempre la cuarta estaca del Fisco, es mui extraño que olviden el tenor de la orden circular explicatoria de 9 de Octubre del mismo, que rectificando la expresion inexacta del Decreto, declara que son las cuartas i las terceras respectivamente en los propios terminos que estatuye el Codigo las que pertenecen al Estado.

(Memoria sobre Las Estacas de Instruccion del Gobierno de Bolivia, p. 19, by Cerda.)

[Translation.]

The location of each one of the estacas of the Treasury in the various registries of veins of silver, which have taken place in that Department, is found to be determined with entire precision by the law. *The Supreme Decree of July 23, 1852, affirmed by legislative acts as a law of the State, designates for the Treasury of Public Instruction the estacas next following those of the discoverer or denouncer in every vein of silver of other metal. Starting from this precedent and bearing in mind the provisions of the Mining Code pertaining to this subject, the designation of the Treasury claims of which Mr. Pedro Lopez Gama should take possession ought to give rise to no doubt. By Article 16 of said Code, which also refers to Article 19, the discoverers, through prospecting of veins in new workings, are entitled to three estacas and in them the fourth belongs to the State. By Article 20, the discoverers of a vein in a mining district known and worked in other parts, are only entitled to two estacas. Of these the third belongs to the State. The exact application of said dispositions in the mining districts of the Litoral overcomes any objection or difficulty that individual interests may interpose.*

If any of the operators of that district should believe they have a right to the third estacas and invoke the decree of September 29, 1871, which by mistake stated that the fourth estaca always belonged to the Treasury, it is very strange that they forget the tenor of the explanatory circular order of October 9, which, correcting the inexact expression of the decree, declares that the fourth and the third are respectively in the very terms set out in the Code, those which belong to the State.

Resolución de 20 de Diciembre de 1873.

ESTACA-MINAS DEL ESTADO. SE APRUEBA LA RESOLUCION ESPEDIDA POR LA PREFECTURA DE COBIJA EN 14 DE NOVIEMBRE SOBRE SEÑALAMIENTO DE ELLAS EN EL LITORAL.

PREFECTURA DEL DEPARTAMENTO,

Lamay, Nov. 14th, 1873.

Vistos y considerando: 1. Que los descubrimientos de vetas de plata hechos por el Sr. Diaz Gana, por medio de diversos cateadores, tuvieron lugar en una parte desconcida del desierto de Atacama, á la que el mismo descubridor dió más tarde el nombre de Caracoles: 2. Que según el inciso primero del Art. 16 corrobora-

rado por el 19 del Código de Minería corresponden a todo descubridor en cerro virjen tres estacas: 3. Que el artículo 20 establece solamente como excepcion el hecho de que el descubrimiento haya tenido lugar en asiento mineral conocido ó en otras partes trabajado; se declara de conformidad con el Decreto Supremo de 23 de Octubre de 1871 y los artículos 16, 19, y 20 del Código de Minería, que el contratista Señor D. Pedro López Gama debe tomar posesion de la cuarta estaca en todas las vetas descubiertas por D. José Diaz Gana y cateadores, que fueron registradas antes de haberse establecido trabajo de ninguna clase en el Mineral de Caracoles, y de las terceras estacas en los demás, salvo el caso previsto por el artículo 199 del Código citado. Regístrese y notifíquese al contratista D. Pedro López Gama y elevese al Supremo Gobierno. Fernandez Costas.

Ministerio de Hacienda e Industria. Ñuccho, Diciembre 20 de 1873.

Vistos en Consejo de Gabinete: la consulta dirigida por la Prefectura de Cobija, lo espuesto por el Fiscal General, y el dictamen del Consejo de Estado, y considerando: que segun los términos de la propuesta aceptada en primero de Abril del año corriente, El Sr. Pedro López Gama debe hacerse cargo del laboreo y explotacion en sociedad de las estaca-minas pertenecientes al Estado, en las vetas descubiertas en el Litoral, y de las que en adelante se descubrieren: que por las actas de concesion que se acompañan en testimonio tomado del Libro de Registros públicos de la Prefectura de Cobija consta que se adjudicaron sucesivamente al ramo de instruccion estacas determinadas con toda claridad en cada uno de los Registros; que por tanto, y constituyendo tales actas los títulos de propiedad del Estado, y no habiendo sido anuladas, canceladas, ni modificadas por ninguna disposicion posterior, son las estacas en ellas señaladas, las que el Gobierno comprometió en sociedad como pertenecientes al Estado al tiempo de celebrar el contrato, y las mismas de que el Sr. López Gama debe tomar posesion; se aprueba la resolucion espedida en este expediente por la Prefectura de Cobija en 14 de Noviembre pasado.

Rejístrese y devuélvese.

BALLIVIAN.

MARIANO BAPTISTA.

DANIEL CALVO.

MARIANO BALLIVIAN.

PANTALEON DALENCE.

[Translation.]

ESTACA MINES OF THE STATE. THE RESOLUTION ISSUED BY THE PREFECTURE OF COBIJA ON NOVEMBER 14TH CONCERNING THEIR DESIGNATION IN THE LITORAL IS APPROVED.

PREFECTURE OF THE DEPARTMENT,

Lamar, November 14, 1873.

Considering:

1. That the discoveries of veins of silver made by Señor Diaz Gana through diverse prospectors took place in an unknown portion of the desert of Atacama to which the discoverer himself later gave the name of Caracoles;

2. That in accordance with paragraph 1, article 16, corroborated by article 19 of the mining code, there belong to every discoverer in a virgin workings three Estacas;

3. That article 20 provides only as an exception the fact that the discovery may have taken place in a known mineral district, known or worked in other portions; It is declared in conformity with the Executive Decree of October 23, 1871, and articles 16, 19 and 20 of the code of mines that the contractor Don Pedro Lopez Gama had to take possession of all the veins of estaca discovered by Don Jose Diaz Gana and prospectors which was discovered before work of any sort had been begun in the mineral district of Caracoles and of the third estacas on the other veins except in the case provided for by article 199 of said code. Let it be registered and notification thereof be given to the said contractor, Don Pedro Lopez Gama, and that it be brought to the attention of the Supreme Government.

FERNANDEZ COSTAS.

Ministry of the Treasury and Industry. Nuccho, December 20, 1873.

Having examined at a Cabinet meeting the communication addressed by the Prefecture of Cobija, the statement of the Attorney General and the opinion of the Counsel of State, and considering that, in accordance with the proposal accepted on the first of April of the current year, Señor Pedro Lopez Gama ought to take charge of the workings and exploitation in partnership of the Estaca mines belonging to the State on veins discovered in the Littoral, and of those which hereafter may be discovered; that from the certified copies of the grants attached taken from the Book of Public Records in the Prefecture of Cobija it appears that there have been successively adjudicated to the Department of

Instruction Estacas determined with entire clearness in each one of the registrations; that, therefore, and such acts constituting the titles of property of the State which have not been annulled, cancelled or modified by any later disposition, the Estacas in them designated are those which the Government let in partnership as belonging to the State at the time of making the contract, and the same of which Lopez Gama ought to take possession; the resolution issued in this proceeding by the Prefecture of Cobija on November 14th last is approved.

Let it be registered and returned.

BALLIVIAN.

MARIANO BAPTISTA.

DANIEL CALVO.

MARIANO BALLIVIAN.

PANTALEON DALENCE.

Fjs 252

No. 348

Transfer of Rights—Pedro Lopez Gama to Alsop & Company, in liquidation.

En Valparaiso, República de Chile, el nueve de Abril de mil ochocientos setenta i cinco. Ante Julio César Escala, Notario Público de esta ciudad i testigos cuyos nombres se espresaran a la conclusion, comparecieron, por una parte, como cedente, don Pedro Lopez Gama, natural del Imperio del Brasil, vecino de Paquica en Bolivia i actualmente de tránsito en Valparaiso, por sí, i por la otra parte como cesionarios los señores Juan Wheelwright i Jorje Federico Hoppin, ciudadanos de los Estados Unidos de Norte América, de esta vecindad, obrando en su carácter de socios liquidadores de la Sociedad de Alsop i Compañia de Valparaiso, a virtud de las facultades que les confiere el artículo doce de la escritura social otorgada en Valparaiso, el treinta i uno de Diciembre de mil ochocientos setenta ante el Notario don Julio César Escala—Todos los comparecientes mayores de edad, a quienes doi fe, conozco i dijeron:

Primero: Don Pedro Lopez Gama, que tiene conocimiento de la escritura social de Alsop i Compañia de Valparaiso i acepta la representacion de la firma indicada que asumen los señores Wheelwright i Hoppin, sin necesidad de que se inserten en esta escirtura las cláusulas de aquella que autorizan la representacion mencionada. Segundo—Que por tres escrituras otorgadas en esta ciudad,

la primera el venticinco de Junio de mil ochocientos sesenta i dos ante el Notario don Ramon E. Renjifo; la segunda en veinticuatro de Agosto de mil ochocientos sesenta i seis, ante el Notario don Máximo Navarrete; i la tercera el veinticuatro de Diciembre de mil ochocientos sesenta i ocho, ante el Notario don Julio César Escala, tenia dados en prenda a los señores Alsop i Compañia i como garantía de las cantidades que le habian dado en cuenta corriente i que pudieran darle hasta la liquidacion de esa cuenta, todos los contratos celebrados entre él i el Supremo Gobierno de la República de Bolivia para la explotacion i esportacion del guano del litoral de dicha República, i cuyos contratos fueron:— primero, el de Agosto veintiocho de mil ochocientos cincuenta i ocho para la explotacion de treinta mil toneladas, celebrado orijinariamente entre don José Santos Ossa i el Supremo Gobierno de Bolivia, i adquirido por el señor Lopez Gama segun traspaso que le hizo el mencionado señor Ossa por escritura de Octubre trece de mil ochocientos cincuenta i ocho; segundo, el de Abril quince de mil ochocientos sesenta i dos, para la explotacion exclusiva durante ocho años de todo el huano del litoral boliviano, celebrado éste como los demas que siguen, directamente entre el cedente i el Gobierno de Bolivia; tercero, el de Abril veintiocho de mil ochocientos setenta i seis, para la explotacion de cien mil toneladas del mismo huano; cuarto, los de Julio veintisiete i Agosto cinco de mil ochocientos sesenta i siete, para la explotacion de doscientas mil toneladas del huano del litoral, una vez terminado el contrato Arman. Tercero—Que habiendo el referido Gobierno de Bolivia dejado de cumplir tanto los referidos contratos para la explotacion i esportacion del huano, como el arreglo que en Octubre veintiseis de mil ochocientos setenta celebró el señor Lopez Gama con el Ministro Plenipotenciario de Bolivia en Chile, todos esos pactos vinieron a reunirse en los dos contratos siguientes: primero, el de transaccion celebrado entre el dicho señor Lopez Gama i el Supremo Gobierno de Bolivia, en uso de la autorizacion que le confirió la ley de Noviembre veintidos de mil ochocientos setenta i dos escriturada en la ciudad de la Paz de Ayacucho el veintisiete de Diciembre de dicho año de mil ochocientos setenta i dos, ante el Notario de Hacienda don Patricio Barrera, i por la cual el Supremo Gobierno de Bolivia reconoce deber i se obliga a pagar a don Pedro López Gama la cantidad de un millon ochenta i siete mil quinientos pesos (\$1,087,500.00) i a mas el interes de ocho por ciento anual para el caso de demora

en las entregas parciales; pues, entre otras estipulaciones de esta transaccion, fue convenido que la cantidad que reconocia deber a don Pedro López Gama el Supremo Gobierno de Bolivia, la pagará con el veinticinco por ciento del producto neto que tuviera el Estado en la explotacion de las estacas minas cuya adjudicacion debia hacerse el primero de Abril de mil ochocientos setenta i tres, escriturado en la Paz de Ayacucho ante el mismo Notario de Hacienda don Patricio Barrera, i por el cual se adjudicó á don Pedro López Gama, o a la sociedad o sociedades anónimas que formara en Compañia con el Gobierno i mediante las estipulaciones que la misma escritura contiene, la explotacion “de todas las estacas minas pertenientes al Estado, que a juicio de la Empresa, costeen cuando menos los gastos de trabajo, en las vetas descubiertas i que en adelante se descubrieren en el litoral de la República con sujecion al Código de Minería.” Cuarto—Que entre las diversas estipulaciones del contrato de adjudicacion que acaba de mancionar, se encuentran las de los artículos sétimo, octavo i diez i nueve en que se pacta: por el primero, que las utilidades netas que produzca la explotacion de las estacas minas se dividan por mitad entre el Estado i don Pedro López Gama o la Empresa que represente sus derechos; por el segundo que de la mitad, ó sea el cincuenta por ciento, de las utilidades netas asignado al Estado, se deducirá el veinticinco por ciento con que debe amortizarse la cantidad que el Supremo Gobierno de Bolivia reconoció deber al señor don Pedro Lopez Gama en la escritura de transaccion de veintisiete de Diciembre de mil ochocientos setenta i dos, antes mencionada; i por el tercero, que para el caso imprevisto de que sobreviniera desacuerdo entre los contratantes sobre la intelijencia de la convencion, “se resolverá la cuestion dice este artículo, por dos jueces arbitros elejidos por cada parte, i sino se aviniesen los arbitros entre si las dos partes contratantes nombraran un tercero en discordia, a cuyo inapelable fallo se someten desde ahora los contratantes.” Quinto—Que sobreviniendo el desacuerdo previsto en este articulo, desde el primer paso dado en ejecucion del contrato de que se trata, cual fue la toma de posesion de las estacas minas, adjudicadas; pues el Supremo Gobierno quiso dar las cuartas estacas en el mineral de Caracoles, al paso que el señor López Gama pretendia las terceras, que eran las subastadas i que correspondian al Estado segun la ley venido el desacuerdo previsto, es decir, fue necesario entrar al juicio arbitral que dicho artículo establece i, al efecto,

se constituyó el Compromiso por escritura pública otorgada en Sucre el diez i siete de Marzo de mil ochocientos setenta i cuatro, con arreglo al decreto del Supremo Gobierno de Bolivia de fecha del mismo mes i año, i en la cual dicho Supremo Gobierno nombró por árbitro a don José Maria Santibañez, i don Pedro López Gama a don Fernando Valverie—Seguido legalmente el juicio arbitral, los jueces pronunciaron su Laudo en la ciudad de Cochabamba el diez i seis de Julio de mil ochocientos setenta i cuatro i por el declararon: que las estacas por don Pedro López Gama i de que debía ponerlo en posesion el Supremo Gobierno de Bolivia en el mineral de Caracoles, eran las “registradas con arreglo a las prescripciones de la ley, i aquellas a que segun la misma tenia derecho el Fisco, i que dichas estacas eran; la cuarta en la “Descubridora”; la tercera en las demas; en los casos de denuncia, la que sigue a la del denunciante; i finalmente, en los casos de sociedad, la sétima o la quinta respectivamente, en conformidad con el artículo ciento noventa i nueve del Código de Minera. Sesto—Que faltando a lo pactado, asi en los artículos diez i nueve del contrato para la explotacion de las estacas minas, como en la escritura misma de constitucion del compormiso, el Supremo Gobierno de Bolivia no se conformó por lo resuelto por los árbitros i entabló recurso de consulta del Laudo compromisario a la Corte de Cochabamba—Recurso tan insólito como contrario a lo pactado, que dió oríjen a la protesta que el señor López Gama formuló en la ciudad de Tacna, República del Perú el veintinueve de Setiembre de mil ochocientos setenta i cuatro, ante el Escribano don Daniel Fernandez Dávila, i a diversos otros reclamos que con tal motivo hizo el Supremo Gobierno de Bolivia; todo lo caul desgraciadamente, no fue bastante para hacer desistir a dicho Gobierno de su recurso a la Corte de Cochabamba i no produjo otro resultado sino el de que enviara la reclamacion del señor López Gama a la Asamblea, la que cerró sus sesiones sin ocuparse de este asunto i sin esperanza de lo que tome en consideracion; pues no deberá reunirse antes de dos años, i eso no es seguro, desde que los acontecimientos políticos puedan retardar indefinidamente su reunion. Sétimo—Que asi por las consideraciones que facilmente se desprenden de los hechos referidos, como la de que aun cuando el Supremo Gobierno de Bolivia se prestara ahora o despues a poner al señor don Pedro López Gama en posesion de las dos terceras estacas minas, este cumplimiento tardio de lo pactado no seria bastante a impedir que el contrato de cuatro de

Abril de mil ochocientos setenta i tres fuera completamente nugatorio en sus efectos; puesto que explotadas las riquezas que contenian las terceras estacas, seria completamente inútil invertir en ellos fuertes sumas a pura pérdida; como asimismo, ese cumplimiento tardio, no seria tampoco bastante para relevar al Supremo Gobierno de Bolivia de la responsabilidad por los daños i perjuicios, lucro cesante i daño emergente que han resultado para el señor López Gama de la falta de cumplimiento oportuno de lo pactado.

Por esas consideraciones, dice, en cuatro de enero del presente año dirijió al Supremo Gobierno de Bolivia una estensa comunicacion, dando por caducado el referido contrato de cuatro de Abril de mil ochocientos setenta i tres en razon de la falta de cumplimiento por parte del Gobierno de la primera de sus obligaciones; reclamando el pago de los daños i perjuicios, lucro cesante i daño emergente resultante de él; reclamando el pago de un millon ochenta i siete mil quinientos pesos (\$1,087,500.00) reconocidos por la escritura de transaccion de veintisiete de Diciembre de mil ochocientos setenta i dos e intereses al ocho por ciento anual; acompañando la cuenta a que ascienden esas reclamaciones; i haciendo presente que harian valer sus derechos a todo lo relacionado, a quienes aquellos legalmente correspondia. Octavo—Finalmente, que en cumplimiento, tanto las obligaciones que tiene contraidas con los señores Alsop i Compañia de Valparaiso, hoi en liquidacion, por las escrituras prendarias de que habla el número dos de la presente, como lo dicho al Supremo Gobierno de Bolivia en la mencionada comunicacion de cuatro de Enero último, por la presente venia en ceder i cedia en toda forma de derecho, a favor de los espresados señores Alsop i Compañia de Valparaiso, en liquidacion; primero, todos los derechos que le confiere la escritura de transaccion de veintisiete de Diciembre de mil ochocientos setenta i dos i por la cual el Supremo Gobierno de Bolivia reconoció deber al cedente un millon ochenta i siete mil quinientos pesos (\$1,087,500.00) e intereses al ocho por ciento anual, i si necesario fuese, todos los contratos para la explotacion i esportacion de huano del litoral boliviano, que fueron causa i quedaron resumidos en la espresada transaccion: i segundo, todos sus derechos i acciones para cobrar daños i perjuicios, lucro cesante i daño emergente al Supreme Gobierno de Bolivia, por no haber dado cumplimiento al contrato de cuatro de Abril de mil ochocientos setenta i tres, para la explotacion de las estacas minas descubiertas

i por descubrir en el litoral boliviano—Al efecto i en cumplimiento de la ley, ha entregado a los señores Alsop i Compañía de Valparaiso en liquidacion, la copia autorizada que obraba en poder del cedente, como título de sus acciones i derechos en la referida transaccion de veintisiete de Diciembre de mil ochocientos setenta i dos i del contrato de cuatro de Abril de mil ochocientos setenta i tres para la explotacion de las estacas minas, obligándose a hacer igual entrega de los contratos para la explotacion de huano si los señores Alsop i Compañía de Valparaiso, lo estiman necesario i tan pronto como ellos se lo exijan; facultando a dicho señores Alsop i Compañía de Valparaiso, para que por sí solo, personalmente, o por medio de apoderados, sin citacion ni intervencion del cedente, hagan notificar la presente cesion a quien de derecho corresponda. Nono—Los cesionarios, señores Alsop i Compañía de Valparaiso en liquidacion, representados como al principio se espresó, por su parte dijeron: que aceptaban la cesion que le hace el señor Lopez Gama de los contratos que tiene celebrados con el Supremo Gobierno de Bolivia, solo en cuanto esos contratos interponen acciones o derechos que hacer valer contra dicho Gobierno; pues los cesionarios no aceptan la transferencia a ellos de obligacion alguna de las contraidas por el señor Lopez Gama a favor del Supremo Gobierno de Bolivia, mui especialmente la de empréstito a que se refiere el artículo sexto del contrato de cuatro de Abril de mil ochocientos setenta i tres—Diez—Que en este sentido, en virtud de la cesion hecha por el señor Lopez Gama, dan por canceladas las tres escrituras prendarias especificadas en el número dos de la presente, i declaran al dicho señor Lopez Gama libre de toda responsabilidad por los adelantos en cuenta corriente a que esas escrituras se referian; la cual cuenta corriente fue cerrada i aprobada por el señor Lopez Gama el dia siete del presente mes i año. Once—Finalmente, dijeron cedente i cesionarios, que estos recobrarian todos sus derechos contra el cedente don Pedro Lopez Gama, si en los términos del artículo mil novecientos siete del Código Civil de Chile, resultase que los créditos que les cede no existieran en la fecha de esta cesion ya por haber sido anulados los contratos de que nacen los derechos cedidos ya que porque las responsabilidades que ellos pudieran imponer al cedente abserverian sus reclamos i derechos respecto del Supremo Gobierno de Bolivia—Se casó testimonio, pagándose en el primer sello un impuesto de doscientos diez i siete pesos cincuenta centavos—El carácter de Jerentes de los señores Wheelwright i Hoppin de Alsop

i Compañia en liquidacion se acredita de la siguiente pieza: “Los socios activos i responsables son don Juan Wheelwright i don Jorje F. Hoppin”—Lo otorgaron i firmaron con los testigos don Juan Pedro Miranda i don Luis Luciano Solar—Doi fe—Juan Wheelwright—Geo. F. Hoppin—Pedro Lopez Gama—J. P. Miranda—Luis L. Solar—Ante mi—Julio Cesar Escala, Notario Público.

ONAFRE LEVIA.

[Translation.]

At Valparaiso, Republic of Chile, on the Ninth of April, One thousand eight hundred and seventy-five Before Julio Cesar Escala, Notary Public of this City, and suitable witnesses, whose names will be given at the end, appeared as party of the first part and transferor, Don Pedro Lopez Gama, a native of the Empire of Brazil, resident of Paquica in Bolivia and at present in transit at Valparaiso, in his own behalf; and as parties of the second part and transferees, Messrs. John Wheelwright and George Frederick Hoppin, citizens of the United States of North America, both of this vicinage, acting in their capacity of liquidating partners of the commercial firm of Alsop & Company of Valparaiso, by virtue of the power conferred upon them in article twelve of the partnership contract executed at Valparaiso, on the thirty-first of December, of one thousand eight hundred and seventy, before the Notary Julio Cesar Escala. All of the parties being of legal age, and whom I attest that I know, and they said:

First. Don Pedro Lopez Gama, that he is acquainted with the partnership contract of Alsop & Company of Valparaiso, and that he accepts as representatives of the said firm the aforementioned Messrs. Wheelwright and Hoppin, without the necessity of incorporating in this present instrument, the clauses of said contract authorizing the beforementioned representation.

Second. That by three written instruments executed in this city, viz: the first on the twenty-fifth of June, one thousand eight hundred and sixty-two, before the Notary Don Ramon E. Renjifo; the second on the twenty-fourth of August, one thousand eight hundred and sixty-six, before the Notary Don Maximo Navarrete, and the third, the twenty-fourth of December, one thousand eight hundred and sixty-eight, before the Notary Julio Cesar Escala, he had given to Messrs. Alsop & Company in pledge and as security for all sums that they had given to him in account current and which they might give until the liquidation of that account, all the

contracts made by and between him and the Supreme Government of the Republic of Bolivia, for the working and exploitation of guano from the Littoral of that Republic, and which contracts were: first, that of August twenty-eighth, one thousand eight hundred and fifty-eight, for the exploitation of thirty thousand tons, concluded originally by and between Don José Santos Ossa and the Supreme Government of Bolivia, and acquired by Mr. Lopez Gama by transfer made to him by the said Mr. Ossa, by written instrument of October thirteenth of one thousand eight hundred and fifty-eight: second, that of April fifteenth one thousand eight hundred and sixty-two, for the exclusive exploitation during eight years of all the guano of the Bolivian Littoral, which contract as were all the following ones, was made and concluded directly by and between the transferrer and the Government of Bolivia; third, that of April twenty-eighth, one thousand eight hundred and sixty-six, for the exploitation of one hundred thousand tons of the same guano; and fourth, those of July twenty-seventh and August fifth, one thousand eight hundred and sixty-seven, for the exploitation of two hundred thousand tons of the guano on the Littoral on the termination of the Arman contract.

Third. That the Supreme Government of Bolivia having failed to comply not only with the said contracts for the exploitation and exportation of guano, but likewise with the arrangement made and concluded on the twenty-sixth of October, one thousand eight hundred and seventy, by and between Mr. Lopez Gama and the Minister Plenipotentiary of Bolivia in Chile, all those pacts were merged into the two following contract: first, the transaction agreed upon by and between the said Mr. Lopez Gama and the Supreme Government of Bolivia, pursuant to the authority conferred upon it by the law of November twenty-second of one thousand eight hundred and seventy-two, as per written instrument executed at the city of La Paz de Ayacucho, on the twenty-seventh of December of said year of one thousand eight hundred and seventy-two, before the Notary of the Treasury, Don Patricio Barrera, and by which the Supreme Government of Bolivia recognizes that it is indebted to, and binds itself to pay to Don Pedro Lopez Gama the sum of one million eighty-seven thousand and five hundred dollars (\$1,087,500) and in addition thereto, interest at eight per cent per annum, in case of any delay in the partial payments; for, among other stipulations of this transaction (Decree of Dec. 21, 1872) it was agreed that the sum recognized by the Government of

Bolivia as due to don Pedro Lopez Gama, it would pay to him with twenty-five per cent of the net profits which the State might have in the working of the Estacas mines, the adjudication of which was to be made on the first of April, one thousand eight hundred and seventy-three, as per written instrument made at La Paz de Ayacucho, before the same Notary of the Treasury don Patricio Barrera, and in which there was adjudged to don Pedro Lopez Gama or to the anonymous company or companies that he might organize conjointly with the Government, and subject to the stipulations contained in the same instrument, the exploitation "of all the Estacas mines belonging to the State, which in the judgment of the Company (Empresa) will meet at least the expenses of working them, in the veins already discovered, or that might thereafter be discovered in the Littoral of the Republic, subject to the Mineral Code."

Fourth. That among the various stipulations of the Transaction contract just mentioned, are those found in articles seventh, eighth and nineteenth, wherein it is covenanted: in the first, that the net profits derived from the working of the Estacas mines shall be equally divided, one-half to each, between the State and Pedro Lopez Gama or such company as may represent his rights; in the second, that from the one-half, or say the fifty per cent of the net profits assigned to the State, there shall be deducted the twenty-five per cent applicable to the amortization of the sum in which the Supreme Government of Bolivia recognized itself indebted to Mr. Lopez Gama, in the transaction contract of twenty-seventh of December, of one thousand eight hundred and seventy-two, already mentioned; and in the third, that in the unforeseen event of there arising any disagreement between the contracting parties as to the meaning of the convention "the question shall be decided," says this article, "by two arbitrators selected by each party, and should the arbitrators be unable to agree, the two contracting parties shall name a third as umpire, to whose unappealable decision the contracting parties hereto submit from now."

Fifth. That the disagreement foreseen in that article having arisen, when the first step was taken to carry into effect the contract in question, which was to take possession of the adjudicated Estacas mines; because the Supreme Government wished to give the fourth estacas in the Caracoles mineral region, whilst Mr. Pedro Lopez Gama claimed the third, which were the auctioned ones which belonged to the State according to law; the foreseen

disagreement having arisen, as stated, it became necessary to make use of the arbitration provided for by said article, and for that purpose the submission was constituted by public instrument executed at Sucre on the seventeenth of March, one thousand eight hundred and seventy-four, in accordance with the decree of the Supreme Government of Bolivia, dated the tenth of the same month and year, and in which said Supreme Government named Don José Maria Santibonez as arbitrator and don Pedro Lopez Gama named Don Fernando Valverde. The arbitration having proceeded legally and in due form, the arbitrators gave their decision in Cochabamba, on the sixteenth of July, one thousand eight hundred and seventy-four and by which they declared: "That the Estacas Mines contracted for by don Pedro Lopez Gama and of which possession should be given him by the Supreme Government of Bolivia, in the Caracoles Mineral region, were those registered in accordance with the prescriptions of the law, and those to which pursuant to the same, the public treasury had a right, and that said estacas were: the fourth in the 'Descubridora'; the third in the rest; and in cases of denunciation, the one next to that of the denunciator; and finally, in cases of association, the seventh or the fifth respectively, in conformity with Article one hundred and ninety-nine of the Mineral Code."

Sixth. That violating what had been agreed to, not only in article nineteen of the contract for the working of the Estacas mines, but likewise in the very instrument constituting the submission, the Supreme Government of Bolivia did not acquiesce in the resolution of the arbitrators, but appealed from the sentence of the arbitrators to consult the Court of Cochabamba. An appeal so unusual as well as contrary to what had been covenanted, gave occasion for the protest formulated by Mr. Lopez Gama in the City of Tacna, Republic of Peru, on the twenty-ninth of September, of one thousand eight hundred and seventy-four, before the Notary Don Daniel Fernandez Davila, and to sundry other claims which on that account he presented to the Supreme Government of Bolivia; all of which, unfortunately did not suffice to make said Government desist from its appeal to the Court of Cochabamba, and produced no other result than the transmission of Mr. Lopez Gama's reclamation to the Assembly, which body closed its sessions without taking this matter into consideration; and there is no hope of its so doing, as it does not have to reassemble for two years to come, and that is not sure, inasmuch as political events may indefinitely delay its next meeting.

Seventh. That not only for the reasons easily understood from the aforementioned facts, but likewise because if the Supreme Government of Bolivia were willing now or later on to place Mr. Lopez Gama in possession of the third estacas mines, this tardy compliance with what was covenanted, would not be sufficient to prevent the contract of fourth of April, one thousand eight hundred and seventy-three, from becoming completely nugatory in its effects; inasmuch as the wealth which was contained in the third estacas has been exploited, it would be entirely useless to invest heavy sums in them when loss is certain. In like manner such tardy compliance would not be sufficient to release the Supreme Government of Bolivia from its responsibility for damages and injuries, profits not made and emergent loss experienced by Mr. Lopez Gama in consequence of its failure to comply opportunely with its pact. For these reasons, he says, on the fourth of January of the present year, he addressed to the Supreme Government of Bolivia, a long communication, in which he considers said contract of fourth April, one thousand eight hundred and seventy-three, as extinct, because of the failure on the part of the Government to comply with the first of its obligations, claiming payment for the damages and injuries, profits not made and emergent loss incurred by him in consequence thereof; demanding payment of one million eighty-seven thousand five hundred dollars (\$1,087,500) recognized by the Transaction contract of twenty-seventh of December of one thousand eight hundred and seventy-two and interest at eight per cent per year; accompanying the account of what said reclamations amount to; and making known that his rights to all that has been related, would be made valid and enforced by those to whom it legally appertaineth to do so.

Eighth. Finally, that in order to comply with not only the obligations that he has contracted with Messrs. Alsop & Company of Valparaiso, now in liquidation, under the written instruments given to secure them spoken of in number two of the present document, but also with what was said in the aforementioned communication of fourth of January last, to the Supreme Government of Bolivia, by these presents he transferred by every form of law to and ceded in favor of Messrs. Alsop & Company of Valparaiso, in liquidation: first, all rights conferred upon him by the Transaction Contract of twenty-seventh of December of one thousand eight hundred and seventy-two, in which the Supreme Government of Bolivia acknowledged that it owed this transfer or one million eighty seven thousand

and five hundred dollars (\$1,087,500) and interest at eight per cent per annum; and should it be necessary all the contracts for the exploitation and exportation of guano from the Bolivian Littoral, which gave cause for and became merged in the said Transaction: and second, all his right and title to claim from the Supreme Government of Bolivia for damages and injuries, profits not made and emergent, loss, in consequence of it's not having complied with the contract of fourth of April of One thousand eight hundred and seventy-three for the exploitation of the estacas mines already discovered and that might be discovered in the Bolivian Littoral. For this purpose and in compliance with the law he has delivered to Messrs. Alsop & Company of Valparaiso in liquidation the exemplified copy which was held by the transferor, as his title to his shares and rights in the aforesaid Transaction of twenty-seventh of December one thousand eight hundred and seventy-two, and of the contract of fourth of April, one thousand eight hundred and seventy-three, for the exploitation of the Estacas Mines, and binding himself to make like delivery of the contract for the exploitation of guano, should Messrs. Alsop & Company of Valparaiso deem it necessary and so soon as they may exact them; giving power to said Messrs. Alsop & Company of Valparaiso to give notice to whomsoever it may legally concern, of this present transfer, either themselves personally or by means of attorneys, and without notice to or any intervention of the transferor.

Ninth. The Transferees, Messrs. Alsop & Company of Valparaiso in liquidation, represented as stated at the beginning, for their part, said: that they accepted the transfer made to them by Mr. Lopez Gama of the contracts concluded between him and the Supreme Government of Bolivia so far only as said contracts refer to rights and actions to enforce and make valid against said Government, but the transferees do not accept the transfer to themselves of any obligation whatever contracted by Mr. Lopez Gama in favor of the Supreme Government of Bolivia, and especially that of the loan to which article sixth of the contract of fourth of April one thousand eight hundred and seventy-three refers:

Tenth. That in that sense, in consideration of the transfer made by Mr. Lopez Gama, they consider duly cancelled the three written instruments given as security described in number two of this present document, and declare Mr. Lopez Gama free from all responsibility for all advances in account current to which the aforesaid instruments refer, and which account current was

closed and approved by Mr. Lopez Gama on the seventh day of the present month and year.

Eleventh. Finally it was said by both transferor and transferees that the latter would recover all their rights against the transferor Don Pedro Lopez Gama, if, according to the terms of article one thousand nine hundred and seven of the Civil Code of Chile, it should turn out that the credits transferred to them do not exist on the date of this transfer, either because the contracts from which the transferred rights spring have been annulled, or because the responsibilities imposed by them upon the transferor would absolve the Supreme Government of Bolivia from all his claims or demands against it. An exemplification was made and on the first seal there was paid a tax of two hundred and seventeen dollars fifty cents. That Messrs. Wheelwright and Hoppin are Agents of Alsop & Company in liquidation, is shown by the following article. "*The active and responsible partners are Mr. John Wheelwright and Mr. George F. Hoppin.*" They executed and signed it with the witnesses Don Juan Pedro Miranda and Don Luis Luciano Solar. Interlineation y seis valid. I tatest John Wheelwright—George F. Hoppin—Pedro Lopez Gama—J. P. Miranda—Luis Ino Solar.

Before me Julio Cesar Escala, Notary Public.

Resolucion de 18 de Diciembre de 1875.

MINISTERIO DE HACIENDA É INDUSTRIA,

La Paz, Diciembre 18 de 1875.

Vistos: considerando que, sometido al dictámen del Consejo de Estado el proyecto de resolución de 20 de Setiembre, ha sido contradicho por su informe de 6 de Noviembre último: que la transacción que tuvo lugar con Don Pedro López Gama en 21 de Diciembre de 1872, y que elevada á escritura pública en 27 del mismo mes y año, por ante el Notario de Hacienda de esta ciudad, se verificó con vista de los informes de las Comisiones de Hacienda é Industria y del decreto legislativo de 24 de Noviembre, de la Asamblea del espresado año 72: que esa transacción se sometió al Cuerpo Legislativo, el cual con su aquiescencia parece haberle dado fuerza de ley para con las partes contratantes que deben ejecutarla en conformidad á las condiciones establecidas. Considerando que el Gobierno al reconocer los intereses del capital transijido, por no haberse verificado la explotación de las minas en cuyo producto descansaba su amortización, no se ha apartado de sus facultades y solo ha tratado de llevar á efecto las estipulaciones de un contrato.

Se declara, en acuerdo de Gabinete: que el cesionario de Don Pedro López Gama, como inculpable de las faltas de explotación que han entorpecido el pago de su crédito, tiene derecho al interés convencional del 8 % anual, de la suma de ochocientos setenta mil bolivianos reconocida por el Estado, desde esta fecha hasta la amortización del capital con el producto de las estaca-minas, que continuará afecto á su pago: en caso de que el Estado tenga algun ingreso extraordinario, el Gobierno lo apicará con preferencia á la cancelación de esta obligación; así mismo se declara, que la cantidad de ochocientos setenta mil bolivianos es la única reconocida como capital, desde que ella resulta de los siete pesos dos reales que se señalaron como precio medio de las ciento cincuenta mil toneladas de guano, en favor de Don Pedro López Gama, como consta de la resolución y escritura citadas de transacción; en ella se hizo expresamente uso de las palabras *pesos y reales*.

En esta virtud, siempre que el cesionario se conforme con la resolución, se situará el pago de los setenta mil bolivianos anuales de intereses en la Tesorería de Cobija, para que tenga lugar por trimestres vencidos. Sin perjuicio de esta resolución, el cesionario de Don Pedro López Gama puede tomar por su cuenta la explotación de las estacas pertenecientes al Estado, á fin de satisfacer con su producto los intereses y amortización del capital de que se trata, mediante nuevo convenio con el Gobierno. Todo con cargo de dar cuenta á la próxima Asamblea ordinaria para su aprobación é inserción de tales intereses en el Presupuesto Constitucional. Rejístrese y hágase saber á quienes corresponde.

FRIAS.

MARIANO BAPTISTA.

DANIEL CALVO.

RUDESINDO CARVAJAL.

HILARION DAZA.

Es conforme.

[SEAL.]

JOSÉ SALINAS,

Oficial Mayor de Relaciones Exteriores.

[Translation.]

Resolution of December 18, 1875.

MINISTER OF FINANCE AND INDUSTRY,

La Paz, December 18, 1875.

Whereas, the draft of a resolution of September 20 having been submitted to the opinion of the Council of State, it was adversely reported on November 6 last; and whereas the compromise made

with Mr. Pedro Lopez Gama on December 21, 1872 (which was duly executed as a public document on the 27th of the same month and year before the Treasury notary of this city and which was made in view of the reports of the committees of the ministry of finance and industry and of the legislative decree of November 24 of the Assembly of the said year of 1872), was submitted to the Legislative Body, which, by its acquiescence, appears to have given it the force of a law as far as the contracting parties are concerned who are to carry it out in accordance with the conditions agreed upon; and whereas the Government, in acknowledging the interest due on the principal as agreed upon in the compromise, because the mines were not operated from whose proceeds the principal was to be paid off, did not go beyond its powers and merely endeavored to carry out the stipulations of a contract: Therefore it is hereby declared by Cabinet resolution that the assignee of Mr. Pedro Lopez Gama, not being responsible for the failure to operate the mines whereby the payment of his claim was prevented, is entitled to 8 per cent interest per annum as agreed upon, on the sum of 870,000 bolivianos acknowledged as due by the Government, from this date until the payment of the principal out of the proceeds of the mines, which shall continue to be applied to its payment; and in case the Government should have any extraordinary revenue, it shall apply it preferentially to the cancellation of this obligation. It is likewise hereby declared that the sum of 870,000 bolivianos is the only one acknowledged as the principal, since it is the amount which results at the rate of 7 pesos 2 reales which were fixed as the average value of the 150,000 tons of guano, in favor of Pedro Lopez Gama, as shown in the aforementioned compromise, wherein the words "pesos and reales" were expressly used.

In virtue of the foregoing, provided the assignee acts in conformity with the resolution, the payment of the 70,000 bolivianos annually as interest shall be made in the Treasury of Cobija, the payments being made at the end of each quarter. Without prejudice to this resolution, Mr. Pedro Lopez Gama may undertake the operation of the mines belonging to the Government on his own account, in order to pay the interest and principal in question from the proceeds thereof, upon concluding a new agreement with the Government. All of which shall include the obligation of reporting the matter to the next ordinary Assembly for its approval and in order that the interest may be included in the Constitutional

Estimates. Let this be recorded and made known to the proper persons.

FRIAS.

MARIANO BAPTISTA.

DANIEL CALVO.

RUDESINDO CARVAJAL.

HILARION DAZA.

[SEAL.]

A true copy.

JOSE SALINAS,
Chief Clerk of For. Rels.

Resolución de 22 de Enero de 1876.

MINISTERIO DE HACIENDA É INDUSTRIA.

La Paz, 22 de Enero de 1876.

Vista esta solicitud en Consejo de Gabinete, el Gobierno mantiene su resolución de 18 de Diciembre último, que de su parte es definitiva, con cargo de dar cuenta á las Cámaras. La confirma declarando que la deuda López Gama, la tiene por consolidada, según el título en que se funda; salvo el cambio de obligación que quisiese estatuir la Asamblea Nacional. Confirma el compromiso primitivo de amortizar el capital con el producto de las estacaminas de Caracóles, en el caso de llevarse á efecto su explotación, y con el eventual (de su citada resolución) de contar el Estado con fuentes de ingreso no previstas y ajenas al Presupuesto calculado de sus ingresos para atender á los servicios corrientes de la administración. No cree llegado el caso de reatarse al pago con fondos del Empréstito Church que están consagrados á un objeto determinado. Sálvase el derecho de los acreedores para establecer judicialmente el que pretenden tener á los intereses devengados. Tómese razón.

FRIAS.

M. BAPTISTA.

D. CALVO.

HILARION DAZA.

RUDESINDO CARVAJAL.

[SEAL.]

Es conforme.

JOSÉ SALMAS,
Oficial Mayor de Relaciones Exteriores.

[Translation.]

Resolution of January 22, 1876.

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, January 22, 1876.

Having considered the present petition in a Cabinet Council, the Government adheres to its resolution of December 18 last, which is final on its part, the obligation remaining to report it to the Chambers. It confirms the resolution by declaring that it considers the payment of the Lopez Gama debt as being provided for according to the title on which it is founded, unless the National Assembly should decide to alter the obligation. It confirms the original agreement to pay off the principal from the proceeds of the Caracoles mining concessions, in case these mines are operated, as well as from any sources of revenue which the Government may have which are unforeseen and not included in the Estimates of its receipts from which to meet the current expenses of administration (as mentioned in the same resolution). It does not believe that it is warranted in making the payment from the funds derived from the Church loan, which are devoted to a particular purpose. It concedes the right of the creditors to establish judicially the right which they claim to the interest due. Let notice be taken hereof.

FRIAS.

M. BAPTISTA.

D. CALVO.

HILARION DAZA.

RUDESINDO CARVAJAL.

[SEAL.]

A true copy.

JOSE SALINAS,

Chief Clerk of Foreign Relations.

12.

Resolucion de 7 de febrero de 1876.

MINISTERIO DE HACIENDA É INDUSTRIA.

La Paz, febrero 7 de 1876.

Vistos en Consejo de Gabinete y con el dictamen fiscal que precede, se declara subsistente, en todas sus partes, la resolución de 22 de enero último, en la que consta el carácter de definitiva que

le ha dado el Gobierno en ejercicio de la autorización legislativa de 22 de noviembre de 1872. Pasen estos obrados al Sr. Prefecto de este Departamento, para que mandando notificar, por el Notario de Hacienda, la presente providencia y las que le son relativas, al Sr. Juan Wheelwright representante de la casa Alsop y Cia. y cesionario de los derechos del Sr. López Gama, se proceda al otorgamiento de la respectiva escritura. Tómese rasón y publíquese.

[L. S.] Frias.—M. Baptista.—D. Calvo.—Rudesino Carvajal.—P. A. del Sr. Ministro de la Guerra.—El Oficial Mayor.—Manuel Othon Jofre.

Es conforme.

JOSE SALINAS.

Oficial Mayor de Relaciones Exteriores.

[Translation.]

MINISTRY OF FINANCE AND INDUSTRY.

La Paz, February 7, 1876.

Having been considered in a Cabinet Council together with the foregoing statement of the government, the resolution of January 22 last, in which is stated the fact that it was made final by the Government in the exercise of the authority conferred upon it by the law of November 22, 1872, is hereby declared to be still in force in all its parts. Let these documents be transmitted to the Prefect of the Department, in order that he may order the Treasury Notary to make the present proceeding and those connected therewith known to Mr. John Wheelwright, representative of the firm of Alsop & Co. and assignee of the rights of Mr. Lopez Gama, and that the necessary document may be executed. Let notice be taken hereof and let it be published.

[SEAL.] Frias.—M. Baptista.—D. Calvo.—Rudesindo Carvajal.—By authority of the Minister of War.—Manuel Othon Jofre, Chief Clerk.

A true copy:

JOSE SALINAS,

Chief Clerk of Foreign Relations.

Memoria que presenta el Ministro de Hacienda e Industria a la Representacion Nacional Reunida en 1877.

I°.

Apercibido el Gobierno, desde su inauguración, del mal estado financiero, procuró atenuarlo con algunas providencias. Entre ellas la Circular de 5 de julio de 1876 (2) que suspendió los pagos

de servicios anteriores al 4 de Mayo, tuvo por objeto establecer una línea divisoria que deslindase la situación y sirviese de punto de partida al jiro de la nueva administración que comenzaba en un inmenso *déficit* que era necesario separar.

La Secretaría General dictó en 17 de octubre del mismo año un decreto de imposición sobre la barilla de cobre (3); recurso, aunque exiguo, muy oportuno en la penuria que se experimentaba. Produjo el ingreso anual de quince mil bolivianos (Bs. 15,000) en letras á plazo.

Cuando se instaló el Ministerio, pendía la cuestión de subsistencia del contrato de don Juan G. Meiggs sobre el arrendamiento de las Salitreras del Toco. Perfeccionado y puesto en ejecución como se hallaba, sin motivo legal para su rescisión, solo censurado por los descontentos sin más criterio que la pasión, se le dió curso en Consejo de Gabinete despues de haberse considerado la cuestión juridicamente. Esto produjo de pronto el fondo de setenta mil soles (S. 70,000) que se devengaban hasta diciembre último, fondo que acreció en tres mil quinientos bolivianos (Bs. 3,500) por el premio que cuidé de obtener en el jiro de letras sobre Lima.

Otro aumento fiscal por el ahorro, es la supresión que, al otorgar la escritura de concesión y separación del Banco Nacional, hice por cláusula adicional, del premio del uno por ciento que éste llevaba y quería continuar llevando por el jiro de letras de fondos del Estado, de una á otra de sus oficinas.

Se obtuvo tambien en letras á término el ingreso del impuesto de pastas por el cuatrimestre que corría desde el 1º de diciembre de 1876 al 31 de marzo del presente año. Alcanzó á la cantidad de cuarenta y nueve mil novecientos cuarenta y seis bolivianos (Bs. 49,946).

2º.

Este fondo era el único aprovechable, como consignado en el presupuesto. Los demás que no lo estaban y cualesquiera otros que hubieran podido arbitrarse, debían corresponder á don Juan Wheelwright representante del crédito de López Gama, á quien por los decretos de 18 de diciembre de 1875 y 22 de enero de 1876 se le habian adjudicado todos los ingresos no previstos en el presupuesto. Además, el contrato aceptado por estos decretos privaba al Fisco de setenta mil bolivianós (Bs. 70,000) efectivos del Tesoro de Cobija que se habían asignado anualmente para pago de intereses de la deuda reconocida á áquel. Estos intereses eran exesivos, tasados al ocho por ciento anual capitalizable.

Con semejante contrato, el Gobierno se veía sin fondos de que disponer, porque todos los ordinarios estaban agotados y sin medios de arbitrar ningunos recursos, por estar de antemano aplicados á la amortización de aquella deuda todos los extraordinarios ó de nueva creación. No podía ser más ominoso ese contrato por el embarazo y dificultad en que colocaba al Gobierno para poder atender á las necesidades del servicio y administración.

Fué preciso en vista de una nueva propuesta del Señor Wheelwright escogitar y estipular una transacción que mejorase las condiciones del contrato favoreciendo y alivando al Fisco y dando al Gobierno libertad y recursos para proporcionarse fondos. Así se consignó en la de 24 de diciembre de 1876 (4), en la que se rebajo del capital reconocido al interés que yá se había abonado, y se redujo éste al cinco por ciento no capitalizable, debiendo amortizarse aquél con letras sobre el excedente que se obtuviese en el actual monto del producto de la Aduana de Arica.

Por este medio quedaron libres los ingresos de la barrilla y las salitreras; porque, si bien los de estas eran considerados por la resolución de 30 de marzo de 1876 como no comprendidos en el contrato de 18 de diciembre de 1875, podía disputarse el valor de esta resolución por el tenor del mismo contrato.

* * * * *

14°.

El contrato de la aduana nacional de Arica fué desahuciado oportunamente para su terminacion ó renovacion con otro. Para esto último se ha constituido en Lima un Plenipotenciario con las instrucciones convenientes. Es de esperar, en caso de arribarse á la renovacion, que sea con el aumento proporcionado al grande desarrollo é incremento que ha tomado nuestro comercio por los puertos de Arica y Mollendo, y con el arreglo de otros puntos de interés vital para el país.

Si así no fuese, la licitacion que solicitan actualmente los nacionales, ofrece muchas probabilidades de utilidad y ventaja para el Estado; siendo evidente en uno y otro caso la mejora de situacion por esta parte.

Cierto es que, como se ha enunciado en el Sec. 2, el aumento sobre la actual suma del producto de aquella Aduana, está destinado al pago de la deuda reconocida al señor Wheelwright; pero si en esto hay una privacion que impide el libre empleo de ese fondo, queda la satisfaccion del cumplimiento de un deber y la exencion de un gravámen de que era indispensable relevarse.

[Translation.]

*Memoria presented by the Minister of Finance and Industry to the National Congress convened in 1877.*1st.

The Government having perceived from the time of its inauguration its poor financial condition, endeavored to remedy it with certain provisions. Among them the circular of July 5, 1876, (2) which suspended the payment for services preceding the 4th of May, had as an object the establishment of a dividing line which should separate the situation and serve as a point of departure for the operation of the new administration which began with an immense deficit from which it was necessary to free itself.

The Office of the Secretary General issued, on the 17th of October of the same year, a decree imposing a tax upon copper bars, (3) a resort which, although exacting, was very timely in the penury which was being experienced. It produced the annual income of 15,000 bolivianos in time drafts.

When the Ministry was installed the question of the existence of the contract with John G. Meiggs concerning the lease of the salt petre deposits of Toco was pending. Perfected and put into execution as it was, without lawful reason for its recession, censured only by malcontents who judged from passion alone, it was passed in Cabinet Council after the judicial question had been considered. This promptly produced the fund of 70,000 soles which were received until December last, a fund which was increased by 3,500 bolivianos the premium obtained on account of the care taken in securing the drafts on Lima.

Another Treasury increase for the poor state of finances is the suspension, which upon the execution of the deed of transfer and separation of the National Bank, I made by an additional agreement, of the premium of 1 per cent which this bank had been charging and desired to continue charging for the drawing of drafts on funds of the State from one of its branches to the other.

There was likewise obtained, also, in time drafts, the income of the coinage for the four months which ran from the first of December, 1876, to the 31st of March of the present year. It reached the sum of 49,946 bolivianos.

2nd.

This fund was the only one available as was set out in the budget. The others which were not available and whatever

others might have been raised should have belonged to John Wheelwright, representative of the credit of Lopez Gama to whom, by the decrees of December 18th, 1875, and January 22, 1876, there had been allotted all the revenues which were not pledged in the budget. Besides the contract, accepted by these decrees deprived the Treasury of 70,000 bolivianos cash from the Treasury of Cobija which had been annually assigned for the payment of the interest upon the debt acknowledged due him. This interest was excessive, having been charged at eight per cent per annum, compoundable.

With such a contract the Government found itself without funds whereof to dispose for all the ordinary ones had been exhausted and without means of creating any other resources because there were applied before hand to the extinguishment of said debt all the extraordinary revenues or those of a new creation. That contract could not be more burdensome because of the embarrassment and difficulty in which the Government was placed in attending to the necessities of its working and administration.

It was necessary, in view of a new proposal from Mr. Wheelwright to formulate and agree upon a compromise which should better the conditions of the contract, favoring and lightening the burden of the Treasury and giving to the Government liberty and resources to obtain funds for itself. Thus the compromise of the 24th of December, 1876, was reached (4) whereby there was deducted from the admitted principal the interest which had already been paid and this latter was reduced to 5 per cent, not compoundable, the payment of the principal to be made by drafts upon the excess which might be obtained over the present amount of the proceeds of the custom house of Arica.

By this means the revenue from the copper bars and nitrates became free because even if these latter were considered by the resolution of the 30th of March of 1876, not to be included in the contract of the 18th of December, 1875, the force of this resolution by the terms of said contract might be disputed.

* * * * * * *

No. 14.

The contract of the national customs house of Arica was opportunely cancelled for the purpose of its termination or its substitution by another. For this latter purpose a Plenipotentiary with proper instructions has gone to Lima. It is to be hoped that in case a renewal of the contract be made, that it will be with

an increase proportionate to the great development and increment which our commerce has shown through the ports of Arica and Mollendo, and in accordance with other points of vital interest to the country.

If this be not so, the auction which the citizens are actually asking, offers many probabilities of profit and advantage for the State; an improvement of this situation being evident in either case.

True it is, as has been stated in Section 2, that the increase over the actual amount of the proceeds of said custom house is destined to the payment of the debt admitted to be due to Mr. Wheelwright, but if in this there is an inhibition which prevents the free employment of that fund, the satisfaction of the fulfillment of a duty and the exemption from a burden from which it was necessary to relieve ourselves, remains.

Lei de 21 de noviembre, 1877.

VOTO DE HONOR AL SEÑOR MINISTRO SALVATIERRA DESPUES DE LA LECTURA DE SU MEMORIA.

La Asamblea Nacional Constituyente, decreta.

ARTÍCULO ÚNICO. Atento el mérito que se revela en la memoria que acaba de leer el honorable Ministro de Hacienda e Industria, doctor Manuel Ignacio Salvatierra; se le acuerda un voto de honor y confianza.

Comuníquese al poder ejecutivo para su ejecucion y cumplimiento.

SALA DE SESIONES *en La Paz, a 20 de noviembre de 1877.*

MARIANO REYES CARDONA, *presidente.*

JORJE DELGADILLO, *diputado secretario.*

LUCIANO VALLE, *diputado secretario.*

Ministerio de Gobierno y Relaciones Exteriores.—La Paz, noviembre 21 de 1877.—Ejécútese.—Daza.—José M. del Carpio.

[Translation.]

VOTE OF HONOR TO MINISTER SALVATIERRA AFTER THE READING OF HIS MEMORIAL.

The National Constituent Assembly decrees:

SINGLE ARTICLE. In view of the merit displayed in the memorial just read by the Honorable Minister of Finance and Industry,

Dr. Manuel Ignacio Salvatierra, he is hereby given a vote of honor and confidence.

Let this be communicated to the Executive for enforcement.

HALL OF SESSIONS, *La Paz*, Nov. 20, 1877.

MARIANO REYES CARDONA, *president*.

JORJE DELGADILLO, *deputy secretary*.

LUCIANO VALLE, *deputy secretary*.

MINISTRY OF GOVERNMENT

AND FOREIGN RELATIONS,

La Paz, Nov. 21, 1877.

Let it be executed.

DAZA.

JOSE M. DEL CARPIO.

SUIT OF MUÑOZ CHAVEZ FOR THE RECOVERY OF A GOVERNMENT
ESTACA.

Cuestion jurídica La Estaca-Mina del Estado.

Auto Supremo

Vistas la demanda interpuestas por Don José Santos Muñoz Chavez sobre la inconstitucionalidad del Decreto de 23 de julio del 52 y la contestación del Señor Fiscal General que la rechaza, por no haberse propuesto conforme al artículo 82 de la Constitución, y 7° de la Ley de organización judicial, ninguna cuestión concreta que deba fallarse, aplicando ó nó el decreto acusado de inconstitucional.

Vistas la ampliación de la demanda, á la solicitud de adjudicación de la Estaca-mina Fiscal, sobre le veta de Cibelos cortada por el socavon de S. Bartolomé en el cerro de Aullagas, que fue negada con apoyo del citado decreto calificado como inconstitucional, y como derogada además; y la respuesta fiscal insistiendo en la improcedencia de la demanda, y afirmando la constitucionalidad y la vijencia del repetido decreto.

Visto el espediente acompañado en que consta el pedimiento que Chavez dirigió para la adjudicación de la mencionada estaca la oposición del Ministerio Público en representación de los intereses fiscales—y el auto de negativa espedido por la Sub-Prefectura de Chayanta—y—

Considerando que las funciones de los Prefectos y Sub-Prefectos cuando intervienen conforme á los artículos 7°, 323° y otros del

Código Minería en Registros, y concesiones de pertenencias por descubrimiento, ó en adjudicaciones de minas, por denuncias de despueble ó demacias, corresponden al órden puramente administrativo, y no están inmediatamente sujetas, sinó examen y censura de sus respectivos superiores en la jerarquía administrativa; pero que cuando dichas autoridades ejerciendo las preindicadas funciones, hieren derechos privados ó intereses garantidos por la ley, ó por un título cualquiera, y provocan reclamaciones, ó cuando la pretención de un peticionario de minas que les ha sido sometida, su cita la oposición de terceras personas, cesa su competencia y empieza la de los Tribunales de Justicia, conforme á los artículos segundo de la ley de 30 de Setiembre del 1871—y 33 del precitado código, sin que sea preciso recurrir antes en segundo grado, á la administración superior; que por tanto los Prefectos y Sub-Prefectos no pueden sin incurrir en esceso de poder, decidir las contradicciones de carácter contencioso que ocurran ante ellos, porque son de la competencia de los Tribunales ordinarios: Considerando en la especie de la solicitud de D. José Santos Muñoz Chavez para la adjudicación de una estaca en la veta de Cibelos, fué contestada por el Fiscal Dr. Estivares, que en representación de los intereses públicos se opuso á la concepción sosteniendo que la Estaca pedida pertenecía al Estado; que desde ese momento la cuestión se hizo judicial, como continua siendo al presente: Considerando que los artículos 82 de la Constitución y 7º de la Ley orgánica de los Tribunales, confieren á la Corte Suprema, la atribución de conocer de los negocios de puro derecho, cuya decisión depende de la constitucionalidad, ó inconstitucionalidad de las leyes; que ni los indicados artículos ni ninguna otra disposición dan conocimiento de semejantes negocios á los Tribunales inferiores de primera y segunda instancia, para que la Corte Suprema solo intervenga en el recurso de casación como en los juicios comunes; que por el contrario, dichos artículos instituyen una potestad privativa y única—la de la Corte Suprema, para garantir el órden constitucional: que el someter previamente al examen y fallo de los Jueces inferiores, los asuntos que no pueden resolverse sin comprometer el respeto á la Constitución en el órden Legislativo, importaría promediar con ellos—el ejercicio de una alta función política que le es peculiar, y aún dar ocasión para que los interesados prescindan de su intervención, conformándose con las sentencias de primera y segunda instancia: Considerando en consecuencia, que las demandas de adjudicación de intereses

minerales, cuando han sido intorpecidas por la oposición del Ministerio público, ó de cualquiera persona que convirtiéndose en discusiones contencioso-administrativas, ó judiciales que hayan de resolverse por una ley cuya inconstitucionalidad se acusa, pueden instaurarse legalmente ante esta Corte, sin precedente conocimiento de la Superintendencia de Minas, ni del Supremo Gobierno, y sin el conocimiento en su caso, de los Tribunales de Justicia, según la escala de su graduación; se declara que la demanda de D. José Santos Muñoz Chavez ha sido interpuesta en conformidad con las leyes anteriormente citadas: Considerando por otra parte, que aunque los artículos 82 de la Constitución y 7° de la Ley orgánica parecen preveer textualmente el caso en que solo se ventile la inconstitucionalidad de la ley, como ellos atribuyen el conocimiento del pleito en el fondo para su resolución en primera y última instancia, exclusivamente á la Corte Suprema, debe ésta conforme al espíritu de dichos artículos, decidir tambien todas las cuestiones de derecho intimamente conexas con la demanda; y que por lo mismo, no podría sin desnaturalizar una acción indivisible abstenerse de estatuir en la especie sobre la vigencia ó derogatoria del Decreto de 23 de julio, propuesta de un modo complejo, é inseparable de la cuestión de inconstitucionalidad: Considerando en el fondo, que los Minerales de Indias incorporados en el patrimonio de los Reyes como Regalias de la Corona por la Ley tercera Título 18 Libro 9° de la Novísima Recopilación, fueron concebidos á sus vasallos en propiedad y posesión en los términos, y sin más condiciones que las indicadas en el Capítulo 2° segunda ordenanza de las de Méjico; pero que semejante franquicia no derogó la restricción establecida por la ordenanza 18, Título 1° de las del Perú según la cual debia reservarse en todo Registro una pertenencia para el Rey, situada entre la Descubridora y la Salteada que eran la primera y la segunda del Registrante: que cuando por la Real orden de 8 de Diciembre de 1785, se mandó la observancia en el Virreinato del Perú de la ordenanza de minería de Nueva España, se ratificó expresamente en la declaración 32 la subsistencia de la Estaca reservada para el Rey por dicha ordenanza 18, con la sola modificación de deber señalarse ésta despues de las pertenencias del descubridor: Considerando que proclamada la independencia de la República y hasta 1852, la mineria continuó bajo el régimen de las mismas ordenanzas, y especialmente de las de Méjico ya adaptadas al Perú; y declaradas vigentes en Bolivia por la Suprema orden de 5 de agosto del 29; que la promulgación del Código Santa-

Cruz derogado en 5 de octubre del 36 y reemplazado con las mismas instituciones que le precedieron, no introdujo variación alguna permanente en la legislación del ramo; que ninguna ley de la Monarquía ni de la República ha derogado la repetida ordenanza 18 ratificada por la declaración 32, del 85; que habiendo el Estado de Bolivia y su Gobierno, subrogado á los Reyes de España en todos los Derechos y Regalias inherentes á la Soberanía, por haber asumido plenamente su autonomía, las pertenencias de que se ha hecho mención, reservadas en los Registros de vetas pasaron *ipso jure* al dominio del Estado, continuando éste en posesión del derecho expectativo de obtener una estaca en todo descubrimiento.

Considerando sobre la inconstitucionalidad del Decreto del 23 de Julio del 52, expedido durante el imperio de la ordenanza 18 y declaración ya citadas, que dicho decreto al adjudicar al ramo de Instrucción pública, una estaca en cada registro, nada estatuye explícitamente sobre la estaca fiscal de que se ha hecho mención: que semejante silencio unido al que guardan los demás decretos y leyes anteriores y posteriores sobre la estaca fiscal, manifiesta evidentemente que el indicado decreto no creyó un nuevo interés, ni se agregó un nuevo lote de los que estaban sujetos á concesiones particulares, habiéndose por el contrario reducido en el fondo, á ordenar implícitamente la aplicación á la Instrucción pública, de una pertenencia que ya era del dominio privado de la Nación; que según los principios de la constitución y la ley financiera del 51, no era prohibido al poder Ejecutivo imputar al rendimiento de una propiedad privada del estado, que permanecía sin aplicación, las obligaciones del ramo del servicio público—Por lo que, y no importando un acto legislativo, sinó meramente un acto de alto administración; el hecho de encargar á los agentes del servicio Nacional en la sección de Instrucción, la gestión de las estacas fiscales sin sustraerlas del dominio público, el Gobierno del 52 pudo en ejercicio de sus atribuciones ordinarias, restablecer como lo hizo, sustancialmente, una reserva sancionada por la Ordenanza 18 que no se habia derogado tácita, ni expresamente y reglamentar su ejecución sin dar mérito para que semejantes medidas sean calificadas de inconstitucionales.

Considerando sobre la derogatoria del Decreto de Julio por disposiciones posteriores, que, el Código de Minería de 1852 sancionado el principio del dominio radical de la Nación en todas los minerales, ha concedido á los particulares como las ordenanzas del Perú y Mejico, el derecho de labrarlas previa concesion; que

ninguna de las disposiciones de dicho código, abroga expresa ni tacitamente la ordenanza 18, ni el decreto de Julio que la puso en vigor que el artículo adicional alcanzado solamente á las ordenanzas, leyes y decretos opuestos á las prescripciones del código, no tiene efecto para con la precitada ordenanza, tanto porque la estacamina fiscal puede subsistir sin mengua del derecho que el código acuerda para solicitar adjudicaciones, que no perjudiquen á terceros que las hayan adquirido antes, cuanto porque en la misma Legislación Colonial han coexistido como compatibles ambos derechos—el reservado para la Corona—y el expectatio de los concesionarios, otorgado por la franquicia de las ordenanzas—considerando por otra parte, que cualquiera duda si la hubiere desaparece en presencia de la ratificación explícita de la fuerza obligatoria del decreto de julio, que contiene la circular dictatorial de 1º de marzo del 60, expedida con la potestad legislativa que asumió aquel Gobierno, cuyas leyes se cumplen y observan por aceptación de los Pueblos, como se cumplen las leyes emanadas del cuerpo legislativo: Considerando sobre este mismo punto, que independientemente de los motivos antedichos, la Asamblea constituyente del 71, en la ley de 19 de Octubre ha dispuesto el laboreo y aprovechamiento en arriendo ó sociedad de las estacas del Estado; que semejante disposición habria carecido de objeto si el Código de minería hubiese derogado el Decreto de Julio que puso en vigor la reserva de la Ordenanza 18, puesto que el Estado no posee con título permanente y conocido, otros intereses mineros que los reservados por el Decreto impugnado.

Considerando en consecuencia que la parte de D. José Santos Muñoz Chavez no ha justificado su acción manifestando la inconstitucionalidad, ni la derogatoria del Decreto de 23 de Julio del 52 y que el Ministerio público ha acreditado debidamente que dicho decreto fué dado constitucionalmente, y que en la actualidad rige en el ramo de minas.

La Corte Suprema declara que la Estacamina solicitada por D. José Santos Muñoz Chavez en la veta de Cibelos, cortada por el socavon de San Bartolomé del cerro de Aullagas, no le es concesible por ser de propiedad fiscal reconocida por las preindicadas disposiciones. Registrada. Archívese.

Señores Ministros—Pantaleon Dalence Presidente, Saturnino Sanjinés—Felix Baldiviese—José Maria Calvo—Mariano Ranillo—Ministros. Agustin Maria Miranda—Conjuez permanente.

Sucre, Octubre 28 de 1872

GREGORIO DELGADILLO.

[Translation.]

Considering the complaint filed by Don José Santos Muñoz Chavez concerning the unconstitutionality of the decree of July 23, 1852, and the answer of the Attorney General which opposes it, because there has not been raised in conformity with Article 82 of the Constitution and 7 of the Law of Judicial Organization (of 1857), any concrete question that must be decided by applying or not applying the decree alleged to be unconstitutional.

Considering the amendment of the complaint so as to request the adjudication of the government estaca mine upon the vein of Cibelos cut by the tunnel of San Bartolomé in the mineral district of Aullagas which was refused because of said decree which is now alleged to be unconstitutional and, furthermore, as having been repealed; and the answer of the Government Attorney insisting upon the want of foundation of the complaint, and asserting the constitutionality and existence of said decree.

Considering the annexed record in which appears the petition that Chavez made for the adjudication of said estaca, the opposition of the Minister of Public Works in representation of the Treasury interests and the order denying the same, issued by the Sub-Prefect of Chayanta; and

Considering that the functions of the Prefects and Sub-Prefects, when they intervene in conformity with Article 7, 323, and others of the Code of Mines in the registries and concessions of claims because of discovery, or in the allotment of mines, because of denouncements founded upon abandonment or others, are of a purely administrative nature, and are not immediately subjected except to the examination and criticism of their respective superiors in the administrative departments; but that when said authorities, exercising the aforesaid functions, injure private rights or interests guaranteed by the law or by any title whatsoever, and provoke claims, or when the claim of a petitioner for mines which has been submitted to them, gives rise to the opposition of third persons, their jurisdiction ceases and that of the tribunals of justice commences in conformity with Articles 2 of the law of September 30, 1871, and 333 of the aforesaid Code, without necessity of taking an appeal to the administrative superior; that, therefore, the Prefects and Sub-Prefects cannot, without committing an excess of jurisdiction, decide the controversies of a contentious character which may come before them because they fall within the jurisdiction of the ordinary tribunals; considering, as a fact,

that the petition of Don José Santos Muñoz Chavez for the adjudication of an estaca in the vein of Cibelos was answered by the Government Attorney, Dr. Estivaris, who, in representation of the public interest, opposed the concession maintaining that the estaca requested belonged to the State, that from that moment the question became a judicial one as it continues to be up to the present; considering that Articles 82 of the Constitution and 7 of the Organic Law of the courts, confer upon the Supreme Court the power to decide matters of pure law, the decision whereof depended upon the constitutionality or the unconstitutionality of the laws; that neither the aforesaid articles nor any other provision gives jurisdiction over such matters to the lower tribunals of the first and second instance, so that the Supreme Court only intervenes in an appeal with regard to their nullity as it does in common lawsuits; that on the contrary said articles constitute a sole and exclusive attribute of the Supreme Court in order to guarantee the constitutional order; that the necessary submission to the examination and decision of the lower courts of matters which cannot be decided without involving the respect for the Constitution and legislative order would entail the division with them of a high political function which is peculiar to it, and even enable the interested parties to prescind from its intervention, obeying the judgments of the first and second instance; considering, therefore, that requests for the adjudication of mineral interests when they have been encumbered by the opposition of the Ministry of Public Works or of any person, and have been converted into a contentious administration or judicial discussions which must be decided in accordance with a law whose unconstitutionality is alleged, may be legally instituted before this court without previous decision of the Superintendent of Mines or of the Supreme Government and without the intervention, in turn, of the lower courts of justice in accordance with their scale of jurisdiction; it is declared that the complaint of Don José Santos Muñoz Chavez has been made in conformity with the laws before mentioned. Considering, on the other hand, that although Articles 82 of the Constitution and 7 of the Organic Law appear to textually provide the case in which the unconstitutionality of the law may alone be discussed, since they confer jurisdiction over the lawsuit upon its merits for its first and final decision exclusively upon the Supreme Court, the latter must, in conformity with the spirit of said articles, decide also all the questions of law intimately

connected with the complaint and therefore could not, without changing the nature of an indivisible action, refrain from deciding, in fact, the existence or repeal of the decree of July 23, proposed in a complex manner and which is inseparable from the question of its unconstitutionality; considering, in fact, that the mineral deposits of the Indies, incorporated into the patrimony of the Kings as royal perquisites of the crown, by law 3, Title 18, Book 9, of the "Novísima Recopilación" were granted to their vassals in property and possession in the terms and without other conditions than those indicated in Chapter 2, Second Ordinance of those of Mexico; but that such privilege did not repeal the restriction established by Ordinance 18, Title 1, of those of Peru in accordance with which in every registry, one claim must be reserved for the King, situated between the "Descubridora" and the "Salteada" which were the first and second of the person making the registry; considering that when by the royal order of December 8, 1785, the observance was ordered in the Vice-Royalty of Peru of the Ordinances of Mines of New Spain, there was expressly ratified in the 32nd declaration the existence of the estaca reserved for the King by said Ordinance 18, with the sole modification that the latter must be designated next following the claims of the discoverer; considering that the independence of the Republic having been proclaimed and up to 1852, mining continued under the jurisdiction of the same ordinances and especially those of Mexico, already adopted in Peru and declared to be in force in Bolivia by the Supreme Order of August 5, 1829; considering that the promulgation of the Code of Santa Cruz, repealed on October 5, 1836, and replaced by said institutions which preceded it, did not introduce any permanent variation in the legislation concerning this department; considering that no law of the Monarchy nor of the Republic has repealed said Ordinance 18 ratified by Declaration 32 of 1785; considering that the State of Bolivia and its government having succeeded to the Kings of Spain in all their rights and perquisites inherent to the sovereignty because it had fully assumed its autonomy, the claims of which mention has been made which were reserved in the registries of veins, passed *ipso jure* to the dominion of the State, the latter continuing in possession of the right in expectancy of obtaining a claim in every discovery.

Considering with regard to the unconstitutionality of the decree of July 23, 1852, issued during the time that Ordinance 18 and said Declaration were in force, that said decree, upon allotting to

the Department of Public Instruction one *estaca* in each registry, did not explicitly provide anything regarding the Government *estaca* of which mention has been made; that such a silence, in conjunction with that which the other prior and subsequent laws preserve concerning the Government *estaca*, evidently shows that the said Decree did not create a new interest nor segregate a new allotment of those which were subject to the grants to individuals, having on the contrary, been reduced to implicitly ordering the application to Public Instruction of one claim which already belonged to the private property of the nation; Considering that in accordance with the principles of the Constitution and of the financial law of 1851, the Executive Power was not forbidden to meet the obligations of a branch of the public service with the rent of a private property of the State which was not being used. Wherefore, inasmuch as there was no question of a legislative act but of an act purely and merely administrative, the fact of empowering agents of the national service in the branch of education to operate the Government *estacas* without withdrawing them from the Public domain, the Government of 1852 could, in exercise of its ordinary attributes, reestablish, as it substantially did, a reservation sanctioned by Ordinance 18 which had not been tacitly or expressly repealed, and to regulate its execution without affording a basis for qualifying such measures as unconstitutional.

Considering that with regard to the repeal of the decree of July, 1852, by the subsequent dispositions, that the Code of Mines of 1852, sanctioning the principle of the radical ownership of the nation in all the mines, has granted to individuals, as did the ordinances of Peru and Mexico, the right to work them after obtaining a grant; considering that none of the provisions of said Code expressly or tacitly abrogates Ordinance 18, nor the decree of July which put it into effect, and considering that the additional article, embracing only the ordinances, laws, and decrees in opposition to the provisions of the Code, has no effect with regard to the afore-said ordinances, not only because the Government *estaca* mine can exist without infringement upon the right which the Code gives to petition allotments which do not prejudice third parties who may have acquired them with priority, but also because in the colonial legislation itself both rights have been coexistent as compatible, that is, the one reserved to the crown and the right of the concessionaries sanctioned by the terms of the ordinance; consid-

ering, on the other hand, that a doubt, if any should exist, would disappear in the presence of the explicit ratification of the binding force of the decree of July, contained in the Dictatorial Circular of March 1, 1860, issued with the legislative power which that Government assumed whose laws are fulfilled and observed by the acceptation of the people as the laws are fulfilled which have emanated from the legislative body; considering, upon this same point, that independently of the motives aforesaid, the constituent assembly of 1871, in the law of October 19, has provided for the working and the use by way of lease or co-partnership, of the estacas of the State; considering that such a provision would have had no object if the Mining Code had repealed the decree of July which put into effect the reservation of Ordinance 18 since the State does not possess in a permanent and known manner other mining interests than those reserved by the decree which is assailed.

Considering, therefore, that on his part, Don José Santos Muñoz Chavez has not justified his action proving the unconstitutionality or the repeal of the decree of July 23, 1852, and that the Ministry of Public Works has duly shown that said decree was constitutionally issued and is actually in force with regard to mines.

The Supreme Court declares that the estaca mine prayed for by Don José Santos Muñoz Chavez upon the vein of Cibelos, cut by the tunnel of San Bartolomé in the mining district of Aullagas, can not be granted him because it is a property of the State, recognized by the aforesaid laws. Having been registered, let it be filed.

GREGORIO DELGADILLO.

Señores Ministers: Pantaleon Dalence, *President*; Saturnino Sanjines, Felix Baldiviese; José Maria Calvo; Mariano Ranillo. Ministers Agustin Maria Miranda, *Conjuez permanente*.

Sucre, October 28, 1872.

Extracts from Various Constitutions of Chile. •

Constitución política del Estado de Chile

TÍTULO PRIMERO.—DE LA NACIÓN CHILENA Y DE LOS CHILENOS

CAPÍTULO PRIMERO.—*De la Nación Chilena*

* * * * *

ART. 3.º El territorio de Chile conoce por límites naturales: al sur, el Cabo de Horno; al norte, el despoblado de Atacama; al oriente, los Andes; al occidente, el mar Pacífico. Le pertenecen

las islas del Archipiélago de Chiloé, la de la Mocha, las de Juan Fernández, la de Santa María y demás adyacentes.

(Derecho Constitucional, Bañados, p. 483.)

[Translation.]

Political Constitution of the State of Chile

TITLE I.—RELATING TO CHILE AND THE CHILEANS.

CHAPTER I.—*Concerning Chile.*

The territory of Chile has for natural boundaries: On the South Cape Horn; on the north, the uninhabited Atacama; on the east, the Andes; on the West, the Pacific Ocean. The Islands of the Chiloé Archipelago, the Island of Mocha, the Islands of Juan Fernandez the Island of Santa Maria and other adjacent islands belong to Chile.

Constitución política del Estado de Chile, promulgada en 29 de diciembre de 1823

* * * * *

ART. 4.º El territorio de Chile comprende de Norte á Sur, desde el Cabo de Hornos hasta el despoblado de Atacama; y de oriente á poniente, desde las cordilleras de los Andes hasta el mar Pacífico, con todas las islas adyacentes, incluso el archipiélago de Chiloé, las de Juan Fernández, Mocha y Santa María.

(Derecho Constitucional, Bañados, pp. 520, 521.)

[Translation.]

Political Constitution of the State of Chile, Promulgated December 29, 1823.

The territory of Chile extends from North to South, from Cape Horn to the uninhabited Atacma; and from east to west, from the chain of the Andes to the Pacific Ocean, with all the adjacent islands including the archipelago of Chilóe, the islands of Juan Fernández, Mocha and Santa Maria.

Proyecto de Reforma Constitucional:

El Congreso Nacional, en uso de la facultad que la confiere el artículo 167 de la Constitución Política, ratifica las proposiciones de reforma contenidas en el siguiente proyecto, publicado en el *Diario Oficial* con fech 20 de diciembre de 1887:

ARTÍCULO PRIMERO. Se suprimen los artículos 1.º y 9.º de la Constitución; la palabra "distinciones" del número 4.º del artículo

11; e inciso 2.º del artículo 24; la palabra “Tanto” y la frase “propietarios como los suplentes” del artículo 25; la palabra “propietarios” del inciso 1.º del artículo 26; y la frase “aplicándose esta misma regla á los senadores suplentes” del inciso último del mismo artículo.

(Derecho Constitucional, Bañados, p. 625.)

[Translation.]

Project for Constitutional Amendment.

The National Congress, exercising the power conferred upon it, by Article 167 of the Political Constitution, ratifies the proposition for amendment contained in the following project, published in *El Diario Oficial*, December, 1887:

ARTICLE 1. Articles I and IX of the Constitution are suppressed; the word “distinciones” of the 4th paragraph of Art. XI; the second paragraph of Art. XXIV the word “Tanto” and the phrase “propietarios como los suplentes” of Article XXV; the word “propietarios” of paragraph 1 of Article XXVI; and the clause “aplicandose esta misma regla á los senadores suplentes” of the last paragraph of the same article.

Constitución política de la República de Chile

CAPÍTULO PRIMERO.—DE LA NACIÓN

* * * * *

ART. 2.º Su territorio comprende de Norte á Sur, desde el desierto de Atacama hasta el Cabo de Hornos, y de Oriente á Occidente, desde las Cordilleras de los Andes hasta el mar Pacífico, con las islas de Juan Fernández y demás adyacentes. Se divide en ocho provincias, que son: Coquimbo, Aconcagua, Santiago, Colchagua, Maule, Concepción, Valdivia y Chiloé.

(Derecho Constitucional, Bañados, p. 563.)

[Translation.]

Political Constitution of the Republic of Chile.

CHAPTER I.—THE NATION.

Its territory extends, from north to south from the Atacama Desert to Cape Horn; and from east to West from the chain of the Andes to the Pacific Ocean together with the islands Jaun Fernández and others adjacent. It is divided into eight provinces which are: Coquimbo, Aconcagua, Santiago, Colchagua, Maule, Concepcion, Valdivia and Chiloe.

Constitucion política de la Republica de Chile

CAPITULO PRIMERO.—DEL TERRITORIO.

ARTÍCULO PRIMERO. El territorio de Chile se extiende desde el desierto de Atacama hasta el Cabo de Hornos, y desde las cordilleras de los Andes hasta el mar Pacífico, comprendiendo el Archipiélago de Chiloé, todas las islas adyacentes, y las de Juan Fernández.

(Derecho Constitucional, Bañados, p. 586.)

[Translation.]

Political Constitution of the Republic of Chile.

CHAPTER I.—THE TERRITORY.

The territory of Chile extends from the desert of Atacama to Cape Horn, and from the Chain of the Andes to the Pacific Ocean, taking in the Archipelago of Chiloe, all the adjacent islands and the Islands of Fernandez.

[From *Diario Oficial*, Santiago, Chile, December 12, 1887, p. 2719.]

Extract from proceedings of Chamber of Senators, November 23, 1887.

El señor VERGARA (Presidente).—Habiendo ya el *quorum* necesario, pasaremos a ocuparnos de la reforma de la Constitucion.

Se da lectura al proyecto presentado por la Comision de Lejislacion i Justicia i se pone en discusion el articulo 1.º, que dice:

“ART. 1.º Se suprimen los artículos 1.º i 9.º de la Constitucion.”

El Señor CUADRA (Ministro de Justicia e Instruccion Pública).—Seria conveniente leer los artículos 1. iº 9º. de la Constitucion.

El señor Secretario.—Dicen así:

“ART. 1.º El territorio de Chile se estiende desde el desierto de Atacama hasta el Cabo de Hornos i desde la Cordillera de los Andes hasta el Mar Pacífico, comprendiendo el Archipiélago de Chiloé, todas las islas adyacentes i las de Juan Fernández.”

• “ART. 9.º Nadie podrá gozar del derecho de sufragio sin estar inscrito en el registro de electores de la Municipalidad a que pertenezca, i sin tener en su poder el boleto de calificacion tres meses ántes de las elecciones.”

El señor VERGARA (Presidente).—Si ningun señor Senador hace uso de la palabra, se procederá a votar el artículo.

En votacion.

Fué aprobada por unanimidad.

Se puso en discusion el Art. 2º.

[Translation.]

Mr. VERGARA (President). The necessary quorum being already present, we will pass on to the discussion of the amendment of the Constitution.

The project presented by the Committee of Legislation and Justice was then offered for discussion, which reads as follows:

“ART. 1. Articles 1 and 9 of the Constitution shall be suppressed.”

Mr. CUADRA (Minister of Justice and Public Instruction). It would be proper to read articles 1 and 9 of the Constitution.

The SECRETARY.—They read as follows:

“ART. 1º. The territory of Chile extends from the desert of Atacama to the Cabo de Hornos and from the Cordilleras of the Andes to the Pacific Ocean, including the Archipelago of Chiloé, all the adjacent islands and those of Juan Fernandez.”

“ART. 9º. No person shall enjoy the right of suffrage without being inscribed on the register of Electors of the Municipality to which he belongs and without having in his possession, three months before the election, the ticket of qualification.”

Mr. VERGARA (President). If no senator wishes to speak we will proceed to vote on the article.

The vote was taken.

It was unanimously approved.

Art. 2. was then offered for discussion.

Anticresis.

TITULO XXXIX.—CODIGO CIVILE DE CHILE.

ART. 2435.—La *anticr sis* es un contrato por el que se entrega al acreedor una cosa raiz para que se pague con sus frutos.

ART. 2436. La cosa raiz puede pertenecer al deudor, o a un tercero que consienta en la anticr sis.

ART. 2437.—El contrato de anticr sis se perfecciona por la tradicion del inmueble.

ART. 2438.—La anticr sis no da al acreedor, por s  sola, ningun derecho real sobre la cosa entregada.

Se aplica al acreedor anticr tico lo dispuesto a favor del arrendatario en el caso del art. 1962.

No valdr  la anticr sis en perjuicio de los derechos reales ni de los arrendamientos anteriormente constituidos sobre la finca.

ART. 2439.—Podr  darse al acreedor en anticr sis el inmueble anteriormente hipotecado al mismo acreedor; i podr  asimismo hipotecarse al acreedor, con las formalidades i efectos legales, el inmueble que se le ha dado en anticr sis.

ART. 2440.—El acreedor que tiene anticr sis, goza de los mismos derechos que el arrendatario para el abono de mejoras, perjuicios i gastos, i est  sujeto a las mismas obligaciones que el arrendatario relativamente a la conservacion de la cosa.

ART. 2441. El acreedor no se hace due o del inmueble a falta de pago; ni tendr  preferencia en  l sobre los otros acreedores, sino la que le diere el contrato accesorio de hipoteca si lo hubiere. Toda estipulacion en contrario es nula.

ART. 2442.—Si el cr dito produjere intereses, tendr  derecho el acreedor para que la imputacion de los frutos se haga primeramente a ellos.

ART. 2443.—Las partes podr n estipular que los frutos se compensen con los intereses, en su totalidad, o hasta concurrencia de valores.

Los intereses que estipularen estar n sujetos en el caso de lesion enorme a la misma reduccion que en el caso de mutuo.

ART. 2444.—El deudor no podr  pedir la restitucion de la cosa dada en anticr sis, sino despues de la estincion total de la deuda; pero el acreedor podr  restituirla en cualquier tiempo i perseguir el pago de su cr dito por los otros medios legales; sin perjuicio de lo que se hubiere estipulado en contrario.

ART. 2445.—En cuanto a la anticr sis judicial o prenda pretoria, se estar  a lo prevenido en el C digo de Enjuiciamiento. (C digos Chilenos, p. 354.)

[Translation.]

TITLE XXXIX, CONCERNING ANTICR SIS.

ART. 2435. Anticr sis is a contract whereby there is delivered to the creditor a real property in order that he may pay himself out of its proceeds.

ART. 2436. The real-estate may belong to the debtor or to a third-person who consents to the anticr sis.

ART. 2437. The contract of anticr sis is perfected by the delivery of the real-estate.

ART. 2438. Anticr sis itself does not give to the creditor any real right over the property delivered.

The provisions in favor of the lessee in the case of Art. 1962 are applied to the creditor in anticr sis.

Anticr sis shall not prevail in prejudice of real rights nor of those of lessees of the real-estate previously concluded.

ART. 2439. There may be given to the creditor in anticr sis the real-estate previously mortgaged to said creditor; and likewise

there may be mortgaged to the creditor, subject to legal effects and formalities, the real-estate which has been given in anticr sis.

ART. 2440. The creditor who holds under anticr sis enjoys the same rights as the lessee for the payment for improvements, damages and expenses and is subject to the same obligations as the lessee with relation to the conservation of the property.

ART. 2441. The creditor does not become the owner of the real-estate without having paid for it, nor shall he have any preference in it over other creditors except that which the accessory contract of mortgage, if there be any, may give him. Every stipulation to the contrary is void.

ART. 2442. If the credit bears interest, the creditor shall have the right to first apply thereto the proceeds.

ART. 2443. The parties may stipulate that the proceeds shall be compensated with the interest in its totality, or in so far as there is an equivalence of value.

Interest which is stipulated shall be subject, in the case of an exorbitant rate, to the same reduction as in the case of a loan.

ART. 2444. The debtor can not request the restitution of the property given in anticr sis except for the entire satisfaction of the debt; but the creditor may restore it at any time and pursue collection of his debt by the other legal methods without prejudice to what may be stipulated in the contract.

ART. 2445. With regard to judicial anticr sis or *prenda pre-toria* [that which is given to the creditors for the security and payment of his credit, by the authority of the judge and with the obligation of rendering an account of its proceeds] the provisions of the Code of Procedure shall be followed.

“ANTICR SIS” AS DEFINED BY ESCRICHE.

ANTICR SIS: Un contrato por el cual pone el deudor en poder del acreedor una cosa inmueble   ra z, con la facultad de percibir sus frutos hasta que con su importe se haga pago de la deuda; y con mas especialidad, un contrato en que el deudor consiente que su acreedor goce de los frutos de la heredad que le entrega, en lugar del inter s del dinero que recib  prestado de  l, hasta que le haga pago de la deuda. La anticr sis suele llamarse vulgarmente contrato   gozar y gozar, porque uno da el goce de una cosa fruct fera, y otro da el goce de su dinero. Est  reprobado como usurario por el Derecho can nico el pacto de que el acreedor haga suyos los frutos de la cosa as  entregada por razon de intereses; y dicen que

lo est  tambi n impl citamente por la ley. 2, t t. 13, Part. 5, la cual ordena que todos los frutos de la prenda pertenezcan al deudor, y que por consiguiente, el acreedor debe imputarlos anualmente en el capital de su cr dito,   restituirlos   su due o; pero es de advertir que podr  imputarlos tambi n   aplicarlos al pago de intereses y luego al del principal, cuando se hubieren estipulado estos por raz n de lucro cesante   da o emergente, as  como est  admitido que el marido perciba   retenga, sin imputar en la suerte   capital, los frutos de los bienes que se le hubieren dado en seguridad de la dote prometida; pues en uno y otro caso, se consideran los frutos como compensatorios.

En la pr ctica no hay cosa mas frecuente que este contrato anticr tico, disfrazado con las apariencias de una venta por tiempo fijo, y mas comunmente, de una venta con pacto de *retrovendendo*,   como suele decirse en algunas provincias,   *carta de gracia*, esto es, con facultad que se reserva el vendedor de retraer   sus habientes derecho la cosa vendida, devolviendo en uno   mas plazos el precio de ella. Como que de este modo se trasfiere el dominio al comprador, percibe los frutos de la cosa sin resistencia legal. Si los contrayentes quieren despues elevar el contrato de venta por tiempo fijo     carta de gracia al de venta pura   de venta   *todas pasadas*, como se la llama en algunas partes, suele darse al vendedor alguna mayor cantidad que la que se le di  al principio en indemnizaci n del derecho de retracto   que renuncia.

Bien dispone la ley 2, tit. 22, lib. 12, Nov. Recopilaci n, que si se pacta en una venta que el comprador ha de torna la cosa por el mismo precio, y que el vendedor no ha de poder tornar el precio sino despues de cierto tiempo, gozando aquel entretanto de los frutos y esquilmos de la cosa vendida, se considere usurario tal contrato, y pueda el vendedor recobrar la cosa que vendi , devolviendo el precio recibido del comprador con deducci n de los frutos que este hubiese percibido: " Porque algunos, dice la ley, no dan derechamente   usuras, mas hacen otros contratos en enga o de las usuras; tenemos por bien, que si alguno vendiere   otro alguno otra cosa alguna, y pusiere con  l, que se la volviese por el mismo precio, con que no pudiese dar el precio que recib  hasta cierto tiempo y que entretants gozase de los frutos y esquilmos de la cosa vendida, que tal contrato sea entendido ser hecho en enga o de usuras; y por ende mandamos que mostrando el vendedor como hobo con el comprador el departimiento y postura que dicha es, que pueda cobrar la cosa que vendi , pagando

el precio que recibió por ella del comprador; y que le sean contados al comprador los frutos y esquilmos que hobo de la cosa vendida, del tiempo que la tuvo en el precio que le hobiere de tornar.”

Pero esta ley habla solamente de la venta por tiempo fijo en que se pacta que el vendedor no ha de poder tornar el precio y recobrar su finca sino despues de pasado cierto número de años; mas nada dice de la venta en que, estableciéndose el pacto de *retrovendendo*, se deja al vendedor la libertad de redimir la finca cuando mas le acomode, aunque se le fije un término dentro del cual, y no despues, haya de hacer el rescate. Así que, en este último caso á lo menos, percibirá el comprador, sin oposicion de la ley, los frutos y esquilmos de la finca, mientras el vendedor no la recobre devolviendo el precio, en el cual no se computan aquellos; de manera, que puede sentarse que la venta á *carta de gracia*, ó con el pacto de *retrovendendo*, es un contrato paliado de *anticresis*.

Si la ley, pues, permite y aun autoriza la venta con el pacto de *retrovendendo* (ley 42, tit. 5, Part. 5), cómo ha de reprobear la *anticresis*, ó sea el abandono de los frutos para que hagan las veces de réditos de una cantidad recibida? Si la ley quiere mirar, como se supone, por el interés de los deudores, mas bien habria de prohibirles la venta á *carta de gracia* que no la *anticresis*. La *anticresis* es seguramente para los deudores menos desventajosa que la venta. Por la venta se desprende un deudor, no solamente de los frutos, sino tambien del dominio de su finca, y por la *anticresis* no se priva sino de los frutos; por la venta adquiere siempre el comprador el derecho de perceber todos los frutos cualesquiera que ellos sean, y por la *anticresis* no debe percibir el acreedor sino los que sean proporcionados á los réditos de la suma prestada, teniendo que aplicar el exceso á la extincion sucesiva del capital de la deuda; por la venta se expone el vendedor razon de la imposibilidad en que puede verse de rescatarla dentro del término, convencional ó legal, como por el peligro que hay de que el comprador la pase por la enajenacion á mano de un tercero, de quien ni el uno ni el otro podrian ya reclamarla, y por la *anticresis* conserva siempre el deudor la facultad de recobrar su finca, dando lo que faltare para culerir la deuda, pues el acreedor nunca puede venderla ni aun en la misma forma que la prenda, y menos ganarla por prescripcion no poseyéndola, como no la posee, sino precariamente.

Siendo esto así, la ley que prohibiese la *anticresis* por precaver el supuesto perjuicio que de ella puede seguirse á las personas necesitadas, las pondria en el conflicto de tener que hacer mayores

sacrificios vendiendo sus fincas cuando sin la prohibicion pudieran remediarse con solo el desprendimiento de sus frutos. Mas hay efectivamente alguna ley que contenga tal prohibicion? No se aduce otra que la ley 2, tit. 13, Partida 5, la cual quiere que los frutos de la cosa que se da en prenda pertenezcan al d dor y no al acreedor. Pero esta ley habla solo de la prenda y no de la anticresis, la cual, aunque tiene varios puntos de contacto con aquella, no deja de diferenciarse en otros: la prenda suele consistir en cosas muebles, y la anticresis en bienes ra ces; por aquella adquiere el acreedor sobre la cosa mueble un derecho real que le permite hacerse pagar con su producto en venta el importe de su cr dito con preferencia   los dem s acreedores, y por esta no adquiere sino la facultad de percibir los frutos de la cosa raiz que se le entrega, imput ndolos sobre los intereses de la cantidad prestada en caso de que se le debieren, y sobre el capital de la deuda: la primera tiene por objeto asegurar el pago del cr dito; y la segunda puede considerarse mas propiamente como un medio de hacer el pago. Adem s, la ley 2, tit. 22, lib. 12, Nov. Recop., que mas arriba hemos transcrito, por el hecho de prohibir el que uno pueda gozar de los frutos de la cosa que compr    carta de gracia cuando el vendedor se oblig    no redimirla sino despues de cierto tiempo, parece que permite la estipulacion de dicho goce en cualquier otro contrato en que el vendedor   empe ador de la finca queda en libertad de volver el precio   el pr stamo cuando le acomode.

Como quiera que sea, la cuestion de la anticresis pende de la cuestion del inter s del dinero; y siempre que sea l cito llevarse inter s por el dinero que se presta, lo ser  igualmente celebrar la anticresis, que se reduce   percibir en frutos dicho inter s.

Segun lo dicho, contr ese la *anticresis*, cuando el que ha tomado dinero   inter s entrega al acreedor una cosa raiz para que perciba sus frutos por via de r ditos: *Contrahitur antichresis*, dice Argentreo, *cum debitor accepta sub usuris pecunia, fundum creditori fruendum dat pro interusurio pecuniae*.

Es griega la palabra *anticresis*, y significa *goce   uso contrario*, no dejando de ser oportuna su aplicacion   este contrato en que el acreedor disfruta de la finca del deudor, mientras el deudor disfruta del dinero del acreedor. .

La anticresis es conforme   los principios de la justicia conmutativa; pues no seria justo que el acreedor quedase privado del aprovechamiento de su dinero y de los frutos de la heredad, y que el deudor disfrutase de ambas cosas.

La anticresis se distingue de la prenda y de la hipoteca: de la prenda, por las razones que ya hemos insinuado; de la hipoteca, porque en esta conserva el deudor la posesion de la cosa hipotecada, al paso que la cosa dada en anticresis se entrega al acreedor, prescindiendo ahora de otras diferencias.

Puede dar una cosa en anticresis, no solamente el deudor, sino tambien un tercero por él.

Pueden darse en anticresis los bienes raíces que produzcan frutos, ya sean naturales como los que da una viña ú olivar, ya sean civiles, como los que da una casa.

El acreedor no adquiere por este contrato sino la facultad de percibir los frutos de la finca que se le entrega, con la obligacion de imputarlos anualmente en los intereses que se le debieren y despues en el capital de su crédito.

Si los frutos de la finca son iguales poco mas ó menos en un año comun á los intereses legales de la deuda, esto es, á los intereses que no excedan la tasa fijada por la ley, puede estipularse que la totalidad de los frutos se compensará con la totalidad de los intereses; pero si el valor de los frutos es mayor que el importe de los intereses legales, habrá de aplicarse el exceso á la extincion sucesiva del capital de la deuda, sin que pueda hacerse convencion alguna que abra puerta á la usura, debiendo por consiguiente el acreedor llevar en este caso cuenta de los frutos que cogiere para presentarla al deudor: *Non debet creditor, dice Argentreo, ampliores fructus percipere, quam quanti conveniat cum legitimis pecuniae usuris, alioquin usurae vitium contractum corrumpet.*

La anticresis puede celebrarse de palabra ó por escrito, entre presentes ó por cartas, por los mismos interesados ó por sus mandatarios, como está dispuesto con respecto á la prenda en la ley 6, tit. 13, Part. 5. Sin embargo, para que surta efecto contra terceras personas, es necesario que conste de un modo auténtico.

La anticresis es un contrato *real*, pues no se perfecciona sino por la tradicion ó entrega de la cosa: es tambien contrato *sinallagmático*, esto es, que produce obligacion de una y otra parte.

Como el acreedor no adquirió por la anticresis sino la facultad de percibir los frutos de la finca, no tiene sobre ella hipoteca ni privilegio que pueda perjudicar á los derechos que tuviesen anteriormente en la misma otros acreedores.

El acreedor anticresista está obligado, no habiendo obligacion en contrario, á pagar las contribuciones y las cargas anuales que graviten sobre los frutos, como igualmente á cultivar la finca

como buen padre de familia y segun el uso del propietario,   conservar la y hacer en ella las reparaciones necesarias, deduciendo de los mismos frutos todos estos gastos, porque *fructus intelligendi non sunt, nisi impensis deductis*. Mas como no tiene el goce de la finca sino temporalmente hasta que se le pague la deuda, solo est  obligado   las contribuciones, cargas y reparaciones ordinarias, y no   las extraordinarias que pudieran sobrevenir durante el tiempo de la anticr sis.

No puede el deudor pedir la devolucion de la cosa dada en anticr sis, antes de la entera satisfaccion de la deuda, de los intereses y de los gastos si los hubiere, como, exceptuando los intereses, est  ordenado en el caso de prenda por la ley 21, tit. 13, Part. 5: y aun si el acreedor tuviese contra el mismo deudor otro cr dito contraido despues del primero, con tal que conste por escrito y haya vencido el t rmino del pago, puede retener la cosa dada en anticr sis hasta la satisfaccion de las dos deudas, aunque los frutos de la finca no estuviesen obligados al pago de la segunda; bien que en esta hip tesis no tendra efecto alguno la anticr sis en cuanto   la segunda deuda contra un tercero   quien el deudor hubiese vendido   empe ado la finca, pues este tendria derecho   reclamarla, pagando la primera deuda, segun dispone con respecto   la prenda, la ley 22, tit. 13, Part. 5.

El acreedor que encontrare demasiado gravoso el cumplimiento de las obligaciones que tiene   su cargo y que hemos insinuado, podr  cuando quisiere, abandonar al deudor la cosa que ha recibido de  l en anticr sis, renunciando   esta garant a,   no ser que se hubiese comprometido con el deudor   conservar la finca hasta el reintegro de la deuda; pues cada uno es  rbitro en renunciar lo que se ha establecido en su favor, salva convencion en contrario.

Aunque la deuda no se pague al plazo convenido, no puede el acreedor disponer de la cosa recibida en anticr sis, pues no la tiene sino en dep sito; ni apropi rsela como comprada por lo que di  prestado, aunque as  lo hubiese estipulado con el deudor, pues tal pacto es nulo, aun con respecto   la prenda, segun la ley 41, tit. 5, y la 12, tit. 13, Part. 5; ni hacerla vender en p blica subasta como la prenda, pues no tiene en ella otro derecho que el de percibir los frutos;   no ser que con el contrato de anticr sis hubiese concurrido el de prenda   hipoteca,   que el deudor le hubiese autorizado expresamente para ello: mas si se hubiese estipulado que no pag ndose   su tiempo la deuda, se entendiese vendida la finca al acreedor por su justo precio, segun tasacion

de peritos, será válido este pacto y deberá llevarse á efecto como dispone en el caso de prenda dicha ley 12, tit. 13, Part. 5.

La anticresis es indivisible en sus efectos; y así es que aunque por muerte del deudor se divida la deuda entre sus herederos, y alguno de ellos pague su parte, no por eso tiene derecho á reclamar la que le corresponda en la cosa dada en anticresis, mientras no quede la deuda enteramente cubierta; y del mismo modo, aunque por muerte del acreedor se divida el crédito entre sus herederos y alguno de ellos reciba del deudor la parte que le tocaba, no puede remitirle la anticresis en perjuicio de sus coherederos que todavía no estuvieren satisfechos. El acreedor es depositario de la cosa recibida en anticresis y perceptor de todos sus frutos; y pues que recibió por entero así la finca como la facultad de disfrutarla, debe restituir ambas cosas en el todo y no parcialmente, y tiene derecho á conservarlas por entero, mientras no quede totalmente reintegrado su crédito.

No puede el acreedor prescribir contra su deudor la propiedad de la cosa recibida en anticresis, pues no la posee como dueño sino solo á título precario; ni tampoco el deudor puede obtener por la misma via de prescripcion la extincion de su deuda, pues el hecho de dejar que el acreedor posea la finca y perciba sus frutos equivale á un reconocimiento tácito y continuo de aquella.

La doctrina y reglas expuestas por el autor en los apartes sétimo, octavo, décimo cuarto y décimo quinto de este artículo para combinar las leyes relativas á la prenda, y á la tasa legal de los intereses de la deuda con las reglas y esencia del contrato de anticresis, apenas tienen aplicacion bajo el punto de vista del derecho civil, desde que por la ley de 14 de marzo de 1856 se ha establecido la libertad de la contratacion, aboliendo la tasa sobre el interés del capital en numerario dado en préstamo; declarándose que puede pactarse convencionalmente interés en el simple préstamo, si bien este pacto será nulo si no consta por escrito; que se reputa interés toda prestacion pactada á favor de un acreedor, y que estas disposiciones son aplicables á todo préstamo de cosa fungible cuyo interés consista en un aumento en la misma especie que haya de devolverse. Sin embargo, el legislador señaló en esta ley el interés que habia de abonarse en los casos en ella determinados disponiendo que el Gobierno fijase al principio de cada año, y oyendo al Consejo de Estado, el interés legal que sin estar pactado debia abonarse en tales casos, y que mientras no llegara á fijarse, se considerase el legal el de 6 por 100 al año.

[Translation.]

ANTICRESIS: A contract whereby the debtor places in control of the creditor a real or immovable thing, with the right to receive its proceeds until with their value payment of the debt is made; and more especially a contract in which the debtor consents that his creditor enjoy the fruits of the heritage which he delivers to him in place of the interest on the money which he has borrowed from him until he pays him his debt. *Anticresis* used commonly to be called a contract of "a use for a use" (*gozar y gozar*) because one gives the use (enjoyment) of a producing thing and the other gives the use (enjoyment) of his money. The agreement whereby the creditor takes, as his, the fruits of the thing thus delivered on account of interest is condemned by the canon law as usurious; and they say that it is also thus implicitly condemned by law 2, title 13, Part 5, which provides that all the proceeds of the pledge belong to the debtor and that, therefore, the creditor must credit them annually to the principal of his credit or restore them to their owner; but it must be remembered that he might also credit or apply them to the payment of the interest, and afterwards to that of the principal, when the former has been agreed to by reason of a profit ceasing and a loss arising (*lucrum cessans et damnum emergens*) as it is admitted that the husband receives or retains, without crediting it to the lot or principal, the proceeds of the properties which may have been given him in security of the promised dot because in both cases the proceeds are considered as compensatory.

In practice there is nothing more usual than this contract of *anticresis* disguised under the appearances of a sale for a given time, and more commonly under those of a sale with the agreement of repurchase, or, as it is usually called in some provinces, with a right of grace (*a Carta de gracia*) that is, with a right which the vendor reserves for himself or his successors to take back the thing sold, returning in one or more installments the price thereof. So that in this manner the ownership is transferred to the purchaser, who receives the proceeds of the thing without a legal resistance being possible. If the contracting parties afterwards desire to elevate the contract of sale for a given time, or with a right of grace, to a contract of simple sale or an absolute sale as it is called in some parts, it is usual to give to the vendor some sum greater than was given him in the beginning in compensation for the right of repurchase which he foregoes.

Law 2, title 22, book 12, Novisima Recopilacion properly provides, that if it be agreed in a contract of sale that the purchaser must return the thing for the same price, and that the vendor cannot return the price except after a certain time, the former meantime enjoying the proceeds and emblements of the thing sold, such a contract is considered usurious, and the vendor may recover the thing he sold by returning the price received from the purchaser less the profits which the latter may have received: "Because" says the law, "though they do not indulge directly in usury, some make other contracts in evasion of usury, we hold, that if one should sell anything to another and should agree with him that it be returned to him for the same price, provided that he could not repay the price he received for a fixed time, and that meantime he should enjoy the profits and emblements of the thing sold, that such contract must be considered to have been made in evasion of usury; and therefore we order that when the vendor can prove that there existed with the purchaser the division and agreement which has been stated, he may recover the thing which he has sold, paying the price he received therefor, from the buyer; and that there be reckoned, on the price that was to be repaid him against the purchaser, the proceeds and emblements which he has received from the thing sold for the time he has had it."

But this law only speaks of a sale for a fixed time in which it is agreed that the vendor cannot repay the price and recover the property except after the lapse of a certain number of years; but it does not say anything of a sale in which, the agreement of resale having been provided, liberty is given the vendor to redeem the property when it may best suit him, although a term be fixed during which, and not after, he must pay the ransom. So that, in the last case, at least, the purchaser will receive, without prohibition of law the proceeds and emblements of the property so long as the seller does not recover it returning the price, in which they shall not be computed; so that it may be stated that a sale with a right of grace or with the agreement of repurchase, is a contract mitigated by *anticresis*.

If the law, therefore, permits and even authorizes a sale with the agreement of obligatory resale (Law 42, title 5, Part 5) how can it condemn *anticresis* or the giving up of the proceeds in order that they may take the place of interest on a sum received. If the law wishes to safeguard, as is supposed, the interests of the debtors, it had much better forbid them the sale with a

right of repurchase (a Carta de gracia) than *anticr sis*. *Anticr sis* is surely less disadvantageous for the debtors than such sale. By the sale, a debtor is dispossessed, not only of the proceeds, but also of the ownership of his property but by *anticr sis* he is only deprived of the proceeds; by the sale the buyer always acquires the right of receiving all the proceeds no matter what they may be and by *anticr sis* the creditor cannot receive any of the proceeds but what are proportionate to the interest of the sum loaned, being obliged to apply the excess to the successive payment on the principal of the debt; by the sale the vendor is always exposed to the loss of the property sold by reason of the inability in which he may find himself of repaying it within the contract or legal term, as well as to the danger that the purchaser may by alienation transfer it into the hands of a third party from whom neither the one nor the other could reclaim it, and by *anticr sis* the debtor always preserves the right to recover his property by paying what may be wanted to cover the debt since the creditor can never sell it, not even under the same form as a pledge and he can much less acquire title to it by prescription, possessing it, as he does, only conditionally.

This being so the law which might prohibit *anticr sis* for the purpose of avoiding the supposed injury which might flow from it to necessitous persons, would put them in the difficulty of having to make greater sacrifices, by selling their properties, when without such prohibition they would have been able to help themselves by the sacrifice only of their proceeds. But is there any law which in terms contains such a prohibition? No law is brought forward but the law 2, title 13, part 5, which requires that the proceeds of a thing which is given in pledge belongs to the debtor and not to the creditor. But this law speaks only of a pledge and not of *anticr sis*, which, although it has various points of similarity with the former is differentiated in others; a pledge is ordinarily of personal property; *anticr sis* affects real property; by the former the creditor acquires over the personalty a real right which permits him to take out of the proceeds the value of his debt with preference over other creditors and by the latter he only acquires the right to receive the proceeds of the real property which is delivered to him, applying them on the interest in case any is due him and on the principle of the debt. The first has as an object the assurance of the payment of the debt. The second may be considered more properly as a means of making the payment. Besides, law 2, title 22, book 12, of the Novisima Recopilacion which

we have transcribed above, by the fact that it prohibits one from enjoying the proceeds of a thing which he buys with a privilege of repurchase when the vendor has bound himself not to redeem it except after a certain time, seems to permit the stipulation for said enjoyment in any other kind of a contract in which the vendor or pledgor of the property remains at liberty to return the price or the loan when it may suit him.

However it may be, the question of *anticresis* depends upon the question of interest on money and so long as it is lawful to charge interest for money which has been loaned it will be equally so to enter into contracts of *anticresis* which reduce themselves to receiving said interest in the form of proceeds.

In accordance with what has been said, *anticresis* is contracted when he who has taken money at interest delivers to the creditor real property in order that he may receive its proceeds by way of interest: "*Contrahitur antichresis*", says Argentreo, "*cum debitor accepta sub usuris pecunia, fundum creditori fruendum dat pro interusurio pecunie.* (*Anticresis* is contracted, says Argentreo, when the debtor, money having been accepted at interest, gives to the creditor a property which must be enjoyed in place of the interest on the money accruing meanwhile).

The word "*Anticresis*" is Greek and it signifies the enjoyment of contrary use and its application is not inopportune to the contract whereby the creditor enjoys the property of the debtor while the debtor enjoys the money of the creditor.

Anticresis is in accordance with the principles of compensatory justice; since it would not be just that the creditor should be deprived of the enjoyment of his money and the proceeds of the heritage and that the debtor enjoy both these things.

Anticresis is distinguished from pledge and mortgage: from pledge by the reasons which we have already indicated; from mortgage because in this latter the debtor retains possession of the thing mortgaged while on the other hand, prescinding for the moment from other differences, the thing given in *anticresis* is delivered to the creditor.

Not only the debtor, but also the third person, if any, can deliver a thing in *anticresis*.

Real estate may be given in *anticresis* which produces fruits be they natural, such as those of a vineyard or an olive orchard, or be they conventional, such as those of a house.

The creditor does not acquire by this contract anything except the right to receive the proceeds of the estate which is delivered to

him with the obligation of crediting them annually on the interest that may be due him and afterwards on the principal of his debt.

If the fruits of an estate are about equal in an ordinary year to the legal interest on the debt, that is, to the interest which does not exceed the rate fixed by law, it may be stipulated that the entirety of the proceeds shall equal the total of the interest; but if the value of the proceeds is greater than the amount of the legal interest, the excess must be applied to the exclusive payment of the principal of the debt without the possibility of making an agreement that will open the door to usury, the creditor, therefore, being obliged to preserve in this case an account of the proceeds which he may collect in order to present it to the debtor: "*Non debet creditor,*" says Argentreo, "*ampliores fructus precipere quam quanti conveniat cum legitimis pecunie usuris, alioquin usurae vitium contractum corrumpet.*" (The creditor must not, says Argentreo, receive greater fruits than would equal the legitimate interest on the money, otherwise the defect of usury would vitiate the contract.)

Anticr sis can be entered into by parole or in writing, between persons present or by letter, by the interested parties themselves, or by their attorneys as is provided with respect to pledge in law 6, title 13, Part 5. Nevertheless, in order that it may be valid as against third parties, it is necessary that it be made to appear in an authentic manner.

Anticr sis is a real contract since it is not perfected except by the transfer or delivery of the thing; it is also a reciprocal contract; that is, one which produces an obligation on one party and on the other.

Since the creditor by *anticr sis* only acquires the right to receive the proceeds of the estate, he does not hold over it a mortgage or privilege that would prejudice the rights which other creditors might previously have acquired in the same property.

The creditor in *anticr sis* is bound when there is no obligation to the contrary, to pay the contributions and the annual charges which may encumber the proceeds, as likewise to cultivate the estate as a good husbandman and in accordance with the custom of the proprietor and to preserve it and make on it the necessary repairs, deducting from the proceeds themselves all these expenses, because, *fructus intelligendi non sunt nisi im pensis deductis* (Proceeds must not be understood except after the deduction of expenses). Moreover, as he has only the temporary

enjoyment of the property, until the debt has been paid him, he is only obliged to pay the ordinary contributions, expenses and repairs, and not the extraordinary ones which might accrue during the time of the *anticr sis*.

The debtor cannot ask the return of the property given in *anticr sis* prior to the entire satisfaction of the debt, interest and expenses, if there be any, as is provided, except for the interest, in the case of a pledge by law 21, title 13, Part 5; and even if the creditor should hold against the same debtor another credit contracted after the first, provided it be in writing, and the term of its payment is expired, he may retain the thing given in *anticr sis* until the satisfaction of both debts, although the proceeds of the estate were not pledged to the payment of the second; but in this hypothesis *anticr sis* would have no effect regarding the second debt against a third party to whom the debtor should sell or pledge the estate since he would have the right to reclaim it by paying the first debt as law 22, title 13, Part 5, provides concerning a pledge.

The creditor who may find the fulfillment of the obligations which he has to assume and which we have pointed out too onerous may, when he sees fit, abandon to the debtor the thing which he has received from him in *anticr sis*, renouncing this guarantee provided that he has not agreed with the debtor to care for the estate until the repayment of the debt, since everyone is free to forego what has been done in his favor unless there be an agreement to the contrary.

Although the debt is not paid within the time agreed, the creditor cannot dispose of the thing received in *anticr sis*, since he only holds it on deposit; he cannot appropriate it to himself as purchased because it has been loaned to him, even though it has thus been agreed with the debtor, since such an agreement is void even with respect to a pledge, according to law 41, title 5, and law 12, title 13, Part 5; nor can he have it sold at public auction as a pledge, because he does not hold in it any other right than that of receiving the proceeds, unless, to the contract of *anticr sis* that of a pledge or mortgage had been joined, or unless the debtor had expressly authorized him to do this; but if it had been stipulated that if the debt was not paid within the time limit the estate should be understood to have been sold to the creditor for its just value in accordance with the appraisement of experts, this agreement would be valid and would have to be carried out as said law 12, title 13, Part 5 provides in the case of a pledge.

Anticr sis is indivisible in its effects and thus it is that although through the death of the debtor the debt be divided among his heirs, and one of them should pay his part, he would not thereby have a right to reclaim what belongs to him in the thing given in anticr sis while the debt has not been entirely satisfied; and in the same manner, although through the death of the creditor the credit is divided amongst his heirs and one of them should receive from the debtor the part which belongs to him, he cannot release the *anticr sis* in prejudice of his co-heirs who may not as yet have been satisfied. The creditor is the depository of the thing received in *anticr sis* and the receiver of all its proceeds, and since he has thus received in its entirety not only the estate, but also the right to enjoy it, he must restore both in their entirety and not partially, and he has a right to keep them in their entirety whilst his credit has not been totally paid.

The creditor cannot acquire against his debtor the property in the thing received in *anticr sis* since he does not possess it as an owner but only by a conditional title; nor can the debtor by way of limitation obtain the extinction of his debt because the act of his allowing the creditor to possess himself of the estate and receive its proceeds is equivalent to a tacit and continuous recognition of the debt.

The doctrine and rules set out by the author in paragraphs 7, 8, 14 and 15 of this article in order to combine the laws relating to a pledge and to the legal rate of interest on a debt with the rules and essence of the contract of *anticr sis* hardly apply from the viewpoint of the civil law, since by the law of March 14, 1856, freedom of contract has been established, abolishing the rate of interest on capital loaned in coin; it being declared that interest on a simple loan may be conventionally agreed, provided that the contract shall be void if it is not evidenced by writing; that every agreement made in favor of a creditor is considered as interest and these provisions are applicable to every loan on a productive thing whose interest consists of an increase in kind which must be returned. Nevertheless the legislator designated in this law the interest which ought to be paid in cases determined therein, providing that the Government should fix at the beginning of each year after hearing counsel of the State, the legal rate of interest which, without being agreed to, must be paid in such cases, and 6% per annum should be considered the legal rate of interest while it was not so fixed.

Memorandum referred to in Article three of the Protocol of May 28,
1895.

Nota de los créditos vigentes á cargo de Bolivia, de cuya cancelación se encarga el Excmo. Gobierno de Chile, según el Artículo 2° del Tratado definitivo de paz, firmado entre ambas Repúblicas el 18 de Mayo de 1895.

* * * * *

Pedro Lopez Gama. Crédito reconocido á favor de los Señores Alsopp y Cia., subrogatarios de los derechos de aquel sin computar intereses por Bs. 835,000 de á 20d, que reducidos á moneda chilena á un cambio de 17-1-2d dan . . . \$954, 285.00

* * * * *

Santiago 23 de Mayo de 1895.

[Firmado.]

H. GUTIÉRREZ, *Ministro de Bolivia.*

Es conforme.

JOSE. SALMAS,
Official Mayor de Relaciones Exteriores.

[Translation.]

Memorandum of the claims existing against Bolivia, with the payment of which the Chilean Government is charged according to Article 2 of the final Treaty of Peace signed between both Republics on May 18, 1895.

* * * * *

Pedro Lopez Gama: Claim recognized in favor of Messrs. Alsop & Co., assignees of the rights of the former, amounting, without reckoning interest, to 835,000 bolivianos at 20d each which, reduced to Chilean money at an exchange of 17-1-2d, equals . . . \$954, 285.00

* * * * *

Santiago, May 23, 1895.

(Signed.)

H. GUTIERREZ, *Minister of Bolivia.*

[SEAL.]

A true copy.

JOSE SALINAS,
Chief Clerk of Foreign Relations.

TREATIES.

BOLIVIA-PERU.

Tratado de Comercio y Aduanas con el Perú.

[Taken from *Coleccion de los Tratados*, por Ricardo Aranda.]

TOMÁS FRIAS, Presidente de la República, etc.

Por cuanto, entre la República de Bolivia y la del Perú, representadas por sus respectivos Plenipotenciarios suficientemente autorizados *ad hoc*, se ajustó y firmó, en 23 de Julio de 1870, el siguiente:

Celebrado en 23
de Julio de 1870;
canjeado en 24 de
Diciembre de 1872;
promulgado el 5 de
Marzo de 1873.

TRATADO DE COMERCIO Y ADUANAS.

En el nombre de Dios Todopoderoso.

Las Repúblicas del Perú y Bolivia convencidas de la utilidad de celebrar un nuevo Tratado de Comercio y Aduanas, introduciendo en el de 5 de Septiembre de 1864, las alteraciones que la práctica insinúa como necesarias para constituir en estado de inalterable armonía sus intereses mercantiles é industriales, con el noble propósito de hacer más íntimas y francas las relaciones fraternales que felizmente las unen; han nombrado sus Plenipotenciarios para la negociación, á saber:

El Excmo. señor Coronel don José Balta, Presidente Constitucional de la República del Perú, al Honorable señor José Jorge Loiza, abogado del Perú, antiguo Plenipotenciarios. Ministro de Hacienda y hoy de Relaciones Exteriores, y

El Excmo. señor Capitán General don Mariano Melgarejo, Presidente Provisorio de Bolivia por el voto directo de los pueblos, al Honorable señor Juan de la Cruz Benavente, ex-Ministro de Relaciones Exteriores de Bolivia, Enviado Extraordinario y Ministro Plenipotenciario en Misión Permanente en el Perú, Decano del Honorable Cuerpo Diplomático extranjero residente en Lima, Enviado Extraordinario y Ministro Plenipotenciario en Misión Extraordinaria para los Estados Unidos de América del Norte y abogado de Bolivia y del Perú.

Quienes, después de haber encontrado en buena y debida forma sus plenos poderes, convinieron en las estipulaciones que siguen:

ARTÍCULO 1º—Las Repúblicas del Perú y de Bolivia, conservan la amplia y absoluta libertad de comercio que existe entre ellas. En consecuencia, los productos naturales é industriales de cada una, se introducirán como hasta

Libertad de comercio.

el presente, al territorio de la otra, y se expendarán libres de todo derecho de importación.

ART. 2°—El tránsito por Arica de toda clase de productos y artículos de comercio, sea cual fuere su procedencia, que se internen para Bolivia por la vía de Tacna, ó que vayan para otra parte de la frontera del Perú, será completamente libre, lo mismo que la exportación al exterior que por las mismas vías, se hiciere de las producciones naturales é industriales de Bolivia.

Se pagarán únicamente en ambas Repúblicas, los derechos municipales de pontazgo y peaje, como retribución de los servicios que recibe el comerciante.

ART. 3°—Los productos ó artefactos que de cualquiera Nación se internen al Perú, por las fronteras de Bolivia, tampoco podrán ser gravados en su tránsito con otros derechos que los de pontazgo y peaje.

ART. 4°—Los productos naturales é industriales del Perú en Bolivia y los de Bolivia en el Perú, gozarán de todos los privilegios que estén ó fueren concedidos á los de la Nación más favorecida.

ART. 5°—El comercio de mercaderías ó efectos extranjeros que se haga á Bolivia por la frontera del Perú, gozará de la misma libertad de internación y consumo que se ha estipulado en el artículo 1° para los productos naturales é industriales peruanos.

ART. 6°—Las mercaderías y efectos expresados en el artículo anterior, pagarán los derechos de importación en la Aduana del Perú en que se despachen, haciéndose su avalúo por el arancel peruano, y quedando de propiedad del Perú su importe.

ART. 7°—La República de Bolivia conviene en arreglar el arancel de derechos de importación para las mercaderías que se despachen en la Aduana de Cobija, ó en cualesquiera otras que establezca en lo sucesivo, una tercera parte más bajo del que rigiere en el Perú para aforar las que se despachen para Bolivia en las Aduanas del Callao, Islay, Arica é Iquique.

En ningún caso podrá hacerse una rebaja que exceda de la tercera parte ya indicada.

ART. 8°—La República del Perú, en virtud de los beneficios que reportan sus nacionales de las estipulaciones contenidas en los artículos 1° y 3°, se compromete por su parte, á abonar á Bolivia la cantidad de cuatrocientos mil soles (S/. 400,000) al año, pagaderos por el Tesoro de Lima, por mensualidades de treinta y tres mil trescientos treinta y tres soles treinta y tres centavos (S/. 33.333.33).

ART. 9°—La Legación de Bolivia en Lima recibirá el total de la subvención mensual, si el Gobierno de Bolivia no gira letras sobre ellas contra el Tesoro de Lima.

Suma que debe abonar el Perú á Bolivia.
Oficina á quienes debe hacerse el pago de dicha suma.

En este caso, el portador presentará las letras al Gobierno del Perú, para que mande se haga el pago en la época correspondiente con los fondos disponibles de Bolivia en dicha época.

Condiciones.

ART. 10.—La subvención aduanera se declara inviolable; queda consignada á la lealtad del Perú y en ningún caso podrá ser retenida ni secuestrada.

Se declara inviolable la subvención.

ART. 11.—Serán libres de derechos de exportación:

Artículos liberados de derechos de exportación.

1° Las máquinas que se destinen á Bolivia para la protección y fomento de las industrias agrícola, mineral y fabril.

2° El acero, el hierro en bruto y todos los instrumentos y herramientas destinadas para las ciencias y para las artes mecánicas.

3° Las armas y municiones para el servicio del ejército.

ART. 12.—Para proteger el comercio recíproco y la más fácil comunicación personal y real y la creación de grandes vías internacionales entre ellas, convienen las dos Altas Partes Contratantes:

Medidas para proteger el comercio y la comunicación internacional entre ambos países.

1° En conservar abolida como hasta aquí la penosa institución del pasaporte. En casos extraordinarios podrá ser establecida temporalmente á juicio de cada Gobierno.

2° Se comprometen á permitir y fomentar entre los territorios de las dos Repúblicas, con arreglo á sus respectivas leyes, la implantación de ferrocarriles, carreteras y navegación fluvial, sean nacionales ó extranjeros.

3° Se comprometen también á otorgar á sus empresarios todos los privilegios y franquicias compatibles con sus leyes, y proporcionados á la extensión territorial que las vías de comunicación recorran en cada una de ellas.

4° La República de Bolivia se compromete á habilitar en la parte austral del lago Titicaca, comprendida en su territorio y en las caletas más apropiadas para el comercio, muelles seguros donde los vapores peruanos puedan atracar, cargar y descargar segura y cómodamente.

5° Ajustar una Convención Consular que facilite el servicio de los Agentes Consulares de las dos Repúblicas.

ART. 13.—Se declara prohibido para ambas Naciones el comercio de fusiles y de toda clase de rifles y el de pólvora fina. No podrán despacharse con destino á cualquiera de ellas, sin prévio permiso de su Gobierno.

ART. 14.—El presente Tratado aprobado que sea por el Congreso de ambas Repúblicas y ratificado por sus Gobiernos, será canjeado en Lima ó Sucre, en el menor tiempo posible, y puesto en ejecución á los treinta dias después del canje.

ART. 15.—La vigencia del presente Tratado será por el término de cinco años, que comenzarán á correr desde el dia en que principie su ejecución, cesando desde entonces los efectos del Protocolo de 2 de Mayo del presente año.

Para que este Tratado termine en el prefijado término de cinco años, es indispensable que cualquiera de las dos Altas Partes Contratantes haga á la otra la respectiva notificación de desahucio, diez y ocho meses antes de la espiración de dicho plazo. Pero si ninguna de ellas hiciese tal intimación, continuará el Tratado para ambas partes hasta diez y ocho meses después de cualquier dia en que se verifique la notificación de desahucio por alguna de ellas.

En fe de lo cual, los respectivos Plenipotenciarios lo firmaron y sellaron por duplicado con el Secretario de la Negociación en Lima, á los veintitres dias del mes de Julio del año del Señor de mil ochocientos setenta.

[L. S.] JOSÉ JORGE LOAIZA.

[L. S.] JUAN DE LA C. BENAVENTE.

El Oficial Mayor del Ministerio de Relaciones Exteriores del Perú, Secretario de la Negociación—

JUAN FEDERICO ELMORE.

A los veinticuatro dias del mes de Diciembre del año de mil ochocientos setenta y dos, reunidos en el Ministerio de Relaciones Exteriores del Perú, el señor don José de la Riva Agüero, Ministro del ramo y el señor doctor don Juan de la Cruz Benavente, Enviado Extraordinario y Ministro Pleni-

Acta de canje.

potenciario de Bolivia, suficientemente autorizados para efectuar el canje de las ratificaciones, de S. E. el Presidente del Perú y de S. E. el Presidente de Bolivia, del Tratado de Comercio y Aduanas, concluído entre ambos países en 23 de Julio de 1870: procedieron á la lectura de los instrumentos originales de dichas ratificaciones, y habiéndolos hallado exactos y en buena y debida forma, realizaron el canje.

En fe de lo cual, los infrascritos han redactado la presente acta, que firman por duplicado, poniendo en ellas sus sellos respectivos.

[L. S.] JOSÉ DE LA RIVA AGÜERO.

[L. S.] JUAN DE LA C. BENAVENTE.

Por tanto, y estando aprobado dicho Tratado por el Congreso Nacional, en 27 de Agosto de 1870, ratificado por las dos Altas Partes Contratantes y canjeadas las ratificaciones en Lima con fecha 24 de Diciembre del año pasado 1872; en uso de las atribuciones que la Constitución me otorga, he venido en promulgarlo para que rija como Ley del Estado en la República, quedando empeñado á su fiel observancia el honor nacional.

Dado en la ciudad de La Paz, á 5 de Marzo de 1873.

TOMÁS FRIAS.

El Ministro de Gobierno y Relaciones Exteriores—

MELCHOR TERRAZAS.

[Translation.]

Treaty of commerce and customs with Peru.

I, TOMAS FRIAS, President of the Republic, etc.

Whereas, between the Republic of Bolivia and that of Peru, represented by their respective plenipotentiaries sufficiently authorized *ad hoc*, there was negotiated and signed on July 23, 1870, the following:

TREATY OF COMMERCE AND CUSTOMS.

In the name of Almighty God.

The Republics of Peru and Bolivia convinced of the usefulness of concluding a new treaty of commerce and customs, introducing in that of September 5, 1864, the alterations which practice indicates as necessary in order to establish in a state of inalterable harmony their mercantile and industrial interests, with the lofty purpose of making the fraternal relations which happily unite them more frank and intimate; have named as their plenipotentiaries for such negotiation, as follows:

His Excellency Colonel Don José Balta, Constitutional President of the Republic of Peru, the Honorable José Jorge Loaiza, a lawyer of Peru, former Minister of Hacienda and at present of Foreign Relations, and

His Excellency, Captain General Don Mariano Melgarejo, Provisional President of Bolivia by the direct vote of the people, the Honorable Juan de la Cruz Benavente, ex-Minister of Foreign Affairs of Bolivia, Envoy Extraordinary and Minister Plenipotentiary on permanent Mission in Peru, Dean of the Honorable Foreign Diplomatic Corps resident at Lima, Envoy Extraordinary and Minister Plenipotentiary on Special Mission to the United States of North America and a lawyer of Bolivia and Peru.

Who, after having found in good and proper form their full powers, agreed upon the following stipulations:

ARTICLE 1.

The Republics of Peru and Bolivia preserve the full and absolute liberty of commerce which exists between them. Therefore, the natural and industrial products of each shall be introduced as heretofore into the territory of the other and shall be consumed free of every importation duty.

ARTICLE 2.

The transit through Arica of every class of products and articles of commerce, no matter what their origin, which shall be entered for Bolivia by way of Tacna, or which may pass any other part of the frontier of Peru, shall be entirely free, as likewise the exportation abroad through the same ways of transportation that may be made of the natural and industrial products of Bolivia.

In both Republics there shall only be paid the municipal duties of road and ferry tolls as compensation for the service that the commerce may receive.

ARTICLE 3.

Products or manufactures of any nation which may be introduced into Peru by means of the frontiers of Bolivia shall not be burdened in their transit with other duties than those of road and ferry tolls.

ARTICLE 4.

The natural and industrial products of Peru in Bolivia and those of Bolivia in Peru shall enjoy all the privileges which are or may be granted to the most favored nation.

ARTICLE 5.

The commerce in foreign merchandise or effects which may be conducted into Bolivia by means of the frontier of Peru shall enjoy the same freedom of entry and consumption as has been stipulated in Article 1 for the natural and industrial products of Peru.

ARTICLE 6.

The merchandise and effects mentioned in the foregoing article shall pay the duties of importation in the custom houses of Peru from which they may be shipped, their valuation being fixed in accordance with the Peruvian tariff, and the value of said duties being the property of Peru.

ARTICLE 7.

The Republic of Bolivia agrees to adjust the schedule of duties of importation for the merchandise that may be entered at the custom houses of Cobija, or in any others that may be established in the future, a third less than that which governs in Peru for the appraisement of those that are despatched for Bolivia in the custom houses of Callao, Islay, Arica and Iquique.

In no case can a reduction be made which shall exceed the third part above indicated.

ARTICLE 8.

The Republic of Peru, by virtue of the benefits which its nationals enjoy on account of the stipulations contained in Articles 1 and 3, obligates itself, on its part, to pay to Bolivia the sum of four hundred thousand soles (S/400,000), per annum, payable by the Treasury of Lima in monthly instalments of thirty-three thousand three hundred thirty-three soles and thirty-three centavos (S/33,333.33).

ARTICLE 9.

The Legation of Bolivia at Lima shall receive the total of the monthly subsidy, if the Government of Bolivia does not draw drafts upon them against the Treasury of Lima. In this case the bearer shall present the drafts to the Government of Peru in order that it may direct that payment be made within the period corresponding to the funds at the disposition of Bolivia in said term.

ARTICLE 10.

The customs subsidy is declared to be inviolable; it is based upon the good faith of Peru and in no case shall it be withheld or attached.

ARTICLE 11.

There shall be free from exportation duty:

1. Machinery destined for Bolivia for the production and development of agricultural, mineral, and manufacturing industries.
2. Steel, pig-iron, and all the instruments and tools destined for scientific purposes and the mechanical arts.
3. Arms and ammunition for the service of the army.

ARTICLE 12.

In order to foster reciprocal commerce and the easiest public and private communication and the creation of great international roads between them, the High Contracting Parties agree:

1. To preserve the abolition as heretofore, of the troublesome institution of the passport. In extraordinary cases it may be established temporarily at the discretion of each Government.

2. They obligate themselves to permit and foment between the territories of the two Republics in accordance with their respective laws, the building of railroads, wagon-roads, and the establishment of river navigation, whether national or foreign.

3. They also obligate themselves to grant their promoters all the privileges and exemption compatible with their laws and proportionate to the territorial extent which the means of communication cover in each one of them.

4. The Republic of Bolivia obligates itself to establish in the southern portion of Lake Titicaca, comprised in its territory, and in the bays best adapted for commerce, secure wharves where the Peruvian steamers may come along side, load and unload safely and commodiously.

5. To negotiate a consular convention which shall facilitate the service of consular agents of the two Republics.

ARTICLE 13.

Commerce in guns and in every class of rifles and of fine powder is declared forbidden for both nations. They cannot be sent to either of them without previous permission of its Government.

ARTICLE 14.

The present treaty, after it has been approved by the Congresses of both Republics and ratified by their Governments, shall be exchanged at Lima or Sucre in the shortest possible time and put into execution thirty days after the exchange.

ARTICLE 15.

The existence of the present treaty shall be for the period of five years which shall commence to run from the day on which its execution commences, the effects of the protocol of the second of May of the present year ceasing from that time.

In order that this treaty may terminate within the period of five years above fixed, it is necessary that either of the two High Contracting Parties shall give the proper notice to the other of its conclusion, eighteen months before the expiration of said period; but if neither of them makes such an intimation, the treaty shall continue for both parties until eighteen months after the day on which the notification of termination by either of them is given.

In faith whereof the respective plenipotentiaries sign and seal it in duplicate with the Secretary of the Board at Lima, on the 23rd day of the month of July in the year of our Lord 1870.

[L. S.] JOSÉ JORGE LOAIZA.

[L. S.] JUAN DE LA C. BENAVENTE.

The Chief Clerk of the Minister of Foreign Relations of Peru,
Secretary of the Board—

JUAN FEDERICO ELMORE.

On the 24th day of the month of December in the year 1872, met in the Ministry of Foreign Relations of Peru Señor Don José de la Riva Agüero, Minister of the Department, and Señor Doctor Don Juan de la Cruz Benavente, Envoy Extraordinary and Minister Plenipotentiary of Bolivia, sufficiently authorized to conduct the exchange of ratifications of His Excellency the President of Peru, and of His Excellency the President of Bolivia, of the treaty of commerce and customs, concluded between the two countries on July 23, 1870, they proceeded to the reading of the original instruments of said ratifications, and having found them correct and in due and proper form, the exchange was carried out.

In faith whereof the undersigned have drafted the present minute, which they sign in duplicate placing thereon their respective seals.

[L. S.] JOSÉ DE LA RIVA AGUERO.

[L. S.] JUAN DE LA C. BENAVENTE.

Therefore, and said treaty having been approved by the National Congress on August 27, 1870, ratified by the High Contracting Parties and the ratifications having been exchanged at Lima under date of December 24 of the year last past, 1872, in exercise of the powers which the Constitution confers upon me, have promulgated it in order that it may govern as a law of the State in the Republic, the national honor being pledged to its faithful observance.

Done at the City of La Paz, March 5, 1873.

TOMAS FRIAS.

The Minister of Foreign Relations—

MELCHOR TERRAZAS.

Circular de 5 de Octubre.

[Taken from the Anuario of Bolivia for 1876.]

ADUANA DE ARICA. NOTIFICACION DE CANCELACION DE LA CONVENCIÓN DE COMERCIO Y ADUANA.

SECRETARIA JENERAL DE ESTADO,

La Paz, Octubre 5 de 1876.

SEÑOR. Tengo el honor de dirijirme a V. E. con el objeto de comunicarle, que el Gobierno de Bolivia ha resuelto notificar en esta fecha al Excmo. Gobierno del Peru, la concelacion estipulada en el articulo 15 de la Convencion de Comercio y Aduana, celebrada entre ambas republicas y firmada por sus Plenipotenciarios en 23 de Julio de 1870, a fin de que cesen los efectos de ella, en el termino prefijado por el articulo indicado de dicha convencion.

Comprendera V. E. que este acto de parte del Gobierno de Bolivia, no implica el menor desacuerdo en las buenas relaciones que felizmente conserva con el Gobierno de V. E. y que solo tiende a abrir nuevas negociaciones, que den por resultado un nuevo convenio, que sea mas equitativo y mas staisfactorio a los verdaderos intereses de ambas republicas.

Aprovecho, Señor Ministro de esta ocasion para reiterar a V. E. las protestas de alta consideracion, con que me suscribo de V. E. atento y obsecuente servidor.

(Firmado) JORGE OBLITAS.

A S. E. el SEÑOR MINISTRO DE RELACIONES EXTERIORES DEL PERU.

Lima.

[Translation.]

Circular of October 5.

CUSTOM HOUSE OF ARICA: NOTICE OF THE CANCELLATION OF THE
CONVENTION OF COMMERCE AND CUSTOMS.

OFFICE OF THE
SECRETARY-GENERAL OF STATE,

La Paz, October 5, 1876.

SIR: I have the honor to address myself to Your Excellency with the object of communicating to you that the Government of Bolivia has resolved to give notice on this date to the most excellent Government of Peru of the cancellation stipulated in Article 15 of the Convention of Commerce and Customs concluded between both Republics and signed by their plenipotentiaries on July 23, 1870, to the end that the effects thereof may cease within the term fixed by the aforesaid article of that Convention.

Your Excellency will understand that this act on the part of the Government of Bolivia does not imply the slightest disagreement in the friendly relations which it happily maintains with the Government of Your Excellency, and is only meant to open new negotiations which shall result in a new agreement which may be more equitable and more satisfactory to the true interests of both Republics.

I avail myself, Mr. Minister, of this occasion to reiterate to Your Excellency the assurance of the high consideration with which I subscribe myself Your Excellency's obedient and humble servant,

(Signed) JORJE OBLITAS.

To His Excellency the

MINISTER OF FOREIGN RELATIONS OF PERU.

Lima.

Tratado de comercio y aduanas entre Bolivia y el Perú.

[Taken from Coleccion de los Tratados; Ricardo Aranda.]

HILARION DAZA, Presidente de la República.

Por cuanto entre las Repúblicas de Bolivia y el Perú se ha celebrado en la ciudad de Lima, por los respectivos Plenipotenciarios, el tratado de comercio y aduanas, firmado en veinte y seis de Octubre de mil ochocientos setenta y ocho, igualmente que, el protocolo complementario de fecha once de enero de mil ochocientos setenta y nueve, los que copiados á la letra, son como sigue

Firmado en 26 de
Octubre de 1878;
promulgado en 18 de
Febrero de 1879.
[No llegó á can-
jearse].

La República de Bolivia y la del Perú, convencidas de la necesidad de celebrar un nuevo tratado de comercio y aduanas, han nombrado para el efecto por sus Plenipotenciarios.

Objeto
 Plenipotenciarios. El Gobierno de Bolivia, al Dr. Dn. Zoilo Flores, su E. E. y Ministro Plenipotenciario en el Perú.

Y el Gobierno del Perú, al Dr. Dn. Manuel Irigoyen, su Ministro de Relaciones Exteriores.

Quienes, habiendo manifestado y canjeado, en debida forma sus respectivos plenos poderes y hallándolos bastantes, han estipulado los artículos siguientes:

ARTÍCULO 1.º—Se adopta como sistema comercial entre Bolivia y el Perú, el libre tránsito por el territorio de aquél, de toda mercadería que se introduzca por sus puertos para el consumo de Bolivia, siendo enteramente libre para el introductor, la elección entre los puertos de Arica ó de Mollendo y las vías ó rutas correspondientes.

Libre tránsito para la importación.
 ART. 2.º—Se establece también el libre tránsito por el mismo territorio para los productos naturales, industriales ó manufacturados que se introduzcan de Bolivia al territorio del Perú para su exportación al extranjero.

Libertad de comercio.
 ART. 3.º—Son igualmente libres de todo derecho fiscal, tanto en su tránsito como en su consumo en Bolivia los artículos naturales, industriales ó manufacturados del Perú.

Idem.
 ART. 4.º—En reciprocidad, son libres de todo derecho fiscal, tanto en su tránsito como en su consumo en el Perú, los artículos naturales, industriales ó manufacturados de Bolivia.

Gravámen sobre el tránsito de artículos de importación.
 ART. 5.º—En compensación de los servicios que el Perú presta al comercio de Bolivia, y de las facilidades que le proporciona, tanto en su importación como en su exportación, con sus puertos, sus aduanas, muelles, sus empleados y sus obras públicas, se establece por todo gravámen, un derecho de cuatro por ciento (4%) en soles de plata ó su equivalente en billetes de bancos autorizados, sobre las mercaderías extranjeras que se introduzcan por su territorio para el consumo de Bolivia; sirviendo como base para el avalúo, el valor de la factura ó el arancel, si aquél fuere menor.

Exención de derechos para el ganado.
 Art. 6.º—Será libre también de todo derecho fiscal, el ganado de toda especie que se introduzca al Perú por territorio boliviano.

ART. 7.º—El depósito en los almacenes del Perú de los artículos destinados á Bolivia, ó procedentes de ella, estará sujeto á los derechos de almacenaje establecidos por el comercio del Perú, si se prolonga por más de setenta días.

ART. 8.º—Sin embargo de lo establecido en los artículos 3.º y 4.º, los alcoholes ó rones de caña de azucar, que se introduzcan para el consumo de Bolivia, serán gravados en ésta con cincuenta centavos de boliviano en galón por todo derecho fiscal, municipal ó de cualquier otra especie.

ART. 9.º—El tránsito por territorio boliviano del ganado, sea cual fuere su especie, que se introduzca para el consumo del Perú, no será gravado sino con el derecho municipal de peaje que estuviese establecido en Bolivia, ó que se estableciere en adelante; el cual será satisfecho en la misma forma y proporción que el que satisfagan los mismos bolivianos.

ART. 10.º—Quedan exonerados de todo derecho, los artículos siguientes, que se introduzcan con destino á Bolivia:

1.º Las máquinas que sirvan para la protección y fomento de las industrias agrícola, mineral y fabril.

2.º El acero, el hierro en bruto, los instrumentos destinados á las ciencias, y los útiles y herramientas para la agricultura y minería.

3.º Las armas, municiones é instrumentales de música para el uso del ejército.

4.º Las prensas y tipos para la imprenta.

ART. 11.—Es potestativo para cada una de las Naciones contratantes el establecimiento de derechos municipales sobre el consumo de los artículos naturales é industriales de la otra, con excepción de los rones ó alcoholes peruanos, que quedan exonerados de ellos según el artículo 8.º

ART. 12.—Queda subsistente el derecho municipal de peaje y de pontazgo que existe desde una época inmemorial, en uno y otro país, ó que existiere en adelante sobre las mercaderías extranjeras que se introduzcan para Bolivia.

ART. 13.—Interesadas ambas partes contratantes en la extirpación del fraude y en la fiel percepción de sus legítimos derechos, acuerdan que el Perú constituya en La Paz y Oruro, y Bolivia en los puertos de Arica

y Mollendo agencias aduaneras que, unidas á la oficina nacional, practiquen colectivamente el despacho de las mercaderías destinadas á Bolivia, con arreglo al arancel boliviano, y en la forma siguiente:

1.º—Hecho de común acuerdo en el puerto y aduana respectivos, el despacho de la mercadería en la forma ordinaria, mediante póliza quintuplicada, en las que deben hacerse constar el resultado de las distintas operaciones del despacho, una de ellas será remitida por la oficina nacional á su agente aduanero en La Paz ú Oruro, según el destino de las mercaderías; y otra por el agente aduanero de Bolivia al jefe de la aduana respectiva.

2.º—Las mercaderías así despachadas en las aduanas del Perú, serán entregadas al agente afianzado en aduana que haga el despacho, quien las introducirá á la de Bolivia en el término de cincuenta dias, si están destinadas á La Paz, y de sesenta dias si á la de Oruro.

3.º—Una vez introducida la mercadería á la respectiva aduana de Bolivia, se procederá á solicitud del interesado, á la verificación de la conformidad entre la mercadería introducida y la despachada en la aduana del Perú, según las pólizas del despacho que servirán de guía.

4.º—Si trascurrido el término designado en el inciso segundo, no se ha hecho la introducción á la aduana respectiva del total de la mercadería despachada en puerto peruano, el agente afianzado en la aduana de éste, abonará derechos dobles, divisibles por mitad entre el Perú y Bolivia.

5.º—Si hecha la confrontación de las mercaderías introducidas, resultan excesos de la misma especie sobre las manifestadas, pedidas y despachadas, según la póliza respectiva de la aduana de la procedencia, se impondrá al interesado derechos dobles sobre los excesos, los cuales se distribuirán en la proporción antedicha entre el Perú y Bolivia.

6.º—Si de dicha confrontación resultaren artículos de diferente especie de lo despachado en la aduana de la procedencia caerán en comiso, sin perjuicio de pagarse en Arica ó Mollendo por el agente del despacho, los derechos correspondientes á las mercaderías despachadas, que quedarán á beneficio del Perú, y de abonar en Bolivia los derechos correspondientes á las mercaderías introducidas y decomisadas.

7.º—Si la introducción en la aduana respectiva solo se ha verificado en una parte de las mercaderías designadas en la póliza

del despacho primitivo, la aplicación de los derechos dobles y su distribución solo tendrá lugar sobre la parte no introducida, sin que en ningún caso se tengan en cuenta las mermas naturales en los líquidos ó en las sustancias volatilizables, ni las que procedan de avería, á juicio de los agentes del despacho.

ART. 14.—La opinión conforme de los dos agentes, peruano y boliviano, que hacen el despacho en la aduana de la procedencia, prevalecerá en la de Bolivia, aunque los dos agentes, peruano y boliviano en ella, conformes entre sí, no lo estén con la opinión de los primeros.

Opinión de los agentes, que debe prevalecer en la aduana de la procedencia.

ART. 15.—En caso de disconformidad entre la opinión del vista peruano y el funcionario boliviano, sobre cualquiera de las operaciones concernientes al despacho en el puerto peruano, la fallará el Administrador de la Aduana. Igual procedimiento se observará en el caso de que existiese disconformidad entre el funcionario peruano y el vista boliviano en las aduanas de Bolivia.

En caso de disconformidad de los funcionarios inferiores fallarán los administradores de aduana.

ART. 16.—La opinión uniforme de los agentes peruano y boliviano, en las aduanas de Bolivia, prevalecerá sobre el fallo del Administrador de la Aduana del Perú, motivado por desacuerdo entre los agentes de ambas naciones en esta Aduana.

Opinión que prevalecerá en las aduanas bolivianas.

ART. 17.—El producto de las multas ó derechos procedentes de mercaderías destinadas á Bolivia que fueren decomisadas en la Aduana del despacho primitivo, se dividirá por mitad entre las partes contratantes; sujetándose dichos juicios á las leyes locales.

Multas y decomisos.

ART. 18.—El término de que habla el 2.º inciso del artículo 13, es prorrogable, si á juicio de los dos agentes del despacho, ha sido imposible la introducción de la mercadería durante él por razón de epidemia, de alteración del órden público ó de cualquier otro motivo poderoso de carácter general.

Adición al inciso 2.º del artículo 13.

ART. 19.—Los agentes aduaneros del Perú en Bolivia y los de Bolivia en el Perú, sujetarán los procedimientos concernientes al ejercicio de sus funciones á los reglamentos del país en que las ejercen, en cuanto éstos no se opongan á las estipulaciones de este Tratado.

Los agentes aduaneros de ambos países se sujetarán á los reglamentos respectivos.

ART. 20.—Ambas partes contratantes quedan en libertad de establecer, cuando lo crean conveniente, aduanillas fronterizas para la vigilancia, confrontación é inspección exterior de los bultos de mercaderías, en sus

Facultad para establecer aduanillas fronterizas.

marcas, números y condiciones de los envases, y de adoptar cualquiera otra medida que á su juicio contribuya á regularizar el tránsito.

ART. 21.—Ambas partes contratantes acuerdan también, desde ahora, hacer las innovaciones que aconseja la experiencia en materia de procedimientos para el despacho, si el sistema establecido en los artículos 13, 14, 15 y 16 no garantizara la fiel percepción de los derechos, ó si su observancia dificultare gravemente las operaciones comerciales entre ambos países.

ART. 22.—Es prohibido entre ambas naciones el comercio de fusiles, rifles, cañones y sus respectivas dotaciones. En su virtud, no podrán despacharse dichos artículos, á cualquiera de ellas, sin previo permiso de su Gobierno.

ART. 23.—Ambas partes contratantes acuerdan también:

1.º—Mantener la absoluta libertad de tránsito personal entre ambas naciones, y no restablecer el uso de los pasaportes sino en casos extraordinarios y de un modo transitorio, mientras pasen las circunstancias que aconsejen su imposición.

2.º—Permitir y fomentar entre los territorios de las dos Repúblicas y con arreglo á sus respectivas leyes, la implantación de ferrocarriles, carreteras, navegación fluvial y líneas telegráficas, sean nacionales ó extranjeras.

3.º—Otorgar á sus empresarios todos los privilejios y franquicias compatibles con sus leyes y en relación á la extensión territorial que las vias de comunicación recorran en cada una de ellas.

ART. 24.—Canjeado que sea el presente Tratado en el menor tiempo posible, será puesto en vigencia 15 dias después de este acto, y su duración será la de tres años. Su caducidad dependerá de la notificación que cualquiera de los Gobiernos haga seis meses antes de la espiración del término estipulado, ó vencido él sin notificación, un año después que ella se verifique.

En fe de lo cual los Plenipotenciarios de una y otra República lo hemos firmado y sellado por duplicado, en Lima, á los veintiseis dias del mes de Octubre del año de mil ochocientos setenta y ocho.

ZOILO FLORES.

MANUEL IRIGOYEN.

Reunidos en el Ministerio de Relaciones Exteriores los infrascriptos, Zoilo Flores, E. E. y Ministro Plenipotenciario de Bolivia y Manuel Irigoyen, Ministro de Relaciones Exteriores del Perú; y comprendiendo, por la discusión que han sostenido en una serie de conferencias anteriores, la necesidad de modificar algunas cláusulas del Tratado de comercio y aduanas celebrado entre Bolivia y el Perú, el 26 de Octubre último, así como la de fijar con más precisión el sentido y alcance de otras; han acordado lo siguiente:

1.º—El gravámen de cuatro por ciento establecido en la cláusula 5.ª del pacto aludido, como compensación de los servicios que el Perú presta al comercio de Bolivia se elevará á cinco por ciento, y su aplicación se hará con arreglo á la factura original ó al arancel peruano, en su caso, y á las demás condiciones en él establecidas.

2.º—El despacho de las mercaderías á que se refiere el artículo 13 en su primera parte, es subentendido que deberá hacerse con arreglo á los respectivos aranceles, y la confrontación de que se ocupa el inciso 3.º del mismo artículo se hará por los dos agentes peruano y boliviano.

3.º—Si además de los casos previstos en el inciso 6.º del citado artículo 13, aconteciere que el comiso tuviese lugar en el puerto del despacho, se observará el mismo procedimiento en él establecido, esto es, el comiso quedará á beneficio del Perú, pagándose además á ambos Estados, por el agente del despacho, los derechos correspondientes á la mercadería decomisada.

4.º—Lo dispuesto en el artículo 16 es solo con referencia á la calificación de la mercadería despachada en la aduana de la procedencia, y no afecta, ni menoscaba los derechos percibidos por la aduana del Perú según la clasificación hecha por ella en despacho de las mercaderías destinadas á Bolivia.

5.º—La prórroga de que habla el artículo 18, se otorgará por el administrador de la aduana de la procedencia y el agente aduanero de Bolivia, y en caso de desacuerdo entre ambos funcionarios, lo resolverá el Prefecto del Departamento respectivo del Perú.

El señor Zoilo Flores expuso, además, que fiel á su propósito de conservar en su mayor fuerza posible la moralidad del comercio entre ambas naciones, ratifica la declaración que, espontáneamente y como un deber de lealtad de

Protocolo por el que se modifican algunas cláusulas del anterior Tratado.

Modificación de la cláusula 5.ª.

Explicación del sentido del artículo 13.

Aición al inciso 6.º del artículo 13.

Explicación del artículo 16.

Id. del artículo 18.

Aduanas y arancel.

parte suya y de su Gobierno, ha tenido el honor de hacer al señor Irigoyen en el oficio de 10 de Diciembre del año próximo pasado y en conferencias verbales, en el sentido de que, durante la vigencia del pacto firmado en 26 de Octubre último, no se entregarán á una explotación particular las aduanas que se relacionan con el comercio que Bolivia mantiene con el Perú y de que el arancel de aforos que en la misma época rija en dichas aduanas no será más bajo que el que estuvo en vigencia en el Perú en el bienio de 1873-1874. El señor Irigoyen aceptó esta declaración en toda la amplitud que encierra, complacido del espíritu de confraternidad que revelaba la manera espontánea como había sido hecha en las conferencias y en el despacho aludido.

En fe de lo cual, y dando á este protocolo el carácter de acto complementario del mencionado Tratado de comercio y aduanas, concluído en veintiseis de Octubre último, lo firman por duplicado, en Lima, á las once dias del mes de Enero del año de mil ochocientos setenta y nueve.

ZOILO FLORES.

MANUEL IRIGOYEN.

Y por cuanto el Poder Ejecutivo está debidamente autorizado por la Asamblea nacional constituyente, en su resolución legislativa de 9 de Enero de 1878, para concluir y obtener el resultado final de dicha negociación; en uso de las facultades que la Constitución del Estado me concede y con cargo de dar cuenta á la próxima Asamblea, he venido en aceptarla, aprobarla y ratificarla, teniéndola como ley del Estado, y comprometiéndola para su observancia el honor nacional.

En fe de lo cual, firmo la presente ratificación, sellada con las armas de la República y refrendada por el Ministro de Estado en el Despacho de Relaciones Exteriores, en La Paz, á los dies y ocho días del mes de Febrero del año de mil ochocientos setenta y nueve.

H. DAZA.

EULOGIO D. MEDINA.

[Translation.]

Treaty of Commerce and Customs Between Bolivia and Peru.

HILARION DAZA, President of the Republic.

Whereas, between the Republics of Bolivia & Peru there has been negotiated, at the City of Lima, by their respective Plenipotentiaries, the treaty of Commerce & Customs, signed on

October 26, 1878, as well as, the additional protocol of date January 11, 1879, which are literally as follows:

The Republic of Bolivia and that of Peru, convinced of the necessity of concluding a new treaty of Commerce & Customs, have named to that end, as their Plenipotentiaries:

The Government of Bolivia, Doctor Zoilo Flores, its E. E. and Minister Plenipotentiary in Peru; &

The Government of Peru, Doctor Manuel Irigoyen, its Minister for Foreign Affairs:

Who, having exhibited and exchanged, in due form their respective full powers, and having found them sufficient, have agreed upon the following articles:

ARTICLE I. There is adopted as a commercial system between Bolivia and Peru, free transit through the territory of the latter, of all merchandise that may be imported through its ports for the consumption of Bolivia, the choice between the ports of Arica and Mollendo and the corresponding lines or routes being entirely free for the importer.

ARTICLE 2. There is also established free transit through said territory for the natural, industrial or manufactured products of Bolivia which may be entered into the territory of Peru for exportation abroad.

ARTICLE 3. Natural, industrial or manufactured articles of Peru are likewise exempt from every treasury tax not only in transit, but also for their consumption in Peru.

ARTICLE 4. The natural, industrial or manufactured articles of Bolivia, as a reciprocity, are exempt from every treasury tax not only in transit but also for consumption in Peru.

ARTICLE 5. In compensation for the services that Peru renders to the Commerce of Bolivia, and for the facilities which it affords it, both in importation and exportation, with its ports, its custom houses, wharves, its employes and its public works, there is established as an entire charge, a duty of four per cent. (4 per cent.) in silver soles or their equivalent in notes of authorized banks, on the foreign merchandises, which may be introduced through its territory for consumption in Bolivia; the value stated in the invoice or the tariff if the latter be less serving as a basis for valuation.

ARTICLE 6. Cattle of every sort that may be introduced into Peru for Bolivian territory shall also be free from every treasury duty.

ARTICLE 7. The deposit in the warehouses of Peru of articles destined for Bolivia or proceeding therefrom, shall be subject to the warehouse duties established by the commerce of Peru, if it exceed seventy days.

ARTICLE 8. Notwithstanding what is stipulated in articles 3 and 4, spirits or rums of sugar cane, which are entered for the consumption of Bolivia, shall be taxed at fifty-hundredths of a boliviano per gallon as a total treasury, municipal or other duty.

ARTICLE 9. The transit through Bolivian territory of cattle, no matter what sort, that may be entered for the consumption of Peru, shall not be charged except with the municipal tax of ferriage that is or in future may be established in Bolivia; which shall be paid in the same form and proportion as that which the Bolivians themselves pay.

ARTICLE 10. The following articles which may be introduced destined for Bolivia shall be exempt from all duty:

1st. Machinery that may serve for the protection and development of agricultural, mining or manufacturing industries;

2d. Steel, iron in the rough, scientific instruments and the utensils and tools for agriculture and mining;

3rd. Arms, amunition and musical instruments for the use of the army;

4. Presses and type for printing;

ARTICLE 11. Each of the contracting nations shall have the right to establish municipal duties upon the consumption of the natural or industrial articles of the other except peruvian spirits or rums which are exempt therefrom in accordance with article 8.

ARTICLE 12. The municipal tax of ferriage and bridge toll which exists from time immemorial in one or the other countries or which may exist on foreign merchandise introduced for Bolivia shall remain in force.

ARTICLE 13. Both contracting parties being interested in the eradication of fraud and in the faithful receipt of their legitimate taxes, agree that Peru may constitute at La Paz and Oruro and Bolivia at the Ports of Arica and Mollendo customs agencies which combined with the national office shall carry out jointly the dispatch of merchandise destined for Bolivia in accordance with the Bolivian tariff and in the following form:

1. Having performed by common agreement in the respective custom house and port, the dispatch of the merchandise in the ordinary manner, by means of a customs permit in quintuplicate,

wherein there must be made to appear the operation of dispatch, one of them shall be sent by the national office to its customs agent at La Paz or Oruro according to the destination of the goods, and the other by the customs agent of Bolivia to the chief of the corresponding custom house.

2. The goods thus dispatched in the custom houses of Peru shall be delivered to the bonded customs agent who may make the dispatch, who shall introduce them into the custom house of Bolivia within the term of fifty days if they are destined for La Paz and of sixty days if for Oruro.

3. Once the merchandise has been introduced in the respective custom house of Bolivia, steps shall be taken on the petition of the interested party for the verification of the agreement between the merchandise introduced and that dispatched from the custom house of Peru in accordance with the permits of the office which shall serve as a guide.

4. If, the term fixed in paragraph 2 having expired, entry has not been made at the respective custom house of the whole of the merchandise dispatched in the Peruvian port, the bonded agent in the custom house thereof shall collect double duties divisible in halves between Peru and Bolivia.

5. If after comparison of the merchandise introduced an excess should result of the same kind of merchandise over those specified, requested and dispatched, in accordance with the respective permit of the custom house of its origin, there shall be imposed on the interested party double duties on the excess which shall be divided in the aforesaid proportions between Peru and Bolivia.

6. If from said comparison articles should be found of a sort different from those dispatched in the custom house of origin they shall be seized without prejudice to the payment in Arica or Mollendo by the agent of the office, the duties corresponding to the merchandise dispatched, which shall be for the benefit of Peru, and of paying in Bolivia of the duties corresponding to the merchandise introduced and seized.

7. If the introduction in the respective custom house has only been performed in a part of the merchandise enumerated in the permit of the original office, the application of double duties and the distribution shall only take place on the part not introduced, without in any case taking into account the natural waste of liquids or volatile substances not arising out of damage in the judgment of the agents of the office.

ARTICLE 14. The opinion of the two agents, Peruvian and Bolivian, who effect the dispatch in the custom house of origin shall prevail in that of Bolivia, even though the two agents Peruvian and Bolivian, therein agreed among themselves are not in accord with the opinion of the former.

ARTICLE 15. In case of disagreement of opinion between the Peruvian and Bolivian functionaries regarding any of the operations concerning the dispatch in a Peruvian port the collector of customs shall decide. A like procedure shall be observed in case a disagreement should exist between the Peruvian and Bolivian functionaries in the custom houses of Bolivia.

ARTICLE 16. The uniform opinion of the Peruvian and Bolivian agents in the custom houses of Bolivia shall prevail over the decision of the Collector of the custom house of Peru, caused by a disagreement between the agents of both governments in the latter custom house.

ARTICLE 17. The proceeds of the fines or duties arising out of goods destined for Bolivia which have been seized in the custom house of first origin, shall be divided in halves between the contracting parties, said judgements being subject to the local laws.

ARTICLE 18. The term of which paragraph 2 of article 13 speaks is extendable if, in the judgment of the two agents of the office, the entry of merchandise within it has been impossible because of an epidemic, a change of public order or any other cogent reason of a general character.

ARTICLE 19. The customs agents of Peru in Bolivia and those of Bolivia in Peru, shall subject the proceedings concerning the exercise of their functions to the rules of the country in which they exercise them in so far as these latter are not in opposition to the stipulations of this treaty.

ARTICLE 20. Both contracting parties are at liberty to establish when they may see fit minor frontier custom houses for the supervision, comparison and exterior inspection of the packages of goods, their marks, numbers and conditions of the barrels and to adopt any other measures which in their judgment may contribute to render regular the transit.

ARTICLE 21. Both contracting parties also agree, from the present, to make the change which experience may counsel in the matter of procedure for the dispatch, if the system established in Articles 13, 14, 15 and 16 should not guarantee the parties full receipt of the duties, or if its observance should seriously incumber commercial operations between both countries.

ARTICLE 22. Commerce between the two nations is forbidden in guns, rifles, cannon and their respective ammunition. By virtue whereof, said articles cannot be dispatched to either of them without previous permission of its government.

ARTICLE 23. Both contracting parties also agree:

1. To maintain absolute liberty of personal transit between both nations and not to reestablish the use of passports except in extraordinary cases and in a temporary manner, until the circumstances which counsel their requirement shall have ceased to exist.

2. To permit and encourage between the two countries in accordance with their respective laws, the building of railroads, wagon roads, the establishment of river navigation, and telegraph lines, whether national or foreign.

3. To grant to their operators all the privileges and exemptions compatible with their laws and in relation to the territorial extent that the means of communication cover in each.

ARTICLE 24. The ratification of the present treaty having been exchanged in the least possible time, it shall be put into effect 15 days after said act and its duration shall be three years. Its cessation shall depend upon the notice which either of the governments shall give six months prior to the stipulated term or, if this shall expire without notice, one year after this has transpired.

In faith whereof we the Plenipotentiaries of both republics, have signed and sealed in duplicate, at Lima, on the 26th day of the month of October of the year one thousand eight hundred and seventy eight.

ZOILLO FLORES.

MANUEL IRIGOYEN.

Met in the Ministry of Foreign Affairs the undersigned, Zoilo Flores, E. E. and Minister Plenipotentiary of Bolivia and Manuel Irigoyen, Minister of Foreign Affairs of Peru; and understanding from the discussion they have held in a series of prior conferences, the necessity of modifying some of the provisions of the Treaty of Customs and Commerce concluded between Bolivia and Peru on October 26 ultimo, as well as to fix with more precision the meaning and scope of others; have agreed on the following.

1. The charge of four per cent established in clause 5 of said agreement, as compensation of the services that Peru lends to the commerce of Bolivia, shall be raised to five per cent. and its appli-

cation shall be made in accordance with the original invoice or the Peruvian customs tariff, if proper, and with the other conditions therein established.

2. The dispatch of merchandise to which the Article 13 refers in its first part, it is understood must be made in accordance with the respective tariffs, and the comparison, of which paragraph 3 of said article treats, shall be made by the two Peruvian and Bolivian agents.

3. If besides the cases provided for in paragraph 6 of said article 13, it should happen that the seizure is made in the port of dispatch, the same procedure, established therein, shall be observed, that is, the forfeiture shall be for the benefit of Peru there being paid besides to both States by the agent of the dispatch, the duties corresponding to forfeited merchandise.

4. The provision of Article 16, is only with reference to the classification of the Merchandise dispatched in the custom house of origin, and does not effect, nor reduce the duties received by the custom house of Peru in accordance with the classification made by it in the dispatch of goods destined to Bolivia.

5. The extension of which article 18 speaks shall be conceded by the collector of the custom house of origin and the customs agent of Bolivia, and in case of disagreement between both functionaries, the prefect of the respective Department of Peru shall decide.

Señor Zoilo Flores states moreover that faithful to his purpose of preserving in its greatest possible vigor the morality of the commerce between both nations, he ratified the declaration, which, spontaneously and as a duty of loyalty on his part and on the part of his government, he has had the honor to make to Señor Irigoyen in the note of December 10th of last year and in oral conference, in the sense that, during the existence of the agreement signed October 26th ultimo, there shall not be delivered to private management the custom houses that are related to the commerce which Bolivia maintains with Peru and of which the schedule of appraisalment which at the same period governs in said custom houses shall not be lower than that which was in force in Peru in the two years of 1873-1874. Señor Irigoyen accepted this declaration in its entire scope, being pleased with its spirit of confraternity which revealed the spontaneous manner in which it was made in the conference and in the said note.

In faith whereof, and giving to this protocol the character of a supplementary act to the Treaty of Commerce and Customs con-

cluded October 26th ultimo they sign in duplicate in Lima, on the eleventh day of the Month of January in the year One thousand eight hunderd and seventy nine.

ZOILO FLORES

MANUEL IRIGOYEN.

And whereas, the executive is duly authorized by the national Constituent Assembly in its resolution of January 9, 1878, to conclude and obtain the final result of said negotiation in exercise of the powers which the constitution of the State confers upon me and with the duty of rendering an account to the next Assembly, I have come to accept, approve and ratify the present, holding it as a law of the State, and pledging the national honor to its observance.

In faith whereof, I sign the present ratification, sealed with the Arms of the Republic and countersigned by the Minister of State in the office of Foreign Affairs at La Paz on the 18th day of the month of February of the year one thousand eight hundred and seventy nine.

H. DAZA.

EULOJIO D. MEDINA.

Tratado de comercio y aduanas entre Bolivia y el Perú.

[Taken from Coleccion de los Tratados; Ricardo Aranda.]

NARCISO CAMPERO, Presidente Constitucional de Bolivia.

POR CUANTO: se ha celebrado el día de ayer por medio de los plenipotenciarios de las Repúblicas de Bolivia y el Perú, un tratado de comercio y aduanas, cuya ratificación inmediata es de urgencia para ambas naciones aliadas.

POR TANTO: y con cargo de cuenta á la Convención Nacional, en sus primeras sesiones, he venido en aceptar y ratificar dicho tratado, comprometiendo á su observancia la fé pública y el honor nacional.

En fé de lo cual firmo la presente ratificación, sellada con las armas de la República y refrendada por el Ministro de Estado en el Despacho de Gobierno y Relaciones Exteriores, en La Paz, á los ocho días del mes de Junio de mil ochocientos ochenta y uno.

NARCISO CAMPERO.

DANIEL NÚÑEZ DEL PRADO.

TRATADO.

Reunidos en el Despacho de Relaciones Exteriores de Bolivia el señor Daniel Núñez del Prado, Ministro del Plenipotenciarios. Ramo, y el señor Aurelio García y García, Secretario General de Estado del Jefe Supremo del Perú, plenamente autorizados por sus respectivos Gobiernos, en vista del Pacto Federal, ajustado en Lima, el once de Junio de mil ochocientos ochenta, y sometido á la aprobación de ambos países; con objeto de preparar su ejecución han acordado lo siguiente:

ARTÍCULO 1.º—En las relaciones comerciales de ambos Estados, se establece el libre tránsito de mercaderías que se Libre tránsito para las importaciones. importen del extranjero, para Bolivia ó para el Perú, pasando por territorio de uno de los Estados contratantes.

ART. 2.º—El mismo sistema de libre tránsito se establece para Id. id. para las exportaciones. la exportación de productos naturales ó manufacturados de ambos países que salgan al extranjero.

ART. 3.º—El que solicitare introducir mercaderías en tránsito Formalidades para el tránsito. terrestre por uno de los puertos del Perú, constituirá un fiador abonado á satisfacción del administrador de la aduana, para que sea responsable de mancomún *et in solidum* con el extractor, por el importe de los derechos de las mercaderías contenidas en el permiso, si no justificare la introducción al punto de su destino.

ART. 4.º—Serán libres de todo derecho fiscal y municipal, Régimen comercial. tanto en el tránsito como en su consumo, los productos naturales ó manufacturados que se importen del Perú á Bolivia ó vice versa.

ART. 5.º—Se exceptúan de lo dispuesto en el artículo anterior, Se exceptúan los alcoholes y aguardientes peruanos. los alcoholes ó rones de caña del Perú, aguardiente de caña de azúcar y aguardiente de uva, que se importen para el consumo de Bolivia, los cuales productos, por todo derecho fiscal y municipal pagarán el siguiente impuesto: cincuenta centavos por cada galón de alcohol, y dos bolivianos por quintal de aguardiente de caña ó de uva, que no pase de 22º grados.

ART. 6.º—Los derechos recaudados según el Participación del Perú en los derechos de alcoholes. artículo anterior, serán partibles por mitad entre el Perú y Bolivia.

ART. 7.º—Los derechos impuestos anteriormente Fecha en que se cobrarán los impuestos. comenzarán á regir desde el 1.º de Agosto próximo.

ART. 8.º—Los respectivos Gobiernos se reservan la facultad de Reglamentación del tránsito. prescribir las formalidades del tránsito de las mercaderías, á fin de evitar el contrabando de los intereses fiscales de una ú otra nación.

ART. 9.º—Este tratado durará mientras se resuelva definitivamente por Bolivia y el Perú, lo relativo al pacto Duración del presente tratado. federal celebrado entre los gobiernos de ambos países.

En fe de lo cual firman por duplicado el presente tratado, en la ciudad de La Paz, á los siete días del mes de Junio del año del Señor de mil ochocientos ochenta y uno.

DANIEL NÚÑEZ DEL PRADO.

AURELIO GARCÍA Y GARCÍA.

Acta de canje. A los ocho días del mes de Junio de mil ochocientos ochenta y uno, reunidos en La Paz, en el Despacho de Relaciones Exteriores de Bolivia, el señor Daniel Núñez del Prado, Ministro del Ramo y el señor Aurelio García y García, Secretario General de Estado del Jefe Supremo del Perú, suficientemente autorizados para efectuar el canje de las ratificaciones de S. E. el Presidente de la República de Bolivia y de S. E. el Jefe Supremo de la República del Perú, del Tratado de comercio y aduanas celebrado entre ambas partes el día de ayer, procedieron á la lectura de los instrumentos originales de dichas ratificaciones y habiéndolos hallado exactos y en buena y debida forma realizaron el canje.

En fe de lo cual los infrascritos han redactado la presente acta, que firman por duplicado.

DANIEL NÚÑEZ DEL PRADO.

AURELIO GARCÍA Y GARCÍA.

NARCISO CAMPERO, Presidente Constitucional de la República.

POR CUANTO: la Convención Nacional ha sancionado la siguiente ley:

La Convención Nacional decreta:

ARTÍCULO 1.º—Apruébase la transacción provisional celebrada Aprobación del Congreso Nacional. por el Gobierno en 7 de Junio último para la abolición del 5% de los derechos aduaneros que reclama el Perú, sin perjuicio de que se negocie un tratado más conveniente en época oportuna, teniéndose en vista las siguientes condiciones:

1.^a Declaratoria expresa de la abolición del derecho del 5% ^{Bases para un} que se cobraba en los puertos del Perú sobre las ^{nuevo tratado.} mercaderías importadas á Bolivia.

2.^a Las Naciones contratantes quedarán libres para gravar los productos naturales ó manufacturados, procedentes de la otra, sin mas limitación que la del gravámen que pese sobre los de la propia Nación.

ART. 2.^o—Queda autorizado el Ejecutivo para otorgar á la Nación peruana, como subsidio de guerra, la parte que crea conveniente del monto de los impuestos que se establezcan sobre los productos de dicha Nación.

ART. 3.^o—Las faltas de forma con que ha sido ajustado el tratado de 7 de Junio último no servirán de precedente en lo sucesivo.

Comuníquese al Poder Ejecutivo para su sanción y cumplimiento.

Sala de sesiones en La Paz á 5 de Agosto de 1881.

M. BAPTISTA.

APOLINAR ARAMAYO

Diputado Strio.

ANTONIO GUERRERO

Diputado Strio.

Por tanto: la promulgó para que se tenga y cumpla como ley de la República.

Casa de Gobierno en La Paz, á los diez días del mes de Agosto de 1881.

NARCISO CAMPERO.

DANIEL N. DEL PRADO.

[Translation.]

Treaty of Commerce and Customs between Bolivia and Peru.

I NARCISO CAMPERO, Constitutional President of Bolivia, whereas a Treaty of Commerce and Customs, the immediate ratification of which is urgent for both nations, was yesterday concluded between the Plenipotentiaries of Bolivia and Peru; and with the obligation of rendering an account to the National Congress at its first session, have come to accept and ratify said treaty, pledging the public faith and national honor to its observance. In faith whereof I sign the present ratification, sealed with the arms of the Republic and countersigned by the Minister of

State in the Office of the Government and Foreign Affairs, at La Paz, on the 8th day of the month of June, 1881.

NARCISO CAMPERO

DANUEL NUÑEZ DEL PRADO.

TREATY.

Met in the Ministry of Foreign Affairs of Bolivia Señor Daniel Nuñez del Prado, Secretary of the Department, and Señor Aurelio Garcia y Garcia, Secretary-General of State of the Supreme Chief, of Peru, fully authorized by their respective Governments in view of the agreement of federation negotiated at Lima, on June 11, 1880, and submitted to the approval of both countries; with the purpose of preparing its execution, have agreed upon the following.

ARTICLE I

In the commercial relations of both states, the free transit of merchandise which may be imported from abroad for Bolivia and for Peru and which may pass through the territory of one of the contracting parties is established.

ARTICLE II

The same privilege of free transit is established for the exportation of the natural or manufactured products of both countries which may proceed abroad.

ARTICLE III

The person who may solicit the entry of merchandise in terrestrial transit by one of the ports of Peru, shall furnish a surety bonded to the satisfaction of the Collector of Customs, to be responsible jointly and severally with the person withdrawing the goods for the value of the duties on the goods contained in the permission if their entry at the point of destination shall not be fulfilled.

ARTICLE IV

Not only in transit but in their consumption the natural and manufactured products which are exported from Peru to Bolivia or vice versa shall be free from every fiscal or municipal tax.

ARTICLE V

Spirits or rums of sugar cane of Peru, sugar cane brandy, and grape brandy which are imported for the consumption of Bolivia

are excepted from the provision of the foregoing article, which products shall pay the following impost as a total fiscal and municipal duty: 50 centavos per gallon on alcohol and 2 bolivianos per quintal of sugar cane or grape brandy which does not exceed 22 degrees.

ARTICLE VI

The duties collected in accordance with the foregoing article shall be divisible in halves between Peru and Bolivia.

ARTICLE VII

The duties above imposed shall commence to govern from the first of next August.

ARTICLE VIII

The respective Governments reserve to themselves the right to dictate the formalities of the transit of goods in order to prevent contraband against the fiscal interests of one nation or the other.

ARTICLE IX

This treaty shall remain in force until what relates to the agreement of federation concluded between the governments of both countries shall be definitely determined by Bolivia and Peru.

In faith whereof they signed the present treaty in duplicate at the City of La Paz on the 7th day of the month of June of the year of our Lord 1881.

DANIEL MUÑEZ DEL PADRO.

AURELIO GARCIA Y GARCIA.

On the 8th day of the month of June, 1881, met at La Paz in the office of the Department of Foreign Affairs of Bolivia, Señor Daniel Muñoz del Padro, Secretary of the Department, Señor Aurelio Garcia y Garcia, Secretary General of State of the Supreme Chief of Peru, sufficiently authorized to affect the exchange of ratifications of his Excellency the President of the Republic of Bolivia and his Excellency the Supreme Chief of the Republic of Peru, of the treaty of commerce and customs, concluded between both parties yesterday, proceeded to the reading of the original instruments of said ratifications and having found them correct and in good and due form, they effected the exchange.

In faith whereof the undersigned have approved the present act which they sign in duplicate.

DANIEL MUÑEZ DEL PADRO,

AURELIO GARCIA Y GARCIA.

I, Narciso Campero, Constitutional President of the Republic, whereas the National Convention has sanctioned the following law, the National Convention decrees:

ARTICLE I

Let the provisional settlement concluded by the Government on the 7th of June ultimo for the abolition of the 5% customs duties which Peru claims be approved without prejudice to the negotiation of a more suitable treaty at a proper time, bearing in mind the following conditions:

1. An express declaration abolishing the duty of 5% which used to be collected in the ports of Peru upon goods imported into Bolivia;

2. The contracting nations shall be free to encumber the natural or manufactured products proceeding from the other without other limitation than that of the tax which is imposed upon them by the nation itself.

ARTICLE II

The executive is authorized to grant to the Peruvian nation as a war subsidy the part which he may deem proper of the amount of the taxes which may be established upon the contracts of said nation.

ARTICLE III

The want of formality with which the treaty of June 7th ultimo was adjusted shall not serve as a precedent in the future.

Let it be communicated to the Executive Power for its sanction and fulfillment. Hall of Sessions, La Paz, August 5, 1881.

M. BAPTISTA.

APOLINAR ARAMAYO, *Deputy Secretary*,

ANTONIO GUERRERO, *Deputy Secretary*,

Therefore, I promulgate it in order that it may be held and observed as a law of the Republic.

House of Government in La Paz, August 10, 1881.

NARCISO CAMPERO

DANIEL NUÑEZ DEL PRADO.

CHILE-SPAIN.

Tratado de paz y amistad entre la República de Chile y su Majestad la Reina de España.^u

[Taken from Recopilación de Tratados y Convenciones; A. Basconan Mortes; Tomo Primero.]

MANUEL BULNES, PRESIDENTE DE LA REPÚBLICA DE CHILE,
ETC., ETC.

Por cuanto un Tratado de amistad entre la República de Chile y Su Majestad la Reina de España, ha sido estipulado y firmado por sus respectivos Plenipotenciarios en la Corte de Madrid, el día 25 de Abril de 1844, el cual Tratado es literalmente como sigue:

Firmado el 25 de
Abril de 1844.
Canjeado el 27 de
Septiembre de 1845.
Promulgado el 1.º
de Julio de 1846.

En el nombre de Dios, Autor y Legislador del Universo.

La República Chilena, de una parte, y de la otra Su Majestad Doña Isabel Segunda, por la gracia de Dios y por la Constitución de la Monarquía Española, Reina de las Españas; deseando poner término á la incomunicación de los habitantes de los dos países y restablecer entre ellos la antigua armonía y fraternidad que tanto conviene á dos pueblos de un mismo origen, han determinado celebrar un Tratado de paz y amistad que asegure para siempre los estrechos lazos que mutuamente deben unir en lo sucesivo á los ciudadanos chilenos con los súbditos españoles; y al efecto:

Han nombrado y constituido por sus Plenipotenciarios, á saber: Su Excelencia el Presidente de la República Chilena, al General de ella don José Manuel Borgoño, y Su Majestad Católica, á Don Luis González Bravo, Gran Cordón de la Legión de Honor, de la Real y Militar Orden de San Fernando, Diputado á Cortes por la Provincia de Jaén, Presidente del Consejo de Ministros, Ministro de Estado y Socio de mérito de varias sociedades científicas etc., etc., quienes, después de haberse comunicado sus plenos poderes y de haberlos hallado en debida forma, han convenido en los artículos siguientes:

(a) Las disposiciones de este Tratado, á causa de la guerra que España promovió á Chile el año 1865, caducaron en cuanto á la paz y á la amistad, que fueron reanudadas por el Tratado hecho en Lima el 12 de Junio de 1883, entre los Plenipotenciarios Novoa y Vallés.

Bol. tom. 14, pág. 150.—L. 1.º Jul. 1846.

ARTÍCULO PRIMERO. Su Majestad Católica, usando de la facultad que le compete por decreto de las Cortes Generales del Reino, de 4 de Diciembre de 1836, reconoce como Nación libre, soberana é independiente á la República de Chile, compuesta de los países especificados en su Ley Constitucional, á saber: todo el territorio que se extiende desde el Desierto de Atacama hasta el Cabo de Hornos, y desde la cordillera de los Andes hasta el mar Pacífico, con el archipiélago de Chiloé y las islas adyacentes á la costa de Chile. Y Su Majestad renuncia, tanto por sí como por sus herederos y sucesores, á toda pretensión al gobierno, dominio y soberanía de dichos países.

ART. 2º. Aunque en el territorio chileno no hay caso de que exista ningún súbdito español preso, procesado ó condenado por el partido político que hubiese seguido durante la guerra de la Independencia é interrupción de relaciones de los dos países, todavía, como medida de precaución, las Partes Contratantes estipulan y prometen solemnemente que habrá total olvido de lo pasado, y una amnistía general y completa para todos los chilenos y españoles, sin excepción alguna, que puedan hallarse expulsados, ausentes, desterrados, ocultos ó que por acaso estuviesen presos ó confinados sin conocimiento de los respectivos Gobiernos, cualquiera que sea el partido que hubiesen seguido durante las guerras y disenciones felizmente terminadas por el presente Tratado, en todo el tiempo de ellas y hasta la ratificación del mismo.

Y esta amnistía se estipula y ha de darse por la alta interposición de Su Majestad Católica en prueba del deseo que la anima de que se cimenten sobre principios de justicia y beneficencia la estrecha amistad, paz y unión que desde ahora en adelante y para siempre han de conservarse entre los ciudadanos de la República de Chile y los súbditos españoles.

ART. 3º. La República de Chile y Su Majestad Católica se convienen en que los ciudadanos y súbditos respectivos de ambos países conserven expedidos y libres sus derechos para reclamar y obtener justicia y plena satisfacción de las deudas *bona fide*, contraídas entre sí; así como también en que no se les oponga por parte de la autoridad pública ningún obstáculo legal en los derechos que puedan alegar por razón de matrimonio, herencia por testamento ó abintestato, sucesión ó cualquiera otro de los

Reconocimiento de la libertad, soberanía é independencia de la República de Chile.

Amnistía general.

Los particulares conservan sus derechos para reclamar y obtener justicia etc., etc.

títulos de adquisición reconocidos por las leyes del país en que haya lugar á la reclamación.

ART. 4°. En atención á que la República Chilena, por la ley de 17 de Noviembre de 1835, ha reconocido voluntaria y espontáneamente como deudas de la Nación las contraídas por el Gobierno Chileno durante la guerra, y las contraídas por el Gobierno y autoridades españolas en Chile, y las contraídas por el Gobierno Chileno antes y después del 18 de Septiembre de 1810, estableciendo reglas generales para su pago, las disposiciones de la referida ley se considerarán como parte de este Tratado.

ART. 5°. El reconocimiento de todos los créditos que procedan de embargos ó secuestros hechos en Chile, se fijará en una ley de consolidación de estos mismos créditos, que dará el Congreso Nacional de esta República, según lo prometido en el artículo 4°. de la ley de deuda interior de la misma; y Su Majestad Católica se obliga á hacer igual reconocimiento y arreglo respecto de los créditos de la misma especie que pertenezcan á ciudadanos chilenos en España.

ART. 6°. Los ciudadanos chilenos ó súbditos españoles, ya se hallen establecidos en las provincias de ultramar ó en otra parte, que á virtud de lo dispuesto en los dos artículos anteriores, tengan alguna reclamación de bienes que hacer ante uno ú otro Gobierno, la presentarán en el término de cuatro años, contados desde el día de la ratificación del presente Tratado, acompañando una relación sucinta de los hechos, apoyada en documentos fehacientes que justifiquen la legitimidad de la demanda. Bien entendido que terminados dichos cuatro años no se admitirán nuevas reclamaciones de esta clase bajo pretexto alguno.

Sin embargo, si la ley á que se refiere el artículo 5° no se hubiere promulgado antes de la ratificación del presente Tratado, el dicho plazo de cuatro años, relativamente á los créditos de que se trata en el expresado artículo, principiará á correr desde la fecha de la promulgación de la ley. Y las reclamaciones que se hagan en la forma que prescribe este artículo antes de la promulgación de la ley y después de ratificado el Tratado, se considerarán hechas dentro del plazo establecido.

ART. 7°. Como la identidad de origen de unos y otros habitantes, y la no lejana separación de los dos países, pueden ser causa de enojosas disensiones en la aplicación de lo hasta aquí estipulado entre Chile y

Se entiende incorporada en este Tratado la ley chilena de 17 de Noviembre de 1835.

Reconocimiento de los créditos procedentes de embargos ó secuestros.

Término para interponer los reclamos de los particulares.

Calificación de los ciudadanos chilenos y súbditos españoles.

España consienten las Partes Contratantes: primero, en que sean tenidos y considerados en la República de Chile como súbditos españoles los nacidos en los actuales dominios de España y sus hijos, con tal que estos últimos no sean naturales del territorio chileno; y se tengan y respeten en los dominios españoles como ciudadanos de la República de Chile, los nacidos en los Estados de dicha República y sus hijos, con tal que estos últimos no sean naturales de los actuales dominios de España.

ART. 8°. Los ciudadanos de la República de Chile y los súbditos de Su Majestad Católica podrán establecerse en lo venidero en los dominios de una ú otra Parte Contratante, ejercer sus oficios y profesiones libremente; poseer, comprar y vender toda especie de bienes y propiedades muebles é inmuebles; extraer del país sus valores íntegramente y disponer de ellos, y suceder en los mismos por testamento ó abintestato, todo en los mismos términos y bajo de iguales condiciones y adeudos que usan y usasen los extranjeros de la nación más favorecida.

ART. 9°. Los ciudadanos chilenos no estarán sujetos en España, ni los españoles en el territorio de Chile, al servicio del ejército ó armada, ni al de la milicia nacional; estarán exentos igualmente del pago de toda carga, contribución extraordinaria ó préstamo forzoso, y en los impuestos ordinarios que satisfagan por razón de su industria, comercio ó propiedades, serán tratados como los súbditos de la nación más favorecida.

ART. 10. Las Partes Contratantes se convienen en hacerse mutuamente extensivos los favores que en punto á comercio y navegación se han estipulado, ó en lo sucesivo se estipularen con otra cualquiera nación; y estos favores se gozarán gratuitamente, si la concesión hubiese sido gratuita, y en otro caso, con las mismas condiciones con que se hubiese estipulado.

Hasta tanto que las Partes Contratantes celebren un Tratado de comercio y navegación, el comercio y navegación de sus respectivos ciudadanos y súbditos se pondrá en los respectivos Estados bajo el pie de una completa reciprocidad, tomando por base el trato y beneficio que se dispense en uno y otro dominio á las naciones más favorecidas.

ART. 11. El Gobierno de Chile y Su Majestad Católica nombrarán; según lo tuvieren por conveniente, Agentes Diplomáticos y Consulares el uno en los dominios del

Libertad para comerciar, adquirir, etc.

Exención del servicio militar y contribuciones extraordinarias.

Tratamiento de la nación más favorecida, en cuanto á navegación y comercio.

Agentes Diplomáticos y Consulares.

otro; y acreditados y reconocidos que sean tales Agentes Diplomáticos y Consulares por el Gobierno cerca del cual residan ó en cuyo territorio ejerzan sus funciones, disfrutarán de las franquicias, privilegios é inmunidades de que se hallen en posesión los de igual clase de la nación más favorecida, y de las que se estipularen en el Tratado de comercio que ha de celebrarse entre las Partes Contratantes.

ART. 12. Deseando la República de Chile y Su Majestad Católica conservar la paz y buena armonía que felizmente Formalidades previas á la declaración de guerra. acaban de restablecer por el presente Tratado, declaran solemne y formalmente:

Que si (lo que Dios no permita) se interrumpiese la buena armonía que debe reinar en lo venidero entre las Partes Contratantes, por falta de inteligencia de los artículos aquí convenidos, ó por otro motivo cualquiera de agravio ó queja, ninguna de las Partes podrá autorizar actos de represalia ú hostilidad por mar ó tierra, sin haber presentado antes á la otra una memoria justificativa de los motivos en que funde la injuria ó agravio, y denegándose la correspondiente satisfacción.

ART. 13. Todas las materias que no son objeto de convenio Negociaciones futuras. explícitamente formulado en este Tratado, podrán serlo de negociaciones entre las dos Potencias Contratantes.

ART. 14. El presente Tratado, según se halla extendido en Ratificación y canje. catorce artículos, será ratificado y los instrumentos de ratificación se canjearán en esta Corte dentro del término de dos años.

En fe de lo cual, nos, los infrascritos Ministros Plenipotenciarios de la República de Chile y de Su Majestad Católica, lo hemos firmado por triplicado y sellado con nuestros respectivos sellos particulares, en Madrid, á veinticinco días del mes de Abril de mil ochocientos cuarenta y cuatro.

[L. s.] JOSÉ MANUEL BORGÑO

[L. s.] LUIS GONZÁLEZ BRAVO

Y por cuanto dicho Tratado ha sido ratificado por mí, previa la Promulgación. aprobación del Congreso Nacional, y las respectivas ratificaciones fueron canjeadas en Madrid á veintiséis de Septiembre de mil ochocientos cuarenta y cinco, entre Don José María Sessé, Encargado de Negocios de esta República cerca de Su Majestad Católica, y el Señor Don Francisco Martínez de la Rosa, primer Secretario del Despacho de Estado en aquel Reino;

por tanto, en virtud de las facultades que me confiere la Constitución de la República, dispongo que se cumpla y lleve á efecto en todas sus partes el Tratado preinserto, por todas las autoridades y ciudadanos de la República, para cuyo conocimiento se publicará en el periódico oficial.

Dado en la Sala de Gobierno, en Santiago de Chile, á primero de Julio del año de Nuestro Señor mil ochocientos cuarenta y seis, firmado de mi mano, sellado con el sello de las armas de la República y refrendado por el infrascrito Ministro de Relaciones Exteriores.

MANUEL BULNES

MANUEL MONTT

Treaty of Peace, Friendship, and Recognition, between Spain and Chile. Signed at Madrid, April 25, 1844.

(Ratifications exchanged at Madrid, September 26, 1845.)

[Translation.]

In the name of God, the Creator and Legislator of the Universe. The Chilean Republic, on the one part, and Her Majesty Doña Isabella the Second, by the grace of God and by the Constitution of the Spanish Monarchy, Queen of the Spains, on the other part, being desirous of putting an end to the state of non-intercourse between the inhabitants of the two countries, and of re-establishing between them that ancient harmony and fraternity so befitting two peoples having one and the same origin, have determined to conclude a Treaty of Peace and Friendship which shall, for ever, secure those intimate ties which ought henceforth mutually to unite the citizens of Chile with the subjects of Spain; and for this purpose they have named and constituted as their Plenipotentiaries, that is to say, his Excellency the President of the Chilean Republic. General Don Jose Manuel Borgoño, and Her Catholic Majesty, Don Luis Gonzalez Bravo, Grand Cross of the Legion of Honour, of the Royal and Military Order of San Fernando, Deputy to the Cortes for the Province of Jaen, President of the Council of Ministers, Minister of State and Member of various Scientific Societies, &c., who, after having communicated to each other their Full Powers, and found the same to be in due form, have agreed upon the following Articles:

ART. I. Her Catholic Majesty, exercising the power with which she is invested by the Decree of the General Cortes of the Kingdom, of the 4th of December, 1836, recognizes as a free, sovereign,

and independent nation, the Republic of Chile, the same being composed of the countries specified in its constitutional law, namely, all the territory which extends from the Desert of Atacama as far as Cape Horn, and from the Chain of the Andes to the Pacific Ocean with the Archipelago of Chiloe and the islands adjacent to the coast of Chile. And Her Majesty renounces both for herself, her heirs and successors, all pretension to the government, dominion, and sovereignty of the said countries.

ART. II. Although there is no instance of any Spanish subject being apprehended, prosecuted, or condemned in the Chilean territory, on account of the political part he may have taken during the war of independence and the interruption of the relations of the two countries; nevertheless, as a means of precaution, the Contracting Parties solemnly stipulate and promise that there shall be a total oblivion of the past, and a general and complete amnesty for all Chileans and Spaniards, without any exception whatsoever, who may have been expelled or banished, who are absent or concealed, or who may, perchance, have been imprisoned without the knowledge of their respective Governments, whatever may have been the part taken by them in the wars and dissensions happily put a stop to by the present Treaty, during the entire continuance of the said wars, and up to the ratification thereof.

And this amnesty is stipulated and granted through the distinguished intervention of Her Catholic Majesty as a proof of the desire with which she is animated that the strict friendship, peace, and union which henceforth and for evermore is to be preserved between the citizens of the Republic of Chile and the subjects of Spain may be cemented upon principles of justice and benevolence.

ART. III. The Republic of Chile and Her Catholic Majesty agree that the respective citizens and subjects of both countries shall preserve unmolested and free their rights for claiming and obtaining justice, as well as full satisfaction, for the debts *bona fide* contracted between them, moreover, that no legal obstacle shall on the part of the public Authorities be opposed to the rights to which they may lay claim by reason by marriage, inheritance, will, *ab intestato*, succession, or any other titles by which property may be acquired, conformably with the law of the country in which the claim shall be made.

ART. IV. In consideration of the Chilean Republic having, by the Law of the 17th of November, 1835, acknowledged, voluntarily and spontaneously, as the debt of the nation, the debts contracted

by the Chilean Government during the war, those contracted by the Government and Spanish authorities in Chile, as well as those contracted by the Chilean Government before and after the 18th of September, 1810, establishing general arrangements for the payment thereof; the provisions of the above-mentioned law shall be considered as part of this Treaty.

ART. V. The recognition of all pecuniary claims arising out of embargoes and sequestrations made in Chile, shall be inserted in an act of consolidation of these same claims, which shall be passed by the National Congress of that Republic, according to the promise contained in Article IV of the Law of the Home Debt of the same; and Her Catholic Majesty engages to make a similar recognition and arrangement as regards the pecuniary claims of the same description which belong to Chilean citizens in Spain.

ART. VI. Chilean citizens or Spanish subjects, who are already established in the ultramarine provinces or elsewhere, and who, by virtue of the dispositions contained in the two preceding Articles, have any pecuniary claims to advance against either Government, shall present the same within the term of four years, reckoned from the day of the ratification of the present Treaty, accompanied by a succinct account of the facts, confirmed by trustworthy documents, which shall establish the justice of the claim. It must be well understood that after the termination of the said four years, no new claims of this description will, under any pretext whatsoever, be admitted. Should the law, however, which is referred to in Article V, not have been promulgated before the ratification of the present Treaty, the said term of four years, relative to the pecuniary claims treated of in the said Article, shall then commence to run from the date of the promulgation of the law, and the claims which may have been made agreeably to the form prescribed by that Article, before the promulgation of the law, but after the ratification of the Treaty, shall be considered as having been made within the appointed term.

ART. VII. As the identity of origin of both Chilean citizens and Spanish subjects, and the comparatively recent separation of the two countries may be the cause of vexatious dissensions, in the application of what has, up to the present time, been stipulated between Chile and Spain, the Contracting Parties agree: 1st, that in the Republic of Chile, such persons shall be considered as Spanish subjects as have been born in the present dominions of Spain, and their children shall also be regarded as such, provided they be not natives of the Chilean territory; and that in the Spanish

dominions, all persons born within the States of the said Republic shall be held and respected as citizens of the Republic of Chile, the same rule being applicable to their children, provided they be not natives of the present dominions of Spain.

ART. VIII. The citizens of the Republic of Chile and the subjects of Her Catholic Majesty are at liberty to establish themselves, in future, in the dominions of either of the Contracting Parties, freely to exercise therein their occupations and professions; they may possess, buy and sell every description of property, movable and immovable; they may draw the whole of their property out of the country, and dispose of the same, and may acquire property either by will or *ab intestato*, precisely upon the same terms and under similar conditions and obligations as are wont to be observed by foreigners belonging to the most favoured nation.

ART. IX. Neither Chilean citizens in Spain, nor Spaniards in the territory of Chile, shall be liable to serve either in the army, navy, or of national militia; they shall be equally exempted from the payment of any tax, extraordinary contribution, or forced loan, and as regards the ordinary imposts which they are liable to pay on account of their trade, commerce or property, they shall be treated as subjects of the most favoured nation.

ART. X. The Contracting Parties agree to extend to each other reciprocally the favours which have been, or shall hereafter be, stipulated with any other nation, which favours shall be enjoyed gratuitously, should the concession thereof have been gratuitous, or in the contrary case, with the same conditions as shall have been agreed upon.

Until the Contracting Parties conclude a Treaty of Commerce and Navigation the relations of their respective citizens and subjects shall be placed, in the respective States, upon a footing of complete reciprocity, adopting as a basis the treatment and advantages granted in both dominions to the most favoured nations.

ART. XI. The Government of Chile and Her Catholic Majesty may each appoint, as they may deem convenient, Diplomatic and Consular Agents, in the dominions of the other; and as soon as such Diplomatic and Consular Agents shall be accredited to and recognized by, the Government at which they reside, or in whose territory they exercise their functions, they shall enjoy the same exemptions, privileges, and immunities as are possessed by those of the same class belonging to the most favoured nation, as well as the advantages which shall be stipulated in the Treaty of Commerce about to be concluded between the Contracting Parties.

ART. XII. The Republic of Chile and Her Catholic Majesty being desirous of preserving the peace and good harmony so happily re-established by the present Treaty, solemnly and formally declare:

That if (which God forbid!) the good understanding which ought in future to exist between the Contracting Parties, should be interrupted in consequence of any misconception of the Articles here agreed upon, or on account of any other cause of injury or complaint, neither of the Parties shall authorize acts of reprisals or hostility by land or sea, without having previously laid before the other a minute explaining the grounds upon which the injury or complaint is founded, and been refused the satisfaction which is due.

ART. XIII. All matters which are not the subjects of agreement explicitly provided for in this Treaty, may be made the subject of negotiations between the two Contracting Powers.

ART. XIV. The present Treaty, which is extended to fourteen Articles, shall be ratified, and the ratifications thereof exchanged at this Court within the term of two years.

In faith of which, we, the Undersigned Ministers Plenipotentiary of the Republic of Chile, and of Her Catholic Majesty, have signed it in triplicate, and sealed the same with our respective private seals, at Madrid, on the 25th April, 1844.

[L. S.] JOSE MANUEL BORGÑO.

[L. S.] LUIS GONZALEZ BRAVO.

[Proclamation omitted.] .

CHILE-BOLIVIA.

Tratado de límites entre Chile y Bolivia.^a

[Taken from *Recopilacion de Tratados y Convenciones*; A. Bascanan Montes; Tomo segundo.]

JOSÉ JOAQUÍN PÉREZ, Presidente de la República de Chile.

Por cuanto entre la República de Chile y la República de Bolivia se negoció, concluyó y firmó un Tratado de límites el día diez de Agosto del presente año, por medio de Plenipotenciarios competentemente autorizados al efecto, y por cuanto se ha levantado y firmado con fecha veinticinco del mismo mes una

Firmado el 10 de Agosto de 1866.
Canjeado el 9 de Diciembre de 1866.
Promulgado el 13 de Diciembre de 1866.

^a Véanse los Tratados que ambos países suscribieron el 6 de Agosto de 1874 y el 21 de Julio de 1875.

Bol. tom. 34, pág. 434.—L. 13 Dic. 1866.

Acta adicional al Tratado referido; los cuales Tratado y Acta adicional son, á la letra, como sigue:

La República de Chile y la República de Bolivia, deseosas de poner término amigable y recíprocamente satisfactorio á la antigua cuestión pendiente entre ellas sobre la fijación de sus respectivos límites territoriales en el desierto de Atacama y sobre la explotación de los depósitos de guano existentes en el litoral del mismo desierto, y decididas á consolidar por este medio la buena inteligencia, la fraternal amistad y los vínculos de alianza íntima que las ligan mutuamente, han determinado renunciar á una parte de los derechos territoriales que cada una de ellas, fundada en buenos títulos, cree poseer, y han acordado celebrar un Tratado que zanje definitiva é irrevocablemente la mencionada cuestión.

Al afecto han nombrado sus respectivos Plenipotenciarios, á saber:

S. E. el Presidente de la República de Chile, al Señor Don Álvaro Covarrubias, Ministro de Estado en el Departamento de Relaciones Exteriores de la misma República; y

S. E. el Presidente de la República de Bolivia, al Señor Don Juan Ramón Muñoz Cabrera, Enviado Extraordinario y Ministro Plenipotenciario de Bolivia en Chile;

Los cuales Plenipotenciarios, después de haber canjeado mutuamente sus plenos poderes y encontrádoslos en buena y debida forma, han acordado y estipulado los artículos siguientes, á saber:

ART. 1.º. La línea de demarcación de los límites entre Chile y Bolivia en el desierto de Atacama, será en adelante el paralelo 24 de latitud meridional, desde el litoral del Pacífico hasta los límites orientales de Chile; de suerte que Chile por el sur y Bolivia por el norte tendrán la posesión y dominio de los territorios que se extienden hasta el mencionado paralelo 24, pudiendo ejercer en ellos todos los actos de jurisdicción y soberanía correspondientes al señor del suelo.

La fijación exacta de la línea de demarcación entre los dos países se hará por una comisión de personas idóneas y peritas, la mitad de cuyos miembros será nombrada por cada una de las Altas Partes Contratantes.

Fijada la línea divisoria, se marcará en el terreno por medio de señales visibles y permanentes, las cuales serán costeadas á prorrata por los Gobiernos de Chile y de Bolivia.

Objeto.

Plenipotenciarios.

Línea de demarcación entre Chile y Bolivia.

Modo de fijar dicha línea.

Demarcación visible y permanente de la línea.

ART. 2°. No obstante la división territorial estipulada en el artículo anterior, la República de Chile y la República de Bolivia se repartirán por mitad los productos provenientes de la explotación de los depósitos de guano descubiertos en Mejillones y de los demás depósitos del mismo abono que se descubrieren en el territorio comprendido entre los grados 23 y 25 de latitud meridional, como también los derechos de exportación que se perciban sobre los minerales extraídos del mismo espacio de territorio que acaba de designarse.

ART. 3°. La República de Bolivia se obliga á habilitar la bahía y puerto de Mejillones, estableciendo en aquel punto una aduana con el número de empleados que exija el desarrollo de la industria y del comercio. Esta aduana será la única oficina fiscal que pueda percibir los productos del guano y los derechos de exportación de metales de que trata el artículo precedente.

El Gobierno de Chile podrá nombrar uno ó más empleados fiscales que, investidos de un perfecto derecho de vigilancia, intervengan en las cuentas de las entradas de la referida aduana de Mejillones y perciban de la misma oficina, directamente y por trimestres, ó de la manera que se estipulare por ambos Estados, la parte de beneficios correspondiente á Chile á que se refiere el citado artículo 2°.

La misma facultad tendrá el Gobierno de Bolivia, siempre que el de Chile, para la recaudación y percepción de los productos de que habla el artículo anterior, estableciere alguna oficina fiscal en el territorio comprendido entre los grados 24 y 25.

ART. 4°. Serán libres de todo derecho de exportación los productos del territorio comprendido entre los grados 24 y 25 de latitud meridional que se extraigan por el puerto de Mejillones.

Serán libres de todo derecho de importación los productos naturales de Chile que se introduzcan por el puerto de Mejillones.

ART. 5°. El sistema de explotación ó venta del guano, y los derechos de exportación sobre los minerales de que trata el artículo 2° de este Pacto, serán determinados de común acuerdo por las Altas Partes Contratantes, ya por medio de convenciones especiales, ó en la forma que estimaren más conveniente y expedita.

Reparto por mitad del producto de la explotación del guano descubierta ó que se descubriere entre los grados 23 y 25.

Id. de los derechos de exportación de minerales extraídos de la misma zona.

Habilitación de la bahía y puerto de Mejillones.

Nombramiento de interventores.

Productos declarados libres de derechos de exportación y de importación.

Modo de fijar el sistema de explotación ó venta del guano y de los derechos de exportación de minerales.

ART. 6º. Las Repúblicas contratantes se obligan á no enajenar sus derechos á la posesión ó dominio del territorio que se dividen entre sí por el presente Tratado, á favor de otro Estado, sociedad ó individuo particular.

Prohibición de enajenar sus derechos al territorio de participación común.

En el caso de desear alguna de ellas hacer tal enajenación, el comprador no podrá ser sino la otra Parte Contratante.

ART. 7º. En atención á los perjuicios que la cuestión de límites entre Chile y Bolivia ha irrogado, según es notorio, á los individuos que, asociados, fueron los primeros en explotar seriamente las guaneras de Mejillones, y cuyos trabajos de explotación fueron suspendidos por disposición de las autoridades de Chile en 17 de Febrero de 1863, las Altas Partes Contratantes se comprometen á dar, por equidad, á los expresados individuos una indemnización de ochenta mil pesos, pagadera con el diez por ciento de los productos líquidos de la aduana de Mejillones.

Indemnización á los primeros explotadores de las guaneras de Mejillones.

ART. 8º. El presente Tratado será ratificado, y sus ratificaciones canjeadas en la ciudad de la Paz ó en la de Santiago, dentro del término de cuarenta días ó antes si fuere posible.

Plazo y lugar para el canje de las ratificaciones.

En testimonio de lo cual los infrascritos Plenipotenciarios de la República de Chile y de la República de Bolivia han firmado el presente Tratado y puéstole sus respectivos sellos en Santiago, á los diez días del mes de Agosto del año de Nuestro Señor de mil ochocientos sesenta seis.

[L. S.] ÁLVARO COVARRUBIAS

[L. S.] JUAN R. MUÑOZ CABRERA

Acta Adicional al Tratado de Límites Entre Chile y Bolivia de 10 de Agosto de 1866

Habiéndose previsto que el plazo de cuarenta días fijado en el artículo 8º del Tratado de límites entre Chile y Bolivia, firmado en Santiago el 10 del presente mes, para el canje de las ratificaciones del mismo Tratado, puede llegar á ser insuficiente, los infrascritos Plenipotenciarios de Chile y de Bolivia han convenido en ampliar el plazo mencionado hasta el término de cuatro meses, contados desde el día en que se firmó el Tratado referido.

En fe de lo cual han levantado la presente Acta, que deberá agregarse al Tratado de límites, y la han firmado y sellado con sus

respectivos sellos en Santiago, á veinticinco días del mes de Agosto de mil ochocientos sesenta y seis.

[L. S.] JUAN R. MUÑOZ CABRERA

[L. S.] ÁLVARO COVARRUBIAS

Y por cuanto el Tratado y Acta preinsertos han sido ratificados por mí, previa la aprobación del Congreso Nacional, y las respectivas ratificaciones se han canjeado en Santiago con fecha 9 del presente mes, entre Don Federico Errázuriz, Ministro de Estado en los Departamentos de Guerra y Marina, encargado accidentalmente del de Relaciones Exteriores, y el Señor Don Juan Ramón Muñoz Cabrera, Enviado Extraordinario y Ministro Plenipotenciario de Bolivia;

Por tanto, en virtud de la facultad que me confiere la Constitución Política del Estado, dispongo que el Tratado preinserto se cumpla y lleve á efecto en todas sus partes como ley de la República.

Dado en la Sala de mi Despacho, en Santiago, á trece días del mes de Diciembre del año de Nuestro Señor mil ochocientos sesenta y seis.

JOSÉ JOAQUÍN PÉREZ

FEDERICO ERRÁZURIZ

Treaty of Territorial Limits between Chile and Bolivia. Signed at Santiago, August 10, 1866.

[Translation.]

The Republic of Chile and the Republic of Bolivia, desirous of bringing to a friendly and mutually satisfactory termination, the old question pending between them as to the settlement of their respective territorial limits in the desert of Atacama, and as to the working of the guano deposits on the coast of that desert, and resolved by this means to consolidate the good understanding, brotherly friendship, and the bonds of intimate alliance by which they are mutually united, have determined to renounce a part of the territorial rights which each, with good reason, believes itself to possess, and they have agreed to conclude a Treaty, which shall finally and irrevocably settle the aforesaid question.

For that purpose they have appointed their respective Plenipotentiaries, viz.:

His Excellency the President of Chile, Señor Don Alvaro Covarrubias, Minister of State of the Republic for Foreign Affairs.

His Excellency the President of the Republic of Bolivia, Señor Don Juan Ramon Muñoz Cabrera, Envoy Extraordinary and Minister Plenipotentiary of Bolivia in Chile.

Which Plenipotentiaries, after having mutually exchanged their full powers and found them in due and proper form, have agreed upon and stipulated the following Articles:

ART. I. The line of demarcation of the limits between Chile and Bolivia, in the desert of Atacama, shall henceforth be the parallel of 24° south latitude, from the coast of the Pacific to the eastern limits of Chile, so that Chile to the south and Bolivia to the north shall have possession and dominion of the territories which extend to the before-mentioned parallel of 24°, exercising in them all the acts of jurisdiction and sovereignty which belong to the lord of the soil.

The exact settlement of the line of demarcation between the two countries shall be effected by a commission of apt and skillful persons, one half of the members to be appointed by each of the High Contracting Parties.

When the divisional line is fixed the ground shall be marked by visible and permanent signs, which shall be paid for jointly by the Governments of Chile and Bolivia.

ART. II. Notwithstanding the territorial division stipulated in the foregoing Article, the Republic of Chile and the Republic of Bolivia shall divide equally the produce of the guano deposits discovered in Mejillones, and any other deposits of the same kind which may be discovered in the territory comprehended within the 23rd and 25th degrees of south latitude, as also the export duties upon minerals exported from the space of territory now designated.

ART. III. The Republic of Bolivia undertakes to qualify the Bay and Port of Mejillones, and to establish a Custom-House with the number of officials which the development of industry and commerce may require. This Custom-House shall be the only fiscal office which can collect the produce of the guano and the duties of exportation upon the metals of which the foregoing Article treats.

The Government of Chile may appoint one or more fiscal officers, who being invested with a perfect right of supervision, may intervene in the accounts of the revenue of the aforesaid Custom-House at Mejillones, and receive from that office, directly, and quarterly, or in the manner which both States may stipulate, the part of the profit belonging to Chile, to which Article II refers. The Government of Bolivia shall enjoy the same right, should Chile, for the

purpose of collecting the produce set forth in the foregoing Article, establish a fiscal office in the territory comprehended between the 24th and 25th degrees.

ART. IV. The produce of the territory comprehended between the 24th and 25th degrees of south latitude, which may be shipped at the port of Mejillones, shall be free of every export duty.

The natural products of Chile which are introduced at the port of Mejillones shall be free of every import duty.

ART. V. The system of working or sale of the guano, and the export duties on the minerals mentioned in Article II of this Treaty shall be mutually fixed by the High Contracting Parties, either by means of special Conventions, or in the form which they may deem most convenient and fitting.

ART. VI. The Contracting Republics bind themselves not to sell or transfer their rights to the possession or dominion of the territory which is divided between them, in virtue of this Treaty, to any other State, or to any Company or private individual. In case either of them should desire to make such sale the purchaser can only be the other Contracting Party.

ART. VII. Taking into consideration the losses which the question of limits has entailed, as is notorious, upon the individuals who, in company, were the first to work seriously the guano fields of Mejillones, and whose works were suspended by order of the Chilean authorities, on February 17, 1863, the High Contracting Parties undertake to give in equity to the said individuals an indemnity of 80,000 pesos, payable by 10 per cent. of the net proceeds of the Mejillones Custom-House.

ART. VIII. The present Treaty shall be ratified, and the ratifications exchanged in the city of La Paz or in that of Santiago, within the period of 40 days, or sooner if possible.

In witness whereof the undersigned Plenipotentiaries of the Republic of Chile and of the Republic of Bolivia, have signed and sealed the present Treaty, in Santiago the 10th of August, in the year of our Lord 1866.

[L. S.] ALVARO COVARRUBIAS.

[L. S.] J. RAMON MUNOZ CABRERA.

And whereas the treaty and minute above inserted have been ratified by me, having first been approved by the National Congress, and the respective ratifications have been exchanged in Santiago under date of the 9th of the present month, between Don Federico Errázuriz, Minister of State in the Departments of War

and Marine, temporarily in charge of the Department of Foreign Relations, and Sr. Don Juan Ramón Muñoz Cabrera, Envoy Extraordinary and Minister Plenipotentiary of Bolivia;

Therefore, by virtue of the authority which the political constitution of the State confers upon me, I order that the treaty above inserted shall be fulfilled, and put into effect in all its parts as a law of the Republic.

Done in the Chambers of my Office on the 13th day of the month of December of the year of our Lord 1876.

JOSE JOAQUIN PEREZ.
FEDERICO ERRAZURIZ.

Tretado de paz y amistad.

[Taken from anex of á la Memoria presentada por el Ministro de Relaciones Exteriores (1908), 102.]

ISMAEL MONTES, Presidente Constitucional de Bolivia.

Por cuanto: Entre la República de Bolivia y la de Chile, se concluyó y firmó el día 20 de Octubre de mil novecientos cuatro años, en la ciudad de Santiago, un Tratado de Paz y Amistad y un Protocolo complementario del mismo, en los siguientes términos:

En ejecución del propósito consignado en el Artículo 8.º del Pacto de Tregua de 4 de Abril de 1884, la República de Bolivia y la República de Chile han acordado celebrar un Tratado de Paz y Amistad y al efecto han nombrado y constituido por sus Plenipotenciarios, á saber:

Su Excelencia el Presidente de la República de Bolivia, á don Alberto Gutiérrez, Enviado Extraordinario y Ministro Plenipotenciario de Bolivia en Chile, y su Excelencia el Presidente de la República de Chile, á don Emilio Bello Codesido, Ministro de Relaciones Exteriores;

Quienes, después de haber canjeado sus Plenos Poderes y habiéndolos hallado en buena y debida forma, han convenido en lo siguiente:

ARTÍCULO 1.º

Restablécense las relaciones de Paz y Amistad entre la República de Bolivia y la República de Chile, terminando, en consecuencia, el régimen establecido por el Pacto de Tregua.

ART. 2.º

Por el presente Tratado quedan reconocidos del dominio absoluto y perpétuo de Chile los territorios ocupados por éste en virtud del Artículo 2.º del Pacto de Tregua de 4 de Abril de 1884.

El límite de Sur á Norte entre Bolivia y Chile, será el que se expresa á continuación:

De la cumbre más alta del cerro Zapaleri (1) en línea recta á la cumbre más alta (2) del cordón desprendido hacia sur el del cerro Guayaques, en la latitud aproximada de veintidos grados cincuenta y cuatro minutos ($22^{\circ}54'$), de aquí otra recta al portezuelo del Cajón (3), y en seguida la divisoria de aguas del cordón que corre hacia el Norte por las cumbres del serro Juriques (4), volcán Licancábur (5), cerros Sairecabur (6) y Curiquinca (7) y volcán Putana ó Jorjencal (8). De este punto seguirá por uno de sus contrafuertes en dirección al cerro del Pajonal (9), y en línea recta á la cumbre Sur de los cerros de Tocorpuri (10), desde donde seguirá nuevamente por la divisoria de las aguas del cordón del Panizo (11) y cordillera del Tatio (12). Seguirá siempre al Norte por la divisoria de las aguas del cordón de Línzor (13) y de los cerros de Silaguala (14); desde cuya cumbre Norte (Volcán Apagado) (15) irá por un contrafuerte al cerrito de Silala (16) y después en línea recta al cerro de Inacaliri ó del Cajón (17).

Desde este punto irá en línea recta á la cumbre que aparece en el centro en el grupo de cerros del Inca ó Barrancane (18) y tomando nuevamente la divisoria de las aguas seguirá hácia el Norte por el cordón del cerro de Ascotán ó del Jardín (19); desde la cumbre de este cerro irá en línea recta á la cumbre del cerro Araral (20), y por otra recta á la cumbre del volcán Ollagüe (21).

De aquí en línea recta á la cumbre más alta del cerro de Chipapa (22), descendiendo al Occidente por un cordón de lomas para tomar la cumbre del cerro Cosca (23).

Desde este punto irá dividiendo las aguas del cordón que lo une al cerro Alconcha (24) y de aquí irá al volcán Olca (25) por el lomo divisorio. De este volcán, seguirá por el cordón de los cerros del Millunu (26), de la Laguna (27), volcán Irruputuncu (28) cerros Bofedal (29) y Chela (30) y después de un alto nudo de cerros, llegará al Milliri (31) y luego al Hualcani (32).

De aquí irá al cerro Caiti (33) y, seguirá por la divisoria de las aguas al cerro Napa (34).

De la cumbre de este cerro irá en línea recta á un punto (35) situado diez kilómetros al Sur de la cumbre oriental del cerro

Huaila (36), desde donde irá en línea recta á esa cumbre mencionada, doblando en seguida, hacia el Oriente, seguirá por el cordón de los cerros Laguna (37), Corregidor (38) y Huailaputunco (39) á la Apacheta más oriental de Sillillica (40), dirigiéndose por el cordón que va al Noroeste la cumbre del serro Piga (41).

De este cerro irá en línea recta á la cumbre más alta de Tres Cerritos (42) y en seguida en línea recta al cerro Challacollo (43) y á la estrechura de la vega de Sacaya (44) frente á Villacollo.

De Sacaya el límite irá en líneas rectas á las apachetas de Cueva Colorada (45) y de Saftaile (46), donde seguirá al Noroeste por los cerros de Irruputuncu (47) y Patalani (48).

De esta cumbre irá el límite en línea recta al cerrito Chiarcollo (49), cortando el río Cancosa (50) y de ahí también en línea recta á la cumbre del cerro Pintapintani (51) siguiendo después de esta cumbre por el cordón de los cerros Quiuri (52) Pumiri (53) y Panantalla (54).

De la cumbre de Panautalla irá en línea recta á Tolapacheta (55) á media distancia entre Chapi y Rinconada, y de este punto en línea recta al Portezuelo de Huaila (56); en seguida pasará por las cumbres de los cerros de Lacataya (57) y del Salitral (58).

Volverá hácia el Norte yendo en línea recta al cerrito Tapacollo (59) en el Salar de Coipasa, y en otra recta al mojón de Quellaga (60) de donde seguirá por líneas rectas al cerrito Prieto (61) al Norte de la vega de Pisiga, cerrito Toldo (62) mojones de Sicaya (63) Chapillicsa (64), Cabarray (65) Tres Cruces (66), Janiachuma (67) Quimsachata (68) y Chinchillani (69) y cortando el río Todos Santos (70) irá á los mojones de Payacollo (71) y Carahuano (72) al cerro de Canasa (73) y al cerro Capitán (74).

Seguirá después hácia el Norte por la divisoria de las aguas del cordón de los cerros Lliscaya (75) y Quilhuiri (76) y desde la cumbre de este punto irá en línea recta al cerro Puquintica (77).

Al Norte de este último punto, Bolivia y Chile convienen en fijar entre sí la siguiente línea fronteriza:

Del cerro Puquintica (77) irá al Norte por el cordón que se dirige á Macaya, cortará en este punto el río Lauca (78) dirigiéndose en seguida en línea recta al cerro Chiliri (79), seguirá al Norte por la divisoria de las aguas del Portezuelo de Japu (80) y cumbres de Quimsachata (81), Portezuelo de Tambo Quemado (82), cerros de Quisiquisini (83), Portezuelo de Huacolle (84), cumbres de los cerros de Payachata (85 y 86), cerro Larancahua (87) hasta el paso de Casiri (88).

Desde este punto irá á los cerros de Condoriri (89), que dividen las aguas de los ríos Sajama y Achuta de las de Caquena, y proseguirá por el cordón que desprendiéndose de estos cerros va al cerro de Carbiri (91) pasando por el portezuelo de Achuta (90); del cerro Carbiri bajará por su falda á la angostura del río Caquena ó Cosapilla (92), aguas arriba del tambo de este último nombre.

Seguirá después el curso del río Caquena ó Cosapilla, hasta la afluencia (93) del desagüe aparente de las vegas de la estancia de Cosapilla, desde cuya afluencia irá en línea recta al mojón de Visviri (94).

De este mojón irá en línea recta al Santuario (95) que se encuentra al Norte del Maure, al Noroeste de la confluencia de este río con otro que le viene del Norte, dos kilómetros al Noroeste del tambo del Maure; seguirá hacia el Noroeste por el cordón que se dirige al mojón del cerro Chipe ó Talacollo (96), último punto de la frontera.

Dentro de los seis meses siguientes á la ratificación de este Tratado, las Altas Partes Contratantes nombrarán una comisión de ingenieros, para que proceda á demarcar en el terreno la línea divisoria cuyos puntos, enumerados en este Artículo, se señalan en el plano adjunto, que formará parte integrante del presente Tratado, y con arreglo al procedimiento y en las épocas que se convengan por un acuerdo especial de ambas Cancillerías.

Si ocurriese entre los ingenieros demarcadores algún desacuerdo que no pudiese ser allanado por la acción directa de ambos Gobiernos; se someterá la cuestión al fallo de Su Majestad el Emperador de Alemania, conforme á lo previsto en el Artículo 12 de este Tratado.

Serán reconocidos por las Altas Partes Contratantes los derechos privados de los nacionales ó extranjeros que hubieren sido legalmente adquiridos, en los territorios que, en virtud de este Tratado, quedan bajo la soberanía de uno ú otro país.

ART. 3.º

Con el fin de estrechar las relaciones políticas y comerciales de ambas Repúblicas, las Altas Partes Contratantes convienen en unir el Puerto de Arica con el Alto de La Paz, por un ferrocarril cuya construcción contratará á su costa el Gobierno de Chile, dentro del plazo de un año contado desde la ratificación del presente Tratado.

La propiedad de la sección boliviana de este ferrocarril se traspasará á Bolivia á la expiración del plazo de quince años contados desde el día en que esté totalmente terminado.

Con igual fin Chile contrae el compromiso de pagar las obligaciones en que pudiera incurrir Bolivia por garantías hasta de cinco por ciento sobre los capitales que se inviertan en los siguientes ferrocarriles, cuya construcción podrá emprenderse dentro del plazo de treinta años; Uyuni á Potosí; Oruro á La Paz; Oruro por Cochabamba á Santa Cruz; de La Paz á la región del Beni; y de Potosí, por Sucre y Lagunillas, á Santa Cruz.

Este compromiso no podrá importar para Chile un desembolso mayor de cien mil libras esterlinas anuales, ni exceder de la cantidad de un millón setecientas mil libras esterlinas que se fija como el máximo de los que Chile destinará á la construcción de la sección boliviana del ferrocarril de Arica al Alto de La Paz, y á las garantías expresadas; y quedará nulo y sin ningún valor al vencimiento de los treinta años antes indicados.

La construcción de la sección boliviana del ferrocarril de Arica al Alto de la Paz, como la de los demás ferrocarriles que se construyan con la garantía del Gobierno Chileno, será materia de acuerdos especiales de ambos Gobiernos y en ellos se consultarán las facilidades que se darán al intercambio comercial de los dos países.

El valor de la referida sección se determinará por el monto de la propuesta que se acepte en el respectivo contrato de construcción.

ART. 4.º

El Gobierno de Chile se obliga á entregar al Gobierno de Bolivia la cantidad de trescientas mil libras esterlinas en dinero efectivo y en dos parcialidades de ciento cincuenta mil libras, debiendo entregarse la primera parcialidad seis meses después de canjeadas las ratificaciones de este Tratado, y la segunda, un año después de la primera entrega.

ART. 5.º

La República de Chile destina á la cancelación definitiva de los créditos reconocidos por Bolivia, por indemnizaciones en favor de las Compañías mineras de Huanchaca, Oruro y Corocoro y por el saldo del empréstito levantado en Chile en el año 1867, la suma de cuatro millones quinientos mil pesos oro de diez y ocho peniques, pagadera á opción de su Gobierno, en dinero efectivo

ó en bonos de su deuda externa, estimados al precio que tengan en Lóndres el día en que se verifique el pago; y la cantidad de dos millones de pesos oro de diez y ocho peniques, pagadera en la misma forma que la anterior, á la cancelación de los créditos provenientes de las siguientes obligaciones de Bolivia; los bonos emitidos ó sea el empréstito levantado para la construcción del ferrocarril entre Mejillones y Caracoles, según contrato de 10 de Julio de 1872; la deuda reconocida á favor de don Pedro López Gama, representado por los Señores Alsop y Compañía, subrogatarios de los derechos de aquél; los créditos reconocidos en favor de don Juan G. Meiggs, representado por don Eduardo Squire, provenientes del contrato celebrado en 20 de Marzo de 1876, sobre arrendamiento de salitreras en el Toco; y finalmente, la suma reconocida en favor de don Juan Garday.

ART. 6.º

La República de Chile reconoce en favor de la de Bolivia, y á perpetuidad, el más amplio y libre derecho de tránsito comercial por su territorio y puertos del Pacífico.

Ambos Gobiernos acordarán, en actos especiales, la reglamentación conveniente para asegurar, sin perjuicios para sus respectivos intereses fiscales, el propósito arriba expresado.

ART. 7.º

La República de Bolivia tendrá el derecho de constituir agencias aduaneras en los puertos que designe para hacer su comercio. Por ahora señala por tales puertos habilitados para su comercio los de Antofagasta y Arica.

Las agencias cuidarán de que las mercaderías destinadas en tránsito, se dirijan del muelle á la estación del ferrocarril y se carguen y trasporten hasta las aduanas de Bolivia, en vagones cerrados y sellados y con guías que indiquen el número de bultos, peso y marca, número y contenido, que serán canjeados con tornaguías.

ART. 8.º

Mientras las Altas Partes Contratantes acuerdan celebrar un Tratato especial de Comercio, el intercambio comercial entre ambas Repúblicas se regirá por las reglas de la más estricta igualdad con las aplicadas á las demás Naciones y en ningún caso se colocará á los productos de cualquiera de las dos Partes en condiciones de

inferioridad respecto de las de un tercero. En consecuencia, tanto los productos naturales y manufacturados de Bolivia como los de Chile, quedarán sujetos en su internación y consumo en uno y otro país, al pago de los impuestos vigentes para los de las demás Naciones, y los favores, exenciones y privilegios que cualquiera de las dos Partes otorgare á una tercera podrán ser exigidos en igualdad de condiciones por la otra.

Las Altas Partes Contratantes convienen en dar, recíprocamente, en todas las líneas férreas que crucen sus respectivos territorios, á los productos nacionales de uno y otro país, la tarifa que acuerden á la Nación más favorecida.

ART. 9.º

Los productos naturales y manufacturados de Chile y las mercaderías nacionalizadas, para internarse á Bolivia, serán despachadas con la respectiva factura consular y con las guías de que habla la cláusula séptima. Los ganados de toda especie y los productos naturales de poco valor, podrán ser internados sin ninguna formalidad y despachados con la simple manifestación escrita en las aduanas.

ART. 10.º

Los productos naturales y manufacturados de Bolivia, en tránsito para el extranjero, serán exportados con guías franqueadas por las Aduanas de Bolivia ó por los funcionarios encargados de este objeto. Dichas guías serán entregadas á los Agentes Aduaneros en los respectivos puertos y sin otra formalidad, embarcados estos productos para los mercados extranjeros.

Por el puerto de Arica el comercio de importación se verificará con iguales formalidades que en el de Antofagasta, debiendo franquearse en este puerto las guías de tránsito con las mismas especificaciones que las indicadas en los artículos anteriores.

ART. 11.º

No pudiendo Bolivia poner en práctica este sistema inmediatamente, continuará observándose, por el término de un año, el que se halla establecido actualmente en Antofagasta, que se hará extensivo al puerto de Arica, fijándose un plazo prudente para que se ponga en vigencia el Arancel de Aforos bolivianos, hasta que sea posible regularizar el comercio de tránsito en la forma antedicha.

ART. 12.º

Todas las cuestiones que llegaren á suscitarse con motivo de la inteligencia ó ejecución del presente Tratado, serán sometidas al arbitraje de Su Majestad el Emperador de Alemania.

Las ratificaciones de este Tratado serán canjeadas dentro del plazo de seis meses y el canje tendrá lugar en la ciudad de La Paz.

En fé de lo cual, el Señor Enviado Extraordinario y Ministro Plenipotenciario de Bolivia y el Señor Ministro de Relaciones Exteriores de Chile, firmaron y sellaron, con sus respectivos sellos, y por duplicado, el presente Tratado de Paz y Amistad, en la ciudad de Santiago á los veinte días del mes de Octubre del año mil novecientos cuatro.

[L. s.] A. GUTIÉRREZ.

[L. s.] EMILIO BELLO C.

En Santiago, á 20 días del mes de Octubre de 1904, reunidos en la sala de despacho del Ministerio de Relaciones Exteriores de Chile, el Señor Enviado Extraordinario y Ministro Plenipotenciario de Bolivia, don Alberto Gutiérrez, y el Señor Ministro del ramo, don Emilio Bello Codesido, debidamente autorizados al efecto por sus respectivos Gobiernos y teniendo presente que los Gobiernos de Bolivia y Chile, al acordar las estipulaciones contenidas en el Tratado de Paz y Amistad, concluído y firmado en esta misma fecha, convinieron en substituir las franquicias aduaneras solicitadas por Chile en favor de los productos naturales chilenos y los elaborados con ellos, por otras facilidades que no contraríen el propósito de Bolivia de conservar su absoluta libertad comercial y que existe acuerdo entre ambos Gobiernos para consignar en un acto separado la inteligencia y alcance que tiene el inciso 5.º del Artículo 3.º de dicho Tratado, en el que se hace referencia á las facilidades que en las convenciones sobre ferrocarriles se darán al intercambio comercial entre los dos países, acordaron lo siguiente:

Los productos naturales y manufacturados de Chile que se internen á Bolivia gozarán en los ferrocarriles que se construyan en el territorio boliviano, con la garantía del Gobierno chileno, de una rebaja no menor de diez por ciento en las tarifas de fletes que rijan en dichos ferrocarriles.

Bolivia hará las gestiones necesarias para que la misma ó análoga ventaja se acuerde á los productos chilenos en la sección boliviana del ferrocarril de Antofagasta á Oruro.

En consecuencia, tanto en las convenciones especiales que celebren los Gobiernos de Bolivia y Chile para la construcción de ferrocarriles, en conformidad á las estipulaciones contenidas en el Artículo 3.º del Tratado de Paz y Amistad, como en los contratos relacionados con la construcción y explotación de las diversas líneas allí consultadas, se consignará la obligación de conceder á los productos chilenos la rebaja mencionada.

En fé de lo cual, el Enviado Extraordinario y Ministro Plenipotenciario de Bolivia y el Ministro de Relaciones Exteriores de Chile, firman el presente Protocolo en doble ejemplar y lo sellan con sus sellos respectivos.

[L. S.] ALBERTO GUTIÉRREZ.

[L. S.] EMILIO BELLO C.

Y por cuanto el Poder Legislativo aprobó los actos anteriores en virtud de la ley de 4 de Febrero del corriente año.

Por tanto; y ejerciendo la facultad que la Constitución Política confiere al jefe del Estado, en su artículo ochenta y nueve, atribución primera, ratifica el Tratado y Protocolo preinsertos, empeña á su cumplimiento la fé y el honor Nacional y ordena se les tenga y cumpla como ley de la República.

Dada en el Palacio de Gobierno de la ciudad de La Paz, sellada con el sello respectivo y refrendada por el Ministro de Estado en el Despacho de Relaciones Exteriores, á los diez días del mes de Marzo de mil novecientos cinco años.

ISMAEL MONTES.

CLAUDIO PINILLA.

Acta de canje.

En la ciudad de La Paz, á los diez días del mes de Marzo de mil novecientos cinco años, reunidos en el despacho del Ministerio de Relaciones Exteriores, Su Excelencia el Doctor don Claudio Pinilla, Ministro del ramo, y Su Señoría el Señor don Domingo Gana Edwards, Encargado de Negocios de la República de Chile, con el objeto de proceder al canje de las ratificaciones del Tratado de Paz y Amistad, concluído y firmado en la ciudad de Santiago, en veinte de Octubre del año mil novecientos cuatro, por el Señor Alberto Gutiérrez, Enviado Extraordinario y Ministro Plenipotenciario de Bolivia, y por el Excelentísimo Señor Emilio Bello C., Ministro de Relaciones Exteriores de Chile; después de haberse comunicado sus plenos poderes, que fueron hallados en buena y debida forma, leídos como corresponde los instrumentos de ratificación del referido Tratado y habiendo manifestado su conformi-

dad en todo lo estipulado, se verificó en seguida el canje en la forma de estilo, disponiendo los Señores Plenipotenciarios se redacte la presente acta, por duplicado, cuyos ejemplares firmaron y sellaron con sus respectivos sellos.

[L. S.] CLAUDIO PINILLA.

[L. S.] D. GANA EDWARDS.

Notas reversales.

LEGACIÓN DE BOLIVIA,

Santiago, 21 Octubre de 1904.

Señor MINISTRO: El Gobierno de Bolivia concuerda con el de V. E. en la necesidad de fijar el alcance de los términos en que está concebido el Artículo 5.º del Tratado de Paz y Amistad, suscrito el día de hoy por V. E. á nombre del Gobierno de Chile y por el infrascrito en representación del Gobierno de Bolivia.

Tanto respecto de los créditos á favor de las Compañías Corocoro, Huanchaca y Oruro y de los Tenedores de Bonos del empréstito boliviano de 1867, que se pagaban con el 40% de la renta de la Aduana de Arica, como respecto de los créditos de Bolivia á favor de los Tenedores de Bonos del Ferrocarril de Mejillones, de Alsop y C.^ª, subrogatorios de don Pedro Lopez Gama, de la testamentaria de don Juan Garday y de don Eduardo Squire, representante de los derechos de don Juan G. Meiggs, ha sido convenido que el Gobierno de Chile hará la cancelación definitiva de todos ellos, sin que quede responsabilidad alguna para Bolivia, debiendo el Gobierno de Chile responder á toda reclamación ulterior presentada por medios privados ó por acción diplomática, considerándose responsable de toda obligación, bono ó documento del Gobierno de Bolivia correspondiente á cualquiera de los créditos enumerados, quedando, por lo tanto, totalmente eliminada la responsabilidad de Bolivia en todo tiempo y haciéndose cargo de todas y en toda su amplitud el Gobierno de Chile.

Desea mi Gobierno que se digne V. E. expresarme, á nombre del Excelentísimo Gobierno de Chile, si son estos mismos los alcances que por su parte ha dado al Artículo 5.º del Tratado de Paz y Amistad suscrito hoy entre los Representantes de ambos Gobiernos.

Aprovecho esta grata oportunidad para renovar á V. E. las seguridades de mi alta y distinguida consideración.

A. GUTIÉRREZ.

A. S. E. el Señor don EMILIO BELLO C.,

Ministro de Relaciones Exteriores. Presente.

REPÚBLICA DE CHILE,
MINISTERIO DE RELACIONES EXTERIORES,

N.º 1.088.

Santiago, 24 Octubre de 1904.

Señor MINISTRO: En contestación á la nota que Vuestra Excelencia me ha dirigido en esta fecha, me es grato expresar, conforme Vuestra Excelencia lo desea, cual es el alcance que esta Cancillería atribuye á la cláusula 5.ª del Tratado de Paz y Amistad suscrito en el día de hoy por Vuestra Excelencia en representación del Gobierno de Bolivia y por el infrascrito á nombre del Gobierno de Chile.

Considera mi Gobierno que la obligación que Chile contrae por el Artículo 5.º del referido Tratado, comprende la de arreglar directamente con los dos grupos de acreedores reconocidos por Bolivia, la cancelación definitiva de cada uno de los créditos que en dicho Artículo se mencionan, libertando á Bolivia de toda responsabilidad ulterior.

En consecuencia es entendido que Chile, subrogado en todas las obligaciones y derechos que pudieran corresponder á Bolivia en lo que con estos créditos se relaciona, responderá de cualquier cobro ó reclamación que se pretendiere formular ante el Gobierno de Vuestra Excelencia por alguno de los interesados en los referidos créditos.

Renuedo á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

EMILIO BELLO C.

Al Excelentísimo Señor don ALBERTO GUTIÉRREZ,

*Enviado Extraordinario y Ministro Plenipotenciario de
Bolivia.*

Protocolo de 15 de Noviembre de 1904.

En Santiago á quince de Noviembre de mil novecientos cuatro, reunidos en el Ministerio de Relaciones Exteriores de Chile el Ministro del ramo, don Luis A. Vergara, y el Enviado Extraordinario y Ministro Plenipotenciario de Bolivia en Chile, don Alberto Gutiérrez, el Ministro de Relaciones Exteriores expuso:

Que refiriéndose al Artículo 11 del Tratado de Paz y Amistad suscrito el 20 de Octubre último á los territorios ocupados por Chile en virtud del Artículo 2.º del Pacto de Tregua de 4 de Abril de 1884, ó sea á los comprendidos entre el río Loa al Norte y el paralelo 23 al Sur, y habiendo sido controvertido en ocasiones por el

Gobierno de Bolivia el criterio con que Chile ha considerado invariablemente la situación de los territorios que se encuentran entre los paralelos 23 y 24 de latitud meridional, consideraba oportuno dejar claramente establecido que el Gobierno de Bolivia reconoce el dominio absoluto y perpetuo de Chile en estos últimos territorios desde el mar hasta el actual deslinde con la República Argentina. Agregó que, no obstante de desprenderse del espíritu de dicho Tratado, de conformidad con los antecedentes que le han dado origen, que el Gobierno de Chile conserva amplia libertad para estudiar, calificar y liquidar los créditos enumerados en el Artículo 5.º como asimismo que, fuera de estas obligaciones, el Gobierno de Chile no toma á su cargo ningún otro crédito del Gobierno de Bolivia, cualquiera que fuere su naturaleza y procedencia, estimaba conveniente dejar testimonio de que éste era el alcance é inteligencia que correspondía al referido Artículo 5.º.

El Señor Enviado Extraordinario y Ministro Plenipotenciario de Bolivia respondió que, debidamente autorizado por su Gobierno, no tenía inconveniente para hacer la declaración pedida por el Señor Ministro de Relaciones Exteriores, esto es, que el Gobierno de Bolivia reconoce el dominio absoluto y perpetuo de Chile en el territorio situado entre los paralelos 23 y 24 de latitud meridional, desde el mar hasta el actual deslinde con la República Argentina. Acepta, igualmente, la inteligencia que da el Ministro de Relaciones Exteriores al Artículo 5.º y declara, en consecuencia, que el Gobierno de Chile tendrá completa libertad para estudiar, calificar y liquidar dichos créditos; que, fuera de estas obligaciones, no toma á su cargo ningún otro crédito del Gobierno de Bolivia, cualquiera que fuere su naturaleza procedencia, y que este último Gobierno suministrará al de Chile todos los antecedentes de que dispusiere relacionados con dichos créditos. Por último, manifestó el Señor Gutiérrez que desearía, por su parte, dejar también testimonio en esta conferencia de que la rebaja mínima de diez por ciento acordada á los productos nacionales y manufacturados de Chile, á que se refiere el Protocolo suscrito en esta ciudad el 20 de Octubre próximo pasado, sólo subsistirá con el carácter de obligatoria por el tiempo que dure la contragarantía que dé Chile, en conformidad al Artículo 3.º del Tratado de Paz y Amistad.

El Señor Ministro de Relaciones Exteriores expresó que en los antecedentes del Tratado de Paz existe esta limitación, y que

no tenía inconveniente para aceptarla en los términos indicados por el Señor Ministro de Bolivia.

Para constancia, convinieron en protocolizar esta conferencia, firmando y sellando esta acta in doble ejemplar.

[L. DEL S.] LUIS A. VERGARA.

[L. DEL S.] A. GUTIÉRREZ.

Acta de canje.

Los abajos firmados, reunidos en el Ministerio de Relaciones Exteriores de Chile para proceder al canje de las ratificaciones de Su Excelencia el Presidente de la República de Chile y de Su Excelencia el Presidente de la República de Bolivia del Acta aclaratoria del Tratado de Paz y Amistad ajustado entre ambos países el 20 de Octubre de 1904, después de haber dado lectura á los instrumentos de dichas Ratificaciones y encontrádoslos en buena y debida forma, procedieron á efectuar el referido canje.

En fé de lo cual los infrascritos firmaron y sellaron la presente Acta de Canje, en doble ejemplar, en Santiago á 16 de Abril de 1907.

[F.] SABINO PINILLA.

[F.] R. SALAS E.

Notas reversales.

LEGACIÓN DE BOLIVIA,

N.º 90.

Santiago, 16 de Noviembre de 1904.

Señor **MINISTRO:** Como algunas de las estipulaciones que contiene el Tratado de Paz y Amistad suscrito entre los Representantes de Bolivia y de Chile, el 20 del mes pasado, así como algunas declaraciones del Protocolo de esa misma fecha y del Acta que suscribimos el día de ayer, establecen obligaciones y derechos de uno y otro país que han de tener una vigencia muy prolongada y cuya ejecución estará sujeta á circunstancias que es difícil prever, estimo necesario dar á la declaración que formulé en nuestra Acta protocolizada de ayer toda la claridad que es precisa para su exacta interpretación en todo tiempo.

Mi propósito fué, de acuerdo con instrucciones de mi Gobierno, dejar establecido que la rebaja para los productos naturales y manufacturados de Chile en las tarifas de los ferrocarriles de Bolivia, y que se ha fijado en un minimum de diez por ciento, sólo deben tener lugar en aquellos ferrocarriles que sean construídos conforme á lo convenido en el Artículo 3.º del Tratado de Paz y Amistad, es decir, con garantías del Gobierno de Chile y sólo

durarán obligatoriamente dichas rebajas el tiempo que esas garantías estuvieren vigentes.

Ello no obsta á que mi Gobierno, dentro de la armonía de intereses que ha de crear dicho pacto, procurará para los productos chilenos ventajas análogas en las líneas férreas que, por su cuenta ó por empresas particulares, se construyan en territorio boliviano.

Espero que no tendrá V. E. inconveniente para expresarme que fué esta la mente de nuestras respectivas declaraciones en el Acta protocolizada con fecha de ayer.

Aprovecho esta oportunidad para renovar á V. E. las seguridades de mi alta y distinguida consideración.

ALBERTO GUTIÉRREZ.

Al Excelentísimo Señor don LUIS A. VERGARA,

Ministro de Relaciones Exteriores de Chile. Presente.

REPÚBLICA DE CHILE,
MINISTERIO DE RELACIONES EXTERIORES,

N.º 1,244.

Santiago, 17 de Noviembre de 1904.

SEÑOR MINISTRO: He tenido el honor de recibir la nota de V. E. de fecha de ayer, N.º 90, por la cual se sirve manifestarme que estina necesario dar á la declaración formulada por V. E. en el Acta que suscribimos el día quince del presente toda la claridad necesaria para su exacta interpretación ya que tanto ésta como el Tratado de Paz y Amistad entre Chile y Bolivia y el Protocolo complementario de éste, suscritos el día 20 de Octubre último, establecen para ambos países derechos y obligaciones de vigencia muy prolongada y cuya ejecución estará sujeta á circunstancias que es difícil prever.

En consecuencia, V. E. tiene á bien expresar que su propósito fué, de acuerdo con instrucciones de su Gobierno, dejar establecido que la rebaja para los productos manufacturados de Chile en las tarifas de los ferrocarriles de Bolivia, fijada en un mínimum de diez por ciento, sólo debe tener lugar en aquellos ferrocarriles que se construyan conforme á lo convenido en el Artículo 3.º del Tratado de Paz y Amistad, es decir, con garantías del Gobierno de Chile, y que esas rebajas sólo durarán de una manera obligatoria el tiempo de la vigencia de dichas garantías.

Agrega V. E. que ello no obsta á que su Gobierno, dentro de la armonía de intereses que ha de crear ese Pacto, procurará á los productos chilenos ventajas análogas en las líneas férreas que se construyan en territorio boliviano, ya sean por cuenta del Estado ó de particulares.

En respuesta, me es grato expresar á V. E. que ha sido esa, en verdad, la mente de nuestras respectivas declaraciones al suscribir el Acta de anteayer; debiendo agregar por mi parte que, en vista de las mismas consideraciones que V. E. ha hecho valer, mi Gobierno desearía dejar establecido que, siendo el total de los créditos para cuya cancelación se destina la suma de seis millones quinientos mil pesos, según algunas de las liquidaciones pendientes, superior á dicha cantidad, ésta se distribuirá á prorrata del capital á que ellos ascienden.

Confío á mi vez, en que V. E. habrá de considerar estas declaraciones en armonía con las que le hice, sobre el particular, en nuestra última conferencia, el quince del presente.

Me complazco en reiterar á V. E. las seguridades de mi muy distinguida consideración.

LUIS A. VERGARA.

Al Excelentísimo Señor don ALBERTO GUTIÉRREZ,

Enviado Extraordinario y Ministro Plenipotenciario de Bolivia en Chile.

LEGACIÓN DE BOLIVIA,

Santiago, 21 de Noviembre de 1904.

N.º 91.

Señor MINISTRO: Tengo el honor de acusar recibo de la estimable nota de V. E. N.º 1,244 de 17 del presente, por la que me persuado de que nos encontramos en perfecto acuerdo de propósitos al suscribir el Acta de 15 del mes actual.

Al terminar dicha comunicación, se sirve V. E. expresarme el deseo de su Gobierno de dejar establecido que, siendo el total de los créditos para cuya cancelación se destina la suma de seis millones quinientos mil pesos en el Artículo 5.º del Tratado de Paz y Amistad entre Bolivia y Chile suscrito el 20 del pasado, superior á dicha cantidad según algunas de las liquidaciones pendientes, aquella suma se distribuirá á prorrata del capital á que dichos créditos ascienden.

Me es grato dejar constancia de que tales declaraciones están en armonía con las que hizo V. E. en nuestra conferencia de quince del presente y se encuentran, además, de acuerdo con los antecedentes escritos de la negociación.

Aprovecho gustoso esta nueva oportunidad para renovar á V. E. las seguridades de mi alta y distinguida consideración.

A. GUTIÉRREZ.

Al Excelentísimo Señor don LUIS A. VERGARA,

Ministro de Relaciones Exteriores de Chile. Presente.

Conferencia Protocolizada de 24 de Diciembre de 1904.

En Santiago, á veinticuatro de Diciembre de 1904, reunidos en el Ministerio de Relaciones Exteriores, el Señor Enviado Extraordinario y Ministro Plenipotenciario de Bolivia don Alberto Gutiérrez, y el Señor Ministro del ramo, don Luis A. Vergara, éste expresó: Que durante la discusión que tuvo lugar en la Cámara de Senadores del Tratado de Paz y Amistad de 20 de Octubre último, se manifestó por algunos de sus miembros la conveniencia de precisar el alcance que pudiera darse al inciso final del Artículo 2.º de dicho Tratado, con el fin de fijar perfectamente establecido que el reconocimiento de derechos privados á que dicho inciso se refiere no podrá, en ningún caso, obligar á las Altas Partes Contratantes á indemnizaciones de ningún género.

Agregó el Señor Ministro de Relaciones Exteriores que, estimando por su parte conforme esta declaración con el espíritu de inteligencia que tiene dicha cláusula, esperaba que el Señor Representante de Bolivia se sirviera manifestar si su Gobierno le da el mismo alcance.

El Señor Enviado Extraordinario y Ministro Plenipotenciario de Bolivia expresó que, debidamente autorizado por su Gobierno aceptaba la declaración solicitada por el Señor Ministro de Relaciones Exteriores declarando, en consecuencia, que el reconocimiento de derechos privados en los territorios que, por el Tratado de Paz y Amistad celebrado por ambos Gobiernos el 20 de Octubre último, cambian de soberanía, como ocurre en Chilcaya y Ascotán y al Sur del río Loa y que serán definidos por los Tribunales ordinarios de justicia, no impondrá á las Altas Partes Contratantes indemnizaciones de ningún género.

Para constancia convinieron en protocolizar esta conferencia firmando y sellando esta Acta en doble ejemplar.

[L. S.] A. GUTIÉRREZ.

[L. S.] LUIS A. VERGARA.

[Translation.]

Treaty of peace and friendship.

ISMAEL MONTES. Constitutional President of Bolivia.

Inasmuch as a Treaty of Peace and Friendship, with a supplementary protocol thereto, was concluded and signed on October 20, 1904, in the city of Santiago, between the Republics of Bolivia and Chile, in the following terms:

In pursuance of the purpose expressed in article 8 of the truce agreement of April 4, 1884, the Republic of Bolivia and the Republic of Chile have agreed to conclude a treaty of peace and friendship, and to that end have named and constituted as their plenipotentiaries, namely: His Excellency the President of the Republic of Chile, Don Emilio Bello Codecido, minister of foreign affairs, and His Excellency the President of the Republic of Bolivia, Don Alberto Gutierrez, envoy extraordinary and minister plenipotentiary of Bolivia in Chile; who, having exchanged their full powers and having found them in good and due form, have agreed on the following:

ARTICLE 1. The relations of peace and friendship between the Republic of Bolivia and the Republic of Chile are re-established, the status established by the truce agreement being thereby terminated.

ARTICLE 2. By the present treaty the territory occupied by Chile by virtue of article 2 of the truce agreement of April 4, 1884, is recognized as belonging absolutely and *in perpetuo* to Chile.

The north and south boundary between Bolivia and Chile shall be that here indicated:

From the highest point of Zapaleri Hill (1) in a straight line to the highest point of the ridge jutting out toward the south from Guayaques Hill, in latitude approximately $22^{\circ} 54'$; hence a straight line to the pass of the Cajon (3); next, the watershed of the ridge which runs north, including the summits of Juriques Hill (4), Licancabur Volcano (5), Sairecabur Hill (6), Curiquinca Hill (7), and Putana or Jorjencal Volcano (8). From this point it will follow one of the ridges to Pajonal Hill (9) and in a straight line to the south peak of the Tocorpuri Hills (10), whence it will follow the watershed of the Panizo Ridge (11) and the Tatio Range (12). It will keep on toward the north by the watershed of the Linzor Ridge (13) and the Silaguala Hill (14); from their northern peak (Volcan Apagado) (15) it shall go by a ridge to the little hill called Silala (16) and thence in a straight line to Inacaliri or Cajon Hill (17).

From this point it shall go in a straight line to the peak which appears in the middle of the group of the Inca or Barrancane Hills (18), and, again taking the watershed, shall keep on northward by the ridge of Ascotan or Jardin Hill (19); from the summit of this hill it shall go in a straight line to the summit of Araral Hill (20) and by straight line again to the summit of Ollague Volcano (21).

Hence in a straight line to the highest peak of Chipapa Hill (22), descending toward the west by a line of small hills until it reaches the summit of Cosca Hill (23).

From this point it shall be the watershed of the ridge which joins it to Alconcha Hill (24), and thence it shall go to Olca Volcana (25) by the divide. From this volcano it shall continue by the range of the Mallunu Hill (26), the Laguna Hill (27), Irruputuncu Volcano (28), Bofedal Hill (29), Chela Hill (30), and, after a high cluster of hills, shall reach the Milliri (31), and then the Hualicani (32).

Hence it shall go to Caiti Hill (33) and shall follow the divide to Napa Hill (34).

From the summit of this hill it shall go in a straight line to a point (35) situated ten kilometers to the south of the eastern peak of Huaila Hill (36), whence it shall go in a straight line to the hill named; doubling immediately toward the east, it shall keep on by the range of Laguna (37), Correjidor (38), and Huailaputuncu (39) hills to the eastermost peak of Sillillica (40), and thence by the ridge that runs northwest to the summit of Piga Hill (41).

From this hill it shall go in a straight line to the highest point of Tres Cerritos (42), and thence in a straight line to Challacollo Hill (43) and the narrow part of Sacaya Valley (44), fronting Villacollo.

From Sacaya the boundary shall run in straight lines to the summit of Cueva Colorado (45) and Santaile (46), and thence it will keep on to the northwest by Irruputuncu Hill (47) and Patalini Hill (48).

From this summit the boundary shall go in a straight line to Chiarcollo Hill (49), cutting the Cancosa River (50), and thence also in a straight line to the summit of Pintapintani Hill (51), and from this hill by the range of the Quiuri, (52) Pumiri (53), and Panatalla (54) hills.

From the summit of Panatalla it shall go in a straight line to Tolapacheta (55), midway between Chapi and Rinconada, and from this point in a straight line to the pass of Huialla (56); thence it shall pass on by the summits of Lacataya (57) and Salitral (58) hills.

It shall turn toward the north, going in a straight line to Tapacollo Hill (59), in the Salar of Coipasa, and in another straight line to the landmark of Quellaga (60), whence it shall continue by straight line to Prieto Hill (61) to the north of Pisiga plain, Toldo Hill (62), the Sicaya landmarks (63), and those of Chapillicsa (64), Cabarray (65), Tres Cruces (66), Jamachuma

(67), Quimsachata (68), and Chinchillani (69), and, cutting the river Todos Santos (70), shall go to the Payacollo (71) and Carahuano (72) hills (mojon = Landmark or mound), to Canasa Hill (73) and Capitan Hill (74).

It shall then continue toward the north by the divide of the range of Liscaya (75) and Quilhuiri (76) hills, and from the summit of the latter in a straight line to Puquintica Hill (77). -

To the north of this last point Bolivia and Chile agree to establish between them the following frontier:

From Puquintica Hill (77) it shall go northward by the range that runs to Macaya; shall cut the river Lauca (78) at this point and then run in a straight line to Chiliri Hill (79). It shall keep on to the north by the divide of the Japu Pass (80), the Quimsachata Hills (81), the Tambo Quemado Pass (82), the Quisquisini Hills (83), the Huacollo Pass (84), the summits of the Payachata Hills (85 and 86), and Larancahua Hill (87) to the Casiri Pass (88).

From this point it shall go to the Condoriri Hills (89), which divide the waters of the Sajama and Achuta rivers from those of the Caquena River, and shall continue by the ridge which, branching off from those hills, goes to Carbiri Hill (91), passing by the Achuta Pass (90); from Carbiri Hill it shall run down its slope to the narrows of the river Caquena or Cosapilla (92), up stream from the inn of that name (Cosapilla).

Then it shall follow the bed of the river Caquena or Cosapilla to the point (93) where it is joined by the apparent outlet of the meadows of the Cosapilla *estancia* (farm), and from this point it shall go in a straight line to Visviri Hill (mojon) (94).

From this hill it shall go in a straight line to the sanctuary (95) on the north side of the Maure, northwest of the junction of this river with another which comes into it from the north, two kilometers northwest of the Maure Inn. It shall keep on toward the northwest by the range which runs to the landmark of Chipeco or Talacollo Hill (96), the last point of the boundary.

Within the six months following the ratification of this treaty the high contracting parties shall name a commission of engineers to proceed to mark out the boundary line, the points of which, enumerated in this article, are indicated in the appended plan, which shall form an integral part of the present treaty, in conformity with the procedure and in the periods which shall be agreed upon by a special arrangement between the two foreign offices.

If there should arise among the engineers engaged in marking the boundary any disagreement which could not be arranged by

the direct action of the two governments, it shall be submitted to the decision of His Majesty the Emperor of Germany, in conformity with the provisions of article 12 of this treaty.

The high contracting parties shall recognize the private rights of natives and foreigners, if legally acquired, in the territory which by virtue of this treaty may remain under the sovereignty of either of the countries.

ART. 3. With the object of strengthening the political and commercial relations between the two Republics the high contracting parties agree to unite the port of Arica with the plateau of La Paz by a railroad for the construction of which the Government of Chile shall contract at its own expense within the term of one year from the ratification of this treaty.

The ownership of the Bolivian section of this railroad shall revert to Bolivia at the expiration of the term of fifteen years from the day on which it is entirely completed.

With the same object Chile undertakes to pay the obligations which Bolivia may incur by guarantees up to 5 per cent on the capital which may be invested in the following railroads, the construction of which shall begin within the term of thirty years: Uyuni to Potosi, Oruro to La Paz; Oruro, via Cochabamba, to Santa Cruz; from La Paz to the Beni region, and from Potosi, via Sucre and Lagunillas, to Santa Cruz.

This obligation shall not occasion for Chile an expense greater than £100,000 sterling annually nor in excess of £1,700,000 sterling, which is fixed as a maximum of what Chile will devote to the construction of the Bolivian section of the railway from Arica to the La Paz plateau and for the guarantees referred to, and it shall be null and void at the conclusion of the thirty years above indicated.

The construction of the Bolivian section from Arica to the plateau of La Paz, as well as that of the other railroads which may be constructed with the Chilean Government's guaranty, shall be a matter of special arrangements between the two governments, and provision shall be made in them for affording facilities for commercial interchange between the two countries.

The value of the section mentioned shall be determined by the amount of the bid which shall be accepted for the contract for its construction.

ART. 4. The Government of Chile binds itself to deliver to the Government of Bolivia the sum of £300,000 sterling in cash, in two payments of £150,000, the first payment to be made six

months after the exchange of ratifications of this treaty and the second one year after the first.

ART. 5. The Republic of Chile devotes to the final cancellation of the credits recognized by Bolivia, for indemnities in favor of the mining companies of Huanchaca, Oruro, and Corocoro, and for the balance of the loan raised in Chile in the year 1867 the sum of 4,500,000 pesos gold of 18 pence, payable, at the option of its government, in cash or in bonds of its foreign debt valued at their price in London on the day on which the payment is made, and the sum of 2,000,000 pesos in gold of 18 pence, in the same form as the preceding, for the cancellation of the credits arising from the following obligations of Bolivia: The bonds issued, i. e., the loan raised for the construction of the railroad between Mejillones and Caracoles according to the contract of July 10, 1872; the debt recognized to Don Pedro Lopez Gama, represented by Messrs. Alsop & Co., successors of the former's rights; the credits recognized to Don John G. Meiggs, represented by Mr. Edward Squire, arising from the contract entered into March 20, 1876, for renting nitrate fields in Toco, and, lastly, the sum recognized to Don Juan Garday.

ART. 6. The Republic of Chile grants to that of Bolivia in perpetuity the amplest and freest right of commercial transit in its territory and its Pacific ports.

Both governments will agree in special acts upon the method suitable for securing, without prejudice to their respective fiscal interests, the object above indicated.

ART. 7. The Republic of Bolivia shall have the right to establish customs agencies in the ports which it may designate for its commerce.

For the present it designates as ports open for its commerce those of Antofagasta and Arica.

The agencies shall take care that the goods in transit shall go directly from the pier to the railroad station and shall be loaded and transported to the Bolivian custom-houses in wagons closed and sealed and with freight schedules which shall indicate the number of packages, their weight and marks, numbers and contents, which shall be exchange for receipts.

ART. 8. Until the high contracting parties shall agree to negotiate a special commercial treaty the commercial interchange between the two Republics shall be regulated by rules of the strictest equality with those applied to other nations, and in no case shall any product of either of the two parties be placed under conditions inferior to those of a third party.

All the natural and manufactured products of Bolivia, therefore, as well as those of Chile, shall be subject, on their entry into and their consumption in the other country, to the payment of the imposts in force for those of other nations, and the favors, exemptions, and privileges which either of the two parties shall grant to a third may be demanded on equal conditions by the other.

The high contracting parties agree to accord reciprocally on all railroad lines which cross their respective territory the same rates to the native products of the other country that they accord to the most favored nation.

ART. 9. The natural and manufactured products of Chile and the nationalized goods, in order to be taken into Bolivia, shall be dispatched with the proper consular invoice and with the freight schedules spoken of in article 7. Cattle of all kinds and natural products of little value may be introduced without any formality and dispatched with the simple manifest written in the custom-houses.

ART. 10. The natural and manufactured products of Bolivia in transit to foreign countries shall be exported with schedules issued by the Bolivian custom-houses or by the officers charged with this duty; these schedules shall be delivered to the customs agents in the respective ports and the products embarked without other formality for foreign markets.

In the port of Arica import commerce shall be conducted with the same formalities as in that of Antofagasta, and the transit schedules in this port shall be passed with the same requirements as those indicated in the previous articles.

ART. 11. Bolivia being unable to put this system into practice immediately, the present system established in Antofagasta shall continue to be followed for the term of one year. This system shall be extended to the port of Arica, a proper term being fixed for putting into effect the schedule of Bolivian appraisements until it shall be possible to regulate the trade in the manner before indicated.

ART. 12. All questions which may arise with reference to the interpretation or execution of the present treaty shall be submitted to the arbitration of His Majesty the Emperor of Germany.

The ratifications of this treaty shall be exchanged within the term of six months, and the exchange shall take place in the city of La Paz.

In witness whereof the envoy extraordinary and minister plenipotentiary of Bolivia and the minister of foreign relations of Chile have signed and sealed with their respective seals in duplicate the present treaty of peace and amity, in the city of Santiago, on the 20th of October of the year one thousand nine hundred and four.

[L. S.] A. GUTIERREZ.

[L. S.] EMILIO BELLO C.

In Santiago, on the 20th of October, 1904, met in the office of the ministry of foreign relations of Chile the envoy extraordinary and minister plenipotentiary of Bolivia, Don Alberto Gutierrez and the minister of the department, Don Emilio Bello Codecido, duly authorized to that end by their respective governments; and having in view the fact that the Governments of Bolivia and Chile, in agreeing upon the stipulations contained in the treaty of peace and amity concluded and signed on this same date, agreed to substitute the customs exemptions solicited by Chile on behalf of Chilean natural products and products manufactured therefrom by other privileges which should not stand in the way of Bolivia's desire to preserve its absolute commercial liberty, and having in view the fact that an agreement exists between the two governments for stipulating in a separate act the meaning and scope of paragraph 5 of article 3 of the said treaty, in which reference is made to the facilities which shall be granted in the agreements concerning railroads to the commercial intercourse between the two countries, have agreed:

The natural and manufactured products of Chile taken into Bolivia shall enjoy on the railroads which may be constructed in Bolivian territory under the Chilean Government's guarantee a reduction of not less than 10 per cent on the freight tariffs in operation on those railroads.

Bolivia shall take the steps necessary for according the same or a similar favor to Chilean products on the Bolivian section of the railroad from Antofagasta to Oruro.

Therefore, both in the conventions which the Governments of Bolivia and Chile may draw up for the construction of railroads in conformity with the provisions of article 3 of the treaty of peace and amity and in the contract for the construction and exploitation of the various lines there provided for there shall be stipulated the obligation of granting to Chilean products the reduction referred to.

In witness whereof the minister plenipotentiary of Bolivia and the minister of foreign relations of Chile signed this protocol in duplicate and sealed it with their respective seals.

[L. S.] A. GUTIERREZ,

[L. S.] EMILIO BELLO C.

And whereas the Legislative Branch has approved the preceding acts by the law of February 4 of the current year,

Therefore, exercising the power vested in the head of the State by the Political Constitution, under Article 89, 1st provision, the Executive ratifies the Treaty and Protocol hereinabove written; pledges for their fulfillment the national faith and honor; and directs that they may be held and complied with as the law of the Republic.

Given in the Government Palace, in the city of La Paz, sealed with the appropriate seal and countersigned by the Minister of State in the Department of Foreign Relations, the 10th day of March, 1905.

ISMAEL MONTES.

CLAUDIO PINILLA.

Act of Exchange.

In the city of La Paz, on March 10, 1905, met in the Department of Foreign Relations His Excellency don Claudio Pinilla, Minister of that Department, and His Excellency Señor don Domingo Gana Edwards, Chargé d'Affaires of the Republic of Chile, for the purpose of proceeding to the exchange of the ratifications of the Treaty of Peace and Friendship, concluded and signed in the city of Santiago, October 20, 1904, by Señor Alberto Gutierrez, Envoy Extraordinary and Minister Plenipotentiary of Bolivia, and by His Excellency Señor Emilio Bello C., Minister of Foreign Relations of Chile; after having communicated their full powers, which were found in good and due form, and after having read the respective instruments of ratification of the aforesaid Treaty which have shown conformity with all the requirements, the exchange thereupon took place in due course, the Plenipotentiaries directing the drawing up of the present Act, in duplicate, copies of which they signed and sealed with their respective seals.

[L. S.] CLAUDIO PINILLA.

[L. S.] D. GANA EDWARDS.

LEGATION OF BOLIVIA.

Santiago, October 21, 1904.

Mr. MINISTER: The Government of Bolivia agrees with Your Excellency's Government on the necessity of determining the purport of the wording of Article 5 of the Treaty of Peace and Friendship signed to day by Your Excellency on behalf of the Government of Chile and by the undersigned in representation of the Government of Bolivia.

Both in regard to the claims of the Corocoro, Huanchaca, and Oruro companies and of the bond holders of the Bolivian loan of 1867 which were being paid out of 40% of the receipts of the Arica Custom House, and in regard to the claims against Bolivia of the bond holders of the Mejillones railroad, of Allsop and Co. (assignees of Pedro Lopez Gama), of the estate of Juan Garday, and of Edward Squire, it has been agreed that the Government of Chile shall permanently cancel all of them, so that Bolivia shall be relieved of all liability, the Government of Chile being obligated to answer every subsequent claim presented either by private means or through Diplomatic channels, and considering itself liable for every obligation, bond, or document of the Government of Bolivia relating to any of the claims enumerated, Bolivia's liability being entirely eliminated for all time and the Government of Chile assuming all liabilities to their full extent.

My Government desires that your Excellency may be pleased to state to me, on behalf of the Government of Chile, whether this is the purport which it has given to article 5 of the Treaty of Peace and Friendship signed to day between the representatives of the two Governments.

I avail, etc.,

A. GUTIERREZ

To His Excellency

Mr. EMILIO BELLO C.

Minister of Foreign Relations, City.


REPUBLIC OF CHILE

MINISTRY OF FOREIGN RELATIONS.

Santiago, October 21, 1904.

No. 1088.

Mr. MINISTER: In reply to the note which Your Excellency addressed to me on this day I take pleasure, in compliance with your request, in defining the purport, which this Chancellery assigns to clause 5 of the Treaty of Peace and Friendship signed to-day by

Your Excellency in representation of the Government of Bolivia and by the undersigned on behalf of the Government of Chile. 

My Government considers that the obligation which Chile contracts by Article 5 of the said Treaty comprises that of arranging directly, with the two groups of creditors recognized by Bolivia, for the permanent cancellation of each of the claims mentioned in said article, thus relieving Bolivia of all subsequent liabilities.

It is consequently understood that Chile, as successor of all the obligations and rights which might be incumbent on or pertain to Bolivia in connection with these claims, shall answer any reclamation which may be presented to Your Excellency's Government by any of the parties interested in the said claims.

I renew, etc.

EMILIO BELLO C.

To His Excellency

Mr. ALBERTO GUTIERREZ, *E. E. M. M. of Bolivia.*

[SEAL]

Protocol of November 15, 1904.

In Santiago on November 15, 1904, met in the ministry of foreign relations of Chile the minister of the department, Don Luis A. Vergara, and the envoy extraordinary and minister plenipotentiary of Bolivia, Don Alberto Gutierrez, the minister of foreign relations stated:

That inasmuch as article 11 of the treaty of peace and amity signed October 20 last, refers to the territories occupied by Chile by virtue of article 2 of the truce agreement of April 4, 1884—that is, to those included between the river Loa on the north and parallel 23 on the south—and inasmuch as the attitude which Chile has always taken with reference to the territory between parallels 23 and 24 south latitude has been objected to by the Government of Bolivia on various occasions, he considers it expedient to have it clearly understood that the Government of Bolivia recognizes the absolute and perpetual sovereignty of Chile in these last-named territories from the sea to the present boundary, with the Argentine Republic. He added that, notwithstanding the fact that it is to be understood from the spirit of said treaty, in view of the circumstances which gave rise to it, that the Government of Chile reserves full liberty to examine into, pass judgment upon, and liquidate the credits enumerated in Article V, as likewise that outside of these obligations the Government of Chile takes no responsibility for any other credit of the Government

of Bolivia, whatever its nature and origin, he deemed it advisable to have it on record that this was the scope and meaning which the article referred to had.

The envoy extraordinary and minister plenipotentiary of Bolivia replied that, duly authorized by his government, he had no objection to making the declaration asked for by the minister of foreign relations, viz., that the Government of Bolivia recognizes the absolute and perpetual sovereignty of Chile in the territory situated between parallels 23 and 24 south latitude from the sea to the present boundary of the Argentine Republic. He also accepts the interpretation which the minister of foreign relations gives to Article V, and declares, therefore, that the Government of Chile shall have complete liberty to examine into, pass judgment upon, and liquidate said credits; that beyond these obligations it takes the responsibility of no other credit of the Government of Bolivia, whatever its nature and origin, and that this last-named government will furnish to the Government of Chile all the data at its disposal with reference to said credits. Finally Senor Gutierrez stated that for his part he would like to have it put on record in this conference that the minimum rebate of 10 per cent granted the national and manufactured products of Chile referred to in the protocol signed in this city October 20 last, should be maintained as an obligation only for the time during which the counter guarantee to be given by Chile in conformity with Article III of the treaty of peace and amity remains in force.

The minister of foreign relations stated that this limitation exists in the preliminaries of the treaty of peace and that he had no objections to accepting it in the terms indicated by the minister of Bolivia.

For the purposes of record they agreed to reduce this conference to the form of a protocol, signing and sealing this minute in duplicate.

[L. S.] LUIS A. VERGARA.

[L. S.] A. GUTIERREZ.

Act of Exchange.

The undersigned, met in the Ministry of Foreign Relations of Chile for the purpose of the exchange of the ratifications of His Excellency the President of the Republic of Chile and of His Excellency the President of the Republic of Bolivia of the Explanatory Protocol of the Treaty of Peace and Friendship between the two countries signed October 20, 1904, after having read the

instruments of Ratification, which were found in good and due form, proceeded to effect the exchange.

In faith whereof the undersigned have signed and sealed the present Act of Exchange, in duplicate, at Santiago April 16, 1907..

SABINO PINILLA.

R. SALAS E.

Exchange of Notes.

No. 90.

LEGATION OF BOLIVIA,

Santiago, Nov. 16, 1904

Mr. MINISTER: Since some of the stipulations of the Treaty of Peace and Friendship signed between the Representatives of Bolivia and Chile, the 20th of last month, as well as certain declarations of the Protocol of the same date and of the Protocol which we signed yesterday, establish obligations and rights for both countries which will be in force for a long time and the execution of which may be subject to circumstances which it is difficult to foresee, I deem it necessary to give to the declaration which I set forth in our Protocol of yesterday all the clarification necessary to its exact interpretation for all time.

My purpose was, in accordance with instructions from my Government, to stipulate that the rebate for the natural and manufactured products of Chile upon the freight tariffs of Bolivia, and which have been fixed at the minimum of ten per cent, shall only cover those railroads which are constructed in conformity with Art. 3 of the Treaty of Peace and Friendship, that is to say, under guarantee of the Government of Chile, and that the said rebate shall be obligatory only so long as the said guarantees are effective.

This does not hinder my Government, in the harmony of interests which should be created under this Treaty, from procuring for Chilean products similar advantages on the lines which may be constructed in Bolivian territory on its own account or by private enterprise.

I hope that Your Excellency will not deem it inadmissible to state that this is the meaning of our respective declarations in the Protocol dated yesterday.

I avail myself of this opportunity to renew to Your Excellency the assurance of my high and distinguished consideration.

ALBERTO GUTIERREZ.

To his Excellency

Señor don LUIS A. VERGARA,

Minister of Foreign Relations of Chile.

No. 1,244

REPUBLIC OF CHILE.
MINISTRY OF FOREIGN RELATIONS,
Santiago, Nov. 17, 1904.

Mr. MINISTER: I have had the honor to receive Your Excellency's note of yesterday's date, No. 90, by which you are pleased to say that you deem it necessary to give to the declaration set forth by Y. E. in the Protocol which we signed on the 15th instant, all the clarification necessary for its exact interpretation, since that Act as well as the Treaty of Peace and Friendship between Chile and Bolivia and the supplementary Protocol thereof, signed the 20th of October last, establish for both countries rights and obligations of a prolonged nature and the execution of which may be subject to circumstances which it is difficult to foresee.

Therefore Y. E. states that your purpose was, following the instructions of Your Government, to stipulate that the rebate for the manufactured products of Chile upon the freight tariffs of the Bolivian railroads, fixed at a minimum of ten per cent., shall only cover those railroads which are constructed in conformity with the stipulations of Art. 3 of the Treaty of Peace and Friendship, that is to say, under guarantee of Chile, and that such rebates shall only last obligatorily for such time as said guarantees are effective.

Y. E. adds that this does not hinder your Government, in the harmony of interests which should be created under the Treaty, from procuring for Chilean products analogous advantages on the lines which may be constructed in Bolivian territory on its own account or by private enterprise.

In response, it is gratifying to me to state to Your Excellency that that was, in truth, the meaning of our respective declarations in signing the Act of day before yesterday; I should add, on my side, that, in view of the same considerations which Your Excellency has brought forward, my Government would desire to have it established that, the total of the credits, for whose cancellation the sum of six million five hundred thousand pesos is destined, being, according to certain pending liquidations, in excess of said sum, such sum shall be distributed at the pro rata of the capital to which those credits amount.

I trust, on my part, that Y. E. may consider these declarations in harmony with those which I made to you upon that subject in our last conference, the 15th instant.

I am pleased to reiterate to Y. E. the assurance of my very distinguished consideration.

LUIS A. VERGARA.

To his Excellency

Señor don ALBERTO GUTIERREZ,

*Envoy Extraordinary and Minister Plenipotentiary of
Bolivia in Chile.*

No. 91.]

LEGATION OF BOLIVIA,

Santiago, November 21, 1904.

Mr. MINISTER: I have the honor to acknowledge receipt of the esteemed note of Your Excellency, No. 1244 of the 17th instant, by which I am convinced that we are in perfect accord of purpose in signing the Act of the 15th of the present month.

In closing said communication, Y. E. is pleased to state the desire of Your Government to have it stipulated that, the total of the credits, for whose cancellation the sum of six million five hundred thousand pesos is destined in Article 5 of the Treaty of Peace and Friendship between Bolivia and Chile, signed the 20th of the past month, being in excess of said sum, according to certain pending liquidations, that sum shall be distributed at the pro rata of the capital to which the said credits may amount to.

It is gratifying to me to give assurance that such declarations are in harmony with those which Your Excellency made in our conference of the 15th of the present month and are, moreover, in accord with the written antecedents in the negotiations.

I have the pleasure to avail of this opportunity to renew to Y. E. the assurance of my high and distinguished consideration.

A. GUTIERREZ.

To His Excellency,

Señor don LUIS A. VERGARA,

Minister of Foreign Relations of Chile.

Record of a conference on December 24, 1904.

In Santiago the 24th of December, 1904, met in the ministry of foreign relations the minister of the department, Señor Luis A. Vergara, and the envoy extraordinary and minister plenipotentiary of Bolivia, Señor Alberta Gutierrez, the minister of foreign relations, stated: That during the discussion of the treaty of peace and amity on the 20th of October, last, which took place in the senate chamber one of the senators pointed out the desirability of determining exactly the scope which might be given to

the final paragraph of Article 11 of said treaty in order to have it perfectly well established that the recognition of private rights to which said paragraph refers can in no case oblige the high contracting parties to give any indemnities whatever.

The minister of foreign relations added that for his part he deemed his declaration consistent with the spirit and meaning of said clause, and that he hoped that the Bolivian representative would be pleased to state that his government gave it the same interpretation.

The envoy extraordinary and minister plenipotentiary of Bolivia stated that, duly authorized by his government, he accepted the declaration asked for by the minister of foreign relations and declared, therefore, that the recognition of private rights in the territories which, by the treaty of peace and amity concluded by the two governments on the 20th of October last, change their sovereignty, as occurs at Chilcaya, Ascotan, and to the south of the Loa River, and which are to be defined by the ordinary tribunals of justice, shall entail on the high contracting parties no indemnities whatever.

For the purposes of record they agreed to put in the form of a protocol this conference, signing and sealing this minute in duplicate.

LUIS A. VERGARA.

A. GUTIERREZ.

TRANSLATION OF EXHIBIT 22.

TRANSLATION OF EXHIBIT 22 FILED BEFORE THE UNITED STATES
AND CHILEAN CLAIMS COMMISSION.^(a)

HE REQUESTS THE COPIES.

Honorable JUDGE OF LETTERS:

I, Edwardo Jackson, respectfully represent to you: that I need to have in my possession the certified copies of the following documents, which are filed in the suit prosecuted by Don Juan Wheelwright against the partners of the Mine "Justicia" concerning the delivery of an estaca of instruction.

1. Instrument of compromise and certified copies of Supreme Resolutions, folios 83 to 88.

2. Decrees running from folio 151 to folio 153, where it says "Malquiades Loaiza", with the certificate of the Secretary of the Court, Don Clodimiro Mujica, inserted at folio 154.

3. The memorial and other documents which were found from folio 114 to folio 119.

4. A return of the writ of the notary of deposit, José del C. Gonzalez M., found at folio 154; a copy of the petition at folio 148; his citation and notifications of the laws and decrees inserted in the documents of the reply, folio 57 referred to in the said Return; (The Spanish is not clear) and

5. Of the resolution of October 12, 1871, which is recorded at folio 184 to 185.

No. 410.]

Stamp.

Settlement executed between the Minister of Finance and Industry, Doctor Manuel Ignacio Salvatierra, in representation of the National interests, and John Wheelwright, partner and representative of Messrs. Alsop & Company of Valparaiso, for the consolidation and amortization of the credits which he has pending against the State.

In the City of La Paz of Ayacucho, at eleven o'clock of the 26th of December, 1876, before me citizen Patricio Barrera, Notary of Finance, Government and War, and the undersigned wit-

^a For Spanish text of this exhibit, see Appendix II, pp. 234-261.

nesses, there appeared, on the one part, Doctor Manuel Ingacio Salvatierra, Minister of Finance and Industry, as representative of the National interests, native of the City of Santa Cruz, resident in this capital, married, and of the legal profession; and of the other part, John Wheelwright, partner and representative of Messrs. Alsop and Company of Valparaiso, Republic of Chili, also married, and transitorily in this City, both being of full age and competent to execute this deed, and whom I certify that I know, and they stated, that in order to consolidate and liquidate the credits pending against the State, arising out of the transfer of the rights which were recognized in favor of Don Pedro Lopez Gama, a Supreme Decree has been issued, dated on the 24th of the present month, in which is embodied the definite settlement for which this deed is ordered to be drawn out, and which is as follows:

SUPREME DECREE.

MINISTER OF FINANCE,

La Paz, December 24th, 1876.

Taking into consideration the proposal of John Wheelwright, partner and representative of Messrs. Alsop & Company of Valparaiso, in liquidation, to consolidate and liquidate the credits which he holds against the State, by the transfer of the rights recognized in favor of Don Pedro Lopez Gama, the Cabinet in Council has agreed with the aforementioned John Wheelwright to a new settlement which shall finally close this matter and which is drawn up under the following conditions:

First.—It recognizes to the aforementioned representative of the firm of Alsop & Company the capital of eight hundred and thirty-five thousand Bolivian silver dollars, (\$835,000), with the yearly interest of five per cent. not capitalizable, which shall commence from the date of the signature of this deed of contract.

Second.—Said capital and interest shall be liquidated by drafts drawn for the sum total in tri-monthly proportions, on the excess which there may be in the customs duties corresponding to Bolivia in the Northern Custom House, from the date on which the actual customs treaty with Peru ceases, over and above the four hundred and five thousand Bolivian dollars (\$405,000) which Peru now renders, either in the case of the customs treaty being renewed with the Government of Peru, or of the re-establishment of the National Custom House.

Third.—All the mining setts of silver belonging to the State in the coast department are hereby subject to the same amortization, which shall be effected by the application of the forty per cent of the nett profit, except in the case of the Estaca "Flor del Desierto" of which the following article disposes.

Fourth.—The said setts of the "Flor del Desierto" and another of those belonging to the State, which the party of the second part shall select, are hereby dedicated to the payment of the interest which is claimed as due, which amounts to one hundred and sixty thousand seven hundred Bolivian dollars (\$160,700) previous to the 18th December, 1875, and seventy thousand dollars (\$70,000) corresponding to the year which expires.

In the sett "Flor del Desierto" the amount corresponding to the State and applicable to this amortization shall be fifty per cent. of the nett product, and in the other one, forty per cent. as in the other mining setts which are granted.

The surplus, after the amortization of the interest has been made, shall be applied to the payment of the recognized capital, as is directed in the third clause, it being a condition that if neither one nor the other of these setts produce anything or produce little, this charge and all claims for accrued interest are definitely cancelled.

Fifth.—The working of the mining setts of the State which are appropriated in the previous articles remains subject to the contract which on this same date is drawn up on the subject, such rights and this settlement being transferable to the persons or companies that the party of the second part may deem convenient, notice of same being given to the Government.

Sixth.—In all cases of payment or receipt of amounts the Chilian silver dollar or Peruvian silver sol shall be considered equal to the Bolivian, either in this contract or in that of the mining setts.

Let the legal deed be drawn up, inserting in it its settlement and the contract relating to it, of which mention is made, and let it be registered.

(Signed.) DAZA, SALVATIERRA, OBLITAS, CARPIO, VILLEGAS.

MANUEL PEÑAFIEL,

Chief Secretary.

Acceptance.

On the 26th of the current month, at eleven o'clock, I made known this supreme decree which precedes, to Mr. John Wheelwright, representative partner of Messrs. Alsop & Company, who,

fully informed of its contents, accepted the contract in legal form, before me, of which

I hereby certify.

(Signed.)

JOHN WHEELWRIGHT.

PATRICIO BARRERA,

Notary of Finance, Government and War.

SUPREME DECREE.

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, December 23d, 1876.

In conformity with the settlement of this date, it has been agreed upon by the Government, at a Council of Ministers, with Mr. John Wheelwright, representative of the house of Alsop & Company, that the working of the mining setts of the State, which have been adjudicated to said firm, shall be made on the basis and conditions which follow:

First.—To Mr. John Wheelwright is allotted a period of three years for making an examination of the silver mines of the State, and for securing the necessary capital for placing work on them, he hastening to adopt in the shortest possible period all the preliminary measures which are conducive to the object. During these three years the mines remain subject to the grantee, the Government facilitating, by recommendations to the authorities, his effective possession.

Second.—The grantee is authorized, by virtue of the adjudication which has been made for him, to organize collective or anonymous companies, either on the coast or abroad, for the working of one or more mines, or to contract for the most secure working of them with the proprietors of adjoining mines, so as to work some or all of said setts, which, in the opinion of the company or organized societies, are most advantageous on the veins already discovered, or which may be discovered during the three years assigned in the first clause.

Third.—The company can contract and employ in their mining works, foreign or native engineers, employes and workmen, who, during the time of their engagement, shall be free from all military service and from all civil employments, except in cases where public order and peace demand attention.

Fourth.—The company or societies in management of the works shall present six-monthly balances, so that in virtue of

them and what the books show, a distribution may be made of the forty per cent. which shall be applied to the amortization of the debt on the terms agreed upon in the settlement of this date for account of the State, and of sixty per cent. in favor of the grantee.

Fifth.—The Government will place the interventor or interventors which may be necessary, and they shall be paid out of the working capital of the company.

Sixth.—The term of this contract is for twenty-five years, in which period, if there is a surplus after the amortization of the State debt on the terms of the settlement, it shall be delivered to the State itself.

Seventh.—If in the first three years or afterwards till the expiry of the twenty-five years mentioned in the previous article, there should be any persons or companies who shall propose the working of one or more of the mining setts referred to in this contract, they can do so if the company does not see fit to take the management of the working, informing the Government in writing, or omitting deliberately the mention of it.

Eighth.—The Supreme Government still cede in favor of the grantee and gratuitously during the term of this contract, the lands of the State which may be required for erecting their houses and establishments necessary for their mines.

DAZA-SALVATIERRA-OBLITAS-CARPIO-VILLEGAS-
MANUEL PEÑAFIEL,
Chief Secretary.

Acceptance.

On the 26th of the present month, at eleven o'clock, I made known the Supreme Decree which precedes to Mr. John Wheelwright, partner and representative of Messrs. Alsop & Company, who, being notified of its purport, accepted it in legal form, of which I certify.

JOHN WHEELWRIGHT.

PATRICIO BARRERA,

Notary of Finance, Government and War.

CONTINUATION.

In conformity with which, ratifying respectively the two Supreme Decrees embodied herein, which, in the original, exist in the archives of the collection under number 410, after being legalized by me, the Notary, in conformity with the present and in the

most legal form, they covenant: that they oblige and compromise themselves in the name of those they represent, the party of the second part for himself as partner, to the observance and fulfilment of all and every clause contained in both Supreme Decrees. In witness thereof they affirmed, sealed and signed before the witnesses who were present, Doctors Manuel Vargas and Benjamin Martinez, residents of this City, single men, both lawyers and of full age, before whom this was read from beginning to end, no objection of any kind being made to the tenor of it, and of which I give faith by signing.

MANUEL I. SALVATIERRA,
JOHN WHEELWRIGHT,
MANUEL VARGAS,
BENJAMIN MARTINEZ.

Before me,
[L. s.]

PATRICIO BARRERA,
Notary of Finance, Gov't and War.

Drawn up and filed at page 1098 of my twenty-second Register of Deeds and Public Contracts.

I deliver this original copy at the verbal request of Mr. John Wheelwright, the party of the second part, in conformity with the law of March 5th, 1858, respecting notaries, after being duly and faithfully compared and corrected. In witness whereof I authorize, seal and sign it in the City of La Paz, of Ayacucho, at four o'clock of the 27th day of December, 1876.

[L. s.] PATRICIO BARRERA,
Notary of Finance, Government and War.

The undersigned notaries of the first class, of this Judicial District, hereby certify and witness: That citizen, Patricio Barrera, who authorizes the foregoing deed, is such Notary of Finance, Government and War as he styles himself, and actually in the exercise of such duties; that the deeds which he authorizes and are drawn up before him, merit entire credit and judicial and extra judicial faith.

In witness whereof we sign, seal and deliver.
La Paz, December the 28th, 1876.

[L. s.] BASILIO F^o. GUACHALLAS,
Notary of the First Class.

[L. s.] FRANCISCO LUIS BALLON,
Notary of the First Class.

The citizen, Pedro Villamil, General of Brigade of the Bolivian Army, and Prefect of the Department, &c., certifies that the declaration which precedes is legal.

DECEMBER the 28th, of 1876.

[L. S.]

PEDRO VILLAMIL,
Minister of Foreign Relations.

La Paz, December 29th, 1876.

Legalized.

(Signed.) J. OBLITAS,
Consulate General of the Argentine Republic.

I hereby certify to the authenticity of the preceding signature of J. Oblitas.

La Paz, December 29th, 1876.

[L. S.]

GEORGE M. BOWEN,
Chancellor of the Consulate.

I certify that the copies which were requested to be annexed in accordance with the 5th enumeration of the preceding petition are the following: In fulfilment of what has been decreed by the Governor under date of the 23rd of the present month, I issue a copy of the following documents: A seal of the Minister of Hacienda and Industry. No. 174. La Paz, August 22, 1878. To the Prefect of the Department of Cobija. Sir. In the petition of the citizen José Santos Monroi, attorney of John Wheelwright, concerning the declaration which he requests, the following resolution has been issued:

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, 21st August, 1878.

In virtue of the reasons on which this petition is founded, and considering that Mr. Wheelwright took over the Fiscal Mining Setts (Estacas Minas Fiscales), under the Contracts of the Settlement of the 24th December, 1876, as the representative of the State, it is hereby declared that as such he should enjoy the same privileges as the State in the judicial measures which he may initiate and sustain in order to enter into and maintain possession of the said Fiscal Mining Setts.

Take note, transcribe and publish.

DAZA.

D. MEDINA.

MINISTRY OF JUSTICE,
PUBLIC INSTRUCTION AND WORSHIP,
La Paz, 5th February, 1879.

To the Fiscal of the Coast District.

SIR: Repeated demands having been made to the Government on the part of Mr. Wheelwright, who, in association with the State, is working the Fiscal Mining Setts (Estacas Minas Fiscales) of your district, in order to render effective his action as administrator of the Society, which he is in virtue of his contract, the President of the Republic charges me to request you to forward to the Fiscal Ministry the following instructions:

First.—That the Fiscal of the District of Caracoles, who, according to law, represents the rights of the State, should put in force the legal measures which the contractor may deduce, seeing that he is not guided by private interests, but as a partner with the Government, in place of putting obstacles in the way, as would seem to be the case from the evidence which accompanies one of his claims.

Second.—That as, according to Article 168, Clause 2, of the Mining Code, the neighbor can have free entrance to a mine when he presumes or fears some prejudice, the contractor, Mr. Wheelwright, cannot be refused the right of investigating personally, or by means of his agent, the encroachment of the neighbor on the bounds of the Fiscal Mine, in order to formulate the corresponding demand before the competent authority in the event of his fears being realized; while, on the other hand, this right of procedure, merely administrative, cannot be restrained by any opposition whatsoever.

Third.—In the event of any well-founded dispute arising, information of the matter shall be passed to the competent judge in the form prescribed, amongst other depositions, by the law of 10th November, 1873.

As will be observed, the Government, in the foregoing instructions, does not make any new resolution, but only calls to remembrance the legal dispositions mentioned, in order that they may have the most faithful and strict fulfilment.

May God be with you.

DAZA.

SERPIO REYES ORTIZ.

Given at the verbal request of the party interested, Mr. José Santos Monroi, as representative of Mr. Wheelwright.

MELQUIADES LOAIZA,
Chief of the Section of Justice.

[L. S.]

I certify that the copy which has been ordered added is of the following tenor:

Memoria which the Minister of Hacienda and Industry presents to the national representatives convened in 1877. *La Paz, 1877. First.*

The Government having perceived from the time of its inauguration its poor financial condition, endeavored to remedy it with certain provisions. Among them the circular of July 5, 1876, (2) which suspended the payment for services preceding the 4th of May, and had as an object the establishment of a dividing line which should separate the situation and serve as a point of departure for the operation of the new administration which began with an immense deficit from which it was necessary to free itself.

The Office of the Secretary General issued, on the 17th of October of the same year, a decree imposing a tax upon copper bars, (3) a resort which, although exacting, was very timely in the penury which was being experienced. It produced the annual income of 15,000 bolivianos in time drafts. When the Ministry was installed the question of the existence of the contract with John G. Meiggs concerning the lease of the salt petre deposits of Toco was pending. Perfected and put into execution as it was, without lawful reason for its rescision, censured only by malcontents who judged from passion, alone, it was passed in Cabinet Council after the judicial question had been considered. This promptly produced the fund of 70,000 soles which were received until December last, a fund which was increased by 3,500 bolivianos the premium obtained on account of the care taken in securing the drafts on Lima. Another Treasury increase for the poor state of finances is the suspension, which, upon the execution of the deed of transfer and separation of the National Bank, I made, by an additional agreement, of the premium of 10 per cent which this bank had been charging and desired to continue charging for the drawing of drafts on funds of the State from one of its branches to the other. There was likewise obtained, also, in time drafts, the income of the coinage for the four months which ran from the first of December, 1876, to the 31st of March of the present year. It reached the sum of 49,946 bolivianos.

Second. This fund was the only one available as was set out in the budget. The others which were not available and whatever others might have been raised should have belonged to John Wheelwright representative of the credit of Lopez Gama to whom,

by the decrees of December 18th, 1875, and January 22, 1876, there had been allotted all the revenues which were not pledged in the budget. Besides the contract, accepted by these decrees, deprived the Treasury of 70,000 bolivianos cash from the Treasury of Cobija which had been annually assigned for the payment of the interest upon the debt acknowledged due him. This interest was excessive, having been charged at eight per cent per annum, compoundable. With such a contract the Government found itself without funds whereof to dispose, for all the ordinary ones had been exhausted, and without means of creating any other resources because there were applied before hand to the extinguishment of said debt all the extraordinary revenues or those of a new creation. That contract could not be more burdensome because of the embarrassment and difficulty in which the Government was placed in attending to the necessities of its working and administration. It was necessary, in view of a new proposal from Mr. Wheelwright to formulate and agree upon a compromise which should better the conditions of the contract, favoring and lightening the burden of the Treasury and giving to the Government liberty and resources to obtain funds for itself. Thus the compromise of the 24th of December, 1876, was reached (4) whereby there was deducted from the admitted principal the interest which had already been paid and this latter was reduced to 5 per cent, not compoundable, the payment of the principal to be made by drafts upon the excess which might be obtained over the present amount of the proceeds of the custom house of Arica.

By this means the revenue from the copper bars and nitrates became free because even if these latter were considered by the resolution of the 30th of March of 1876, not to be included in the contract of the 18th of December, 1875, the force of this resolution by the terms of said contract might be disputed.

17. You see, gentlemen, that in the same manner that the slave considers himself happy only because he has shaken off the yoke of servitude, thus should Bolivia consider itself and is happy when it compares its present situation of exemption and economic repose with that in which it was not more than a year ago, burdened under the weight of an enormous foreign debt and threatened by poverty at home. This situation, so flattering, is due, it is just to confess, to the elevation in spirit, nobility of sentiments, and to the lofty patriotism of the young President who, with the purity of his intentions and the energy of his determination for good, has known

how, in harmony with my worthy colleagues, to grasp my modest initiative in economic measures and put them decidedly and unhesitatingly into practice. But in that, if there is any reason for pleasure and satisfaction, there is no reason for vain glory and inaction. We must not forget that inspiration for success only proceeds from the fountain of *increate* wisdom. To the majesty of eternal wisdom, to the best and greatest God, let us lend our fervent thanks, let us adore His providence, let us bless His mercy and let us glorify His name on high, exclaiming with the prophet: "Not to us, O, Lord, not to us, but to Thy name give glory".
La Paz, November 20, 1877. MANUEL I. SALVATIERRA.

Approbation of the Acts of the Provisional Government. La Paz, Printing Office of "El Ciudadano," Illimani Street, No. 31; 1878. The National Constituent Assembly considering that the Provisional Government established on the 4th of May, 1876, has completed important reforms necessitated by public opinion, of which it has given an account to the Assembly through the conduct of the various ministries of State: decrees: Sole Article. All the political and administrative acts of the government established on the 4th of May, 1876, are approved. Let it be communicated to the Executive Power for its execution and fulfilment. Done at the City of La Paz on the 10th day of the month of December, of 1877. Luciano Valle. Leus. Ceferino Mendez. Office of the Secretary of the National Assembly. *La Paz, January 7, 1878.* Referred to the Committee on Constitution by order of P. S. Acha, Deputy Secretary. Sir: The Committee of the Treasury, complying with the order of the Chamber, to examine the acts and determinations which the Supreme Government has made in the important financial department, in order that there may be accorded to them the approval or disapproval of the Assembly, has the honor to render its report: that; touching upon each one of said acts or determinations, the Committee has presented a special report as is evidenced from the diverse projects which during the course of its labors it has presented to the Chair with the exception of a report upon the Supreme Decree concerning the depreciation of inferior currency. The commission limits itself for the present to repeating what it has said in the aforementioned projects, only adds, that it has no opinion, absolutely no opinion, to express upon the depreciation of said currency, the results and consequences of which are found within the range of the facts already completely consummated which the country has

found itself obliged to accept, hoping that the Supreme Government, faithful to its sacred promises, will endeavor as it does endeavor to indemnify with merited preference the bankruptcy which the depreciated capitals have suffered. It is as much as the Committee can report in truth and justice. Messrs. Tamayo and Carrasco sustain the affirmative. *La Paz, January 29, 1878.* Buitrago, Carrasco, Tuarzo, Tamayo, Maldonado, Villegas, Arancibia, Nogales. *Office of the Secretary of the National Assembly. La Paz, January 7, 1878.* Let it be filed with its antecedents. By order of P. Ondarza, Deputy Secretary. Sir: Your Committee on Industry having examined with every attention and care the acts of the Government from May, 1876, to the present time, only concerning such matters as are purely industrial, sees fit to present to you the following report: In the Ministry of Hacienda and Industry, from the political movement of May 4th until the re-union of the present Legislature there have been accomplished very important innovations of a serious and sufficiently important character which, it cannot be doubted, will have an immediate influence upon the economic situation of the Republic. The acts of the Government in the important sphere of industry are found set out in a simple and detailed manner in the respective memorial which it must be supposed is known to each one of the deputies, since many of them and the more important ones have been decided in the bosom of the Chamber. The Committee has analyzed, one by one, all the resolutions which are appropriate for its cognizance and has seen that it would be useless to present a special report upon the sphere already indicated, not only because the greater part of those acts are nothing except the logical consequence of the administrative power but also because the branch of industry is found to be connected with the Treasury and this latter has lent its approval in the manner and form of which the national Republic is cognizant. Therefore, our Committee of Industry is of the opinion that, because no substantial observation can be made, the acts of the present Government should be approved because of the reasons set out by the Department of Industry. *Chamber of the Committee, La Paz, January 31st, 1878.* Messrs. Velasco and Torres support the affirmative. José M. Velasco, Manuel Maria, Abasto, Felix Leiton, Abelin Torres, P. Benjamin Velasco. *Office of the Secretary of the National Assembly. La Paz, February 3, 1878.* Let it be filed with its antecedents. By order of P. Ondarza, Deputy Secretary.

The National Constituent Assembly, having read the report of the various Commissions, concerning the acts of the Provisional Government, and after having debated in order each one of the matters in accordance with the provisions of the rules, decrees: Sole Article. The acts of the Provisional Government are approved in the following manner. *First.* The Constitution of the State having been sanctioned, and the foundations for the formation of laws for elections and municipalities having been issued, it is declared unnecessary to render any decision upon the reglamentary decrees of December 15th, 1876, and March 30th, 1877. *Second.* The measures dictated in the Department of Hacienda are approved except those which have been revoked and modified by express provision of the present Assembly. *Third.* In the Department of War there are approved the measures of the Government relative to the organization of the Army and the garrison forces, the provision for armament, munitions and other necessities of war. And for the promotion and rehabilitation of the high rank of generals of the old chiefs mentioned in the memoria of the Honorable Minister of War. *Fourth.* All the decrees and resolutions issued by the Executive on matters of justice authorizing him to submit to the Supreme Court the modifications proposed by the respective Committee and to formulate, therefore, the necessary amendments with the proviso that he should render an account to the next Legislature. *Fifth.* The acts of the Government are approved concerning ecclesiastical matters, including the suspension of temporalities decreed against the Most. Illustrious Archbishop of the Plata because he has refused to consent to the vacancy of curates in the archdiocese. *Sixth.* The decree of August 10, 1877, is approved which places official instruction over that which may be given by private enterprises. *Seventh.* The decrees are confirmed which have as an object the modifications introduced in provincial times of the Departments of Cochabamba, Potosi, and Tarija. *Eighth.* The acts which refer to the Department of Industry are approved. Let it be communicated to the Executive Power for its execution and fulfilment. *Hall of Sessions, La Paz de Ayacucho, on the 12th day of February, 1878.* A Quijarro, President. Samuel Velasco, Flor, Deputy Secretary. Abdon S. Ondaza, Deputy Secretary. *Ministry of the Government and Foreign Relations, La Paz, February 14, 1878.* Let it be executed. H. Daza, J. M. del Carpio. It is a true copy. *Antofagasta, November 13th, 1880.* Clodomiro

Mujica. I certify that the laws and decrees of Bolivia inserted in the replication beginning at folio 57 are exact copies of their originals with which I have compared them. I give this certificate in fulfilment of the decree of the 17th of November last, issued by Your Excellency in virtue of the petition in the second demand of the preceding document. *Antofagasta, December 1st, 1880.* José del C. Gonzalez M. R. S., Judge of Letters. I, John Wheelwright, in a suit against Don Benjamin Fisher and others concerning the delivery of the estaca of instruction of the mine Justicia, etc., the other pleadings having been filed before you, respectfully represent: that this cause having arrived at the stage for the production of evidence, it is necessary for the protection of my rights that consideration be taken of such documents as I present and which are: *First*, two reports and two plans made by the Engineer Hugo Rock by order of the Government of Bolivia. *Second*. Two notes of said Government relating to the contract on folio ——. *Third*. A copy of the plans A, B and C, presented by the partners of the "Justicia" in the suit which I am prosecuting concerning the entry, and which were made by the Engineer of the State, Don Enrique Cabada and amended by Don Carlos de la Mahotiere. Therefore, I pray Your Excellency to be good enough to decide in accordance with my petition. *The first subdemand*. May Your Excellency be good enough to decree that the Secretary of the Court shall compare the copies to which number three of this petition refers with the original and certify as a part of the proof if they are exact. *Second subdemand*. May Your Excellency be pleased to decree that a Minister of standing compare the laws and decrees of Bolivia which I have inserted in my petition of replication with the originals which exist in the respective bulletin and certify as a part of the proof if they are exact copies thereof. *Third subdemand*. May Your Excellency be good enough to decree that the Secretary of the Court shall certify as a part of the proof if in his files there exist the books of the territorial deputation (in which are recorded the titles of the mines during Bolivian dominion) prior to the year 1872 and if in those that exist there figure the titles of the mine Justicia of Caracoles corresponding to the year 1871. *Fourth subdemand*. May Your Excellency be pleased to decree that the same functionary as a part of the proof add to the record the files of the case which I am presenting against the partners of Justicia concerning entry, a copy of the petition of 526 folios and a copy

of the reports of Don Carlos R. de la Mahotiere to be found on folio 527. *Fifth subdemand.* Needing for other uses the documents to which the first and second parts of the principal demand of this petition refer, may Your Excellency be good enough to order that they be returned to me as soon as copies thereof which I request have been added to the record. John Wheelwright. *Antofagasta, November 17th, 1880.* Let it be done in the principal and subdemands as is requested after citation. Tagle J. Mujica. On the 17th of November I notified Don Demetrio Acosta. Acosta, Mujica. On the 17th of November I notified Don John Wheelwright. John Wheelwright, Mujica. The estacas of public instruction are created by the decree of July 23rd, 1852. Article first of this decree says: "In every mine or vein of silver, gold or other metal there is applied of full right the interest or estaca next following those which belong to the discoverer or denouncer in accordance with the existing ordinances, to the Treasury of Public Instruction".

MINISTER OF HACIENDA AND INDUSTRY,

Sucre, October 9, 1871.

To His Excellency, the prefect of the Department of ———. In case there should be any doubt as to the understanding and application of the Supreme Decree of September 29, last, relative to the taking of possession of the estacas mines which belong to the State, His Excellency the President of the Republic has ordered me to issue the following regulations:

1. By virtue of Article 16, paragraph 1, of the Code of Mines, there belong to the discoverer of a mine in virgin workings three estacas; therefore the fourth estaca next following those of the first discoverer is the property of the State;

2. In the same manner, because by Article 20 of said code the two estacas in each vein belong to the discoverer thereof in a known mineral district, the third estaca in this case is the one which belongs to the State.

In order to determine said properties of the State the point of beginning shall be understood to be the point of the boundary which the discoverer may have designated; which shall be shown by the operation of registering and staking the mine, the title to which is demanded by the discoverer. In case the presentation of said documents should be refused the surveyor of the State shall determine the matter, taking always as the point of departure the beginning of the first estaca.

Every malicious concealment of the documents of registration shall make the concealer liable to the penalty of Article V of the aforesaid Decree of September 29, last.

Which I communicate to your Excellency for your information in order that, after having transmitted it to your inferior authorities, you shall order it published in the official periodical of that city so that it will come to the notice of everybody.

God guard your honor. Rubric of His Excellency

CASIMIRO CORRAL.

Later, and in the year 1873, Don Pedro Lopez Gama entered into a contract with the Government of Bolivia whereby he took over under the conditions stipulated the working and exploitation of all the estaca mines of silver belonging to the State. One of the first acts of the contractor was to request of the Prefect of Cobija a categorical declaration concerning the estacas which belong to the Treasury and of which he ought to take possession by virtue of his contracts. Said functionary saw fit to consult the Government upon the petition of Lopez Gama and in answering his consultation the Minister of Hacienda, among other things, told him by a note of October 22nd, 1873, that which follows: "The situation of each one of the estaca mines of the Treasury in the different registries of veins of silver which have taken place in that Department are found determined by the law with entire precision. The Supreme Decree of July 23, 1852, recognized by legislative acts of law of the States belong to the Treasury of Public Instruction the estaca next following those which belong to the discoverer or denouncer in every vein of silver or other metal. Beginning with this antecedent and bearing in mind the provisions of the mining code concerning the subject matter, the designation of the Treasury claims of which Pedro Lopez Gama was to take possession should not offer any doubt. By Article 17 of said code which also refers to Article 19 thereof, the discoverers through prospecting of veins in a virgin workings enjoy three estacas and on them the fourth belongs to the State. By article 20, the discoverers of a vein in a mineral district known and worked in other parts enjoy only two estacas the 3d in these being the one which belongs to the State. The exact application of said provision in the mineral districts of the litoral destroys any objection or difficulty that an individual interest might oppose. If any of the workers in that district who believe themselves to have a right to the three estacas invoke the decree of September 29th, 1871, which by a mistake expressed that

the fourth estaca always belongs to the State, it is very strange that they forget the tenor of the circular explanatory order of October 9th of the same year, which, correcting the inexact expression of the published decree declares that the fourth and third estacas respectively in the very terms which the code provides are those which belong to the State." By virtue of what is set out in that part of the note which I have just transcribed the Prefect of Cobija proceeded to decide the question which Pedro Lopez Gama had propounded, and in November, 1873, he rendered the following judgment. *Prefecture of the Department Lamar, November 14th, 1873.* Having examined and considered, first, that the discoveries of veins of silver made by Señor Diaz Gana, by means of diverse prospectors, took place in an unknown part of the Desert of Atacama, to which the same discoverer afterwards gave the name of Caracoles; second, that according to paragraph I of Article 16, corroborated by Article 19 of the Code of Mines, there belonged to every discoverer in a virgin workings three estacas; third, that Article 20 establishes only as an exception the fact that the discovery has taken place in a mineral district known and worked in other parts; it is declared in conformity with the supreme decree of October 23, 1871, and articles 16, 19, and 20 of the Code of Mines that the contractor, Pedro Lopez Gama, ought to take possession of the fourth estaca and all the veins discovered by Don Jose Diaz Gana and his prospectors which were registered before work of any sort had been begun in the mineral district of Caracoles and of the third estaca in the others, except in the case provided by Article 199 of said Code. Let it be registered and notice thereof given to the contractor, Pedro Lopez Gama, and let it be brought to the attention of the Supreme Government.

FERNANDEZ COSTAS.

The Government, reviewing this resolution in December of 1873, after having issued the law of November 15th of the same year whereby it was ordered that the Executive should take possession of the estaca mines of instruction, approved it in the following terms.

MINISTRY OF THE TREASURY AND INDUSTRY.

Nuccho, December 20, 1873.

Having examined at a Cabinet meeting the communication addressed by the Prefecture of Cobija, the statement of the Attorney General and the opinion of the Counsel of State, and consid-

ering that, in accordance with the proposal accepted on the first of April of the current year, Señor Pedro Lopez Gama ought to take charge of the workings and exploitation in partnership of the Estaca mines belonging to the State on veins discovered in the Littoral, and of those which hereafter may be discovered; that from the certified copies of the grants attached taken from the Book of Public Records in the Prefecture of Cobija it appears that there have been successively adjudicated to the Department of Instruction Estacas determined with entire clearness in each one of the registrations; that, therefore, and such acts constituting the titles of property of the State which have not been annulled, cancelled or modified by any later disposition, the Estacas in them designated are those which the Government let in partnership as belonging to the State at the time of making the contract, and the same of which Lopez Gama ought to take possession; the resolution issued in this proceeding by the Prefecture of Cobija on November 14th last is approved.

Let it be registered and returned.

BALLIVIAN,
 MARIANO BAPTISTA.
 DANIEL CALVO.
 MARIANO BALLIBIAN.
 PANTALEON DE LENCE.

After various other decrees relative to the estaca mines of the State in general, or especially to those of silver in the Littoral which would take a long time to enumerate, the law of the 15th of November, 1873, was issued whereby the Executive was ordered to take possession of the Estaca mines of Public Instruction. This law is conceived in the following terms:

Law of the 15th of November.

ESTACA MINES OF INSTRUCTION.

The Executive is ordered to take possession thereof. The National External Assembly decrees:

ARTICLE 1. The Executive Power has ordered that possession immediately be taken of all the Estaca mines of public instruction after citation of the adjacent owners, measurements and other procedure prescribed by the code of mines, and in view of the titles which shall be exhibited by those holding claims at each one of these operations.

ARTICLE 2. For no reason or cause shall the possession of the State be suspended except should opposition arise from the possessors who have works already established, in which case these shall be tried before the ordinary tribunals. The administrative authority ought to limit itself to the appointment of a receiver to the end that the net proceeds may be deposited in the National Bank of Bolivia until the respective judgments can be rendered.

ARTICLE 3. The Executive Power is authorized to compromise all suits concerning said estacas with the approval of the legislative power.

ARTICLE 4. All dispositions contrary to the present law are repealed.

Let it be communicated to the Executive Power for its execution and fulfilment.

Hall of Sessions, Sucre, November 14, 1873.

JENERO PALAZUELOS, *President.*

BELISARIO BOETO,

MACEDONIO DE MEDINA, *Deputy Secretaries.*

House of Government, Sucre, November 15, 1873.

Let it be executed.

ADOLFO BOLIVIA.

The Minister of Hacienda and Industry.

PANTALEON DE LENCE.

Law of October 19, 1871.

Executive.

Authorization to promote the progress of the country.

The National Constituent Assembly decrees:

ARTICLE I:

That let the Executive be authorized under obligation of rendering an account to the next Assembly, to do the following things * * *

5. To enter into contracts for the renting or exploitation in partnership of all estacas mines belonging to the State in the mineral districts of the Republic.

6. To regulate the exportation of minerals or inorganic substances by the littoral or by any of the frontiers * * *

Let it be communicated to the Executive Power for execution and fulfilment.

Hall of Sessions in the illustrious and heroic capital of *Sucre*,
October 19, 1871.

TOMAS FRIAS, *President*

[L. S.]

MARIANO NAVARRO, *Deputy Secretary.*

EULOJIO D. MEDINA, *Deputy Secretary.*

Palace of the Supreme Government in *Sucre*, *October 19, 1871*,
 let it be executed.

AGUSTIN MORALES.

(Counter-signed)

Minister of Government and Foreign Relations.

CASIMIRO CORRAL.

Finally, on the 7th of January, 1878, there was presented to the National Constituent Assembly a draft of a law proposing the approbation of all the political and administrative acts of the Government of the 4th of May, 1876, with which I made my contract. Having been passed and reported upon by the Commission of the Treasury, the Assembly voted on the 14th of February of the same year the law conceived in the following terms: The National Constituent Assembly having read the reports of the various Commissions concerning the acts of the Provisional Government and after having debated in every way each one of the matters in accordance with the rules, decrees:

Sole Article. The acts of the Provisional Government are approved in the following manner. *First.* The Constitution of the State having been sanctioned, and the foundations for the formation of laws for elections and municipalities having been issued, it is declared unnecessary to render any decision upon the reglamentary decrees of December 15th, 1876, and March 30th, 1877. *Second.* The measures dictated in the Department of Hacienda are approved except those which have been revoked and modified by express provision of the present Assembly. *Third.* In the Department of War there are approved the measures of the Government relative to the organization of the Army and the garrison forces, the provision for armament, munitions and other necessaries of war. And for the promotion and rehabilitation of the high rank of generals of the old chiefs mentioned in the memoria of the Honorable Minister of War. *Fourth.* All the decrees and resolutions issued by the Executive on matters of justice authorizing him to submit to the Supreme Court the modifications proposed by the respective Committee and to formulate, therefore, the necessary amendments with the proviso that he should render

an account to the next Legislature. *Fifth.* The acts of the Government are approved concerning ecclesiastical matters, including the suspension of temporalities decreed against the Most Illustrious Arch Bishop of the Plata because he has refused to consent to the vacancy of curates in the archdiocese. *Sixth.* The decree of August 10, 1877, is approved which places official instruction over that which may be given by private enterprises. *Seventh.* The decrees are confirmed which have as an object the modifications introduced in provincial times of the Departments of Cochabamba, Potosi, and Tarija. *Eighth.* The acts which refer to the Department of Industry are approved. Let it be communicated to the Executive Power for its execution and fulfilment. *Hall of Sessions, La Paz de Ayacucho, on the 12th day of February, 1878.* A Quijarro, President. Samuel Velasco, Flor, Deputy Secretary. Abdon S. Ondaza, Deputy Secretary. *Ministry of the Government and Foreign Relations, La Paz, February 14, 1878.* Let it be executed. H. Daza, J. M. del Carpio. Upon occupying this territory Colonel Emilio Sotomayor, in charge of the expedition, declared in the name of Chile that private property should be properly respected. The documents in which this declaration was made is of public notoriety here. In the next to the last paragraph of the note with which the Minister of Foreign Relations addressed the diplomatic agents the manifesto in which he gave an account to the neutral Powers of the causes of the war with Bolivia, it is said "I do not need to assure Your Excellency that your nationals will find in the territory, in which now the Chilean law has come to rule, every class of guarantee for their persons and their interests." In the manifesto of the 18th of February, 1879, the Minister of Foreign Relations (3d paragraph, page 83 of the respective memorial), expresses himself in the following terms: "The measures of conciliation having been exhausted which its desire for the tranquility of America caused Chile to place in incessant operation; all of the calls which were addressed to it in fulfilment of the obligations legally entered into in the treaty of 1874, having been unheard and disdained, there did not remain to Chile any other course than to raise anew its flag in the territories of which it was the owner and to return therewith to the enormous Chilean and foreign population and to the industries and capitals there situated, the tranquility, the confidence and the well being which the Bolivian Administration had made them lose. At the end of said manifesto (page 114 of the memorial) the following

words are read: "Fifty hours later the Chilean law ruled in said region, collecting under its protection Chilean and Foreign interests without the shedding of one drop of blood and in the midst of an enthusiastic patriotism of its redeemed people." The Minister of Foreign Relations, Don Domingo Santa Maria, on page 20 of his memorial, says: "In the course of the hostilities Chile has not lost sight on any occasion of the respect for property and neutral interests and it has strived to avoid every damage to them which was not necessitated by the duty of effectively consulting the first rights of war." I certify that the copy which has been ordered to be edited is of the following tenor: *Resolution of October 12th. Mining. The estaca mines of the State are not subject to prescription. Department of Hacienda and Industry. Sucre. October 12, 1871. To His Excellency the Prefect of the Department of ———.* Sir: In the consultation which the Sub-Prefect of the Province of Chayanta sent to the Government upon the abandonment of the estaca mines which belong to public instruction, on this date there has been resolved, in answer thereto, the following: Sir. The matters pending in the Departments of Hacienda and Industry having been taken up in this Ministry, I have taken note of the consultation which you have made in your note of July 9th last concerning the denouncement which Dr. José Lino Mendoza made, because of abandonment, of the estaca of public instruction upon the veins "Embudo" and "Melgarejo" of the District of Anconaza, mineral district of Aullagas. The denouncement of Mr. Lino Mendoza has been too strange and even absurd and stranger still is it that the public minister of that Province should have considered that the estacas denounced had become deserted, as though the property of the State could be subject to prescription. This abandonment does not exist and cannot exist concerning the estacas devoted to its benefit or to instruction, which, as the Attorney General of the Republic has decided, are national properties and are fully protected by the decree of their adjudication which has in mind the creation of funds to meet one of the most vital necessities of public administration. Therefore, Mr. Sub-Prefect, there is no abandonment of national properties and the estaca mines of the State are nothing else. Which, by order of His Excellency, I communicate to you so that you may order it published in the counties and mineral districts of that Province. God guard your honor. Rubric of His Excellency. Casimiro Corral. which I transcribe to Your

Excellency for your proper knowledge and in order that you may transmit it to your inferior authorities, ordering its publication in the official periodicals in that city, to the end that it may become known and serve as a general rule. God guard your honor. Casimiro Corral. A true copy. *Antofagasta, January 3d, 1881.* Clodomiro Mujica. A true copy. *Antofagasta, August 7th, 1893.* J. del J. Concha: [Eduardo Jackson requests further copies, including the judgment rendered May 2, 1882, in the suit maintained by Wheelwright against Benigno Barrios concerning the estaca Amonita. See Appendix II, page 255.]

I certify that the copy to which the foregoing petition refers is as follows: *Antofagasta, May 2, 1882.* Having considered: That Don Theodoro Hohmann for John Wheelwright sues Don Benigno Barrios for the purpose of having it declared that the mine "Amonita" belongs to the Bolivian Treasury, whose rights his constituent represents; that the defendant be condemned to restore the mine together with the proceeds received during the time of his possession. Setting out his complaint on folio 29 and in the name of John Wheelwright he says: In accordance with the stipulations of the Respective contract he petitions the delivery and possession of several of the claims called treasury claims, enumerating among them that corresponding to the Vein "Blanca Torre," and that, the Mining Deputy having entered into the ground which ought to be measured in order to deliver possession of said estaca to him Don Benigno Barrios opposed said proceeding whereby the delivery of the Treasury Estaca which plaintiff unduly held under the name of "Amonita" and the allotment of which he obtained surrepticiously by having denounced it under the false idea that it was a private property. Don Emilio Garcia Ramirez for Don Benigno Barrios answering at folio 145 the complaint on folio 29 asks that his constituent be absolved therefrom; and in setting up his right maintains: First, that the mine "Amonita" has never been an Estaca Instruction; second, that his constituent obtained it on account of abandonment on August 13, 1875, a fact that suffices to make understood that before him another person who was not the treasury of Bolivia had worked it; Third, that in the supposition that the mine "Amonita" had been an Estaca of Instruction, the Government of Bolivia had lost its ownership which it held to the territory in which it is located and together therewith the right to the so-called "Estacas of Instruction" and; Fourth, that the contract made with John

Wheelwright was void: first, because the Government of Bolivia needed an authorization from the Congress which it did not hold; and second, because those contracts were not reduced to public instruments: In the replication the plaintiff answering the arguments of his adversary says: that in accordance with the documents appearing in copy at folios 71 and 72 it appears that on July 4, 1870, Francisco B. Latulle requested under the name of "Amonita" an Estaca upon the course of the Vein "Blanca Torre" to the south, south-east of the discovery claim and on the 19th of said month the estaca was allotted to him following the one belonging to the treasury of Public Instruction, a reservation which the Sub-prefect made because the Decree of July 23, 1852, applied by full right to the treasury of said department the claim next following those which belonged to the discoverer; that five years thereafter the defendant denounced the mine "Amonita" because of abandonment the titles appearing from folio 13 showing that the claim, the object of this denouncement was the mine "Amonita." He adds that the defendant cannot allege prescription in this case as he does at folio 188, nor denouncement on account of abandonment; since by the Supreme resolution of October 12, 1871, under whose rule the contract was made of which the annexed instrument gives proof, it was declared that the Estacas of Public Instruction were not subject to prescription nor to denouncement for abandonment. Passing on then to refuting the third reason in the answer he avers: that the question being an international one between Chile and Bolivia its effects must be decided in accordance with the law of nations; that the usufruct interest in the estacas of Public Instruction of this littoral having been adjudicated by the contract of December, 1876, for the term of twenty-five years, and in payment of eight hundred and odd thousand pesos; that the rights which he acquired thereby form an integral part of his private property; that if there is any point upon which the authorities and the practice of nations are agreed it is in recognizing that whenever any Power takes possession by force of the territory of another nation, private properties which existed or may have had their origin therein, are sacred and inviolable; that admitting that only real rights are such as ought to be respected, his own falls within this class since by the afore-said contract the usufruct of the estacas of Instruction, which is a real right, was granted to him; and that even in the supposition that it was not a usufruct right, it would nevertheless be a real

right: first, because the courts of Bolivia admitted him to proceed for the estacas against every class of persons; second, because the Minister of Hacienda recommended more than once to his superior authorities that possession of the estacas should be given to him; third, by the authority which was granted him in the note copied at folio 120 to institute suits; and fourth, by different privileges which have been granted to him in various clauses of said contract. Finally, in establishing the validity of the contract of December, 1876, the plaintiff says that Article V of the law of the 19th of October, 1871, authorized the executive to rent or exploit in partnership the estacas of instruction and the contract comes within that authority; and that the latter was reduced to a public instrument at the proper time and even expressly approved by the Bolivian Congress. The defendant in his turn does not accept as proper the observations which precede and in his written rejoinder, supporting his arguments to the effect that the mine "Amonita" has never been an Estaca of Instruction, with respect to the validity of his denouncement because of abandonment, and with respect to the prescription which is alleged and with respect to the nullity of the contract of December, 1876, adds, with relation to the second point of the replication, that Chile has not conquered any portion of foreign territory, but that because of the failure of Bolivia to comply with the condition prescribed by the treaty of 1876, Chile did what every individual does when a thing is granted to him conditionally and the condition is not fulfilled. It recovered the thing which had not as yet ceased to belong to it. That John Wheelwright has not, and does not even allege, a right of property in the so-called Estaca of Instruction which, as properties of Bolivia, passed to the ownership of Chile by the fact of the war itself; that the contract of December, 1876, is not a usufruct contract but one of *anticresis* and that the same rights which the Bolivian authorities gave to Wheelwright show that the right of the latter was not a real one and it was for this reason that the complaint prayed that "Amonita" should be declared a claim of the Treasury of Public Instruction of the Government of Bolivia. The case passed to the presentation of the evidence and such proof as is required was adduced. Considering, first, that the territory which lies between parallels 23 and 24 of south latitude has been occupied under a right of recovery by the Chilean arms; but the absolution of the treaty of August 6, 1874, having approved by the law of the Country, Chile recovered

its dominion over the national properties which Bolivia had acquired by virtue of said treaty, and, second, that John Wheelwright is recognized and fully justified by the declarations of the witnesses who gave their answers at folio 218, that the mine "Amonita," denounced because of abandonment and actually occupied by Don Benigno Barrios, was the estaca of Blanca Torre; third, that among the national properties of Bolivia recovered by Chile there are counted the Estacas of Instruction, established by the Supreme Decree of July 23, 1852; fourth, that the agreement made on December 24, 1876, between the Government of Bolivia and Don Juan Wheelwright, a representative of the mercantile house of Alsop and Company, in accordance with the terms of the public instrument which appears copied at folio 180, was a contract of *anticresis* in which the Government of Bolivia granted to John Wheelwright the Estacas of Instruction of the mines of the then called "Litoral del Norte" in order that for the term of twenty-five years he might pay himself out of the proceeds the sum of 835,000 bolivianos and its interest which said Government admitted owing him. (Article 2435 of the Civil Code); fifth, that this same classification has been made in the order at folio 136 and accepted by the honorable Court of Serena which confirmed said order as appears at folio 151; sixth, that *anticresis* does not by itself give to the creditor any real right to real estate affected by it, not even after the delivery which perfects the contract, according to Article 2436 of said code; seventh, that John Wheelwright, not having acquired a right over the Estacas of Instruction granted by the aforesaid contract nor having ever had delivered to him the one which the defendant possesses under the name of "Amonita," can not even protect himself under the doctrine of these authors of the theoretic law of nations which, recognizing the positive principle of the real right which authorizes the conqueror in a war to appropriate to himself all the properties which form a part of the public domain of the enemy state, nevertheless counsel the nations who conquer a territory respect for real rights created in properties of the nation to whom the conquered territory belongs, and much less can he avail of his imperfect title by *anticresis* against an individual possessor of a mine which, with all others of the littoral "Del Norte" have become the national properties of the Republic of Chile by recovery and effective occupation of said littoral and which have become governed by our Code of Mines; eighth, that if the complaint on folio 29 should be sus-

tained and logically all those who contend for the return to the Bolivian treasury of the Estacas of Instruction of the mines situated between parallels 23 and 24 of south latitude, the ostensible contradiction would result in that the courts of Chile should restore to the Republic of Bolivia most important portions of the territories recovered and occupied by the arms of our republic; and, ninth, finally, that these premises having been established and a judgment having to be given in accordance therewith there is no reason for ascertaining or deciding whether or not the contract at folio 29, by virtue of which it is declared that the mine "Amonita" belongs to the Bolivian treasury, is legal, nor for rendering judgment that the defendant has vindicated his rights to said mine: By virtue of these considerations and the disposition set forth of article 591 of the Civil Code and law 32, title 16, Part 3, the complaint at folio 29 is declared to be without foundation.

Let it be noted.

A true copy,

FUENZALIDA.

A true copy,

CLODOMIRO MUJICA.

Antofagasta, Chile, August 7; 1893.

("Interest" O. K.)

J. DEL T. CONCHA, *Secretary.*

Statements of Account.

The Acting Secretary of the Treasury to the Secretary of State.

TREASURY DEPARTMENT,

Washington, April 13, 1910.

The Honorable The SECRETARY OF STATE.

SIR: I have the honor to acknowledge the receipt of your letter of the 4th instant stating that in the preparation of the claim of Alsop and Company against Chile you find it necessary to learn the exact value of the silver boliviano of Bolivia, the silver sol of Peru, and the silver peso of Chile, year by year, from 1876 until the present time.

In reply I take pleasure in enclosing extracts from the coinage laws of the countries named relative to the coins in question. I also enclose two tables in one of which the values of the coins are based upon the average price of fine silver per ounce reckoned at par of exchange, and the other the values as proclaimed by the Secretary of the Treasury and issued quarterly. I also transmit

a circular giving the values of foreign coins dated January 1, 1886, and a circular dated April 1, 1910, for the purpose of comparison.

Respectfully,

C. D. NORTON,
Acting Secretary.

Bullion value of the silver boliviano, peso, and sol.

United States Revised Statutes, section No. 3564, and act of October 1, 1890, and act of August 28, 1894.]

Years.	Boliviano of Bolivia.	Peso of Chile.	Sol of Peru.
1876, Jan. 1	\$. 965	\$. 912	\$. 918
1877, Jan. 1	. 965	. 912	. 918
1878, Jan. 1	. 965	. 912	. 918
1879, Jan. 1	. 965	. 912	. 935
1880, Jan. 1	. 836	. 912	. 836
1881, Jan. 1	. 823	. 912	. 823
1882, Jan. 1	. 823	. 912	. 823
1883, Jan. 1	. 812	. 912	. 812
1884, Jan. 1	. 806	. 912	. 806
1885, Jan. 1	. 795	. 912	. 795
1886, Jan. 1	. 751	. 912	. 751
1887, Jan. 1	. 727	. 912	. 727
1888, Jan. 1	. 699	. 912	. 699
1889, Jan. 1	. 680	. 912	. 680
By quarters.			
1890, Jan. 1	. 698	. 912	. 698
Oct. 1	. 850	. 912	. 850
1891, Jan. 1	. 771	. 912	. 771
Apr. 1	. 735	. 912	. 735
July 1	. 736	. 912	. 736
Oct. 1	. 723	. 912	. 723
1892, Jan. 1	. 691	. 912	. 691
Apr. 1	. 665	. 912	. 665
July 1	. 649	. 912	. 649
Oct. 1	. 616	. 912	. 616
1893, Jan. 1	. 613	. 912	. 613
Apr. 1	. 610	. 912	. 610
July 1	. 604	. 912	. 604
Oct. 1	. 531	. 912	. 531
1894, Jan. 1	. 516	. 912	. 516
Apr. 1	. 465	. 912	. 465
July 1	. 457	. 912	. 457
Oct. 1	. 464	. 912	. 464
1895, Jan. 1	. 455	. 912	. 455
Apr. 1	. 441	. 912	. 441
July 1	. 486	. 912	. 486
Oct. 1	. 486	. 912	. 486
1896, Jan. 1	. 491	. 912	. 491
Apr. 1	. 493	. 912	. 493
July 1	. 497	. 365	. 497
Oct. 1	. 490	. 365	. 490
1897, Jan. 1	. 474	. 365	. 474
Apr. 1	. 468	. 365	. 468
July 1	. 443	. 365	. 443
Oct. 1	. 412	. 365	. 412

Bullion value of the silver boliviana, peso, and sol—Continued.

Years.	Boliviano of Bolivia.	Peso of Chile.	Sol of Peru.
1898, Jan. 1	\$0.424	\$0.365	\$0.424
Apr. 1	.409	.365	.409
July 1	.418	.365	.418
Oct. 1	.436	.365	.436
1899, Jan. 1	.439	.365	.439
Apr. 1	.434	.365	.434
July 1	.443	.365	.443
Oct. 1	.436	.365	.436
1900, Jan. 1	.427	.365	.427
Apr. 1	.436	.365	.436
July 1	.438	.365	.438
Oct. 1	.451	.365	.487
1901, Jan. 1	.468	.365	.487
Apr. 1	.451	.365	.487
July 1	.436	.365	.487
Oct. 1	.428	.365	.487
1902, Jan. 1	.413	.365	.487
Apr. 1	.403	.365	.487
July 1	.382	.365	.487
Oct. 1	.384	.365	.487
1903, Jan. 1	.361	.365	.487
Apr. 1	.352	.365	.487
July 1	.384	.365	.487
Oct. 1	.408	.365	.487
1904, Jan. 1	.424	.365	.487
Apr. 1	.419	.365	.487
July 1	.403	.365	.487
Oct. 1	.422	.365	.487
1905, Jan. 1	.431	.365	.487
Apr. 1	.439	.365	.487
July 1	.422	.365	.487
Oct. 1	.441	.365	.487
1906, Jan. 1	.465	.365	.487
Apr. 1	.478	.365	.487
July 1	.480	.365	.487
Oct. 1	.485	.365	.487
1907, Jan. 1	.510	.365	.487
Apr. 1	.500	.365	.487
July 1	.484	.365	.487
Oct. 1	.499	.365	.487
1908, Jan. 1	.429	.365	.487
Apr. 1	.408	.365	.487
July 1	.393	.365	.487
Oct. 1	.382	.365	.487
1909, Jan. 1	.365	.365	.487
Apr. 1	.389	.365	.487
July 1	.389	.365	.487
Oct. 1	.389	.365	.487
1910, Jan. 1	.389	.365	.487
Apr. 1	.389	.365	.487

Value of the silver boliviano, peso, and sol according to the average value of an ounce of silver at the par of exchange.

Calendar years.	Boliviano of Bolivia.	Peso of Chile.	Sol of Peru.
1876.....	\$. 842	\$. 842	\$. 842
1877.....	. 869	. 869	. 869
1878.....	. 834	. 834	. 834
1879.....	. 813	. 813	. 813
1880.....	. 828	. 828	. 828
1881.....	. 819	. 819	. 819
1882.....	. 821	. 821	. 821
1883.....	. 802	. 802	. 802
1884.....	. 803	. 803	. 803
1885.....	. 770	. 770	. 770
1886.....	. 720	. 720	. 720
1887.....	. 709	. 709	. 709
1888.....	. 680	. 680	. 680
1889.....	. 676	. 676	. 676
1890.....	. 757	. 757	. 757
1891.....	. 715	. 715	. 715
1892.....	. 630	. 630	. 630
1893.....	. 564	. 564	. 564
1894.....	. 459	. 459	. 459
1895.....	. 473	. 351	. 473
1896.....	. 489	. 363	. 489
1897.....	. 437	. 325	. 437
1898.....	. 427	. 317	. 427
1899.....	. 435	. 323	. 435
1900.....	. 449	. 333	. 449
1901.....	. 431	. 320	. 431
1902.....	. 382	. 238	. 382
1903.....	. 392	. 244	. 392
1904.....	. 419	. 260	. 419
1905.....	. 441	. 276	. 441
1906.....	. 490	. 305	. 490
1907.....	. 479	. 298	. 479
1908.....	. 387	. 241	. 387
1909.....	. 278	. 234	. 376
1910 (3 months).....	. 280	. 236	. 379

The Acting Secretary of State to Chargé Pierrepont.

[Telegram—Paraphrase.]

Washington, June 29, 1910.

Summers will cable immediately the average yearly value in gold of Chilean paper pesos for each year from eighteen hundred and seventy-nine to nineteen hundred and one, inclusive. Also inform Department the legal rate of interest from eighteen seventy nine to the present date. If there is no rate provided by law then cable the bank rate for the same period.

WILSON.

Mr. Summers to the Secretary of State.

[Telegram—Paraphrase.]

Santiago, July 2, 1910.

Following are averages Chilean paper pesos in gold from eighteen hundred and seventy-nine to nineteen hundred and one, inclusive: 33; 30 7/8; 30 15/16; 35 3/8; 35 1/4; 31 3/4; 25 1/16; 23 15/16; 24 1/2; 26 1/4; 26 9/16; 24 1/16; 18 13/16; 15; 12 9/16; 16 13/16; 17 7/16; 17 9/16; 15 11/16; 14 1/2; 16 4/5; 15 91/100. Rates will be sent tomorrow. See Diario Oficial Ley number 277 February eleventh 1895.

SUMMERS.^a*Mr. Summers to the Secretary of State.*

[Telegram—Paraphrase.]

Santiago, Chile, July 4, 1910.

Legal rate of interest is six per cent. See 2205 to 2207, thirty-one.

SUMMERS.

EXTRACT FROM CIVIL CODE OF CHILE.

ART. 2205.

Se puede estipular intereses en dinero o cosas fungibles.

[Translation.]

ART. 2205.

Interest may be stipulated in money or in consumable articles.

ART. 2207.

Si se estipulan en general intereses sin determinar la cuota, se entenderán los intereses legales.

El interés legal, mientras la lei no estableciere otro, es el de seis por ciento.

[Translation.]

ART. 2207.

If interests are stipulated in general without fixing the rate, legal interests shall be understood.

The legal interest, whilst the law shall establish no other, is six per cent.

^a See also Estadística Minera de Chile, 1906-1907, Vol. III, pp. 88-89.

ACCOUNT NO. 1.—Estimated profits of the "Estacas de Instruccion" which were taken away through wrong jurisdiction.

	Chilean paper peso.	U. S. Gold.
The mines around the Estaca Justicia gave	428,000.00	
Around the Estaca Blanca Torre	119,815.00	
" " id Esmeralda	150,000.00	
" " id Desempeño	85,200.00	
" " id Limbo	34,800.00	
" " id San Juan	30,000.00	
" " id Luz del Pilar	90,000.00	
" " id Patriota	24,000.00	
" " id Fekualda	71,300.00	
" " id Colorada	259,200.00	
" " id Olivia	30,000.00	
" " id Carmelita	9,000.00	
Chilean paper pesos	1,331,315.00	
It is calculated that not less than 25% of this amount was extracted from the ground belonging to the Estacas.		
25% of \$1,331,315	332,828.75	
Taking this amount as a reliable sum of the net proceeds from the "Estacas de Instruccion" which were worked by strange parties, instead of the Liquidator of Alsop & Co., the loss to the firm would be 60% of this sum as per Art. 4 of Decree of Dec. 23, 1876, embodied in the contract signed with the Bolivian Government.		
60% of \$332,828.75	199,697.25	
All these Estacas were worked between the years 1879 and 1884 when the average exchange of paper currency was 67 cents U. S. gold.		
\$199,697.25 at 67 cents U. S. gold		\$133,797.16
Interest from the 1st of Jan. 1879 to Dec. 1st 1909. 24 years & 11 months at 6 %		200,026.75
Total amount of this item in U. S. currency		333,823.91

ACCOUNT NO. 2.—Expenses incurred in the "Estacas de Instruccion" mines in order to prevent them from being denounced.

Nos. of pages in Ledgers.	Name of Estaca.	Expenses, Chilean paper peso.	U. S. gold.
119, 193	Acullico	23.00	
254	Alhambra	4.30	
233	Aurelia (Sierra de Pinto)	7.10	
115, 189	Andacollo	17.60	
241	Araña	3.95	
123, 196	Aventura	4.20	
153, 211	Beneficiadora	81.55	
120, 217	Blanca Torre	918.95	
102, 178	Buena Esperanza	13.10	
251	California	1.60	
167, 221	Candelaria	15.85	
149, 208	Candeleros	53.15	

ACCOUNT NO. 2.—*Expenses incurred in the "Estacas de Instruccion" mines in order to prevent them from being denounced—Continued.*

Nos. of pages in Ledgers	Name of Estaca.	Expenses, Chilean paper peso.	U. S. gold.
136, 202	Carmen de Bonilla	6. 20	
161, 215	Cautiva	20. 00	
253	Chilena	1. 50	
105, 181	Compañía	228. 39	
148, 207	Consoladora	2. 00	
110, 186	Desempeño	832. 01	
237	Dolores	4. 75	
103, 179	Dorila (before Paris)	5. 10	
154, 212	Dos Amigos	17. 00	
145, 205	Empalone	363. 60	
118, 192	Ernestina	4. 00	
230	Escapada (Sierra de Pinto)	47. 60	
134, 243	Esmeralda	3, 352. 55	
252	Espatriada	5. 10	
239	Esperanza	2. 75	
122, 195	Francholina	72. 95	
164, 218	Frontera	83. 15	
152, 210	Garmendía	195. 07	
121, 194	Gualera	136. 35	
232	Hortencia	4. 25	
255	Independencia	1. 20	
104, 180	Invitacion	1, 293. 27	
248	Jenerosa	1. 30	
173, 226	Juana. 2°	6. 00	
116, 190	Julia	97. 80	
129, 204	Justicia	9, 312. 90	
247	Lechera	3. 75	
107, 183	Limbo	429. 88	
242	Litijiosa	43. 10	
227	Loreto	42. 00	
235	Maria Antonia	192. 97	
245	Maria Mercedes	25. 50	
228	Maximiliana	47. 10	
133, 200	Merceditas	732. 62	
246	Olivia	22. 50	
135, 201	Renquina	7. 20	
138, 203, 263	Restauradora	12. 85	
250	Rita	14. 70	
220	Rosa	37. 50	
132, 199	Rosario	69. 70	
256	San Carlos	5. 50	
238	San Ignacio	2. 00	
106, 182	San José	461. 80	
168, 222	San José 2°	65. 80	
100, 176	San Martín	38. 20	
108, 184	San Rafael (isla)	457. 69	
151, 209	Santa Ana . . . . .	. 50	
229	Santa Ines	47. 10	
131, 234, 257	Seis de Agosto (Sierra Gorda) . . . . .	. 50	
117, 191	Sofía	4. 00	
114, 188	Talegon	11. 45	

ACCOUNT NO. 2.—*Expenses incurred in the "Estacas de Instruccion" mines in order to prevent them from being denounced—Continued.*

Nos. of pages in Ledgers.	Name of Estaca.	Expenses, Chilean paper peso.	U. S. gold.
147, 206	Teresa	\$42. 50	
231	Transaccion	47. 10	
101, 177	Tres Amigos	963. 85	
165, 219	Tres Puntas	8. 50	
244	Tunari	18. 00	
240	Union Americana . . . . .	. 50	
236	Ursula	3. 00	
225	Valencianita . . . . .	. 75	
124, 197	Vallenar	43. 20	
249	Virjilia	6. 40	
109, 185	Zoila	37. 40	
224	Zoraida	15. 50	
250, 305, 163	Mineral district of the Inca including all the Estacas	15, 295. 18	
	Total amount expended	36, 498. 93	
	All the expenses on these mines were incurred during the years 1879 to 1884 inclusive, so that taking the rate of exchange of Chilean paper money, in which the amounts were paid, at 67 cents gold per Chilean paper peso, the exchange having fluctuated between 62.52 and 71.63, we have \$36,498.93 at 67 cents		\$24, 454. 28
	Interest from the 1st Jan. 1885 to 1st of Dec. 1909, or say 24 years and 11 months at 6 %		36, 559. 15
	Total amount of this item in U. S. gold		61, 013. 43

ACCOUNT NO. 3 (a).—*Expenses of litigation, attorneys' fees, etc.*

Date.	Page of Journal.	Judicial account.	Chile paper.	Rate of exchange.	U. S. gold.
1879.					
Sept. 30	36	Cash payments 404. 50			
Oct. 14	40	Paid M. A. Araya writs 48. 60			
7	42	Paid Lawyer I. Cabezon 200. 00			
Dec. 31	51	Cash payments to lawyers 543. 96			
31	60	Paid Lawyer C. Mujica 1, 965. 00			
			\$3, 162. 06	66. 82	\$2, 112. 89
1880.					
June 30	84	Paid Lawyer D. Feliu 2, 050. 00			
Dec. 31	112	Services of attorney 95. 00			
	117	Attorney's salary 240. 00			
	118	Paid Señor Rios Egana 150. 00			
			2, 535. 00	62. 52	1, 584. 88
1881.					
Mar. 31	137	Services of P. Godoy 30. 00			
Dec. 31	200	Salary of P. N. Pineda 4, 977. 77			
29	202	Paid J. M. Cabezon 50. 00			
			5, 057. 77	62. 65	3, 168. 69
1882.					
Mar. 31	230	Paid J. M. Cabezon 50. 00			
June 30	248	Salary, P. N. Pineda 1, 400. 00			
Dec. 31	323do 1, 400. 00			
			2, 850. 00	71. 63	2, 041. 46

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ACCOUNT NO 3 (a) —Expenses of litigation, attorneys' fees, etc.—Continued.

Date.	Page of Journal.	Judicial account.	Chile paper.	Rate of exchange.	U. S. gold.
1883.					
Apr. 30	362	Salary, P. N. Pineda, 4 months	933.33		
Nov. 11	433	Stamped paper	16.00		
June 30	387	Salary, P. N. Pineda, 2 months	466.67		
Dec. 31	448	.....do	1,400.00		
			\$2,816.00	71.38	\$2,010.06
1884.					
June 30	489	Salary, P. N. Pineda, 2 months	600.00		
Dec. 12	516	General expenses	69.20		
30	517	Salary, P. N. Pineda	600.00		
			1,269.20	64.29	815.97
1885.					
Apr. 30	555	Stamped paper	75.80		
May 30	572	General expenses	575.51		
June 30	597	Salaries, lawyers, U. S. A.	2,440.88		
30	603	Salary, P. N. Pineda	600.00		
July 31	609	General expenses	295.92		
Dec. 31	693	Salary, P. N. Pineda	600.00		
31	696	Authorized copies	16.90		
			4,605.01	50.75	2,337.04
1886.					
June 30	25	Salary, P. N. Pineda	600.00		
Dec. 31	53	.....do	600.00		
			1,200.00	46.76	561.12
1887.					
June 30	86	Salary, P. N. Pineda	600.00		
Dec. 31	105	.....do	600.00		
			1,200.00	49.61	595.32
1888.					
June 30	135	Salary, P. N. Pineda	600.00		
Dec. 31	153	.....do	600.00		
			1,200.00	53.15	637.80
1889.					
June 30	178	.....do	600.00		
Dec. 31	203	.....do	600.00		
31	237	Salary, E. Garcia	180.00		
			1,380.00	53.79	742.30
1891.					
Dec. 31	246	Salary, P. N. Pineda	1,500.00		
31	246	Salary, E. Garcia	240.00		
31	246	Consultation, F. Bazan	100.00		
			1,840.00	38.07	700.48
1892.					
June 30	255	Salary, B. Fisher	200.00		
30	255	Salary, E. Garcia	180.00		
30	255	Salary, P. N. Pineda, 3 months	266.24		
Dec. 31	256	Legalizations in Valparaiso	80.10		
31	257	General expenses	78.95(2)		
31	257	Salary, B. Fisher	300.00		
31	257	Salary, Max Espinosa P.	360.00		
31	257	Salary, E. Garcia	120.00		
			1,585.29	38.07	603.52

ACCOUNT—No. 3 (a).—Expenses of litigation, attorneys' fees, etc.—Continued.

Date.	Page of Journal.	Judicial account.	Chile paper.	Rate of exchange.	U. S. gold.
1893.					
June 30	258	Copy of sentences E. Justicia 78. 25			
30	258	Translation of powers 500.00			
Dec. 31	258, 355	Salary, Max Espinosa P 720.00(2)			
31	258, 355*	Salary, E. Garcia 240.00(2)			
31	258	Legalizing documents 68.60			
1894.			\$1,606.85	30.38	\$488.16
Dec. 31	356	Salary, M. Espinosa P 720.00(2)			
31	353	Salary, E. Garcia 240.00(2)			
1895.			960.00	25.44	244.22
Dec. 31	356-7	Salary, M. Espinosa 660.00(2)			
31	356-7	Salary, E. Garcia 240.00(2)			
1896			900.00	34.04	306.36
Dec. 31	357	Salary, M. Espinosa 600.00(2)			
31	357	Salary, E. Garcia 240.00(2)			
1897.			840.00	35.31	296.60
Dec. 31	357	Salary, M. Espinosa 50.00			
31	357	Salary, E. Garcia 20.00			
1901.			70.00	35.56	24.89
Dec. 31	353-4	Legation expenses in Valparaiso 918.79	918.79	31.54	289.79
		Total of judicial expenses	35,995.97		19,561.55

To this has to be added the simple interest of 6 per cent from Jan. 1, 1880, to Dec. 31, 1909:

	U. S. gold.	U. S. gold.
For 29 years 11 months on	\$2,112.89	\$3,792.64
For 28 years 11 months on	1,584.88	2,749.67
For 27 years 11 months on	3,168.69	5,307.56
For 26 years 11 months on	2,041.46	3,296.96
For 25 years 11 months on	2,010.06	3,125.64
For 24 years 11 months on	815.97	1,219.88
For 23 years 11 months on	2,337.04	3,353.65
For 22 years 11 months on	561.12	771.54
For 21 years 11 months on	595.32	782.85
For 20 years 11 months on	637.80	800.44
For 19 years 11 months on	742.30	887.05
For 17 years 11 months on	700.48	753.02
For 16 years 11 months on	603.52	612.57
For 15 years 11 months on	488.16	466.19
For 14 years 11 months on	244.22	218.58
For 13 years 11 months on	306.36	255.81
For 12 years 11 months on	296.60	229.86
For 11 years 11 months on	24.89	17.80
For 7 years 11 months on	289.79	137.65
Total interest on this account		28,779.36

SUMMARY.

Amount of judicial account	19,561.55
Interest on same	28,779.36
Total amount of this item	48,340.91

Statements of Account.

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ACCOUNT No. 3 (b).

Date.	Page of journal.	Prejudicial account.	Chile paper.	Exchange.	U. S. Gold.
1879.					
June 30	27	Contract with F. Hohmann of \$5,000 to defend rights besides his salary.	\$1,500.00		
July 31	31		500.00		
Aug. 31	34		500.00		
Sept. 30	37		500.00		
Oct. 31	42		500.00		
Nov. 30	48		500.00		
Dec. 31	57		500.00		
1880.					
Jan. 31	67	500.00			
			\$5,000.00	66.82	\$3,341.00
Dec. 31	120	Salary F. Hohmann from Jan. 1, 1879, to Dec. 31, 1880.....	12,000.00	62.52	7,502.40
1881.					
June 30	155	Salary F. Hohmann, 6 months.....	3,000.00		
Dec. 31	200	.....do.....	3,000.00		
			6,000.00	62.65	3,759.00
1882.					
June 30	252	Salary F. Hohmann, 6 months.....	3,000.00		
Aug. 31	275	Salary F. Hohmann, 15 days.	250.00		
Nov. 30	323	Salary R. E. Raithel, 4 months.....	1,000.00		
1883.					
Apr. 30	361	Salary R. E. Raithel, 1 month.....	250.00		
June 30	387	Salary R. E. Raithel, 6 months.....	1,500.00		
Aug. 31	411	Salary E. Cavada, 2 months.	500.00		
Sept. 30	419	Salary E. Cavada, 1 month..	250.00		
Oct. 31	430	.....do.....	250.00		
Dec. 31	447	Salary E. Cavada, 2 months.	500.00		
			3,000.00	71.38	2,141.40
1884.					
Apr. 30	475	Salary E. Cavada, 15 days..	125.00		
Apr. 30	477	Salary S. Herreros, 1 month.	50.00		
May 15	483	Salary S. Herreros, 15 days..	25.00		
June 30	488	Salary C. Heppe, 1 month....	50.00		
Aug. 31	498	Salary C. Heppe, 2 months..	100.00		
Sept. 30	503	Salary C. Heppe, 1 month...	50.00		
Oct. 31	508	.....do.....	50.00		
Nov. 30	511	.....do.....	50.00		
Dec. 31	515	.....do.....	50.00		
			550.00	64.29	353.59
1885.					
Jan. 31	523	Salary C. Heppe, 1 month ..	50.00		
Feb. 28	536	.....do.....	50.00		
Mar. 31	548	.....do.....	50.00		
Apr. 30	564	.....do.....	50.00		
May 31	579	.....do.....	50.00		
June 30	596	.....do.....	50.00		

ACCOUNT No. 3 (b)—Continued.

Date.	Page of journal.	Prejudicial account.	Chile paper.	Exchange.	U. S. Gold.
July 31	621	Salary C. Heppe, 1 month.. \$50.00			
Aug. 31	637	.....do..... 50.00			
Sept. 30	653	.....do..... 50.00			
Oct. 31	669	Salary C. Heppe, 1½ months. 70.00			
1886.			\$520.00	50.75	\$263.90
June 30	23	Salary, C. Heppe, 6 months. 300.00			
Dec. 31	52	Salary, C. Heppe, 5 months, 27 days..... 295.00			
1887.			595.00	46.76	278.22
June 30	86	Salary, S. Herreros..... 300.00			
Dec. 31	107	Salary, C. Waschmann.... 350.00			
31	111	Salary, S. Herreros..... 150.00			
1888.			800.00	49.61	396.88
June 30	135	Salary, C. Waschmann.... 400.00			
Dec. 31	152	.....do..... 800.00			
1889.			1,200.00	53.15	637.80
June 30	180	Salary, C. Waschmann.... 600.00			
Dec. 31	203	.....do..... 600.00			
1890.			1,200.00	53.79	645.48
Dec. 31	244	Salary, C. Waschmann.... 900.00			
1891.			900.00	48.73	438.57
Dec. 31	245	Salary, C. Waschmann.... 1,200.00			
1892.			1,200.00	38.07	456.84
June 30	255	Salary, C. Waschmann.... 400.00			
Dec. 31	257	Salary, F. Labashe..... 400.00			
1893.			800.00	38.07	304.56
June 30	258	Salary, F. Labashe..... 600.00			
Dec. 31	355	.....do..... 600.00			
1894.			1,200.00	30.38	364.56
Dec. 31	356	Salary, F. Labashe..... 1,200.00(2)	1,200.00	25.44	305.28
1895.			1,200.00	34.04	408.48
Dec. 31	356	Salary, F. Labashe..... 1,200.00(2)	1,200.00	34.04	408.48
1896.			1,440.00	35.31	508.46
Dec. 31	357	Salary, F. Labashe..... 1,440.00(2)	1,440.00	35.31	508.46
1897.			240.00	35.56	85.34
Dec. 31	357	Salary, F. Labashe..... 240.00	240.00	35.56	85.34
		Total of prejudicial account.	43,545.00	.....	25,415.11

ACCOUNT No. 3 (b)—Continued.

To this has to be added the simple interest of 6 per cent from Jan. 1, 1880, to Dec. 1, 1909:		U. S. gold.	U. S. gold.
For 29 years and 11 months on		\$3,341.00	\$5,997.10
For 28 years and 11 months on		7,502.40	13,016.66
For 27 years and 11 months on		3,759.00	6,296.32
For 26 years and 11 months on		3,223.35	5,205.71
For 25 years and 11 months on		2,141.40	3,329.88
For 24 years and 11 months on		353.59	528.62
For 23 years and 11 months on		263.90	378.70
For 22 years and 11 months on		278.22	382.55
For 21 years and 11 months on		396.88	521.90
For 20 years and 11 months on		637.80	800.44
For 19 years and 11 months on		645.48	771.35
For 18 years and 11 months on		438.57	497.78
For 17 years and 11 months on		456.84	491.10
For 16 years and 11 months on		304.56	309.13
For 15 years and 11 months on		364.56	348.15
For 14 years and 11 months on		305.28	273.23
For 13 years and 11 months on		408.48	341.08
For 12 years and 11 months on		508.46	394.06
For 11 years and 11 months on		85.34	61.02
Total interest of this account			39,944.78
SUMMARY.			
Amount of prejudicial account			25,415.11
Interest on same			39,944.78
Total amount of this item			65,359.89

Summary of *tori* account.

	Dr.
To account No. 1	\$133,797.16
Interest on same	200,026.75
Account No. 2	24,454.28
Interest on same	36,559.15
Account No. 3 (a)	19,561.55
Interest on same	28,779.36
Account No. 3 (b)	25,415.11
Interest on same	39,944.78
Total amount	508,538.14

ACCOUNT NO. 4.—*Account of the Estacas mines worked at a profit.*

No. of ledger.	Name of estaca.	Year of closing account.	Chilean paper.	Ex-change.	U. S. gold.
				<i>Cents.</i>	
125, 213	Al fin Hallada	1882	\$7, 144. 70	71. 63	\$5, 117. 75
113, 187, 260	Mapocho	1886	5, 828. 16	46. 76	2, 725. 25
130, 258	Reventon	1890	30, 050. 30	48. 73	14, 643. 51
111, 216	Rosales	1882	7, 650. 35	71. 63	5, 479. 95
126, 214, 261	San Rafael (S. G.)	1886	6, 488. 40	46. 76	3, 033. 98
131, 234, 262	Santa Isabel	1886	30, 142. 82	46. 76	14, 094. 78
			87, 304. 73		45, 095. 22
The contract provided that 40 per cent of those net proceeds should be credited to the Bolivian Government on the debt of the capital account.					
40 per cent of \$45,095.22					18, 038. 09
To this must be added 6 per cent simple interest up to Dec. 1, 1909, as follows:					
On 40 per cent of \$5,117.75 or \$2,047.10 for 26 years and 11 months					3, 306. 07
On 40 per cent of \$2,725.25 or \$1,090.10 for 22 years and 11 months					1, 498. 89
On 40 per cent of \$14,643.51 or \$5, 857.40 for 18 years and 11 months					6, 648. 15
On 40 per cent of \$5,479.95 or \$2,191.98 for 26 years and 11 months					3, 540. 04
On 40 per cent of \$3,033.98 or \$1,213.59 for 22 years and 11 months					1, 668. 69
On 40 per cent of \$14,094.78 or \$5,637.91 for 22 years and 11 months					7, 752. 13
Total amount of this item					24, 413. 97
					42, 552. 06

Statement of the production and expenses of the Estaca de Instruccion Flor del Desierto.

Year.	Production.		Expenses.	Net proceeds.	Net loss.
1877	First half year	\$8,307.03	\$8,474.37		\$167.34
	Second half year	3,058.46	5,168.46		2,110.00
1878	First half year	99.87	2,034.88		1,935.01
	Second half year	30,070.78	11,178.81	\$18,891.97	
1879	First half year	115,322.96	20,935.53	94,387.43	
	Second half year	59,789.69	21,572.52	38,217.17	
1880	First half year	11,859.54	16,907.45		5,047.91
	Second half year	11,304.62	16,065.34		4,760.72
1881	First half year	48,230.43	24,630.94	23,599.49	
	Second half year	57,140.93	28,599.48	28,541.45	
1882	First half year	4,634.43	19,045.55		14,411.12
	Second half year	33,620.29	24,314.37	9,305.92	
1883	First half year	63,178.20	37,885.52	25,592.68	
	Second half year	17,535.65	33,294.61		15,758.96
1884	First half year	8,583.67	12,514.14		3,930.47
	Second half year	19,745.27	10,560.87	9,184.40	
1885	First half year	22,156.95	13,202.91	8,954.04	
	Second half year	9,142.76	7,885.49	1,257.27	
1886	First half year	8,635.61	7,224.13	1,411.48	
	Second half year	5,832.76	6,332.47		499.71
1887	First half year	3,411.32	3,313.17	98.15	
	Second half year	737.76	2,197.49		1,459.73
1888	First half year	288.71	1,329.62		1,040.91
	Second half year		1,309.29		1,309.29
1889	First half year		602.62		602.62
	Second half year		68.73		68.73
1890	First half year	512.09	401.95	110.14	
	Second half year	16,367.59	11,966.98	4,400.61	
1891	First half year	26,928.76	18,107.34	8,821.42	
	Second half year	29,886.14	18,600.07	11,286.07	
1892	First half year	14,157.27	10,529.66	3,627.61	
1894		1,285.19	1,086.07	199.12	
		631,824.73	397,040.83	287,886.42	53,102.52
			234,783.90		234,783.90
		631,824.73	631,824.73	287,886.42	287,886.42
	Net proceeds				234,783.90

Account current between the Estaca Flor del Desierto and the Cia. Esplotadora.

1894.

Dec. 1.	By net proceeds up to date.....	\$234, 783. 90	
	To 20 per cent of net proceeds of \$234. 783.90, paid to the Esplotadora Company for the use of the Calameña shaft for the extraction of metals, as per contract.....	\$46, 956. 77	
	Expenses on auction of Estaca...	6. 55	
	Accrued interest on diverse occasions.....	1, 426. 86	
	Accrued interest, as per books of Sothers & Co.....	2, 152. 92	
	Balance.....	184, 240. 80	
			234, 783. 90
	By balance, being the total profit.....		184, 240. 80

Statement of the production and expenses of the Estaca de Instruccion Disputa.

(Ledger No. 1, 146-169; No. 2, 223-264.)

Year	Production.	Expenses.	Net profit.	Net loss.
1881.				
June.....	\$30, 478. 02	\$12, 592. 53	\$17, 885. 49	
December.....	33, 227. 26	9, 442. 60	23, 784. 66	
1882.				
June.....	11, 588. 86	13, 755. 94		\$2, 167. 08
December.....	26, 755. 84	18, 751. 14	8, 004. 70	
1883.				
June.....	3, 206. 86		3, 206. 86	
December.....	2, 653. 22		2, 653. 22	
1884.				
June.....	2, 551. 51		2, 551. 51	
December.....	1, 060. 99	200. 00	860. 99	
1885.....	180. 34	12. 00	168. 34	
1887.....	271. 78	285. 24		13. 46
1890.....	12, 336. 42		12, 336. 42	
1891.....	26, 194. 35	20. 90	26, 173. 45	
1892.....	11, 311. 22		11, 311. 22	
	823. 20		823. 20	
1894.....	84. 22		84. 22	
	162, 724. 09	55, 060. 35	109, 844. 28	2, 180. 54

Net profit..... \$109, 844. 28
Less net loss..... 2, 180. 54

Net proceeds..... 107, 663. 74

Power of Attorney referred to in Edward Jackson's affidavit.

El Notario Público y Conservador de Bienes Raices que suscribe, certifica: que en los documentos agregados al final del Protocolo de Instrumentos Públicos del año mil novecientos dos, se encuentra el siguiente:

“TRADUCCION de los documentos y poderes de fs. 1 a fs. 23.— Por las presente se da a conocer que yó J. Enrique Chauncey Riley, como albacea del último testamento de Teodoro W. Riley, ciudadano de los Estados Unidos de América, quien era socio de la casa de Alsop y Compañía de Valparaiso en la República de Chile, he hecho, constituido y nombrado, y por las presentes hago, constituyo y nombro a Enrique S. Prevost, ciudadano de los Estados Unidos, residente actualmente en Lima, Perú; y quien era tambien uno de los socios de la misma casa, para que sea mi fiel y legal apoderado, por mí, en mi nombre, y en mi lugar, para que dirija i maneje la parte de los intereses que me corresponden en la liquidacion de los negocios de dicha casa en cualesquiera y todos los paises de América del Sur, para que recoja i reciba cualquiera y todo dinero que se debe a dicha casa o al cual ella de alguna manera tenga derecho, dando recibos válidos por estas sumas, para que segun su discrecion, entre en compromisos, o transija por la suma entera que me corresponde o reciba solamente parte, en lugar de todo, en cabal satisfaccion; tambien si fuese necesario para que haga reclamos, o entable juicios, que creyera conveniente ante cualquier Gobierno, cortes o tribunales, o aparezca en defensa de los intereses de dicha casa ante ese Gobierno, corte o tribunal; tambien para que entre en negociaciones con alguna otra personas o autoridades, con el objeto de adquirir alguna propiedad o derechos de dicha casa, y sobre esto hacer los arreglos o concesiones que el estimara conveniente. Sin embargo advierto que dicho apoderado no puede afianzar por mi o comprometerme a pagar algun dinero en relacion con los negocios de dicha casa, salvo en el caso que ese dinero sea resultado de dicho negocios, y con esa restriccion. Doi i concedo por este medio a este mi dicho apoderado poder amplio y amplisimo para que obre y ejecute en todos los actos i en cualquiera cosa que sea necesario e indispensable que se hiciera tocante a mis intereses tan latamente para todos los casos y efectos que haya lugar, tal como yó pudiera hacerlo o lo haria si estuviera presente personalmente, con pleno poder para delegar y revocar ratificando y confirmando por este medio todo

lo que mi dicho apoderado o su sustituto hiciera o dejara hacer legalmente en virtud de esta facultad.—En fé de lo cual firmo i sello esto en la ciudad de Nueva York en este dia diez i seis de Junio del año mil ochocientos ochenta y cinco.—(Firmado)—Henry Chauneey Riley.—Sellado i entregado en la presencia de (Firmado) A. M. James.—(Firmado) Geo. G. Nichols.—Sello.—Estados Unidos de América, ciudad y condado de Nueva York. Sépase que el dia diez y seis de Junio, mil ochocientos ochenta y cinco, ante mi Geo. G. Nichols notario público, en y por el estado de Nueva York debidamente comisionado y jurado, domiciliado en la ciudad de Nueva York, se presentó personalmente Enrique Chauneey Riley albacea del último testamento de Teodoro W. Riley bien conocido por mi, quien se que es el mismo a quien se refiere, y que ejecutó el poder que va adelante, y quien declaró haberlo ejecutado. I tambien certifico y declaro por mi propio conocimiento que el susodicho Teodoro W. Riley era ciudadano de los Estados Unidos de América.—En testimonio de lo cual firmo, i pongo mi sello oficial a esto, el mismo dia y año ya mencionado.—(Firmado) Geo. G. Nichols.—Notario Público.—(\$40.60).—Sello.—1. ANEXO (Impreso).—Estados Unidos de Nueva York, Ciudad i condado de Nueva York. S. S.—Yó, Patricio Keeman, Escribano de la Ciudad y Condado de Nueva York, y tambien escribano de la Corte Suprema de dicha ciudad, i Condado, siendo ella una Corte de Archivos, certifico por ésta suscrito al certificado de la prueba o reconocimiento del instrumento anexo, i escrito sobre él, era al tiempo de ser tomado dicha prueba o reconocimiento Notario Público en y por la Ciudad y Condado de Nueva York, domiciliado en dicha ciudad, comisionado y jurado y debidamente autorizado para tomarse el cargo. I mas que le reconozco bien la firma de dicho Notario, y creo verdaderamente que la firma de dicho certificado de prueba o reconocimiento es jenuina. Certifico ademas que dicho instrumento está ejecutado y aceptado segun la lei del Estado de Nueva York. En testimonio de lo cual firmo esto i pongo mi sello de dicha corte i condado, este dia de hoi Junio 17 de 1885.—(Firmado) Patricio Keeman.—Escribano.—Sello.—Legacion de los Estados Unidos. Lima, Perú, S. A.—S. S.—Sépase que en este dia de hoi, el diez y nueva de Diciembre del año mil ochocientos noventa, ante mi personalmente, apareció Enrique S. Prevost, ciudadano de los Estados Unidos de América, conocido por mi que es el mismo descrito y a quien se refiere el poder que va adelante. Y en conformidad con la autoridad i

poder de que se halla investido a virtud de dicho poder declaró: que trasferia el mismo poder a Juan Hewart Jackson, domiciliado en la ciudad de Valparaiso, en la República de Chile, para que obrase libremente, y con plena accion bajo los terminos i condiciones que en el se espresan, con la única limitacion de no someter a compromiso los reclamos pendientes de la firma de Alsop y Cia. contra el Gobierno de Chile o cualquier otro Gobierno (Firmado) Henry S. Prevost.—En testimonio de lo cual firmo y pongo mi sello oficial de esta Legacion el mismo dia y año arriba mencionado.—Sello.—(Firmado) Ricardo R. Neill—Secretario de la legacion de Estados Unidos.—Legacion de los Estados Unidos Santiago Chile Enero 19 de 1891.—Por el presente certifico que la firma de Ricardo R. Neill que se halla en este poder es la del secretario en ejercicio de la Legacion de Estados Unidos en Lima, Perú, y como tal es digna de plena fé y crédito Sello.—(Firmado) Patrick Egan. E. E. y M. P. de los Estados Unidos en Chile.—Legalizada en el Ministerio de Relaciones Exteriores, la firma del señor Patrick Egan.—Santiago 19 de Enero de 1891.—El subsecretario.—Sello.—(Firmado) T. Velasco.—2.—ANEXO.—El pueblo del Estado de Nueva York. A todos lo que reciban las presentes o a quienes les conciernen. Salud. Sepan que nosotros habiendo examinado los archivos de nuestra corte de testamentarias, en i por el Condado de Nueva York, hemos encontrado que en el dia 20 de Marzo del año mil ochocientos sententa y tres fueron concedido i encomendando por dicha corte, cartas testamentarias de la Sucesion de Teodoro W. Riley que fué de la ciudad de Nueva York, fallecido, a Elizabeth. v. Riley Enrique Chauncey Riley, y Cárlos v. Riley, todos de la ciudad de Nueva York—albacea y albaceas nombrados en el último testamento de dicho fallecido, y que no aparece de dichos archivos que estas cartas hayan sido revocadas.—En testimonio de lo cual hemos hecho que se agregue el sello de la Corte de Testamentarias a este documento.—Testigo Daniel G. Rollins. Esqre—Juez de Testamentarias de nuestro dicho condado, en la ciudad de Nueva York, el dia 12 de Junio del año dominí mil ochocientos ochenta y cinco.—Sello.—(Firmado) Ansburn M. Dickinson.—Secretario de la Corte de Testamentarias.—3.—ANEXO.—El pueblo del Estado de Nueva York. A todos los que reciban la presente o a quienes les conciernen.—Salud.—Sepan que nosotros, habiendo examinado los archivos de nuestra Corte de Testamentarias, en i por el Condado de Nueva York, hemos encontrado que el dia 28 de Diciembre del año mil

ochocientos setenta y tres, fueron concedido y encomendado por dicha Corte cartas testamentarias de la sucesion de Elizabeth Vaughan Riley, que fué de la ciudad de Nueva York, fallecida a Carlos Vaughan Riley de la ciudad de Nueva York, albacea que fué nombrado en el último testamento de dicho fallecido, y que no aparece de dichos archivos que estas cartas hayan sido revocadas.—En testimonio de lo cual hemos hecho que se agregue el sello de Corte de Testamenterías a este documento.—Testigo: Daniel G. Rollins. Esqre. Juez de Testamenterías de nuestro dicho condado, en la ciudad de Nueva York, el día 12 de Junio del año domini mil ochocientos ochenta y cinco.—Sello.—(Firmado) Ansburn M. Dickinson.—Secretario de la Corte de Testamenterías.—4.—

ANEXO.—El pueblo del Estado de Nueva York. A todos lo que reciban las presentes o a quienes les conciernen.—Salud: Sepan, que nosotros habiendo examinado los archivos de nuestra Corte de Testamenterías, en y por el Condado de Nueva York, hemos encontrado que el día 3 de Noviembre del año mil ochocientos setenta y nueve por dicha corte fueron concedido i encomendado cartas testamentarias de la sucesion de Carlos Vaughan Riley, que fué de la ciudad de Nueva York fallecido, a Santiago, J. Kilbreth, de la ciudad de Nueva York albacea nombrado en el último testamento de dicho fallecido, y que no aparece de dichos archivos que estas cartas hayan sido revocadas. En testimonio de lo cual hemos hecho que se agregue el sello de la Corte de Testamenterías a este documento.—Testigo: Daniel J& Rollins Esqre, Jues de Testamenterías de nuestro dicho condado en la ciudad de Nueva York, el día 12 de Junio del año domini, mil ococientos ochenta y cinco.—Sello.—(Firmado) Amsburn M. Dickinson.—Secretario de la Corte de Testamenterías.—Legacion de los Estados Unidos de América, Lima, Perú, S. A.—S. S. Sepan que en este dia el 5 de Mayo del año mil ochocientos noventa y dos, ante mi personalmente apareció Enrique S. Prevost cocido por mi ser el individuo descrito, y a quien se refiere el poder que se acompaña. I en conformidad con la autoridad i poder conferido a el en virtud de dicho poder, declaró: que su trasferencia previamente otorgada a favor del señor Juan Etwart Jakson ha quedado nulo a consecuencia de la muerte del susodicho Juan Etwart Jakson, y que en lugar de este viene ahora en trasferir el mismo poder al señor Juan Etwart Jakson que fué Juan Stewart 2 Jakson, actualmente residente en Valparaiso en la República de Chile, y a Eduardo Jakson actualmente residente en Antofagasta, Republica de

Bolivia, temporalmente bajo el rejimen de la República de Chile, para su uso conjuntamente o separadamente segun el caso, y por libre y plena accion bajo los términos i condiciones indicados, con la única limitacion del derecho de someter a compromiso los reclamos pendientes de la firma de Alsop y Cia. contra el Gobierno de la República de Chile, o cualquier otro Gobierno.—(Firmado) Enrique S. Prevost.—En testimonio de lo cual e suscrito mi nombre y puesto mi sello oficial de esta Lagacion, el dia y año arriba espresado, 5 de Mayo mil ochocientos noventa y dos.—Sello.—(Firmado) Ricardo R Neill Encargado de Negocios de Estados Unidos interino. Legacion de los Estados Unidos, Santiago, Chile 13 de Junio 1892.—Yó Tenton R. M. Creery, secretario de la Legacion de los Estados Unidos, En Santiago Chile, certifico por este medio que la firma de Ricardo R. Neill es la del verdadero secretario de la Legacion de los Estados Unidos y el encargado de Negocios interino de E. U. en Lima, Perú, y que su firma puesta a este documento como tal merece toda fé y crédito.—En testimonio de lo cual firmo y pongo mi sello oficial de esta Legacion el dia y año arriba mencionado 13 de Junio 1892.—Sello.—(Firmado) Tenton. R. M. Creery.—Secretario de la Legacion de E. U.—Por las presentes se da a conocer que yó Enrique W. Alsop, ciudadano de los Estados Unidos de Norte América, residente actualmente en Morrethead en el Estado de Minnesota quien era socio de la casa de Alsop y Cia. de Valparáiso en la Republica de Chile, he hecho, constituido y nombrado y por las presentes hago, constituyo y nombro a Enrique S. Prevost, ciudadano de los Estados Unidos de América, residente actualmente en Lima, Perú, y quien era tambien uno de los socios de la misma casa, para que sea mi fiel i legal apoderado, por mi, en mi nombre, y en mi lugar, para que dirija, y maneje la parte de los intereses que me corresponde en la liquidacion de los negocios de dicha casa, en cualquiera y todos los paises de Sud América, para que recoja y reciba cualquiera y todo dinero que se deba a dicha casa, o al cual ella de alguna manera tenga derecho, dando recibo válidos por esta suma, para que segun su discrecion entre en compromisos o trasija por la suma entera que me corresponde, o reciba solamente parte en lugar de todo en cabal satisfaccion; tambien si fuese necesario, para que haga reclamos o entable juicios que creyera conveniente ante cualquier Gobierno, Cortes o Tribunales, o aparezca en defensa de los intereses de dicha casa ante ese Gobierno, Corte, o Tribunal; tambien para que entre en

negociaciones con otras personas cualesquiera o autoridades, con el objeto de adquirir alguna propiedad o derechos de dicha casa, y sobre esto hacer los arreglos o concesiones que el estimare conveniente. Sin embargo advierto que dicho apoderado no puede afianzar por mi o comprometerme a pagar algun dinero en relacion con los negocios de dicha casa, salvo en el caso que dicho dinero sea el resultado de dicho negocio, y con esa restriccion; doi i concedo por este medio a este mi dicho apoderado poder amplio i amplisimo para que obre y ejecute en todos los actos y en cualquiera cosa que sea necesario e indispensable que se hiciera tocante a mis intereses tan latamente para todos los casos y efectos que haya lugar, tal como yó pudiera hacerlo o lo haria si estuviera presente personalmente con pleno poder para delegar y revocar ratificando y confirmando por este medio todo que mi dicho apoderado o su sustituto hiciera o dejara hacer legalmente en virtud de esta facultad.—En fé de lo cual firmo y sello esto en la ciudad de Moorhead este dia, el 26 de Abril del año mil ochocientos noventa—(Firmado) Enrique W. Alsop.—Sello.—Estado de Minnesota, Condado de Clay.—S. S. En este dia el 26 de Abril A. D. 1890 ante mi el suscrito Notario Público, en i por dicho Condado, apareció personalmente Enrique W. Alsop a quien conozco i conocido por mi ser ciudadano de los Estados Unidos de América, i la persona descrita en este documento, y quien lo ejecutó, y declaró libre y voluntariamente haberlo ejecutado.—(Firmado) C. A. Nye.—Sello.—Notario Público.—Condado de Clay.—Minnesota.—Certifico por este medio que al tiempo de tomar la declaracion que precede, el señor C. A. Nye era Notario Público, que se recibió como tal el 12 de Febrero 1887 i continua en su empleo hasta el 12 de Febrero de 1892 y que esta registrado y archivado en mi oficina, siendo su firma digna de plena fé como Notario Público.—(Firmado) H. Rasmusson.—Sello Escribano de la Corte de Distrito. Distrito judicial numero 14 Condado de Clay, Minnesota.—5 ANEXO.—(Inpreso).—Estados Unidos de América.—Estado de Minnesota.—Departamento del Estado. Yó H. Mattson, secretario de Estado del Estado de Minnesota certifico por este medio que H. Rasmusson cuya firma aparece al certificado anexo era a esa fecha el escribano de la Corte de Distrito en i por el Condado de Clay, y estado de Minnessota debidamente calificado y funcionando como tal; que dicha corte de Distrito era a esa fecha debidamente instalada y tenia jurisdiccion bajo las leyes de dicho estado de Minnesota para dar dicho certificado.—Certifico que dicha Corte de distrito es una Corte de

Archivos, y que dichos archivos estan en la custodia de los oficiales que firman dicho certificado.—Certifico ademas que el sello anexo es el sello jenuino de dicha Corte, que creo deberas que cada una de las firmas a testiguando dicho certificado es jenuina, y que está ejecutado segun las leyes de dicho estado de Minnesota.—En testimonio de lo cual firmo y sello con el sello mayor del Estado en el Capital Saint Paul este dia el 29 de Abril A. D. 1890 (Firmado) H. Mattson.—Sello.—Secretario de Estado.—Legacion de los Estados Unidos Lima, Perú, S. A.—S. S. Sepan que en este dia 19 de Diciembre del año mil ochocientos noventa, ante mi personalmente apareció Enrique S. Prevost ciudadano de los Estados Unidos de América, conocido por mi ser el individuo descrito, y a quien se refiere el poder que se acompaña.—I en conformidad con la autoridad i poder conferido a el en virtud de dicho poder, declaró: que trasfiere el mismo a Juan Hewart Jakson residente en Valparaiso República de Chile para que obrase libremente i con plena accion bajo los términos i condiciones que en el se espresan, con la única limitacion de no someter a compromiso los reclamos pendientes de la firma de Alsop y Compañia contra el Gobierno de Chile o cualquier otro Gobierno.—Sello.—(Firmado) Enrique S. Prevost.—En testimonio de lo cual firmo i pongo mi sello oficial de esta legacion el dia i año arriba mencionado.—(Firmado) Ricardo R. Neill secretario de la Legacion de Estado Unidos.—Legacion de los Estados Unidos, Santiago, Enero 19 de 1891.—Por el presente certifico que la firma de Ricardo R. Neill que se halla en este poder es la del Secretario en ejercicio de la Legacion de Estados Unidos en Lima, Perú, y como tal es digna de plena fé i credito.—Sello.—(Firmado) Patricio Egan.—E. E. y M. P de los Estados Unidos en Chile.—Lelizada en el Ministerio de Relaciones Exteriores la firma del señor Patricio Egan.—Santiago 19 de Enero de 1891.—Sello.—El subsecretario: (Firmado) F. Velasco.—Legacion de los Estados Unidos América, Lima, Perú, S. A.—S. S.—Sepan que en este dia el cinco de Mayo de mil ochocientos noventa y dos ante mi personalmente apareció Enrique S. Prevost, ciudadano de los Estados Unidos de América, conocido por mi ser el individuo descrito, y a quien se refiere el poder que se acompaña.—I en conformidad con la autoridad, i poder conferido a el, en virtud de dicho poder, declaro: que su transferencia previamente otorgada a favor del señor Juan Stewart Jakson ha quedado nulo a consecuencia de la muerte del susodicho Juan Stewart Jackson, i que en lugar de este viene ahora en trasferir el mismo poder al Señor Juan Stewart

Jackson que fué Juan Stewart 2º Jackson, actualmente residente en Valparaiso en la República de Chile, y a Eduardo Jackson, residente en Antofagasta, en la República de Bolivia, temporalmente bajo el réjimen de la República de Chile, para su uso conjuntamente o separadamente segun el caso, y por libre y plena accion, bajo los términos y condiciones indicados, con la única limitacion del derecho de someter a compromiso los reclamos pendientes de la firma de Alsop y Compañia contra el Gobierno de la República de Chile, o cualesquier otro Gobierno.—Sello.—(Firmado) Enrique S. Prevost.—En testimonio de lo cual es suscrito mi firma i puesto mi sello oficial de esta Legacion, el dia y año arriba espresado, 5 de Mayo de mil ochocientos noventa y dos (Firmado) Ricardo R. Neill.—Encargado de Negocios de Estados Unidos interino.—Legacion de los Estados Unidos.—Santiago, Chile, Junio trece de mil ochocientos noventa y dos.—Yó Tenton R. M. Creey secretario de la Legacion de los Estados Unidos en Santiago, Chile, certifico por este medio que la firma de Ricardo R. Neill, es la del secretario en oficio de la Legacion de los Estados Unidos i el encargado de Negocios interino de E. U. en Lima, Perú, i que su firma puesto a este documento como tal merece toda fé y crédito En testimonio de lo cual firmo y pongo mi sello oficial de esta Legacion el dia y año arriba mencionado, 13 de Junio de 1892.—Sello (Firmado) Tenton R. McCreery secretario de Legacion de los Estados Unidos.—Por las presentes se da a conocer que nosotros José W. Alsop (Antes Segundo) como único albacea sobreviviente del último testamento de José H. Alsop, fallecido, Guillermo M. Prishard, i Guillermo G. Choate, como albaceas del último testamento de Jorje J. Foster fallecido, y Enrique Chauneey,—dichos José W. Alsop, Jorje J. Foster, i Enrique Chauneey, juntos con Enrique S. Prevost de quien se trata adelante habiendo sido consocio formando con otras personas la asociacion de la firma de Alsop i Compañia de Valparaiso Chile, y Lima, Perú; hemos hecho constituido i nombrado, y por las presentes hacemos, constituimos i nombramos al dicho Enrique S. Prevost para que sea nuestro fiel i legal apoderado, por nosotros i en nuestro nombre, i en nuestro lugar, para que dirija i maneje la parte de los intereses que nos corresponden en la Liquidacion de los Negocios de la dicha firma de Alsop y Compañia en cualquiera y todos los paises de América del Sur, para que recoja y reciba cualquiera y todo dinero que se deba a dicha casa, o a cual ella de alguna manera tenga derecho, dando recibos válidos por esta suma, para que segun su discrecion entre en compromisos, o transija por la suma

entera que nos corresponde, o reciba solamente parte en lugar de todo en cabal satisfaccion; tambien si fuese necesario para que haga reclamos o entable juicios que creyera conveniente, ante cualquier Gobierno, Corte o Tribunal, o aparezcan en defensa de los intereses de dicha casa, ante tal Corte: tambien para que entre en negociaciones con algunas otras personas o autoridades con el objeto de adquirir alguna propiedad o derechos de dicha casa, y sobre esto hacer los arreglos y concesiones que él estira conveniente. Sin embargo advertimos que dicho apoderado no puede afianzar por nosotros o comprometernos a pagar algún dinero en relacion con los negocios de dicha casa, salvo en el caso que ese dinero sea resultado de dichos negocios, i con esa restriccion: Damos i concedimos por este medio a nuestro dicho apoderado, poder amplio i amplisimo para que obre i ejecute en todos los actos i en cualquier cosa que sea necesario e indispensable que se hiciera tocante a nosotros intereses tan latamente para todos los casos i efectos que haya lugar, tal como nosotros pudieramos hacerlo o lo haríamos si estuviéramos presente personalmente, con pleno poder para delegar i revocar, ratificando i confirmando por este medio, todo lo que nuestro dicho apoderado o su sustituto hiciera o dejara hacer legalmente en virtud de esta facultad.—En fé de lo cual firmamos i sellamos esto el dia treinta de Abril del año mil ochocientos noventa.—Sello.—(Firmado) J. W. Alsop.—Como único albacea sobreviviente de José W. Alsop, fallecido.—(Firmado) W. M. Prichard.—Sello.—(Firmado) W. G. Choate.—Sello.—Como albaceas de Jorje J. Foster fallecido.—(Firmado) Henry Chauneey.—Sello.—Sellado i entregado en presencia de (Firmado) E. M. Barnes.—Estado de Nueva York, Ciudad i Condado de Nueva York.—S. S.—Sepan que en este dia veintinueve de Julio del año mil ochocientos noventa ante mi el que suscribe Edwin T. Corey, Notario Público del Estado de Nueva York, debidamente comisionado y jurado i domiciliado en la ciudad de Nueva York, apareció personalmente Enrique W. Barnes a quien conozco personalmente, y reconozco ser el testigo que suscribe este instrumento, quien despues de ser debidamente jurado, testifica y dice que reside en la ciudad de Brooklyn Condado de Kings i Estado de Nueva York, que conoce a José W. Alsop Guillermo M. Prichard, Guillermo G. Choate y Enrique Chauneey i sabe que son las personas descritas en, y quienes ejecutaron dicho instrumento, que el los vió ejecutarlo, y que confesaron que ellos lo habian ejecutado, i en consecuencia de eso firmo el como testigo.—En testimonio de lo cual firmo esto y pongo mi sello

el dia y año ya mencionado.—Sello.—(Firmado) Edwin T. Corey.—Notario Publico.—Número 338.—Sello.—Consulado de la República de Chile en Nueva York.—El infrascrito certifica que el señor Edwin T. Corey es Notario Público i esta debidamente autorizado para la ciudad i condado de Nueva York, y que la firma y sello que aparece al pie de la certificacion que precede son la que usa en el ejercicio de sus funciones.—En testimonio de lo cual firma y sella la presente en Nueva York el dia treinta de Julio de Mil ochocientos noventa.—Por ausencia del consul (Firmado) J. M. W. Fierro.—Encargado del Consulado.—Legacion de los Estados Unidos Lima, Perú, S. A.—S. S.—Sepan que en este dia el diez i nueve de Diciembre en el año mil ochocientos noventa ante mi personalmente apareció Enrique S. Prevost ciudadano de los Estados Unidos de América, conocido por mi ser el individuo descrito, i a quien se refiere el poder que se acompaña. I en conformidad con la autoridad, y poder conferido a el en virtud de dicho poder, declaró: que trasfiere el mismo a Juan Hewart Jackson, residente en la ciudad de Valparaiso en la República de Chile, para que obrase libremente i con plena accion bajo los terminos y condiciones que en el se espresa, con la única limitacion de no someter a compromiso los reclamos pendientes de la firma de Alsop y Compañia contra el Gobierno de Chile o cualquier otro Gobierno.—(Firmado) Enrique S. Prevost.—En testimonio de lo cual firmo y pongo mi sello oficial de esta Legacion el dia y año arriba mencionado.—Sello.—(Firmado) Ricardo R. Neill.—Secretario de la Legacion de los Estados Unidos Legacion de los Estados Unidos Santiago Enero diez i nueve de mil ochocientos noventa y uno.—Por el presente certifico que la firma de Ricardo R. Neill que se halla en este poder es la del secretario en ejercicio de la Legacion de los Estados Unidos en Lima, Perú, y como tal es digna de toda fé y crédito.—(Firmado) Patricio Egan.—Sello.—E. E. i M. P. de los Estados Unidos en Chile.—Legalizada en el Ministerio de Relaciones Exteriores la firma del señor Patricio Egan.—Santiago diez y nueve de Enero de mil ochocientos noventa y uno. El subsecretario.—(Firmado) F. Velasco.—Sello.—Legacion de los Estados Unidos de América Lima, Perú, S. A. S. S.—Sepan que en este dia el cinco de Mayo de mil ochocientos noventa y dos ante mi personalmente apareció Enrique S. Prevost, ciudadano de los Estados Unidos de América conocido por mi ser el individuo descrito, y a quien se refiere el poder que se acompaña.—I en conformidad con la autoridad y poder conferido a el, en virtud de dicho poder declaró: que su tras-

ferencia previamente otorgada a favor del señor Juan Edwart Jackson a quedado nulo a consecuencia de la muerte del susodicho Juan Edwart Jackson y en lugar de este viene ahora en trasferir el mismo poder a Juan Hewart Jackson, que fué Juan Hewart 2º Jackson actualmente residente en Valparaiso en la República de Chile y a Eduardo Jackson residente en Antofagasta en la República de Bolivia (temporalmente bajo el rejimen de la republica de Chile) para su uso conjuntamente o separadamente segun el caso, y por libre y plena accion, bajo los terminos y condiciones indicadas con la única linitacion del derecho des someter a compromiso los reclamos pendientes de la firma de Alsop y Compañia contra el Gobierno de la República de Chile o cualquier otro Gobierno.—(Firmado) Enrique S. Prevost.—En testimonio de lo cual firmo y pongo mi sello oficial de esta Legacion, el dia y año arriba mencionado, cinco de Mayo de mil ochocientos noventa y dos.—Sello.—(Firmado) Ricardo R. Neill—Encargado de Negocios de Estados Unidos interino.—Legacion de los Estados Unidos.—Santiago Chile Junio trece de mil ochocientos noventa y dos.—Yó Tenton R. M. Creery secretario de la Legacion de los Estados Unidos en Santiago Chile certifico por este medio que la firma de Ricardo R. Neill, es la del secretario en oficio de la Legacion de los Estados Unidos, i el Encargado de Negocios interino de E. U. en Lima, Perú, y su firma a puesto a este documento como tal merece toda fé y crédito. En testimonio de lo cual firmo y pongo mi sello de esta Legacion el dia y año arriba mencionado, trece de Junio de mil ochocientos noventa y dos.—Sello.—(Firmado) Tenton R. M. Creery.—Secretario de la Legacion de los Estados Unidos.—Por las presentes se da a conocer que yo, Elizabeth W. Hoppin, tenedores de bienes de la sucesion y efectos de Jorje Federico Hoppin, ciudadano de los Estados Unidos de América fallecido, quien era un socio de la firma de Alsop i Compañia de Valparaiso en la República de Chile he hecho, constituido, i nombrado, i por las presentes hago, constituyo i nombro a Enrique S. Prevost, ciudadano de los Estados Unidos de América actualmente residente en Lima, Perú i quien era tambien uno de los socios de dicha casa, para que sea mi fiel y legal apoderado por mi, i en mi nombre i en mi lugar, para que dirija i maneje la parte de los intereses que me corresponden en la liquidacion de los negocios de la dicha firma de Alsop y Compañia, en cualquiera y todos los paises de Sud-América, para que recoja i reciba cualquiera i todo dinero que se deba a dicha casa a al cual ella de alguna manera tenga derecho, dando recibos válidos por estas sumas, para que segun su discrecion entre en compromisos o

transija por la suma entera que me corresponde, o reciba solamente parte en lugar de todo en cabal satisfaccion, tambien si fuese necesario, para que haga reclamos o entable juicios, que creyera conveniente ante cualquier Gobierno, Corte o Tribunal, o aparezca en defensa de los intereses de dicha casa ante tal Gobierno, Corte o Tribunal tambien para que entre en negociaciones con algunas otras personas o autoridades con el objeto de adquirir alguna propiedad o derechos de dicha casa, i sobre esto hacer los arreglos o concesiones que el estimara conveniente. Sin embargo advierto que dicho apoderado no puede afianzar por mi, o comprometerme a pagar algun dinero en relacion con los negocios de dicha casa, salvo en el caso que ese dinero sea resultado de dichos negocios i con esa restriccion: doi i concedo por este medio a este mi dicho apoderado, poder ampli i amplisimo para que obre y ejecute en todos los actos i en cualquiera cosa que sea necesario e indispensable que se hiciera tocante a mis intereses, tan latamente para todos los casos i efectos que haya lugar, tal como yó lo pudiera hacer, o lo haria, si estuviera presente personalmente, con pleno poder para delegar i fevocar, ratificando i confirmando por este medio, todo lo que mi dicho apoderado o sustituto hiciera o dejara hacer legalmente en virtud de esta facultad.—En fé de lo cual firmo y sello este documento en Providence, Rhode Island, en este dia el siete de Mayo en el año mil ochocientos ochenta i cinco.—(Elizabeth W. Hoppin.—Tenedora de los bienes.—Sello.—Firmado, sellado i entregado en presencia de J. E. Spink (Firmado).—C. A. Hoppin.—(Firmado).—Estados Unidos de América, Estado de Rhode Island, condado de Providencia.—En la ciudad de Providencia i en dicho condado en este dia siete de Mayo.—A. D. mil ochocientos ochenta y cinco apareció personalmente ante mi Elizabeth W. Hoppin, testadora de bienes de la sucesion de Jorje F. Hoppin, que fué de dicha ciudad Providencia, fallecido, dicho Jorje T. Hoppin a su fallecimiento era natural de los Estados Unidos, i aceptó el instrumento que presede, firmando por ella, ser de su libre accion, i por los efectos i fines consiguientes.—(Firmado) J. E. Spink.—Notario Público.—Sello.—7 Anexo.—Estado de Rhode Island i Providence Plantations.—Oficina del Secretario de Estado.—Providence, R. I., Enero veintiseis de mil ochocientos ochenta y seis.—Yó, Josae M. Addeman.—Secretario de Estado de dicho Estado i guardian del sello.—Certifico por este medio que Charles Blake es, i era al tiempo de firmar el instrumento anexo, escribano de la Corte Suprema en i por el Condado de

Providence i Estado antedicho, debidamente nombrado i calificado, i que debe darse plena fé i credito a sus actos i deposiciones como tal, adentro y afuera de la Corte: que la deposicion anexa esta en debida forma i por el oficial correspondiente i que yó creo que la firma de dicho Carlos Blake agregada a ella sea jenuina.—En testimonio de lo cual firmo y sello con el sello del Estado arriba mencionado.—en la fecha ya mencionada (Firmado) Joshua M. Addeman.—Secretario de Estado.—Sello.—67 anexo.—Impreso.—El Estado de Rhode Island y Providence Plantations.—Providence Sc. Oficina del Escribano Corte Suprema.—Sello.—Providence Mayo siete A. D. mil ochocientos ochenta y cinco.—Yó Carlos Blake, Escribano de la Corte Suprema de dicho Estado, adentro y por el Condado de Providence: Certifico por este medio, que: José E. Spink esq. es un Notario Publico en i por dicho Estado, i como tal era, al tiempo de firmar el certificado al instrumento anexo, debidamente nombrado i calificado, i autorizado tomar juramentos y recibir deposiciones y la aceptacion de instrumentos auténticos i otros; que yó conozco bien la firma de dicho Notario Público, y creo verdaderamente que la firma adicho certificado, que se designa ser de el, es jenuina; i que dicho instrumento es ejecutado i aceptado segun las leyes de dicho Estado. En prueba de lo cual firmo y pongo el sello de dicha Corte el dia y año arriba mencionado. (Firmado) Charles Blake, Escribano.—8 anexo.—(Impreso) Estado de Rhode Island y Providence Plantations oficina del Escribano de la Corte Municipal de la ciudad de Providence, y Estado ante nombrado, ejerciendo jurisdiccion de pruebas. Certifico por este medio, que: Elizabeth W. Hoppin de dicha Providence ha sido nombrada por dicha Corte, testadora de bienes de la sucesion de Jorje Federico Hoppin, que fué de dicho Providence, fallecido intestado, i es a esta fecha debidamente calificada i esta ejerciendo como tal testadora de bienes. En prueba de lo cual, firmo y pongo el sello de dicha Corte este dia el siete de Mayo A. D. mil ochocientos ochenta y cinco.—Sello.—(Firmado) Chas. C. Mumfard.—Escribano.—Legacion de los Estados Unidos Lima, Perú, S. A.—S. S.—Sepan que en este dia diez y nueve de Diciembre del año mil ochocientos noventa, ante mi personalmente apareció Enrique S. Prevost, ciudadano de los Estados Unidos de América, conocido por mi ser el individuo descrito, i a quien se refiere el poder que se acompaña. I en conformidad con la autoridad i poder conferido a el en virtud de dicho poder declaró: que trasfiere al mismo a Juan Hewart Jackson, residente en Val-

paraiso, en la República de Chile, para que obrase libremente, i con plena accion, bajo los términos y condiciones que en el se espresan, con la única limitacion de no someter a compromiso los reclamos pendientes de la firma de Alsop y Compañia contra el Gobierno de Chile o cualquier otro Gobierno.—(Firmado) Enrique S. Prevost. En testimonio de lo cual firmo y pongo mi sello oficial de esta Legacion, el dia y año arriba mencionado Sello.—(Firmado) Richard R. Neill, secretario de la Legacion de los Estados Unidos.—Legacion de los Estados Unidos, Santiago, Chile, Enero diez y nueve mil ochocientos ochenta y uno.—Por el presente certifico que la firma de Ricardo R. Neill es la del secretario de la Legacion de Estados Unidos en Lima, Perú debidamente nombrado, i como tal es digna de plena fé y crédito.—Sello.—(Firmado) Patrick Egan, E. E. y M. P. de los Estados Unidos en Chile.—Legalizada en el Ministerio de Relaciones Exteriores de Chile, la firma del señor Patrick Egan. Santiago diez i nueve de Enero de mil ochocientos noventa y uno.—Sello.—El sub secretario (Firmado) F. Velasco.—Legacion de los Estados Unidos Lima, Perú, S. A.—S. S.—Sepan que en este dia el cinco de Mayo del año mil ochocientos noventa y dos ante mi personalmente apareció Enrique S. Prevost, ciudadano de los Estados Unidos de América, conocido por mi ser el individuo descrito, i a quien se refiere el poder que se acompaña. I en conformidad con la autoridad i poder conferido a el, en virtud de dicho poder, declaró: que su transferencia previamente otorgada a favor del señor Juan Stewart Jackson ha quedado nulo a consecuencia de la muerte del susodicho Juan Stewart Jackson, y que en lugar este vie-ahora en transferir el mismo poder al señor Juan Stewart Jackson que fué Juan Stewart 2º Jackson, actualmente residente en Valparaiso en la República de Chile, i a Eduardo Jackson, residente en Antofagasta, en la República de Bolivia, temporalmente bajo el rejimen de la República de Chile, para su uso conjuntamente i separadamente segun el caso, y por libre y plena accion bajo los terminos y condiciones indicados, con la única limitacion del derecho de someter a compromiso los reclamos pendientes de la firma de Alsop y Compañia contra el Gobierno de la República de Chile o cualquier otro Gobierno. (Firmado) Enrique S. Prevost. En testimonio de lo cual he suscrito mi firma y puesto mi sello oficial de esta legacion el dia y año arriba espresado, cinco de Mayo mil ochocientos noventa y dos.—Sello.—(Firmado) Richard R. Neill. Encargado de Negocios de Estados Unidos interino.

Legacion de los Estados Unidos Santiago Chile Junio trece de mil ochocientos noventa y dos.—Yo Tenton M. R. Creery, secretario de la Legacion de los Estados Unidos en Santiago de Chile, certifico por este medio, que la firma de Ricardo R. Neill es la del secretario en oficio de la Legacion de los Estados Unidos, i el Encargado de Negocios interino de E. U. en Lima, Perú, y que su firma puesto a este documento como tal merece toda fé y crédito.—En testimonio de lo cual firmo y pongo mi sello oficial de esta Legacion, el dia y año arriba mencionado, trece de Junio de mil ochocientos noventa y dos.—Sello.—(Firmado) Tenton R. M. Creery.—Secretario de la Legacion de los Estados Unidos.—La traduccion que antecede ha sido tomada fielmente de los orijinales. Antofagasta, Setiembre diez y seis de mil ochocientos noventa y dos.—Carlos C. Greene.—Juan Barnett.—Antofagasta, Diez y seis de Setiembre de mil ochocientos noventa y dos.—S. J. L. Tenemos el honor de pasar a manos de V. S. la traduccion que hemos hecho de los poderes y documentos anexos de fs. uno a veintiuno vuelta en cumplimiento de lo dispuesto por decreto de fecha trece de Julio último. Dios Guarde a V. S.—Carlos C. Greene.—Juan Barnett.—Antofagasta Octubre diez i siete de mil ochocientos noventa y dos.—Por presentada la traduccion vuelvan estos antecedentes en vista al señor Promotor Fiscal inutilicensen por el secretario las estampillas agregadas.—Fuente.—Proveido por el tercer Alcalde Municipal Don Carlos de la Fuente.—Concha.—En diez y siete de Octubre notifique a don Emilio Garcia Ramirez.—Garcia R.—Concha.—En diez y siete de Octubre notifique al señor Promotor Fiscal.—Mujica.—Concha.—Responde.—S. J. L.—Se ha agregado a las traducciones adjuntas las estampillas que corresponden a la naturaleza de los contratos referidos en ellos por lo cual este Ministerio es de opinion se digne usia mandar se haga como se pide en la solicitud de fs. veinticuatro Salvo mejor acuerdo de usia.—Antofagasta, Octubre diez y ocho de mil ochocientos noventa y dos.—Mujica.—Antofagasta Octubre diez y ocho de mil ochocientos noventa y dos.—Hágase como parece al señor Promotor Fiscal.—Fuente.—Concha.—En diez y ocho de Octubre notifique a don Emilio Garcia Ramirez.—Garcia R.—Concha. En diez y ocho de Octubre notifique al señor Promotor Fiscal.—Mujica.—Concha.—En diez y ocho de Octubre notifique al señor Notario Público don Pedro P. Alvarez.—P. P. Alvarez.—Concha.—Conforme con el documento agregado y de que se ha hecho referencia al principio, dandose esta a copia a solicitud de don

Eduardo Jackson y para los efectos a que haya lugar. Antofagasta, Noviembre veintiuno de mil novecientos cuatro.—Enmendado Presentes—solamente—alguna—comprometer—me—y—no—venta—trasferir—Jackson—fallecido—lo—setenta—Dickinson—reclamos—Alsop—todos—Corte—dinero—todos—mi digo apoderado—estado—secretario—Prevost—otorgada—favor—quedado—Guillermo—Choate—habiendo—nombramos—ratificando—ejecutaron—Estados—latamente—notifiqué—Alvarez.—Valen.

[SEAL.]

VICENTE VILLALON, *N. P.*

Certifico: que al pié de los poderes orijinales cuya copia autorizada antecede, se encuentran las siguientes legalizaciones:—“Legation of the United States of América, Santiago-Chile.—I the undersigned, Chargé d’ Affaires and interim of the United States of America, do hereby certify that on the date above mentioned, June 13th 1892, Fenton R. Mc Creery was the duly appointed Secretary of Legation at Santiago, Chile, that the above, signature is identical with that which appears in the records of this Legation, and is, therefore, entitled to full faith and credit.—In witness whereof, I have hereunto affixed my signature, and the Seal of the Legation of the United States of America, this 6th day of July, 1905.—Edward Winden Ames, Chargé d’ affaires ad int.—“El Ministerio de Relaciones Exteriores de Chile, certifica: la autenticidad de la firma del señor don Edward Winlow Ames, Encargado de Negocios de Estados Unidos en Chile.—Santiago, ocho de Julio de mil novecientos cinco.—El Sub-Secretario.—César de la Lastra.”—Legation of the United States of America.—Santiago de Chile.—I, the undersigned, Chargé d’ Affaires ad interim of the United States of America do hereby certify that on the date above mentioned June 13th, 1892, Fenton R. Mc Creery was the duly appointed Secretary of Legation at Santiago, Chile, that the above signature is identical with that which appears in the recods of this Legation, and is, therefore entitled to full faith and credit.—In witness whereof, I have hereunto affixed my signature and the Seal of the Legation of the United States of America, this 6th day of July, mil novecientos cinco.—Ewards Winslow Ames, Chargé d’ Affaires ad int.”—El Ministerio de Relaciones Exteriores de Chile, certifica: la autenticidad de la firma del señor don Ewards Winslow Ames, Encargado de Negocios de Estados Unidos en Chile.—Santiago, ocho de Julio de mil novecientos cinco.—El Sub-Secretario, César de la Lastra.—“El Ministerio de Relaiones

Esteriores de Chile, certifica: la autenticidad de la firma del señor don J. M. W. Fierro, encargado del Consulado en el año noventa.—Santiago, ocho de Julio de mil novecientos cinco.—El Sub-secretario ac. M. A. Martinez.—Hai un sello.—“Legation of the United States of America, Santiago de Chile.—I, the undersigned, Chargé d' Affaires ad interim of the United States of America do hereby certify that on the date above mentioned, June 13th, 1892, Fenton R. Mc Creery was the duly appointed Secretary of Legation at Santiago, Chile, that the above signaturu is identical with that which appears in the records of this Legation, and is therefore, entitled to full faith and credit.—In witness whereof, I have hereunto affixed my signature, and the Seal of the Legation of the United States of America, this 6th day of July, mil novecientos cinco.—Edwards Winslow Ames, Chargé d' Affaires ad-int.”—El Ministerio de Relaciones Esteriores de Chile certifica: la autenticidad de la firma del señor don Edwards Winslow Ames, Encargado de Negocios de Estados Unidos en Chile.—Santiago ocho de Julio de mil novecientos cinco.—El Subsecretario.—César de la Lastra.—“Legation of the United States of America, Santiago, Chile.—I, the undersigned, Chargé d' Affaires and interim of the United States of America, do hereby certify that on the date above mentioned, June 13th, 1892, Fenton R. Mc Creery was the duly appointed Secretary of Legation at Santiago, Chile, that the above signature is identical with that which appears in the records of this Legation, and is therefore, entitled to full faith and credit.—In witness whereof, I have hereunto affixed my signature, and the Seal of the Legation of the United States of America this 6th day of July, mil novecientos cinco.—Edwards Winslow Ames, Chargé d' Affaires ad it.”—El Ministerio de Relaciones de Chile, certifica la autenticidad de la firma del señor don Edwards Winslow Ames, Encargado de Negocios de los Estados Unidos en Chile.—Santiago, ocho de Julio de mil novecientos cinco.—El Sub-secretario, César de la Lastra.—”

Conforme con sus orijinales que he tenido a la vista corrientes en el Legajo de Documentos Comprobantes del Protocolo de Instrumentos Públicos del año mil ochocientos noventa i dos.— Antofagasta, dos de Abril de mil novecientos seis.—

SAMUEL DONOSO,

N. y C. interino.

Translation of Powers of Attorney referred to in Edward Jackson's affidavit.

The undersigned Notary Public and Keeper of Real Property, certifies: that in the documents added at the end of the Register of Public Instruments for the year one thousand nine hundred and two, the following one appears:

“Translation of documents and powers of attorney found at folio 1 to folio 23.—Know all men by these presents that I, J. Henry Chauncey Riley, as executor of the last Will of Theodore W. Riley, a citizen of the United States of America, late a partner of the firm of Alsop and Company of Valparaiso, in the Republic of Chile, have made constituted and appointed, and by these presents do make, constitute and appoint Henry S. Prevost, a citizen of the United States, now resident of Lima, Peru, and who was also one of the partners of the said firm, to be my true and lawful attorney, for me and in my name and stead to manage and administer the share of the interest to me belonging in the liquidation of the business of said firm and in any and all the countries of South America, to collect and receive any and all kinds of money due said firm, or to which it has any right whatever, giving valid receipts for said sums; in his discretion to enter upon agreements or compromise for the entire sum coming to me, or receive part thereof in lieu of the whole amount, in full settlement; in necessary cases to institute claims or the lawsuits that he may deem proper before any Government, courts or tribunals, or appear in defence of the interests of said firm before that Government, court or tribunal; also to enter into negotiations with any other person or authorities, for the purpose of acquiring any property or rights of said firm, and in relation thereto make the agreements or concessions that he may deem proper. Nevertheless, I give notice, that said attorney in fact cannot bind or hold me subject to pay any money in relation to the business of said firm, except in the case that said money result from said transactions; and with this restriction I give and grant hereby to this my said attorney in fact the fullest and most ample power to act and do in all matters, and in anything that may be necessary and indispensable to be done relating to my interests, as fully to all intents and purposes, as I might or should do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute may do or cause to be done in virtue of this power. In testimony whereof I sign and seal these presents in the city of

New York, on this sixteenth day of June, of the year one thousand eight hundred and eighty five. (signed) Henry Chauncey Riley.—Sealed and delivered in the presence of (signed) A. M. James.—(signed) Geo. G. Nichols.—Seal.—United States of America, City and County of New York. Be it known that on the sixteenth day of July, one thousand eight hundred and eighty five, before me Geo. G. Nichols, notary public, in and for the State of New York, duly commissioned and sworn, residing in the city of New York, personally appeared Henry Chauncey Riley executor of the last Will of Theodore W. Riley, well known to me, and known to me to be the same person referred to and who executed the above power of attorney, who acknowledged that he had executed the same. And I also certify and make known of my own knowledge that the said Theodore W. Riley was a citizen of the United States of America. In testimony whereof I sign and seal these presents with my official seal, the day and year aforesaid. (signed) Geo. G. Nichols, Notary Public. (\$40.60). Seal. 1. Annexed certificate. (Printed). United States of New York (sic). City and County of New York, Ss.—I, Patrick Keeman, Clerk of the City and County of New York, and also Clerk of the Supreme Court of said city and county, the same being a court of record, certify that the above certificate of acknowledgement or proof to the document annexed thereto and written thereon was signed by one who at the time of taking such acknowledgement or proof was a notary public for the city and county of New York, residing in said city, duly commissioned and sworn and empowered to hold the office. And, moreover, that I know well the signature of said notary, and verily believe that the signature to said certificate of acknowledgement or proof is genuine. I certify, moreover, that said instrument is executed and drawn in accordance to the law of the State of New York. In testimony whereof I sign these presents and affix the seal of said court and county this 17th day of June, 1885. (signed) Patrick Keeman.—Clerk.—Seal. Legation of the United States, Lima, Peru. S. A. Ss:—Be it known that on this day, the nineteenth of December, of the year eighteen hundred and ninety, before me personally appeared Henry S. Prevost, a citizen of the United States of America, known to me to be the same person described in and to whom the above power of attorney refers, and in pursuance of the authority and power to him granted in virtue of said power of attorney, set forth: that he transferred the same power to John Hewart [Stewart] Jackson, a

resident of the city of Valparaiso, in the Republic of Chili, to act freely, and with full power under the terms and conditions therein expressed, with the only limitation of not submitting to arbitration the pending claims of the firm of Alsop and Company against the Government of Chile or any other Government. (Signed) Henry S. Prevost. In testimony whereof I sign and affix my official seal of this Legation on the day and year aforesaid.—Seal. (Signed) Richard R. Neill.—Secretary of the Legation of the United States.—Legation of the United States, Santiago, Chili, January 19th, 1891. I hereby certify that the signature of Richard R. Neill found in this power of attorney is that of the secretary in office of the Legation of the United States at Lima, Peru, and as such is entitled to full faith and credit. Seal.—(Signed) Patrick Egan. E. E. and M. P. of the United States in Chili.—The signature of Mr. Patrick Egan is legalized in the Office of the Minister of Foreign Affairs. Santiago, January 19th, 1891. The subsecretary.—Seal.—(Signed) T. Velasco. 2. Annexed document. The People of the State of New York, To all whom these presents come or concern, greeting. Be it known that we having examined the archives of our Probate Court in and for the county of New York, have found that on the 20th day of March, in the year one thousand eight hundred and seventy three letters testamentary were granted and issued by said court on the estate of Theodore W. Riley, late of the city of New York, deceased, to Elizabeth V. Riley, Henry Chauncey Riley and Charles V. Riley, all of the city of New York, executrix and executors named in the last will of said deceased, and it does not appear from said archives that said letters have been revoked. In witness whereof we have caused the Seal of the Probate Court to be affixed to this document. Attest: Daniel G. Rollins Esq. Probate Judge or Surrogate of said county, in the city of New York, the 12th day of June in the year one thousand eight hundred and eighty five. Seal.—(Signed) Ansburn M. Dickinson, Clerk of the Probate Court. 3. Document annexed thereto. The People of the State of New York—To all whom these presents come or in anywise concern, greeting: Know all men that we, having examined the archives of our Probate Court in and for the county of New York, have found that on the 28th day of December, in the year one thousand eight hundred and seventy three, letters testamentary were granted and issued by said Court on the estate of Elizabeth Vaughan Riley, late of the city of New York, deceased, to Charles Vaughan Riley of the city of New York, executor named

in the last will of said deceased, and that it does not appear from said archives that said letters have been revoked. In witness whereof we have caused the seal of the Probate Court to be affixed to this document. Attest: Daniel C. Rollins Esq. Surrogate of our said county, in the city of New York, on the 12th day of June, in the year one thousand eight hundred and eighty five.—Seal.—(Signed) Ansburn M. Dickinson, Clerk to the Surrogate Court. 4. Document annexed thereto. The People of the State of New York. To all whom these presents come or in anywise concern, greeting: Know ye, that we having examined the archives of our probate Court in and for the county of New York, have found that on the 3rd day of November in the year one thousand eight hundred and seventy nine, letters testamentary were granted and issued on the estate of Charles Vaughan Riley, late of the city of New York, deceased, to Santiago J. Kilbreth, of the city of New York, executor named in the last will of said deceased, and that it does not appear from said archives that said letters have been revoked. In witness whereof we have caused the seal of our Probate Court to be affixed to this document. Attest: Daniel J. Rollins Esq. Surrogate of our said county in the city of New York, on the 12th day of June A. D. one thousand eight hundred and eighty five.—Seal.—(Signed) Ansburn M. Dickinson, Clerk to Surrogate's Court.—Legation of the United States of America, Lima, Peru, S. A.—Ss: Know ye that on this 5th day of May in the year one thousand eight hundred and ninety two, before me personally appeared Henry S. Prevost, known to me to be the individual described in, and to whom the annexed power of attorney refers, and in pursuance of the authority and power conferred on him by said power of attorney, set forth: that its substitution previously made in favor of Mr. John Stewart Jackson has become null and void, in consequence of the death of the said John Stewart Jackson, and that in his stead he now substitutes the said power of attorney on Mr. John Stewart Jackson late John Stewart Jackson, Jr., now resident of Valparaiso in the Republic of Chili, and on Edward Jackson, now resident of Antofagasta, Republic of Bolivia, temporarily under the dominion of the Republic of Chili, to be used jointly or severally as the case may be, and for free and full exercise under the terms and conditions indicated, with the sole limitation of the right not to submit to arbitration the pending claims of the firm of Alsop and Company against the Government of the Republic of Chili, or any other Government. (Signed) Henry S. Prevost. In witness whereof I have subscribed my name

and affixed the seal of this Legation on the day and year aforesaid, May 5th, one thousand eight hundred and ninety two.—Seal.—(Signed) Richard R. Neill, Chargé d’Affaires of the United States pro tem. Legation of the United States, Santiago, Chili, June 13th, 1892. I, Fenton R. McCreery, secretary of the Legation of the United States at Santiago, Chili, hereby certify that the signature of Richard R. Neill is that of the true secretary of the Legation of the United States and the Chargé d’Affaires of the United States pro tem. at Lima, Peru, and that his signature affixed to said document as such deserves full faith and credit.—In witness whereof I sign and affix the official seal of this Legation on the day and year aforesaid, June 13th, 1892. Seal.—(signed) Fenton R. McCreery, Secretary of the Legation of the United States.—Know all men by these presents that I, Henry W. Alsop, a citizen of the United States of North America, now residing at Moorehead in the State of Minnesota, late partner of the firm of Alsop and Company of Valparaiso in the Republic of Chili, have made, constituted and appointed and by these presents do make, constitute and appoint Henry S. Prevost, a citizen of the United States of America, now residing at Lima, Peru, and who was also one of the partners of said firm, to be my true and lawful attorney, for me and in my name and stead, to direct and manage the share of interests to me belonging in the liquidation of the business of said firm, in any and all countries of South America; to collect and receive any and all moneys due the said firm, or to which in any way the same may have a right, giving valid receipt for said sum; in his discretion to enter into all agreements or compromise for the whole amount due me, or receive only part instead of the whole in full satisfaction; also, in a necessary case, to institute claims or lawsuits that he may deem proper before any Government, Courts or Tribunals, or appear therein in defence of the interests of said firm before said Government, Court of Tribunal; also to enter in transactions with any other persons or authorities, for the purpose of acquiring any property or rights of said firm, and in relation thereto execute agreements or grants which he may deem proper. Nevertheless, I give notice that said attorney in fact cannot bind or hold me responsible to pay any money relating to the business of said firm, except in the case that said money result from said business, and with that restriction, I give and grant to this my said attorney the fullest power to act and do in all things whatever may be necessary and requisite to be done relating to my interests, as fully to all intents and

purposes, as I might or should do if personally present, with full power of substitution and revocation; hereby ratifying and confirming all that my said attorney or his substitute might lawfully do or cause to be done in virtue of this power. In witness whereof I sign and seal these presents in the city of Moorehead this 26th day of April, in the year eighteen hundred and ninety. (Signed) Henry W. Alsop.—Seal.—State of Minnesota. Clay County, ss: On this 26th day of April A. D. 1890 before me the undersigned notary public, in and for said county, personally appeared Henry W. Alsop, to me known and known to me to be a citizen of the United States of America, and the person described in this document and who executed the same, and freely and voluntarily acknowledged that he had executed the same.—(Signed) C. A. Nye.—Seal.—Notary Public.—Clay County.—Minnesota. I hereby certify that at the time of taking the above acknowledgment, Mr. C. A. Nye was a notary public, that he was appointed as such on February 12th, 1887, and will continue in office until February 12th, 1892, and is registered and noted in my office, his signature as Notary Public being entitled to full faith and credit.—(Signed) H. Rasmusson.—Seal of the Clerk of the District Court. Judicial District number 14, Clay County, Minnesota. 5. Document annexed thereto. United States of America. State of Minnesota. Department of State. I, H. Mattson, Secretary of State of the State of Minnesota hereby certify that H. Rasmusson whose signature appears attached to the annexed certificate was on said date the Clerk for the District Court in and for the County of Clay, and State of Minnesota, duly qualified and acting as such; that said District Court was on said date duly installed, and had jurisdiction under the laws of said State of Minnesota to issue said certificate.—I certify that said District Court is a Court of record, and that said records are in the custody of the officers who sign said certificate.—I certify, moreover, that the seal annexed thereto is the true seal of said Court, and truly believe that each one of the signatures authenticating said certificate is genuine; and that it is executed according to the laws of said State of Minnesota. In witness whereof I sign and seal with the Great Seal of State in the capital Saint Paul this 29th day of April A. D. 1890 (Signed) H. Mattson. Seal.—Secretary of State.—Legation of the United States, Lima, Peru, S. A. Ss:—Know ye that on this 19th day of December in the year eighteen hundred and ninety, before me personally appeared Henry S. Prevost, a citizen of the United States of America, known to me to be the individual described in

and to whom the annexed power of attorney refers, and in pursuance of the authority and power on him conferred by said power of attorney, set forth: that he substitutes the same in John Stewart Jackson, a resident of Valparaiso, Republic of Chili, to act freely and with full power under the terms and conditions therein expressed, with the sole limitation of not submitting to arbitration the pending claims of the firm of Alsop and Company against the Government of Chili or any other Government.—Seal.—(Signed) Henry S. Prevost.—In witness whereof I sign and affix the official seal of this legation on the day and year above mentioned.—(Signed) Richard R. Neill, Secretary of the Legation of the United States.—Legation of the United States, Santiago, January 19th, 1891.—I hereby certify that the signature of Richard R. Neill found in this power of attorney is that of the Secretary in office of the Legation of the United States in Lima, Peru, and as such is worthy of full faith and credit.—Seal.—Patrick Egan.—E. E. and M. P. of the United States in Chili.—The signature of Mr. Patrick Egan is legalized in the Office of the Minister of Foreign Affairs.—Santiago, January 19th, 1891.—Seal.—The subsecretary: (Signed) F. Velasco.—Legation of the United States of America, Lima, Peru, S. A.—Ss: Know ye that on this 5th day of May, one thousand eight hundred and ninety two, before me personally appeared Henry S. Prevost, a citizen of the United States of America, known to me to be the individual described in and to whom the above power of attorney refers, and in pursuance thereof, under the authority and power conferred therein, sets forth: that his previous substitution made in favor of Mr. John Stewart Jackson has become null and void in consequence of the death of said John Stewart Jackson, and that in his stead he now substitutes and transfers said power of attorney in and to Mr. John Stewart Jackson, late John Stewart Jackson Jr., now a resident of Valparaiso in the Republic of Chili, and to Edward Jackson, a resident of Antofagasta, in the Republic of Bolivia, temporarily under the control of the Republic of Chili, to be exercised jointly or severally as the case may be, and for free and full power, under the terms and conditions indicated, with the sole limitation as to submitting to arbitration the pending claims of the firm of Alsop and Company against the Republic of Chili, or any other Government.—Seal.—(Signed) Henry S. Prevost.—In witness whereof I sign my name and affix the official seal of this Legation on the day and year aforesaid, May 5th, one thousand eight hundred and ninety two. (Signed) Richard R. Neill.—Chargé d'affaires of the

United States pro tem.—Legation of the United States.—Santiago, Chili, June 13th, one thousand eight hundred and ninety two.—I, Fenton R. McCreery, Secretary of the Legation of the United States at Santiago, Chili, hereby certify that the signature of Richard R. Neill, is that of the Secretary in office of the Legation of the United States and Chargé d'Affaires pro tem of the United States at Lima, Peru, and that his signature affixed to this document as such deserves full faith and credit. In testimony whereof I sign and affix the official seal of this Legation on the day and year aforesaid, June 13th, 1892.—Seal.—(Signed) Fenton R. McCreery, Secretary of Legation of the United States.—Know all men by these presents that we, Joseph W. Alsop (late Jr.), as sole surviving executor of the last Will of Joseph W. Alsop, deceased, William N. Prichard, and William G. Choate, as executors of the last Will of George J. Foster, deceased, and Henry Chauncey,—said Joseph W. Alsop, George J. Foster, and Henry Chauncey, together with Henry S. Prevost named hereinafter having been copartners, forming with other persons the partnership of the firm of Alsop and Company of Valparaiso, Chile, and Lima, Peru, have made constituted and appointed, and by these presents do make, constitute and appoint the said Henry S. Prevost to be our true and lawful attorney, for us and in our names and stead, to direct and manage the shares of interest to us pertaining in the Liquidation of the business of said firm of Alsop and Company in any and all countries of South America; to collect and receive any and all moneys due said firm, or to which it may have any right, giving valid receipts for said sum; in his discretion to enter upon agreements, or compromise for the whole sum to us pertaining, or receive only part instead of the whole in full satisfaction; also, in a necessary case, to make claims or institute the lawsuits that he may deem proper, before any Government, Court or Tribunal, or appear in defence of the interests of said firm, before such Court: also to enter into negotiations with any other persons or authorities for the purpose of acquiring any property or rights of said firm, and in relation thereto to enter into agreements or make the concessions that he may deem proper. Nevertheless, we give notice, that said attorney cannot bind us or hold us responsible to pay any money in relation to the business of said firm, except in the case that such money result from said business, and with this restriction we hereby give and grant to our said attorney full and unrestricted power to act and do all things, in anything that may be requisite and necessary

to be done in relation to our interests as fully to all intents and purposes as we could or should do if personally present, with full power of substitution and revocation; hereby ratifying and confirming whatever our attorney or his substitute may do or cause to be done lawfully in virtue of this power. In witness whereof we sign and seal these presents on the thirtieth day of April, in the year eighteen hundred and ninety.—Seal.—(signed) J. W. Alsop.—As sole surviving executor of Joseph W. Alsop deceased.—(Signed) W. M. Prichard.—Seal.—(Signed) W. G. Choate.—Seal.—As executor of George J. Foster, deceased.—(Signed) Henry Chauncey.—Seal.—Sealed and delivered in the presence of—(Signed) E. M. Barnes. State of New York, City and County of New York. Ss: Know ye that on this twenty ninth day of July in the year one thousand eight hundred and ninety, before me the undersigned Edwin T. Corey, Notary Public of the State of New York, duly commissioned and sworn, and residing in the city of New York, personally appeared Henry W. Barnes personally known to me, and acknowledged to be the witness who subscribed this instrument, who after being duly sworn deposed and said that he resides in the city of Brooklyn, County of Kings and State of New York, that he knows Joseph W. Alsop, William M. Prichard, William G. Choate and Henry Chauncey and knows them to be the persons described in and who executed said instrument, that he saw them execute the same, and that they acknowledged that they had executed it, and in consequence thereof he signed as witness. In witness whereof I sign these presents and affix my seal the day and year aforementioned.—Seal.—(Signed) Edwin T. Corey.—Notary Public.—Number 338.—Seal.—Consulate of the Republic of Chile in New York.—The undersigned certifies that Mr. Edwin T. Corey is a Notary Public and is duly commissioned for the city and county of New York, and that the signature and seal which appear at the foot of the preceding certificate are the ones that he employs in the exercise of his functions. In witness whereof he signs and seals these presents in New York, on the thirtieth day of July, eighteen hundred and ninety.—In the absence of the Consul (Signed) J. M. W. Fierro.—In charge of the Consulate.—Legation of the United States, Lima, Peru, S. A. Ss:—Know ye that on this nineteenth day of December, in the year eighteen hundred and ninety, before me personally appeared Henry S. Prevost, a citizen of the United States of America, known to me to be the person described in and to whom the annexed power of attorney refers, and in pursuance of the authority conferred on him under said power of

attorney, set forth: that he transfers the same to John Stewart Jackson, a resident of the city of Valparaiso, in the Republic of Chile, to act freely and with full authority under the terms and conditions therein set forth, with the sole limitation not to submit to arbitration the pending claims of the firm of Alsop and Company against the Government of Chili or any other Government.—(Signed) Henry S. Prevost.—In witness whereof I sign and affix the official seal of this Legation on the day and year aforesaid.—Seal.—(Signed) Richard R. Neill, Secretary of Legation of the United States, Santiago, January nineteenth, eighteen hundred and ninety one.—I hereby certify that the signature of Richard R. Neill found in this power of attorney is that of the Secretary in office in the Legation of the United States at Lima, Peru, and as such is entitled to full faith and credit.—(Signed) Patrick Egan.—Seal.—E. E. and M. P. of the United States in Chili.—The signature of Mr. Patrick Egan is legalized in the Office of the Ministry of Foreign Affairs.—Santiago, January nineteenth, eighteen hundred and ninety one. The subsecretary.—(Signed) F. Velasco.—Seal.—Legation of the United States of America, Lima, Peru, S. A. Ss: Know ye that on this fifth day of May, one thousand eight hundred and ninety two, before me personally came Henry S. Prevost, a citizen of the United States of America, known to me to be the individual described in and to which the annexed power of attorney refers, and in pursuance of the authority conferred on him, in virtue of said power of attorney, he set forth, that its previous transfer in favor of Mr. John Stewart Jackson has been rendered null and void in consequence of the death of said John Stewart Jackson, and in his stead he now transfers the power of attorney aforesaid to John Stewart Jackson, late John Stewart Jackson Jr., now a resident of Valparaiso in the Republic of Chili and to Edward Jackson a resident of Antofagasta in the Republic of Bolivia (temporarily under the control of the Republic of Chili) for its exercise jointly or severally as the case may be, and for free and full power under the terms and conditions indicated, with the sole limitation of the right to submit to arbitration the pending claims of the firm of Alsop and Company against the Government of the Republic of Chili or any other Government. (Signed) Henry S. Prevost. 9 In witness whereof I sign and affix the official seal of this legation on the day and year aforesaid, May fifth, eighteen hundred and ninety two.—Seal.—(Signed) Richard R. Neill.—Chargé d'Affaires of the United States pro tem.—Legation of the United States.—Santiago, Chili, June thirteenth, one thousand eight hundred and

ninety two.—I, Fenton R. McCreery, Secretary of Legation of the United States at Santiago, Chili, hereby certify that the signature of Richard R. Neill, is that of the Secretary in office of the Legation of the United States, and the Chargé d’Affaires of the United States pro tem., at Lima, Peru, and his signature affixed to this document is entitled to full faith and credit.—In testimony whereof I sign and affix the seal of this Legation on the said day and year, June thirteenth, one thousand eight hundred and ninety two.—Seal.—(Signed) Fenton R. McCreery.—Secretary of the Legation of the United States.—Know all men by these presents that I, Elizabeth W. Hoppin, Administratrix of the property of the estate and effects of George Frederick Hoppin, a citizen of the United States of America, deceased, late a partner of the firm of Alsop and Company of Valparaiso, in the Republic of Chili, have made, constituted and appointed, and by these presents do make, constitute and appoint Henry S. Prevost, a citizen of the United States of America, now a resident of Lima, Peru, and who was also one of the partners of said firm, to be my true and lawful attorney, for me and in my name and stead to direct and manage the share of the interests to me pertaining in the liquidation of the business of said firm of Alsop and Company, in any and all countries of South America; to collect and receive any and all sums of money due the said firm or to which the same may have any right; giving valid receipts for said sums; in his discretion to enter into agreements or compromise for the whole amount to me pertaining, or receive only part instead of the whole amount in full satisfaction; also in a necessary case, to make claims or institute lawsuits which he may deem proper before any Government, Court or Tribunal, or appear in defence of the interests of said firm before such Government, Court or Tribunal; also to enter in negotiations with any other persons or authorities for the purpose of acquiring any property or rights of said firm, and in relation thereto make the arrangements or grants which he may deem proper. Nevertheless, I give notice that said attorney cannot bind or hold me to pay any money in relation to the business of said firm, except in case that said money result from said business, and with this restriction I hereby give and grant to this my said attorney the most ample and fullest power to do and act in all things in anything that may be requisite and necessary to be done in relation to my interests, as fully to all intents and purposes, as I might or should do if personally present, with full power of substitution and revocation; hereby ratifying and confirming all that my said attorney or his substitute

may do or cause to be done lawfully in virtue of this power. In witness whereof I sign and seal these presents at Providence, Rhode Island, on this seventh day of May in the year one thousand eight hundred and eighty five.—Elizabeth M. Hoppin.—Administratrix of the estate.—Seal.—Signed, sealed and delivered in presence of J. E. Spink.—(Signed) G. F. Hoppin.—(Signed)—United States of America, State of Rhode Island, County of Providence.—In the city of Providence and in said State, on this seventh day of May, A. D. one thousand eight hundred and eighty five, personally appeared before me Elizabeth W. Hoppin, testator [Administratrix] of the property of the estate of George F. Hoppin, late of said city of Providence, deceased, said George F. Hoppin prior to his death having been a native of the United States, and she accepted the above instrument, signed by her, and acknowledged the same to be executed freely by her, and for the ends and purposes therein set forth.—(Signed) J. E. Spink.—Notary Public.—Seal.—7. Document annexed. State of Rhode Island and Providence Plantations.—Office of the Secretary of State.—Providence, R. I. January twenty sixth, one thousand eight hundred and eighty six.—I, Joshua M. Addeman, Secretary of State of said State and keeper of the Seal, hereby certify that Charles Blake is and was at the time of signing the annexed instrument, Clerk of the Supreme Court and for the County of Providence and State aforesaid, duly commissioned and qualified, and that full faith and credit should be given to his acts and depositions as such as well in Court as thereout; that the annexed deposition is in due form and made by the proper officer, and that I believe that the signature of said Charles Blake attached thereto is genuine.—In witness whereof I sign and seal with the Seal of the State aforesaid, on the aforesaid date. (Signed) Joshua M. Addeman.—Secretary of State. Seal.—7. Document annexed. Printed slip. The State of Rhode Island and Providence Plantations.—Providence Ss: Office of the Clerk of the Supreme Court.—Seal.—Providence, May seventh, A. D. one thousand eight hundred and eighty five.—I, Charles Blake, Clerk of the Supreme Court of said State, in and for the County of Providence, hereby certify that Joseph E. Spink Esq., is a Notary Public in and for said State and was such at the time of signing the certificate to the annexed instrument, duly commissioned and qualified, and empowered to administer oaths and take depositions and the acknowledgement of authentic instruments and others; that I am well acquainted with the signature of said Notary Public, and truly believe

that the signature affixed to said certificate, which is described as being his, is genuine; and that said instrument is acknowledged and executed according to the laws of said State. In testimony whereof I sign and affix the Seal of said Court the day and year aforesaid. (Signed) Charles Blake. Clerk.—8 Document annexed. (Printed slip) State of Rhode Island and Providence Plantations.—Office of the Clerk of the Municipal Court of the city of Providence, and State aforesaid, having jurisdiction of proofs. I hereby certify that Elizabeth W. Hoppin of said city has been appointed by said Court, testatrix [Administratrix] of the property of the estate of George Frederick Hoppin, late of said Providence, deceased, intestate, and is on this date duly qualified and is acting as such testatrix [administratrix] of the estate. In testimony whereof I sign and affix the seal of said Court this seventh day of May A. D. one thousand eight hundred and eighty five.—Seal.—(Signed) Chas. C. Mumfard.—Clerk.—

Legation of the United States, Lima, Peru, S. A. Ss: Know ye that on this nineteenth day of December of the year eighteen hundred and ninety, before me personally appeared Henry S. Prevost, a citizen of the United States of America, known to me to be the individual described and to whom the annexed power of attorney refers, and in pursuance of the authority and power on him conferred in virtue of said power of attorney, he set forth: that he transfers the same to John Stewart Jackson, resident of Valparaiso, in the Republic of Chili, to act freely and with full power, under the terms and conditions therein expressed, with the sole exception and limitation not to submit to arbitration the pending claims of the firm of Alsop and Company against the Government of Chili or any other Government.—(Signed) Henry S. Prevost. In witness whereof I sign and affix the seal of this Legation, the day and year aforesaid. Seal.—(Signed) Richard R. Neill, Secretary of the Legation of the United States.—Legation of the United States, Santiago, Chili, January nineteenth, one thousand eight hundred and eighty [ninety] one.—I hereby certify that the signature of Richard R. Neill is that of the Secretary of the Legation of the United States at Lima, Peru, duly appointed, and as such is entitled to full faith and credit.—Seal.—(Signed) Patrick Egan. E. E. and M. P. of the United States in Chili.—The signature of Patrick Egan is legalized in the Office of the Minister of Foreign Affairs of Chili. Santiago January nineteenth, eighteen hundred and ninety one.—Seal.—The subsecretary (Signed) F. Velasco.—Legation of the United States, Lima, Peru, S. A. Ss: Know ye that on this fifth day of May in the year eighteen hundred and ninety

two, before me personally appeared Henry S. Prevost, a citizen of the United States of America, known to me to be the individual described in and to whom the annexed power of attorney refers, and in pursuance of the authority and power conferred therein, in virtue of said power of attorney, he set forth: that its previous transfer executed in favor of Mr. John Stewart Jackson has become null and void, in consequence of the death of the said John Stewart Jackson, and that in his stead he now transfers the said power of attorney to Mr. John Stewart Jackson, late John Stewart Jackson Jr., now a resident of Valparaiso in the Republic of Chili, and to Edward Jackson, resident of Antofagasta, in the Republic of Bolivia, temporarily under the control of the Republic of Chili, for its exercise jointly and severally as the case may be, to act freely and with full power, under the terms and conditions indicated, with the sole limitation not to submit to arbitration the pending claims of the firm of Alsop and Company against the Government of the Republic of Chili or any other Government. (Signed) Henry S. Prevost. In witness whereof I have signed and affixed my official seal of this Legation the day and year aforesaid, May fifth, eighteen hundred and ninety two.—Seal.—(Signed) Richard R. Neill, Chargé d'Affaires of the United States pro tem. Legation of the United States, Santiago, Chili, June thirteenth, eighteen hundred and ninety two.—I, Fenton R. McCreery, Secretary of the Legation of the United States at Santiago, Chili, hereby certify that the signature of Richard R. Neill is that of the secretary in office of the Legation of the United States, and the Chargé d'Affaires of the United States pro tem. at Lima, Peru, and that his signature affixed to this document as such is entitled to full faith and credit.—In witness whereof I sign and affix the official seal of this Legation, the day and year aforesaid, June thirteenth, one thousand eight hundred and ninety two.—Seal.—(Signed) Fenton R. McCreery.—Secretary of the Legation of the United States.—The above translation has been faithfully made from their originals. Antofagasta, September sixteenth, eighteen hundred and ninety two.—Charles G. Greene.—John Barnett.—Antofagasta, September sixteenth, eighteen hundred and ninety two.—S. J. L. We have the honor of placing in the hands of Y. H. the translation that we have made of the powers of attorney and the documents annexed thereto, found from folio one to folio twenty one, reverse, in compliance with what was provided by the decree dated July thirteenth ultimo. May God guard Your Honor.—Charles C. Greene.—John Barnett.—

Antofagasta, October seventeenth, eighteen hundred and ninety two.—The above translation is received, and let this data pass for review to the District Attorney; let the clerk cancel the revenue stamps attached.—Fuente.—Ordered by the third Municipal Mayor Don Carlos de la Fuente.—Concha.—On October seventeenth, I gave notice thereof to Don Emilio Garcia Ramirez.—Garcia. R.—Concha.—On October seventeenth I gave notice thereof to the District Attorney.—Mujica.—Concha.—Answer. S. J. L.—The revenue stamps proper to the class of the contracts referred to have been attached to the annexed translations, wherefore this office is of the opinion that you may order compliance with the request made at folio twenty four, unless Your Honor, decide otherwise.—Antofagasta, October eighteenth, eighteen hundred and ninety two.—Let it be provided as the District Attorney advises.—Fuente.—Concha.—On the eighteenth of October I gave notice thereof to Don Emilio Garcia Ramirez.—Garcia R.—Concha.—On the eighteenth of October I gave notice thereof to the District Attorney.—Mujica.—Concha.—On the eighteenth of October I gave notice thereof to the Notary Public Don Pedro P. Alvarez.—P. P. Alvarez.—Concha.—

The above conforms to the document annexed thereto and which has been referred to at the beginning hereof, this copy being issued at the request of Mr. Edward Jackson for the proper purposes. Antofagasta, November twenty first, nineteen hundred and four. Corrections noted. All valid.

VICENTE VILLALON,

Notarial Seal.

N. P.

I certify: that at the foot of the original powers of attorney the authenticated copy whereof is found above, the following legalizations appear:—"Legation of the United States of America, Santiago Chili.—I the undersigned, Chargé d'Affaires ad interim of the United States of America, do hereby certify that on the date above mentioned, June 13th, 1892, Fenton R. McCreery was the duly appointed Secretary of Legation at Santiago, Chili, that the above signature is identical with that which appears in the records of this Legation, and is, therefore, entitled to full faith and credit.—In witness whereof, I have hereunto affixed my signature, and the Seal of the Legation of the United States of America, this 6th day of July, 1905.—Edward Winslow Ames, Chargé d'Affaires ad int." The Office of the Minister of Foreign Affairs of Chili certifies: the authenticity of the signature of Mr. Edward Wins-

low Ames, Chargé d'Affaires of the United States in Chili.—Santiago, July eighth, nineteen hundred and five.—The Subsecretary.—César de la Lastra.—“Legation of the United States of America.—Santiago, Chili.—I, the undersigned, Chargé d'Affaires ad interim of the United States of America do hereby certify that on the date above mentioned June 13th, 1892, Fenton R. McCreery was the duly appointed Secretary of Legation at Santiago, Chili, that the above signature is identical with that which appears in the records of this Legation, and is, therefore, entitled to full faith and credit.—In witness whereof I have hereunto affixed my signature and the seal of the Legation of the United States of America, this 6th day of July, one thousand nine hundred and five.—Edward Winslow Ames, Chargé d'Affaires ad int.”—The Office of the Minister of Foreign Affairs of Chili, certifies: the authenticity of the signature of Mr. Edward Winslow Ames, Chargé d'Affaires of the United States in Chili.—Santiago, July eighth, one thousand nine hundred and five.—The subsecretary, César de la Lastra.”—The Office of the Minister of Foreign Affairs of Chili, certifies: the authenticity of the signature of Mr. J. M. W. Fierro, in charge of the Consulate in the year ninety.—Santiago, July eighth, nineteen hundred and five.—The subsecretary acting, M. A. Martinez.—Stamp.”—“Legation of the United States of America, Santiago, Chile.—I, the undersigned, Chargé d'Affaires ad interim of the United States of America do hereby certify that on the date above mentioned, June 13th, 1892, Fenton R. McCreery was the duly appointed Secretary of Legation at Santiago, Chili, that the above signature is identical with that which appears in the records of this Legation, and is therefore, entitled to full faith and credit. In witness whereof, I have hereunto affixed my signature, and the Seal of the Legation of the United States of America, this 6th day of July, nineteen hundred and five.—Edward Winslow Ames, Chargé d'Affaires ad-int.”—The Office of the Minister of Foreign Affairs of Chili certifies: the authenticity of the signature of Mr. Edward Winslow Ames, Chargé d'Affaires of the United States in Chili.—Santiago, July eighth, nineteen hundred and five.—The Subsecretary.—César de Lastra.—“Legation of the United States of America, Santiago, Chili.—I, the undersigned, Chargé d'Affaires ad interim of the United States of America, do hereby certify that on the date above mentioned, June 13th, 1892, Fenton R. McCreery was the duly appointed Secretary of Legation at Santiago, Chili, that the above signature is identical with that which appears in the records of this Lega-

tion, and is therefore, entitled to full faith and credit.—In witness whereof, I have hereunto affixed my signature, and the Seal of the Legation of the United States of America this 6th day of July, one thousand nine hundred and five.—Edward Winslow Ames, Chargé d’Affaires ad int.”—The Office of the Minister of Foreign Affairs of Chili, certifies to the authenticity of the signature of Mr. Edward Winslow Ames, Chargé d’Affaires of the United States in Chili.—Santiago, July eighth, one thousand nine hundred and five.—The Subsecretary, César de la Lastra.”—

The above conform to their originals which I have had before me as found in the files of Documents of Proofs in the Register of Public Instruments of the year one thousand eight hundred and ninety two.—Antofagasta, April second, one thousand nine hundred and six.

SAMUEL DONOSO,
N. and C. *pro tem.*

CITY OF WASHINGTON,
District of Columbia, United States of America. } *ss.*

Edward Jackson, being of full age, and having been duly sworn, on his oath saith:

That he is a native and resident of the city of Valparaiso, in the Republic of Chile; that he was born in the said city on the 23rd day of January, 1859; that he is a citizen of the said Republic of Chile, and is now temporarily on a visit to Washington, from which city he expects ere long to return to Chile.

That he is a mining engineer by profession, having studied at the Royal Academy of Mines in Freiberg, Saxony, and also at Clausthal in Germany.

That soon after he returned to Chile from his studies abroad, in the spring of 1882, he was employed as mining engineer in the district of Caracoles by his father, the late John Stewart Jackson of Valparaiso, deceased, (a British subject by birth), who had a contract of habilitation with the late John Wheelwright, as liquidator of Alsop & Co., for working the “*estacas d’instruccion*” or silver mines which had been set off to the Bolivian Government under the mining laws of Bolivia and afterwards leased to John Wheelwright as liquidator of Alsop & Co. under the contract of December 26, 1876, between the said Government and the said Wheelwright.

That deponent remained in charge of the said mines in the Caracoles district after the death of the said Wheelwright, which occurred in March, 1890, Wheelwright having been succeeded as

liquidator by the late Henry Stanhope Prevost, who, as such liquidator, transferred his power of attorney which he had from the partners of Alsop & Co. to the said John Stewart Jackson, which power was, upon the death of the said John Stewart Jackson in January, 1892, transferred by the said Prevost to deponent and his brother John Stewart Jackson, second, a certified copy of which power in Spanish, with a translation into English, is hereto annexed, and made part of this affidavit.

That deponent was well acquainted with the said John Wheelwright and was intimately associated with him from 1882 until his death in 1890 as aforesaid; that to deponent's personal knowledge the said Wheelwright, who had been one of the active partners of Alsop & Co., continued the books of the firm as liquidator, some of the entries being in his own handwriting, with which deponent is familiar, having received hundreds of letters from him (the said Wheelwright) during the years that deponent was in charge of the mines at Caracoles.

That the said books of accounts belonging to Alsop & Co., which were in the charge and custody of the said Wheelwright at the time of his death, came into the possession of deponent as the result of instructions from deponent's father, the aforesaid John Stewart Jackson, deceased, directing deponent to go to Antofagasta and take possession of Mr. Wheelwright's office and effects. This was done by deponent and since that time the said books of accounts have been in his possession. They comprise a journal, ledger and cash book for the years 1871 to 1878 inclusive; also a journal from 1879 to 1885 inclusive, and a journal and ledger from 1886 to date, being six (6) books in all, bound in leather, and now lodged temporarily with the Bureau of Accounts in the Department of State.

That since he came to Washington deponent has reproduced the missing ledger by transcribing the entries from the journal for the years 1879 to 1885 inclusive, the old ledger for these years having been burned or lost at a fire in Valparaiso.

That deponent has carefully and diligently made certain compilations from the said books of account showing (1) the legal expenses incurred in defense of the rights of Wheelwright and his successors as liquidators of Alsop & Co. under the contract of December 26, 1876, with Bolivia, in respect of the Government estacas or mines included in the said contract,—which compilation, marked Exhibit A, is hereunto annexed and made part of this affidavit; (2) the extra expenses incurred in guarding the said mines and main-

taining possession of the same, such expenses being caused by the failure of the Chilean Government to protect the rights of Wheelwright as liquidator and his successors under the aforesaid contract,—which compilation, marked Exhibit B, is hereunto annexed and made part of this affidavit; (3) the expenses incurred under the Chilean mining laws in respect to the said estacas or mines, which, under the aforesaid contract with Bolivia, should have been free from certain requirements prescribed by the mining laws of Chile,—which compilation, marked Exhibit C, is hereunto annexed and made part of this affidavit; (4) the net proceeds of the several “estacas d’instruccion” which were worked to a profit under the said contract with Bolivia,—which compilation, marked Exhibit D, is hereunto annexed and made part of this affidavit; and (5) the expenses and gross proceeds of the estaca *Flor del Desierto* and the estaca *Disputa*,—which compilation, marked Exhibit E, is hereunto annexed, and made part of this affidavit. All these statements or compilations have been carefully and diligently transcribed, item by item, from the said books of account, and deponent verily believes that they are true and accurate, and he hereby incorporates them and each of them into this affidavit and makes them part and parcel thereof as hereinbefore stated. Deponent has also made a statement (6), marked Exhibit F, and hereunto annexed, showing the names and number of the “estacas d’instruccion” included in the aforesaid contract of December 26, 1876, which were not worked by the said John Wheelwright, or his successors as liquidators of Alsop & Co., together with an estimate of the value of the net production of the same,—the said estacas having been appropriated and operated by other persons in derogation of the aforesaid contract. This estimate of such production has been made partly from deponent’s personal knowledge of the said estacas and the mines of which they formed a part, which knowledge was acquired during the years deponent was engaged in working other mines in the same district of Caracoles, and partly from published statistics and other sources of information, from which deponent has endeavored to make a fair and reasonable approximation of the value of such production, which estimate, although considerably below the figures given in the aforesaid statistics, deponent verily believes to be more nearly correct, and which, with this explanation, deponent makes a part of this affidavit.

Deponent further saith that he, and the firm of Jackson Brothers, of Valparaiso, and deponent’s brother, Arthur S. Jackson, individ-

ually, and as attorney in fact for some and as guardian for others of the heirs and next of kin of the aforesaid John Stewart Jackson, late of Valparaiso, deceased, are interested as creditors of Alsop & Co. in liquidation in the so-called Alsop claim and in any award which may be rendered for or on account of the same in the pending arbitration thereof between the United States and Chile, by reason of advances made and services rendered under the aforesaid contract between John Wheelwright, deceased, and John Stewart Jackson, deceased, and under the aforesaid powers of attorney made by Henry Stanhope Prevost, deceased, as liquidator of Alsop & Co., to John Stewart Jackson, deceased, and, on his death, to John Stewart Jackson, second, and to this deponent as hereinbefore set forth.

Deponent further saith that he has turned over and delivered the said books of account temporarily to the Department of State of the United States, with the understanding that the said Department will return the same to deponent, and that meanwhile the said Department may submit any or all of the said books for inspection and examination to the representatives or proper officers of the Chilean Government at this Capital. And further deponent saith not.

Subscribed and sworn to before me in the Department of State, at Washington, this 9th day of July, A. D. 1910.

41307-10-34

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