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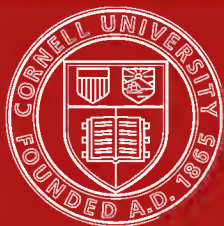
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THE ALSOP CLAIM

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. II

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APPENDIX TO THE CASE OF THE UNITED STATES.

Case No. 3.—Convention.

Convention between the United States of America and the Republic of Chile, for the settlement of certain claims of the citizens of either country against the other. Signed at Santiago, August 7, 1892. Ratification advised by the Senate, December 8, 1892. Ratified by the President of the United States, December 16, 1892. Ratifications exchanged, January 26, 1893. Proclaimed, January 28, 1893.

The United States of America and the Republic of Chile, animated by the desire to settle and adjust amicably the claims made by the citizens of either country against the government of the other, growing out of acts committed by the civil or military authorities of either country, have agreed to make arrangements for that purpose, by means of a Convention, and have named as their Plenipotentiaries to confer and agree thereupon as follows:

The President of the United States of America, Patrick Egan, Envoy Extraordinary and Minister Plenipotentiary of the United States at Santiago, and the President of the Republic of Chile, Isidoro Errázuriz, Minister of Foreign Relations of Chile;

Who, after having communicated to each other their respective full powers, found in good and true form, have agreed upon the following articles:—

ARTICLE I.

All claims on the part of corporations, companies or private individuals, citizens of the United States, upon the Government of Chile, arising out of acts committed against the persons or property of citizens of the United States not in the service of the enemies of Chile, or voluntarily giving aid and comfort to the same, by the civil or military authorities of Chile; and on the other hand, all claims on the part of corporations, companies or private individuals, citizens of Chile, upon the Government of the United States, arising out of acts committed against the persons or property of citizens of Chile, not in the service of the enemies of the United States, or voluntarily giving aid and comfort to the same, by the

civil or military authorities of the Government of the United States, shall be referred to three Commissioners, one of whom shall be named by the President of the United States, and one by the President of the Republic of Chile, and the third to be selected by mutual accord between the President of the United States and the President of Chile. In case the President of the United States and the President of Chile shall not agree within three months from the exchange of the ratifications of this Convention to nominate such third Commissioner then said nomination of said third Commissioner shall be made by the President of the Swiss Confederation.

ARTICLE II.

The said Commission, thus constituted, shall be competent and obliged to examine and decide upon all claims of the aforesaid character presented to them by the citizens of either country.

ARTICLE III.

In case of the death, prolonged absence or incapacity to serve of one of the said Commissioners, or in the event of one Commissioner omitting, or declining, or ceasing to act as such, then the President of the United States, or the President of the Republic of Chile, or the President of the Swiss Confederation, as the case may be, shall forthwith proceed to fill the vacancy so occasioned by naming another Commissioner within three months from the occurrence of the vacancy.

ARTICLE IV.

The Commissioners named as hereinbefore provided shall meet in the city of Washington at the earliest convenient time within six months after the exchange of ratifications of this Convention, and shall, as their first act in so meeting, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to public law, justice and equity, without fear, favor or affection, all claims within the description and true meaning of Articles I and II, which shall be laid before them on the part of the Governments of the United States and of Chile respectively; and such declaration shall be entered on the record of their proceedings; *Provided*, however, that the concurring judgment of any two Commissioners shall be adequate for every intermediate decision arising in the execution of their duty and for every final award.

ARTICLE V.

The Commissioners shall, without delay, after the organization of the Commission, proceed to examine and determine the claims specified in the preceding articles, and notice shall be given to the respective Governments of the day of their organization and readiness to proceed to the transaction of the business of the Commission. They shall investigate and decide said claims in such order and in such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of, or in answer to, any claim, and to hear, if required, one person on each side whom it shall be competent for each Government to name as its Counsel or Agent to present and support claims on its behalf, on each and every separate claim. Each Government shall furnish at the request of the Commissioners, or of any two of them, the papers in its possession which may be important to the just determination of any of the claims laid before the Commission.

ARTICLE VI.

The concurring decisions of the Commissioners, or of any two of them, shall be conclusive and final. Said decisions shall in every case be given upon each individual claim, in writing, stating in the event of a pecuniary award being made, the amount or equivalent value of the same in gold coin of the United States; and in the event of interest being allowed on such award, the rate thereof and the period for which it is to be computed shall be fixed, which period shall not extend beyond the close of the Commission; and said decision shall be signed by the Commissioners concurring therein.

ARTICLE VII.

The High Contracting Parties hereby engage to consider the decision of the Commissioners, or of any two of them, as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objections, evasions, or delay whatever.

ARTICLE VIII.

Every claim shall be presented to the Commissioners within a period of two months reckoned from the day of their first meeting for business, after notice to the respective Governments as prescribed in Article V of this Convention. Nevertheless, where reasons for delay shall be established to the satisfaction of the Commissioners, or of any two of them, the period for presenting the claim may be extended by them to any time not exceeding two months longer.

The Commissioners shall be bound to examine and decide upon every claim within six months from the day of their first meeting for business as aforesaid; which period shall not be extended except only in case of the proceedings of the Commission shall be interrupted by the death, incapacity, retirement, or cessation of the functions of any one of the Commissioners, in which event the period of six months herein prescribed shall not be held to include the time during which such interruption may actually exist.

It shall be competent in each case for the said Commissioners to decide whether any claim has, or has not, been duly made, preferred, and laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this Convention.

ARTICLE IX.

All sums of money which may be awarded by the Commissioners as aforesaid shall be paid by the one Government to the other, as the case may be, at the capital of the Government to receive such payment, within six months after the date of the final award, without interest, and without any deduction save as specified in Article X.

ARTICLE X.

The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof; and the Governments of the United States and of Chile may each appoint and employ a Secretary versed in the languages of both countries, and the Commissioners may appoint any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner, Secretary and Agent or Counsel, and at the same or equivalent rates of compensation, as near as may be, for like officers on the one side as on the other. All other expenses, including the compensation of the third Commissioner, which latter shall be equal or equivalent to that of the other Commissioners shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the Commissioners, provided always that such deduction shall not exceed the rate of five per centum on the sum so awarded. If the whole expenses shall exceed this rate, then the excess of expense shall be defrayed jointly by the two Governments in equal moieties.

ARTICLE XI.

The High Contracting Parties agree to consider the result of the proceedings of the Commission provided for by this Convention as a full, perfect and final settlement of any and every claim upon either Government within the description and true meaning of Articles I and II; and that every such claim, whether or not the same may have been presented to the notice of, made, preferred or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be treated and considered as finally settled, concluded and barred.

ARTICLE XII.

The present Convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof and by the President of the Republic of Chile, with the consent and approbation of the Congress of the same, and the ratifications shall be exchanged at Washington, at as early a day as may be possible within six months from the date hereof.

In testimony whereof the respective Plenipotentiaries have signed the present Convention, in the English and Spanish languages, in duplicate, and hereunto affixed their respective seals.

Done at the city of Santiago the seventh day of August, in the year of our Lord one thousand eight hundred and ninety-two.

[SEAL.]

PATRICK EGAN.

[SEAL.]

ISIDORO ERRÁZURIZ.

Preliminary Proceedings of Commission.

FIRST SESSION.

Washington City, D. C. July 25th, 1893.

The Commissioner of the United States of America, John Goode; the Commissioner of the Republic of Chile, Domingo Gana, and the Commissioner of the Swiss Confederation, Alfred de Claparède, appointed in pursuance of the Convention between the United States of America and the Republic of Chile for the settlement of certain claims of the citizens of either country against the other, concluded at Santiago, August 7, 1892, met pursuant to arrangement at the office of the Secretary of State in the city of Washington, July 25, 1893, at eleven o'clock A. M., and having exhibited to each other their credentials in their behalf, did, as their first act, make and subscribe, respectively, a solemn declaration as provided in Article IV of said Convention. The declarations so made are in the words and figures following, to wit:

"OFFICE OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, July 25, 1893.

The Commissioners appointed pursuant to the Convention between the United States of America and the Republic of Chile, for the settlement of certain claims of the citizens of either country against the other, concluded August 7, 1892; that is to say, John Goode, a citizen of the State of Virginia, the Commissioner named by the President of the United States; Domingo Gana, a citizen of the Republic of Chile, the Commissioner named by the President of that Republic, and Alfred de Claparède, a citizen of the Swiss Confederation, the Commissioner named by the President of that Confederation, met this day, in the presence of the Honorable Alvey A. Adee, Acting Secretary of State of the United States, at the Department of State, in the city of Washington, and made and subscribed the following declaration:—

We, the undersigned Commissioners appointed in pursuance of a Convention between the United States of America and the Republic of Chile, for the settlement of certain claims of the citizens of either country against the other, concluded at Santiago, on the seventh day of August, one thousand eight hundred and ninety two, do severally and solemnly declare that we will impartially and carefully examine and decide, to the best of our judgment and according to public law, justice and equity, with-

out fear, favor or affection, all claims within the description and true meaning of Articles I and II, which shall be laid before us on the part of the Governments of the United States and of Chile respectively.

In witness thereof we have, this twenty-fifth day of July, one thousand eight hundred and ninety-three, made and subscribed this our solemn declaration.

ALFRED DE CLAPARÈDE,

Commissioner appointed by the President of the Swiss Confederation.

JOHN GOODE,

Commissioner appointed by the President of the United States.

DOMINGO GANA,

Commissioner appointed by the President of the Republic of Chile."

DEPARTMENT OF STATE,

Washington, July 25, 1893.

I certify that the above declaration was signed at the Department of State in the presence of the Acting Secretary of State, this twenty-fifth day of July, one thousand eight hundred and ninety three.

In witness whereof I have hereunto set my hand and caused the seal of the Department of State to be affixed.

ALVEY A. ADEE,

Acting Secretary of State.

Thereupon, after the subscribing of the foregoing solemn declaration, Mr. Alfred de Claparède was elected President of the Commission by acclamation.

On motion of the Honorable John Goode, Commissioner on the part of the United States, it was

"Ordered: That the Secretaries to this Commission be, and they are hereby directed to provide suitable quarters for the occupancy of the Commission while engaged in the transaction of its business."

And then, on motion of Señor Don Domingo Gana, Commissioner on the part of the Republic of Chile, it was

"Ordered: That the Agents of the two countries be instructed to prepare a draft of Rules for the guidance of the deliberations of the Commission, said draft to be submitted thereto at its next meeting."

Whereupon Mr. George H. Shields presented his commission as Agent on the part of the United States, and on motion of the

Honorable John Goode, he was recognized as such, and Mr. Arthur W. Fergusson, also the Honorable John Goode, was recognized as Secretary on the part of the United States.

Señor Don Domingo Gana then presented the names of Señor Don José Francisco Vergara Donoso and Señor Don Marcial A. Martinez de Ferrari as Agent and Secretary, respectively, on the part of the Republic of Chile, and moved their recognition as such, which motion was unanimously adopted.

The Secretaries were then instructed to procure the proper books for the use of the Commission.

Thereupon the Commission took a recess until August 15th, 1893, at 11 o'clock A. M. when they will meet in the Diplomatic Room of the Department of State to consider the Rules.

ALFRED DE CLAPARÈDE,
President.

A. W. FERGUSSON

M. A. MARTINEZ DE F.

Secretaries.

SECOND SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN CLAIMS COMMISSION, *Washington, D. C., August 15, 1893.*

The Commission met at 11 o'clock A. M. pursuant to the recess taken on the 25th of July, 1893.

Present: The Honorable Alfred de Claparède, the Commissioner named by the President of the Swiss Confederation, presiding; the Honorable John Goode, Commissioner on the part of the United States; the Honorable Domingo Gana, Commissioner on the part of the Republic of Chile; the Honorable George H. Shields, Agent on the part of the United States; the Honorable José Francisco Vergara Donoso, Agent on the part of Chile; Mr. Arthur W. Fergusson, Secretary on the part of the United States, and Mr. Marcial A. Martinez de Ferrari, Secretary on the part of Chile.

The Minutes of the previous session were read and approved.

The Honorable Agents on the part of the United States and of Chile presented the draft of the Rules for the regulation of the Commission, prepared by them, the Agent on the part of the

United States stating that the Agents of the respective Governments agreed substantially on the rules except that they could not agree on the time which should be allowed the respective Governments for the completion of their proofs; that the Agents therefore had reported Rule X and Rule XII with blanks for the Commission to fill, and that they had also left a blank in Article II until the Commission should set its first day for business.

The Rules were then read and taken up for consideration seriatim:

When Rule II was read considerable discussion followed on the propriety of setting the first day for business. The Honorable Commissioner Gana and the Honorable Agent for Chile expressed the opinion that the day for the first meeting for business should not be set at this time on the one hand, because the Convention provides that the Commission must finish its work within six months, and, consequently, the Commissioners cannot adopt rules establishing a longer period than that designated. On the other hand the periods which are to be submitted to the Commission are absolutely necessary in order that a claim may be heard and examined with sufficient testimony. In order to show the impossibility of establishing shorter terms it is sufficient to bear in mind that the testimony will have to be taken, as a general rule, in some point in Chile or Peru. In this situation the most practical solution, in their opinion, is for the Commission to halt before this insuperable difficulty and call the attention of the Governments of the United States and Chile, whose duty it is to remove it and provide for the extension of the Treaty.

The Honorable Commissioner John Goode stated that he did not think the Commission should decline to set a day for business on the ground that they could not get through all the cases that might be presented; that while he was willing to recommend the extension of the Treaty, he thought the Commission should proceed to do what it could in the way of disposing of the cases that might be ready, and he therefore moved to fill the blank in Rule II by inserting: "the ninth day of December, 1893."

The Agent for the United States stated that he expected to be ready to submit cases soon enough after the first day for business to be disposed of within the six months' limit of the Treaty and allow all reasonable time for defence.

After further discussion this date was adopted by the votes of the Honorable Commissioners de Claparède and Goode, Com-

missioner de Claparède accompanying his affirmative vote with the proviso that on the day of the first meeting for business the first act of the Commission should be to lay before the two Governments in interest the difficulty referred to, together with a copy of the Rules as adopted, thus showing the manifest necessity of extending the period within which the claims may be examined and decided and urging the extension. The Honorable Commissioner Gana refrained from voting for the reasons he had previously stated.

Rules I, II, III, IV, V, VI, VII, VIII, and IX were then adopted with some amendments. When Rule X was reached Commissioner Gana moved to fill the blank with "three months." The Agent for the United States objected, saying that in view of the short limit of the Treaty, the very shortest time possible should be adopted; that most of the cases had long been pending and that both Governments had known their character and ought to have made preparations in advance; that he was not disposed to cut off time for defence or the taking of necessary testimony, but that the Commission should act on the Treaty as it is and not on the presumption that it would be extended. The Honorable Agent on the part of Chile maintained that the term of three months was the shortest that could be adopted. The Commission unanimously adopted the three months' amendment and afterwards adopted Rule X as amended,

Rule XI was then adopted.

When Rule XII was reached, at the suggestion of the Honorable Agent for Chile the blanks were filled so as to require ten days' notice for depositions in the United States and forty days out of the United States. This amendment was adopted, as was also the Rule as amended.

Rules XIII, XIV, XV, and XVI were then adopted.

When Rule XVII was read the Honorable Commissioner Gana moved to amend so as to require that Memorials should be in the English and Spanish languages. The amendment and the Rule as amended were then adopted.

Commissioner Gana then proposed an additional Rule as to printing to be numbered XVIII, which was adopted.

Rules XIX, XX, XXI, and XXII were read and after some verbal changes were adopted.

On motion of Commissioner Goode the Rules as amended were then adopted unanimously, as follows:

RULES OF THE COMMISSION FOR THE SETTLEMENT OF CLAIMS UNDER
THE CONVENTION OF AUGUST 7, 1892, BETWEEN THE UNITED
STATES OF AMERICA AND THE REPUBLIC OF CHILE.

I.

The claims shall be entered in the docket provided for the purpose in their order of presentation, and shall be numbered consecutively, beginning with the claim first presented as number one. The style of each case shall be:

—————, claimant,

No. —, against
The Republic of Chile;

or

—————, claimant,

No. — against
The United States.

II.

The claimant shall file in the office of the Commission at any time before the ninth day of December, 1893, a Memorial setting forth in plain and concise terms, and without repetition, the facts constituting the grounds of the claim and relied on as entitling the claimant to relief under the Convention; but the Commission, for good cause shown, may extend the time for filing such Memorial.

III.

(a) The Memorial shall state the name and present residence of the claimant, and the place of his residence at the time when the acts complained of occurred;

(b) Also whether the claimant is at the time he files his Memorial a citizen of Chile or of the United States by birth or naturalization, and whether he was such when the claim originated;

(c) Also a clear and detailed statement of the cause of action—that is to say, the amount claimed, the place and date of the acts from which it originated, the kind, quantity, and value of the property destroyed or injured, the kind of money in which the damage is estimated, and all the facts and circumstances in regard to the loss or damage for which indemnity is asked; and also, if known to the claimant, the name, rank, or employment of the persons committing the acts complained of.

(d) All claims for interest shall be separately stated, including the rate demanded and the time covered.

(e) If the claim or any part thereof is alleged to have arisen from acts upon the high seas, the names of the vessels concerned, the part taken by each, with the names of the commanding officers, if known, and in the services of what Governments respectively engaged, with proper dates and localities, must be stated.

(f) If any transfer of the claim or any part thereof has occurred, the Memorial must state, how, when, by what means, for what consideration, and to who and by whom the same has been made.

(g) If the claim is for property taken, lost, or injured, for which any voucher, receipt, memorandum, or any writing was given, a copy thereof must be attached to the Memorial, or reason assigned for not so doing. If not attached, the names of the parties to it and its substance must be given.

(h) If the claim is made in behalf of a corporation; or joint-stock company, or partnership, the nationality of the same and its domicile must be stated; and if the claimant is not a corporation or joint-stock company, the name of each person interested both at the date the claim accrued and at the date of verifying the Memorial, with the proportion of each person's interest must be stated.

(i) The claimant must also state in the Memorial whether he has received any sum of money or any other equivalent or indemnity for the whole or part of his losses, or damages suffered, and if so, when and from whom the same was received, and also whether the claim was ever presented to any tribunal of the United States or Chile, and if so, what disposition was thereof made by such tribunal.

(j) The Memorial must conclude with the distinct statement of the amount due to claimant for each cause of action and the interest claimed thereon, the aggregate amount and kind of money claimed, the sum paid thereon, if any, and the balance for which judgment is asked.

IV.

The memorial shall be verified by an oath or affirmation of the claimant, or by one of the several claimants, or if a corporation or joint-stock association by a principal officer thereof, before some officer authorized by the laws of the place where verified to administer oaths, or before a diplomatic or consular agent of either Government. In case of impossibility, absence,

or any other reasonable and legitimate cause the verification cannot be made by the claimant, the same may be verified by duly authorized agent, attorney, or legal representative.

V.

Memorials may be amended at any time before final submission upon leave granted by the Commission, but such amendment shall not include a new or different cause of action.

VI.

If the claim should be preferred through an agent or legal representative, his authority to act must be shown to the satisfaction of the Commission in accordance with the laws of the country under which he is appointed.

VII.

It shall not be necessary for the defendant Government in any case to deny the allegations of the petition or the validity of any claim. But a general denial thereof shall be entered of record by the Secretaries, as of course, and thereby all the material allegations of the petition shall be considered as put in issue, and the claimant shall be required to establish them by legal and sufficient evidence.

VIII.

The filing of the Memorial shall be entered in the notice book mentioned in Rule XXI. Within ten days from the filing thereof the Counsel or Agent of the respondent country may file any demurrer or motion thereto, together with his argument in support of the same; within ten days thereafter the Counsel or Agent for the opposing Government shall file his reply thereto, and the same shall be disposed of by the Commission as soon as practicable.

IX.

If the Agent for the respondent Government desires to file a special answer to any Memorial, he shall do so within ten days after the decision of the Commission on the demurrer or motion, together with all documentary evidence justifying his answer. In case no demurrer or motion is filed the respondent Government may have thirty days to answer. Such order will be made respecting further pleadings in the case as may be deemed proper.

X.

Within three months after the answer, special or general, the claimant shall complete his proofs; and within three months after the claimant announces his proofs are complete the respondent Government must complete its testimony in defence. The Commission may allow testimony in rebuttal if necessary. The Commission may make orders as to the limit of time within which arguments and briefs shall be made after the proofs are complete.

XI.

No evidence or information in the nature thereof will be received, except such as shall be furnished by or through the respective Governments.

XII.

Additional testimony may be taken in the form of deposition. The party desiring to take it shall give ten days notice thereof, if taken in the United States, and forty days if taken outside of the United States, stating particularly the place and time of taking the same, the names and residences of the witnesses intended to be examined, and the subject of the examination. The adverse party may appear and cross-examine. After the deposition has been completed pursuant to such notice the adverse party may take the testimony of other witnesses in that vicinity, giving twenty-four hours notice thereof to the opposing party, his attorney or agent, with a list of the witnesses proposed to be examined. And the same officer shall take the testimony of such witnesses as in continuation of such deposition. Each witness shall state whether he is concerned in the claim in controversy, and if so how, and whether he is related in business or otherwise to the claimant.

Such depositions shall be taken by any officer competent under the laws of the place where taken. He shall first [swear] (or affirm) the witness to tell the truth, the whole [truth], and nothing but the truth relative to the cause in which he is about to testify. He shall then write the questions desired, following each with the answer of the witness thereto, giving in every instance the exact words of the latter. If the attorney or agent of either party make any suggestion to the witness under examination as to his answer, the officer shall note the suggestion in the deposition. As soon as completed the witness shall subscribe his deposition

and write his name on the margin of each sheet containing any part of it.

The officer shall give the style of the case in the caption of the deposition, and note the time and place of taking the same together with the names of the attorneys or agents appearing for the several parties.

At the conclusion of the deposition he shall certify over his official signature and seal (if he have one), furnishing evidence of his official character with his certificate that the witnesses were duly sworn (or affirmed) as required in this rule before being examined; that he wrote the questions and the answers which they severally gave thereto, saw them sign the deposition, and that it was taken at the time and place specified in the caption. When the deposition shall have been completed and authenticated as aforesaid, he shall forthwith inclose the same in an envelope or packet, on which, after being duly sealed, he shall indorse the title of the case and the names of the witnesses examined, and, having addressed the same to the Commission at Washington, D. C., deposit it in the proper post-office duly stamped. When received by the Commission it may be opened by the Secretaries at the request of either party.

XIII.

The Commission may at any time, specially authorize testimony to be taken upon written interrogatories or otherwise, and may also, on motion or of its own accord, authorize any claimant or witness to appear personally before it for examination or cross-examination. Leading questions must not be put to a witness by the party calling him, and the officer who takes a deposition, while noting any objection of counsel to any question or answer, shall not pass upon the same, but shall record the question or answer as if unobjected to.

XIV.

On motion, any testimony or matter that is improper, irrelevant, immaterial, or scandalous shall be stricken from the record.

XV.

The rules of evidence as to the competency, relevancy, and effect of the same shall be determined by the Commission, with reference to the Convention under which it is created, the laws of the two nations, the public law, and these rules.

XVI.

When an original paper on file in the archives of either Government cannot conveniently be withdrawn, a duly certified copy may be received in evidence in lieu thereof. Public official documents, laws and decrees, published by authority of either government, may be received in evidence, subject to objection as to relevancy, without further authentication.

XVII.

Motions, demurrers, and written arguments shall be in the English language. Memorials shall be in English and Spanish. All depositions which may be taken outside of the United States under these Rules shall be taken in the language which the witness ordinarily uses, and if in any language other than the English, the testimony shall be accompanied by a faithful translation into English. All documentary evidence shall be submitted in the original language in which it is written, and if in Spanish, shall be accompanied by a faithful translation into English.

XVIII.

The claimant shall file with his original Memorial at least twenty copies thereof printed in English and twenty in Spanish. All pleadings and arguments and briefs of the Agents and Counsel of the respective Governments shall be printed by the Commission, together with such other documents as in their judgment may be necessary.

XIX.

The Commission may, upon reasonable cause being shown, extend the time for pleading, argument, or taking evidence in any case.

XX.

The order and mode of procedure which obtain in courts of justice of both countries will be observed in proceedings before the Commission so far as practicable and consistent with the Convention and these Rules.

XXI.

The Secretaries shall keep a record of the proceedings of the Commission in a book provided for the purpose for each day of its session, which shall be read at its next meeting, and, if no objec-

tion be made, or when corrected, if correction be needed, it shall be approved and subscribed by the President of the Commission and counter-subscribed by the Secretaries.

They shall keep a notice book, in which entries may be made by the Counsel for either Government, and when made shall be notice to the opposing Counsel and all concerned.

They shall provide a book of printed forms, under the direction of the Commission, in which shall be recorded its several awards or decisions signed by the Commissioners concurring therein.

They shall be the custodians of the papers, documents, and the books of the Commission, under its direction, and shall keep the same safe and in methodical order.

Upon each paper received by the Commission they shall indorse the date of receipt and enter a minute thereof in the docket in the proper case, and they shall make brief memoranda in such docket under the proper case of all orders of the Commission, with appropriate dates respecting such case. While affording every reasonable opportunity and facility to parties and their counsel to inspect and make extracts from papers and records, they shall permit none to be withdrawn from the files of the Commission or taken from its office, except by its direction duly entered of record.

XXII.

The docket minutes of proceedings, and record of awards or decisions shall be kept in duplicate, both in English and Spanish, one of which shall be delivered to each Government at the close of the Commission.

ARTHUR W. FERGUSON,
Secretary on the part of the United States.

M. A. MARTINEZ DE F.,
Secretary on the part of Chile.

The Agent for the United States then stated that he desired that the records should show that he protested against the Rules extending the time for completing the testimony beyond the limit mentioned in the Convention, for the reasons he had already stated.

The ninth day of October was then adopted as the date for the first meeting for business, the Honorable Commissioner for

Chile refraining from voting, for the reasons he had previously stated.

The Secretaries then reported that they had secured quarters for the Commission at No. 2 Lafayette Square, at the rate of \$100 per month, and they were directed to close the contract for the same. The Secretaries reported further that they had provided the necessary books for the use of the Commission.

The President then laid two communications from attorneys for claimants before the Commission, and the Secretaries were directed to reply to and file the same.

The Commission then adopted the following orders:

“Ordered, That the Secretaries purchase, at a reasonable cost, a seal for the use of the Commission.”

“Ordered, That the Secretaries cause to be printed five hundred (500) copies of the Rules of the Commission, together with the Convention, in Spanish and English, establishing the Commission.”

“Ordered, That in conformity with Article V of the Convention the Secretaries give notice to the respective Governments that the Commissioners, on the 25th day of July, 1893, signed the declaration required by Article IV; that then they took a recess until the 15th day of August, 1893, when they adopted a body of Rules for the regulation of their proceeding; that they are now ready to proceed to the transaction of the business of the Commission, and that they have fixed the ninth day of October, 1893, as the day of their first meeting for business after the notice herewith given, from which day, under and in conformity with Article VIII, the period of two months within which every claim shall be presented will be reckoned.”

“Ordered, That the Secretaries publish in certain newspapers, to be by them selected under the advice of the Agents, a notice that the Commissioners have appointed the ninth day of October, 1893, as the day of their first meeting to transact the business of the Commission; that the Convention provides that every claim shall be presented within a period of two months after such meeting; and that parties having claims will please forward the memorial and other papers to the Agents of their respective Governments; that the Agent for the prosecution of American claims against the Republic of Chile is Honorable George H. Shields, and his address is No. 2 Lafayette Square, Washington, D. C., and that the Agent for the prosecution of Chilean claims against the

United States is Señor Don José Francisco Vergara Donoso, and his address is No. 2 Lafayette Square, Washington, D. C."

"*Ordered*, That the Secretaries procure a fire-proof safe, copying press, and the necessary stationery for the use of the Commission."

"*Ordered*, That the Commissioner for the United States and the Commissioner for Chile are each authorized to employ the services of one clerk to assist the Commission in the transaction of the business which may come before it, at a salary not to exceed \$80 a month."

Thereupon the Commission adjourned, to meet on October ninth, at 11 o'clock A. M.

ALFRED DE CLAPARÈDE,
President.

A. W. FERGUSON,
M. A. MARTINEZ DE F.,
Secretaries.

UNITED STATES AND CHILEAN CLAIMS COMMISSION,
Washington, D. C., August 18th, 1893.

His Excellency WALTER Q. GRESHAM,
Secretary of State, Washington,

SIR: The Commissioners appointed under the Convention between the United States of America and the Republic of Chile for the settlement of claims of either country against the other, concluded August 7, 1892, have directed us, in their behalf, to inform your Excellency that they met at the Department of State, in the city of Washington, on the twenty-fifth day of July, 1893, and made and subscribed the declaration required by Article IV of the said Convention; that they thereupon adjourned to meet on the fifteenth of August, 1893, at the Department of State, for the purpose of adopting rules, and that on said last date they adopted a body of rules for the regulation of the proceedings of the Commission.

The Commissioners have therefore directed us to further inform your Excellency that they are now ready to proceed to the transaction of the business of the Commission on the 9th day of October, 1893, and that, in conformity with Article VIII of the Convention, which provides that every claim shall be presented within a period of two months reckoned from the day of their first meeting for business after notice to the respective Governments, the Commissioners have appointed Monday, the ninth day of October,

eighteen hundred and ninety three, as the day of their first meeting after the notice here given.

In witness whereof we have hereunto set our hands
[SEAL.] and caused the seal of the Commission to be affixed.

A. W. FERGUSSON,

Secretary on the part of the United States.

M. A. MARTINEZ DE F.,

Secretary on the part of Chile.

NOTICE PUBLISHED IN CERTAIN NEWSPAPERS OF THE UNITED STATES, PERU, AND CHILE BY ORDER OF THE COMMISSION.

Office of the United States and Chilean Claims Commission, Washington, D. C., August 18th, 1893.—The Commissioners under the Convention between the United States of America and the Republic of Chile, for the settlement of certain claims of the citizens of either country against the other, duly ratified by the respective countries and the ratifications exchanged January 26, 1893, having duly organized and adopted Rules, have appointed the 9th day of October, 1893, as the day of their first meeting to transact the business of the Commission. The Convention provides that every claim shall be presented within the period of two months from such meeting. Claimants will forward their Memorials and other papers to the Agents of their respective Governments, to wit: American claims against the Republic of Chile to the Hon. George H Shields, and Chilean claims against the United States to Señor Don José Francisco Vergara Donoso, both at No. 2 Lafayette Square, Washington, D. C. Arthur W. Fergusson, Secretary on the part of the United States; M. A. Martinez de F., Secretary on the part of Chile.

THIRD SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN
CLAIMS COMMISSION, NO. 2 LAFAYETTE SQUARE,
Washington, D. C., October 9, 1893.

The session was called to order at 11 o'clock A. M.

Present: The Honorable Alfred de Claparède, presiding, the Honorable Commissioners, Agents and Secretaries on the part of the United States and Chile.

The Honorable Commissioner of Chile presented the Honorable George S. Boutwell to the Commission as assistant counsel on the part of Chile.

Before proceeding to the reading of the minutes of the preceding session, at the suggestion of the Honorable Commissioner of Chile, the Commission took up the question whether or not the sessions of the same should be public or private. The Honorable Commissioner of the United States requested the Honorable George S. Boutwell to inform the Commission as to the practice observed in the French-American Commission. The gentleman replied that in said Commission all sessions and hearings were public, the only secret hearings being the consultations or deliberations of the Commissioners.

After a short discussion, on motion of the Honorable Commissioner of Chile, the solution of the question was postponed until the next session.

A discussion then ensued regarding the days and hours for meeting, and the point was left unacted on.

The Honorable Agents were requested to inform as to the condition of the cases. The Honorable Agent of the United States announced that he had filed two cases. The Honorable Agent of Chile stated that he had received a communication from the Secretaries informing him of the filing of said cases before the 9th day of October, and that he found that no exhibits had been filed with the Memorial in the first case. He expressed the opinion that the ten days within which, by the terms of the Rules, he may file a demurrer or motion to the petition, should not begin to run until all exhibits should be filed.

On motion of the Honorable Commissioner of the United States the Commission unanimously agreed that the period of ten days for the filing of any demurrer or motion should be reckoned from the filing of the Memorial, after the 9th day of October.

The minutes of the previous meeting were then read and approved.

The Secretaries reported that they had complied with all the orders passed at the last session.

The Honorable Commissioner of the United States presented a draft of a Memorial addressed to the Secretary of State of the United States and the Minister of Foreign Relations of Chile, and submitted the same to the approval of the Commissioners.

The Secretaries then read the Memorial, which is in the words following:

OFFICE OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,

Washington, D. C., October 9, 1893.

HON. WALTER Q. GRESHAM,

Secretary of the United States of America.

Hon. Minister of Foreign Relations

of the Republic of Chile.

SIR: The Commission duly appointed and qualified under the Convention between the United States of America and the Republic of Chile for the settlement of certain claims of the citizens of either country against the other, signed at Santiago, August 7, 1892, and ratifications thereof exchanged January 26, 1893, beg leave to present the following facts to the respective Governments of the United States of America and the Republic of Chile:

First. That the undersigned Commissioners, having been duly appointed in accordance with the terms of said Convention, met on the 25th day of July, 1893, within six months after the exchange of the ratifications of the Convention and duly qualified as required in Article IV thereof.

Second. The Commission requested that the Agents of the respective Governments draft Rules for the transaction of the business of the Commission and present the same for its consideration at the next meeting, and then adjourned to August 15, 1893.

Third. On said last-named day the said Agents presented a draft of Rules in which they substantially agreed. On the question of time to be allowed parties to complete their proofs the said Agents could not agree. The Commission carefully considered said Rules and the statements made in regard thereto by the respective Agents of the two Governments, and after full discussion and amendment adopted Rules for the transaction of their business.

Fourth. It appears from the representations made by the respective Agents and Counsel for the two Governments that it will require from twenty-eight to thirty-five days for communications by mail to reach Chile from the United States, and a similar length of time from Chile to the United States. It was further represented by the Agent for the Republic of Chile that it would be necessary for him to take testimony in Chile in defence of the claims filed by the citizens of the United States against his Government, and that he might be compelled in some cases to ask

the additional time, not exceeding two months, for presenting some of the claims of the citizens of Chile against the United States, as provided in Article VIII of the Treaty. It was evident to the Commission that justice, equity, and fairness require that sufficient time should be allowed the parties for the taking of necessary testimony, and the shortest possible time within which this could be done was three months, which time was fixed in the Rules.

Fifth. If the time necessary to settle the pleadings and to take testimony on both sides allowed by the Rules is consumed by the parties, the Commission could not dispose of such claims within the limit of six months prescribed by Article VIII of the Convention, to wit, "within six months from the day of their first meeting for business." In view of this difficulty the Agent of the Republic of Chile, and its honored member of this Commission, thought the proper course to pursue would be to decline to set a day for business at present, and to notify the respective Governments of the status of affairs. The majority of the Commission, however, thought that it was their duty to follow the directions of the Treaty and to set a day for business and dispose of such business as was properly brought before it within the time limited by the Convention. The Honorable Commissioner for the United States and the Honorable President of the Commission, therefore, voted to set the ninth day of October, 1893, as the first day for business of said Commission, the Honorable President accompanying his vote with a declaration that on the said first day for business the Commission should present to the respective Governments ratifying the Convention the difficulties above suggested.

Sixth. On the 9th of October the Agent and Counsel for the United States stated that while he hoped to be ready to submit the larger part of the claims of citizens of the United States against the Republic of Chile early enough to be disposed of within the limit of the Treaty, yet in some cases he was advised that it would be necessary to take testimony in Chile on behalf of the claimants, and as the defence would undoubtedly have to do likewise, it was doubtful if such claims could be disposed of within the six months mentioned in the eighth article of the Treaty.

Seventh. Inasmuch as this Convention was intended to settle all claims of every kind and character existing between the two Governments, and as the parties are entitled to full opportunity to present their cases and the defence thereto, and as it appears

exceedingly doubtful in view of the distance between the countries that the parties can complete their testimony in all cases according to the reasonable Rules adopted by the Commission, and within the time limited by the Treaty, we conceive it to be our duty at the earliest opportunity to lay these facts, together with the record of our proceedings and a copy of the Rules adopted, before the respective Governments, recommending to them to extend the time limit of said Treaty for an additional period of six months from the ninth of April, 1894.

All done in the city of Washington October 9th, 1893, and respectfully submitted.

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| (Signed) ALFRED DE CLAPARÈDE, <i>President,</i> | } <i>United States and Chilean Claims Commission.</i> |
| (Signed) DOMINGO GANA, <i>Commissioner,</i> | |
| (Signed) JOHN GOODE, <i>Commissioner,</i> | |

We, the undersigned Agents and Counsel for the United States of America and the Republic of Chile, acquiesce in the above statement of facts, and believing it to be for the best interest of all parties concerned respectfully recommend that the time limit fixed in the Treaty be extended for a further period of six months.

(Signed) GEO. H. SHIELDS,
Agent and Counsel for the United States.

(Signed) J. FRAN^{co}. VERGARA DONOSO,
Agent and Counsel for the Republic of Chile.

We, the undersigned, Secretaries of the United States and Chilean Claims Commission, do certify that the foregoing is a complete copy of the Memorial this day adopted by the United States and Chilean Claims Commission, and the signatures thereto of the Honorable Alfred de Claparède, the Honorable Domingo Gana, and the Honorable John Goode as said Commissioners, and the signatures of the Honorable Don José Francisco Vergara Donoso, Agent and Counsel of the Republic of Chile, and the Honorable George H. Shields, Agent and Counsel for the United States, are the true and proper signatures of the officials signing the same.

Done in duplicate, in the city of Washington, this ninth day of October, 1893.

A. W. FERGUSSON,
Secretary on the part of the United States.

[SEAL.]

M. A. MARTINEZ DE F.,
Secretary on the part of Chile.

On motion of the Honorable Commissioner presenting it, the Commission unanimously approved the Memorial.

The same Commissioner then reported that he had appointed Mr. E. H. McDermot as a clerk to the Commission, at a salary of \$80 per month. The Honorable Commissioner of Chile stated that he had appointed Mr. Luis Bolton a clerk at a similar salary.

The Honorable Agent of Chile then read the last paragraph of Rule XXI, and asked authority to take from the office of the Commission for examination the exhibits in the case of Edward C. Du Bois *vs.* The Republic of Chile. The Honorable Agent of the United States objected on the ground that in the office the exhibits were kept in a fire-proof safe, and if removed therefrom they would run the risk of being mislaid, lost, or destroyed. The Commission unanimously decided, on motion of the Honorable Commissioner of the United States, that no papers or documents should be removed from the office-building.

The Commissioners then unanimously decided to meet again on Monday, the 16th instant at 12 o'clock, noon.

And thereupon the meeting adjourned.

ALFRED DE CLAPARÈDE,
President.

A. W. FERGUSSON,
M. A. MARTINEZ DE F.,
Secretaries.

FOURTH SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN
CLAIMS COMMISSION, No. 2 LAFAYETTE SQUARE,
Washington, D. C., October 16, 1893.

The session was called to order at 12 o'clock, noon.

Present: The Honorable Alfred de Claparède, presiding, the Honorable the Commissioners and Agents of the United States and Chile, respectively, the Honorable George S. Boutwell, assistant counsel for Chile; and the Secretaries.

The minutes of the previous meeting were read in English and Spanish, and, after correction, were approved.

A long discussion then ensued between the Honorable Agents for the United States and Chile regarding the opinion expressed by the latter at the last session on the subject of the time when the ten days within which a demurrer or motion may be filed to

a Memorial shall begin to run. The Honorable Agent for the United States argued that the terms of Rule II should be construed strictly and that no papers or documents should be filed with the Memorial other than those referred to therein; that the ten days alluded to, in cases filed after the ninth day of October, should begin to run from the filing of the Memorial, as provided in Rule VIII. The Honorable Agent of Chile maintained that all papers and documents in each case in the possession of the claimant at the time of filing his Memorial should accompany the same, and if the contrary were the case, then the ten days should not begin to run until such papers and documents should be filed.

During the discussion the Honorable Commissioner Goode suggested that the Honorable Agent for Chile crystallize his opinion into the form of an amendment to the Rules, which this gentleman did as follows:

"I move to amend Rule II by inserting after the word 'Convention' in the third line from the last the words 'filing also therewith all documents in his possession or within his knowledge and at his command.'"

The Honorable President laid the amendment before the Commission and after considerable discussion of the same by the Honorable Agents of Chile and the United States, in favor of and against its adoption, respectively, the Honorable Commissioner Goode announced that the proposed amendment was a new departure in pleading in the United States; that in his opinion whenever a memorialist refers to an exhibit it should be filed with the Memorial, but not otherwise; he discussed the offices of a demurrer, and finished declaring that his vote would be against the adoption of the proposed amendment.

At this stage the Honorable Commissioner of Chile stated that as several precedents had been cited by the Honorable Agent of Chile, he deemed it wise to afford the Commissioners time to consult the same, and examine into the scope of the amendment; he therefore moved that the resolution of the point lay over until the next session. This was unanimously agreed to.

The same gentleman then moved that the discussion of the question as to whether or not the sessions should be public or private, which was to have been the order of the day, be postponed until the next session. This motion was also unanimously agreed to.

The Hon. George S. Boutwell then begged to state to the Commission, referring to the amendment above set forth, that it only applied to documents the memorialist might have in his possession, and that the purpose thereof was to expedite the proceedings, as the sooner such documents came into the hands of the adverse party, the quicker would an issue be reached and the case disposed of.

The session then adjourned to meet again on Saturday next, the 21st instant, at 9 o'clock A. M.

ALFRED DE CLAPARÈDE,
President.

A. W. FERGUSON,
M. A. MARTINEZ DE F.,
Secretaries.

FIFTH SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN
CLAIMS COMMISSION, NO. 2 LAFAYETTE SQUARE,
Washington, D. C., October 21, 1893.

The Commission met pursuant to adjournment, and was called to order at 9 o'clock A. M.

Present: The Honorable Alfred de Claparède, presiding, the Honorable Commissioners and Agents of the United States and Chile, respectively, the Honorable George S. Boutwell, Assistant Counsel for Chile, and the Secretaries.

The minutes of the preceding session were read in English and Spanish, and after slight modifications, were approved.

The order of the day being the deciding of the question as to the publicity or privacy of the sessions, and the amendment to the rules presented by the Honorable Agent of Chile, both laid over from the last session, the Honorable President submitted the first question to the Commission, which, on motion of the Honorable Commissioner Gana, unanimously decided:

That all sessions of the Commission shall be public, except in the two cases following: When for any special reason the Commission shall decide to hold a private session, and when the Commissioners shall be deliberating on any interlocutory or final decision.

The President then laid the proposed amendment to Rule II before the Commission, and the Honorable Agent of Chile, who had offered the same, modified it as follows:

"I move to amend Rule II by inserting after the word 'Convention' in the third line from the last the words 'filing also therewith all documents in his possession and at his command.'"

The Honorable Agent of the United States manifested that he was satisfied that the position he had taken on this proposed amendment at the last session was correct, but that for the sake of expediting the hearing of cases he would agree to it. The amendment was then unanimously agreed to, and the Secretaries were instructed to make the necessary changes in the wording of the said Rule.

The Honorable Assistant Counsel of Chile, on behalf of the Honorable Agent of that country, moved that the two Agents and Secretaries select from the exhibits and proofs such documents as they thought should be printed for the examination of the Commissioners and cause the same to be printed. The Commission unanimously approved the motion and so ordered.

The Honorable Agent of the United States then submitted the amendments following:

"I move to strike out the word 'ten' wherever it appears in Article VIII of the Rules and insert 'six' in lieu thereof.

"That Article IX be amended by striking out 'ten' in the third line and inserting 'three' in lieu thereof; and to strike out 'thirty' in line eight, and insert 'ten' and add the words 'after the filing of the memorial' to the end of line eight.

"That Rule X be amended by striking out 'three months' wherever it appears and insert 'seventy days.'

"To amend Rule XII by striking out 'forty' in line four and insert 'thirty-five' in lieu thereof."

A considerable discussion ensued between the Honorable Counsel of both Governments, the Honorable Counsel for the United States urging the necessity of cutting down the time allowed for the filing of pleadings and proofs to the shortest possible space in order to keep within the time limit of the Convention. The Honorable Agent of Chile claimed that the time prescribed in the amendments for the filing of demurrers and answers was the shortest ever allowed in any Commission of this character of which he had any notice; but that it was acceptable if too many cases were not filed at one time; he seriously doubted, nevertheless,

that testimony could be taken in Chile and returned in seventy days. He, however, suggested that the matter was deserving of study, and that it would be well to let it go over to the next session. The Honorable President requested the Honorable Agents to consult as to how far they could agree upon the proposed amendments and to report at the next session.

The Secretaries then requested instructions from the Commission with respect to the printing of the minutes, but, at the request of the Honorable Agent of the United States, the matter was laid over to be considered and reported on by the Honorable Agents of the two Governments.

The Honorable Commissioner Goode moved that the next session be held on Monday, the 30th instant. The motion was unanimously carried.

Thereupon the Commission adjourned to meet at 10 o'clock A. M. on the said day.

ALFRED DE CLAPARÈDE,
President.

A. W. FERGUSSON,
M. A. MARTINEZ DE F.,
Secretaries.

SIXTH SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN
CLAIMS COMMISSION, No. 2 LAFAYETTE SQUARE,
Washington, D. C., October 30, 1893.

The Commission met pursuant to adjournment, and was called to order at 10 o'clock A. M.

Present: The Honorable Alfred de Claparède, presiding, the Honorable the Commissioners and Agents of the United States and Chile, respectively, the Honorable George S. Boutwell, Assistant Counsel for Chile, and the Secretaries.

The minutes of the previous session were read in English and Spanish, and were approved.

The Honorable Agent of the United States reported that the Agents of the two Governments, having studied and considered the amendments proposed by him at the last session, had agreed to submit them to the Commission in the form following:

Amend Rule VIII by striking out the word "ten" wherever it occurs, and insert "six" in lieu thereof.

Amend Rule IX by striking out the word "ten" in the third line, and insert "five" in lieu thereof.

Strike out the second clause of Rule IX, and insert in lieu thereof "In case no demurrer or motion is filed the respondent Government may have fifteen days from the filing of the Memorial to file a special answer, and if no special answer is filed within said fifteen days the Secretaries shall enter of record a general denial, as provided in Rule VII."

Amend Rule X by striking out the first paragraph thereof and inserting in lieu thereof the following: "Within seventy-five days after the answer, special or general, the claimant shall complete his proofs, and within seventy-five days after the claimant announces his proofs are complete the respondent Government must complete its testimony in defence."

Amend Rule XII by striking out the word "forty" in the fourth line, and inserting "thirty-five" in lieu thereof.

The Honorable Agent then moved that the foregoing amendments be adopted, and be printed on the last page of the Rules. The motion was unanimously approved.

The same Honorable Agent stated that he and the Honorable Agent of Chile were of the opinion that the periodic printing of the minutes suggested by the Secretaries at the last session, and which point had been laid over for consideration, was hardly necessary at this time, since the minutes were recorded periodically in the proper book, and might be printed when the Commission finished its labors. The Commission decided to lay the matter on the table.

The Honorable Commissioner Goode requested the Honorable Agents to inform the Commission whether it was necessary for it to meet this week again. The Honorable Agent of the United States replied that as there were only five cases on the Docket, and no answers had been filed, he did not see the necessity of meeting before next week.

The Honorable Commissioner Goode moved that the next meeting should be held on Monday next, the 6th of November, at 10 o'clock A. M.

The session then adjourned.

ALFRED DE CLAPARÈDE,
President.

A. W. FERGUSSON,
M. A. MARTINEZ DE F.,
Secretaries.

Case No. 3.—Docket.

DOCKET OF THE COMMISSION OF THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF CHILE.

CONVENTION OF AUGUST 7TH, 1892.

Henry Chauncey, Claimant }
against } No. 3.
The Republic of Chile }

1893.

- Oct. 11 Memorial filed with 5 printed exhibits, as follows: 1. Articles of copartnership of Alsop & Co. 2 Articles of settlement between the Republic of Bolivia and John Wheelwright. 3. Record of Judicial proceedings in *re* the mine "Justicia". 4. Record of Judicial proceedings in *re* the mine "Amonita". 6. Decree of Chilean Minister of Justice, Oct. 18, 1882.
- " " 20 printed copies memorial in Spanish & 20 in English.
- " " Exhibit (5) Letter from John Stewart Jackson to Minister of Justice, Sept 11, 82 and paper writings marked D2, E, F, G and H.
- Oct. 12 Affidavit of Arthur S. Doane, Feb. 11, 1886. Affidavit of Robert Codman, and Sarah Wheelwright, Jan. 22, 1886. Affidavit of Isaac Watts Wheelwright, Feb. 11, 1886. Affidavit of William M. Prichard, Mch. 6, 1886. Certificate of M. Friedsam, Feb. 12, 1886. Affidavit of William M. Prichard, Mch. 1, 1886. Affidavit of J. W. Alsop, Feb. 22, 1886. Certified copy will of J. W. Alsop.
- Oct. 13 Original exhibits #1, 2, 3, 5 & 6 filed.
- Nov. 11 General denial entered.

1894.

- Jan'y 8 Exhibits filed as follows:—7. Certified copy pact of truce between Chile and Bolivia, reported in "Diario Oficial", 9 Dec. 1884. 8. Extracts from various newspapers of years 1876, 1877, & 1878, with translations. 9. Extract from "Diario Oficial", 4 April,

1894. 1879, authorizing declaration of war against Gov't of
 Jan'y 8 Bolivia, 3 April, 1879, and translation. 10. Petition
 of Jose' Santos Monroy, and declaration of Gov't. of
 Bolivia thereon. 11. Publication in "El Titicaca",
 15 Jan'y, 1877, of agreement between Jno. Wheel-
 wright and Bolivia, and translation. 12. Official
 statement as to present condition of the suit concern-
 ing the mine "Amonita", and translation of same.
 13. Order of Prefect of Department of Cobija, 9 Aug.
 1878, and order of Ministry of Finance & Industry,
 21 Aug. 1878, with translation. 14. Agreement be-
 tween John Stewart Jackson and Jno. Wheelwright
 as to amount of money to be furnished by Jackson for
 working of mines, and translation of same. 15. Offi-
 cial notice from Minister of the Treasury of Bolivia,
 28 Mch., 1878, and translation of same appended to
 Exhibit 14.
- " " Filed: Ex. 16. Statement of Jno. Wheelwright as to his
 position as liquidator of American firm of Alsop & Co.,
 in English, 25 Mch., 1885. 17. Correspondence be-
 tween Jno. Wheelwright and B. Salinas, 23 Nov. and
 11 Dec., 1883, and translations of same. 18. State-
 ment under oath of Henry S. Prevost, as to appoint-
 ment as liquidator of the affairs of Alsop & Co., and
 declaration that he had appointed Henry Chauncey
 to act as attorney in *re* Alsop & Co. *vs.* Republic of
 Chile. 19. Petition of Jno. Stewart Jackson to Gov't
 of Chile, and translation of same. 20. Petition of
 Jackson and certified copy of agreement between
 Wheelwright and Bolivia, and report of Government
 Attorney on same, with translations. 21. Copies cer-
 tain laws of Chile referred to in decisions in the
 "Amonita" and "Justicia" cases, and Article 12
 Constitution of Chile, translated. 22. Certified copies
 of decrees, petitions and extracts from laws of Chile,
 and typewritten appendix. 23. Certified translation
 of petition of J. Stewart Jackson, with report of State
 Attorney thereon, with decree and extracts from laws.
 24. Order from Minister of the Treasury of Bolivia,
 25 July, 1878, to Prefect Department of Cobija.
 Translation thereof in original memorial filed with

1894.
 Jan'y 8 Secretary of State of the U. S., being document 8.
 25. Report of Attorney of Chilean Government, 9 Oct., 1884. 26. Boundary treaty of 1875 between Chile and Bolivia, with translation. 27. Petition of Jno. Stewart Jackson, and translation of same. 28. Power of Attorney, Jno. Wheelwright to Jno. Stewart Jackson, and translation of same. 29. Petition of John Wheelwright to Hon. Thos. F. Bayard, Sect'y of State of the U. S., 3 Nov., 1885, with translations of various documents, the originals of which have been filed in the several exhibits. Letter of George S. Boutwell to Gen. Geo. H. Shields, accompanying foregoing exhibits, 8 Jan'y, 1894.
- “ 9 Exhibit 30 filed. Statement of receipts of Arica Custom House from 1883 to 1889.
- “ 11 Printed slip giving substance Matta-Reyes protocol, 19 May, 1891 (Spanish) filed Affidavit of Henry Stanhope Prevost, 11 December, 1893, filed (See also Cases Nos. 26 and 30)
- “ “ Deposition of Henry Chauncey, 10 Jan'y, 1894 taken before Notary Public Nathaniel S. Smith, and one exhibit and notice of taking of depositions filed.
- “ 13 English translation of printed slip giving substance of Matta-Reyes protocol, 19 May, 1891.
- “ “ Certified copies filed as follows: Despatch, Patrick Egan to Mr. Wharton, 22 June, 1892; Note, Senor Errazuriz to Mr. Egan, 18 June, 1892; translation of same; Note, Mr. Egan to Senor Errazuriz, 22 June, 1892.
- “ “ Exhibit 4 filed: Proceedings and opinion in regard to the mines “Justicia” and “Amonita”.
- “ 15 The U. S. closes its case in chief, reserving right to rebut, if necessary.
- Mch. 5 Copy Compact of Truce between Chile and Bolivia, English translation, filed by Agent of Chile.
- “ 13 Letter from Director of Mint to Geo. H. Shields, Esq., 10 Mch., 1894, filed Value of the Peruvian *sol*, from 1882 to 9 Mch., 1894, inclusive. Account between the Gov't of Bolivia and Alsop & Co., 30 June, 1892, filed Letter from Edward Jackson to P. N. Pineda,

1894. 1 July, 1893, filed Reply of latter, 9 July, 1893,
 Mch. 13 filed, and translative into English. Certificate of
 Richard R. Neill, 31 July, 1893, filed. Depositions
 of Henry S. Prevost, 22 Jan'y, 1894, and attach-
 ments filed, taken before Judge Villagarcia, Lima,
 Peru. Translation of foregoing.
- " 16 Respondent files Spanish document: Report of the
 Minister of the Treasury for the year 1889.
- " 20 Receipts of Arica Custom House, from 1885, Jan. 1 to
 1892, (Spanish)
- " " Protocol of proposed treaty between Chile and Bolivia,
 19 May, 1881, (Spanish) filed by Respondent.
- " 23 English translation of foregoing filed.
- " " " " " Statement receipts Arica Custom
 House, filed.
- " 26 Chile closes its case.
- " 31 Chile and U. S. file briefs.
- April 2 United States files six (6) Documents (printed) in
 Spanish, as follows: Reports of the Ministry of the
 Treasury of Chile for the years 1880, 1881, 1882, 1883
 and 1884, and a collection of treaties between Peru
 and Bolivia.
- " " Report of Ministry of Treasury of Chile for year 1885,
 in Spanish, filed.
- " 4 Three copies translation of Title III, Art. 37; Title IV,
 Art. 67; Title V, Art. 107; Title XII, Art. 243 of the
 Chilean Law of Organization and Attributes of the
 Courts, filed by claimant.
- " 9 Commission declines to render decision owing to lack of
 time.

Case No. 3.—Memorial.

AMERICAN AND CHILIAN COMMISSION.

MEMORIAL OF HENRY CHAUNCEY V. REPUBLIC OF CHILI.

To the Honorable Commissioners of the Joint Commission, &c.,

The memorial of Henry Chauncey respectfully shows to the Honorable Commissioners that your memorialist and Henry S. Prevost and Henry W. Alsop, the claimants herein, are the sole surviving members or co-partners of the firm of Alsop & Co., herein-after mentioned: That all of said claimants are and at all times have been citizens by birth of the United States of America, and that the said Henry S. Prevost now resides, and at the times the acts complained of herein occurred resided, at Lima in the Republic of Peru, that said Henry W. Alsop now resides at Moorhead, Minnesota, and at the times said acts occurred resided in the City of New York, as your memorialist is informed and believes, and that your memorialist at all of said times had his residence in the State of New York in the said United States and at present is living at Garden City in said State.

That in the year 1876 and prior and subsequent thereto your memorialist, said Henry S. Prevost, and said Henry W. Alsop, were members of the firm or commercial partnership of Alsop & Co., which was then carrying on business at Valparaiso in the Republic of Chili: That at the times aforesaid said firm of Alsop & Co. was composed of Joseph W. Alsop, Edward McCall, George G. Hobson, George J. Foster, Theodore W. Riley, said Henry S. Prevost, John Wheelwright, George Frederick Hoppen, said Henry W. Alsop and your memorialist, of whom the said Joseph W. Alsop, Edward McCall, George G. Hobson, George J. Foster, Theodore W. Riley, Henry S. Prevost and your memorialist were special partners, and the said John Wheelwright, George Frederick Hoppen and Henry W. Alsop were active and responsible partners: That two of the active members aforesaid, namely, John Wheelwright and George Frederick Hoppen, and all of said special partners excepting said Henry S. Prevost and your memorialist, are now deceased.

That, as your memorialist is informed and believes, all of said partners were during their respective lifetimes citizens by birth of the United States of America, and that as your memorialist is further informed and believes, the said deceased partners prior to such decease resided respectively as follows, to wit,: Said Joseph W. Alsop, George J. Foster and Theodore W. Riley, in said City of New York, George G. Hobson in England, said Edward McCall in Lima Peru aforesaid, and said John Wheelwright and George Frederick Hoppen in Valparaiso, Chili: That a translation in the English language of the partnership agreement of said Alsop & Co. is hereto annexed and marked Exhibit 1, and that the names of the persons interested therein and the proportion of each of said person's interest at the date said claim accrued are the same as set forth in said partnership agreement, to which your memorialist prays leave to refer as forming a part of this memorial, excepting that said George G. Hobson had no interest then or thereafter therein, and that from and after the time of the liquidation of said firm hereinafter mentioned the interest of said Henry W. Alsop therein and in the claim herein set forth wholly ceased, and that the names of the persons interested therein, as surviving partners at the time of verifying this memorial are the said Henry S. Prevost and your memorialist, who are jointly interested therein as such survivors of said firm of Alsop & Co.: That except in the manner hereinafter set forth the claim herein has never been presented to any tribunal of the said United States or Chili.

That prior to 1876 said firm of Alsop & Co. loaned and advanced to one Pedro Lopez Gama large sums of money, amounting to more than a million dollars, to enable him to make advances to the Republic of Bolivia, and in consideration of said loans and advances and with a view to the repayment thereof the said Pedro Lopez Gama on or about the 14th of April, 1875, assigned and transferred, to the said firm of Alsop & Co., certain claims and rights which he had previously acquired from Bolivia: That thereafter, the said firm of Alsop & Co., having gone into liquidation, the said John Wheelwright, who had been duly appointed one of the liquidating partners of said firm, after long negotiations and very considerable expense and trouble, succeeded in effecting a settlement with the Government of Bolivia of the said claims and rights so assigned to said firm of Alsop & Co., which said settlement consisted of and was evidenced by a formal agreement or contract duly executed by and between the Government of

Bolivia and the said John Wheelwright as liquidating partner and representative of Alsop & Co. at the City of La Paz, on the 26th of December, 1876, and which said agreement of settlement was executed in pursuance of and embodied in its terms two Supreme Decrees duly made and enacted by the Government of Bolivia on the 23rd and 24th days of December 1876, respectively, a translation in the English language of said agreement of settlement is hereto annexed marked *Exhibit No. 2.*

That in and by said agreement of settlement the Republic of Bolivia recognized and acknowledged its indebtedness to the said firm of Alsop and Co., in the principal sum of 835,000 Bolivian silver dollars with yearly interest thereon at the rate of five per cent, (not capitalizable), from the date of said agreement; (See section 1st of Decree of December 24th, 1876 in Exhibit No. 2.) And said agreement further provided that the said principal sum of \$835,000. and the interest thereafter accruing thereon, should be liquidated by tri-monthly drafts, which said Wheelwright was authorized to draw on the excess of Bolivia's share of the customs duties received in the Northern Custom House, after the date of the expiration of the then existing Customs Treaty between Bolivia and Peru, over and above the sum of 405,000 Bolivian dollars, which Peru then rendered to Bolivia, and such drafts were to be made either in case the said Customs Treaty were thereafter renewed with Peru or the National Custom House of Bolivia were re-established (See section 2nd of Decree of December 24th, 1876, in Exhibit No. 2) And said agreement provided also, as another means of payment of said principal sum and interest, that 40 per cent of the net profit of all the mining sets of silver belonging to the State (to wit, to the Bolivian Government) in the Coast Department, should be applied to such payment, excepting the estaca or mining set known as "Flor del Desierto", as to which special provision was made in said agreement as hereinafter set forth.

That said agreement further provided that 50 per cent of the net profit of the said set "Flor del Desierto", and 40 per cent of the net profit of another of said sets belonging to the State, to be selected by said Wheelwright, should be applied to the payment of interest which had accrued and become due on said principal sum prior to December 18th, 1875 amounting to 160,700 Bolivian dollars, and also to the payment of interest on said principal sum for the year just preceding the date of said agreement, (namely

from December 1875 to December 1876,) amounting to \$70,000: And that after the payment of said arrears of interest the said percentage of profits of the two last mentioned sets should be applied to the payment of the said principal sum: And in case such percentage of the profits of said two sets did not amount to enough to pay such arrears of interest, all further claim for its payment should be cancelled. (See section 4th of Decree of December 24th, 1876, in Exhibit No. 2).

The agreement further provided that in all cases of payment the Chilean silver dollar or the Peruvian silver sol should be considered equal to the Bolivian dollar.

In order to enable the said Wheelwright to avail himself of these means of payment he was by the terms of said agreement allotted a term of three years for making an examination of the silver mines of the State, (to wit, belonging to the Bolivian Government), and securing the necessary capital for working them, during which time the mines were to remain subject to him, the Bolivian Government agreeing to facilitate him in obtaining possession of them. (See section one of Decree of December 23, 1876 in Exhibit No. 2) The said Wheelwright was further authorized by said agreement to organize Companies, either on that coast or abroad, for the working of said mines or any of them, or to contract for the more secure working of them with the proprietors of the adjoining mines, so as to work some or all of said sets, which in the opinion of the Company or organized societies were most advantageous on the veins already discovered or which should be discovered during the three years above mentioned, and to employ in such work foreign or native engineers or workmen.

The term of said contract or agreement was twenty-five years, and it was therein provided that if in that period there was a surplus after the payment of said indebtedness, such surplus was to be delivered to Bolivia. And said agreement contained sundry other terms and provisions which by reference thereto will more fully and at large appear.

Your memorialist further alleges that immediately after the execution of the above mentioned agreement the said Wheelwright caused notice of the rights of Alsop & Co. thereunder to be given by publication at La Paz and also in Caracoles, (which latter place is situated within said Coast Department), and a copy of said contract to be published in the newspaper called the "Mercurio" at Valparaiso in the Republic of Chili: And said contract having

been executed as aforesaid on behalf of the Government of Bolivia by the Bolivian Minister of Finance and Industry, said action of the said Minister was subsequently duly approved by an Act of the Bolivian Congress passed on or about February 12th, 1878: And the rights of the said firm of Alsop & Co. under said agreement were thereafter repeatedly asserted and reaffirmed by the Bolivian Government by official decrees and orders directed by the said Government to the Prefects of the Department of Cobija, and fiscal officers in the District of Caracoles and the Coast Department, at various times from May, 1877, to February, 1879, in substance directing said officials to facilitate said Wheelwright in obtaining possession of said mining sets and securing the rights of Alsop & Co. under said agreement.

Your memorialist further alleges that upon the execution of said agreement said Wheelwright, as such representative of Alsop & Co., immediately proceeded, by himself and his legal and salaried representatives, to look after and examine said mining sets, and selected pursuant to the terms of the said 4th section of said agreement the mining set known as the "Disputa", and for about a year before the occupation of said territory wherein said mining sets were situated by Chili as hereinafter mentioned, worked either himself or by contract with mine owners or others a number of said mining sets, and among them the said sets "Flor del Desierto" and "Disputa;" but before the expiration of the three years which were allotted to said Wheelwright as aforesaid, for the selection of mining sets under said agreement, hostilities broke out between the Republics of Chili and Bolivia, and early in 1879 Chili took possession of and occupied the territory in which said mining sets were located, and thereafter, and on or about the 3rd of April, 1879, such occupation of said territory by Chili was formally approved by a law passed by the Chilian Congress, and from the date of such occupation down to the present time the said territory has been in the continuous occupation and under the dominion of the Republic of Chili: That during the continuance of such hostilities and at all times said Wheelwright and said firm of Alsop & Co., their agents and employees, were and remained wholly neutral and took no part or share in said hostilities.

Your memorialist further alleges that after the commencement of hostilities as aforesaid and before the firm of Alsop & Co. were able to realize any part of their claim by means of the drafts upon the custom receipts belonging to Bolivia in excess of \$405,000, as

hereinabove mentioned, or from said mining sets, the said Northern Custom House, which was situated at the port of Arica, was taken possession of and the said port of Arica occupied by the armed forces of Chili, and both the said Custom House and the port of Arica have ever since remained and now are in possession and subject to the dominion of the Republic of Chili; and notwithstanding that the term of the then existing Customs Treaty between Bolivia and Peru has long since expired, the Customs receipts upon goods imported through said Northern Custom House into Bolivia, were thereafter by means of a certain Pact of Truce or otherwise, appropriated and applied by Chili either wholly or to a very large extent, to other uses and purposes, regardless and in derogation of the right and interest therein and claim thereupon existing in favor of said of Alsop & Co. under said agreement of December 24th, 1876 with Bolivia, whereby all possibility of the re-payment of the claim of Alsop & Co. by means of the Custom receipts at the said Northern Custom House was removed, and the said Wheelwright as representative of said Alsop & Co. was compelled to and did attempt to secure the payment of said debt wholly from the mining sets referred to in said agreement in the manner thereby provided.

Your memorialist further alleges that at the date of said agreement there were a large number of mining sets of silver in said Coast Department belonging to the Government of Bolivia, which were known as Estacas Minas de Instruction, and subject to the provisions and operation of said agreement which provided, that said Wheelwright should have the right to contract with proprietors of adjoining mines for the working of said mining sets of instruction, in accordance with the laws of Bolivia in existence at the date of said agreement: And your memorialist further alleges that by the acts of Chili such right of access to the adjoining sets was, at the times aforesaid and thereafter, denied to the owners of mining sets.

And your memorialist further alleges that after the occupation of said territory wherein said mining sets were located by the Chilian Government, divers persons ignoring or refusing to recognize the rights of the said Wheelwright as such representative of Alsop & Co. under said agreement and as established by the laws of Bolivia, and claiming or pretending as to some or all of said mining sets of Instruction, either that they had not been actually measured off to the Government of Bolivia or to said Wheelwright

or that the measurements thereof had been obliterated or destroyed and the identity of said sets thereby lost, or that by reason of said hostile occupation of said territory by Chili the said agreement between Bolivia and Wheelwright had become void and said mining sets of Instruction had become vacant ground and susceptible of denouncement anew, or on some other ground, sought to retain or obtain possession thereof, or to penetrate into the same and refused to deliver up or account for the profits thereof in violation of the clear rights of the said Wheelwright as representative of Alsop & Co. therein, and took possession of some of said mining sets and withheld the product of others from the said Wheelwright, who by reason thereof and in order to assert or defend the rights of Alsop & Co. under said agreement became involved in numerous and expensive litigations and suits at law.

That in one of the first of said suits which was decided the Court rendered its decision in first instance in favor of the said Wheelwright and of the rights of Alsop & Co. under the said contract; which decision was, however, reversed on appeal by the judgment of the Court in second instance, and in consequence of such reversal all of the other said suits as your memorialist is informed and believes resulted adversely to said Wheelwright as such representative of Alsop & Co. and to their rights under said agreement. (See translation in the English language of the sentences in the 1st and 2nd instances in the case of the mine "Justicia" hereto annexed marked *Exhibit No. 3*; also of the decision of the Court in the 1st instance in the case of the mine "Amonita" hereto annexed marked *Exhibit No. 4*.)

And your memorialist further alleges that the violations and infractions and withholding of the rights of Alsop & Co. under said agreement by the persons and in the manner aforesaid together with said decisions of the Chilian Courts, deterred capitalists and rendered it impossible for said Wheelwright to form any companies or company to exploit or work the said mining sets as contemplated by said agreement with Bolivia, or to obtain capital sufficient to work with profit the few sets which were for a short time under his control, and that the said Court, by applying to the said actions at law the laws of the Republic of Chili and disregarding the laws of Bolivia as affecting the rights of said Alsop & Co. under said agreement, acted in contravention of well known and long established principles of the laws of nations and to the irremediable damage of said Alsop & Co.

That thereafter and subsequent to the rendition of such adverse decisions by said Court in second instance and in consequence thereof, and finding that no protection or relief was to be obtained in the Chilean Tribunals of Justice, the said Wheelwright, representing Alsop & Co. as aforesaid, by means of a petition duly presented to the Chilean Government by John Stewart Jackson, acting as attorney for said Wheelwright, made known to said Government of Chili, through its Minister of Justice, the facts substantially as hereinabove stated, together with other facts bearing upon the matter, and asked for the intervention of the said Government in protection and enforcement of the rights of Alsop & Co., under said agreement, and among other things, that a law be promulgated decreeing in substance that to mines measured before said Chilean occupation the mining laws of Bolivia should apply, and that new measurements should be made in conformity with the Chilean law, without prejudice to third parties who had rights under the Bolivian law. (See translation in the English language of petition of John Stewart Jackson, hereto annexed, marked *Exhibit No. 5.*)

That in response to said petition the Government of Chili, through its said Minister of Justice, duly issued a decree whereby among other things, it decreed in substance, that it was not possible to grant the prayer of said petition because it did not "belong to the jurisdiction of the Government, but to that of the tribunals of justice to appreciate or qualify the merits of the private rights which a private individual pretends to have against the State": and declared said petition inadmissible "with the exception of the right of the petitioner to make good his claim before whom and in the form which he may deem convenient:" (See translation in the English language of said decree hereto annexed, marked *Exhibit 6.*) and wholly failed, neglected and refused to intervene or to take any steps whatever to protect the rights of Alsop & Co. under their said agreement, and ever since has refused and neglected so to do, notwithstanding that said matters were on sundry occasions brought to the official notice of the Chilean Government.

And your memorialist further shows that owing to the difficulties, obstacles and expenses attendant upon the efforts of said Wheelwright to realize said claim under said agreement as aforesaid, no profits were obtained by him or by said firm of Alsop & Co. to be applied towards the payment of the indebtedness so

recognized by Bolivia under said contract either as to the principal or the interest, and that the whole of said claim, both principal, interest and arrears of interest, remains entirely unpaid to this day.

Your memorialist further alleges that at the date of said agreement between Wheelwright and the Government of Bolivia, the value of a Bolivian silver dollar, in which said indebtedness was by said agreement to be paid, was about 85 cents in current money of the United States, but pending the interval since elapsed such Bolivian silver dollar has greatly depreciated in value so that the same is now worth only about 45 cents in such current money of the United States.

Your memorialist further alleges that the Customs duties which have been paid and collected upon goods imported and introduced into Bolivia through said Northern Custom House over and above the sum of \$405,000 per annum should have been paid to said Wheelwright as the representative of said Alsop & Co. And that had it not been for the hostile occupation of the department or territory wherein the said mining sets then belonging to the Government of Bolivia, mentioned in said agreement, were situated, by Chili as aforesaid, and the wrongful neglect and refusal of the Chilian Government at all times thereafter to respect the rights of said Wheelwright as such representative of Alsop & Co. under said agreement of December 26th, 1876, and to protect him and them in the occupation, use and enjoyment of their property and rights thereunder and of said mining sets in said agreement mentioned or referred to, the percentage of profits of said mining sets, provided and appropriated in and by said agreement for the liquidation of the indebtedness therein acknowledged, would have sufficed to liquidate and pay in full the principal sum of said indebtedness together with all arrears of interest accrued or to accrue thereon as provided in said agreement.

Your memorialist respectfully represents and avers, that under and by virtue of said agreement of December 26th, 1876, the said firm of Alsop & Co. obtained and acquired and thereby there became vested in them certain rights, interests and property; 1st, in the customs duties which should be collected and received on goods imported to Bolivia after the expiration of the term of its said then existing customs treaty with Peru over and above the sum of \$405,000.; and 2nd, in the mining sets of silver in said

Coast Department belonging to the Government of Bolivia at the date of said agreement:

1st. In so far as relates to such excess of customs duties on goods imported to Bolivia, said firm of Alsop & Co. thereby acquired an absolute right to draw tri-monthly drafts upon the same, for the payment of the whole of their said claim (excepting said arrears of interest), which constituted an equitable assignment of such excess and transferred the same to and vested the property and ownership therein in Alsop & Co.

2nd. In so far as relates to said mining sets of silver said agreement constituted in fact and in law a grant and conveyance thereof, to the extent and in the manner therein provided, to Alsop & Co., together with the right to use, occupy and enjoy the same to the extent and for the purposes set forth in said agreement, and for such purposes and to such extent granted and transferred to Alsop & Co. the right of property therein and of possession, use and enjoyment thereof paramount to those of the Government of Bolivia itself.

That the foregoing rights, interest and property were in no way or manner the public property of Bolivia, but the private property of said Alsop & Co., and that by the long established and well recognized principles of international right, Chili; as a belligerent making a conquest in the territory of Bolivia, acquired and could acquire no further or other rights, interests or property therein than were owned or possessed by Bolivia at the time of such conquest, and that all rights and property then possessed by Bolivia in said excess of customs receipts and mining sets, were as aforesaid subject and subordinate to the right of Alsop & Co. by virtue of and in accordance with the terms of said agreement, and that Chili did not acquire and could not acquire any right in or to said property of Alsop & Co., they being private citizens of a neutral nation and not having taken any part or share in said hostilities, but was bound in right and equity and law to protect them, said Alsop & Co., in the peaceful possession, occupation, use and enjoyment thereof.

And your memorialist prays that by reason of the premises and inasmuch as the Republic of Chili has, by its acts and by its failure and neglect and refusal to act as aforesaid, in accordance with the established principles of the laws of nations, prevented the application of the said excess of customs receipts to the liquidation of said claim of Alsop & Co., and has hindered, restrained and

prevented said Alsop & Co., from the occupation, use and enjoyment of said mining sets and their rights, interest and property under said agreement with the Government of Bolivia, whereby said Alsop & Co. have been after long delay wholly unable to realize any part of the principal sum or interest due them from Bolivia by virtue of said contract of December 26th, 1876, that it may be ADJUDGED AND DECREED by this Honorable Joint Commission that the Republic of Chili pay Henry S. Prevost, Henry W. Alsop and your memorialist, as the survivors of the said partnership of Alsop & Co., the said principal sum of \$835,000., with interest thereon at the rate of five per cent per annum from December 26th, 1876, together with the further sums of \$160,700. and \$70,000. arrears of interest as aforesaid, with interest on said sum of \$160,700. at six per cent per annum from the 18th day of December, 1875, and with interest on said \$70,000. at six per cent per annum from said 26th day of December, 1876, and that all of said sums may be paid in Bolivian silver dollars at their present market value, or the equivalent in gold.

And your memorialist will ever pray, &c.,

HENRY CHAUNCEY.

STATE OF NEW YORK, }
City and County of New York, }^{ss.}

Henry Chauncey, the above named Memorialist, being duly sworn, deposes & says: That he has read the foregoing memorial subscribed by him & knows the contents thereof, and that the same is true to the best of his knowledge & belief.

HENRY CHAUNCEY.

Sworn to before me this 2nd day of October 1893.

NATH'L S. SMITH,
Notary Public New York County

Form 2.

STATE OF NEW YORK, }
City and County of New York, }^{ss.}

I, Henry D. Purroy, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, DO HEREBY CERTIFY That Nath'l S. Smith before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said City and County, duly appointed and sworn, and author-

ized to administer oaths to be used in any Court in said State, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the Seal of the said Court and County, the 2 day of Oct. 1893.

[SEAL.]

HENRY D. PURROY

Clerk.

Exhibit 1.

SOCIEDAD EN COMANDITA—ALSOP I COMPAÑIA.

En Valparaiso, República de Chile, á treinta i uno de Diciembre de mil ochocientos setenta. Ante mi el Notario i testigos comparecieron los Señores Don Juan Wheelright por si i Don Jorje Federico Hoppin, tambien por si, i en representación de Don Enrique W. Alsop, de Don José W. Alsop, de Don Eduardo McCall, de Don Jorje G. Hobson, de Don Jorje F. Foster, de Don Teodoro W. Riley, de Don Enrique Chanser i de Don Enrique S. Prevost según aparece de los poderes que mas adelante se insertarán, ámbos de este domicilio, á quienes doi fé, conozco, dijeron: que entre los nombrados se habia convenido continuar los negocios de la casa que ha jirado en esta plaza con la razón social de Alsop i Compañia, i al efecto habian convenido tambien formar la Sociedad Comercial que consta de los articulos siguientes: Artículo primero. La firma ó razón social será la de Alsop i Compañia. El capital social será de seis cientos mil pesos \$600,000 en metálico, i contribuido en la forma siguiente: á saber, por Don José W. Alsop (\$75,000) setenta i cinco mil pesos, Don Eduardo McCall (\$75,000) setenta i cinco mil pesos, Don Jorje G. Hobson (\$50,000) cincuenta mil pesos, Don Jorje F. Foster (\$75,000) setenta i cinco mil pesos, Don Theodore W. Riley (\$75,000) setenta i cinco mil pesos, Don Enrique Chauncey (\$75,000) setenta i cinco mil pesos, Don Enrique S. Prevost (\$75,000) setenta i cinco mil pesos, Don Juan Wheelright (\$50,000) cincuenta mil pesos, Don Jorje Federico Hoppin (\$50,000) cincuenta mil pesos. Este capital será enterado el primero de Enero de mil ochocientos setenta i uno i cualquiera cuenta ó propiedad de la Sociedad estinguida que sea apropiada por los socios de este contrato formará parte del dicho capital. Segundo: José W. Alsop, Eduardo McCall, Jorje G. Hobson, Jorje F. Foster, Teodoro W. Riley, Enrique Chauncey y, Enrique S.

Prevost son socios capitalista Comanditario, i la responsabilidad de ellos no excederá del monto del capital contribuido por cada uno. Esta reponsabilidad limitada será debidamente registrada en conformidad con las leyes de Chile respecto á sociedad en Comandita, i un Certificado al efecto será mandado por los socios activos á Don José W. Alsop, Nueva Yorck. Los socios activos i responsables son: Don Juan Wheelright i Don Jorje F. Hoppin en Valparaiso, i Enrique W. Alsop residente en Nueva York, pero éste no puede usar de la firma social i no tendrá intervención alguna en los negocios de la Sociedad, si no por un Convenio especial. Los socios activos tienen una responsabilidad i limitada pero los socios capitalista no les harán responsable por cualquiera pérdida del capital, resultando de los negocios dirigidos en conformidad con éste Convenio. Tercero: Intereses serán pagados á los socios que constituyen capital á razón del nueve por ciento anual, pagadero el treinta i uno de Diciembre de cada año con tal que las ganancias de la sociedad lo permitan de otro modo el importe Correspondiente será abonado á cada socio en cuenta corriente hasta el tiempo en que pueda ser pagado de los ganancias. Los pagos i remesas de los intereses en letras de cambio ó metálico seran hechas libre de toda comisión pero si fueren hechas en productos del pais los gastos de costumbresserán cargados. Cuarto: Ninguno de los pactantes de este contrato puede retirar ó recibir parte alguna del Capital ó de las ganancias durante la continuación de ello con ecepción de los socios activos en Valparaiso quienes recibirán cada uno cuatro mil pesos anuales, moneda de Chile, i dicha suma será cargada á sus cuentas privadas, sin interes durante el termino de éste contrato, i seis meses después de su terminación en caso que se necesitase tanto tiempo para liquidar los negocios. Dichos socios recibirán tambien la suma de tres mil pesos anuales cada uno, cargándolos á ganancias i pérdidas, pues ellos tendrán que costear sus gastos personales. No se mantendrá una casa habitación por cuenta de la sociedad, pero se abonará á los dependientes una suma convenida para sus gastos. Quinto: A la terminación de éste contrato i después de pagar todas las deudas nacientes del negocio i devolver á los socios el capital con que han contribuido, en una moneda equivalente á aquella en que le entregáron, se dividirán las ganancias en cien fracciones las que se repartirán en la forma siguiente. Setenta fracciones á los socios que contribuyeron el capital, cada uno recibiendo la parte que corresponde á lo que ha proporcionado, quince fracciones á Juan Wheelright,

quince fracciones á Jorje F. Hoppin. Cien fracciones en todo. En caso de pérdida se abonará la misma proporción. Enrique W. Alsop recibirá como compensación la cantidad de setecientos cincuenta pesos anuales moneda de papel moneda de los Estados Unidos pagaderos por semestre vencido. Sexto: Los negocios de la Sociedad serán en jeneral de Agencia i Comisión i además todos aquellos que creyeren conveniente por cuenta propia los socios activos; pero éstos no podrán emprender ninguno por su propia cuenta, debiendo emplear todo su tiempo i esfuerzo en beneficio común de la Sociedad. Setimo: Los negocios de la Sociedad serán dirigidos en los Estados Unidos por los Señores Fabbry i Chauncey de Nueva York, Agentes especiales bayo la base de una división de comisiones i ganancias sobre las transacciones que tengan lugar entre ámbas casas como se convenga entre ellos. Octavo: Cada semestre vencido se remitirán á José W. Alsop el balance de los libros como tambien toda comunicación de especial interés que tenga relación con los negocios de la casa. Los gastos de dependientes i de escritorio incurridos por dicho Señor en el servicio de Alsop i Compañia serán por cuenta de la Sociedad. Nono: En caso de muerte de cualquiera de los socios en Valparaiso, los socios capitalistas tendrán la opción de dar por terminado este contrato de una vez i de continuarlo, nombrando ó nó como mejor les convenga otra persona para reemplazar al socio finado. En caso que no terminase el contratõ de Sociedad, el interés del socio finado continuará hasta el treinta i uno de Diciembre próximo venidero después de su muerte i en ésa época se hará la liquidación de las cuentas, i sobre el saldo que aparezca en su favor (en caso que lo haya), se abonará á su albacea ó el que lo represente el interés del nueve por ciento anual hasta la conclusión de este contrato, en cuya fecha se pagará el saldo debido, en conformidad á lo estipulado en artículo tres de éste contrato. Décimo: En caso de muerte de cualquiera de los socios capitalistas ninguna parte de su capital puede ser retirado hasta la espiración de este contrato i liquidación de los negocios en conformidad con el artículo tres en cuya fecha el capital de él ó de ellos (si fuere intacto ó tal parte que quedare) i la parte de las ganancias que corresponda á él ó ellos será pagada á su albacea ó á quien lo represente, abonándole tambien el interés anual que corresponda en conformidad con el artículo tres de éste contrato. Undecima: En caso que los socios activos, uno ú ámbos adquieren costumbres malas ó de cualquiera manera esponga la seguridad ó reputación de la Sociedad entonces tal socio

puede ser espulsado por los votos de tres cuartas partes de los socios capitalistas i su participación en los negocios de la Sociedad será terminada abonándole interés sobre su capital en conformidad con el artículo tres. Dicho Capital con la proporción de las ganancias hasta el día de su separación de la Sociedad quedarán, hasta la espiración de esto contrato, i la liquidación del negocio conforme al artículo tres. Duodécimo: En caso que se continuara la Sociedad después del tres de Diciembre de mil ochocientos setenta i tres por cuenta de la mayoría de los pactantes de éste contrato, la liquidación de los negocios de la presente Sociedad, será hecha por los sucesores de los socios activos mencionados en éste contrato según los terminos que se convenga la Sociedad con ellos. En caso de no continuar los socios activos ó uno de ellos (con la aprobación de los socios capitalistas) liquidarán los negocios de la casa dando si fuere necesario seis meses de su tiempo á ése efecto. Los gastos actuales de tal liquidación serán por cuenta de Alsop i Compañía i si fuese atendido por uno solo de los socios el recibirá compensación á razón de cuatro mil quinientos pesos anuales; por los seis meses ya mencionados se fuese atendido por ámbos socios cada uno recibirá tres mil pesos anuales por el mismo tiempo. Al espirar los seis meses i en caso que todas las responsabilidades nacientes del negocio (con escepción del capital i las ganancias) hayan sido cancelada los asuntos pendientes deben ser realizados si fuere posible i todas las cuentas que quedaren pendientes después serán confiadas á una persona ó personas competentes (sujetos á la aprobación de los socios capitalistas) para su liquidación final en caso que no hubiere otro Convenio especial. Los socios capitalistas quedarán obligados á notificar en ó antes del primero de Abril mil ochocientos setenta i tres á los socios activos de su intención de cerrar los negocios de la casa el treinta i uno de Diciembre de mil ochocientos setenta i tres ó de seguir por otro período. Trece: En caso de cualquier disputa naciente de éste contrato entre los socios activos los socios capitalistas quedarán nombrados jueces para resolver la cuestión, i el fallo de la mayoría de ellos será final i obligatorio para las partes. Si la cuestión fuese entre los socios i los capitalistas, cada parte nombrará un arbitrador, i en caso de discordia entre estos dos éellos nombrarán un tercero i la decisión de los tres ó de dos de ellos será final i obligatoria para todos sin apelación á los cortes de justicia: “Sepan todos por las presentes que nosotros Joseph W. Alsop, George G. Hobson, George J. Foster, Theodore W. Riley, Henry Chauncey i Henry W.

Alsop todos de la ciudad de Nueva York, hemos hecho, constituido i nombrado, i por estas presentes hacemos, constituimos i nombramos á John Wheelright i George F. Hoppin ámbos de Valparaíso, Chile, ó á cualquiera de entre ámbos nuestro verdadero apoderado legal por nosotros i en nuestro nombre lugar i situación de cada uno de nosotros para firmar, reconocer, verificar, entregar i publicar ó hacer constar todos ó cualquiera datos certificados, escrituras ó documento de cualquiera naturaleza que sea necesarios ó requeridos por las leyes de Chile para la formación de una Sociedad especial bayo la firma de Alsop i Compañia la cual debe establecerse en Valparaíso, la Ciudad, por el termino de tres años contados desde el primer dia de Enero del año de mil ochocientos setenta i uno i para limitar la responsabilidad de los socios limitados ó especiales de ella, de cuya firma los arriba mencionados, Joseph W. Alsop, George G. Hobson, George G. Hoster, Theodore W. Riley i Henry Chauncey, de la ciudad de Nueva York i tambien Edward McCall de Lima en el Perú serán socios especiales i los arriba mencionados Henry W. Alsop, John Wheelright i George G. Hoppin, serán socios jenerales, Contribuyendo cada socio especial ecepto George G. Hobson con (\$75,000) en oro chileno al capital de la firma i los mencionados George G. Hobson, John Wheelright, George G. Hoppin contribuyendo cada uno con \$50,000 cincuenta mil pesos al mismo, sumando en todo \$600,000—seiscientos mil pesos i Conformándose bajo otros aspectos á los términos de la espresada Sociedad estipulados por los contratantes arriba nombrados dando i concediendo á cada uno i ambos de nuestros espresados, apoderados ámplio poder i facultad para ejecutar i cumplir todo i cualquiera acto ó cosa que se requiera i sea necesario llevar á cabo en i sobre el particular de que se trata i enteramente i para todo efecto i propósito como lo haríamos ó pudiéramos hacer nosotros mismos si nos halláramos presentes en persona, ratificando aquí i confirmando todo lo que nuestros ya espresados apoderados ó uno cualquiera de ellos ejecutare ó hiciere ejecutar legalmente i en virtud del presente. En testimonio de lo cual hemos estampado al pie nuestras firmas i sello el dia veinticinco de Octubre del año de mil ochocientos setenta. Siguen las firmas: Henry Chauncey, hai un sello, Henry W. Alsop, hai un sello, George W. Alsop, hai un sello, G. G. Hobson, hai un sello, George G. Hoster, hai un sello, Theodore W. Riley, hai un sello. Sellado i entregado en presencia de—sigue la firma—H. B. Hathaway. Es traduccion fiel del original Ingles. Luis H. Lynch Z—Certificado—Estado de Nueva York—Ciudad i

Condado de Nueva York—Conste—que el dia veinticinco de Octubre de mil ochocientos setenta ante mi H. B. Hathaway Notario Público en i por él Estado de Nueva York, comisionado i juramentado en debida forma i residente en la ciudad de Nueva York Compareció personalmente Theodore W. Riley, el dia veintiseis de Octubre de mil ochocientos setenta compareció George G. Hobson, el veintisiete de Octubre de mil ochocientos setenta compareció Henry W. Alsop, el veintiocho de Octubre de mil ochocientos setenta George G. Foster, el veintinueve de Octubre de mil ochocientos setenta compareció Henry Chauncey i el tres de Noviembre de mil ochocientos setenta compareció José W. Alsop á quienes conozco personalmente i me consta son las mismas personas que se enumeran i quienes otorgaron el presente poder, reconociendo todas i cual ser dicho poder de su propia obra i voluntad. En testimonio de lo cual he suscrito mi nombre al pié i he estampado mi sello de oficina el dia i año último preinserto. Sigue la firma—H. B. Hathaway. Es traduccion fiel del original Ingles—Luis H. Lynch, Z. José Carlos Tracy—Consul del Perú en Nueva York—Certifico: que la firma que se lee en el adjunto documento es la del Señor H. B. Hathaway, Notario Público de este Estado de Nueva York como se titula i que se le dá entera fé i crédito en el ejercicio de sus funciones. Igualmente certifico: que en ésta ciudad no hai Consul de Chile por lo que i á petición de los interesados espido ésta certificación. En fé de lo cual firmo la presente i la sello con el sello de éste Consulado en Nueva York á tres de Noviembre de mil ochocientos setenta. José Carlos Tracy—En Lima i Octubre diez i nueve de mil ochocientos setenta. Ante mi el Escribano i testigos Compareción los Señores Eduardo McCall i Enrique S. Prevost de éste Comercio i vecindad, mayores de edad, á quienes doi fé conozco i me entregaron una minuta de mandato que hacen para que se eleve á instrumento público i su tenor es como sigue: Señor Secretario—sírvasse Usted estender en su registro de escrituras públicas una por la que conste que nosotros los que suscribimos Eduardo McCall i Enrique S. Prevost, vecinos de ésta capital deseándo entrar como socio Comanditario en la Sociedad Mercantil que bayo la razón social de Alsop i Compañia principiará á jirar desde el primero de Enero del entrante año de mil ochocientos setenta i uno en la ciudad de Valparaiso de la República de Chile, i no pudiendo trasladarnos personalmente á dicha ciudad con el objeto de firmar la escritura de la nueva sociedad que tendrá que ser allí estendida con arreglo

á las leyes de aquel país, queremos facultar á cualquiera de los Señores Juan Wheelright i Jorje F. Hoppin comerciantes de Valparaiso, para que firmen uno i otro de ellos en nuestro nombre la escritura en cuestion i al concederlos nuestro poder ámplio para obra por nosotros en éstas circunstancias, declaramos desde ahora conformarnos i observar religiosamente lo pactado en dichas escrituras como si nuestras firmas hubieran sido en ella estampadas por nuestras propias manos. Usted se servirá agregar lo demas que sea de estilo—Lima Octubre diez i ocho de mil ochocientos setenta—Eduardo McCall—Enrique S. Prevost—Encuya virtud espusiéron los Señores otorgantes que facultan á dichos Señores para el objeto indicado en la inserta minuta pues el poder ó mandato para ello preciso ese les dan sin limitacion alguna i en toda forma de derecho—Yo el Escribano doi fé que he cumplido con lo prevenido en los artículos setecientos treinta i cinco al treinta i ocho del Código de Enjuiciamiento i firmáron con los testigos Don Juan Fuentes, Don Manuel Diaz, i Don Enrique Morales. Eduardo McCall—Enrique S. Prevost—Juan Fuentes—Manuel Diaz—Enrique Morales. Ante mi—Felipe Arellano Escribano Público—Es conforme con el poder orijinal que pasó ante mi i queda en mi registro de escrituras públicas del presente año á que me remito. I en fé de ello, doi el presente que signo i firmo conforme á la ley en el dia de su otorgamiento—Hai un signo—Felipe Orellana—Escribano Público Los Escribanos Públicos que suscribimos damos fé que según aparece Certificado por el Escribano Público Don Felipe Orellano el poder que antecede es uno de los de el número como se titula i nombra i se les dá entera fé i crédito en juicio i fuera de él. I para los efectos que haya lugar en derecho ponemos la presente en Lima veinte de Octubre de mil ochocientos setenta—Jose de Selaya; Juan de Cubillo; José Cubillos—El Prefecto del Departamento que suscribe Certifica que los Señores Escribanos por quienes aparece suscrita la delijencia que antecede pertenecen al número de los de ésta capital i se hallan en actual ejercicio de sus funciones. Lima, veinte de Octubre de mil ochocientos setenta. Manuel Santa Maria. Ministro de Estado en el Depacho de Gobierno, Policia i Obras Públicas, Certifica: que la firma que antecede es la que acostumbra hacer oficialmente el Señor Prefecto de ésto Departamento, Coronel Don Antonio Rodriguez Ramirez—Lima, Octubre veinte de mil ochocientos setenta—Manuel Santa Maria—Legalizado en el Ministerio de Relaciones Exteriores del (Bolivia) Perú. Lima Octubre veinticuatro de mil ochocientos setenta—El Ministerio de Relaciones Exteriores—José J. Soaysa—

Legalizado en la Legación de Chile en el Perú—El Encargado de negocios de Chile—Adolfo Ibañez—Conforme las piezas trascritas con las originales de que son copias i que devolvi al mandatario para los usos que le convengan—Los comparecientes, por si i demas personas que representan, ratifican el contrato social en los terminos estipulados—Lo otorgaron i firmaron con los testigos Don Nicolás Ramirez i Don Juan Pablo Ruiz; doi fé—(firmadas) G. F. Hoppin—Juan Wheelright; Nicolás Ramirez; Juan P. Ruiz; Ante mi Julio César Escala—Notario Público—Conforme el testimonio preinserto con su matriz que se registra á fs. 559 No. 839 del Protocolo respectivo archivado en la oficina á mi cargo.

Valparaiso, 28 de Junio de 1893.

Emmendado—"serán"—vale—entre parentesis "Bolivia" no vale. dchos. con papel \$9.15¢.

[L. s.]

R. LOVCA PRIETO, *N. A.*

Los Notarios que suscriben certifican que la firme que antecede, es autentica del Señor Ricardo Lovca Prieto, Archivero Jeneral del Departamento en actual ejercicio de sus funciones.

Valparaiso de Junio de 1893.

JOSÉ MARIA VEGA V.,

Notario.

PEDRO FLORES ZAMADIO, *N. P. y de U.*

UNITED STATES CONSULATE,

Valparaiso, Chile, June 30, 1893.

I, Corvis M. Barre, Consul of the United States of America at Valparaiso, do hereby certify that the foregoing are respectively the true and genuine signatures of Pedro Flores Zamadio and José Maria Vega V Notaries Public at this city, and as such are entitled to full faith and credit.

Given under my hand and the Consular seal, the day and year aforesaid.

[L. s.]

CORVIS M. BARRE,

United States Consul.

[Translation.]

Exhibit 1.

SOCIETY OF COPARTNERSHIP.—ALSOP AND COMPANY.

In Valparaiso, Republic of Chili, on the thirty-first day of December, one thousand eight hundred and seventy, Before me, the notary, and witnesses, there appeared Mr. John Wheel-

wright, on his own part, and Mr. George Frederick Hoppin, on his own part, and also as the representative of Mr. Henry W. Alsop, of Mr. Joseph W. Alsop, of Mr. Edward McCall, of Mr. George G. Hobson, of Mr. George J. Foster, of Mr. Theodore W. Riley, of Mr. Henry Chauncey and of Mr. Henry S. Prevost, as appears from the Powers, which are inserted further on, both residents of this place, and whom I certify that I know, and they stated: That between the persons named it had been agreed to continue the business of the House which has carried on business in this city under the style of Alsop and Company, and to this effect they had also agreed to form the commercial partnership which consists of the following articles:

Article First.—The title or style shall be that of Alsop and Company. The social capital shall be six hundred thousand dollars (\$600,000) in coin, and shall be contributed in the following manner, namely, by Mr. Joseph W. Alsop, seventy-five thousand dollars (\$75,000); by Mr. Edward McCall, seventy-five thousand dollars (\$75,000); by Mr. George G. Hobson, fifty thousand dollars (\$50,000); by Mr. George J. Foster, seventy-five thousand dollars (\$75,000); by Mr. Theodore W. Riley, seventy-five thousand dollars (\$75,000); by Mr. Henry Chauncey, seventy-five thousand dollars (\$75,000); by Mr. Henry S. Prevost, seventy-five thousand dollars (\$75,000); by Mr. John Wheelwright, fifty thousand dollars (\$50,000); and by Mr. George Frederick Hoppin, fifty thousand dollars (\$50,000). This Capital shall be completed on the first of January, one thousand eight hundred and seventy-one, and whatever account or property of the extinct Society, which may be appropriated by the partners to this Contract, shall form part of the said Capital.

Second.—Joseph W. Alsop, Edward McCall, George G. Hobson, George J. Foster, Theodore W. Riley, Henry Chauncey and Henry S. Prevost, are special partners, and their responsibility shall not exceed the amount of capital contributed by each one of them. This limited responsibility shall be duly registered in conformity with the laws of Chili, respecting Societies in Copartnership; and a Certificate to the effect shall be sent by the active partners to Mr. Joseph W. Alsop, New York. The active and responsible partners are Mr. John Wheelwright and Mr. George F. Hoppin, in Valparaiso, and Henry W. Alsop, residing in New York; but he cannot use the signature of the firm, nor shall he have any intervention in the affairs of the Society, unless by special agreement.

The active partners have an unlimited responsibility, but the special partners shall not make them responsible for any loss whatever of the capital resulting from the business directed in conformity with this agreement.

Third.—Interest shall be paid to the partners who contribute capital at the rate of nine per cent. per annum, payable the thirty-first of December of each year, provided that the profits of the Society may permit it, otherwise the corresponding amount shall be passed to the credit of each partner in account current up to the time at which it can be paid out of the profits. The payments and remittances of the interest, in Bills of exchange or coin, shall be made free of all commission, but if they should be made in produce of the Country, the customary expenses shall be charged.

Fourth.—None of the parties to this Contract can withdraw or receive any part of the capital or of the profits during its continuance, with exception of the active partners in Valparaiso, who shall each receive four thousand dollars annually, Chilian money, and the said sum shall be charged to their private accounts, without interest, during the term of this contract, and six months after its termination, in case so much time should be required to wind up the affairs. The said partners shall also receive the sum of three thousand dollars per annum each, charging it to profit and loss, but they will have to defray their personal expenses. No dwelling house shall be maintained on account of the Society, but a stipulated sum shall be paid to the clerks for their expenses.

Fifth.—At the termination of this Contract, and after paying all debts arising out of the business, and returning to the partners the capital which they have contributed, in money equivalent to that in which they delivered it, the profits shall be divided into one hundred fractions, which shall be apportioned in the following manner: Seventy fractions to the partners who contributed the capital, each one receiving the part corresponding to that which he contributed, fifteen fractions to John Wheelwright, fifteen fractions to George F. Hoppin—in all one hundred fractions. In case of loss the same proportion shall be taken into account. Henry W. Alsop shall receive, as compensation, the sum of seven hundred and fifty dollars annually, in paper money of the United States, payable by six monthly completed terms.

Sixth.—The business of the Society shall be, in general, of agencies and commissions, and likewise all such as the active partners may deem convenient on particular account, but these shall not

undertake any on their own account, it being their duty to employ all their time and efforts for the common interest of the Society.

Seventh.—The business of the Society shall be directed in the United States by Messrs. Fabbir & Chauncey of New York, special agents, under the basis of a division of commissions and profits on the transactions which may take place between both houses, as may be arranged between them.

Eighth.—At the completion of each half year the balance of the Books, and likewise all information of special interest in connection with the business of the house, shall be transmitted to Joseph W. Alsop. The expenses for clerks and counting-house, incurred by the said gentleman, shall be for account of the Society.

Ninth.—In case of the death of either of the partners in Valparaiso, the special partners shall have the option of considering this contract terminated at once, or of continuing it, naming or not, as it may best suit them, another person to replace the deceased partner. In case the contract of partnership should not be terminated, the interest of the deceased partner shall continue till the thirty-first of December next ensuing after his death, and in that term the liquidation of the accounts shall be made, and on the balance which may appear in his favor (provided there should be any) there shall be allowed to his executor or representative the interest of nine per cent. per annum up to the termination of this Contract, on which date the balance due shall be paid, in conformity with what is stipulated in the third article of this Contract.

Tenth.—In case of the death of any of the special partners, no part of his capital can be withdrawn until the expiration of this Contract and the winding up of the affairs, in conformity with the third article, at which date the capital of him or them (if it should be intact, or such part as may remain), and the part of the profits which may correspond to him or them, shall be paid to his executor or representative, allowing also the corresponding annual interest, in conformity with the third article of this Contract.

Eleventh.—In case one or other of the active partners should contract bad habits or should, in any way, compromise the security or reputation of the Society, such partner may be expelled by the votes of three-fourths of the special partners, and his participation in the affairs of the house shall be terminated, allowing him interest upon his capital, in conformity with the third article. The said capital, with the proportion of interest up to the day of his separation from the Society, shall remain until the

expiration of this Contract and the winding up of the business, in conformity with the third article.

Twelfth.—In case the Society should be continued after the thirty-first of December, one thousand eight hundred and seventy-three, for account of the majority of the parties to this Contract, the winding up of the affairs of the present Society shall be made by the successors of the active partners mentioned in this Contract, according to the terms which the Society may agree upon with them. In case of the active partners or one of them not continuing (with the approbation of the special partners) they shall liquidate the affairs of the house, giving, if it should be necessary, six months of their time to that object. The actual expenses of such liquidation shall be for account of Alsop & Company, and if it should be attended to by only one of the partners, he shall receive compensation at the rate of four thousand five hundred dollars per annum for the six months already mentioned; if it should be attended to by both partners, each one shall receive three thousand dollars per annum for the same time. At the expiration of the six months, and in case all the liabilities arising out of the business (with exception of the capital and the profits) have been cancelled, the outstanding assets should, if possible, be realized, and all the accounts pending thereafter shall be entrusted to a competent person or persons (subject to the approval of the special partners) for their final liquidation, in case there should be no other special arrangement. The special partners are obliged to notify the active partners on or before the first of April, one thousand eight hundred and seventy-three, of their intention to close the business of the house on the thirty-first December, one thousand eight hundred and seventy-three, or to continue it for another term.

Thirteenth.—In case of any dispute, arising out of this Contract, between the active partners, the special partners are named judges for settling the question, and the sentence of the majority of them shall be final and obligatory on the parties. If the question should be between the active and the special partners, each party shall name an arbitrator, and in case of disagreement between these two, they shall name a third, and the decision of the three, or of two of them, shall be final and obligatory on all without appeal to the courts of justice. Power of attorney. Know all men by these presents that we, Joseph W. Alsop, George G. Hobson, George J. Foster, Theodore W. Riley, Henry Chauncey and

Henry W. Alsop, all of the City of New York, have made, constituted and appointed, and by these presents we do make, constitute and appoint, John Wheelwright and George F. Hoppin, both of Valparaiso, Chili, or either of them, our true and lawful attorney, for us and in our name, place and situation, and for each one of us, and in name, place and situation of each one of us, to sign, examine, verify, deliver and publish or make known all or any facts, certificates, deeds or documents of whatsoever nature, which may be necessary or required by the laws of Chili for the formation of a special Society under the style of Alsop & Company, which should be established in Valparaiso, the city, for the term of three years, counted from the first day of January of the year one thousand eight hundred and seventy-one, and to limit the responsibility of the partners thereof, whether limited or special, of which firm the above-mentioned Joseph W. Alsop, George G. Hobson, George J. Foster, Theodore W. Riley and Henry Chauncey, of the City of New York, and also Edward McCall, of Lima, Peru, shall be special partners, and the above-mentioned Henry W. Alsop, John Wheelwright and George F. Hoppin shall be general partners, each special partner, except George G. Hobson, contributing seventy-five thousand dollars (\$75,000) in Chilian gold to the Capital of the house, and the said George G. Hobson, John Wheelwright and George F. Hoppin each contributing fifty thousand dollars (\$50,000) to same, amounting in all to six hundred thousand dollars (\$600,000), and submitting themselves under other points of view to the conditions of the said Society stipulated by the constituents above named, giving and conceding to all and each one of our said attorneys full power and authority to execute and fulfil all and every act or thing which may be required or may be necessary to carry through in and upon the matter treated of, and entirely, and for every effect and purpose, as we ourselves would or could do if we were present in person, ratifying here and confirming all which our already mentioned attorneys, or any one of them, should execute, or cause to be executed, legally and in virtue of the present. In testimony whereof we have affixed at foot our signatures and seals the twenty-fifth day of October of the year one thousand eight hundred and seventy. (Signed) Henry Chauncey (seal), (signed) Henry W. Alsop (seal), (signed) Joseph W. Alsop (seal), (signed) G. G. Hobson (seal), (signed) George J. Foster (seal), (signed) Theodore W. Riley (seal). Sealed and delivered in presence of (signed) H. B. Hathaway. This is a faithful translation from the original English. (Signed) Luis A. Lynch, J.

Certified: State of New York, City and County of New York (seal of notary public of New York). Be it known that on the twenty-fifth day of October, one thousand eight hundred and seventy, before me, H. B. Hathaway, notary public in and for the State of New York, commissioned and sworn in due form, and residing in the City of New York, there appeared personally Theodore W. Riley; on the twenty-sixth day of October, one thousand eight hundred and seventy, there appeared George G. Hobson; on the twenty-seventh of October, one thousand eight hundred and seventy, there appeared Henry W. Alsop; on the twenty-eighth of October, one thousand eight hundred and seventy, there appeared George J. Foster; on the twenty-ninth of October, one thousand eight hundred and seventy, there appeared Henry Chauncey; and on the third of November, one thousand eight hundred and seventy, there appeared Joseph W. Alsop, whom I know personally, and who are known to me to be the same persons who are enumerated, and who executed the present Power, all and each one of them acknowledging the said Power to be of their own deed and will. In testimony whereof I have signed my name at the foot and have affixed my seal of office the day and year previously inserted. (Signed) H. B. Hathaway. It is a faithful translation from the original English. (Signed) Luis A. Lynch, J. I, Joseph Charles Tracy, Consul of Peru in New York, certify: that the signature which is read on the annexed document is that of Mr. H. B. Hathaway, notary public of this State of New York, as he styles himself, and that entire faith and credit is given him in the exercise of his functions. I likewise certify: that in this city there is no Chilian consul, on which account, and at the request of the interested parties, I issue this certificate.* In faith of which I sign the present and seal it with the seal of this Consulate, in New York, on the third day of November, one thousand eight hundred and seventy. (Signed) Joseph Charles Tracy. In Lima, on the nineteenth of October, one thousand eight hundred and seventy, before me, the notary, and witnesses, there appeared Messrs. Edward McCall and Henry S. Prevost, of this place and neighborhood, of full age, whom I certify that I know, and they delivered to me a minute of order, which they make, that it may be put into the form of a public instrument, and its tenor is as follows: Mr. Secretary, Have the goodness to extend in your Register of public deeds one, by which it may appear that we who subscribe, Edward McCall and Henry S. Prevost, residents in this Capital, desiring to enter as special partners into the Mer-

cantile Society, which, under the style of Alsop & Company, will commence business from the first of January of the ensuing year of one thousand eight hundred and seventy-one, in the City of Valparaiso, Republic of Chili; and, not being able to proceed personally to the said city with the object of signing the Contract of the new Society, which will there be extended, in conformity with the laws of that Country, we desire to empower either of the gentlemen, John Wheelwright or George F. Hoppin, merchants of Valparaiso, that one or other of them may sign, in our name, the Contract in question; and in granting them our full power to act for us in these circumstances, we declare from henceforth to conform to, and observe religiously, that which is stipulated in the said Contract just as if our signatures had been affixed thereto by our own hands. You will please add whatever else may be according to usual form. Lima, the eighteenth of October, one thousand eight hundred and seventy. (Signed) Edward McCall; (Signed) Henry S. Prevost. In virtue whereof the granters explained that they empowered the said gentlemen, for the object indicated in the minute inserted, inasmuch as the power or mandate necessary therefor gives them that without limit, and in complete form of law. I, the notary, certify that I have complied with what is stipulated in the seven hundred and thirty-fifth to the seven hundred and thirty-eighth articles of the Code of Legal Procedure, and they signed, together with the witnesses, Mr. John Fuentes, Mr. Manuel Diaz and Mr. Henry Morales. (Signed) Edward McCall; (Signed) Henry S. Provost; (Signed) John Fuentes; (Signed) Manuel Diaz; (Signed) Henry Morales. Before me, Philip Orellana, notary public. This is in conformity with the original Power which was presented before me, and remains in my Register of Public Writings of the present year, to which I return it. In witness whereof I give the present, which I seal and sign, according to law, on the day of its being granted. (Signed) Philip Orellana, Notary Public. We, the notaries public who subscribe, certify that the Power which precedes appear authorized by the Notary Public, Mr. Philip Orellana, who is one of those "of the number," as it is styled and named, and that entire faith and credit is given him, both judicially and extra-judicially; and, for the purposes which may be required by law, we extend the present in Lima, on the twentieth of October, one thousand eight hundred and seventy. (Signed) Joseph de Selaya; (Signed) John de Cubilla; (Signed) Joseph Cubillas. The Prefect of the Depart-

ment, who subscribes, certifies: That the Notaries by whom the foregoing document appears signed belong to the number of those of this capital, and are in the active exercise of their functions. Lima, the twentieth of October, one thousand eight hundred and seventy. (Signed) Antony Rodriguez Ramirez. I, Manuel Santa Maria, Minister of State in the Department of Government, Police and Public Works, certify: That the preceding signature is that which the Prefect of this Department, Colonel Antony Rodriguez Ramirez, is accustomed to make officially. Lima, the twentieth October, one thousand eight hundred and seventy. (Signed) Manuel Santa Maria. Legalized in the Ministry of Foreign Affairs of Peru. Lima, the twenty-fourth of October, one thousand eight hundred and seventy. (Signed) Joseph I. Loaxza, Minister of Foreign Affairs. Legalized in the Chilian Legation in Peru. (Signed) Adolphus Ibañez, Chargé d'affairs of Chili. The parts transcribed are in conformity with the originals, of which they are copies, which I returned to the attorney for the purposes which may suit him. The appearers, for themselves and the other persons whom they represent, ratify the Contract of partnership in the terms stipulated. They agreed to and signed it, together with the witnesses, Mr. Nicholas Ramirez and Mr. John Paul Ruiz. I certify. (Signed) George F. Hoppin, (Signed) John Wheelwright, (Signed) Nicholas Ramirez, (Signed) John P. Ruiz. Before me, Julius Cesar Escala, Notary Public. The preceding Instrument agrees with its original, which is registered at folio 559 of the respective Register, which is archived in the Office under my charge. Valparaiso, the twenty-seventh February, one thousand eight hundred and eighty-five. In the absence of the General Registrar,

(Signed.) JULIUS CESAR ESCALA.

Fees, including paper, \$70.

N. P.

We, the Ministers of public faith of Valparaiso, who subscribe, certify the preceding signature to be authentic of the handwriting of the Notary Public of this city, Mr. Julius Cesar Escala, replacing the General Registrar by special appointment, and to whom is given entire faith and credit. Valparaiso, the twenty-seventh February, one thousand eight hundred and eighty-five.

(Signed.) FRANCIS PASTENE, *N. P.*

(Signed.) JOSEPH MARIA VEGA, *V.*,

Notary.

Legalized, the two preceding signatures of the public notaries of this city, Mr. Francis Pastene and Mr. Joseph Maria Vega, V., in the Government House of Valparaiso, the twenty-seventh February, one thousand eight hundred and eighty-five.

[SEAL.]

(Signed.)

D. DE TORO, H.

[Copy.]

CONSULATE OF THE UNITED STATES,

Valparaiso, March 10, 1885.

I, David M. Dunn, Consul of the United States of America, at Valparaiso, do hereby certify that the foregoing is the true and genuine signature of Hon. Domingo de Toro Herrera, Governor of the City and Province of Valparaiso, Republic of Chili, and as such is entitled to full faith and credit.

Witness my hand and Consular seal.

[SEAL.]

(Signed.)

D. M. DUNN,

United States Consul.

I, David Sim, of Antofagasta, in the Republic of Chili, gentleman, make oath, and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.
3. That I have carefully examined and compared the paper-writing in the English language hereunto annexed, and headed "Society of Copartnership—Alsop & Company," and consisting of pages Nos. 1 to 17 inclusive, with the corresponding paper-writing in the Spanish language, which has been produced to me in Antofagasta aforesaid by Mr. John Wheelwright for the purpose of my making the said comparison.
4. That the said paper-writing hereunto annexed, and so, as aforesaid, headed "Society of Copartnership—Alsop & Company," is a correct and faithful translation into the English language of the said document, of which it purports to be a translation, excepting the certificate of the American Consul at Valparaiso, of which a true and exact copy is given.

DAVID SIM.

Sworn at Antofagasta, in the Republic of Chili, this twenty-fifth day of March, one thousand eight hundred and eighty-five, before me.

(Signed.)

JOHN BURNETT,

[VICE-CONSULAR SEAL.]

British Vice-Consul.

I, John Burnett, Esquire, British Vice-Consul at Antofagasta, do hereby certify that Mr David Sim is well known to me, and that he is acquainted perfectly with the English and Spanish languages, and is a fit and competent person to make the translations referred to in the above or before written affidavit.

In testimony whereof I have hereunto set my hand and affixed my seal of Office at Antofagasta this twenty-sixth day of March one thousand eight hundred and eighty-five.

(Signed.) JOHN BURNETT,

[VICE-CONSULAR SEAL.]

British Vice-Consul.

No. 451.]

I, Lewis Joel, Esquire, Her Britannic Majesty's Consul-General at Valparaiso, do hereby certify and attest that the foregoing signature of John Burnett is of his own true and proper handwriting, and that he is British Vice-Consul at Antofagasta.

In testimony whereof I have hereunto set my hand and affixed my seal of Office at Valparaiso this twenty-eighth day of June, one thousand eight hundred and seventy-three.

[CONSULAR SEAL.]

[Stamp 7 Shillings.]

(Signed.)

LEWIS JOEL,

H. B. M. Consul-General.

UNITED STATES CONSULATE,

Valparaiso, Chili, June 30, 1893.

I, Corvis M. Barre, Consul of the United States of America at Valparaiso, do hereby certify that the foregoing is the true and genuine signature of Lewis Joel, Esq., Her Britannic Majesty's Consul-General at this port, and as such is entitled to full faith and credit.

Given under my hand and the Consular Seal the day and year aforesaid.

[CONSULAR SEAL.]

(Signed.)

CORVIS M. BARRE,

United States Consul.

EXHIBIT 2.

Numero 410.

Corresponde.

TESTIMONIO DE LA TRANSACCION OTORGADA ENTRE EL SEÑOR MINISTRO DE HACIENDA É INDUSTRIA DOCTOR MAMUEL IGNACIO SALVATIERRA, EN REPRESENTACION DE LOS INTERECES 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 intereces, Nacionales, natural de la ciudad de Santa Cruz, con residencia en esta capital, de profesion abogado, casado; 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 Norteamérica, 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 cuatro de los corrientes la resolucion Suprema en que consta la transacion definitiva, ordenandose la estension de

la escritura, y es como sigue. Ministerio de Resolucion suprema.

Hacienda, La Paz, Diciembre viente y cuatro de mil ochocientos setenta y seis. 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 Lopez Gama, se ha acordado en Conceijo de Gabinete, con el citado señor Wheelwright una nueva transaccion que termine definitivamente este asunto, formalizada en los términos siguientes. Primero. Se reconoce al espresado

representante de la casa Alsop y Compañia el capital de ochocientos treinta y cinco mil bolivianos con el

interés anual del cinco por-ciento, no capitalisable, que correrá desde la fecha del otorgamiento de la escritura de este contrato. Segundo: dicho capital é intereses será amortizado con letras jiradas en su totalidad en proporciones trimestrales sobre el excedente que desde la fecha en que termine el actual contrato Aduanero con el Perú, haya en la percepción de derechos de la aduana del Norte, correspondiente á Bolivia, sobre los cuatrocientos cincuenta 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.

3° Tercero: Se adjudica a la misma amortización todas las esta 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 Decierto," de que se dispone en el artículo siguiente. Cuarto: Se adjudica la dicha estaca "Flor del Decierto" 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 diez y ocho de Diciembre de mil ochocientos setenta y cinco, y setenta mil bolivianos correspondientes al año que espira. En la estaca "Flor del Decierto" la cuota correspondiente al Estado, y aplicable á esta amortización 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 después de hecha la amortización de estos intereses, será aplicable al pago del capital reconocido, como se dispone en la cláusula tercera, siendo condición que si una ó ambas estacas no producen nada, ó producen poco, quedarán definitivamente cancelados, este cargo y toda reclamación por dichos intereses devengados. Quinto: La explotación 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 transferidos esos derechos y esta transacción 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 al boliviano; sea en este contrato ó en el de estaca minas. Otorgose la correspondiente escritura incertándose en ella esta transacción y el contrato relativo de que se hace mérito.—Rejístrese.—

Aceptación. Daza. — Salvatierra. — Oblitas. — Carpio. — Villegas. — Manuel Peñafiel. — Oficial Mayor. — En veinte y seis de los corrientes, horas once, hice saber la resolución 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 Hacienda, Gobierno y Guerra — Ministerio de Hacienda á 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 Concejo de Gabinete con el señor don Juan Wheelwright, representante de la casa Alsop y Compañía que la esplotacion de las estaca minas del Estado, que en aquella han sido adjudicadas á dicha casa, se haga bajo las baces 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, facilitandole el Gobierno, con su recomendacion á las autoridades su posesion efectiva.

2^a 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 esplotacion 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 anos del término asignado en la base primera.—Tercera. Los empresarios podran

3^a 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 distribución del producto neto en un cuarenta por-ciento que se aplicará por parte del Estado á la amortización de la deuda en los terminos convenidos en la transacción de esta fecha, y un sesenta por-

5^a ciento á favor del peticionario.—Quinta. El

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 con-

6^a trato durará por veinte y cinco años; en cuyo tiempo si hubiere sobrante despues de amortizada

la deuda del Estado en los terminos de la transacción 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, podran hacerlo, si la empresa no tiene por conveniente encargarse de la explotación, manifestandolo por escrito ante el Gobierno, ú omitiendo delibe-

8^a radamente esta manifestacion.—Octava. El

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—

Carpio — Villegas — Manuel Peñafiel — oficial

Aceptacion 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, acepto en legal forma:

Prosigue doy fé.—Juan Wheelwright—Patricio Barrera,—

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 comprometen 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 cláusulas 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 F. Salvatierra—Juan Wheelwright—Manuel Vargas P.—Benjamin Martinez. Aqui un signo. Ante mi
 Escrito Patricio Barrera,—Notariò de Hacienda, Gobierno y Guerra. Señor Juez Instructor—Solicita testimonio de la escritura que indica. Ernesto Frierdich ante los respectos de Usted, digo: qua á mis derechos conviene obtener un testimonio de la escritura publica celebrada en viente y seis de Diciembre de mil ochocientos setenta y seis entre don Juan Wheelwright representante de la casa comercial de Alsop y Compañia y el doctor Manuel Ignacio Salvatierra representante del Suprema Gobierno. Dicha escritura fué otorgada ante el Notario publico don Patricio Barrera, cuyo archivo corre hoy á cargo del señor Notario don Benjamin Z. Crespo.—Sirvase Usted ordenar que el señor Notario Crespo me otorgue el testimonio que solicito, con citacion fiscal. Será justicia. La Paz Junio ocho de mil ochocientos noventa y tres.—E. Frierdich. Otro si: Para la notificacion del caso estaré en la actuaria.—E. Frierdich.—La Paz, Junio ocho de mil ochocientos noventa y tres. Franquese el testimonio que se solicita y sea con noticia Fiscal. Eyzaguirre. Ante mi: Manuel F. Orihuela.—En la misma fecha hice saber el decreto anterior al señor Fiscal, impuesto de su tenor firmó: doy fé. Eyzaguirre. Orihuela.—En seguida hice saber á don Ernesto Frierdich, impuesto firmo: doy fé—E. Frierdich. Origuela—Luego hice saber al Notario don Benjamin Z. Crespo, impuesto de su tenor firmó de que doy fé, Benjamin Z. Crespo. Orihuela. Concuerta esta testimonio con con la escritura matriz de su referencia que corre en el registro que pasó por ante el finado Notario Patricio Barrera, á que en caso necesario me remito, dando el presente á peticion del señor E. Frierdich y por mandato judicial. En fe de ello, despues de correjido y confrontado, fiel y legalmente lo autorizo, firmo y signo en la ciudad de La Paz de Ayacucho á los diez dias del mes de Junio de mil ochocientos noventa y tres años. Lleva en tiembres el valor de veinte centavos.

[L. S.]

(f.)

BENJAMIN J. CRESPO.

[Estampilla.]

Not. de Hda. y Gob.

Los Suscritos Notarios de esta Capital, certifican: que son auténticos la firma y sello del Notario de Hacienda y Gobierno del Departamento Don Benjamin Z. Crespo, por quien se halla autorizado el anterior testimonio, y sus actos merecen entera fé y crédito,

por hallarse en actual ejercicio de sus funciones. La Paz Junio diez de mil ochocientos noventa y tres.

[L. S.] . (f.) PACIFICO N. LANDA.
Not. de 1^a Clase.
[L. S.] (f.) JOSE F. CORDERO.
Not. de la Clase. †

El Ciudadano Tenaro Sanjines Prefecto i Comandante General del Departamento etc. etc. Certifica: que las firmas i rubricas de los Señores Notarios de primera Clase Pacifico N. Landa i Jose F. Cordero son autenticas.

10 de Junio de 1893.

[L. S.] (f.) J. SANJINES.

Legalizada la firma anterior del Señor Prefecto del Departamento don Tenaro Sanjines La Paz Junio 12 de 1893.

[L. S.] f. L. PAZ.

La Paz, 12 de Junio de 1893.

Legalizada. [Estampilla.] (f.) EMET^o CANO.

LEGATION OF THE UNITED STATES,

La Paz, Bolivia, June 12, 1893.

I hereby certify that Emeterio Cano is the Minister of Foreign Relations of the Republic of Bolivia and that the above is his signature.

[SEAL.] (Signed.) F. J. GRANT.

Envoy Extraordinary and Minister Plenipotentiary of the United States to Bolivia.

[Translation.]

Exhibit 2.

A.

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, No-

tary 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 Valparaíso, 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.^a

MINISTER OF FINANCE,
La Paz, December 24th, 1876.

Taking into consideration the proposal of John Wheelwright, partner and representative of Messrs. Alsop & Company of Valparaíso, 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

^a For Spanish text, as published in "El Titicaca", January 15, 1877, see Exhibit 11, p. 181, *infra*

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.^a

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.

^a For Spanish text, as published in "El Titicaca," January 15, 1877, see Exhibit 11, p. 179, *infra*.

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.

(Signed.) 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.

(Signed.) 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.

(Signed.)

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

Before me,

[SEAL.]

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.

(Signed.)

PATRICIO BARRERA,

[SEAL.]

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.

(Signed.) BASILIO F^{co}. GUACHALLAS,
[SEAL.] *Notary of the First Class.*

(Signed.) FRANCISCO LUIS BALLON,
[SEAL.] *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.

[SEAL.] (Signed.) 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.

(Signed.) GEORGE M. BOWEN,
[SEAL.] *Chancellor of the Consulate.*

[Translation.]^a

B.

The National Congress Assembly, after having heard the report of its different Commissions concerning the acts of the Provisional Government, and having debated consequently each matter with subjection to the interior regulation.

DECREES.

SOLE ARTICLE.—The acts of the Provisional Government are approved of in the following form.

First.—The Constitution of the State being sanctioned, and the bases for the formation of a Regulation of Elections and Municipalities being dictated, it is declared inofficious to pronounce any decision on the reglamentary decrees of 15th December, 1876, and 30th March, 1877.

^a For Spanish text, see Exhibit 22, p. 246, *infra*.

Second.—*The measures adopted in the State Department are approved of, with exception of such as have been expressly derogated or modified by disposition of the present Assembly.*

Third.—In the War Department, the measures of the Government relative to the organization of the army and of the columns of garrisons, the provision of arms, ammunitions and the rest of war utensils, and the promotion and re-establishment of the high class of Generals of the former Chiefs mentioned in the report of the Minister of War, are approved of.

Fourth.—All the decrees and resolutions dictated by the executive in matter of justice authorizing same to submit to the Supreme Court the proposed modifications for the respective commissions and to formulate consequently the necessary reforms under the condition of rendering account to the next Legislature, are approved of.

Fifth.—The acts of the Government are approved of concerning ecclesiastical matters, including the suspension of temporalities decreed against the Most Illustrious Archbishop of La Plata for having refused to give concurrence of the vacant curacies in the archdiocese.

Sixth.—The decree of 10th August, 1877, is approved of, which re-establishes the official instruction which is actually given by private institutions.

Seventh.—The decrees are confirmed which have for their object the introduction of changes in the provincial circumscriptions of the Departments of Cochabamba, Potosi and Tarija.

Eighth.—The acts are approved of which refer to the branch of industry.

Communicate to the Executive Power for its performance and fulfilment.

Hall of Sessions at La Paz, of Ayacucho, this twelfth day of the month of February of 1878.

(Signed.) A. QUIJANO,
President.

(Signed.) SAMUEL VELASCO FLOR,
Secretary.

(Signed.) ABDON S. ONDARZA,
Deputy Secretary.

MINISTRY OF GOVERNMENT AND OF FOREIGN AFFAIRS,
La Paz, 14th February, 1878.

Be it performed.

(Signed.) H. DAZA.

(Signed.) J. M. DEL CARPIO.

[Translation.]

C. (a)

EXTRACT OF THE BILL PRESENTED BY THE MINISTER OF FINANCE
AND INDUSTRY TO THE NATIONAL CONGRESS HELD IN LA PAZ
IN THE YEAR 1877.

The contract of the National Custom House at Arica was opportunely rejected in order to be terminated or renewed by another. To attain this latter end a plenipotentiary constituted himself at Lima with the convenient instructions. It is to be hoped that in the event of arriving at the renewal same be made with the proportionate increase caused by the great development and increase which have taken place in our commerce at the ports of Arica and Mollendo as well as the arrangements of other points of vital importance for the country. Should such not be the case the offer which the Nationals at present make presents many probabilities of utility and advantage for the Country being evidently in both cases conducive to the improvement of the situation in this respect.

It is true, as said in the second clause, the increase over the actual sum of the product of that Custom House is destined to the payment of the indebtedness recognized to Wheelwright but even if thereby a privation is incurred which prevents the free employment of those funds the satisfaction remains of the fulfilment of a duty and the exemption of an obligation of which it was indispensable to be relieved.

Exhibit 3.

PIDE COPIAS.

S. J. L.

Eduardo Jackson a U. S. respetuosamente digo: que necesita copia autorizada de las sentencias de 1^a i 2^a instancia recaidas en el juicio seguido por don Juan Wheelwright con los socios de la mina Justicia sobre entrega de una estaca de instruccion. La primera fué dictada el 14 de Mayo de 1881 i se registra a fs. 230 vta. de los autos respectivos i la otra fué espedida el 19 de Mayo de 1882 i corre a fs. 451 de los mismos autos.

(a) NOTE.—This document, which is taken from the files of the Department of State, formed a part of the original petition of John Wheelwright to the American Legation at La Paz, but appears not to have been incorporated as a part of the proceedings of the Commission.

Por tanto, Ruego a U. S. tenga a bien ordenar que se me dé por el secretario de este Juzgado la copia certificada de la referencia, para los fines que me convengan, desarchivándose al efecto los autos si fuere necesario. Enmendado—convengan—vale.

EDUARDO JACKSON.

Antofagasta, 8 de junio de 1893.

Como se pide.

M. CARVALLO.

[SELLO.]

Concha.

En ocho de Junio notifiqué a don Eduardo Jackson.

EDUARDO JACKSON.

Concha.

Certifico que las copias a que se refiere la solicitud de la vuelta, son del tenor siguiente: Antofagasta, Mayo catorce de mil ochocientos ochenta i uno.—Vistos: En el juicio que sobre internacion sigue don Juan Wheelwright contra los socios de la mina "Justicia," estos presentaron un informe y tres planos hechos por el ingeniero del Estado don Enrique Cavada de los cuales aparece que las Damacias Fisher reunidas a las Damacias Caracoles, bajo el nombre de "Fusion" y una parte de la mina "Tarija" ocupan el terreno que corresponde a la Estaca de Instruccion de la mina "Justicia," pues que siendo mui posteriores a la Estaca, se estienden hácia el sur y sur oeste de la "Justicia," rumbo en el cual fué mensurada aquella en mil ochocientos setenta i uno, segun consta de las copias testimoniadas de fojas veintiocho a treinta i seis. A consecuencia de esto, don Juan Wheelwright se ha presentado a foja una entablado demanda contra don Benjamin Fisher, don Máximo Julio, don Belisario Salinas, don Jose Jacinto Gaete y don Camilo Ocaña i pidiendo que se entienda con ellos la demanda de fojas diez del cuaderno agregado a fin de que se declare que ellos deben entregar la parte de terreno que han ocupado y pagar el valor de los metales que han estraído de ella debiendo ponérsele en posesion de la Estaca de Instruccion. En la demanda a que Wheelwright se refiere, espone que, como cesionario de los derechos que al Fisco boliviano correspondian en las estacas llamadas de Instruccion, ha estado en posesion y trabaja varias de ellas. Pero hai otras, como la de la mina "Justicia," que, a pesar de haber sido designada y mensurada oportunamente, no ha sido hasta la fecha trabajada por causas independientes a su voluntad; y si bien es cierto que parece haberse estraviado su título primitivo, existe,

no obstante, el acta de entrega y mensura de ella al denunciante don José Manuel Quintana. Allí aparece que la Estaca de Instruccion fué medida en terreno entonces vacante como se consta de la copia que se acompaña. Cuando aquella operacion tuvo lugar, en mil ochocientos setenta i uno, no habia al rededor de la "Justicia" otras minas, que la "Buena Esperanza," "Niza," "Cleopatra," "Saturnina," "Garmendia," y "Demetria," sin perjuicio de las cuales fué medida la Estaca de Instruccion con arreglo a las prescripciones de la ley de veintitres de Julio de mil ochocientos cincuenta i dos y demas disposiciones referentes a la materia. Posteriormente fueron pedidas las minas "Perseverancia," las "Damacias Fisher" y demas colindantes ahora con la referida Estaca, cuyo terreno no han podido ocupar lejítimamente por cuanto las Estacas de Instruccion no eran denunciabiles por despueblo ni por otra causa cualquiera: La situación de ella era de todos conocida: los dueños de la mina "Cleopatra" cuyas casas fueron construidas en el terreno perteneciente a la Estaca, tuvieron necesidad de solicitar permiso del representante, en esa época de las Estacas de Instruccion para mantener las casas en el mismo lugar. Con estas antecedentes, Wheelwright gestionó en los últimos tiempos de la dominacion boliviana i obtuvo de las autoridades correspondientes la órden de que le fuera entregada, lo que no llegó a efectuarse, a consecuencia de la ocupacion de este territorio por las armas de la República. Contestando la demanda las demandados propónen y discuten las siguientes cuestiones:—Primero; Oríjen i legalidad de las Estacas de Instruccion: Segundo;—Aceptada la legalidad ¿que estaca es la que corresponde al Fisco?—Tercero;—El Código de Minería boliviano ¿derogó el decreto de veintitres de Julio de mil ochocientos cincuenta i dos que mandó aplicar a la Instruccion Pública la cuarta Estaca?—Cuarto; Chile, como reivindicador de este territorio ¿debe respetar el contrato celebrado entre Wheelwright i el Gobierno de Bolivia? Quinto;—¿Fué medida la estaca de Instruccion de la mina "Justicia" que aquel reclama?—Primero—Oríjen i legalidad de las Estacas de Instruccion;—El primer acto del Gobierno de Bolivia relativo a ellas el decreto supremo de veintitres de Julio de mil ochocientos cincuenta i dos segun el cual atendiendo a que por las principios de la jurisprudencia universal í a las ordenanzas vijentes en la República, pertenece al Estado toda clase de vetas metálicas que se hallen en el territorio de la Nacion i que no se concede a los descubridores más que tres intereses o estacas quedando las restantes en el dominio público, se ordena "que en toda

mina o veta de plata, oro o cualquiera otro metal, se aplique de pleno derecho el interés o estaca siguiente a las que corresponden al descubridor o denunciante al Tesoro de Instrucción pública.” Este decreto no hacia otra cosa que poner en vigor una ley que talvez se creia en desuso. En efecto, si las antiguas Ordenanzas Españolas que en materias mineras rejian en toda la América del Sur, reservaban a la Corona la cuarta estaca, es evidente que el decreto de veintitres de Julio de mil ochocientos cincuenta i dos, no tuvo otro objeto que aplicar a la Instrucción pública la misma estaca que antes correspondia a aquella. Pero el artículo final de él disponia que fuera “sometido a la aprobacion de las Cámaras legislativas,” desde que un decreto no podia derogar leyes. ¿Obtuvo esa aprobacion? ¿Fué remitido siquiera a ellas? No consta en parte alguna. Segundo.—Aceptada la legalidad ¿que estaca corresponde al Fisco? Segun la real órden de ocho de Diciembre de mil setecientos ochenta i cinco, que se refirió a Ordenanzas anteriores, pertenecia a la Corona la estaca siguiente a las del descubridor, disposicion que, como se ha dicho, vino a sancionar explícitamente el decreto de veintitres de Julio de mil ochocientos cincuenta i dos. Las ordenanzas de Méjico, vigentes en Bolivia, en todo lo que no esté en oposicion con el Código de Minería de esta República, segun se espresa en los artículos adicionales de éste i varias resoluciones de la Corte Suprema, disponen en su artículo primero, titulo sexto que “siendo justo i conveniente premiar con especialidad a los que se dedican a los descubrimientos de nuevos minerales i venas metálicas que en ellos se crian, puedan adquerir en la veta principal que mas les agrade hasta tres pertenencias contínuas o interrumpidas, i que si hubieren descubierto ; vetas, pueden tener una pertenencia en cada veta.” De todo que, si las tres pertenencias primeras se adjudicaban al descubridor de veta vírjen en cerro vírjen i la que el decreto de veintitres de Julio citado daba a la Instrucción la estaca siguiente a la que correspondia por las antiguas Ordenanzas, es claro que no puede referirse a otra que a la cuarta. Así lo ha declarado la Corte Suprema de Sucre en una sentencia pronunciada en el juicio seguido por don José L. Muñoz Chavez. En vista de esto, el mineral de Caracoles no ha debido soportar otra mensura en favor de la Instrucción que la cuarta a continuacion de la “Descubridora” en el mineral de la Placilla del Norte; de la Descubridora en la Sierra de San Juan; de la Descubridora en Sierra Gorda &c., &c., sobre la primera veta descubierta en esa sierra, con

arreglo a las disposiciones del decreto de veintitres de Julio de mil ochocientos cincuenta i tres.—Tercero.—El Código de Minería boliviano—¿derogó el decreto de veintitres de Julio?—A pesar de lo dicho ese decreto fué derogado por el Código de Minería promulgado cuarenta i ocho dias despues en diez de Agosto del mismo año. En efecto, en el primero de sus artículos se declara que “por este Código se resolverán todas las causas de minas quedando sin vigor las demas leyes, decretos ordenanzas y reglamentos especiales que estén en oposicion.” Que existe oposicion entre el Código i el decreto de veintitres de Julio, ello es indudable. El artículo segundo dispone que “la Nacion concede a todo boliviano o extranjero la propiedad de los minerales siempre que se guarden las formalidades que se prescriben.” Como el Código no prescribe la reserva de estaca alguna para la Instruccion pública, ella no puede tener existencia legal y el decreto de veintitres de Julio há sido necesariamente derogado en conformidad a las exigencias de la libertad de la industria i junto con él todas las leyes y ordenanzas Españolas. Solo un injustificable abuso ha podido mantener en Caracoles la existencia de las Estacas de Instruccion que no se han medida en otro mineral de Bolivia. Es verdad, sin embargo, que con posterioridad al Código de Minería se han espedido decretos i circulares referentes a las Estacas, pero ellas no pueden tener valor alguno legal desde que dicen relacion con un decreto derogado. Pero, aun suponiendo que no lo estuviera, todavia ellos se refieren solamente a la cuarta estaca de las minas descubridoras compuestas de tres pertenencias, sin que haya una palabra siquiera que directa ni indirectamente haga presumir la intencion de adjudicar estaca al Fisco, a continuacion de otra pertenencia que no sea la descubridora, como son la de primero de Mayo de mil ochocientos sesenta, la de veintinueve de Setiembre de mil ochocientos setenta i uno i otras.—Cuarto.—Chile como reivindicador ¿debe respetar el contrato celebrado entre Wheelwright i el Gobierno de Bolivia? El territorio comprendido entre los paralelos veintitres i veinticuatro de latitud sur perteneció siempre a Chile. Por el tratado de mil ochocientos sesenta i seis Chile lo cedió a Bolivia, bajo condiciones fijas i determinadas que el Gobierno de esta Republica quebrantó. Consecuencia natural de ello fué la resolucion del pacto en conformidad a los artículos mil cuatrocientos ochenta i nueve del Código Civil Chileno y setecientos sesenta i cuatro del de Bolivia, segun el cual “en los contratos bilaterales vá siempre implícita la condicion resolutive

en el caso de faltar una de las partes a su compromiso," principio universalmente sancionado por todas las legislaciones. Si, pues, Bolivia faltó, a Chile ha correspondido exigir la resolución del pacto por medio de la reivindicación del territorio en conformidad al artículo ochocientos ochenta i nueve del Código Civil haciéndolo valer su acción de dominio contra el actual poseedor según el artículo ochocientos noventa i cinco del mismo. Tal ha sido la teoría del Gobierno de Chile, manifestada en "la exposición del Ministro de Relaciones Exteriores sobre los motivos que justifican la reivindicación del territorio comprendido entre los paralelos veintitres i veinticuatro de latitud sur." Y si no fueran tan conocidas en derecho las consecuencias naturales de una reivindicación; si no se supiera que, declarada la justicia de esa acción, vuelve la cosa reivindicada a manos de su legítimo dueño, saneada i libre de toda responsabilidad y de todo gravámen, bastaría para ello la palabra oficial del Gobierno de Chile que así lo declaró sin protesta ni siquiera insinuación de los gobiernos extranjeros que revelasen de modo alguno que no participaban de esa misma opinión. Si, según estos principios, Chile reivindica este territorio libre de todo gravámen, debe, por lo mismo desconocer en absoluto los actos y contratos que hayan modificado sus derechos. Por consiguiente si Chile no puede ni debe aceptar los contratos del Gobierno de Bolivia con Wheelwright respecto a la cuarta estaca de toda descubridora, ménos podría reconocer los derechos que éste hace valer sobre las minas o pertenencias que no lo son, respecto a las cuales ni la ley boliviana creó estacas de Instrucción. Pero el contrato celebrado entre aquellos adolece de una causal especial de nulidad. Como se vé por los documentos acompañados por el demandante, el contrato tiene fecha veintitres y veinticuatro de Diciembre de mil ochocientos setenta i seis, i mientras tanto, la prensa de Chile y de Bolivia publicó la declaración que por medio de sus cónsules hizo el Gobierno de aquella República el trece de Febrero de mil ochocientos setenta i cuatro en orden a que no reconocía ni aceptaba, por su parte, los contratos, "transacciones, arreglos, ni ninguna otra disposición que celebrare o acordare el Gobierno de Bolivia por sí o por otras personas o sociedades, en cuanto tales contratos o arreglos impóngan gravámenes o afecten el territorio de la participación comun a que se refiere el tratado vijente de límites, i en cuanto tales gravámenes u obligaciones contraídas ó que se contraigan puedan perjudicar o menoscabar los derechos que Chile tiene sobre aquel territorio conforme al referido tratado." Según esto, no es posible suponer buena entre Wheelwright y el

Gobierno de Bolivia. Quinto—¿Fué medida la Estaca de Instruccion de la mina Justicia?—En sus primitivos tiempos fué mensurada la mina “Justicia” con un rumbo que es inutil por ahora especificar y parece que debió medirse tambien, como siempre la Estaca de Instruccion. Pero fué abandonado por unos primero i despues por otros hasta que fué denunciada por don José Maria Blacutt a quien se le midió con un rumbo absolutamente distinto del primitivo y estrechándose en la nueva mensura con pertenencias de terceras personas que trabajaban tranquilamente con anterioridad, sin protesta de ningun jenero de parte del Gobierno boliviano o de su representante Wheelwright que solo ha pretendido hacer valer sus derechos cuando la mina “Justicia” alcanzó su riqueza. I para ello no se presenta con los títulos primitivos de su pertenencia pero asegura que basta tener presente que a toda mina ha debido medirse estaca. En la réplica i refiriéndose a la Primera i Segunda cuestiones propuestas por los demandados, sienta el demandante que las leyes i otras disposiciones gubernativas de Bolivia concedian i autorizaban para medir a la Instruccion pública la cuarta estaca a continuacion de las tres que correspondian al descubridor de veta en cerro vírjen y tambien la tercera a continuacion de las dos que correspondian al descubridor de veta en cerro conocido y en otras partes trabajado. El artículo primero i segundo del título sexto de las Ordenanzas de Méjico llamában descubridor al que hallaba veta metálfera sea en terreno absolutamente nuevo sea en cerro conocido i en otras partes trabajado i concedia a aquellas tres pertenencias y dos a estas. Iguales disposiciones contienen los artículos quince i diez i seis del Código de Minería de Bolivia y aun aceptándose que este haya derogado a aquellas, el hecho es que, bajo el imperio de ámbas ha habido dos cláses o categorías de descubridores: el que halla veta en cerro virjen i el que la encuentra en cerro conocido i en otras partes trabajado. Las Estacas de Instruccion pública fueron creadas por el decreto de veintitres de Julio de mil ochocientos cincuenta i dos i en su artículo primero estatuye que “en toda mina o veta de plata, oro o cualquiera otro metal se aplica de pleno derecho el interes o estaca siguiente a las que correspondan al descubridor o denunciante, segun las Ordenanzas videntes al Tesoro de Instruccion pública.” Si esta disposicion no distingue entre las clases de descubridores que entonces existian; sí segun esas ordenanzas y segun el Codigo era descubridor el que hallaba veta en cerro vírjen o en cerro ya trabajado; si el artículo citado del decreto de veintitres de Julio no limita de modo alguno el

derecho del Fisco a la estaca siguiente a las tres que corresponden al primero, es evidente que se lo ha concedido igualmente respecto de la siguiente a las dos que corresponden al segundo. Pero los demandados, para sostener que, caso de medirse estaca a la Instruccion, ella deberia ser la cuarta a continuacion de la que corresponden al descubridor en cerro vírjen, se apoyan: primero, en el rubro del decreto de veintitres de Julio y segundo, en el considerando tercero del mismo. Respecto a lo primero, el rubro no pertenece al decreto ni forma parte de él desde que no lo lleva la edicion oficial. Respecto a lo segundo, está en manifiesta contradiccion con las disposiciones legales a que se refiere, las cuales reconocen como descubridores a los de que ya se ha hecho mencion. Ademas pugna con el artículo primero del decreto que, por los términos en que está concebido comprende a las dos categorias de descubridores. Tal opinaban tambien algunos jurisconsultos bolivianos i la sentencia pronunciada por la Corte de Sucre en el juicio seguido por Muñoz Chavez a que se refieren los demandados no tiene el alcance que ellos la atribuyen porque entonces se trataba puramente de la constitucionalidad o inconstitucionalidad del decreto de veintitres de Julio de mil ochocientos cincuenta i dos. Por circular de veintiuno de Marzo de mil ochocientos sesenta se mandó hacer efectivo el decreto de veintitres de Julio i por el de veintinueve de Setiembre de mil ochocientos setenta i uno se ordenó a los prefectos que tomasen posesion de las estacas correspondientes al Estado. Estas dos disposiciones daban mala inteligencia al decreto de veintitres de Julio, y dias despues de aquella, se dirijió a las autoridades administrativas la circular de nueve de Octubre de mil ochocientos setenta i uno por la cual se declaraba que en virtud de los artículos diez i seis i veinte del Código de Minería, perteneciendo al descubridor en cerro vírjen tres estacas, la cuarta correspondia al Estado, y la tercera, cuando se tratase de veta en cerro ya trabajado, en cuyo caso correspondian solo dos al descubridor. Igual declaracion hizo el Ministerio de Hacienda en veintidos de Octubre de mil ochocientos setenta i tres con motivo de una consulta del entonces contratista de las Estacas, don Pedro Lopez Gama i posteriormente se resolvió lo mismo por el Prefecto de Cobija en catorce de Noviembre resolucion que fué aprobada por el Supremo Gobierno en veintidos de Diciembre del mismo año. Todas estas resoluciones, circulares y decretos destruyen por completo la circular de primero de Marzo de mil ochocientos sesenta y el decreto de veintinueve de Setiembre de mil ochocientos setenta i uno que habian interpretado

erróneamente el de veintitres de Julio de mil ochocientos cincuenta i dos, i en conformidad a aquellos, al Código de Minería y a las Ordenanzas de Méjico se ha medido en todo tiempo a la Instrucción pública las estacas terceras o cuartas respectivamente. Para la toma de posesion se atendia a las actas de registro que segun las resoluciones de catorce de Noviembre y veinte de Diciembre de mil ochocientos setenta i tres constituian los títulos de propiedad del Estado. Siendo todo ello así, ha debido medirse a la mina "Justicia" como en efecto se hizo, teniendo en cuenta que pertenecia a la categoria de las descubridoras en cerro conocido. Tercero.—Pero el decreto de veintitres de Julio de mil ochocientos cincuenta i dos ¿fué derogado por el Código de Minería?—El artículo primero adicional del Código de Minería de Bolivia deroga todas las leyes, decretos i ordenanzas preexistentes que estuviesen en oposicion con él. El artículo segundo del mismo Código concede a todo boliviano o extranjero la propiedad de las minerales, guardándose las formalidades que en otro lugar prescribe. De estas dos disposiciones deducen los demandados que, puesto que el Código no prescribió que se reservase estaca alguna a la Instrucción pública, hai oposicion entre él y el decreto de Julio de mil ochocientos cincuenta i dos, y que debe por lo tanto estimarse derogado i suprimidas las Estacas de Instrucción. La consecuencia a que llegan los demandados es de todo punto falsa, porque el hecho de no haber reservado el Código estaca alguna no importa oposicion entre sus prescripciones i el decreto de Julio de mil ochocientos cincuenta i dos. Para que esa oposicion hubiera existido habria sido necesario que el Código hubiera estatuido algo sobre las Estacas. Pero es inoficioso discurrir cuando hai tantas disposiciones lejislativas y gubernativas que manifiestan que esa derogacion no ha existido como son: la circular de primero de Marzo de mil ochocientos sesenta, el decreto de veintinueve de Setiembre de mil ochocientos setenta i uno, la circular de nueve de Octubre de mil ochocientos setenta i uno, la resolucion de doce de Octubre, la ley de diez i nueve de id. el decreto de dos de Noviembre, todos ellos del mismo año. La ley de quince de Noviembre de mil ochocientos setenta i tres por la cual se ordenó al Ejecutivo que tomase posesion de las estaca-minas de Instrucción pública, ley que, a haber derogado el Código el decreto de veintitres de Julio, habria ella misma derogada a aquel en esta parte. Despues de la referida ley de mil ochocientos setenta i tres se dictaron nuevas disposiciones hasta el año mil ochocientos setenta i seis en que el demandante celebró con el Gobierno de

Bolivia el contrato por el cual se le adjudicaron las estacas de las minas de plata de este Litoral. Hai tambien resoluciones judiciales, como la citada por los mismos demandados, recaida en el juicio de Muñoz Chavez, que denunció una estaca en el mineral de Aullágas, fundado en que el decreto de veintitres de Julio de mil ochocientos cincuenta i dos era inconstitucional y ademas que habia sido derogado por el Código de Minería. Cuarto.—Chile como reivindicador ¿debe respetar los contratos celebrados por el Gobierno de Bolivia con terceras? Pretenden los demandados que no fundados: primero, en la resolucion del tratado de límites de seis de Agosto de mil ochocientos setenta i cuatro; segundo, en las declaraciones del Gobierno de Chile por intermedio de sus cónsules el trece de Febrero de mil ochocientos setenta i cuatro; tercero, por haberse medido a la Instrucción otras estacas que las cuartas en vetas descubiertas en cerro vírjen y cuarto, por las molestias y desventajas que la existencia de las estacas irroga a los mineros. Primero.—Respecto a la resolucion del tratado de mil ochocientos setenta i cuatro i la reivindicacion conseguida, los demandados no pueden ni deben aplicar a esta las prescripciones del derecho civil chileno por tratarse de una cuestion internacional, no de una privada. Por el contrato que consta de los decretos de veintitres y veinticuatro de Diciembre de mil ochocientos setenta i seis y en la escritura del mismo mes i año, el Gobierno de Bolivia, dueño entonces de este territorio cedió al demandante por el término de veinticinco años, y en pago de una deuda de mas de un millon de pesos el usufructo de todas las Estaca-minas de plata del Litoral, correspondientes al ramo de Instrucción pública. A ello procedió el Gobierno perfectamente autorizado por leyes del país, entre las que figura la de diez i nueve de Octubre de mil ochocientos setenta i uno que autorizó al Ejecutivo para arrendar o explotar en sociedad todas las Estacas del Estado. En conformidad a ella se dictaron los decretos de dos de Noviembre de mil ochocientos setenta i uno y de siete de Marzo, veintinueve de Mayo y diez i nueve de Setiembre de mil ochocientos setenta i dos por las cuales se llamó a licitacion para el laboreo de aquellas, i despues se aceptaron, el primero de Abril de mil ochocientos setenta i tres, las propuestas hechas por don Pedro Lopez Gama y posteriormente, en mil ochocientos setenta i seis, se celebró el contrato con el demandante. Este contrato fué confirmado por varios decretos y circulares espedidos tanto por el Gobierno de Bolivia, como por el Prefecto del Litoral, aprobado por la cámara de Diputados y despues ratificado, junto con todos los actos políticos i adminis-

trativos del Gobierno del cuatro de Mayo de mil ochocientos setenta i seis por la Asamblea Nacional Constituyente. Probada, pues, la lejitimidad del contrato, es facil demostrar que debe ser respetado por nuestras autoridades. Por él se adjudicaron al demandante por el término de veinticinco años todas las Estacas del Litoral, para que este se pagara de una fuerte deuda y ese usufructo forma parte indudablemente de su propiedad privada a la que el derecho internacional presta cumplido respeto, como oportunamente fué declarado por el Gobierno de Chile al ocupar este territorio. Ademas, el número cinco del artículo doce de la Constitucion del Estado asegura a todos los habitantes “la inviolabilidad de todas las propiedades, sin que nadie pueda ser privado de ellas, si no en virtud de una sentencia judicial o a ménos que una ley exija el uso o enajenacion por causa de utilidad pública; ni debe olvidarse que, segun los principios de derecho internacional, cuando un pueblo se apodera por la fuerza de las armas de un territorio cualquiera no adquiere mas derechos que las que pertenecian al antiguo dueño. La segunda razon que dan los demandados para probar que el Gobierno de Chile no debe respetar el contrato del demandante consiste en decir que fué otorgado en Diciembre de mil ochocientos setenta i seis siendo que en trece de Febrero de mil ochocientos setenta i cuatro el Gobierno de Chile habia declarado, por conducto de su cónsul en Antofagasta, que no reconoceria ni aceptaria los contratos, transacciones i arreglos que celebrase Bolivia afectando o gravando cualquier parte del territorio de participacion comun a que se refiera el tratado de límites de mil ochocientos sesenta i seis. Por el tratado de seis de Agosto de mil ochocientos sesenta i seis, el Gobierno de Bolivia reconoció a Chile el derecho de percibir la mitad de los productos provenientes de la explotacion del huano y de los derechos de esportacion sobre minerales que se estrajesen del territorio comprendido entre los paralelos veintitres y veinticuatro de latitud Sur, y el Gobierno de Bolivia lejos de dar cumplimiento al tratado, intentó a principios de mil ochocientos setenta i cuatro, enajenar las entradas de Aduana, lo que obligó a Chile a dar la declaracion de que se ha hecho mérito. Pero posteriormente se reanudaron las negociaciones diplomáticas entre ámbas paises i se arribó al tratado de seis de Agosto de mil ochocientos setenta i cuatro, por el cual Chile cedió a Bolivia para siempre el goce esclusivo de todos los derechos de esportacion. Por consiguiente, aquella declaracion quedó sin efecto despues de este ultimo tratado. Tercero.—La tercero razon en que los demandados se apoyan para pedir que se desconozca

el contrato se refiere al abuso, segun ellos, de haberse medido a la Instruccion no solo la cuarta estaca a continuacion de las tres que corresponden al descubridor de veta en cerro vírjen, sino tambien la tercera a continuacion de las dos que corresponden al descubridor de veta en cerro conocido y en otras partes trabajado. El decreto de veintitres de Julio de mil ochocientos cincuenta i dos, por una parte i por la otra las declaraciones de que ya se ha hecho mérito destruyendo por su base el argumento de los contrarios. Cuarto.—Respecto a las molestias i desventajas que las Éstacas de Instruccion irroga a los mineros, a ser ellas ciertas, nada valdrian, cuando la existencia de ellas es legal i el contrato debe ser respetado. Expuestas separadamente las razones que manifiestan la falsedad de cada uno de los fundamentos aducidos por los demandados para objetar el contrato de veintitres i veinticuatro de Diciembre de mil ochocientos setenta i seis hai todavía dos observaciones jenerales con relacion a ellos. Es la primera, que si no hubieran de respetarse, los gravámenes o enajenaciones que durante la administracion boliviana afectaron a este territorio se producira un trastorno social: todas las ventas, concesiones de terrenos o minas habrian de ser hoi desconocidos. Es la segunda, que si Chile, por la resolucion del tratado de límites de mil ochocientos setenta i cuatro há recobrado el dominio del Litoral y se ha sustituido al de Bolivia es claro que mientras el Gobierno de Chile no espropie, con arreglo a la Constitucion y a las leyes, o no venza en juicio contradictorio sobre rescicion o nulidad del contrato, debe considerarse subsistente respecto de terceros y que no es lícito a estos, que no son parte en él, alegar que carece de firmaza i validez. Resta solo examinar la quinta cuestion propuesta por los demandados. ¿Fué medida la Éstaca de Instruccion de la mina “Justicia?” cual es su ubicacion? Inmediatamente despues de mensurada una mina se procedia a medir la Éstaca de Instruccion a continuacion de las que correspondian al descubridor: se hacia constar la mensura de esta en la misma acta en que se consignaba la de la mina principal, sirviendo el título para ámbas. La mina Justicia fué descubierta i mensurada en mil ochocientos setenta i uno i si los socios de ella no conservan el título primitivo es probable que se haya extraviado, como tantos documentos que faltan hoi con motivo de la ocupacion. Pero, tratándose, hai, no obstante, antecedentes que bastan para determinar su ubicacion con toda exactitud. De la lista oficial de estacas de Instruccion pública que en testimonio corre a fojas veintiocho aparece que el año setenta i uno, en que se hizo la primera mensura de la “Jus-

ticia." se midió tambien la estaca fiscal de ella, con rumbo sud oeste, i en virtud de ello, fué que cuando se practicó la segunda mensura de la mina en mil ochocientos setenta i ocho se presentó a fin de impedir que al dueño de ella se midiese como lo pretendia el terreno situado al sur de la "Justicia." Del acta de mensura, que corre en autos consta que la oposicion fué respetada y que se reservó al denunciante de la "Justicia" el derecho que creia tener, derecho que hasta la fecha no han hecho valer, de lo que se deduce que reconocen que ese terreno pertenece a la Estaca Fiscal. Tambien don Benjamin Fisher se opuso a que la "Justicia" se mediese al sur, alegando que ese terreno le pertenecia como Damacias, pero fué desechada su oposicion en obsequio del representante del demandante que presentó título legal. Segun consta de la lista oficial la Estaca Fiscal fué medida con rumbo S. O.; pero oportunamente se probará que la inclinacion hácia al sur oeste fué pequeña i que la Estaca se estrechó en su mensura con la linea de aspas oeste de la mina "Saturnina." En el juicio que el demandante sigue con los socios de la mina "Justicia" sobre internacion, éstos han presentado varios planos hechos por el Injeniero del Estado. En el que lleva la letra C. ha colocado al sur de la "Justicia" una pertenencia a que da el nombre de "Demacias Fisher" i otra que denomina "Tarija" en lo que no ha andado exacto, porque en su informe, dice que para dibujar las Demacias Fisher solo tuvo a la vista un simple denunció i que la ubicacion que la ha dado no guarda conformidad con las indicaciones del denunció. Proyectando en ese plano sobre la cabecera sur de la "Justicia" una Estaca de treinta varas de latitud mas el ancho de la veta i de sesenta de longitud con rumbo sud oeste i que se estrecha con la mina "Saturnina" resulta, en efecto, que las Demacias Fisher, casi en su totalidad, i una parté de la mina "Tarija" quedan comprendidas dentro de las cuadras de esa Estaca que es la Estaca de Instruccion de la mina "Justicia."—Finalmente, los demandados han explotado la parte de terreno de la Estaca que detentan estrayendo de ella grandes cantidades de metales.—En rebeldia de los demandados para duplicar, se recibió la causa a prueba i se ha rendido la que corre en autos.—CONSIDERANDO: primero, que el decreto de veintitres de Julio de mil ochocientos cincuenta i dos, al reconocer el dominio del Estado sobre toda clase de vetas metálicas que se hallaren en su territorio, ordenó "que en toda mina o veta de plata o en cualquiera otro metal se aplicará de pleno derecho el interes o estaca siguiente a las que correspondian al descubridor, segun las ordenanzas vijentes, al Tesoro de Instruc-

cion Publica"—Segundo—Que las Ordenanzas a que el decreto se refiere no son otras que las de Méjico, las del Perú i las Ordenanzas de Nueva España cuya observancia se prescribió por la real cédula de ocho de Diciembre de mil setecientos ochenta i cinco que ratificaba espresamente en la declaracion treinta i dos la subsistencia de la Estaca reservada al Rei por la ordenanza diez i ocho título primero de las del Perú, pero debiendo medirse esta despues de las pertenencias del descubridor.—Tercero—Que proclamada la independenciam de Bolivia se declararon por órden de cinco de Agosto de mil ochocientos veintinueve, subsistentes las antiguas ordenanzas y especialmente las de Méjico ya adoptadas al Perú y que continuaron en vijencia hasta el año mil ochocientos cincuenta i dos; Cuarto—Que segun esto, el decreto de veintitres de Julio de esta año, nada de nuevó estatuyó sobre el interes que en toda mina correspondia al Fisco como sucesor de la Corona: solo determinaba a que ramo del servicio debia aplicarse su producto; Quinto—que aunque en autos no aparece constancia de que el decreto referido se sometiera inmediatamente a la aprobacion de la cámaras lejislativas, como en él se ordena, despues de él se han publicado varias disposiciones consignadas en leyes, decretos, órdenes i disposiciones que reconocen y sancionan la existencia legal de las estacas destinadas a la Instruccion y reglamentar su esplotacion como son, entre otros, la circular de veintiuno de Mayo de mil ochocientos sesenta que ordenó hacer efectivo el decreto de veintitres de Julio; los decretos de veintinueve de Setiembre i nueve de Octubre de mil ochocientos setenta i uno, sobre las estacas pertenecientes al Estado; la ley de doce del mismo mes y año, declarando imprescriptibles las estacas de la Instruccion, la ley de diez i nueve de Octubre del referido año, que faculta al Ejecutivo para celebrar, respecto de ellas, contratos de arrendamiento o para esplotarlas en sociedad, la ley de quince de Noviembre de mil ochocientos setenta i tres que dispone que el Gobierno proceda a tomar posesion de ellas y muchos otras disposiciones que seria largo enumerar. Sexto—que, demostrada la constitucionalidad del decreto, i por consiguiente, la existencia legal de las estacas de Instruccion, cumple saber si el decreto que reconoció esa existencia, ha sido o no derogado por el Código de Minería de Bolivia promulgado el diez de Agosto de mil ochocientos cincuenta i dos. Sétimo—que el artículo primero de los adicionales de dicho Código establece que "por el nuevo Código se resolveran todas las causas de minas, quedando sin vigor todas las demas ordenanzas, leyes, decretos y reglamentos especiales que esten en

oposicion.” Octavo—que, cualquiera que sea el alcance que le dé a esta disposicion, nunca podrá descubrirse en ella la derogacion del decreto de veintitres de Julio de mil ochocientos cincuenta i dos porque el Código no contiene disposicion alguna que diga relacion con las Estacas de Instruccion ni creó nuevo interes a favor de ella, ni suprimió el existente; Noveno.—que léjos de ello, con posterioridad a el se dictaron innumerables disposiciones que, como se ha dicho en el considerando quinto, tuvieron por objeto o reconocer i sancionar los derechos de la Instruccion sobre las Estacas o reglamentar conveniente la explotacion de ellas, pudiendo notarse, ademas de las ya indicadas ahí, i entre otras, los decretos de siete de Marzo, veintinueve de Mayo y diez i nueve de Setiembre de mil ochocientos setenta i dos por los cuales se llama a licitacion para el laboreo de las Estacas, en conformidad a la ley antes citada de diez i nueve de Octubre de mil ochocientos setenta i uno; la órden de trece de Febrero de mil ochocientos setenta i cuatro, en que se previene al Ministerio Público que reivindique las Estaca-minas del mineral de “Aullagas;” la órden de veinticuatro del mismo mes y año, que se dá al Fiscal Jeneral para que tome posesion de las referidas estacas; la circular de veintiuno de Abril de mil de mil ochocientos setenta i cuatro que contiene prevenciones para el mismo objeto y respecto de todos las minerales en jeneral, y por último el contrato celebrado por el Gobierno con el demandante en veintitres de Diciembre de mil ochocientos setenta i seis. Décimo—que no es posible presumir que, con referencia al decreto de veintitres de Julio, haya habido en el largo espacio de tiempo transcurrido desde mil ochocientos cincuenta i dos, un número tan considerable de leyes, disposiciones gubernativas y decisiones judiciales, si el hubiera sido derogado por el Codigo de Minería. Once.—Que manifestada la constitucionalidad del decreto aludido y su actual vijencia, en virtud de las consideraciones que preceden, toca averiguar, en seguida, la estaca que corresponde a la Instruccion, que, segun los demandados, seria solamente la cuarta a continuacion de las tres que median al descubridor. Doce.—que el artículo quince del Código de Minería de Bolivia llama descubridor al que halla metal en cualquiera veta, manto, aspa, venero &c en la superficie o en la profundidad de un terreno y el artículo diez i seis concede al descubridor que registre veta en cerro vírjen, tres estacas en la veta descubierta y el artículo diez y nueve dos al descubridor de veta en mineral conocido o en otros partes trabajado. Trece.—Que exactamente iguales disposiciones contenian los artículos primero y segundo

del título sexto de las Ordenanzas de Méjico. Catorce.—Que al decir el artículo primero del decreto de mil ochocientos cincuenta i dos “que en toda mina o veta de cualquier metal se aplicaria de pleno derecho el interes o estaca siguiente a las que correspondan al descubridor o denunciante, segun las Ordenanzas vijentes, al Tesoro de Instruccion,” evidentemente se ha referido a las Ordenanzas de Méjico, que, como se ha dicho en el considerando tercero, fueron declaradas subsistentes en Bolivia por Orden de cinco de Agosto de mil ochocientos veintinueve. ; Quince.—Que no haciendo el artículo primero aludido distincion alguna entre las dos clases de descubridores que existian al tiempo en que fueron citadas esas Ordenanzas i que el mismo Código reconoció mas tarde, y si ambos tenian por descubridor al que hallase veta en cerro vírjen o en cerro trabajado, es evidente que la ley reservaba a la Instruccion la cuarta estaca en el primer caso y la tercera en el segundo; Dieziseis.—Que el rubro del decreto de veintitres de Julio de mil ochocientos cincuenta i dos que dice: “Se adjudica al Tesoro de Instruccion publica la cuarta estaca de toda mina” o Veta &c. no puede ni debe tomarse en cuenta, tanto porque no pertenece al decreto ni aparece en la edicion oficial, cuanto porque, aunque si fuera, no esta en armonia con el decreto, y sobre aquel prevaleceria la parte resolutiva de éste. Dieziseite.—Que todavia la circular de primero de Marzo de mil ochocientos sesenta i el decreto de veintinueve de Setiembre de mil ochocientos setenta que hablan únicamente de la cuarta estaca a continuacion de los descubridores y que los demandados invocan en su apoyo fueron, no obstante, reformados y el Gobierno lo hizo tambien estensivo a la tercera estaca por la órden circular de nueve de Octubre de mil ochocientos setenta i uno conformándose a las disposiciones contenidas en los artículos diez o seis i veinte del Código de Minería; Dieziocho.—Que ajustándose a ella resolvió en el mismo sentido el Prefecto de Cobija en catorce de Noviembre de mil ochocientos setenta i tres, resolucion que, reveida por el Supremo Gobierno fué aprobada en Diciembre del mismo año. Diezinueve.—Que, provada la vijencia del decreto de veintitres de Julio citada y que toca a la Instruccion respectivamente la cuarta o la tercera estaca a continuacion de las que se miden al descubridor de veta en cerro vírjen o trabajado, corresponde examinar ahora la validéz del contrato celebrado entre el demandante Wheelwright y el Gobierno de Bolivia, contrato que dá oríjen a tres cuestiones que enúncian los demandados: primero, si pudo ese Gobierno celebrar el contrato sin faltar a los tratados; segundo, si lo autorizaban para su celebracion las

leyes del país; tercero, si Chile, como reivindicador de este territorio debe o no respetarlo; Veinte.—respecto al primero punto, que si bien es cierto que en trece de Febrero de mil ochocientos setenta i cuatro el Gobierno de Chile por conducto del Cónsul Reyes declaró que no reconocia ni aceptaba, por su parte, los contratos, transacciones o arreglos que celebrare o acordare el Gobierno de Bolivia en cuanto ellos impongan gravámenes o afecten el territorio de la participacion comun, tambien es verdad que, a virtud de negociaciones posteriores, se firmó entre las dos Repúblicas el tratado de seis de Agosto del mismo año, por el cual Chile renunciaba en favor de Bolivia todas sus derechos al territorio de la referida participacion comun; Veintiuno.—Que correspondiendo ya a ella el dominio eminente sobre el territorio, pudo proceder sin obstáculo a celebrar el contrato con Wheelwright el veintitres y veinticuatro de Diciembre de mil ochocientos setenta i seis, en virtud del cual se reconoció a éste, como representante de la casa de Alsop y Compañia el crédito de ochocientos treinta i cinco mil bolivianos, al interes del cinco por ciento, que debia amortizarse, entre otras cosas, con el cuarenta por ciento del producto de todas las Estaca-minas de plata del Litoral que se le adjudicaban por veinticinco años; Veintidos.—respecto al segundo punto esto es, si el Gobierno pudo celebrar contratos, que por la ley de diez i nueve de Octubre de mil ochocientos setenta i uno fué autorizado el Ejecutivo para celebrar contrato de arrendamientos o explotar en sociedad todas las Estaca-minas pertenecientes al Estado en los minerales de la República, y conforma a ella se llamó a licitacion para el laboreo de las mencionadas estacas por los decretos de dos de Noviembre de mil ochocientos setenta i uno, siete de Marzo, veintinueve de Mayo y diez i nueve de Setiembre de mil ochocientos setenta i dos, terminando todo con la celebracion del contrato con Wheelwright. Veintitres.—Que dos años mas tarde, en doce de Febrero de mil ochocientos setenta i ocho (fojas ciento diez i ocho vta.) la Asamblea Nacional aprobó las medidas dictadas en el ramo de Hacienda por el Gobierno provisorio inaugurado el cuatro de Mayo de mil ochocientos setenta i seis, fuera de las que habian sido derogadas y modificadas por espresa disposicion de ella entre las cuales no figura el contrato con Wheelwright. Veinticuatro.—respecto de la tercera cuestion, de sí Chile, como reivindicador de este territorio, debe o no respetar el contrato celebrado entre el demandante y el Gobierno de Bolivia, que, atendida su naturaleza y por las consecuencias que entraña, ella debe resolverse, segun los principios de derecho internacional, y su conoci-

miento corresponde, por lo tanto, a otro Tribunal, en conformidad al artículo ciento diez i siete de la ley de quince de Octubre de mil ochocientos setenta i cinco. Veinticinco.—Que, mientras eso no suceda, o los títulos del demandante no sean objetados por quien y como corresponda, este tiene perfecto derecho para hacerlos valer en juicio y reclamar lo que por ellos se le deba; Veintiseis.—Que siendo así, no hai para que tomar en consideracion esta cuestion y ménos tratar de resolverla, como lo quieren los demandados, conforme a las disposiciones que, sobre reivindicacion contiene el Código Civil; no es posible aplicar a ella las leyes del derecho privado que tienen por objeto reglar los intereses respectivos de los particulares entre sí en lo que atañe a sus personas, a sus bienes y a sus convenciones; Veintisiete.—Con relacion a cuestion de hecho de la presente demanda esto es, si se midió la Estaca de Instruccion de la “Justicia” en rumbo &c, que el demandante ha probado cuando mensuró la mina “Justicia” en mil ochocientos setenta i uno, se midió igualmente y en el mismo acto la correspondiente estaca de Instruccion (Interrogatorio de fojas noventa i siete, ciento uno, ciento tres, ciento treinta i uno vuelta, ciento treinta i dos y ciento treinta i ocho) Veintiocho.—Que del mismo modo ha acreditado con la prueba rendida que la Estaca se midió i alinderó al sur de la “Justicia” con pequeña inclinacion al Oeste y estrechándose con la mina “Saturnina” (Int^o. de fojas ciento cuarenta i tres, preg. sesta; int^o. fijas ciento cuarenta i seis preg. segunda e interrog. de fojas ciento treinta i ocho). Veintinueve.—Que como consta de los testimonios de fojas seis vuelta, cuaderno primero, cuando en Octubre de mil ochocientos setenta i ocho se midió la mina “Justicia” por segunda vez a don Jose Maria Blacutt que entonces la habia denunciado por despueblo, se opuso don Benjamin Fisher, a que se practicara la operacion, alegando derecho sobre el terreno del que en la primera mensura de mil ochocientos setenta i uno habia correspondido a la Estaca de Instruccion, pero fué desechada su oposicion en legal forma por carecer de títulos y se aceptó la del representante del actual demandante, don Juan Wheelwright, todo lo cual se halla corroborado por el referido Blacutt al declarar al tenor del interrogatorio de fojas ciento cuarenta i seis; Treinta.—Que así mismo ha justificado el demandante que las casas de la mina “Cleopatra” fueron construidas despues de mil ochocientos setenta i uno, dentro del terreno de la Estaca de Instruccion, hoi de la Fusion; Treinta i uno.—Que tambien ha probado no solo con las declaraciones de los testigos que responden a los interroga-

torios de fojas ciento treinta i ciento treinta i cinco vta., sino tambien con las posiciones absueltas por don Benjamin Fisher a fojas ciento doce y don José Tomas Segundo Cortes a fojas ciento once, que la mina "Fusion" compuesta de las Damasias Fisher y de las Damasias Caracoles, está situada en la cabecera Sur, con inclinacion al Sur Oeste, de la mina "Justicia" y y, por consiguiente, en el terreno que correspondia a la Estaca; Treinta i dos.—que, por consiguiente, la ubicacion de la Estaca no puede ser otra que la trazada por el Injeniero señor Mahotiere en los planos A. C. del Injeniero del Estado. Treinta i tres.—que con la prueba rendida al tenor de los interrogatorios de fojas noventa i siete, ciento treinta i cinco y posiciones de fojas ciento doce se há acreditado que en los primeros meses del año mil ochocientos setenta i nueve se estrajo metal de buena ley tanto de la "Fusion," como de la "Justicia" que entonces estaban comunicadas; Treinta i cuatro. que aunque las demandados pretendan en el alegato de bien probado haber destruido la prueba contraria con la que dicen han rendido, ella, con todo, no aparece en autos y por el contrario, del certificado de publicacion de probanzas de fs. consta que no han rendido ninguna. CON ARREGLO a las precedentes consideraciones y conforme a las leyes primera y segunda, tit°. catorce Parta Tercera y artículo mil seiscientos noventa i ocho del Código Civil, se declara que ha lugar a la demanda, y, en consecuencia, primero, que los demandados deben hacer entrega a don Juan Wheelwright de la parte de terreno de la Estaca de Instruccion que han invadido, junto con el valor de los métales que se pruebe han sido extraidos de la "Fusion" y segundo que debe ponerse a aquel en posicion de la mencionada Estaca de Instruccion pública. Anótese. Tagle I. Mujica.—En catorce de Mayo notifiqué a don Demetrio Acosta.—Acosta.—Mujica.—En diez i seis de Mayo notifiqué a don Juan Wheelwright.—Mujica. SERENA, Mayo diez i nueve de mil ochocientos ochenta i dos. VISTOS: reproduciéndo la parte espositiva de la sentencia de primera instancia i considerando: Primero.—que es un contrato de anticrécis la convencion testimoniada a fojas ochenta i tres, celebrada en la ciudad de La Paz el veintiseis de Diciembre de mil ochocientos setenta i seis, entre el Gobierno de la República de Bolivia i don Juan Wheelwright, representante de la sociedad de Alsop y Ca. por cuya convencion se reconoció a favor de esta casa una deuda de ochocientos treinta i cinco mil bolivianos, i se le adjudicaron las estacas minas de plata pertenecientes al Estado, en el departamento litoral, para que con el cuarto por ciento de

sus productos líquidos, durante el término de veinticinco años, se pagara de dicha deuda; Segunda.—Que en ese contrato funda Wheelwright la demanda de foja una en la cual pide que los demandados le entreguen la parte del terreno de la estaca del Estado de la mina “Justicia” situada en el mineral de Caracoles, que han invadido; Tercero.—Que de la diligencia de mensura de la referida mina “Justicia” practicadas el doce Octubre de mil ochocientos setenta i ocho, que corre en compulsa a fojas seis vuelta del espediente agregado, aparece que no se midió en esa veta la estaca del Estado, por haberlo ordenado así el diputado de minerías a consecuencia de estar en cuestion el terreno que debería ocupar dicha estaca; Cuarto.—Que no se ha hecho constar que en el tiempo trascurrido desde aquel día, doce de Octubre de mil ochocientos setenta i ocho hasta la fecha en que la comarce de Caracoles fué reincorporada al territorio de la República de Chile, se diese mensura a la indicada estaca i se hubiese puesto en posesion de ella al demandante; Quinto.—Que de tales antecedentes resulta que no tuvo existencia real i positiva esa estaca, ni pleno efecto, en lo relativo a ella, el citado contrato de veintiseis de Diciembre de mil ochocientos setenta i seis, mientras el distrito de Caracoles permaneció bajo la dominacion de la Republica de Bolivia. Sexto.—Que el demandante ha venido a pedir que se dé efecto a aquel contrato, celebrado en Bolivia i con el gobierno de esa República, i apoyando su reclamacion en los privilejios que las leyes de aquel pais otorgaban a las llamadas estacas minas de instruccion, cuando el territorio en que se encuentra la mina de que se trata ha vuelto al dominio de la República de Chile; Sétimo.—Que los efectos del mencionado contrato, referentes a un inmueble situado hoi en Chile, deben arreglarse a las leyes de este pais, por cuanto la soberania es indivisible, i dejaria de serlo en el caso actual si el distrito de Caracoles, que al presente es una porcion del territorio chileno, pudiese estar rejido por leyes emanadas de otro soberano; Octavo.—Que el dar lugar a la demanda ordenando la mensura i entrega de la estaca reclamada, no importaria en realidad el simple reconocimiento de un derecho definitivamente constituido de antemano, sino un mandato para que se constituyese ahora un derecho en virtud de leyes que no deben rejir en ninguna parte de la Republica ni pueden servir de fundamento a los fallos de sus tribunales; Noveno.—Que no habiendo sido entregado al demandante, en tiempo de la dominacion boliviana en Caracoles, la estaca que reclama a virtud de su contrato de anticrécis i no perfeccio-

nándose tal contrato sino por la tradicion del inmueble, quedó sin efecto aquella convencion respecto a dicha estaca. Con arreglo a estos fundamentos i a lo dispuesto en los artículos diez i seis i dos mil cuatrocientos treinta i siete del Código Civil i en la ley primera tit°. catorce, Pa. tercera, se declara sin lugar la demanda de foja una. Revócase la sentencia apelada de catorce de Mayo del año pasado, corriente a fojas doscientas treinta vuelta. Esta resolucion ha sido acordado unánimamente. El ministro Varas consigna en voto especial las razones en que por su parte funda la revocacion. Publíquese i devuélvase. Rojas—Cavada.—Varras.—Aguirre. Proveido i firmado por la Ultima Corte de Apelaciones.—Cuellar.—En veinte de Mayo notifiqué a don Andres Segundo Contador.—Contador.—Cuellar.—En veinte de Mayo notifiqué a don Ramon Irigoyen.—Irigoyen.—Cuellar. En veinte de Mayo notifiqué a don Francisco A. Gonzalez. Gonzalez. Cuellar.—Es conforme. Antofagasta, Junio diez de mil ochocientos noventa i tres. Enmendado.—otras. vale.

[L. S.]

J. DEL T. CONCHA.

secretario.

Certifico que la firma presente es la que use don Jose del Tránsito Concha, Secretario del Juzgado de Letras de este departamento. Antofagasta, once de junio de mil ochocientos noventa i tres.

[L. S.]

P. P. ALVAREZ,

N° i C°.

José M. Walker Intendente y Comandante Jeneral de Armas de la Provincia de Antofagasta, Chile, certifica: que la firma puesta al pie del documento que precede es de don Pedro Pablo Alvarez, Notario y Conservador de esta ciudad. Antofagasta. Junio doce de mil ochocientos noventa y tres.

[L. S.]

JOSE M. WALKER,

[Stamp.]

[Estampilla.]

BRITISH VICE-CONSULATE, ANTOFAGASTA.

I the undersigned British Vice Consul at Antofagasta do hereby certify that Don José M. Walker whose signature is at the foot of the preceding document is to me personally well known as the Intendente and Comandante Jeneral de Armas of this Province in the Republic of Chile, and that as such his said signature is worthy of all faith and credit.

In testimony whereof I hereunto set my hand and Seal of office at Antofagasta aforesaid this twelfth day of June one thousand eight hundred and ninety three.

[STAMP AND SEAL.]

JOHN BARRETT,
V. Consul.

I hereby certify to the authenticity of the signature of Mr. Barrett, British Vice Consul at Antofagasta.

C. B. MANSFIELD,
British Consul General

Lima, June 22, 1893.

UNITED STATES LEGATION,
Lima, Peru, June 22, 1893.

I certify that the foregoing signature of H. B. M. Consul General at Lima, Peru, Sir Chas. B. Mansfield, K. C. M. G. is correct and worthy of full faith and credit.

[SEAL.]

RICHARD R. NEILL,
United States Secretary of Legation.

[Translation.]

Exhibit 3.

AN AUTHORIZED COPY OF THE SENTENCES INDICATED IS SOLICITED.

To the Judge of Letters:

I, John Wheelwright, in the terminated proceedings with Mr. Benjamin Fisher and others respecting delivery of the Estaca of Instruction of the mine "Justicia," and the rest pleaded, respectfully say to your Honor that I require an authorized copy of the sentences definitely pronounced in this suit in first and second instances; therefore I beg that you may be good enough to cause that the said copy be given me.

(Signed.) JOHN WHEELWRIGHT.

Antofagasta, 13th April, 1885.

As is solicited, for the purposes for which there may be occasion.

(Signed.) VALDES.

(Signed.) MUJICA.

On the 13th April I notified John Wheelwright.

(Signed.) MUJICA.

(Signed.) JOHN WHEELWRIGHT.

I certify that the sentences of first and second instances, pronounced in the suit prosecuted by Mr. John Wheelwright against the partners of the mine "Justicia," respecting delivery of the Estaca of Instruction to which the preceding petition refers, and of which copy is ordered to be given, are of the following tenor:

Sentence in first instance.

Antofagasta, 14th May, 1881.

In the suit which, respecting encroachment, John Wheelwright prosecutes against the partners of the mine "Justicia," the latter presented a report and three plans made by the engineer of the State, Mr. Enrique Cavada, from which it appears that the mines "Demasias Fisher," united to the "Demasias Caracoles" under the name "Fusion," and a part of the mine "Tarija," occupy the ground which belongs to the Estaca of Instruction of the mine "Justicia," inasmuch as being of more recent origin than the estaca, they extend towards the south and southwest of the mine "Justicia," the direction in which it was measured in 1871, as it appears from the attested copies at folios 28 to 36.

In consequence of this Mr. John Wheelwright has presented himself, according to folio 8, entering a claim against Mr. Benjamin Fisher, Mr. Maximo Julio, Mr. Belisario Salinas, Mr. José Jacinto Gaete and Mr. Camilo Ocaña, and asking that the claim at folio 10 of the annexed pamphlet (cuaderno) may be argued with them in order that it may be declared that they ought to deliver up the part of the ground which they have occupied, and pay the value of the metals which they have extracted therefrom, it being their duty to put him in possession of the Estaca of Instruction.

In the demand to which Wheelwright refers, he sets forth that, as cessionary of the rights which belonged to the Bolivian Government in the estacas termed "of Instruction," he has been in possession of and works some of them.

But there are others, such as that of the mine "Justicia," which, in spite of having been designated and measured opportunely, have not, up to the present date, been worked, on account of causes independent of his will, and although it is certain that his original title appears to have been mislaid, nevertheless the act of delivery and measurement of the estaca to the denouncer, Mr. José Manuel Quintana, exists. There it appears that the Estaca

of Instruction was measured on ground then vacant, as is evident from the accompanying copy.

When that operation took place in 1871, there were no other mines around the "Justicia" than the "Buena Esperanza," "Niza," "Cleopatra," "Saturnina," "Garmendia" and "Demetria," without prejudice to which the Estaca of Instruction was measured in conformity with the prescriptions of the law of the 23d July, 1852, and other dispositions referring to the matter. Afterwards, the mines "Perseverancia," "Demasias Fisher" and the rest now contiguous to the said estaca were asked for, the ground of which they have not been able to occupy legitimately, inasmuch as the Estacas of Instruction were not denounceable for abandonment nor for any other motive whatever.

The situation of these was known to all; the owners of the mines "Cleopatra," the houses of which were constructed on the ground belonging to the estaca, were under the necessity of asking permission from the then representative of the estacas, in order to retain the houses in the same situation.

With these antecedents, Wheelwright took steps in the last days of the Bolivian dominion, and obtained from the corresponding authorities the order that it should be delivered to him, which was not carried into effect, in consequence of the occupation of this territory by the arms of the Republic.

Answering the demand, the defendants propound and discuss the following questions:

I.—Origin and legality of the Estacas of Instruction.

II.—The legality being accepted, what estaca is that which corresponds to the State?

III.—Did the Bolivian Mining Code derogate the decree of the 23d July, 1852, which ordered the adjudication of the fourth estaca to public instruction?

IV.—Ought Chili, as revindicator of this territory, to respect the contract celebrated between Wheelwright and the Government of Bolivia?

V.—Was the Estaca of Instruction of the mine "Justicia," which he claims, measured?

I.—Origin and legality of the Estacas of Instruction.

The first act of the government of Bolivia relating to them, namely, the Supreme Decree of the 23rd July, 1852, according to which, seeing that, by the principles of universal jurisprudence and the existing statutes of the Republic, every description of metallic lode found in the territory of the nation belongs to the

State, and that there is not conceded to the discoverers more than three interests or estacas, the rest remaining public property, orders: "That in every mine or lode of silver, gold or other metal whatsoever, the interest or estaca following those which may correspond to the discoverer or denouncer according to the existing statutes, is applied of full right to the Treasury of Public Instruction."

This decree did nothing else than put in forcè a law which probably was believed to be in disuse. In fact, if the old Spanish ordinances which, in mining affairs ruled throughout South America, reserved the fourth estaca for the crown, it is evident that the decree of the 23rd July, 1852 had no other object than to apply to Public Instruction the same estaca which previously belonged to the former.

But the final article thereof ordered that it should be submitted to the approval of the Legislative Chambers, since a decree could not derogate laws. Did it obtain that approval? Was it even remitted to them? It does not so appear anywhere.

II.—The legality being accepted, what estaca belonged to the State?

According to the Royal order of the 8th December, 1785, which referred to previous ordinances, the estaca following those of the discoverer belonged to the crown, a disposition, which, as has been said, sanctioned explicitly the decree of the 23rd July, 1852.

The ordinances of Mexico ruling in Bolivia, in all which may not be in opposition to the mining code of this Republic, as is expressed in the additional articles thereof and various resolutions of the Supreme Court, dispose in their 1st article, 6th title, "that it being just and convenient specially to reward those who dedicate themselves to the discovery of new mineral districts, and metallic lodes which are produced in them, they could acquire, on the principal lode most to their liking, up to three sets, continuous or interrupted, and that if they should have discovered more lodes they could have a set on each."

So that if the three first sets were adjudicated to the discoverer of a virgin lode in virgin ground, and that which the said decree of the 23rd July gave to instruction was the estaca following that which corresponded by the old ordinances, it is clear that no other than the fourth can be referred to.

Thus has the Supreme Court of Sucre declared it to be, in a sentence pronounced in the suit prosecuted by Mr. José L. Munoz Chavez.

In view of this, the mineral district of Caracoles ought not to have allowed any other measurement in favor of instruction than the fourth in continuation of the "Descubridora" in the mineral of the Placilla del Norte, of the "Descubridora" in the ridge of San Juan, of the "Descubridora" in Sierra Gorda, &c., &c., on the first lode discovered in that ridge, according to the provisions of the decree of the 23rd July, 1852.

III.—Did the Bolivian mining code derogate the decree of the 23rd July?

Notwithstanding what it is said, that decree was derogated by the mining code promulgated forty-eight days afterwards, on the 10th August of the same year.

In fact, in the first of its articles it is declared that "by this code all mining law suits shall be decided, the other laws, decrees, ordinances and special regulations which may be in opposition thereto becoming of no effect."

That there exists opposition between the mining code and the decree of the 23rd July is unquestionable,

The second article directs that "the nation may concede to every Bolivian or foreigner the proprietorship of the mineral sites, provided that the formalities which are prescribed be complied with." As the code does not prescribe the reservation of any estaca for public instruction, it can have no legal existence, and the decree of the 23rd July has necessarily been derogated in conformity with the claims of the liberty of industry, and together with it, all the Spanish laws and ordinances.

Only an unjustifiable abuse has been able to maintain in Caracoles the existence of the estacas of instruction, which have not been measured in any other mineral district of Bolivia.

It is true; nevertheless, that subsequent to the mining code, decrees and circulars have been issued, referring to the estacas, but these cannot have any legal value since they relate to a derogated decree.

But even supposing that it were not, still they only refer to the fourth estaca of the discovered mines (descubridoras) composed of three sets, without there being even a word which, directly or indirectly, would infer the intention of adjudicating an estaca to the State, in continuation of another set not the discovered one (descubridora), as is that of the 1st March, 1860, that of the 29th September, 1871, and others.

IV.—Ought Chili, as revindicator, to respect the contract celebrated between Wheelwright and the Government of Bolivia?

The territory comprised between the 23d and 24th parallels of south latitude has always belonged to Chili.

By the treaty of 1866 Chili ceded it to Bolivia under fixed and determined conditions which the Government of this Republic broke. The natural consequence thereof was the rupture of the Pact in conformity with the 1489th Article of the Chilian Civil Code, and the 764th of that of Bolivia, according to which, "in bilateral contracts the resolute condition always implicitly exists in the case of one of the parties not fulfilling his engagement," a principle universally sanctioned by all legislations.

If, therefore, Bolivia transgressed, it belonged to Chili to exact the abrogation of the Pact by means of a revindication of the territory, in conformity with the 889th Article of the Civil Code, making use of its faculty of dominion against the actual possessor, according to the 895th Article of the same Code.

Such has been the theory of the Government of Chili, manifested in the representation of the Minister of Foreign Affairs respecting the motives which justify the revindication of the territory comprised between the 23d and 24th parallels of south latitude. And if the natural consequences of a revindication were not so well understood according to law unless it should be known that the justice of that action being declared the thing revindicated returns to the hands of its legitimate owner indemnified and free from all responsibility and all obligation, the official word of the Government of Chile should be sufficient therefor, which has so declared it, without protest or even insinuations from Foreign Governments which would in any way reveal that they did not participate in that same opinion.

If, according to these principles, Chili revindicates this territory free from all obligation, she ought on the same account to disown absolutely the acts and contracts which may have modified her rights. Consequently if Chili cannot nor ought not to accept the contracts of the Government of Bolivia with Wheelwright respecting the fourth estaca of every discovered mine, less ought she to recognize the rights which this person avails himself of over the mines or sets which are not so, with respect to which not even the Bolivian law created estacas of instruction.

But the contract celebrated between them labors under a special ground of nullity. As it appears from the documents annexed by the plaintiff, the contract is dated the 23d and 24th of December, 1876, notwithstanding that the press of Chili and Bolivia published the declaration which the Government of the

former Republic made, by means of its Consuls, on the 13th February, 1874, with regard to "that it did not recognize nor accept on its part the contracts, settlements, arrangements, nor any other disposition which the Government of Bolivia might celebrate or adjust, separately or with other persons or societies, inasmuch as such contracts or arrangements may impose obligations on, or affect the territory of common participation to which the existing treaty of limits refers, and inasmuch as such burdens or obligations, contracted, or which may be contracted, may prejudice or impair the rights which Chili possesses over that territory in conformity with the treaty referred to."

According to this, it is impossible to suppose good faith between Wheelwright and the Government of Bolivia.

V. Was the Estaca of Instruction of the mine "Justicia" measured?

In its primitive times the mine "Justicia" was measured, with a course which it is now needless to specify, and it seems that the estaca of instruction ought to have been measured also, as usual. But it was abandoned, first by some, and afterwards, by others, until it was denounced by Mr. José Maria Blacutt, to whom it was measured with a course absolutely distinct from the original one and contracting itself in the new measurement with sets of third parties who were previously working in tranquility without a protest of any description from the Bolivian Government, or from its representative, Wheelwright, who has only attempted to make good his rights when the mine "Justicia" acquired its riches.

And for this purpose he does not come forward with the original titles of his set, but asserts that it is sufficient to bear in mind that an estaca ought to have been measured to each mine.

In the reply, and referring to questions I and II, put by the defendants, the plaintiff maintains that the laws and other gubernative dispositions of Bolivia conceded to and authorized him to measure to Public Instruction the fourth estaca in continuation of the three which corresponded to the discoverer of a lode in virgin ground, and also the third in continuation of the two which corresponded to the discoverer of a lode in known ground and worked in other parts.

The 1st and 2d Articles of title VI of the Ordinances of Mexico applied the term discoverer to him who found a metallic lode, whether in ground absolutely new or in ground known and worked

in other parts, and conceded to the former, three, and to the latter, two allotments.

The 15th and 16th Articles of the Bolivian Mining Code contain similar dispositions, and even admitting that this may have derogated the former, the fact is that, under the rule of both, there have been two classes or categories of discoverers; he who finds a lode in virgin ground, and he who comes upon it in known ground and worked in other parts.

The *Estacas* of Public Instruction were created by the Decree of the 23d July, 1852, and, in its first article, it enacts that “in every mine or lode of silver, gold or other metal whatsoever, the interest or *estaca* following those which may correspond to the discoverer or denouncer according to the existing statutes, is applied of full right to the Treasury of Public Instruction.”

If this disposition does not distinguish between the classes of discoverers which then existed, if, according to these ordinances and according to the code, he who finds the lode in virgin ground, or in ground already worked, is a discoverer; if the article cited of the decree of the 23d July does not limit in any way the right of the State to the *Estaca* following the three which may correspond to the first, it is evident that it has conceded it equally with respect to that following the two which may correspond to the second.

But the defendants, in order to sustain that, in the case of measuring an *Estaca* to Instruction, it ought to have been the fourth in continuation of those which may correspond to the discoverer in virgin ground, rely first, upon the preamble of the preamble of the decree of the 23d July, and, secondly, on the third consideration of the same.

With respect to the first, the preamble does not belong to the decree, nor does it form part of it, since the official edition does not have it. As regards the second, it is in manifest contradiction with the legal dispositions to which it refers, which recognize as discoverers those of whom mention has already been made. Besides, it impugns the first article of the decree, which, from the terms in which it is conceived, comprises the two classes of discoverers.

Several Bolivian juriconsults were also of this opinion, and the sentence pronounced by the Court of Sucre in the suit prosecuted with Muñoz Chavez, to which the defendants refer, does not possess the scope that they attribute to it, because merely

the constitutionality or unconstitutionality of the decree 23d July was then treated of.

By circular of the 21st March, 1860, the decree of the 23d July was ordered to be made effective, and, by that of the 29th September, 1871, the Prefects were ordered to take possession of the Estacas corresponding to the State.

These two dispositions gave a bad interpretation to the decree of the 23d July, and some days thereafter the circular of the 9th October, 1871, was directed to the administrative authorities, by which it was declared that, in virtue of articles 16 and 20 of the Mining Code, three estacas belonging to the discoverer in virgin ground, the fourth belonged to the State, and the third when a lode in ground already worked was treated of, in which case only two corresponded to the discoverer.

The Minister of Finance made a similar declaration on the 22d October, 1873, on account of an inquiry from the then Contractor of the Estacas, Mr. Pedro Lopez Gama, and afterwards the same decision was made by the Prefect of Cobija on the 14th November, a decision which was approved by the Supreme Government on the 22d December of the same year.

All these resolutions, circulars and decrees completely destroy the circular of the 1st March, 1860, and the decree of the 29th September, 1871, which had interpreted erroneously that of the 23d July, 1852; and in conformity with the former, with the Mining Code and with the ordinances of Mexico, the third or fourth estacas respectively have always been measured to Public Instruction.

For taking possession, attention was paid to the acts of registry, which, according to the resolutions of the 14th November and 20th December, 1873, constituted the titles of proprietorship of the State.

All this being so, an estaca ought to have been measured to the mine Justicia, as in fact there was, taking into account that it belonged to the category of mines discovered in known ground.

III. But was the decree of the 23d July, 1852, derogated by the Mining Code?

The first additional article of the Mining Code of Bolivia derogates all preexisting laws, decrees and ordinances which might be in opposition to it. The second article of the same code concedes to every Bolivian or foreigner the proprietorship of the mineral sites, on their complying with the formalities which it prescribes in another place.

From these two dispositions the defendants deduce that, although the code did not prescribe that any estaca should be reserved for Public Instruction, there is opposition between it and the decree of the 23d July, 1852, and that it ought therefore to be considered derogated and the estacas of instruction suppressed.

The result at which the defendants arrive, is in every respect false, because the fact of the code not having reserved any estaca does not signify opposition between its prescriptions and the decree of July, 1852. In order that that opposition should have existed it would have been necessary that the code should have enacted something respecting the estacas.

But it is inofficious to argue when there are so many legislative and gubernative dispositions which clearly show that that derogation has not existed, such as the Circular of the 1st March, 1860, the Decree of the 29th September, 1871, the Circular of the 9th October, 1871, the Resolution of the 12th October, the Law of the 19th of same year, and the Law of the 15th November, 1873, by which the Executive was ordered to take possession of the Estacas Mines of Public Instruction, a law which, had the Code derogated the decree of the 23rd July, would itself have derogated the former in this part.

After the said law of 1873, new dispositions were dictated until the year 1876, in which the plaintiff celebrated with the Government of Bolivia the contract by which the estacas of the silver mines of this littoral were adjudicated to him.

There are also judicial resolutions, such as that cited by the defendants themselves, given in the suit of Muñoz Chavez, who denounced an estaca in the mineral district of Aullagas, founded on the assumption that the decree of the 23rd July was unconstitutional, and further that it had been derogated by the Mining Code.

IV.—Ought Chili, as revindicator, to respect the contracts celebrated by the Government of Bolivia with third parties.

The defendants maintain that she ought not, founded upon, first, the rupture of the treaty of limits of the 6th August, 1874; secondly, the declarations of the Government of Chili, by means of its consuls, of the 13th February, 1874; thirdly, for having measured to Instruction other estacas than the fourth on lode discovered in virgin ground; and, fourthly, for the inconveniences and disadvantages which the existence of the estacas causes to the miners.

1. With respect to the rupture of the treaty of 1874 and the consequent revindication, the defendants neither can nor ought to apply to this the prescriptions of Chilian civil right, because they are treating of an international, not of a private question.

By the Contract, which consists of the decrees of the 23rd and 24th December, 1876, and in the deed of the same month and year, the Government of Bolivia, the then proprietor of this territory, ceded to the plaintiff, for the term of twenty-five years, and in payment of a debt of more than a million of dollars, the usufruct of all the estacas-mines of silver of the Coast Department, belonging to Public Instruction.

The Government proceeded to it perfectly authorized by laws of the country, amongst which figures that of the 19th October, 1871, which authorized the Executive to let, or work in partnership, all the estacas of the State. In conformity therewith, the decrees of the 2d November, 1871, and 7th March, 29th May and 19th September, 1872, were dictated, by which offers were invited for the working of them, and, afterwards, on the 1st April, 1873, the tenders made by Mr. Pedro Lopez Gama were accepted, and later on, in 1876, the Contract with the plaintiff was celebrated.

This Contract was confirmed by various decrees and circulars, issued both by the Government of Bolivia and by the Prefect of the Coast Department, approved by the Chamber of Deputies, and afterwards ratified, together with all the political and administrative acts of the Government of the 4th May, 1876, by the National Congress Assembly.

The legitimacy of the Contract being thus proved, it is easy to show that it ought to be respected by our authorities. By it all the estacas of the Coast Department were adjudicated to the plaintiff for the term of twenty-five years, in order that he might pay himself a heavy debt, and that usufruct undoubtedly forms part of his private property, to which International right lends complete respect, as was opportunely declared by the Government of Chili, on occupying this territory.

Besides, No. 5 of the 12th article of the Constitution of the State insures to all the inhabitants the inviolability of all their possessions, and that no one can be deprived of them except in virtue of a judicial sentence, or at least that a law may exact their use or alienation for account of the public welfare; nor should it be forgotten that, according to the principles of International right, when a people takes possession, by force of arms, of any territory

whatever, it does not acquire more rights than those which belonged to the former proprietor.

2. The second reason which the defendants give to prove that the Government of Chili ought not to respect the plaintiff's contract, consists in saying that it was executed in December, 1876, while, on the 13th February, 1874, the Government of Chili had declared by means of its Consul in Antofagasta, that it would not recognize nor accept the contracts, settlements or arrangements which Bolivia might celebrate, affecting or burthening any part of the territory of common participation to which the treaty of limits of 1866 referred.

By the treaty of the 6th August, 1866, the Government of Bolivia recognized in favor of Chili, the right to receive the half of the proceeds arising from the exploitation of the guano, and of the export duties on minerals which might be extracted from the territory comprised between the 23rd and 24th parallels of South latitude; and the Government of Bolivia, far from complying with the treaty, attempted, in the beginning of 1874, to alienate the receipts of the Custom House, which obliged Chili to make the declaration of which mention has been made.

But diplomatic negotiations were afterwards renewed between both countries, and the treaty of the 6th August, 1874, was adjusted, by which Chili ceded to Bolivia forever the exclusive enjoyment of all the export duties. Consequently the said declaration remained of no effect after this last treaty.

3. The third reason on which the defendants rely in order to ask that the contract may be ignored refers to the abuse, as they term it, of having measured to instruction, not only the fourth estaca in continuation of the three corresponding to the discoverer of a lode in virgin ground, but also the third in continuation of the two corresponding to the discoverer of a lode in ground known and worked in other parts.

The decree of the 23d July, 1852, on the one hand, and on the other the declarations of which mention has been made, destroy, from its basis, the argument of the defendants.

4. With respect to the inconveniences and disadvantages which the Estacas of Instruction cause to the miners, should these be certain they would not matter, since their existence is legal, and the contract ought to be respected.

The reasons having been separately explained, which show the falsity of each one of the grounds brought forward by the defendants for opposing the contract of the 23d and 24th December,

1876, there are still two general observations to make in relation thereto. The first is, that, if the obligations or alienations which, during the Bolivian administration, affected this territory should not be respected, a social subversion would be produced—all the sales, concessions, &c., of land or mines would to-day have to be disowned. The second is, that, if Chili, by the rupture of the treaty of limits of 1874, has recovered the Dominion of the Littoral, and has taken the place of Bolivia, it is clear that, while the Government of Chili cannot expropriate, according to the Constitution and the laws, or cannot overcome, in contradictory judgment, respecting rescission or nullity of the contract, it ought to be considered subsisting with respect of third parties, and that it is not permitted to these, who are not a party to it, to allege that it is wanting in stability and validity.

There only remains the examination of question V, put by the defendants—was the Estaca of Instruction of the mine “Justicia” measured? What is its position?

Immediately after a mine had been measured the measurement of the Estaca of Instruction was proceeded with, in continuation of those which belonged to the discoverer, and the measurement thereof was caused to be noted in the same act in which that of the principal mine was recorded, serving as the title for both.

The mine “Justicia” was discovered and measured in 1871, and, if the partners do not preserve the primitive title, it is probable that it may have gone astray, like so many documents which are missing to-day on account of the occupation. But, treating to-day, nevertheless, of antecedents which suffice to determine its situation with all exactness From the official list of Estacas of Public Instruction, which is extended in evidence, at folio 28 it appears that, in the year 1871, in which the first measurement of the mine “Justicia” was made, the fiscal estaca of same was also measured, with a southwest course, and it was in virtue thereof that, when the second measurement of the mine was effected in 1878, opposition was made to prevent the owner thereof from measuring, as he attempted, the ground situated to the south of the mine “Justicia.”

From the Act of Measurement, which is extended in the pleadings, it appears that the opposition was respected, and that the right which the denouncer of the mine “Justicia” believed he possessed was reserved to him, a right which, up to the present

date, he has not availed himself of, from which it is inferred that it is acknowledged that that ground belongs to the Government estaca.

Mr. Benjamin Fisher also opposed the measuring of the mine "Justicia" towards the south, alleging that that ground belonged to him as "Demasias," but his opposition was rejected out of respect to the representative of the plaintiff, who presented the legal title.

As it appears from the official list, the Government estaca was measured with a southwest course, but it will be proved opportunely that the inclination towards the southwest was small, and that the estaca contracted itself in the measurement with the west boundary line of the mine "Saturnina."

In the suit which the plaintiff prosecutes with the partners of the mine "Justicia" respecting encroachment, these have presented various plans made by the Engineer of the State. In that which bears the letter C there has been placed to the south of the mine "Justicia" a set to which he gives the name "Demasias Fisher," and another which he calls "Tarija," in which he has not proceeded correctly, because in his report he says that, in order to draw the "Demasias Fisher," he had only before him a simple denouncement, and that the position which he has given it is not in conformity with the indications of the denouncement.

Projecting on this plan, upon the southern head of the mine "Justicia," an estaca of thirty yards (varas) in breadth, besides the width of the lode, and of sixty in length, with a southwesterly direction, and which contracts itself with the mine "Saturnina," it results in fact that the "Demasias Fisher," almost in their entirety, and a part of the mine "Tarija," are comprised within the bounds of that estaca which is the estaca of instruction of the mine "Justicia."

Finally, the defendants have worked the front of the ground of the estaca which they unlawfully retain, extracting therefrom large quantities of metals.

By default of the defendants to duplicate, the cause was admitted to proof, and that which appears in the pleadings has been rendered.

Considering: 1. That the decree of the 23d July, 1852, in recognizing the dominion of the State over every description of metallic lode which might be found in its territory, enacted that "in every mine or lode of silver, gold or other metal whatsoever,

the interest or estaca following those which may correspond to the discoverer or denouncer, according to the existing statutes, is applied of full right to the Treasury of Public Instruction."

2. That the statutes to which the decree refers, are no others than those of Mexico, those of Peru, and the ordinances of New Spain, whose observance was prescribed by the Royal Schedule of the 8th December, 1785, which expressly ratified, in the 32d declaration, the subsistence of the estaca reserved for the King by the 18th ordinance, 1st title of those of Peru, but this having to be measured after the sets of the discoverer.

3. That the independence of Bolivia being proclaimed, there was declared subsisting, by order of the 5th August, 1829, the old ordinances and especially those of Mexico already adopted by Peru, and which continued in force until the year 1852.

4. That, according to this, the decree of the 23d July, of this year, enacted nothing new respecting the interest which in every mine belong to the State as successor of the Crown; it only determined to what branch of the service the product should be applied.

5. That, although in the pleadings there is no evidence that the said decree would be submitted immediately to the approval of the Legislative Chambers, as is ordered therein, there have been published, after it, various dispositions embodied in laws, decrees, orders and dispositions, which recognize and sanction the legal existence of the estacas destined to public instruction, and regulate their exploitation, as, amongst others are the circular of the 21st May, 1860, which ordered that the decree of the 23d July should be made effective, the decree of the 29th September and 9th October, 1871, respecting the estacas belonging to the State, the law of the 12th of the same month and year declaring the estacas of instruction to be imprescriptible, the law of the 19th October, of the said year, which empowers the executive to celebrate respecting same contracts of letting or for working them in partnership, the law of the 15th November, 1873, which directs that the Government may proceed to take possession of them, and many other dispositions which it would be tedious to enumerate.

6. That the constitutionality of the decree being established, and consequently, the legal existence of the estacas of instruction, it is incumbent to know if the decree which recognized that existence has or has not been derogated by the Mining Code of Bolivia, promulgated on the 10th August, 1852.

7. That the first article of the additional ones of the said code establishes that "all law suits about mines shall be decided by

the new code, all the other ordinances, laws, decrees and special regulations which may be opposed thereto remaining null and void."

8. That whatever may be the scope which may be given to this disposition, the derogation of the decree of the 23d July, 1852, will never be discovered in it, because the Code does not contain any disposition which may imply relation with the estacas of instruction, nor did it create a new interest in favor thereof nor suppress the existing one.

9. That, far from this, subsequent thereto, innumerable dispositions were dictated, which, as has been said in the fifth consideration, had for their object either to recognize and sanction the rights of instruction with respect to the estacas, or to regulate conveniently the exploitation thereof, it being fitting to note, in addition to those already indicated here, and, amongst others, the decrees of the 7th March, 29th May and 19th September, 1872, by which tenders were invited for the working of the estacas in conformity with the already cited laws of the 19th October, 1871, the order of the 13th February, 1874, in which notice is given to the Public Ministry to revindicate the estacas mines of the mineral district of Aullagas, the order of the 24th of the same month and year, which is given to the Attorney-General in order that he may take possession of the said estacas, the circular of the 21st April, 1874, which contains instructions for the same object and with respect to the mining districts in general, and lastly, the contract celebrated by the Government of Bolivia with the plaintiff on the 23d December, 1876.

10. That it is impossible to presume that, with reference to the decree of the 23d July, there should have been in the long space of time elapsed since 1852, so considerable a number of laws, gubernative dispositions and judicial decisions, if it had been derogated by the Mining Code.

11. That the constitutionality of the decree referred to, and its actual obligation being established in virtue of the preceding considerations, it is necessary to ascertain, in succession, the *estaca* which corresponds to instruction, which, according to the defendants, would be only the fourth in continuation of the three which were measured to the discoverer.

12. That the 15th article of the Bolivian Mining Code terms discoverer him who finds metal in any lode, vein, &c., &c., on the surface or in the depth of the ground, and the 16th article

concedes to the discoverer who may register a lode in virgin ground, three estacas on the lode discovered, and the 19th article two to the discoverer of a lode in ground known and worked in other parts.

13. That the 1st and 2d Articles of Title VI of the Ordinances of Mexico, contained precisely similar dispositions.

14. That the 1st Article of the Decree of 1852, in declaring that in every mine or lode of any metal whatsoever, the interest or estaca following those which may correspond to the discoverer or denouncer, according to the existing statutes, would be applied of full right to the Treasury of Public Instruction, has evidently referred to the Ordinances of Mexico, which, as has been stated in the third consideration, were declared subsistent in Bolivia, by order of the 5th August, 1829.

15. That the said first article, not making any distinction between the two classes of discoverers which existed at the time in which these ordinances were cited, and which the same Code recognized afterwards, and if both considered as a discoverer him who should find a lode in virgin ground or in worked ground, it is evident that the law reserved to Instruction the fourth estaca in the first case, and the third in the second.

16. That the preamble of the decree of the 23d July, 1852, which says: "The fourth estaca of every mine or lode, &c., is adjudicated to the Treasury of Public Instruction," ought not and cannot be taken into account as much for not belonging to the decree nor appearing in the official edition, as because, even if it did, it is not in consonance with the decree, and the resolute part of the latter would prevail over the former.

17. That yet the circular of the 1st March, 1860, and the decree of the 29th September, 1870, which only speak of the fourth estaca in continuation of the discovered ones, and which the defendants call to their aid, were, nevertheless, reformed, and the Government made it also extensive to the third estaca by the circular order of the 9th October, 1871, making it in conformity with the dispositions contained in the 16th and 20th articles of the Mining Code.

18. That, conforming himself thereto, the Prefect of Cobija resolved in the same sense on the 14th November, 1873, a resolution which, being revised by the Supreme Government, was approved in December of the same year.

19. That the effectiveness of the said decree of the 23d July being proved, and that there belongs to Instruction the fourth

or the third estaca respectively, in continuation of those which may be measured to the discoverer of a lode in virgin or worked ground, it is fitting now to examine the validity of the contract celebrated between the plaintiff Wheelwright and the Government of Bolivia, a contract which gives rise to three questions which the defendants propound.

(1) If that Government could celebrate the contract without infringing the treaties.

(2) If the Laws of the Country authorized it for the celebration thereof, and

(3) If Chili, as revindicator of this territory, ought or ought not to respect it.

20. With respect to the first point that although it is certain that on the 13th February, 1874, the Government of Chili, by means of Consul Reyes, declared that it did not acknowledge nor accept on its part the contracts, settlements or arrangements which the Government of Bolivia might celebrate or accord, in so far as they may impose burdens on or effect the territory of common participation; it is also true that in virtue of subsequent negotiations, the treaty of the 6th August of the same year was signed between the two Republics, by which Chili renounced in favor of Bolivia, all her rights to the territory of the said common participation.

21. That the high dominion belonging already to her over the territory, she could proceed, unencumbered, to the celebration of the contract with Wheelwright on the 23d and 24th December, 1876, in virtue of which she recognized to him, as representative of the house of Alsop & Company, the credit of eight hundred and thirty-five thousand Bolivian dollars, at the interest of five per cent. per annum, which was to be amortized, amongst other things, with forty per cent. of the product of all the estacas-mines of silver of the Coast Department, which were adjudicated to him for twenty-five years.

22. With respect to the second point, namely, if the Government could celebrate contracts; that by the law of the 19th October, 1871, the Executive was authorized to celebrate contracts of letting or of working in partnership all the estacas-mines belonging to the State in the mineral districts of the Republic, and in conformity therewith, tenders were invited for the working of the said estacas by the decrees of the 2d November, 1871, 7th March, 29th May and 19th September, 1872, the whole concluding with the celebration of the contract with Wheelwright.

23. That two years afterwards, on the 12th February, 1878 (fol. 118), the National Assembly approved the measures dictated in the Department of Finance by the Provisional Government inaugurated on the 4th May, 1876, excepting those which had been derogated or modified by express disposition thereof, amongst which the contract with Wheelwright does not appear.

24. With respect to the third question, if Chili, as revindicator of this territory, ought or ought not to respect the contract celebrated between the plaintiff and the Government of Bolivia, that its nature being borne in mind, and on account of the consequences which it involves, it ought to be decided according to the principles of international right, and on that account, the cognizance thereof corresponds to another Tribunal, in conformity with the 117th Article of the Law of the 15th October, 1875.

25. That while that does not take place or the titles of plaintiff are not opposed by whom and how it may concern, the latter has a perfect right to make it good at law, or to demand that which, through them, may be due him.

26. That such being the case, there is no need to take this question into consideration, and less to treat of deciding it, as the defendants desire, in conformity with the disposition which the Chilian Civil Code contains respecting revindication; it is impossible to apply thereto the laws of private right, which have for their object the regulating of the respective interests of private individuals between themselves in what may concern their persons, their goods and their agreements.

27. With respect to the question of fact of the present demand, namely, if an Estaca of Instruction of the mine "Justicia" was measured in the course, &c., which the plaintiff has proved, when the mine "Justicia" was measured in 1871, there was also measured, and in the same act, the corresponding Estaca of Instruction (Interrogatory, fols. 97, 101, 103, 131, 132 and 138).

28. That, in the same manner he has established, by the proof rendered, that the Estaca was measured and that it was bounded on the south of the mine "Justicia" with a slight inclination to the west, and contracting itself with the mine "Saturnina" (Interrogatory, folio 146, 2d question; and Interrogatory, folio 138).

29. That, as it appears from the evidence at folio 6, pamphlet 1, when in October, 1878, the mine "Justicia" was measured for the second time to Mr. José Maria Blacutt, who had then denounced it on account of abandonment, Mr. Benjamin Fisher

objected to the operation being performed, asserting his right to the ground of that which, in the first measurement, had belonged to the Estaca of Instruction, but his opposition was rejected in legal form for want of titles, and that of the representative of the actual plaintiff, Mr. John Wheelwright, was accepted, all which is corroborated by the said Blacutt in declaring to the tenor of the interrogatory of folio 146.

30. That likewise the plaintiff has established that the houses of the mine "Cleopatra" were constructed later than 1871, within the ground of the Estaca of Instruction, to-day of the mine "Fusion."

31. That he has also proved, not only by the declarations of the witnesses who answer the interrogatories of folios 130 and 135, but also by the questions answered by Mr. Benjamin Fisher, at folio 112, and by Mr. José 2^{do} Cortez at folio 111, that the mine "Fusion," composed of the "Demasias Fisher" and the "Demasias Caracoles," is situated on the southern head, with an inclination to the southwest, of the mine "Justicia," and, consequently, on the ground which belonged to the Estaca.

32. That, consequently, the position of the Estaca can be no other than that traced by the engineer, Mr. Makotiere, on the plans A. C. of the Government Engineer.

33. That, with the proof rendered to the tenor of the interrogatories of folios 97 and 135, and the positions of folio 112, it has been established that in the early part of the year 1879, metal of good ley was extracted both from the mine "Fusion" and the mine "Justicia," which were then in communication.

34. That, although the defendants, in the allegation of well-proved, claim to have destroyed the contrary proof with that which they say they have rendered, it does not, withal, appear in the pleadings; and, on the contrary, from the certificate of publication of evidence at folio , it appears that they have not rendered any.

According to the preceding considerations, and in conformity with the 1st and 2d Laws, 14th title, 3d paragraph, and the 1698th Article of the Civil Code, it is declared: That the demand is well founded, and, consequently, *First*.—That the defendants ought to deliver to Mr. John Wheelwright the part of ground of the Estaca of Instruction which they have invaded, together with the value of the metals which it may be proved have been extracted

from the mine "Fusion;" and, *Secondly*.—That they ought to put him in possession of the said Estaca of Public Instruction.

Let it be noted.

(Signed) TAGLE, J.
(Signed) MUJICA, V.

On the 14th May I notified Mr. Demetrio Acosta.

(Signed) ACOSTA.
(Signed) MUJICA.

On the 16th May I notified Mr. John Wheelwright.

(Signed) JOHN WHEELWRIGHT.
(Signed) MUJICA.

SENTENCE IN SECOND INSTANCE.

Serena, 19th May, 1882.

Reproducing the expository part of the sentence in first instance, and considering—

1. That the convention celebrated in the City of La Paz on the 26th December, 1876, between the Government of the Republic of Bolivia and Mr. John Wheelwright, representative of the firm of Alsop and Company, is a contract of "anticresis," by which convention there was recognized in favor of this firm a debt of eight hundred and thirty-five thousand Bolivian dollars, and there were adjudicated to him the estacas-mines of silver belonging to the State in the Coast Department, in order that the said debt should be paid with forty per cent. of their net products during the term of twenty-five years.

2. That on that contract Wheelwright founds the demand of folio 1, in which he asks that the defendants may deliver up to him the part of ground of the Government estaca of the mine "Justicia," situated in the mineral district of Caracoles, which they have invaded.

3. That from the act of measurement of the said mine "Justicia," executed on the 12th October, 1878, which is extended in attested copy at folio 6 of the added writing, it appears that the Government estaca was not measured on that lode, on account of the Deputy of Mining having so ordered it, in consequence of the ground which the said estaca should have occupied being in dispute.

4. That it has not been shown that in the time elapsed since that day, the 12th October, 1878, until the date on which the district of Caracoles was reincorporated in the territory of the Republic of Chili, the said *estaca* should have been measured and the plaintiff put in possession of it.

5. That from such antecedents it results that the said *estaca* did not have real and positive existence, nor in that which relates to it, did the said contract of the 26th December, 1876, have full effect while the district of Caracoles remained under the dominion of the Republic of Bolivia.

6. That the plaintiff has asked that effect may be given to that contract celebrated in Bolivia and with the Government of that Republic, and supporting his claim on the privileges which the laws of that country conceded to the *estacas* mines called of Instruction when the territory in which the mine treated of it situated has returned to the dominion of the Republic of Chili.

7. That the effects of the said contract, referring to an immovable property, situated to-day in Chili, ought to be arranged according to the laws of this country, inasmuch as the sovereignty is indivisible, and it would cease to be so in the present case if the district of Caracoles, which at present is a portion of Chilian territory, should be governed by laws emanated from another sovereign.

8. That the admission of the demand, by ordering the measurement and delivery of the *estaca* claimed, would not mean in reality the mere recognition of a right definitely constituted beforehand, but a mandate to the effect that a right should now be constituted in virtue of laws which ought not to rule in any part of the Republic, nor serve as a basis for the decisions of its tribunals.

9. That the *estaca* which the plaintiff claims in virtue of his contract of "*anticresis*" not having been delivered to him in the time of the Bolivian dominion in Caracoles, and such contract not being perfected except by the tradition of immovable property, that convention remained without effect with respect to the said *estaca*.

In conformity with these bases, and with that which is determined in the 16th and 2437th articles of the Civil Code, and in the 1st Law, 14th title, 3d paragraph. It is declared that the demand of folio 1 is without foundation. Let the sentence appealed from of the 14th May of the past year, extended at folio 230, be repealed.

This decision has been resolved unanimously. Minister Varas records, in a special opinion, the reasons on which, for his part, he founds the repeal.

Let it be published, and the documents returned.

| | |
|----------|----------|
| (Signed) | ROJAS, |
| (Signed) | VARAS, |
| (Signed) | CAVADA, |
| (Signed) | AJUURRE. |

Dispatched and signed by the Most Illustrious Court of Appeals.

| | |
|----------|----------|
| (Signed) | CUELLAR. |
|----------|----------|

On the 20th May I notified Mr. Andres, 2d contractor.

| | |
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| (Signed) | CUELLAR. |
|----------|----------|

On the 20th May I notified Mr. Ramon Irigoyen.

| | |
|----------|-----------|
| (Signed) | IRIGOYEN, |
| (Signed) | CUELLAR. |

On the 20th May I notified Mr. Francisco A. Gonzalez.

| | |
|----------|-----------|
| (Signed) | GONZALEZ, |
| (Signed) | CUELLAR. |

In conformity with the originals referred to which are extended in the writing to which the preceding petition refers.

Antofagasta, 20th April, 1885.

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| (Signed) | CLODOMIRA MUJICA. |
|----------|-------------------|

[Translation.]

Exhibit 4.^a

An answer is Solicited.

MOST ILLUSTRIOUS COURT:

1, Andres 2° Contador, for John Wheelwright, in the proceedings with Benigno Barrios respecting delivery of the estaca "Amonita,"

^aNOTE.—On January 13, 1894, Hon. Geo. S. Boutwell filed with the Commission an additional English text of this document. His letter of transmittal reads as follows:

"SIR: I hand you herewith a sworn and duly certified translation of the record of judicial proceedings in the courts of Chile in the case of the mine known as the "Amonita," the same to be filed as Exhibit 4 in the case of Henry Chauncey v. The Republic of Chile, No. 3.

"I had the original in the Spanish language in my office, but, unfortunately, it can not now be found.

"Very truly,

"GEO. S. BOUTWELL.

"To the Honorable GEORGE H. SHIELDS,

"Agent for the United States, &c., &c."

respectfully set forth, that I have received instructions from my constituent to ask that your Honor may cause to be given me an authorized copy of the sentence of first instance pronounced in this suit.

Therefore, I ask that your Honor may be good enough to order that the said copy be given me, which will be delivered to me with this petition, which is justice.

(Signed.) ANDRES 2° CONTADOR.

Serena, 12th April, 1885. The most illustrious Court decreed. Let answer be given.

(Signed.) CUELLAR.

On the 13th of April I notified Mr. Andres 2° Contador.

(Signed.) CUELLAR.

Serena, 14th April, 1885. As is asked.

(Signed.) CAVADA.

(Signed.) VARAS.

(Signed.) GORROÑO.

(Signed.) GAETE.

Decreed and signed by the most illustrious Court.

(Signed.) CUELLAR.

On the 14th April, 1885, I notified Mr. Andres 2° Contador.

(Signed.) CUELLAR.

I certify that the sentence of which a copy is ordered to be given by the preceding decree, is of the following tenor:

Antofagasta, 2d May, 1882.

Mr. Theodore Hohmann, for John Wheelwright, sues Mr. Benigno Barrios in order that it may be declared that the mine "Amonita" belongs to the Bolivian State, whose rights his constituent represents, condemning him to the restitution thereof, together with the products received during the time of his possession.

Founding the claim of folio 29, and in the name of Mr. John Wheelwright, he says: That, in conformity with the clauses of the respective contract, he demanded the delivery and possession of various of the mining sets called Fiscal, enumerating amongst them the one corresponding to the lode "Blanco Torre," and that the Deputy of Mines being located on the ground which should be measured in order to deliver to him the possession of the estaca referred to, Mr. Benigno Barrios opposed himself to the said

proceeding by which is asked the delivery of the Government estaca which he unlawfully retains with the name of "Amonita," and the adjudication of which he obtained surreptitiously owing to his having denounced it under the false conception of its being private property.

Mr. Emilio Garcia Ramirez, for Mr. Benigno Barrios, answering at folio 155 the demand of folio 29, asks that his constituent may be absolved therefrom; and, founding his rights, sustains. First, that the mine "Amonita" has never been an estaca of instruction; secondly, that his constituent obtained it on account of abandonment, on the 13th August, 1875, a fact which is sufficient to show that before him another, not the Bolivian Government, had worked it; thirdly, that on the hypothesis that the mine "Amonita" should have been an estaca of Instruction, the Government of Bolivia has lost the dominion which it had over the territory in which it is situated, and conjointly the right to the estacas called "of Instruction;" and fourthly, that the contract celebrated by John Wheelwright was null; first, because the Government of Bolivia required an authorization from Congress which it did not have, and, secondly, because these contracts were not reduced to public deeds.

In the reply, the plaintiff, impugning the arguments of his opponent, says: That according to the documents extended in copy at folios 61 and 62, it appears that, on the 4th July, 1870, Mr. Francis B. Latrille asked for, with the name of "Amontia," an estaca on the run of the lode "Blanco Torre," to the south south-east of the discovered mine, (descubridora) and on the 19th of the same month there was adjudicated to him the estaca in continuation of that corresponding to public instruction, a reservation which the sub prefect made because the decree of the 23d July, 1852, applied of full right to the Treasury of the said department, the interest following those which corresponded to the discoverer, and that five years afterwards the defendant denounced, on account of abandonment the mine "Amonita," showing by the titles extended at folios 3 to 13, that the estaca, 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 denunciation on account of abandonment, because, by the supreme resolution of the 12th October, 1871, under the rule of which the contract, of which the accompanying deed gives evidence, was celebrated, it is declared that the estacas of Public Instruction can-

not be prescribed or denounced on account of abandonment. Passing, in continuation, to refute the third ground of the answer, he sets forth; that the question between Chili and Bolivia being an international one, its consequences ought to be judged according to the right of nations; that there having been adjudicated to him by the contract of December, 1876, the usufruct of the estacas of Public Instruction of the Littoral, for the term of twenty-five years, and in payment of more than eight hundred thousand dollars, the rights which he acquired by it, form an integrant part of his private property; that if there is any point on which the authorities and the practice of nations be in accord, it is in recognizing that whenever any power takes possession by force of arms, of any portion of the territory of another, the private possessions which may exist or may have their origin in it, are sacred and inviolable; that admitting that only real rights are those which ought to be respected, his is found in this category, for by the said contract the usufruct of the estacas of Instruction, which is a real right, was given him, and that even in the supposition that there may not be usufruct, there would always be his real right; first, because the Tribunals of Bolivia admitted him to take steps respecting the estacas against every class of persons; secondly, because the Minister of Finance charged the subordinate authorities, more than once, that they should facilitate the taking possession of the estacas; thirdly, on account of the faculty which was conceded to him in the note copied at folio 120, of prosecuting claims; and fourthly, on account of the different faculties which are conceded to him in various clauses of the said contract.

Lastly, asserting the validity of the contract of December, 1876, the plaintiff says: That the 5th article of the law of the 19th October, 1871, authorized the Executive to let, or work in partnership, the estacas of Instruction, and the contract is comprised in that authorization, and that it was reduced to a public deed, at the proper time, and even approved explicitly by the Bolivian Congress.

The defendant, in his turn, does not accept as valid the foregoing observations, and, in his reply, strengthening his reasons with respect to the mine "Amonita," never having been an estaca of Instruction, with respect to the validity of his denouncement on account of abandonment, to the prescription which he alleges, and to the nullity of the contract of December, 1876, he adds, relative to the second point of the reply: That Chili has not conquered

any part of foreign territory, but that, Bolivia having failed to fulfil the condition prescribed by the treaty of 1874, she did that which everyone does, when he cedes a thing conditionally, and the condition is not kept, revindicates the thing which has not yet ceased to belong to him; that Mr. John Wheelwright does not have, and does not even allege, a right of proprietorship, in the estacas, termed "of Instruction," which, as possessions of Bolivia, passed to the Dominion of Chili "*ipso facto*" by the war; that the contract of December, 1876, is not one of usufruct, but of "anticresis," and that the same faculties which the Bolivian authorities gave Wheelwright, show that his right was not real, and on this account it was that in the demand he asked that it should be declared that the mine "Amonita" belonged to the Treasury of Public Instruction of the Government of Bolivia.

The cause was admitted to proof, and that which appears in the pleadings has been rendered.

Considering; 1. That the territory comprised between the 23d and 24th parallels of south latitude, being occupied on the plea of revindication, by the Chilian arms, and the rupture of the treaty of the 6th August, 1874, being approved by the law of the country of the 3d April, 1879, Chili recovered the dominion over the National possessions which Bolivia had acquired in virtue of that treaty.

2. That Mr. John Wheelwright has fully recognized and established, by the declarations of the witnesses, who reply to the interrogatory of folio 218, that the mine "Amonita," denounced on account of abandonment, by Mr. Benigno Barrios, and actually occupied by him, was the estaca of Instruction of the mine "Blanco Torre."

3. That, amongst the National possessions of Bolivia, recovered by Chili, the estacas of Instruction, established by the Supreme Decree of the 23d July, 1852, were numbered.

4. That the Convention celebrated on the 24th December, 1876, between the Bolivian Government and Mr. John Wheelwright, partner and representative of the mercantile house of Alsop and Company, according to the terms of the public deed, which is extended at folio 180, was a contract of "anticresis," in which the Government of Bolivia conceded to Mr. John Wheelwright the estacas of Instruction of the mines of what was then called the Littoral of the North, in order that, for the term of twenty-five years, he might pay himself with their products, the sum of eight

hundred and thirty-five thousand Bolivian dollars, and the interest thereof, which the said Government acknowledged to owe him (Article 2435 of the Civil Code).

5. That this same classification has been made in the pleading of folio 136, and accepted by the Most Illustrious Court of Serena, confirming the said pleading at folio 151.

6. That the “anticresis” does not, by itself alone, give to the creditor any real right over the immovable estate subject to it, not even after the delivery which perfects the contract, according to to Article 2437 of the Civil Code.

7. That Mr. John Wheelwright, not having a real right over the estacas of Instruction ceded by the said contract, nor that which the defendant possesses with the name of “Amonita” having ever been delivered to him, he cannot shelter himself, even under the doctrine of those authors of the Theoretical Right of Nations who, recognizing the positive principle of real right which authorizes the conqueror in a war to appropriate all the possessions which form part of the public dominion of the hostile State, nevertheless counsel the Nations who conquer a territory to respect the real rights constituted in fiscal possessions of the Nation whose the conquered territory is; nor less to make good his “anticretic” and imperfect title against a private person, the possessor of a mine, which, with all the others of the Littoral of the North, came to be National possessions of the Republic of Chili, by the revindication and effective occupation of the said Littoral, and to be governed by our Mining Code.

8. That if the demand of folio 29 should be admitted, and, logically, all those which claim the return to the Bolivian Government of the estacas of Instruction of the mines situated between the 23d and 24th parallels of South latitude, the evident inconsequence would result that all the tribunals of Chili would restore to the Republic of Bolivia most important parts of the territories revindicated and occupied by the arms of our Republic, and:

9. Finally, that these premises being established, and it being necessary to decide in conformity with them, there is no occasion to ascertain or decide if the contract was legal or not, in virtue of which the declaration has been asked in the demand of folio 29, that the mine “Amonita” belongs to the Bolivian State, nor to pronounce respecting the validity of the abandonment of the said mine, and the prescription, of which the defendant has availed himself, in support of his right to the said mine.

In virtue of these considerations, and of the said dispositions of Article 591 of the Civil Code, and law 32, title 16, page 3, the demand of folio 29 is declared to be without foundation.

Let it be noted.

(Signed) FERENZALIDA.

(Signed) MUJICA.

It is correct.

Serena, 15th April, 1885.

(Signed) MANUEL CUELLAR,
Secretary.

I, David Sim, of Antofagasta, in the Republic of Chili, gentleman, make oath and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.
3. That I have carefully examined and compared the paper writings in the English language hereunto annexed, consisting of forty pages, headed "An Authorized Copy of the Sentences Indicated is Solicited," and ten pages, headed "An Answer is Solicited," with the corresponding paper writings in the Spanish language, which have been produced to me in Antofagasta, aforesaid, by Mr. John Wheelwright for the purpose of making the said comparisons.
4. That the said paper writings hereunto annexed, and so aforesaid headed, "An Authorized Copy of the Sentences Indicated is Solicited," and "An Answer is Solicited," are respectively correct and faithful translations into the English language of the said documents, of which they respectively purport to be translations.

DAVID SIMS.

Sworn at Antofagasta, in the Republic of Chili, this twenty-ninth day of April, one thousand eight hundred and eighty-five.

Before me,

[SEAL.]

JOHN BARNETT,
British Vice-Consul.

I, John Barnett, Esquire, British Vice Consul at Antofagasta, do hereby certify that Mr. David Sim is well known to me, and that he is well acquainted with the English and Spanish languages, and is a fit and competent person to make the translations referred to in the above or before written affidavit.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Antofagasta, this twenty-ninth day of April, one thousand eight hundred and eighty-five.

No. 472.]
[Stamp.]

JOHN BARNETT,
British Vice-Consul.

Ramon Rivera Jofré, Gobernador Civil i Politico i Comandante Jeneral de Armas del territorio de Antofagasta, certifica: que la firma puesta al pié del documento que antecede es la misma que usa en todos sus actos publicos i privados, el Vice-Consul de S. M. B. en este puerto, Mr. John Barnett.

Antofagasta Mayo once de mil ochocientos ochenta i cinco.

[SEAL.]

R. RIVERA JOFRÉ.

Iquique, 16th May, 1885.

I, the undersigned United States Consul for Iquique and the dependencies thereof, do hereby certify, that the foregoing signature is that of Ramon Rivera Jofré, the Civil and Military and Political Governor of Antofagasta, within my consular jurisdiction.

[SEAL.]

J. W. MERRIMAN.

[Stamp.]

Exhibit 5.

Señor Ministro de Justicia.

Cárlos C. Greene a U. S. respetuosamente espongo: Que Don Juan Wheelwright, adjudicatario por Alsop i Cia., en liquidacion, de las Estacas de Instruccion Publica del Litoral de Bolivia, á virtud de un contrato celebrado con este Gobierno, presentó a ese Ministerio en 1882, una solicitud sobre reconocimiento de los derechos que le corresponden. Necesitando el Sr. Wheelwright copia de todos los antecederntes de la materia. A. V. S. suplico se sirva mandar se me dé dicha copia.

Es Gracia.

CARLOS C. GREENE.

Santiago, Junio 18 de 1889.

N. 61 Dése la cópia que se solicita.

Anótese.

Por el Ministro.

[L. S.]

AMUNÁTEGUI.

Legalizado en el Ministerio de Relaciones Exteriores de Chile, la firma Aminátegui, Ex-Sub-Serto. de Justicia.

Santiago, 10 de Julio de 1893.

El Subsecretario.

[L. S.]

A BASCUÑÁN M.

I, Owen McGarr, Secretary of the United States Legation at Santiago, Chili, do hereby certify that the signature A. Bascuñán on the foregoing page is the true and genuine signature of Aurelio Bascuñán, the Sub-Secretary of Foreign Relations of the Republic of Chili.

Witness my hand and seal of the Legation at Santiago, Chili, this the 11th day of July, A. D. 1893.

[SEAL.]

OWEN MCGARR,

Secretary of Legation.

Certifico que la copia que se solicita dice literalmente como sigue:—"Hai un sello. Valparaiso, setiembre 11 de 1882.—Señor Ministro,—Juan Stewart Jackson apoderado de Juan Wheelwright, socio i liquidador de la casa de Alsop i Cia., tiene el honor de esponer V. S.; que fallos recientes de los Tribunales de Chile, adversos a los intereses de Juan Wheelwright i no en conformidad con los principios de derecho internacional me obligan a poner en conocimiento de V. S., los antecedentes de los derechos de Juan Wheelwright contra las Estacas de Minas, denominadas Estacas de Instruccion del Gobierno de Bolivia. Sin entrar, por ahora, a dar cuenta del oríjen de la deuda del Gobierno de Bolivia; V. S. verá por el documento No. 1 (que en copia acompaño), que dicho Gobierno reconoció deber a la casa de Alsop i Cia. de Valparaiso, de cual es Juan Wheelwright socio i representante, (segun el art. 1) la cantidad de (835,000) ochocientos treinta i cinco mil Bolivianos, con el interés anual del (5%) cinco por ciento, desde la fecha del contrato de 26 de Diciembre de 1876, amortizable; primero, con el exceso de los derechos de la Aduana de Arica sobre los (405,000) cuatrocientos i cinco mil Bolivianos que pagaba el Perú; ya sea por nuevo tratado ó estableciendo una aduana nacional (Art. 2), i a mas se adjudicaba a la misma amortizacion todas las Estacas Minas de plata del Estado en el departamento litoral, debiendo verificarse ella con (40%) cuarenta por ciento de la utilidad líquida, ménos en la Estaca Flor del Desierto (Art. 3). Por el Art. 4 se adjudicaba la Estaca Flor i otra que podia elejir el interesado para el pago de los intereses devengados (160,700) ciento sesenta mil setecientos Boli-

vianos hasta el 26 de Diciembre de 1876, aplicando (50%) cincuenta por ciento del producto neto en la una i (40%) cuarenta por ciento en la otra. Por un contrato subsidiario (que acompaño en copia bajo el No. 2) se reglamentaba la concesion del usufructo de las Estacas; i por dicho contrato tenia Juan Wheelwright tres años para los estudios (Art. 1) i veinticinco años para el usufructo (Art. 6). Sometidos estos contratos a la Asamblea Nacional Constituyente del año de 1878 se aprobó (segun el documento No. 3 que en copia acompaño) en la forma siguiente:—Art. 2—“Las medidas dictadas en el ramo de Hacienda quedan aprobadas, fuera de las que han sido derogadas o modificadas por espresa disposicion de la presente Asamblea.”—Este decreto tiene fecha 12 de Febrero de 1878 i aprueba todos los actos del Gobierno Provisorio i principalmente la memoria del Ministro de Hacienda, en que da cuenta de estos contratos.—Con fecha 27 de Diciembre de 1876, es decir, el dia despues de firmados los contratos, Juan Wheelwright publicaba en la ciudad de La Paz, i despues en Caracoles, el aviso que en copia acompaño bajo el No. 4.—Con fecha 5 de Enero de 1877, se dió un decreto Gubernativo (copia No. 5) avisando a Juan Wheelwright, que se habia dado órdenes al Prefecto del departamento de Cobija, para prestar su proteccion i se repitio con otro oficio (No. 5 A) con fecha 24 de Mayo de 1877. La copia del acto de la sesion del Congreso en 23 de Noviembre de 1877 (copia adjunta, No. 6) menciona la aprobacion de la Memoria del Ministro de Hacienda. Un oficio del 28 de Marzo de 1878 (copia No. 7) vuelve a pedir del Prefecto la cooperacion que demandaba Juan Wheelwright para la pronta i pacífica posesion de las Estacas Fiscales; este oficio fué dictado a consecuencia de haber tomado indebidamente posesion varios vecinos de Caracoles. Con fecha 25 de Julio, 1878, (documento No. 8) hubo otro decreto Gubernativo.—Con fecha 9 de Agosto de 1878 (documento No. 9) se espidió otro decreto en Antofagasta, reglamentando el modo de hacer mensuras en notificacion de Juan Wheelwright, i con fecha 19 de Agosto de 1878, (No. 10) se decretó que se debia notificar al apoderado de Juan Wheelwright en Caracoles.—Con fecha 21 de Agosto de 1878, (No. 11) decretó el Ministro de Hacienda que Juan Wheelwright debía gozar de todos los privilejios del Estado en este asunto.—El 30 de Octubre de 1878, por decreto del Ministro de Hacienda (No. 12), se hace responsable a los funcionarios por el non cumplimiento del decreto del 21 de Agosto de 1878.—Con fecha 12 de Diciembre de 1878 (No. 13), decretó de nuevo el Gobierno, que respetase los derechos de Juan Wheelwright

i con fecha 5 de Febrero de 1879 (No. 14) el Gobierno, a consecuencia de repetidos reclamos del Señor Wheelwright, volvió a encargar otra vez el cumplimiento del contrato. Los documentos que he presentado prueban el derecho perfecto que tiene Juan Wheelwright, en el usufructo de las Estacas Minas, denominadas, Estacas de Instruccion de Bolivia, creadas por decreto de 23 de Julio de 1852, con todas las franquicias i derechos que existieron al tiempo de celebrar los contratos de 26 de Diciembre de 1876. La cesion del Gobierno de Bolivia, en pago de una deuda lejítima, confirmada por el Congreso Constituyente de Mayo de 1878, cuando el territorio estaba bajo el dominio del Gobierno de Bolivia, no puede ser sinó válida.—La ocupacion de parte de Chile i la reivindicacion de una parte del territorio comprendido en el Contrato, no puede de ningun modo afectar los intereses de personas privadas i extranjeras, sin faltar a las leyes internacionales i el espíritu de equidad que hasta ahora ha sido la norma del Gobierno de Chile, i de la que ha dado pruebas en muchos otros casos semejantes; i que no tienen, por cierto tantas razones en su favor como la cesion de las Estacas a Juan Wheelwright.—Se pretende que habiendo el Gobierno de Chile reivindicado el territorio disputado ántes, i ocupado el territorio enemigo, que lo que antes pertenecia a la nacion Boliviana ya pertenece a Chile i los contratos antes celebrados son nulos; en este concepto desde el principio de la guerra se rejistró denuncia de las Estacas Minas de Instruccion i ahora se trata de hacer valer dichos denuncios, i hacer nuevos.—Pero si esta pretension es válida, tambien el dominio de otras minas, adquirido en el tiempo de la ocupacion Boliviana i en conformidad con las leyes vijentes, es tambien nulo, i todas las minas susceptibles de denuncia; pero esto seria contrario al derecho internacional; la posesion de las minas en jeneral i la de las Estacas ha sido adquirido por leyes de Bolivia anteriores a la ocupacion i el derecho de terceros no puede ser perjudicada por el cambio de dominio. En el estado de guerra que actualmente existe entre Chile i Bolivia se comprende que miéntras hai la ocupacion armada o miéntras que no existe un nuevo tratado de limites entre las dos naciones que determine el territorio de cada uno, puede Chile sostituirse en todos los derechos de Aduana, tomando posesion de terrenos del Gobierno de Bolivia i cobrando los derechos i las contribuciones que ántes existían. Pero sin faltar a los derechos internacionales no puede quitar de los vecinos extranjeros, ajenos a la guerra, los derechos legítimamente adquiridos en tiempo de paz o confiscar sus propiedades i mucho ménos en el caso presente, cuando la ocupacion por parte de Chile

de la Aduana de Arica quita de hecho una parte de lo adjudicado para el pago de lo adeudado por Bolivia i que asciende a más de (1,000,000) un millon de pesos, i por otra parte la ocupacion misma ha causado graves perjuicios i pérdidas a Juan Wheelwright como despues se demostrará. Como se desprende de los documentos presentados en copia; firmado el contrato con el Gobierno de Bolivia, desde luego tuvo que luchar Juan Wheelwright con mil dificultades. En primer lugar, personas estrañas se habian apoderado de las Estacas, quitando los linderos; en segundo lugar otras trabajando minas adjacentes, valiéndose del abandono de años anteriores por parte del Gobierno, se habian internado en las Estacas, robando sus riquezas; en tercer lugar, las autoridades del litoral no prestaron el apoyo requerido, algunos por ser interesados en el despojo.—In consecuencia, era necesario pedir en muchos casos o la remensura o la reposicion de los linderos quitados, conforme a los documentos orijinales; se siguió un sin número de pleitos contra los delincuentes por internacion u ocupacion indebida. En los dos años ántes de la ocupacion por parte de Chile poco se avanzaba muchos de los documentos orijinales se perdieron en Cobija por la entrada del mar en el año de 1878, despues a consecuencia de la guerra se llevaron los registros a Bolivia. Las Estacas Minas llamadas de Instruccion fueron creadas por Decreto del Gobierno de Bolivia el 23 de Julio de 1852. Dichas estacas se midieron inmediatamente despues de medir cada mina descubridora sobre veta nueva, i en cada titulo de la mina descubridora consta la Estaca Mina de Instruccion; luego existen Estacas de Instruccion para todas las minas descubridoras como consta por los archivos del Gobierno de Bolivia, los mapas contemporáneos i los oficios de las autoridades; existieron de hecho las Estacas de Instruccion en número mui considerable al tiempo de la ocupacion de parte de Chile, i aunque los hechos enumerados obligaron a Juan Wheelwright a pedir la remensura o reposicion de los linderos, todas las Estacas existieron antes i eran de hecho entregadas por el Gobierno de Bolivia a Juan Wheelwright para trabajarlas en conformidad con los contratos de 26 de Diciembre de 1876. Los Tribunales no han tomado en cuenta estas circunstancias i han fallado en contra Juan Wheelwright, considerando el pedimento de remensura, confesion de parte, que todavía no estaba él en posesion cuando Chile ha ocupado el territorio, sin embargo que se ha presentado el testimonio de testigos oculares, oficios de las autoridades Bolivianas, mapas, etc.; pero U. S. comprenderá que no es justo ni conforme a derecho desconocer la existencia de las Estacas anteriormente

medidas i cedidas en usufructo a Juan Wheelwright por veinticinco años; solamente porque el documento orijinal en que consta la mensura no se puede presentar por motivo de la guerra i que por ahora solamente existe en copia en los manos de los contrarios, cuando no hai dificultad de probar la existencia por otras pruebas convincentes.—Por otra parte entre las franquicias inherentes al contrato el derecho de amparo existe por ser propiedad del Estado i este derecho no se puede quitar o el contrato en sí sería ilusorio.—Las personas quienes han tomado posesion de las Estacas indebidamente, sacando injentes sumas han levantado una nube de protestas contra la existencia de las Estacas como si el contratista Juan Wheelwright hubiese despojado a ellos de terreno suyo, cuando ha sido exactamente el contrario.—Las Estacas de Instruccion midiendo solamente (60) sesenta varas de largo, por (30) treinta de ancho, no pueden ser trabajadas sino en casos mui excepcionales como minas, por su poca estension; por consiguiente, como el mismo contrato con el Gobierno de Bolivia especifica; el contratista puede contratar con otros i asi ha ofrecido en términos favorables, hacer contratos con los vecinos o con personas independientes, ha trabajado muchas por si solo, gastando inmensas sumas sin recompensa adecuada, al o que hai que agregar el costo de innumerables pleitos etc.—¿En qué se daña a la industria o a los derechos privados? Sinembargo denuncian las Estacas que no han querido trabajar lejítimamente por arreglos con Juan Wheelwright, alegando que son terrenos baldios sin título, aun denunciando las Estacas que Juan Wheelwright ha trabajado por sí o por contrato desde el principio del contrato; entre ellas, la Estaca Flor del Desierto cedida por el Gobierno de Bolivia especialmente para el pago de los intereses de la deuda de Alsop i Cia., trabajada constantemente desde el año de 1876 por contrato con la Comp^a Esplotadora de Caracoles.—Aún concediendo la validez del contrato de Juan Wheelwright con el Gobierno de Bolivia, tratan algunos de hacer ilusorio dicho contrato, tratando de aplicar las leyes mineras de Chile a este caso; pero si el contrato es válido como he probado debe tener todas las franquicias que tenía legalmente al tiempo de la sesion, sino sería el contrato oneroso i no llenaría el objeto que era el pago de la deuda a Alsop i Cia.; entre dichas franquicias es el amparo legal por ser propiedad del Estado, sin esto perderia el contrato todo su valor desde que quedaría Juan Wheelwright obligado para conservar el derecho de usufructo, a trabajar cada una de las Estacas minas que los vecinos no quisieran contratar, desde luego gastando una suma enorme a pura pérdida i que de ningun modo se podría recuperar

por ser la pertenencia tan pequeña. En segundo lugar, si se aplica el Código de Minería Chileno ninguna de las Estacas tiene valor, de consiguiente el contrato quedaría anulado de hecho, porque según la ley Chilena no se puede salir de las cuadradas de la mina, persiguiendo la veta; ahora todas las vetas en Caracoles tienen un fuerte recuento, de modo que en una Estaca de treinta varas de ancho no hai campo para trabajar.—Sería justo aplicar la ley Chilena a minas medidas durante el dominio de Bolivia. Todas las pertenencias tienen una estension menor por la ley minera de Bolivia, por esta razon es, que se puede seguir la veta fuera de las Cuadradas; ya no se puede remediar este mal por tener las Estacas como otras minas sus vecinas. El Supremo Gobierno de Chile sin faltar a los principios de equidad puede obviar esta dificultad dictando una ley que concilie todos los intereses decretando que “a las minas mensuradas ántes de la ocupacion se aplicará la ley de Minería de Bolivia, con la escepcion de las pertenencias no amparadas por la ley o por derechos legales, como las Estacas de Instruccion i las nuevas mensuras se haran conforme a la ley Chilena, sin perjuicios de terceros con derechos según la ley Boliviana.”—Falta considerar la conveniencia del Gobierno de Chile respecto a las Estacas de Instruccion. El reconocimiento del contrato entre Juan Wheelwright i el Gobierno de Bolivia no perjudica a ningun tercero. Las Estacas que pueden tener valor se trabajáran o por él o por los vecinos por contrato con él.—La Industria en jeneral no será perjudicada; al Estado no puede importar quienes trabajan las Estacas.—Si por tratado o derecho de conquista adquiere el territorio en que existen las Estacas se sustituye en los derechos que ántes tenía Bolivia, de modo que una vez pagada la deuda de Alsop i Cia., gozará de una entrada por ser socio en una Compañía en que Juan Wheelwright es socio jector.—Finalmente, hai del parte del Gobierno de Chile un deber moral para reconocer el contrato entre Juan Wheelwright como socio de Alsop i Cia., i el Gobierno de Bolivia.—El oríjen de la deuda del Gobierno de Bolivia es como sigue:—Pedro Lopez Gama habilitado por Alsop i Cia., adelantó al Gobierno de Bolivia, sumas fuertes desde el año de 1860, contra contratos para la esportacion del Guano del litoral de Bolivia, estos contratos comprendieron el Guano de Mejillones. Por tratado entre Chile i Bolivia se hizo un arreglo entre los dos Gobiernos sin tomar en cuenta los derechos de Pedro Lopez Gama i Alsop i Cia. Chile ha recibido fuertes sumas del producto de dicho guano, aunque era hipotecado a Pedro Lopez Gama quien cedió despues todos sus derechos a Alsop i Cia. en pago de las sumas adelantadas por ellos.—Alsop i Cia. en esa

época no quizo hacer valer sus derechos esperando arreglo directamente con Bolivia, lo que consiguió despues de muchos años; sin embargo, esta circunstancia se debe tomar por V. S. en consideracion cuando se trata de la cuestion principal.—El infrascrito cree por ahora innecesario apoyar su solicitud con muchos otros argumentos que robustecen los derechos del Señor Juan Wheelwright i solamente acompaña el poder que acredita su personería, otorgado ante el escribano señor Julio Escala, en fecha 25 de Octubre de 1878 i un certificado legalizado del aviso publicado en La Paz (documento No. 4) suplicando a V. S. se sirva dictar las medidas conducentes a poner al Señor Juan Wheelwright en posesion de lo que ha sido legitimamente adquirido, por ser de justicia etc.—(Firmado)—Juan Stewart Jackson.

República de Chile—Ministerio de Justicia, Culto e Instruccion Pública—Santiago, Octubre 18 de 1882.—No. 611. . Vista la precedente solicitud i teniendo presente 1°:—Que ella se dirige en parte a reclamar de providencias judiciales que han desconocido el derecho de don Juan Wheelwright a poseer i usufructuar ciertas estacas de minas que, segun se espone, le habian sido cedidas temporalmente por el Gobierno de Bolivia; i por otra a reivindicar el derecho de usufructo que sobre diversas estacas habia sido concedido al mismo Wheelwright i por el precitado Gobierno de Bolivia; 2°—Que el primero de los objetos a que esa solicitud se dirige, entraña la tendencia de una reclamacion diplomática, que, aunque no netamente formulada, se insinúa a lo ménos; i que reclamaciones de esta especie no recaen bajo la accion del Ministerio de Justicia; 3°.—Que el segundo objeto de la precitada solicitud envuelve una cuestion sobre amparo i reconocimiento de derechos privados sobre bienes fiscales, la cual por su naturaleza es de la competencia esclusiva del poder judicial; i, 4°.—Que en este estado de cosas no es posible recurrir a los arbitrios que el solicitante indica, de allanar las dificultades que le embarazan en el ejercicio de sus derechos por medio de una lei o de medidas administrativas, tanto por no haber antecedentes que den a conocer de una manera remota siquiera cuál podría ser la responsabilidad del Estado por los juzgamientos que se indican como contrarios a los derechos del reclamante, como porque no es de la competencia del Gobierno, sinó de la de los tribunales de Justicia, entrar a apreciar i calificar el mérito que puedan tener los derechos privados que un particular pretende poseer contra el Estado;—Se declara sin lugar la solicitud precedente, salvo el derecho del solicitante para hacer valer el que pretende tener, ante quien i en la forma que lo estime

conveniente.—Anótese i comuníquese al ocurrente.—(Firmado) Vergara.—

Señor Don Fanor Velasco.—Estimado amigo i señor:—Con suma urjencia me piden de Valparaiso los papeles del señor Jackson que presenté al Ministerio. Mejor sería tenerlos todos, pero en ultimo caso sírvase enviarme, desde luego, los que se adjuntaron al memorial.—Saluda a Ud. atentamente su servidor i amigo.—(Firmado) Miguel Cruchaga, Santiago, Octubre 31 de 1882.

Santiago, Octubre 31 de 1882.—Con esta fecha se devolvieron al señor don Miguel Cruchaga los antecedentes incorporados a esta solicitud. (Fdo.) Ramon María Acevado, archivero”.

Está conforme con su original.

Santiago, Junio 22 de 1889.

El Sub secretario,

[L. S.]

DOMINGO AMUNÁTEGUI.

Legalizado en el Ministerio de Relaciones Exteriores de Chile, la firma Domingo Amunátegui, ex-Sub-serto. de Justicia.

Santiago, 10 de Julio de 1893.

El Sub-secretario,

[L. S.]

A BASCUÑAN M.

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I, Owen McGarr, Secretary of the United States Legation at Santiago, Chile, hereby certify that the signature A. Bascañon on the foregoing page is the true and genuine signature of Aurelio Bascañon, the Sub-Secretary of Foreign Relations of the Republic of Chile.

Witness my hand and seal of the Legation at Santiago, Chile, this 11th day of July, A. D. 1893.

[SEAL.]

OWEN MCGARR,

Secretary of Legation.

[Translation.]

Exhibit 5.

D.

Valparaiso, September 11th, 1882.

Your Excellency:

John Stewart Jackson, attorney of John Wheelwright, partner and liquidator of the house of Alsop & Company, has the honor

to represent to your Excellency that recent sentences of the Tribunals of Chili, adverse to the interests of John Wheelwright, and not in conformity with the principles of international law, oblige him to lay before your Excellency the antecedents of the rights of John Wheelwright to the mines (Estacas Minas) called "Estacas de Instruccion" of the Government of Bolivia.

Without discussing, for the present the origin of the debt of the Government of Bolivia, your Excellency will observe, by the document No. 1, which I accompany in copy, that said Government acknowledges its indebtedness to the house of Alsop & Company of Valparaiso, of which John Wheelwright is partner and representative (Art. 1), for the sum of eight hundred and thirty-five thousand Bolivianos (\$835,000), with the annual interest of five per cent. from the date of the contract, 26th December, 1876, to be paid off first by the excess of the Custom House duties of Arica (Northern Custom House), over and above the four hundred and five thousand Bolivianos (\$405,000) paid by Peru to Bolivia, either obtained by a new treaty or by establishing a National Custom House (Art. 2); and besides there were adjudicated, for the cancelment of said debt, all the mines of silver of the State (Estacas Minas), in the Coast Department, the debt to be so liquidated by the payment of forty per cent. of the nett profits, except the mine Estaca "Flor del Desierto" (Art. 3). By Art. 4 the mine Estaca "Flor del Desierto" and another mine, to be chosen by the parties interested, were ceded for the payment of account interest, one hundred and sixty thousand seven hundred Bolivianos (\$160,700), due up to the 26th December, 1876, applying fifty per cent. of the nett product of the one mine and forty per cent of the other.

By a subsidiary contract, which I accompany under No. 2, rules were laid down for the concession of usufruct of the mines, and, by said contract, John Wheelwright had given to him three years for preliminary studies (Art. 1) and twenty-five years for the usufruct (Art. 6).

These contracts were submitted to the National Assembly of Bolivia of the year 1878 (Asamblea Nacional Constituyente) and were approved, according to document No. 3 (which I accompany in copy), in the following manner:

"ART. 2.—The measures adopted in the State Department are approved of, with the exception of such as have been expressly derogated or modified by disposition of the present Assembly."

This decree is dated 12th of February, 1878, and approves of all the Acts of the provisional Government, and principally the "Memoria" of the Minister of Finance, which gives an account of these contracts.

On the 27th December, 1876, that is to say, the day after these contracts were signed, John Wheelwright published in the City of La Paz, and subsequently in Caracoles, a notice of which I accompany copy under No. 4.

On the 5th January, 1877, a Government decree was issued (copy No. 5) advising John Wheelwright that orders had been given to the Prefect of the Department of Cobija to lend his aid (proteccion), and this was repeated in another official document (No. 5A) under date 24th May, 1877.

The copy of the Act of Sittings of Congress, 23d November, 1877 (copy No. 6), mentions the approval of the "Memoria" of the Minister of Finance.

In a dispatch of 28th March, 1878 (copy No. 7), the Government again requested the co-operation of the Prefect, asked for by John Wheelwright, in order to obtain the prompt and pacific possession of the Government mines; this dispatch was given in consequence of some persons having taken possession of the mines in Caracoles unduly.

On the 25th July, 1878 (document No. 8), was issued another Government decree.

On the 9th August, 1878 (document No. 9), another decree was made, given in Antofagasta, laying down rules for the measurement of the mines, giving notice to John Wheelwright; and on the 19th August, 1878 (No. 10), a decree was given to notify the attorney of John Wheelwright in Caracoles.

On the 21st August, 1878 (No. 11), the Minister of Finance decreed that John Wheelwright had a right to all the privileges of the State in this affair.

On the 30th October, 1878, by the decree of the Minister of Finance (No. 12), the employees are held responsible for the non-fulfillment of the decree of 21st August, 1878.

On the 12th December, 1878 (No. 13), the Government again decreed that the rights of John Wheelwright were to be respected; and on the 5th February, 1879 (No. 14), the Government, in consequence of repeated claims of Mr. Wheelwright, again repeated orders to comply with the contract.

The documents which I have presented prove the perfect right which John Wheelwright has to the usufruct of the mines called "Estacas Minas de Instruccion de Bolivia," created by decree of the 23d July, 1852, with all the privileges and rights which existed at the time when the contracts of 26th December, 1876, were made.

The cession of the Government of Bolivia in payment of a legitimate debt confirmed by extraordinary Congress of March, 1878 (Congress Constituyente), when the territory was under the dominion of the Bolivian Government, cannot but be valid.

The occupation on the part of Chili, and the revindication of a part of the territory comprised in the contract, cannot in any way affect the rights and interests of private individuals and foreigners without transgressing international law and that spirit of equity which has hitherto been the guide of the Government of Chili, and of which it has given proofs in many other similar cases which have less reason in their favor than the cession of the mines to John Wheelwright.

It is pretended that the Chilean Government having revindicated the territory disputed before, and having occupied the enemy's territory, that which previously belonged to the Bolivian Nation now belongs to Chili, and that contracts previously made are null and void. Under this pretext, at the beginning of the war, denunciations of the Estacas Minas de Instruccion were registered, and now it is attempted to make said denunciations effective, and also to make new ones. But if this pretension be valid, the possession of other mines, obtained during the Bolivian domination and in conformity with the laws then existing in Bolivia, is also void, and all the mines liable to denunciation. But this would be contrary to international law. The possession of the mines in general, and that of the Estacas, was obtained under Bolivian laws previous to the occupation, and the rights of third parties cannot be prejudiced by a change of dominion.

During the war which actually exists between Chili and Bolivia, one can understand that whilst there is an armed occupation, or whilst no new treaty of limits is celebrated between the two nations, determining the territory of each, Chili may take the place of the enemy in all its rights and prerogatives, exacting Custom House dues, taking possession of the landed property of the Bolivian Government and recovering the dues and contributions previously existing. But without transgressing international law,

it cannot take away from foreigners who have had no part in the war, rights legitimately acquired in time of peace, nor can it confiscate their property, much less in the present case, when the occupation on the part of Chili of the Custom House of Arica deprives Mr. Wheelwright of a part of what was adjudicated for the payment of the debt of the Bolivian Government, and which now amounts to more than one million of dollars (\$1,000,000), and also, on the other hand, this same occupation has caused heavy prejudices and losses to Mr. John Wheelwright, as will afterwards be shown.

As will be seen by the documents presented in copy, immediately after signing the contract with the Bolivian Government, John Wheelwright had to contend with a thousand difficulties. In the first place, other persons had unlawfully taken possession of the mines, taking down the boundary marks; secondly, others who were working adjacent mines, availing themselves of the neglect in previous years on the part of the Government, had penetrated into the Government mines, robbing the riches; and, thirdly, the authorities on the coast did not give the requisite aid, some of them being interested in the spoil. It was therefore necessary, in many cases, to ask either for the remeasurement of the mines, or for the replacement of the boundary marks (which had been taken away), in conformity with the original documents; a number of lawsuits were followed up against the delinquents for unwarrantable encroachment or occupation. In the two years previous to the Chilian occupation but little was obtained, as most of the original documents were lost in the tidal wave at Cobija in the year 1877, and afterwards, owing to the war, the registers were taken to Bolivia.

The *Estacas Minas*, called "de Instruccion," were created by decree of the Bolivian Government of the 23d July, 1852. These *Estacas* were measured immediately after each mine newly discovered (*descubridora*), and on each title of such mine (*descubridora*) the measurement of the *Estaca de Instruccion* is noted. These *Estacas* therefore exist for all the mines (*descubridoras*) first measured, and are noted in the archives in Bolivia, contemporary maps and the official notes of the authorities; they existed *de facto*, and in very large number, at the time of the occupation of the Chilian Government, and although the facts enumerated obliged Mr. John Wheelwright to ask for the remeasurement and reposition of the boundaries, all the *Estacas* were previously

existing and were "*de facto*" delivered by the Bolivian Government to John Wheelwright to be worked by him, in conformity with the contracts of 26th December, 1876.

The tribunals of justice have not taken into account these circumstances, and have given sentences against Mr. Wheelwright, considering the act of asking for remeasurement, an admission on his part that he was not yet in possession when the territory was occupied by Chili, notwithstanding that he has presented the testimony of eye-witnesses, official documents of the Bolivian authorities, maps, &c. But your Excellency will comprehend that it is not just or in conformity with right to disallow the existence of the *Estacas Minas* measured and ceded on usufruct to John Wheelwright for twenty-five years, merely because the original documents on which the measurement is noted cannot be presented, on account of the war, and for the present only exist in the hands of the contrary parties, when there is no difficulty in proving their existence by other convincing proofs.

On the other hand, amongst the franchises inherent by the contract, the right of protection (*amparo*) exists, being property of the State, and this right cannot be taken away, as in such case the contract would be illusory.

The parties who have unwarrantably taken possession of the *Estacas*, taking out large sums, have raised a crowd of protests against the existence of the *Estacas*, as if John Wheelwright had deprived them of their ground, when it has been exactly the contrary.

The *Estacas de Instruccion*, measuring only sixty varas in length by thirty in breadth, they cannot be worked, except in exceptional cases, as mines, on account of their small extent, consequently, as the contract with the Bolivian Government specifies, the contractor can sub-contract with others, and he has offered to do so, on favorable terms, with the owners of the neighboring mines, and with others. He has worked many himself, spending large sums without any adequate recompense, to which has to be added the cost of innumerable lawsuits, &c.

In what has he damaged industry or private rights? Notwithstanding, people denounce the *Estacas*, which they have not desired to work legitimately, by arrangement with John Wheelwright, alleging that they are unappropriated property (*terrenos baldios*) without titles; they even denounce the *Estacas* which John Wheelwright has worked himself, or by contract, from the

commencement of his contract, amongst them the Estaca "Flor del Desierto," ceded by the Bolivian Government specially for the payment of the interest of the debt to Alsop & Company, and which has been constantly in work since the year 1876, by a contract with the Company "Esplotadora de Caracoles."

Even conceding the validity of the contract of John Wheelwright with the Bolivian Government, some parties attempt to render it illusory, endeavoring to apply the mining laws of Chili to this case; but if the contract be valid, as I have proved, it ought to carry with it all the franchises which it had legally at the time of the concession, otherwise the contract would be onerous, and would not fulfil its object, which was the payment of the debt due to Alsop & Company, and amongst said franchises is that of legal protection, it being property of the State; without this the contract would lose all its value, as John Wheelwright would be obliged, in order to preserve his right of usufruct, to work each one of the Estacas mines which the adjacent mines would not work, thus spending enormous sums with evident loss, and without hopes of regain, on account of the small extent of the mines.

Secondly, if the Chilian Mining Code be applied, none of the Estacas have any value, and therefore the contract would be annulled "*de facto*," because, according to the Chilian law, the miner cannot go out of his ground to follow the lode. Now, all the lodes in Caracoles have a strong dip, so that in a mine of only thirty varas width there is no room for working. Would it be just to apply the Chilian law to mines measured during the dominion of Bolivia? All the mining properties have less extension, according to the mining law of Bolivia, for this very reason that the lode can be followed up outside of the superficial ground measured, and this cannot now be remedied, as the Estacas, like other mines, have their neighbors. The Supreme Government of Chili can, without departing from principles of equity, obviate this difficulty by promulgating a law which will conciliate the interests of all, decreeing that to the mines measured before the occupation the mining law of Bolivia applies, with the exception of the mines not protected by law or by legal right, such as the Estacas de Instruccion, and that new measurements will be made in conformity with Chilian law, without prejudice to third parties, with rights according to the Bolivian law.

There is still to be considered the convenience of the Chilean Government with regard to the Estacas de Instruccion.

The recognition of the contract between John Wheelwright and the Bolivian Government does not prejudice any third party. The Estacas which have any value will be worked by him or by the neighbors by contract with him. The industry in general will not be prejudiced. To the State it can be of no importance who works the mines. If, by treaty or right of conquest, Chili acquires the territory where the Estacas are located, she acquires the right which Bolivia had before, so that as soon as Alsop & Company are paid, Chili will have a revenue, as being associated with John Wheelwright.

Finally, there is a moral obligation on the part of Chili to recognize the contract between John Wheelwright, as partner of Alsop & Company, and the Bolivian Government. The origin of the debt is as follows: Pedro Lopez Gama, habilitated by Alsop & Company, advanced to the Bolivian Government large sums of money, from the year 1860, on account of contracts for the exportation of guano on the coast of Bolivia; these contracts comprised the guano of Mejillones. By treaty between Chili and Bolivia an arrangement was made between the two Governments ignoring the rights of Pedro Lopez Gama and Alsop & Company. Chili has received large sums of money, product of said guano, although it was hypothecated to Pedro Lopez Gama, who ceded all his rights to Alsop & Company in payment of the money advanced by them. Alsop & Company, at that time, did not wish to make good their claim, hoping to arrange separately with Bolivia, which they did after years. Nevertheless, this circumstance ought to be taken into consideration of your Excellency when treating the principal question.

The undersigned does not think it necessary, for the present, to support his representation with many additional arguments which might be brought forward to confirm the rights of Mr. John Wheelwright, and solely begs to accompany the power of attorney which accredits him, duly executed before the notary, Julio Cesar Escala, dated 25th October, 1878, and a legalized certificate of the notice published in La Paz (document No. 4), begging your Excellency to adopt such measures as may be conducive to place Mr. John Wheelwright in possession of what he has legitimately acquired, which is justice, &c.

(Signed.)

J. STEWART JACKSON.

D2.

Documents referred to in the Representation marked D.

No. 1 is part of the preceding document marked A, being Bolivian Government Decree of 24th Dec'r, 1876.

No. 2 is part of the same document marked A, being Bolivian Government Decree of 23d Dec'r, 1876.

No. 3 is the document marked B, being report of proceedings of the Bolivian National Assembly.

DOCUMENT NO. 4.^a

Translation of notice published in the newspapers of La Paz and Caracoles:

Mining Setts of the State on the Coast.

I hereby give notice to all who have adjoining properties, or who are in any way interested in the above mentioned mines, that, in virtue of a Supreme Decree of the 23d inst., I am in possession of all the Mining Setts of Silver belonging to the State in the Coast Department, and consequently that any arrangement which such persons may desire to enter into respecting same should be made with the undersigned, with whom they can communicate by addressing him at Valparaiso, post office box No. 254.

La Paz, 27th Dec'r, 1876.

(Signed.) JOHN WHEELWRIGHT.

[Translation.]

DOCUMENT NO. 5.

Government Decree.

No. 87.]

La Paz, 5th January, 1877.

JOHN WHEELWRIGHT, Esq.,

Representative of the firm of Alsop & Company.

SIR: On this date the following communication has been addressed to the Prefect of the Department of Cobija:

“The Government, by the contracts of the 23d and 24th December last, which are registered in No. 691 of the ‘Reforma,’ has adjudicated to Mr. Wheelwright, the representative of Messrs. Alsop & Co., of Valparaiso, in liquidation, all the mining Setts, Estacas Mines of Silver belonging to the State, situated in the Coast Department.

^a For Spanish text, see Exhibit 11, p. 179, *infra*.

“In order that this adjudication may be duly carried into effect, you will please render Mr. Wheelwright all the aid dependent on your authority, and you will arrange: That the Sub Prefects and other functionaries under your jurisdiction may, within their sphere, render Mr. Wheelwright such aid that he may be put in peaceful possession of the said Mining Setts.

“Due compliance with this disposition is expected from your patriotism.

“May God be with you.

“(Signed.)

H. DAZA.

“M. I SALVATIERRA.”

I deem it right to transcribe the foregoing to you for your information and other ends.

May God be with you.

(Signed.)

MANUEL I. SALVATIERRA.

[Translation.]

DOCUMENT NO. 6.^a

Parliamentary Section.

Session of the 20th November, published in the newspaper entitled *El Tehcaca*, in the number of the 23d November, 1877.

The Minutes of Proceedings of the 17th were approved.

Mr. Jose Gutierrez took the oaths.

The Reports of the Ministers of War and Finance were read.

A law was passed granting a vote of honour and confidence to the Minister of Finance.

The session was suspended at twenty minutes past 2 o'clock, P. M., the order of the day being the Report of the Commissions.

[Translation.]

DOCUMENT NO. 5A.

Ministry of Finance and Industry.

No. 58.]

La Paz, 24th May, 1877.

To the Prefect of the Department of Cobija.

SIR: Notwithstanding that orders have been given to your Prefecture to facilitate the taking possession of the Mining Setts (Estacas Minas) of the State by Mr. John Wheelwright to whom they were adjudicated, these orders are now repeated with the same object, in order that, by all the legal and judicious measures in your power, you may overcome all difficulties and remove every obstacle, either personally or by means of the Sub-Prefects and other functionaries who are competent to intervene in the matter.

^a For Spanish text, see Exhibit 8, printed slip marked “A”, p. 170, *infra*.

The strict fulfilment of this order is expected from your zeal and patriotism.

May God be with you.

(Signed.) MANUEL I. SALVATIERRA.

The foregoing is correct.

(Signed.) MANUEL PEÑAFIEL.

[Translation.]

DOCUMENT NO. 7.^a

MINISTRY OF FINANCE AND INDUSTRY,

La Paz, 28th March, 1878.

To the Prefect of the Department of Cobija.

In order that he and the other authorities, both political and fiscal, of the Coast Department, each in the sphere of his respective attributes, and in the case in question, may render the petitioner, Mr. Wheelwright, the co-operation he asks for the prompt and peaceful possession of the Fiscal Mining Setts (Estacas Fiscales).

[SEAL.] (Signed.) SALVATIERRA.

The foregoing is correct.

(Signed.) MANUEL PEÑAFIEL,
Chief Secretary.

[Translation.]

DOCUMENT NO. 8.^b

Government Decree.

La Paz, 25th July, 1878.

Let this representation be forwarded to the Prefect of the Department of Cobija, in order that he may co-operate effectively with the fiscal and other public functionaries of Caracoles, so that, in the sphere of their attributes, they may render the most active co-operation to Mr. John Wheelwright, who represents the rights of the State, with the object of putting him in possession of the Mining Setts (Estacas Minas) of the State, in fulfilment of the agreements of the 24th December, 1876.

Let this be registered.

(Signed.) DAZA.

(Signed.) D. MEDINA.

The foregoing is correct.

(Signed.) M. PEÑAFIEL.

^a For Spanish text, see Exhibit 15, p. 194, *infra*.

^b For Spanish text, see Exhibit 24, p. 275, *infra*.

[Translation.]

DOCUMENT NO. 9.^a*Antofagasta, 9th August, 1878.**Prefecture of the Department of Cobija.*

In conformity with the reasons given by the Fiscal of the District, and the claim made by the agent of Mr. John Wheelwright being just and legal, it is ordered: That in all measurements and surveys of silver mines made in future by the Territorial Deputation, Mr. Wheelwright or his representative be notified, in protection of the rights of the State, in order that he may form an opinion and take the necessary steps for the due fulfilment of the settlement of the 24th December, 1876. Likewise, that to all titles or minutes of possession, the clause protecting the rights of the State be added.

Let this be noted and returned.

(Signed.)

S. ZAPATA.

[Translation.]

DOCUMENT NO. 10.^b

TERRITORIAL DEPUTATION OF CARACOLAS,

19th August, 1878.

In conformity with the foregoing Superior Edict, the Actuary is hereby ordered to notify Mr. Theodore Hohmann, the representative of the Contractor of the Mines of Instruction (Estacas de Instruccion) of all the operations of measurement, possession and examination which may be performed by this Deputation.

It is also ordered that in all the minutes of possession, a clause be inserted, expressing the inviolability of the fiscal property in the event of its being encroached upon by intruders.

Notify the Fiscal of the District for his information, and this having been done, return the deeds to the interested party, previously taking note of the Superior Edict and of the present Decree.

(Signed.)

GUTHRIE.

Before me,

(Signed.)

I. M. BLACUTT.

^a For Spanish text, see Exhibit 8, printed slip marked "B", p. 171, *infra*.

^b For Spanish text, see Exhibit 8, printed slip marked "C", p. 171, *infra*.

[Translation.]

DOCUMENT NO. 11.^a

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.

(Signed.)

DAZA.

(Signed.)

D. MEDINA.

[Translation.]

DOCUMENT NO. 12.

MINISTRY OF JUSTICE AND FINANCE,

La Paz, 30th October, 1878.

Represent to the Prefect of the Department of Cobija that he order the strict fulfilment of the Supreme Resolution of the 21st August last, and that, having assured himself that, as stated in this petition, the subaltern functionaries oppose its execution, let them be proceeded against by law, and let others be named to replace them, subject to the approval of the Supreme Government.

Let this be registered.

(Signed.)

DAZA.

(Signed.)

SERAPIO REYES ORTIZ.

The foregoing is correct.

[SEAL.]

(Signed.)

MANUEL PEÑAFIEL,

Chief Secretary.

^a For Spanish text; see Exhibit 13, p. 186, *infra*, also Exhibit 22, p. 240, *infra*.

[Translation.]

DOCUMENT NO. 13.^a

MINISTRY OF FINANCE AND INDUSTRY,

*La Paz, 12th December, 1878.**To the Prefect of the Department of Cobija.*

SIR: The President of the Republic has resolved: That, as soon as in the Department under your jurisdiction any discoveries of minerals have been made, and the legal Setts (estacas) have been adjudicated to the discoverers in conformity with the Mining Code, the respective authorities in the matter, as well as the Fiscal authorities, shall, in fulfilment of the Supreme Decree of the 23d July, 1852, and other dispositions relative thereto, without waiting for any petition or other representation, proceed to the measurement, placing of boundaries, and adjudication to the State of the Fiscal Mining Sett (Estaca Mina Fiscal), under their immediate responsibility, the possession taken by any interested parties whatsoever, of such Mining Setts being null and void, even when they can call to their aid the plea of good faith.

The authority charged with the measuring, placing of boundaries and adjudication to the State of the Fiscal Mining Sett, shall cause Mr. Wheelwright to be notified, in order that he, as representative of the State, may intervene in the said operations, in compliance with the Contracts of Settlement of the 23d and 24th December, 1876.

May God be with you.

(Signed.)

H. DAZA.

(Signed.)

SERAPIO REYES ORTIZ.

[Translation.]

DOCUMENT NO. 14.^b

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

^a For Spanish text, see Exhibit 8, printed slip marked "D", p. 172, *infra*.^b For Spanish text, see Exhibit 13, p. 187, *infra*, also Exhibit 22, p. 241, *infra*.

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.

(Signed.)

DAZA.

(Signed.)

SERPÍO REYES ORTIZ.

Given at the verbal request of the party interested, Mr. José Santos Monroi, as representative of Mr. Wheelwright.

(Signed.)

MELQUIADES LOAIZA,

[SEAL.]

Chief of the Section of Justice.

[Translation.]

E. ^a*Santiago, 18th October, 1882.*

The Minister of Justice has this day given the following decree:
No. 611.—In view of the preceding petition, and taking into consideration—

First.—That it is directed in part to protest against judicial sentences which have not recognized the right of Mr. John Wheelwright to possess and enjoy the usufruct of certain Mining Setts (Estacas Minas), which, as explained, had been temporarily granted to him by the Bolivian Government, and partly to revindicate the right of usufruct on sundry Mining Setts which had been granted to the same Mr. Wheelwright, and by the aforementioned Bolivian government.

Secondly.—That the first of the objects to which this petition is directed points towards a diplomatic claim, which, although not absolutely formulated, is at least insinuated, and that claims of this class do not fall under the action of the Ministry of Justice.

Thirdly.—That the second object of the aforementioned petition involves a question respecting support (*amparo*) and recognition of private rights on fiscal property, which, from its nature, belongs exclusively to the judicial power; and

Fourthly.—That, in this state of things, it is not possible to have recourse to the expedient which the petitioner indicates for removing the difficulties which embarrass him in the exercise of his rights, by means of a law, or by administrative measures, as much for the want of antecedents which would indicate in a manner, however remote, what would be the responsibility of the State for the judgments referred to as contrary to the rights of the claimant, as because it does not belong to the jurisdiction of the Government, but to that of the Tribunals of Justice, to appreciate or qualify the merit of the private rights which a private individual pretends to have against the State.

The foregoing petition is declared inadmissible, with the exception of the right of the petitioner to make good his claim before whom and in the form which he may deem convenient.

Take note, and communicate to the claimant.

The foregoing I transcribe to you for your information, having the honor to remain, &c.,

(Signed.) F. DELARIO.

(a) For Spanish text, see Exhibit 6, p. 152, *infra*.

[Translation.]

H. ^a

Your Excellency:

John Stewart Jackson, as representative of John Wheelwright, in his quality of contractor of the mines in the Bolivian Coast Provinces occupied by Chili, which are known under the name of Public Instruction Appropriation Mines, according to the contract of which I accompany a legalized copy, hereby respectfully sets forth:

That Mr. Wheelwright, in his natural interest to secure, on the part of the Supreme Government of Chili, the recognition of his contract, has presented on several occasions petitions tending to secure that object, but up to the present time no decision has been taken to put an end to the uncertainty in which he finds himself in respect of the rights conceded to him by his contract since the occupation of the Bolivian Coast Provinces by the Chilian army.

Not long since, when an endeavour was being made to arrange the International question between Chili and Bolivia, I presented in his name a new petition, in order that in the treaty of peace, or truce, or cessation of hostilities which might be arranged, his contract should be provided for, and that in the treaty which should be celebrated a clause should be inserted by which the Supreme Government of Chili, as was just, should compromise itself to recognize and respect the contract referred to on the same conditions as Bolivia had granted it.

After some time the indefinite truce was settled, of which the treaty published subsequently gives an authorized account, and in which, notwithstanding my efforts, no mention whatever is made of Mr. Wheelwright's contract, nor has any reason been assigned to me since then of that omission.

As Mr. Wheelwright is desirous of having the question defined as soon as possible, I again recur to your Excellency, in his name, in view of the justice of the reasons stated in my last petition as well as of the treaty of peace with Peru, and also of the truce signed with Bolivia, to claim the rights conferred in the subjoined contract, and especially in the second clause of the Supreme Decree of December 24th, 1876, incorporated in the said contract, so that in justice to the case you will grant the recognition asked for, since that recognition did not take place in the treaty of truce with Bolivia, which is justice, &c.

(Signed.)

J. STEWART JACKSON.

^a For Spanish text, see p. 221, *infra*.

I, David Sim of Antofagasta, in the Republic of Chili, gentleman, make oath and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.
3. That I have carefully examined and compared the several paper writings in the English language hereunto annexed and marked respectively with the letters A, B, C^a, D, D², E, F^b, G^b and H, and consisting of forty-seven pages, with the corresponding paper writings in the Spanish language which have been produced to me in Antofagasta aforesaid by Mr. John Wheelwright, for the purpose of my making the said comparisons.
4. That the said paper writings hereunto annexed and so as aforesaid marked A, B, C, D, D², E, F, G and H are respectively correct and faithful translations into the English language of the said documents of which they respectively purport to be translations.

DAVID SIM.

Exhibit 6.

No. 1572.]

Santiago, octubre 18 de 1882.

El Señor Ministro de Justicia, ha decretado hoi lo que sigue: “No. 611.—Vista la precedente solicitud, i teniendo presente 1^o que ella se dirige en parte a reclamar de providencias judiciales que han desconocido el derecho de don Juan Wheelwright a poseer i usufructuar ciertas estacas de minas que, segun se espone, le habian sido cedidas temporalmente por el gobierno de Bolivia; i por otra a reivindicar el derecho de usufructo que sobre diversas estacas habia sido concedido al mismo Wheelwright i por el precitado gobierno de Bolivia; 2^o, que el primero de los objetos a que esa solicitud se dirige, entraña la tendencia de una reclamacion diplomática, que, aunque no netamente formulada, se insinúa a lo menos; i que reclamaciones de esta especie no recaen bajo la accion del Ministerio de Justicia; 3^o que el segundo objeto de la precitada solicitud envuelve una cuestion sobre amparo i reconocimiento de derechos privados sobre bienes fiscales, la cual por su naturaleza es de la competencia exclusiva del poder judicial; i 4^o.—que en este estado de cosas no es posible recurrir a los arbitrios que el solicitante indica, de allanar las dificultades que le embarazan en el

^aSee p. 77.

^bSee Exhibit 17, pp. 196-198.

ejercicio de sus derechos por medio de una lei o de medidas administrativas, tanto por no haber antecedentes que den a conocer de una manera remota siquiera cual podria ser la responsabilidad del Estado por los juzgamientos que se indican como contrarios a los derechos del reclamante, como porque no es de la competencia del Gobierno, sino de la de los tribunales de justicia, entrar a apreciar i calificar el mérito que puedan tener los derechos privados que un particular pretende poseer contra el Estado;

Se declara sin lugar la solicitud precedente, salvo el derecho del solicitante para hacer valer el que pretende tener, ante quien i en la forma que lo estime conveniente.

Anótese i comuníquese al ocurrente.”

Lo trascibo a Ud. para su conocimiento, teniendo el honor de ser de Ud.

A. S. S.

F. VELASCO.

Legalizado en el Ministerio de Relaciones Exteriores de Chile, la firma “F. Velasco,” Ex-Subsecretario de Justicia e Instruccion.

Santiago 24 de junio de 1893.

El Subsecretario,

[L. s.]

A. BASCUÑAN, M.

[Éstampilla.]

LEGATION OF THE UNITED STATES,

Santiago, Chile, 24th June, 1893.

I hereby certify that the foregoing signature of A. Bascuñan M. is that of the Under Secretary of the Chilean Foreign Office.

[SEAL.]

FENTON R. MCCREERY,

U. S. Secretary of Legation.

[Translation.]

Exhibit 6.

E.

Santiago, 18th October, 1882.

The Minister of Justice has this day given the following decree:
No. 611.—In view of the preceding petition, and taking into consideration—

First.—That it is directed in part to protest against judicial sentences which have not recognized the right of Mr. John Wheelwright to possess and enjoy the usufruct of certain Mining Setts

(Estacas Minas), which, as explained, had been temporarily granted to him by the Bolivian Government, and partly to revindicate the right of usufruct on sundry Mining Setts which had been granted to the same Mr. Wheelwright, and by the aforementioned Bolivian Government.

Secondly.—That the first of the objects to which this petition is directed points toward a diplomatic claim, which, although not absolutely formulated, is at least insinuated, and that claims of this class do not fall under the action of the Ministry of Justice.

Thirdly.—That the second object of the aforementioned petition involves a question respecting support (*amparo*) and recognition of private rights on fiscal property, which, from its nature, belongs exclusively to the judicial power; and

Fourthly.—That, in this state of things, it is not possible to have recourse to the expedient which the petitioner indicates for removing the difficulties which embarrass him in the exercise of his rights, by means of a law, or by administrative measures, as much for the want of antecedents which would indicate in a manner, however remote, what would be the responsibility of the State for the judgments referred to as contrary to the rights of the claimant, as because it does not belong to the jurisdiction of the Government, but to that of the Tribunals of Justice, to appreciate or qualify the merit of the private rights which a private individual pretends to have against the State.

The foregoing petition is declared inadmissible, with the exception of the right of the petitioner to make good his claim before whom and in the form which he may deem convenient.

Take note, and communicate to the claimant.

The foregoing I transcribe to you for your information, having the honor to remain, &c.,

(Signed.) F. DELARIO.

Unnumbered exhibits filed October 12, 1893.

Affidavit of Arthur S. Doane.

I, Arthur S. Doane of the City of Boston, State of Massachusetts, aged fifty two years, do on oath depose and say, that I am well acquainted with John Wheelwright, a citizen of the United States of America, now residing at Antofogasta in the Republic of Chile, and who, as liquidating partner and duly authorized attorney of the parties interested in the estate of the late firm of Alsop and

Company of Valparaiso, is, as I am informed and believe, prosecuting a claim against the government of Chile for losses sustained by the said firm arising from transactions connected with contracts made with one Gama, but in relation to which this deponent has no definite knowledge or information: that this deponent became acquainted with the said John Wheelwright in the fall of 1863 and was on intimate and friendly terms with him until the year 1865 when he went to South America: that the said John Wheelwright during the period of the war of the rebellion viz: from 1861 to 1865, was to the best of this deponent's information and belief a resident of the City of New York and a firm and consistent supporter of the Government of the United States at all times and under all circumstances, and has never ceased to be a citizen of the United States.

ARTHUR S. DOANE.

COMMONWEALTH OF MASSACHUSETTS, }
County of Suffolk. } s.s.

Boston, Feby. 11, 1886,

then personally appeared Arthur S. Doane, known to me, and made oath to the truth of the foregoing statement, by him signed in my presence.

Before me

[NOTARIAL SEAL.]

S. S. BARTLETT,
Notary Public.

Affidavit of Robert Codman and Sarah Wheelwright.

IN THE MATTER OF JOHN WHEELWRIGHT AGAINST THE GOVERNMENT OF CHILE.

We Robert Codman and Sarah Wheelwright both of Boston in the Commonwealth of Massachusetts do hereby testify and declare, according to our best knowledge information and belief as follows.

First. That the said John Wheelwright is and always has been a citizen of the United States of America.

Second. That about the year 1849 he went to South America, in the course of his business & remained there till about the year 1858, after which he passed some time in England, whence he returned to New York & resided at the Everett House in that city and in other places there or in New England in the years 1860 and 1861. In 1862 or a subsequent year he went again to South

America and has since remained there principally in Bolivia and Chili, occupied during most of the time in prosecuting claims against the Bolivian government.

Third. The said John Wheelwright was born at Newburport Massachusetts in September 1827.

Fourth. We believe the beneficiaries referred to are the members of the late firm of Alsop & Company consisting of himself Mr G. Hobson now or late of New York City and perhaps other citizens of said city.

Fifth. We are confident that the said John Wheelwright has not become a citizen of any country other than the United States of America

Sixth. We have no means of knowing how much he contributed during the war for the suppression of the rebellion, but we know him to have been a patriotic citizen and in full sympathy with the government at that time.

In testimony of the foregoing we have hereto subscribed our names at Boston this day of January in the year of our Lord one thousand eight hundred and eighty six.

ROBERT CODMAN.

SARAH WHEELWRIGHT.

COMMONWEALTH OF MASSACHUSETTS. }
Suffolk. } ss.

Boston, January 22, 1886.

Then personally appeared Robert Codman and Sarah Wheelwright, to me personally known, and severally made oath that the statements made by them as affiants in the foregoing writing are true to the best of their knowledge and belief, before me

JAMES G. FREEMAN,

Notary Public.

[NOTARIAL SEAL.]

Affidavit of Isaac Watts Wheelwright.

I, Isaac Watts Wheelwright of the town of South Byfield, State of Massachusetts, aged eighty four years, do on oath depose and say, that I am the uncle of John Wheelwright, a citizen of the United States of America, now residing at Antofogasta in the Republic of Chile, and who as liquidating partner and duly authorized attorney of the parties interested in the estate of the late firm of Alsop and Company of Valparaiso, is, as I am informed and

believe, prosecuting a claim against the government of Chile for losses sustained by the said firm arising from transactions connected with contracts made with one Gama, but in relation to which this deponent has no definite knowledge or information: That the said John Wheelwright was born in the town of Newburyport, Massachusetts on or about the 2d day of September 1827: that sometime subsequent to the year 1840, he went to Chile in the employ of his uncle William Wheelwright who was engaged in constructing the important lines of railway and the establishment of the Pacific Steam Navigation Company, which have contributed so much to the prosperity of that country: that subsequently the said John Wheelwright was connected with the house of Alsop & Co. aforesaid, the most important American commercial establishment in South America, and became a partner therein, but at what date this deponent is not advised: that to the best of this deponent's information and belief, the said John Wheelwright has never ceased to be a citizen of the United States, and that during the war of the rebellion, when he was for a good portion of the time in his native country, the said John Wheelwright was a firm and consistent supporter of the government of the United States.

ISAAC WATTS WHEELWRIGHT

Witness:

JOSEPH WHEELWRIGHT.

COMMONWEALTH OF MASSACHUSETTS, }
Essex. } s. s.

Byfield, Mass. February 11th, 1886.

Personally appeared the above named Isaac Watts Wheelwright to me well known, and made oath that the above statement is true in every particular.

HORACE F. LONGFELLOW

Justice of the Peace

Affidavit of William M. Prichard, March 1, 1886.

I, William M. Prichard, of the city of New York, in the State of New York, Counsellor at Law for more than forty years past, do on oath, depose and say that I am one of the Executors of the last Will of the late George James Foster who was a partner in the firm of Alsop & Co. of Valparaiso and Lima in South America for the period of about twenty five years continuously until the said firm retired from business and went into liquidation about the year 1875, that the estate of said Foster now holds the interest

which belonged to him as having been such partner in the said firm in a certain claim which is now in course of prosecution against the government of Chile by Mr. John Wheelwright now residing at Autofogasta in the Republic of Chili as liquidating partner and duly authorized attorney of all parties interested in the assets of said late firm of Alsop & Co. that said claim is for losses sustained by said firm arising from transactions connected with contracts made between said firm and one Pedro Lopez Gama the particulars of which are not fully known to this deponent—

And deponent further says that the said George James Foster was, as deponent is informed and believes, a native of the Town of Newburyport in the State of Massachusetts and was born in or about the year 1809—that he resided for many years in Boston, Massachusetts and was a graduate of Harvard College in the class of 1829—that he went out to the West coast of South America in the capacity of Supercargo and Commercial Agent—and after several years spent in that capacity he joined the said firm of Alsop & Co. and remained a partner in that firm until it went out of business as above stated, previous to which and in or about the year 1863 said Foster had returned to this country and taken up his residence in the City of New York—that he continued to reside in said City until his death in September 1876,—that said Foster always remained a citizen of the United States—

And deponent further says that the only other Executor of said George J. Foster's Will is Hon. William G. Choate of the City of New York, Counsellor at Law and for several years Judge of the District Court of the United States for the Southern District of New York.

WM. M. PRICHARD.

STATE OF NEW YORK,
City and County of New York. } ss:

Be it remembered, that on this first day of March in the year one thousand, eight hundred and eighty-six before me, William M. K. Olcott, a Notary Public in and for the City & County of New York, duly commissioned and sworn, personally came William M. Prichard, to me known, and being first duly sworn, deposed and said that the foregoing affidavit by him subscribed is true.

In witness whereof I have hereunto set my hand and affixed my seal of office at New York City this 1st day of March 1886.

W. M. K. OLCOTT,
Notary Public, N. Y. Co.

[SEAL.]

CLAIM OF JOHN WHEELWRIGHT.

8TH MARCH, 1886.

MY DEAR SIR: I now have the honor to enclose the affidavit of William M. Prichard, of New York, executor of the will of George James Foster, deceased, in which the affiant declares that all the existing beneficiaries under said will are and always have been citizens of the United States.

Very truly,

GEO. S. BOUTWELL.

To FRANCIS WHARTON LL.D.

Counsel for Secretary of State,

Washington, D. C.

Affidavit of William M. Prichard, March 6, 1886.

I William M. Prichard of the City, County and State of New York, Counsellor at Law and one of the Executors under the last will and testament of George James Foster deceased, do on oath depose and say that all the beneficiaries under said will, are now and have always been citizens of the United States of America except those to whom specified pecuniary legacies were bequeathed—and that all such legacies have been long ago paid and satisfied.

WM. M. PRICHARD

STATE OF NEW YORK,

City and County of New York. } *to wit:*

Be it remembered that on this 6th day of March 1886, before me William M. K. Olcott a Notary Public in and for the City & County of New York duly commissioned and sworn, personally came William M. Prichard, to me known, who being by me first duly sworn said that the foregoing deposition by him subscribed is true.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

W. M. K. OLCOTT,

Notary Public, N. Y. Co.

[SEAL.]

Affidavit of J. W. Alsop.

I, Joseph W. Alsop of the City of Middletown, State of Connecticut, a native of the City of New York, aged forty seven years, do on oath depose and say, that I am the son of Joseph W. Alsop,

who died in the said city of New York on the 26th day of February 1878; that my said father was a partner in the house of Alsop and Company of Valparaiso, Republic of Chile, and that by the terms of his last Will and Testament which was duly probated in the Office of the Surrogate of the County of New York, I was made the sole legatee of all his interest in said firm, as is shown by the authenticated copy of said will hereto annexed: that among the assets of said firm is a claim against the government of Chile for losses sustained from transactions connected with one Gama, and that John Wheelwright, a native born citizen of the United States of America, now residing at Antofogasta, Chile, is engaged, as liquidating partner of said firm and duly authorized Attorney of all the parties interested in its estate, in the prosecution of said claim; and as this deponent is advised and believed is asking the intervention of his government in the protection of the rights and to further the adjustment of the interests which he has in charge. I further depose and say that Henry S. Prevost is the only member of the firm of Alsop & Co. named in the articles of copartnership who was born outside of the United States, and that the said Prevost, as this deponent is informed and believes was born in Lima, Peru, while his father, a citizen of the United States and formerly a partner in said firm was temporarily residing in that country, and that no member of said firm at any time ceased to be a loyal citizen of the United States

J. W. ALSOP

STATE OF CONNECTICUT, }
Middlesex County. }*ss.*

Middletown, February 22nd, A. D. 1886.

Personally appeared J. W. Alsop who signed the foregoing instrument and made oath in due form of law to the truth of the same.

Before me,

CLARENCE E. BACON
Notary Public.

STATE OF CONNECTICUT, }
County of Middlesex. }*ss.*

COUNTY CLERK'S OFFICE.

I, Charles G. R. Vinal, Clerk of said County, and Clerk of the Superior Court for said County, which is a Court of Record, and keeper of the seal thereof,

DO HEREBY CERTIFY, That Clarence E. Bacon Esquire, whose name is subscribed to the Certificate or proof of acknowledgment of

the annexed instrument and therein written, was at the time of taking such proof of acknowledgment, a Notary Public within and for said State, dwelling in said County, duly commissioned and sworn, and duly authorized to take the same.

AND FURTHER, that I am well acquainted with his handwriting; and that I verily believe the signature to the instrument hereto annexed, purporting to be his, is his genuine official signature.

I FURTHER CERTIFY, That said instrument is acknowledged and in all respects executed according to the laws of this State.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, at Middletown, this 22 day of February A. D. 1886.

CHAS. G. R. VINAL, *Clerk.*

[Sealed as stated.]

Will of Joseph W. Alsop.

Be it remembered that heretofore to wit: on the seventh day of March in the year one thousand eight hundred and seventy eight, Joseph W. Alsop and Frederick Chauncey Executors named in the last Will and Testament of Joseph W. Alsop late of the County of New York deceased. Appeared in open Court before Delane C. Calvin Surrogate of the County of New York and made application to have the said last Will and Testament which relates to both real and personal estate proved and on such application the Surrogate did ascertain by satisfactory evidence that Mary Oliver Alsop, together with said petitioner Joseph W. Alsop were the widow only heirs and next of kin of said deceased and said Mary Oliver Alsop having waived the issue and consented that the said Will be admitted to probate forthwith and service of a citation all being of full age and on that day no one appearing to oppose the probate of said Will such proceedings were thereupon had afterwards that said Surrogate took the proofs of said Will hereinafter set forth and upon this Eighth day of March in the year one thousand eight hundred and seventy eight he adjudged said Will to be a valid Will of Real and Personal estate and the proofs thereof to be sufficient which said last Will and Testament and proofs are as follows, that is to say.

In the name of God Amen!

I, Joseph W. Alsop of the City of New York Merchant being at present in the enjoyment of my usual health and of sound and disposing mind, memory and understanding, conscious of the

uncertainty of humane life and desirous of making a disposition of all such worldly estate as I may leave behind me in accordance with my wishes during life have thought proper to make execute and publish and in and by these presents I now do make, execute and publish My last Will and Testament in manner and form following—that is to say! *First.* I do hereby revoke and disallow every other and former Will, Testament and Codicil by me heretofore made, executed and published. *Second.* I direct the payment of my just debts funeral expenses and testamentary charges by my Executrix and Executor hereinafter named as soon after my decease as can conveniently be done. *Third.* I give and devise all my real estate land, and tenements situated in the City and town of Middletown and State of Connecticut, to my beloved Son Joseph W. Alsop to have and to hold the same to him his heirs and assigns forever. I also give and bequeath to my said Son all my share, property, right, interest and privileges, in the present firm of Alsop and Company of Lima and Valparaiso, South America, including all profits and Interests that shall have accrued thereon or be payable or coming to me at the time of my decease, as well from first transactions or terms of the said firm as from the present term of the said firm of Alsop and Company. *Fourth.* I give, devise and bequeath to my beloved Wife Mary Oliver Alsop, all and singular the rest residue and remainder of My property and estate both real and personal, of whatsoever name, nature and description and wheresoever situated, to have and to hold for and during the residue of her natural life, but with full and absolute power and authority to sell, assign, transfer, convey, or otherwise dispose of the same or of any part or parts thereof absolutely and in fee or any lesser estate at her own free will and pleasure without accountability as to the same or the proceeds thereof during her lifetime or of her representatives or estate after death and from and after her decease, I give, devise and bequeath all and singular My said property and estate both real and personal or so much and such parts thereof or of the proceeds thereof as she may not have sold or otherwise disposed of in her life time to my said Son Joseph W. Alsop to have and to hold the same to him and his heirs, Executors, Administrators and assigns forever.

I nominate, Constitute and appoint My said Wife Mary Oliver Alsop, Executrix, and my said son Joseph W. Alsop, Executor of this my last Will and Testament and I request and if I have the legal right so to do, direct that no bond or security of any kind

shall be required by any officer or Court having jurisdiction of the Probate of this Will or of granting Letters Testamentary thereon from either my said Executrix or Executor by reason of their or either of their non-residence within the State or jurisdiction of such officer or Court inasmuch as they are the only persons interested in my Estate.

In witness whereof I have to these Presents set my hand and seal this fifteenth day of May, in the year one thousand eight hundred and seventy three.

JOS. W. ALSOP. [L. s.]

Signed, sealed, published and declared by the said Testator Joseph W. Alsop as his last Will and Testament in our presence, who in his presence, and at his request and in presence of each other have hereto subscribed our names as witnesses the day and year last above written.

| | | |
|--------------------|-----|---------------------------|
| LEONARD A. BRADLEY | 30 | East 28th St. N. Y. City. |
| JOHN R. STRONG | 113 | “ 21th “ “ “ |
| CHARLES E. STRONG | 125 | “ 26th “ “ “ |

Codicil.

This is a codicil to the foregoing last Will and Testament of Joseph W. Alsop of the city of New York Merchant. I nominate, constitute and appoint My Nephew Frederick Chauncey of the City of New York, Merchant, and Executor of my said last Will and Testament in conjunction with Mary Oliver Alsop and Joseph W. Alsop therein, named in the same manner and with the same effect, with the same powers and privileges as if he had been named as such in my said Will.

I Witness whereof I have to these presents set my hand and seal this twenty sixth day of January in the year of our Lord one thousand eight hundred and seventy seven.

JOS. W. ALSOP. [L. s.]

Signed, sealed, published and declared by the said Testator, Joseph W. Alsop, as and for a Codicil to his last Will and Testament, in our presence, who in his presence, at his request, and in the presence of each other have hereto subscribed our names as witnesses, the day and year last above written.

| | | |
|-------------------|----|------------------------------|
| G. F. BUTTERWORTH | 38 | East 35th St. New York City. |
| CHAS. M. BENIAN | 68 | Wall St. “ “ “ |
| CHAS. E. STRONG | 16 | Fifth Avenue “ “ “ |

STATE OF CONNECTICUT, }
District of Middletown }^{ss.}

Probate Court, Feby 12, 1886.

I, Eldon B Birdsey Judge of the Probate Court for the District of Middletown hereby certify that I have compared the above and foregoing copy of the last will and Testament of Jos W. Alsop late of New York City dec^d with the original records of the same in this office and that the same is a correct transcript of said will and codicil thereto as appears of record in Vol 29 Pages 355, 6, 7, & 8 and further that it appears by sd record that said will and codicil was exhibited in said Probate Court proved and approved April 3d 1878

In witness whereof I have hereto set my hand and the seal of sd Probate Court this 12th day of February 1886

[SEAL.]

ELDON B. BIRDSEY, *Judge.*

Certificate of M. Friedsam.

UNITED STATES INTERNAL REVENUE,
COLLECTORS OFFICE, 3D DISTRICT,
New York, Feby 12th, 1886.

M. I. McMAHON, Esq
U. S. Marshal,

SIR: In reply to your letter of the 11st inst. I would inform you that the records of this office show, that payment of income tax, was made by John Wheelwright as follows, viz

For year 1863 tax on \$10,884.⁰⁰ income, residence 5th Ave. Hotel.

For year 1864, tax on 2 carriages, house residence.

For year 1865, tax on \$3,654.⁰⁰ income, residence No. 229 5th Ave.

Respt Yours,

M. FRIEDSAM, *Collector.*

Exhibit 7.

[Taken from "Diario Oficial," Santiago, December 9, 1884, No. 2292.]

Ministerio de Relaciones Exteriores i Colonizacion. .

Domingo Santa Maria.

Presidente de la República de Chile.

Por cuanto entre la República de Chile i la República de Bolivia se concluyeron i firmaron; en Valparaiso, en los dias 4 i 8 de abril del presente año, por medio de Plenipotenciarios debidamente autorizados al efecto, el Tratado de Tregua i el Protocolo Adicional que, copiados a la letra, dicen como sigue:

PACTO DE TREGUA ENTRE CHILE I BOLIVIA.^a

Mientras llega la oportunidad de celebrar un Tratado definitivo de paz entre las Repúblicas de Chile i Bolivia, ámbos Países, debidamente representados, el primero por el señor Ministro de Relaciones Exteriores don Aniceto Vergara Albano, i el segundo por los señores don Belisario Salinas i don Belisario Boeto, han convenido en ajustar un Pacto de Tregua en conformidad a la bases siguientes:

Primera. Las Repúblicas de Chile i Bolivia celebran una tregua indefinida; i, en consecuencia, declaran terminado el estado de guerra, al cual no podrá volverse sin que una de las Partes Contratantes notifique a la otra, con anticipacion de un año a lo ménos, su voluntad de renovar las hostilidades. La notificacion, en este caso, se hará directamente o por el conducto del representante diplomático de una nacion amiga.

Segunda. La República de Chile, durante la vijencia de esta tregua, continuará gobernando con sujecion al rejimen político i administrativo que establece la lei chilena, los territorios comprendidos desde el paralelo 23 hasta la desembocadura del rio Loa en el Pacífico, teniendo dichos territorios por límite oriental una línea recta que parta de Sapalegui; desde la interseccion con el deslinde que los separa de la República Argentina, hasta el volcan Licancaur. Desde este punto seguirá una recta a la cumbre del volcan apagado Cabana. De aquí continuará otra recta hasta el ojo de agua que se halla mas al sur en el lago Ascotan; i de aquí otra recta que, cruzando a lo largo dicho lago, termine en el volcan Ollagua. Desde este punto otra recta al volcan Túa, continuando despues la divisoria existente entre el departamento de Tarapacá i Bolivia.

En caso de suscitarse dificultades, ámbas partes nombrarán una comision de ingenieros que fije el límite que queda trazado con sujecion a los puntos aquí determinados.

Tercera. Los bienes secuestrados en Bolivia a nacionales chilenos por decretos del Gobierno o por medidas emanadas de autoridades civiles i militares, serán devueltos inmediatamente a sus dueños o a los representantes constituidos por ellos con poderes suficientes.

Les será igualmente devuelto el producto que el Gobierno de Bolivia haya recibido de dichos bienes, i que aparezca justificado con los documentos del caso.

^aFor English translation of this exhibit, see unnumbered exhibit filed March 5, 1894, p. 324, *infra*.

Los perjuicios que por las causas espresadas o por la destruccion de sus propiedades hubieren recibido los ciudadanos chilenos, serán indemnizados en virtud de las jestioncs que los interesados entablaren ante el Gobierno de Bolivia.

Cuarta. Si no se arribase a un acuerdo entre el Gobierno de Bolivia i los interesados, respecto del monto e indemnizacion de los perjuicios i de la forma del pago, se someterán los puntos en disidencia al arbitraje de una comision compuesta de un miembro nombrado por parte de Chile, otro por la de Bolivia i de un tercero que se nombrará en Chile, de comun acuerdo, de entre los representantes neutrales acreditados en este pais. Esta designacion se hará a la posible brevedad.

Quinta. Se restablecen las relaciones comerciales entre Chile i Bolivia. En adelante los productos naturales chilenos i los elaborados con ellos se internarán en Bolivia libres de todo derecho aduanero, i los productos bolivianos de la misma clase i los elaborados del mismo modo, gozarán en Chile de igual franquicia, sea que se importen o esporten por puertos chilenos.

Las franquicias comerciales de que respectivamente hayan de gozar los productos manufacturados chilenos i bolivianos, como la enumeracion de estos mismos productos, serán materia de un protocolo especial.

La mercadería nacionalizada que se introduzca por el puerto de Arica será considerada como mercadería extranjera para los efectos de su internacion.

La mercadería extranjera que se introduzca a Bolivia por Antofagasta tendrá tránsito libre, sin perjuicio de las medidas que el Gobierno de Chile pueda tomar para evitar el contrabando.

Miéntas no haya convencion en contrario, Chile i Bolivia gozarán de las ventajas i franquicias comerciales que una u otra puedan acordar a la nacion mas favorecida.

Sesta. En el puerto de Arica se cobrará conforme al arancel chileno los derechos de internacion por las mercaderías extranjeras que se destinen al consumo de Bolivia, sin que ellas puedan ser en el interior gravadas con otro derecho. El rendimiento de esa aduana se dividirá en esta forma: Un veinticinco por ciento se aplicará al servicio aduanero i a la parte que corresponde a Chile por el despacho de mercaderías para el consumo de los territorios de Tacna i Arica, i un setenta i cinco por ciento para Bolivia. Este Setenta i cinco por ciento se dividirá por ahora de la manera siguiente: Cuarentavas partes se retendrán por la administracion chilena para el pago de las cantidades que resulte adeudarse por

Bolivia en las liquidaciones que se pratiquen, segun la cláusula tercera de este pacto, i para satisfacer la parte insoluta del empréstito boliviano levantado en Chile en 1867; i el resto se entregará al Gobierno boliviano en moneda corriente o en letras a su órden. El empréstito será considerado en su liquidacion i pago en iguales condiciones que los damnificados en la guerra.

El Gobierno boliviano, cuando lo crea conveniente, podrá tomar conocimiento de la contabilidad de la aduana de Arica por sus agentes aduaneros.

Una vez pagadas las indemnizaciones a que se refiere el artículo 3º, i habiendo cesado por este motivo la retencion de las cuarentavas partes antedichas, Bolivia podrá establecer sus aduanas interiores en la parte de su territorio que lo crea conveniente. En este caso, la mercadería extranjera tendrá tránsito libre por Arica.

Sétima. Los actos de las autoridades subalternas de uno i otro país que tiendan a alterar la situacion creada por el presente Pacto de Tregua, especialmente en lo que se refiere a los límites de los territorios que Chile continua ocupando, serán reprimidos o castigados por los Gobiernos respectivos, procediendo de oficio o a requisicion de parte.

Octava. Como el propósito de las Partes Contractantes, al celebrar este pacto de tregua, es preparar i facilitar el ajuste de una paz sólida i estable entre las dos Repúblicas, se comprometen reciprocamente a proseguir las jestioncs conducentes a este fin.

Esta Pacto será ratificado por el Gobierno de Bolivia en el término de cuarenta dias, i las ratificaciones canjeadas en Santiago en todo el mes de junio próximo.

En testimonio de lo cual el señor Ministro de Relaciones Exteriores de Chile i los señores Plenipotenciarios de Bolivia, que exhibieron sus respectivos poderes, firman por duplicado el presente Tratado de Tregua en Valparaiso, a cuatro dias del mes de abril de mil ochocientos ochenta i cuatro.—(Firmado).—A. Vergara Albano.—(Firmado).—Belisario Salinas. (Firmado).—Belisario Boeto.

PROTOCOLO ADICIONAL AL PACTO DE TREGUA ENTRE CHILE I BOLIVIA.^a

En Valparaiso, a los ocho dias del mes de abril de mil ochocientos ochenta i cuatro, reunidos en la Sala de Despacho de Relaciones Esteriores, el señor Ministro del ramo i los señores Enviados de Bolivia, espusieron éstos: que despues de haber firmado el Pacto de Tregua, hacian notar que el plazo designado para el canje de

^a For English translation, see p. 328, *infra*.

las ratificaciones era estrecho, en razon a que el Congreso de Bolivia abria sus sesiones anuales en el mes de agosto, i ántes de esa época seria mui difícil conseguir se reuniese.

Que solicitaban, por tanto, que el término para dicho canje se ampliase hasta el próximo mes de setiembre inclusive, sin perjuicio de que, si por calquiera circunstancia, funcionase ántes el Congreso boliviano, se someteria a su conocimiento el Pacto de Tregua; i que, en cuanto a la aprobacion de éste por parte del Gobierno, creian que se obtendria en el término designado; hecho lo cual juzgaban que no habria inconveniente para que dicho Pacto pudiera desde luego ejecutarse.

El señor Ministro de Relaciones Exteriores contestó: que, dadas las esplicaciones i consideraciones espuestas, deferia gustoso a la indicacion de los señores Ministros Plenipotenciarios de Bolivia.

En seguida, espuso el señor Ministro de Relaciones Exteriores que, segun las versiones diversas que se atribuian a la cláusula sesta, en la parte que se refiere a la division que por ahora se hace del setenta i cinco por ciento correspondiente a Bolivia, podia interpretársela en un sentido contrario a la voluntad de las Partes Contratantes, i que, para evitar toda dificultad en adelante, creia necesario que se declarase que del total de la entrada aduanera de Arica, correspondia veinticinco por ciento al Gobierno de Chile, cuarenta por ciento para las indemnizaciones de que habla la cláusula tercera i pago del empréstito boliviano de 1867, i treinta i cinco por ciento al Gobierno de Bolivia, resultando de este modo completa la unidad de ciento que se tomaba como punto de partida.

Los señores Ministros de Bolivia espresaron que estaban conformes con esta declaracion, pues ése era el espíritu de la cláusula sesta i lo convenido en las conferencias que precedieron al Pacto de Tregua.

Se acordó, por último, suscribir el presente Protocolo Complementario del Pacto de Tregua, firmándose al efecto dos ejemplares del mismo tenor.—(Firmado).—A. Vergara Albano—(Firmado).—Belisario Salinas.—(Firmado). Belisario Boeto.

I por cuanto el Tratado i Protocolo preinsertos han sido ratificados por mí, previa, la aprobacion del Congreso Nacional i las respectivas Ratificaciones se han canjeado en esta ciudad de Santiago el dia 29 de noviembre último entre los Plenipotenciarios de ámbos paises;

Por tanto, haciendo uso de la facultad que me otorga la parte 19 del artículo 82 de la Constitucion Política del Estado, dispongo

i mando que el Tratado i Protocolo preinsertos se cumplan i lleven a efecto en todas sus partes como lei de la República.

Dado en la Sala de mi Despacho, a dos dias del mes de diciembre del año de mil ochocientos ochenta i cuatro.

DOMINGO SANTA MARIA.

A. VERGARA ALBANO.

Exhibit 8.

UNITED STATES LEGATION,

Lima Peru, August 7, 1893.

I hereby certify that on this day personally appeared before me Henry S. Prevost Esq. a Citizen of the United States at present a resident of this City, to me personally known as one of the partners of the late firm of Messrs Alsop and Company of the City of Valparaiso in the Republic of Chile and after being duly sworn declared under oath that the printed slips hereunto annexed and marked respectively,—A. B. C. D are true and exact copies of the original documents emanating from the authorities of the Government of Bolivia to which they refer. Deponent further declared under oath—

Firstly. That the Slip marked "A" is taken from the parliamentary section of the Newspaper "El Titicaca", edited in the City of La Paz, Bolivia, corresponding to the 23d of November 1877, and that it is a true copy of the Report of Proceedings of the Session, of the Bolivian Congress of the 20th of November 1877.

Secondly. That the slips marked respectively "B" and "C" are taken from the administrative section of one of the local newspapers edited at the time, in the town of Antofogasta, then under the jurisdiction of the Republic of Bolivia, and that they are true copies of the Decree emanating from the Prefect of Cobija Bolivia dated Antofagasta, August 9th 1879, and of the official order consequent on the aforesaid Decree, emanating from the Mining Senatorial Deputation of Caracoles, Bolivia, dated August 19, (1878) 1878, and

Thirdly. That the Slip marked "D" is taken from the official Section of one of the Local Newspapers, likewise published at the time in the town of Antofagasta, then under the jurisdiction of the Republic of Bolivia and that it is a true copy of a note No. 214 addressed by the Minister of Finance and Industry of the said

Républic under date La Paz, December 12, 1878, to the Prefect of the Department of Cobija, Bolivia.

HENRY S. PREVOST.

In Witness whereof, and of the foregoing document having been signed in my presence by Henry S. Prevost, Esq I hereunto set my hand and affix the Seal of this Legation the day and year first above written.

[SEAL.]

RICHARD R. NEILL.
U. S. Secretary of Legation.

[Printed slip marked "A"].^a

El Titicaca, Viernes, 23 De Noviembre de 1877.

Seccion Parlamentaria. Sesion del dia 20.

Se aprobó la acta del dia 17.

Prestó juramento el señor Jose R. Gutierrez.

Lectura de las memorias de los señores Ministros de la Guerra y Hacienda.

La Cámara dió una ley por la que concede un voto de honor y confianza al Sr. Ministro de Hacienda.

Se suspendió la sesion a horas 2 y 20 p. m., dándose por órden del dia informe de las comisiones.

[Translation of printed slip marked "A".]

El Titicaca, Friday, November 23d 1877.

Parliamentary Section. Session of the 20th day.

Minutes of 17th day were approved.

The oath was taken by Senor Jose R. Gutierrez.

The reports of the Ministers of War and Finance read.

The Chamber gave a law passing a vote of honor and confidence to the Minister of Finance.

Session suspended at 2 hours & 20 minutes P. M., the order of the day being announced as report of committees.

^a For another translation of this report, see Exhibit 5, Document No. 6, p. 144, *supra*.

[Printed slip marked "B."^a]*Seccion administrativa. Estacas de instruccion.*

Con motivo de una solicitud del representante del señor Wheelwright se ha decretado lo siguiente:

PREFECTURA DEL DEPARTAMENTO DE COBIJA,
Antofagasta, Agosto 9 de 1878.

En conformidad con las razones espuestas por el señor Fiscal del Distrito, i siendo justa i legal la reclamacion hecha por el apoderado de don Juan Wheelwright, se ordena; que en todas las mensuras i reconocimientos de minas de plata que se efectuen en lo sucesivo por la Diputacion Territorial, se haga nótificar en defensa de los derechos del Fisco, a D. Juan Wheelwright o su representante, para que púeda presenciar, i hacer las jestioncs respectivas para el fiel cumplimiento de la transaccion de 24 de diciembre de 1876. Asi mismo se agregara a los titulos o actas de posesion la clausula de salvedad de los derechos del Fisco. Tomese razon i devuelvase.

S. ZAPATA.

DIPUTACION TERRITORIAL DE CARACOLCS,
Agosto 19 de 1878.

En conformidad del auto Superior que antecede, se ordena al actuario para que notifique al señor Theodo Hohmann, representante del contratista de las estacas de instruccion en todas las operaciones de mensura, posesion i reconocimiento que se practicaren por esta Diputacion. Asi mismo se ordena que en todas las actas de posesion se espresc por una clausula, la salvedad del terreno fiscal, caso de ser invadido por intereses particulares. Notifiquese al señor Fiscal de Partido para su conocimiento, i fecho, se devuelvan estos obrados al interesado debiendo previamente tomarse razon del auto superior i del presente decreto.

GUTHRIE.

Ante mi.

J. M. BLACUTT.

[Printed slip marked "C."^b]

^a For English translation, see Exhibit 5, Document No. 9, p. 146, *supra*.

^b For English translation, see Exhibit 5, Document No. 10, p. 146, *supra*.

[Printed slip marked "D." a]

Oficial.

MINISTERIO DE HACIENDA E INDUSTRIA,

Núm. 214.]

La Paz, diciembre 12 de 1878.

Al señor Prefecto del departamento de Cobija.

SEÑOR: El Señor Presidente de la República, se ha servido disponer: que inmediatamente de q'en el departamento de su mando se verifiquen algunos descubrimientos de minerales i se hayan adjudicado las estacas de ley a los descubridores en conformidad al código de minería, las autoridades respectivas en su caso; así como los fiscales en cumplimiento del Supremo decreto de 23 de julio de 1852, i demas disposiciones que le son relativas, sin esperar solicitud, ni representacion, alguna, procederan a la mensura, amojonamiento i adjudicacion al Estado de la estaca—mina fiscal bajo su inmediata responsabilidad, siendo las posesiones que cualquiera interesados aprehendieron de tales estaca—minas fiscales, aun cuando les asistiese la buena fé que suele invocarse.

La autoridad encargada de hacer la mensura, amojonamiento i adjudicacion al Estado de la Estaca-mina fiscal, mandará notificar al Empresario señor Wheelwright, para que como representante del fisco intervenga en dichas operaciones en cumplimiento de los contratos de transaccion de 23 i 24 de diciembre de 1876.

Dios guarde Ud.

DAZA.

SERAPIO REYES ORTIZ.

Es conforme—el Secretario.

RODOLFO S. GALVARRO.

Exhibit 9.

Diario Oficial 4th April 1879, authorizing the declaration of war against the Government of Bolivia, dated April 3rd 1879.

Diario Oficial de la República de Chile

PODER EJECUTIVO,

MINISTERIO DE R. ESTERIORES,

Santiago, abril 4 de 1879.

Por cuanto el Congreso Nacional ha dado su aprobacion al siguiente

Proyecto de lei:

ARTÍCULO PRIMERO. Se aprueba la resolucion del Tratado de seis de agosto de mil ochocientos setenta i cuatro que existia con la

^a For English translation, see Exhibit 5, Document No. 13, p. 148, *supra*.

República de Bolivia i la consiguiente ocupacion del territorio que media entre los paralelos 23 i 24 de latitud sur.

ART. 2°. El Congreso presta su aprobacion para que el Presidente de la República declare la guerra al Gobierno de Bolivia.

ART. 3°. Se autoriza al Presidente de la República:

1°. Para que aumente las fuerzas de mar i tierra hasta lo que creyere necesario;

2°. Para que de fondos nacionales invierta por ahora hasta cuatro millones de pesos en los objetos a que se refiere esta lei, debiendo rendir la correspondiente cuenta de inversion en las epocas en que deben rendirse las cuentas jenerales de la Administracion pública;

3°. Para contrar empréstitos hasta la suma de cinco millones de pesos, pudiendo hipotecar a su pago las propiedades del Estado, o estipular otras garantías;

4°. Para que declare puertos mayores los que juzgue necesarios i provea a su servicio miéntras no se dicte una lei que lo organice.

ART. 4°. Se aprueba la inversion de caudales públicos decretada por el Presidente de la República para el aumento, la provision i movilizacion de la Escuadra Nacional i de las fuerzas del Ejército de tierra i para el servicio administrativo i aduanero de Antofagasta i Mejillones, debiendo rendir la correspondiente cuenta.

ART. 5°. Las autorizaciones contenidas en el artículo 3° durarán por el término de un año.

I por cuanto, oido el Consejo de Estado, he tenido a bien aprobarlo i sancionarlo; por tanto, promúlguese i llévese a efecto como lei de la República.

ANIBAL PINTO.—BELISARIO PRATS.—ALEJANDRO FIERRO.—
JOAQUIN BLEST GANA.—JULIO ZEGERS.—CORNELIO SAAVEDRA.

[Translation.]

Exhibit 9.

From "*Diario Oficial*," No. 618. *Santiago, Apl. 4-179.*

MINISTRY OF FOREIGN AFFAIRS.

Whereas the National Congress has given its approval to the following

Projected Law:

ARTICLE FIRST. The rescission of the Treaty of August 6th, 1874, which existed with the Republic of Bolivia, is approved and

the consequent occupation of the territory lying between parallels 23 and 24 of South Latitude.

ARTICLE 2d. Congress gives its approval that the President of the Republic declare war against the Government of Bolivia.

ARTICLE 3d. The President of the Republic is authorized:

1st. To increase the forces by sea and land as much as he may deem necessary;

2d. To use out of the national funds for the present up to four millions of dollars for the purposes to which this law refers, giving the corresponding account of such inversion at such times as the general accounts of public administration have to be rendered;

3d. To contract for loans up to the sum of five millions of dollars, with power to hypothecate for payment thereof the properties of the Nation, or to stipulate other guarantees;

4th. To declare ports of entry all such as he may deem necessary and provide for the service thereof until the passage of a law organizing the same.

ARTICLE 4th. The use of the public funds decreed by the President of the Republic for the increase, provisioning and mobilization of the National Squadron and the forces of the Army, and for the administrative and customs service at Antofagasta and Mejillones, is approved, the respective account to be rendered in due course.

ARTICLE 5th. The authority conferred in Article 3 shall continue for the term of one year.

And whereas, having heard the Council of State, I have deemed it well to approve and sanction it; therefore let it be promulgated and carried into effect as a law of the Republic.

ANIBAL PINTO—BELISARIO PRATO—ALEJANDRO FIERRO—JOAQUIN BLEST GANA—JULIO ZEGERS—CONNELIO SAAVEDRA.

Exhibit 10.

Sr. Ministro de Hacienda é Industria.

Pide se haga la declaratoria que espresa.

El ciudadano José Santos Monroy por don Juan Wheelwright representante de la casa de los señores Alsop i Ca., de Valparaiso, ante el Supremo Gobierno por el digno órgano de U. me presento i digo: que cuando se celebraron la transacion i el contrato de explotacion de las estaca-minas de 23 ó 24 de diciembre de 1876 estuvieron sin duda el Supremo Gobierno i mi instituyente mui lejos de creer los

embarazos i dificultades que el interes individual en oposicion al del fisco, opondría á la realizacion de ese negociado. Mas desgraciadamente se ha adquirido el triste convencimiento de que cada día esas dificultades i embarazos se hacen mas onerosos á los intereses del Estado por la facilidad con que se elude la posesion efectiva que este debe tomar de las estacas que le corresponden, objeto que se consigue nada mas que con una simple solicitud en la que con solo decir me opongo á tal ó cual cosa, se obtiene que ella se declare contenciosa, convirtiendose en una cuestion ante los tribunales ordinarios que se prolonga en proporcion de los caprichos del que la ha suscitado. Sin embargo por ahora mi objeto no es el de pedir al Supremo Gobierno un remedio sobre los inconvenientes que provienen de la facilidad con que se declaran contenciosos los asuntos, por que á este respecto espero que pronto se presentará la ocasion de someter un hecho determinado i concreto al conocimiento i deliberacion del Supremo Gobierno, limitandome por ahora á llamar su atencion sobre el objeto de que paso á ocuparme.

Por el mencionado contrato de explotacion se celebró entre el Supremo Gobierno i mi instituyente una verdadera sociedad mineralógica, cuya jerencia se encargó al segundo para que con las utilidades que correspondieran al primero, deducidos los gastos fuera amortizandose el crédito de 835,000 bolivianos con el interes *no capitalizable* del cinco por ciento anual, fuera del sobrante que se obtuviese en las entradas aduaneras. Evidentemente pues no ha podido el Gobierno celebrar un contrato mas ventajoso para el pago de su injente deuda, respecto de la que no hago mencion de los intereses devengados hasta 1876, por que ellos están sujetos á otras estipulaciones especiales.

Si pues en la explotacion de las estaca-minas del Litoral mi instituyente no tiene un interes personal esclusivo, siendo por el contrario un ajente de las grandes utilidades que esa explotacion puede producir al Estado, no hai razon para que en el ejercicio de los derechos que le corresponden, no goce de las escenciones i privilejios de que por las leyes goza este en sus jestionen judiciales, mucho mas cuando como he dicho siendo socios, no hai distincion de derechos.

Por otra parte, segun los mencionados contratos el Gobierno estaba en la obligacion de poner á mi instituyente en posesion pacífica de todas las estaca-minas fiscales; pero á fin de procurar el segundo la mas pronto utilidad posible en beneficio de la empresa, ha hecho injentes gastos para obtener esa posesion lo que sin duda

ha estimulado las interesadas especulaciones de algunos, para que multipliquen las oposiciones contenciosas; creyendo por este medio hacer imposible la adquisicion de esas estaca-minas, siendo necesario sostener muchos pleitos para cada una. En semejante conflicto, he creido de indispensable necesidad ocurrir ante el Supremo Gobierno con el objeto de que teniendo en consideracion de que mi instituyente no es sino su representante en la explotacion de las estaca-minas fiscales, se sirva declarar que en todas las cuestiones administrativas ó contenciosas que se susciten sobre ellas, esté escento de pagar derechos judiciales ó de actuacion de cualquiera clase, pudiendo hacer uso del papel del sello sexto. Será justicia i para ello, etc.

Paz, 19 de Agosto de 1878.

S. M.

[L. S.]

(Signed.)

JOSE SANTOS MONROY.

La Paz, agosto 21 de 1878.

A mérito de las razones en que se funda esta solicitud, y considerando que el Señor Juan Wheelwright, tomó á su cargo las estaca-minas fiscales, mediante los contratos de transaccion de 24 de diciembre de 1876, como representante del fisco; Se declara: que como tal, debe gozar de los mismos privilejios; que el Estado en las jestioncs judiciales, que inicie y sostenga para entrar i mantenerse en la posesion de las referidas estaca minas fiscales. Tómese razon—trascríbese i publíquese.

DAZA.

D. MEDINA.

No. 30]

El Enviado Extraordinario y Ministro Plenipotenciario de Bolivia que suscribe, certifica la autenticidad de las firmas que preceden.

Lima 12 de Julio de 1893.

[L. S.]

J. M. BRAUN.

U. S. LEGATION,

Lima, Peru, July 17, 1893.

I hereby certify that the above signature of Señor J. M. Braun, Minister of Bolivia, in Peru, is correct, and worthy of full faith and credit.

[SEAL.]

(Signed.)

RICHARD R. NEILL,
U. S. Secretary of Legation.

[Translation.]

To the Minister of Finance and Industry.

Asks for the declaration which he states.

I, citizen Jose Santos Monroy in behalf of Mr. John Wheelwright representative of the firm of Messrs Alsop & Co. of Valparaiso, present myself to the Supreme Government through your worthy self and say: that at the time of concluding the transaction and contract for exploitation of the estaca mines of 23d and 24th of December, 1876, the Supreme Government and my constituent were undoubtedly very far from imagining what obstacles and difficulties would be presented by private interests opposed to those of the public treasury, against the realization of that negotiation—But unfortunately the sad conviction now exists, that day by day those difficulties and obstacles against the interests of the nation become greater, owing to the facility with which the effective possession that the state should take of the estacas belonging to it, is eluded, which object is obtained by nothing more than a simple petition in which by merely saying I am opposed to this or that thing, the matter is declared contestable, and becomes a question to be heard before the ordinary courts, to be prolonged according to the caprices of the party who has brought it about. Nevertheless for the present it is not my purpose to seek from the Government a remedy for the inconveniences arising from the facility with which these matters are declared contestable, because with respect to this I hope an occasion will soon offer for submitting some determined and concrete act to the knowledge and consideration of the Supreme Government, and for the time being I content myself by calling your attention to the matter I am about to occupy myself with.

By the aforesaid exploitation contract, there was formed between the Supreme Government and my constituent, a veritable mineralogical society, the management of which was confided to the latter, so that from the profits to which the former might be entitled, after deducting expenses, he should pay by amortization his credit of 835000 bolivianos with interest, *not compoundable*, at 5 per cent per annum, outside of the excess obtainable from the customs duties. Evidently the Government could not have made a more favorable contract for the payment of its very large debt, respecting which I make no mention of the past due interests to 1876, as they are subject to other special stipulations.

If therefore in the working of the estaca mines of the Coast (Litoral), my constituent has no exclusive personal interest, but on the contrary is an agent for the great profits which that working may produce for the nation, there is no reason why in the exercise of the rights belonging to him, he should not enjoy the exemptions and privileges to which the Nation is entitled under the laws in its judicial proceedings, all the more when as I have said being partners, there is no difference in rights.

On the other hand, according to said contracts the Government was under obligation to place my constituent in pacific possession of all the fiscal estaca mines; but the latter for the purpose of obtaining the quickest possible profits for the benefit of the enterprise, has incurred heavy expenses to obtain that possession, and this has undoubtedly stimulated some parties interested in such speculations, to multiply these contentious oppositions, in the belief that in this way the acquisition of said estaca mines will be made impossible, as it will be necessary to carry on many suits for each. Under such difficulty, I have deemed it necessary to appeal to the Supreme Government that considering the fact that my constituent is merely its representative in the working of the fiscal estaca mines, it may be pleased to declare that in all administrative or contentious questions that may arise concerning them, he shall be exempt from the payment of judicial or actuary fees of every kind and entitled to make use of the stamped paper of sixth class. It will be justice & for this &c. Par August 19th, 1878.

S. M. (Mr. Minister)

(Signed.) JOSE SANTOS MONROY.

(Here follows in Spanish dated La Paz August 21/78 a document that has already been translated—Doc N^o 11 [see page 147] and below the signatures Daza and D. Medina, are the following certifications.)

No. 30.]

The undersigned Envoy Extraordinary and Minister Plenipotentiary of Bolivia, Certifies the authenticity of the foregoing signatures.

Lima, July 12th 1893.

(Signed.) J. M. BRAUN.

[Seal of the Legation of Bolivia in Peru.]

U. S. Legation, Lima, Peru, July 17, 1893.

I hereby certify that the above signature of Señor J. M. Braun, Minister of Bolivia in Peru, is correct and worthy of full faith and credit.

(Signed.)

RICHARD M. NEILL,
U. S. Secretary of Legation.

[Seal of U. S. Legation.]

Exhibit 11.

[Taken from *El Titicaca*, January 15, 1877.]^a

ESTACA-MINAS DEL ESTADO EN EL LITORAL.

Aviso á todos los colindantes é interesados en ellas de alguna manera, que por resolucion suprema de 23 de Diciembre corriente, estoi en posesion de todas las estacas-minas de plata, correspondientes al Estado en el Litoral; de manera q^e cualquier arreglo que se quiera hacer al respecto, se solicitará del suscrito, para cuyo efecto deben dirigirse á Valparaiso, Cazilla No. 254.

La Paz, Diciembre 27 de 1876.

JUAN WHEELWRIGHT.

[Taken from *El Titicaca*, January 15, 1877.]^b

En la Solicitud del Señor Dn. Juan Wheelright, Representante y Socio de los Señores Alsop y Cia. de Valparaiso, se ha Resuelto lo que Sigue:

Ministero de Hacienda e Industria,

La Paz, diciembre 23 de 1876.

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

1^a El señor Juan Wheelright tendrá el término de tres años para hacer los estudios de las minas de plata del Estado y buscar los capitales necesarios para ponerlas en trabajo, debiendo apresurarse a adoptar en el menor tiempo posible, las medidas y disposiciones preliminares conducentes a ello. Durante estos tres años, las minas quedarán a disposicion del empresario, facilitándole el Gobierno, con su recomendacion a las autoridades, su posesion efectiva.

^a For translation, see Exhibit 5, Document No. 4, p. 143, *supra*.

^b For translation, see Exhibit 2, p. 72, *supra*.

2ª En virtud de la adjudicacion que se le tiene hecha, el empresario está en su derecho para organizar; yá sea en la costa, o en el extranjero, sociedades colectivas o anónimas para la explotacion de una o mas estacas; o bien para contratar los medios mas seguros de explotacion con los propietarios de minas colindantes, a efecto de trabajar todas o cualquiera de dichas estacas, que a juicio de la empresa o sociedad organizadas, sean provechosas, o por lo ménos costeen los gastos de su laboreo, en las vetas descubiertas, o que se descubrieren durante los tres años del término asignado en la base 1ª.

3ª Los empresarios pueden contratar y ocupar en sus trabajos de minas, enjenieros, empleados y trabajadores extranjeros o nacionales, quienes durante el tiempo de su compromiso serán esceptuados de todo servicio militar, y de todo cargo civil o concejil, salvos los casos de atencion a la tranquilidad y órden público.

4ª La empresa o sociedades encargadas del trabajo presentarán 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 a la amortizacion de la deuda en los términos convenidos en la transaccion de esta fecha, y en un *sesenta por ciento* a favor del peticionario.

5ª El Gobierno pondrá en todos los trabajos que se formalicen, el interventor o interventores necesarios, los que serán dotados con el fondo comun de la empresa.

6ª Este contrato durará por *veinticinco años*; en cuyo tiempo si hubiere sobrante, despues de amortizada la deuda del Estado en los términos de la transaccion, se entregarán al mismo Estado.

7ª Si en los primeros tres años o en adelante hasta el vencimiento de los veinticinco espresados en el artículo anterior, hubiere individuos o sociedades que se propongan explotar alguna o algunas estacas de las contenidas en este contrato, podrán hacerlo, si la empresa no tiene por conveniente encargarse de la explotacion, manifestándolo por escrito ante el Gobierno, u omitiendo deliberadamente esta manifestacion.

8ª El Gobierno Supremo cederá a favor del peticionario y gratuitamente, miéntras dure este contrato los terrenos del Estado que sean necesarios para la planteacion de sus casas y establecimientos de sus minas. Registrese.

DAZA,
OBLITAS.
CARPIO.
VILLEGAS.
SALVATIERRA.

En la solicitud del Sr. D. Juan Wheelright, representante y socio de los señores Alsop y Cia. de Valparaiso, se ha resuelto lo que sigue:

MINISTERIO DE HACIENDA E INDUSTRIA,^a

La Paz, diciembre 24 de 1876.

Teniendo en consideracion la propuesta del Sr. D. Juan Wheelright, socio y representante de los señores Alsop y Cia. 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 D. Pedro López Gama, se ha acordado en Concejo de Gabinete, con el citado Sr. Wheelright una nueva transaccion, que termina definitivamente este asunto, formalizada en los términos siguientes:

Primero: Se reconoce al espresado representante de la casa Alsop y Cia. 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 e 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 a Bolivia, sobre los cuatrocientos cinco mil bolivianos que ahora abona el Gobierno del Perú, sea que se renueve el tratado Aduanero con esa República, o sea que se restablezca la Aduana Nacional.

Tercero: Se adjudican a 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, ménos en 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 a esta amortizacion será el cincuenta por ciento del producto neto, y en la otra el (40%) cuarenta por ciento, como en las demás estacas concedidas. El sobrante despues de hecha la amortizacion

^a For English translation, see Exhibit 2, p. 70, *supra*.

de estos intereses será aplicable al pago del capital reconocido, como se dispone en la cláusula 3ª; siendo condicion que si una, o ámbas estacas no producen nada, o producen poco, quedarán definitivamente cancelados este cargo y toda reclamacion por dichos intereses devengados.

Quinto: La explotacion de las estacas-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 a las personas o sociedades que crea conveniente el interesado, dando de ello aviso al Gobierno.

Sexto: En todos los casos de entrega o recibo de cantidades se considerara el peso chileno o sol peruano de plata sellada, equivalente al *boliviano*; sea en esta contrato o en el de estaca-minas.

Otórguese la correspondiente escritura insertándose en ella esta transaccion y el contrato relativo de que se hace mérito. Rejístrese.

DAZA.
OBLITAS.
CARBIO.
VILLÉGAS.
SALVATIERRA.

Son conformes.—El Oficial Mayor,

MANUEL PEÑAFIEL.

UNITED STATES LEGATION

Lima Peru, July 17, 1893.

I hereby certify that on this day personally appeared before me Henry S. Prevost a Citizen of the United States now residing in this City, to me known as one of the partners of the late commercial firm of Messrs Alsop and Company, established in the City of Valparaíso, Chile, and having produced the Newspaper hereunto annexed edited in the City of La Paz, Bolivia entitled "El Titicaca" [Año 2.º N.º 31] corresponding to the date of January 15, 1877,

Declared under oath that the advertisement appearing on the first page of said newspaper, under the heading "Estaca-minas del Estado en el Litoral" (Red Ink No 1) signed by "Juan Wheelwright" under date of La Paz, Bolivia, December 27, 1876, is to his knowledge and believe the advertisement that Mr John Wheelwright, now deceased published at that time as liquidator of the

firm of Messrs Alsop and Company, in compliance with the stipulations of the Contract signed between himself as such liquidator and the Government of Bolivia, for the working of the Government Silver Mining Setts located on the territory then known as the Coast of Bolivia, and which has since passed under the jurisdiction of the Republic of Chile, which Contract, dated La Paz, December 23 and 24 1876 (Red Ink No. 2) also appears published on the fourth page of the aforesaid Newspaper hereunto annexed and the affiant further declares also under oath that to his full knowledge and believe similar advertisements were at the same time published by the aforesaid John Wheelwright, in the local newspapers of the City of Valparaiso, Chile, and of the Townships of Antofagasta and Caracoles, then under the jurisdiction of Bolivia and now under the jurisdiction of Chile.

In Testimony whereof, I have hereunto subscribed my name and affixed the Seal of this Legation the day and date last above written.

RICHARD R. NEILL,
United States Secretary of Legation

Exhibit 12.

J. C.

El procurador Andres Q. Contador por don Juan Wheelwright a S. S. J. digo: que en el año 1882 seguía juicio mi parte con don Benigno Barrios sobre la mina Amonita i estaca de Instruccion Boliviana, i venida la causa en Apelacion ante S. S. J. despues de alguna tramitacion se suspendió de comun acuerdo i posteriormente se mandó archivar los autos, que hasta ahora permanecen archivados en la Secretaría, sin perjuicio del derecho de las partes.

La susecion Wheelwright me encarga una constancia oficial del estado de dicha causa; i por tanto:

A S. S. J. pido se sirva mandar que el secretario de cámara me dé un certificado sobre la tramitacion i estado de dicho juicio, a saber: que apelada por Wheelwright la sentencia de 1ª instancia de Mayo 2 1882 corriente a F 316, e ingresada la causa en segunda instancia promovió el apelante la incidencia de competencia de F 343, para remitir la causa a la Exma. Corte Suprema, incidencia que se mandó tener presente para la vista de la causa; en seguida se espresó agravios por parte de Wheelwright, i luego de comun acuerdo se suspendió la causa hasta que cualquiera ne las partes

pidiese su continuacion; i por último se mandó archivar los autos en Noviembre de 1884 sin perjuicio del derecho de las partes; i en este estado se encuentran hasta ahora archivados en secretaría los autos de la referida causa.

RAVEST

A. Q. CONTADOR

Serena, Agosto 21 de 1893.

Como se pide con citacion.

PARRA.

Proveido por el señor presidente don José M. Parra.

BRICEÑO

En veintiuno de Agosto notifiqué a don Andres Q. Contador.

BRICEÑO.

En veintiuno de Agosto notifiqué a don Ramon Irigoyen.

BRICEÑO.

Estoi conforme.

IRIGOYEN.

Certifico: ser efectivo todo lo espuesto en la solicitud que precede i conforme con los autos archivados en esta secretaria, que he tenido a la vista.

Serena, Agosto 22 de 1893.

[L. S.]

N. 2° BRICEÑO,

Secretario.

Certifico: Que la firma que precede—"N. 2°. Briceño—Secretario"—es autentica.

Serena, Agosto 22 de 1893.

[L. S.]

J. ELEUT° VIEDMA,

Not° y Cr.

[Dros \$0.50 Viedma.]

Certifico: que la firma que precede, J. Eleut° Viedma, es la de uno de los Notarios i Conservador de este departamento.

Serena, Agosto 22 de 1893.

[L. S.]

RUPERTO ALVAREZ.

I, Henry L. Stevens, Acting United States Consul at the Port of Coquimbo, do hereby certify that the signature of Ruperto Alvarez, Intendente of Serena, is his true and genuine signature, and that he is personally known to me.

[SEAL.]

HENRY L. STEVENS,

Acting U. S. Consul.

Coquimbo, 23 August 1893.

[Translation.]

The procurator Andres 2° Contrador for Mr. John Wheelwright to Your Ill^s. Honor says: that in the year 1882 my party had a suit with Mr. Benigo Barrios about the Bolivian Instruction estaca and Amonita mine, and that the case having come on appeal before Y. I. H. after certain steps it was by common accord suspended and subsequently the records were ordered on file, and until now they remain in the archives of the office of the Secretary, without prejudice to the rights of the parties

The succession of Wheelwright instruct me to procure an official declaration as to the state of said case; and therefore: I pray Y. I. H. may please to order that the Secretary of the chamber give me a certificate as to the proceedings and status of said cause, as follows: that Wheelwright having appealed from the sentence of 1st instance of May 2^d. 1882, found on folio 315 and the cause being entered into 2^d. instance, appellant raised the question of competency on folio 343 to carry the case to the Most Excellent Supreme Court, which incident it was order to bear in mind when the cause was presented; thereupon damages were claimed in behalf of Wheelwright, and when by common accord the cause was suspended until either of the parties should demand that it be continued; and finally in November 1884 the records were ordered on the archives without prejudice to the rights of any of the parties; and in this state the records of the case referred to, remain in the archives of the Secretary's office.

(Signed.)

RAVEST.

(Signed.)

A. 2° CONTADOR.

Serena, August 21st 1893.

As asked with notification

PARRA

Ordered by the President Don José M. Parra

(Signed.)

BRICEÑO

On the twenty first of August I notified Mr Andres 2° Contador

(Signed.)

BRICEÑO

On the twenty first August I notified Mr. Ramon Grigoyen

(Signed.)

BRICEÑO

(Signed.)

GRIGOYEN

I certify that all set forth in the foregoing petition is true and is in conformity with the records in the archives of this office which I have had before me.

Serena, August 22d 1893

[Seal of Office of Secretary of Court of Appeals, Serena.]

(Signed.) N 2° Q BRICEÑO

Secretary

I certify that the foregoing signature "N. 2° Q Briceño Secretary" is authentic

[Seal of the Notary]

I. ELENTE^s. VIEDMA

Noty & Com.

I certify that foregoing signature, J. Elente^s. Viedma, is that of one of the Notaries & Conservator of this department.

Serena, August 22d 1893

[Seal of the Intendency of Coquimbo.]

(Signed.) RUPERTO ALVAREZ

I Henry L. Stevens Acting United States Consul at the Port of Coquimbo do hereby certify that the signature of Ruperto Alvarez, Intendente of Serena is his true and genuine signature and that he is personally known to me

Coquimbo, 23 August 1893

HENRY L. STEVENS

Acting U. S. Consul.

[Signed over the Consulate Seal.]

Exhibit 13.

[Corresponde.

Decreto Supremo de veinte y uno de Agosto.^a—Estaca-minas fiscales—El señor Wheelwright como representante del fisco, debe gozar de tos los privilejios del Estado en las cuestiones judiciales que inicie.—Ministerio de Hacienda é Industria.—La Paz Agosto viente y uno de mil ochocientos setenta y ocho.—A mérito de las razones en que se funda esta solicitud y considerando que el señor Juan Wheelwright, tomó a su cargo las estaca-minas fiscales mediante los contratos de transaccion de viente y cuatro de diciembre de mil ochocientos setenta y seis, como representante del fisco; se declara: que como tal, debe gozar de los mismos

^a For translation, see Exhibit 5, Document No. 11, p. 147, *supra*.

privilejos que el Estado, en las gestiones judiciales que inicie y sostenga para entrar y mantenerse en posesion de las Estacaminas fiscales. Tomese razón,—Trascribase y publíquese.—Daza—D. Medina.

* * * * *

Decreto Supremo de cinco de Febrero.^a—Estaca minas fiscales.

Previsiones relativas a las franquicias que debe gozar el señor Wheelwright como socio del Estado—Ministerio de Justicia, Culto é Instruccion pública.—La Paz Febrero de mil ochocientos setenta y nueve. Al señor Fiscal del Distrito Litoral—Repetidos reclamos se han elevado al Gobierno por parte del señor Juan Wheelwright,—que en sociedad con el Estado explota las estaca-minas fiscales de ese distrito; y á fin de hacer efectiva su accion como jerenente que es de ella en virtud del contrato que se tiene celebrado, me en carga decir á Usted, el señor Presidente de la República que tramita al Ministerio fiscal las siguientes prevenciones:—Primera. Que el Fiscal de Partido de Caracoles que por las leyes representa los derechos del fisco, debe ejercitar las acciones legales que el contratista deduzca, pues que no procede por interes privado, sino como socio del Gobierno, en vez de entorpecerlas como aparece de los espedientes que ha adjuntado á uno de sus reclamos.—Segunda. Que permitiendo el articulo ciento sesenta y ocho, inciso segundo del Codigo de Minería, que el vecino tenga entrada libre á una mina cuando presume ó tiene un mal, al contratista señor Wheelwright puede negarsele el derecho de investigar por si ó por medio de apoderado la introduccion del vecino á las cuadras de la estaca fiscal, á fin de proponer la demanda que corresponda ante la autoridad competente, realizados que sean sus temores, sin que ese derecho de procedimiento meramentè administrativo por otra parte, pueda ser esactado por una oposicion cualquiera.—Tercera. En caso de suscitarse alguna contencion fundada en derecho, se pasara el conocimiento del asunto al Juez competente en la forma prescrita entre otras disposiciones por la ley de quince de Noviembre de mil ochocientos setenta y tres.—Como si vé, el Gobierno en las prevenciones legales que ha mencionado, para que tengan su mas fiel excto cumplimiento.—Dios guarde á Usted.—Daza.—Serapio Reyes Ortiz.

Concuerta éste testimonio con las Supremas resoluciones de su referencia, que se han tomado de los anuarios de mil ochocientos setenta y ocho y mil ochocientos setenta y nueve, á que en caso

^a For translation, see Exhibit 5, Document No. 14, p. 148, *supra*.

necesario me remito dando el presente á petición de parte y por mandato superior En fé de ello, lo autorizo, firmo y signo en la ciudad de La Paz de Ayacucho á los veinte y cinco dias del mes de Noviembre de mil ochocientos noventa y tres años. Lleva en timbres veinte centavos.

[L. S.]

BENJAMIN Z. CRESPO,

[Estampilla.]

Noto. de Hda. y Gob.

Los suscritos Notarios públicos de primera clase de éste Distrito Judicial de La Paz, en la República de Bolivia, certifican y dan fé, de que Don Benjamin Zapata Crespo por quien se halla autorizado y firmado el anterior documento, es Notario de Hacienda y Gobierno como se titula y nombra. Por tanto, su firma y rúbricas son autenticas, mereciendo entera fé y crédito.

La Paz, Noviembre 25 de 1893.

[L. S.]

CLDOMIRA ALCOREZA B.

Notario de 1ª. clase.

[L. S.]

PABLO ZAMBRANA

Nrio de 1ª. Clase

[L. S.]

TENARO SANJINES,

Prefecto y Comandante General de este Departamento etc. etc.

Certifica: Que las firmas y rúbricas de los Notarios de 1ª Clase, Clodomiro Alcoreza B. y Pablo Zambrana, son autenticas.

Á 25 de Noviembre de 1893.

[L. S.]

J SANJINES

La Paz, 25 de noviembre de 1893.

Legalizada.

[L. S.]

SEVERO F. ALAMO

[Estampillas.]

La Paz, Noviembre 27 de 1893.

Legalizada

[L. S.]

F. GERARDO CHAVES.

Exhibit 14.

CONVENIO. PROT^o 28—1^{er} SEMESTRE DE 1882. COMPETENTE POR HABERSE DADO OTRAS COPIAS.

En Valparaiso, República de Chile, a ocho de Febrero de mil ochocientos ochenta i dos. Ante Julio César Escala, Notario público de esta ciudad, i testigos idóneos cuyos nombres se espresarán a la conclusion, comparecieron de una parte el Señor Juan

Stewart Jackson, de este domicilio, i de la otra el Señor Juan Wheelwright, de tránsito en este puerto, como cesionario por decretos del Gobierno de Bolivia fechados en veintitres i veinticuatro de Diciembre de mil ochocientos sesenta i seis, de las Estacas minas de instruccion situadas en el Litoral de Bolivia; i celebran este convenio de aviacion i habilitacion al tenor de los siguientes

1 artículos. Primero. Juan Stewart Jackson como habilitador de dichas estacas minas conviene en suplir los fondos necesarios para los trabajos de ellas, hasta la cantidad de cincuenta
2 mil pesos moneda corriente de Chile. Segunda. Los intereses de cargo i abono de la cuenta corriente entre las partes serán al tipo de cargo del Banco Nacional de Chile.

3 Tercero. Juan Wheelwright confiesa haber recibido hasta el siete de Febrero de mil ochocientos ochenta i dos la suma de diez i seis mil seiscientos diez i seis pesos veintisiete centavos para el fomento de las minas, cuya suma forma parte de los cincuenta mil pesos que segun el artículo primero se obliga Juan

4 Stewart Jackson a proporcionar. Cuarto. Juan Stewart Jackson se obliga a ser el Agente en Valparaiso de Juan Wheelwright para todos los asuntos que tengan relacion con las estacas minas citadas. Quinto. Juan Wheelwright con-

5 viene en pagar a Juan Stewart Jackson una comision de cinco por ciento sobre el neto producto que le corresponde en las estacas minas: dicho neto producto será computado despues de rebajar los gastos de explotación, entrega, partición i salarios de Injenieros; pero no los gastos de administracion jeneral en Antofagasta, ni los gastos de abogado i pleitos. Se exceptua la mina Estaca Flor del Desierto, por estar comprendida en un arreglo
6 aparte. Sesto. En el caso de que el cinco por ciento de

que trata el artículo quinto no llegue a ocho mil pesos al año, Juan Wheelwright pagará en lugar de la comision del cinco por ciento al fin del año, ocho mil pesos; pero esta cantidad asi garantizada, será reducida a cinco mil pesos, tan luego como el fondo de reserva formado por el artículo sétimo llegue a la suma
7 de cincuenta mil pesos. Sétimo. Los productos netos de

las minas se destinarán: primero, para pagar los adelantos hechos por Juan Stewart Jackson; i segundo para formacion de un fondo de reserva hasta la suma de ciento cincuenta mil pesos
8 (\$150,000). Octavo. El fondo de reserva será depositado

en un Banco o será empleado en la compra de títulos de crédito, por mutuo convenio entre las partes, i servirá para la

la explotación de las estacas minas cuando fuere necesario.

9 Nono. En cualquier tiempo en que los adelantos lleguen al máximun fijado de cincuenta mil pesos (\$50,000) Juan Stewart Jackson tendra la opcion de terminar este contrato o seguir la habilitacion, quedando en el primer caso las estacas minas gravadas con el saldo adeudado, saldo que será pagado con intereses anuales de seis por ciento Capitalizado, de los primeros productos netos, despues de pagar la cuenta de cualquier nuevo

10 habilitador. Décimo. En el caso que fuese necesario una nueva habilitacion, Juan Stewart Jackson será preferido en iguales términos a cuyo efecto se constituye segun la hipoteca especial sobre las estacas minas habilitadas en favor de Juan Stewart Jackson, esto es, hipoteca que no reconocerá otro preferencia que la del nuevo habilitador. Undécimo. Este

11 convenio será sometido a las personas interesadas en la liquidacion de Alsop i Compañía, i si fuese aprobado por ellas, continuará indefinidamente; pero podrá hacerse cesar despues de seis meses, contados desde la fecha en que cualquiera de las partes diere aviso por escrito de no continuar. Cesará así mismo de hecho seis meses despues de la fecha de la muerte de cualquiera de las

12 partes. Duodécimo. Si hubiese desavenencia entre las partes respecto a la administracion o modo de trabajar las estacas minas será sometida al fallo de Don Henrique S. Prevost, cuyo fallo será final. Décimotercio. Si hubiese desavenencia respecto a la interpretacion de este contrato se someterá

13 a dos árbitros comerciantes uno nombrado por cada una de las partes con protesta de nombrar a un tercero en discordia, i su fallo será respetado sin apelacion, ya sea que el tercero en discordia se pliegue al de alguno de sus conjueces, ya que no. Se dio copia en papel de quinta clase. Lo otorgaron i firmaron con los testigos Don Juan Usaveaga i Don Arturo Rojas—Enmendado—*Wheelwright*—vale. Doi fé—John Wheelwright—Juan Stewart Jackson—Juan Usaveaga—Arturo Rojas—Julio César Escala, Notario Publico.

En testimonio de verdad, sello i firma

[L. S.]

JULIO CÉSAR ESCALA,

N. P.

UNITED STATES CONSULATE,

Valparaiso, Chile, June 23rd, 1893.

I, Corris M. Barre, consul of the United States of America at Valparaiso, do hereby certify that the foregoing is the true and genuine signature of Señor Julio César Escala, notary public at

this City on the date of the execution of the within document, and as such is entitled to full faith and credit.

Given under my hand and the consular seal, the day and year aforesaid.

[SEAL]

(Signed.)

CORRIS M. BARRE,
United States Consul.

[Translation.]

Exhibit No. 14.

N.

AGREEMENT. PROTOCOL 28. 1ST HALF YEAR OF 1882.

COMPETENT.

In Valparaiso, Republic of Chili, the eighth of February, one thousand eight hundred and eighty-two, before Julius Cesar Escala, notary public of this city, and befitting witnesses, whose names are expressed at the end of this document, there appeared, on the one part, Mr. John Stewart Jackson, a resident of this place, and on the other part, Mr. John Wheelwright, transitorily in this port, as cessionary by decrees of the Government of Bolivia, dated the twenty-third and twenty-fourth of December, one thousand eight hundred and seventy-six, of the Mines of Instruction (Estacas Minas de Instruccion), situated in the Coast Department of Bolivia; and they celebrated this agreement of supply and habilitation, in terms of the following articles:

First.—John Stewart Jackson, as habilitator of the said mines, agrees to supply the funds necessary for working same, up to the sum of fifty thousand dollars, current money of Chili.

Second.—The interest, both debtor and creditor, in account current, between the contracting parties, shall be at the rate charged by the National Bank of Chili.

Third.—John Wheelwright acknowledges to have received, up to the seventh February, one thousand eight hundred and eighty-two, the sum of sixteen thousand six hundred and sixteen dollars twenty-seven cents for the development of the mines, which sum forms part of the fifty thousand dollars which, in terms of the first article, John Stewart Jackson undertakes to supply.

Fourth.—John Stewart Jackson undertakes to be John Wheelwright's agent in Valparaiso in all matters connected with the aforesaid mines.

Fifth.—John Wheelwright agrees to pay to John Stewart Jackson a commission of five per cent. on the net product accruing to him from the mines; said net product shall be calculated after deducting the expenses of extraction, delivery, apportionment and salaries of engineers, but not the expenses of general administration in Antofagasta, nor those of lawyers and lawsuits. The mine, "Flor del Desierto," is excepted, being included in a separate arrangement.

Sixth.—In case the five per cent. treated of in Article Fifth should not reach the sum of eight thousand dollars per annum, John Wheelwright, in place of the commission of five per cent. at the end of the year, shall pay the sum of eight thousand dollars; but this sum so guaranteed shall be reduced to five thousand dollars so soon as the reserve fund, to be formed in terms of Article Seventh, reaches the sum of fifty thousand dollars.

Seventh.—The net products of the mines shall be devoted, first, to the payment of the advances made by John Stewart Jackson, and secondly, to the formation of a reserve fund, up to the sum of one hundred and fifty thousand dollars (\$150,000).

Eighth.—The reserve fund shall be deposited in a bank, or shall be invested in the purchase of securities, as may be mutually arranged between the contracting parties, and shall serve for the development of the mines, when such may be necessary.

Ninth.—Whenever the advances reach the fixed maximum of fifty thousand dollars (\$50,000), John Stewart Jackson shall have the option of terminating this contract or of going on with the habilitation, the mines being, in the first of these cases, charged with the balance owing, which balance shall be paid, together with compound interest at the rate of six per cent. per annum, out of the first net products, after paying the account of any new habilitator.

Tenth.—In the event of a new habilitation being necessary, John Stewart Jackson shall have the preference, on equal terms, with which object a second special mortgage shall be granted on the habilitated mines in favor of John Stewart Jackson—that is to say, a mortgage which shall not recognize any preference but that of the new habilitator.

Eleventh.—This agreement shall be submitted to the persons interested in the liquidation of Alsop & Company, and if approved by them, it shall continue in force indefinitely, but it shall be terminable in six months, calculated from the date on which either of the parties gives notices in writing of his intention not to continue it. It shall also terminate *de facto* six months after the death of either of the parties.

Twelfth.—If there should be discord between the parties respecting the administration or the mode of working the mines, the matter shall be submitted to the decision of Mr. Henry S. Prevost, whose decision shall be final.

Thirteenth.—If there should be discord respecting the interpretation of this contract, the matter shall be submitted to two merchants, as arbitrators, one being named by each of the parties, with power to said arbitrators, in the event of their disagreeing, to name a third, whose decision shall be final and without appeal, whether he should agree with the opinion of either of his colleagues or not.

A copy of this was given on stamped paper of the fifth class. Executed and signed before me, and by the witnesses, Mr. John Usaseaga and Mr. Arthur Rojas. I attest, (signed) John Wheelwright, (signed) J. Stewart Jackson, (signed) John Usaseaga, (signed) Arthur Rojas, (signed) Julius Cesar Escala, Notary Public.

In testimony of the truth, I seal and sign.

[SEAL.]

(Signed.)

JULIUS CESAR ESCALA,

Notary Public.

I, David Sim, of Antofogasta, in the Republic of Chili, gentleman, make oath and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.

3. That I have carefully examined and compared the paper writing in the English language hereunto annexed, and headed "Agreement, Protocol 28, 1st half year of 1882," and consisting of pages Nos. 1 to 4, inclusive, with the corresponding paper writing in the Spanish language which has been produced to me in Antofagasta aforesaid by Mr. John Wheelwright for the purpose of my making the said comparison.

4. That the said paper writing hereunto annexed, and so as aforesaid headed "Agreement, Protocol 28, 1st half year of 1882," is a correct and faithful translation into the English language of the said document of which it purports to be a translation.

DAVID SIM.

Sworn at Antofagasta, in the Republic of Chili, this twenty-fifth day of March, one thousand eight hundred and eighty-five, before me.

[SEAL.]

JOHN BARNETT,

British Vice-Consul.

I, John Barnett, Esquire, British Vice-Consul at Antofagasta, do hereby certify that Mr. David Sim is well known to me and that he is well acquainted with the English and Spanish languages, and is a fit and competent person to make the translations referred to in the above or before-written affidavit.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Antofagasta this twenty-sixth day of March, one thousand eight hundred and eighty-five.

[SEAL.]
No. 450.]

JOHN BARNETT,
British Vice-Consul.

Exhibit 15.^a

MINISTERIO DE HACIENDA É INDUSTRIA,
La Paz, Marzo 28 de 1878.

Al Prefecto del Departamento de Cobija, para que él y las demas autoridades políticas de ese Litoral, asi como los Fiscales, cada cual en el círculo de sus atribuciones i en su respectivo caso, presten al solicitante Sor. Wheelwright, la cooperacion que demanda para la pronta y pacífica posesion de las estacas fiscales.

(fir.) SALVATIERRA.

Es conforme. El ofl. Mor.

[L. S.] (fir.) MANL. PEÑAFIEL.

El infrascrito Enviado Extraordinario y Ministro Plenipotenciario de Bolivia certifica la autenticidad de la firma que precede.
Lima 4 de Agosto de 1893.

[L. S.] (fir.) J. M. BRAUN.

U. S. LEGATION,
Lima, Peru, Aug. 4, /93.

I hereby certify that the above signature of Sr. J. M. Braun Bolivian Minister is correct.

[SEAL.] (Signed.) RICHARD R. NEILL
U. S. Sect. of Legation.

Exhibit 16.

I, John Wheelwright, resident of Antofagasta, do hereby declare that I am the liquidator of the American firm of Alsop and Company, formerly transacting business in Valparaiso; and we David Sim, gentleman, Charles Baur silver smelter and John Barnett British Vice Consul, likewise residents of Antofagasta do, at the

^a For translation, see Exhibit 5, Document No. 7, p. 145, *supra*.

request of the said John Wheelwright, hereby certify that he, the party named herein as the liquidator as aforesaid is well known to us severally and individually and that we have known him for some years past as liquidator of the outstanding affairs of the afore mentioned firm of Alsop and Company, in which liquidation he is still engaged.—In testimony thereunto, we David Sim, Charles Baur and John Barnett, do together with the within-mentioned John Wheelwright, sign our names in the presence of John Barnett Esq^o. British Vice Consul at this port, this twenty fifth day of March one thousand eight hundred and eighty five

JOHN WHEELWRIGHT

JOHN BARNETT

CARL. BAUR

DAVID SIM

I, John Barnett Esquire, British Vice Consul at Antofagasta, do hereby certify and attest that the foregoing deed or instrument subscribed by John Wheelwright, David Sim, Carl Baur and John Barnett was duly signed by the said parties therein named, in my presence to the due execution of which, an act being requested, I have granted this certificate——

In testimony whereof I have hereunto set my hand and affixed my seal of office at Antofagasta, this twenty-fifth day of March one thousand eight hundred and eighty five

[Seal of British Vice
Consulate.]

JOHN BARNETT,
British Vice-Consul

No. 448]

I Lewis Joel Esquire Her Britannic Majestys Consul General at Valparaiso do hereby certify and attest that the foregoing signature of John Barnett is of his own true and proper handwriting, and that he is British Vice Consul at Antofagasta. In testimony whereof I have hereunto set my hand and affixed my Seal of Office at Valparaiso this twenty eighth day of June one thousand eight hundred and ninety three.

[Seal of British Consulate General, Valparaiso.]

LEWIS JOEL,
H B. M. Consul General

[Consular Fee Stamp—Five Shillings.]

UNITED STATES CONSULATE,
Valparaiso, Chile, June 30th, 1893.

I, Corvis M. Barre, Consul of the United States of America at Valparaiso, do hereby certify that the signature at the foot of

the preceding page is that of Lewis Joel, Esq., Her Britannic Majesty's Consul General at this port, and as such is entitled to full faith and credit.

Given under my Hand and the Consular Seal, the day and year aforesaid.

[Seal of U. S. Consulate, Valparaiso, Chili.]

CORVIS M BARRE

United States Consul.

Exhibit 17.

Antofagasta

Noviembre 23, 1883.

SEÑOR DE MI APRECIO: Sabiendo que viene Ud de La Paz acompañado del Señor Don Belisario Boeto para tratar con Chile sobre arreglos de paz me tomo la libertad de dirigir a Ud la presente confiado en que Ud tendrá a bien atender a la recomendacion que es el objeto de éstas líneas, apesar de no haber tenido durante mi permanencia en años pasados en dicha ciudad, relaciones íntimas con Ud.

Teniendo como talvez Ud sepa, un contrato por el cual el Gobierno de Bolivia me adjudicó las Estacas de Instruccion Pública del Litoral en pago de una deuda, con contrato que pretendo sea respetado por Chile en los mismos términos que Bolivia, caso que el Litoral queda bajo el dominio del primero de los dos países, me permito introducir a Ud por medio de ésta al Señor Juan Stewart Jackson de Valparaiso, a quien hé encargado para que haga por allá en mi nombre las jestionos conducentes al logro de mis deseos.

Siendo el señor Jackson digno de toda consideracion, i mereciendo por completo mi confianza, agradeceré a Ud mui sinceramente se sirva dispensarle en el desempeño de su cometido la misma benevolencia i facilidades que abrigo la esperanza habria podido dispensarme a mí personalmente.

Rogando a Ud se sirva disculparme por la libertad que me hé tomado, tengo el gusto de ofrecerme de Ud mui atento i S. S.

(Firmado,) JUAN WHEELWRIGHT.

Señor don BELISARIO SALINAS

&c &c &c.

BRITISH VICE CONSULATE, *Antofagasta.*

I John Barnett, British Vice Consul at Antofagasta do hereby certify that the above is a truly written out copy of a letter appearing in the press Copy book of letters, produced before me, of the

late John Wheelwright of this town, and carefully copied therefrom which, to the best of my belief is written by and signed in, the handwriting of the said John Wheelwright, who was to me personally well known and with whose handwriting I am personally familiar.

In testimony whereof Witness my hand and seal of office at Antofagasta this twenty-sixth day of July one thousand eight hundred and ninety three

[British Vice Consulate Antofagasta.]

[SEAL.]

JOHN BARNETT

V. Consul.

[Stamps cancelled]

[Translation.]

F.

Antofagasta, 23d November 1883.

BELISARIO SALINAS, Esq^{re}

&c &c &c

DEAR SIR, Knowing that you come from La Paz accompanied by Mr. Belisario Boeto, in order to treat with Chili about terms of peace, I take the liberty to address you this letter, trusting that you will kindly attend to the recommendation which is the object of these lines, although I had not intimate relations with you during my stay in former years in that city.

Having, as you may perhaps know, a Contract by which the Bolivian Government adjudicated to me the divisions (estacas) called "Public Instruction" of the Littoral in payment of a debt; a Contract which I am endeavoring to have respected by Chili on the same terms as by Bolivia in case the Littoral should remain under the dominion of the former of the two Countries, I take the liberty of introducing to you, through this letter, Mr John Stewart Jackson of Valparaiso, whom I have entrusted to adopt there, in my name, the measures conducive to the obtaining of my desires.

Mr. Jackson being worthy of all consideration and having my complete confidence, I would esteem it very sincerely if you would extend to him in the execution of his commission, the same benevolence and facilities which I embrace the hope you would have bestowed upon me personally.

Begging you kindly to excuse the liberty I have taken,

I have the pleasure to remain,

Yours truly,

(Signed.)

JOHN WHEELWRIGHT.

[Translation.]

G.

Santiago, 11th December 1883.

JOHN WHEELWRIGHT, Esq^{re}

Antofagasta

DEAR SIR. I had opportunely the pleasure of receiving through the house of Jackson at Valparaiso, your valued favour of 23rd ultimo, as well as the explanation concerning the matter of the Mining Divisions (Estacas) of the Bolivian Littoral.

In reply thereto I have the satisfaction to say that when the proper moment has arrived to treat of those subjects in the course of negotiations with the Chilian Government, I shall bear in mind your indication in order to arrive at the solution desired by you.

Meanwhile, I remain Dear Sir,

Yours faithfully

(Signed.)

B. SALINAS.

Exhibit 18.

UNITED STATES LEGATION,

Lima Peru, October 10. 1893.

I, the undersigned, do hereby certify that on this day personally appeared before me Henry Stanhope Prevost, to me personally known as a Citizen of the United States of America, at present a resident of this City of Lima, Peru and having by me been duly sworn, declared under oath:—

First: That he was one of the Partners of the late firm of Messrs Alsop and Company, established in the City of Valparaiso, in the Republic of Chile, and that he, and Henry Chauncey, and Henry W. Alsop, likewise Citizens of, and now residing in the United States of America, are at this date the only three surviving Partners of the firm aforesaid.

Second: That the other Partners, completing the Partnership in the same firm, were the late, Joseph W. Alsop, Edward McCall, Theodore W Riley, George J. Foster, George G. Hobson, John Wheelwright, and George F. Hoppin—all likewise Citizens of the United States of America, and all since dead.

Third: That the interest and position of each and all of the aforementioned partners in the said partnership; the term of duration of the latter; and the other proper and legal and business

conditions thereof; were all clearly stipulated and established in the Deed of Partnership executed, in due accordance with the laws, in the subject, of the Republic of Chile, before a Notary Public, of the City of Valparaiso, under date thirty-first of December 1870 (one thousand eight hundred and seventy).

Fourth: That deponent has, since the year one thousand eight hundred and seventy,—mostly resided in this City of Lima, and in other parts of the Republic of Peru. That, especially in the Month of December of the year one thousand eight hundred and seventy-six, he was residing in the City of Lima. But that during the aforementioned period, to this date, he has visited on several occasions the United States and Europe, and also the Republics of Bolivia and Chile in the furthering of his business occupations

Fifth: That John Wheelwright, with the consent, and by appointment of all the parties interested in the liquidation of the aforesaid firm of Messrs Alsop and Company, was the duly authorized and recognized liquidator thereof, from the date of its expiration, consequent on its limitation of duration, to the date of the death of the said John Wheelwright, which occurred in Valparaiso, in the year one thousand eight hundred and ninety,

Sixth: That since the death of John Wheelwright, aforementioned, deponent likewise with the consent and by appointment of all the parties interested in the liquidation, has acted, and continues to act, as the liquidator of the aforesaid firm of Messrs Alsop and Company; and that, as such liquidator, he hereby duly authorizes Henry Chauncey, of New York, aforementioned, and one of the only two other surviving partners of the firm, to appear in support of the Claims of Messr Alsop and Company against the Republic of Chile. Also that, as one of the Partners of the firm, deponent recognizes the aforementioned Henry Chauncey as his duly authorized Attorney, to appear in support of the Claim's of Mess Alsop and Company, against the Republic of Chile.

HENRY S. PREVOST

In witness whereof and of the foregoing deposition having been made, sworn to and signed in my presence, I hereunto set my hand and affix the seal of this Legation at Lima, this day and years as above written.

[Seal of
United States Legation,
Lima, Peru.]

RICHARD R NEILL.
*United States Secretary
of Legation.*

Exhibit 19.[Translation.]^a

MOST EXCELLENT SIR. John Stewart Jackson Attorney of John Wheelwright, liquidator and partner of the firm of Alsop & Co. has the honor of representing to Your Excy., with due respect, that he has on several occasions made known to the Supreme Government the documents which accredit John Wheelwright's rights to the usufruct of the mines called the Instrucción Estacas of the Government of Bolivia that are within the territory actually occupied by the forces of the Chilian Nation, and accompanying the Memorial presented under date of September 11th, 1882,^b was a copy of the documents and the power of attorney accrediting his right to appear.

It being very probable that a treaty will soon be concluded between the two nations, I believe that the opportune moment has arrived to again call Your Excy's attention to the facts, and to beg you to bear in mind at the time of arranging a treaty with the Republic of Bolivia.

A faithful recital of the facts is as follows:

On the 23d of July 1852, the Government of Bolivia desiring to provide for the Public Instruction of the country, a source of revenue, issued a decree in which it was provided that in every discovery of mines whether of silver, gold or other metal, there should belong in full right to the Treasury of Public Instruction, the Estaca next to those to which the discoverer was entitled, according to the Mining Code.—Since the date of said decree, in every discovery, after measuring for the discoverer the plots to which the law entitled him, there has been measured for the Treasury one of sixty yards in length by thirty in width—Such is the origin of the mines known in Bolivia by the name of Public Instrucción Estacas—Many other regulations, some legislative and others governmental, dictated afterwards, all confirmed the decree of July 23d, 1852, assuring at same time to the State the ownership and possession of those mines, and by the law of 19th October, 1871, the Government was authorized to lease them or to work them in association with third parties. The commercial firm doing business in Valparaiso, under the name & style of Alsop & Company, at a certain period furnished Mr. Pedro Lopez Gama with large sums of money to be advanced to the Government of Bolivia on account of contracts for the exportation of Guano from the Bolivian coast

^a For Spanish text, see Exhibit 20, p. 208, *infra*.

^b See p. 135, *supra*.

and for the administration of the same business. These sums amounted to over one million of dollars, and to pay for them Mr. Lopez Gama by public instrument, executed at Valparaiso on the 14th of April, 1875, ceded to Messrs Alsop & Co. certain rights which by virtue of anterior contracts he had acquired from Bolivia— This transfer being made, Mr. John Wheelwright one of the partners & liquidators of the firm of Alsop & Company, proceeded to La Paz for the purpose of claiming from the Government of Bolivia, the fulfillment of the obligations it had contracted in favor of Mr. Lopez Gama, and by the latter assigned to those represented by him (Wheelwright).—After long and many negotiations, which occasioned Mr. Wheelwright expenses and not a few troubles, and after a thousand vicissitudes which it would be idle to relate here, finally in December of the year 1876, he succeeded in bringing about the transaction contained in the decrees of 23d and 24th of December of that year, and which was reduced to a public instrument on the 26th of December at La Paz, before the Notary of the Treasury, Mr. Particio Barrera.—By Article first of decree of 24th of December, the Government of Bolivia accepting Mr. Wheelwright as acting for those whom he represented, concluded a contract with him in which it recognized itself debtor to Messrs Alsop & Company as transferees of Mr. Pedro Lopez Gama, in the sum of eight hundred and thirty-five thousand bolivianos with interest at five per cent per year from the date of the writing of the contract. By Article second it bound itself to pay said capital and interest, by drafts drawn for the total amount in quarterly proportions against the excess which, from the date of the expiration of the Customs Contract it had celebrated with Peru, there might be in the receipt of or duties belonging to Bolivia at the Custom House of the North, over and above the four hundred and five thousand dollars allowed by the Government of Peru, and this either in case of the renewal of the Customs treaty with that Republic or the re-establishment of the National Custom House.—By Article three it adjudicated for the amortization of the same debt all the Estaca silver mines of the State in the Department of the Coast (Litoral), said amortization to be made with forty per cent of the net profits of each one excepting the Estaca called “Flor del Desierto,” which with one other that Mr. Wheelwright had the right to select, were adjudicated by Article four for the payment of past due interests.—By Article first of decree of 23d of December, in which regulations were made for the exploi-

tation of the adjudicated Estaca mines, there was granted to Mr. Wheelwright the term of three years for the exploration of the mines and in which to procure the necessary capital to put them in working order.—By Article second he was authorized to organize companies, associated or stock, for the working of one or more estacas, and to make contracts for working with the owners of adjoining mines—By Article sixth it was provided that the duration of the pact should be for twenty five years—This was in its principal points all that Mr Wheelwright could obtain from the Government of Bolivia, after having worked for a considerable period in favor of the recognition of the rights which Mr. Lopez Gama had assigned to his principals in payment of the million & odd hard dollars delivered by these to the former in order that he might make to the Government of Bolivia the advances to which he has hereinbefore referred.—And consequently, from this contract likewise spring the rights of Mr. Wheelwright with respect to the silver mines on the Coast of Bolivia known by the name of Public Instruction Estacas.—Immediately after the contract had been extended as a public instrument, Mr Wheelwright published in La Paz and in Caracoles a notice as transferee of the Estacas, inviting all who might be interested in working any one or more of them to come to an understanding with him.—He likewise published the contract in the “Mercurio” of Valparaiso to call the attention of miners and capitalists thereto. Following and nearly up to the very date of the occupation of the coast by the Chilian Army, the Government of Bolivia issued very many resolutions ordering the Coast authorities to carry out in all its parts the contract made with Mr. Wheelwright—In entering into this pact, the Government of Bolivia only exercised the authority conferred upon it by the law of 19th of October, 1871, with respect to the Public Instruction Estacas, and that which the law of 22d of November, 1872, afterwards gave to it to settle and adjust certain interests of the State that were being litigated or concerning, which certain claims were pending. It seemed, therefore, that the contract of December 26th of 1876, did not require to make it valid the approval of Congress. Nevertheless, Don Jose Salvatierra Minister of the Treasury having informed the legislature of 1877 that the contract had been made, in his report of that year, and annexed to which appear the decrees of 23d and 24th of December, 1876, a bill was presented to Congress proposing a law approving all the political and administrative acts of the provisional Government of Don Hilarion Daza, with whom the contract in question

was concluded, and on the 12th of February, 1878, after the reports of the Committees on Industry and Finance had been heard, a law was passed giving approval to all the measures adopted by the said Government in the Treasury Department—From what has so far been shown it appears that the Government of Bolivia, recognizing itself indebted to Messrs. Alsop & Company, Transferees of Don Pedro Lopez Gama, bound itself to pay to Mr. Wheelwright as representative of Messrs. Alsop & Company, with the receipts from Customs mentioned in article second of the decree of 24th of December, and with forty per cent of the net profits of the Public Instruction Estacas of the Coast mentioned in Article third, which for that purpose were adjudicated to him by the contract. It appears moreover that although the Government of Bolivia entered into this contract sufficiently empowered by the laws of 19th of October, 1871, and 22d of November, 1872, the National Congress subsequently approved the transaction by means of a special and positive law—If to this there is added, as has already been stated, that Mr. Wheelwright entered into possession of the Estacas immediately after the date of the contract, and that the Government charged its subordinate agents with strict compliance with the same so far as on them depended, it seems as though there can not be the slightest doubt as to the validity of the contract, and the legality of Mr. Wheelwright's rights with respect to the Public Instruction Estacas of the coast (*Litoral*)—Being confident of this, and having met with difficulties in consequence of the actual war in receiving the part of the Customs duties destined for the amortization of the debt, Mr. Wheelwright dedicated his efforts exclusively to the Public Instruction estacas, attempting their exploration and the working of the same either personally or by means of contractors—But the three years granted to him for the exploration of the mines had not yet terminated when the war with Bolivia broke forth, since when, either because of the exceptional situation created on the Coast by the war, or owing to the fact that his rights were ignored by the miners interested in keeping or taking possession of some of the Estacas or interpenetrating them, Mr. Wheelwright has been very far from succeeding in organizing, as he had intended to, the working of the Estacas, and has been compelled to maintain his rights by carrying on with many persons very expensive lawsuits which have taken up a large part of the time which he had for developing the working of the mines.—In fact, as many of the laborers on whom the mining industry on the Coast relied, enlisted in the army, the number of hands became so

scarce that it oftentimes became necessary to reduce or stop work in some mines for lack of workmen. It is not difficult to understand that all these obstacles were much more serious for Mr. Wheelwright, who had so many mines that it was to his own interest to keep working either personally or by means of contractors—As to the second of the above noted circumstances, certain individuals moved by their personal interests and believing either truly or pretending to, that the boundary treaty with Bolivia of the year 1874, having been rescinded, and the territory included between S. latitudes 23 and 24 having been occupied by Chile, the contract of 26th December, 1876 had become extinct, looked upon the Public Instruction Estacas as vacant lands and attempted to deprive Mr. Wheelwright of his rights to the same, by means of petitions or denunciations notwithstanding that according to Supreme resolution of Bolivia they are not subject to denunciation; removing boundaries to destroy their individuality or interpenetrating his squares. And there have not been lacking some who applying that theory even to Estacas situated outside of the territory which it is said has been revindicated and is merely under military occupation, have created for Mr. Wheelwright respecting these the same kind of difficulties just mentioned. Of course, each of these assaults which have been repeated very frequently ever since the beginning of the war, has obliged Mr. Wheelwright to enter a long and expensive suit, in order to avoid the despoilment of which it has been sought to make him the victim.—Meanwhile, it is neither possible to cast any doubt upon the validity of the contract made by Mr. Wheelwright with the Government of Bolivia, as has already been demonstrated, nor are the precepts of international law in accord with the pretensions of those individuals who imagine that Mr. Wheelwright has lost his rights to the Public Instruction Estacas by the fact that the territory in which they are located has been occupied by Chile with her arms—It will not be difficult to establish this last by referring to some principles of International law bearing upon the question.—The effects of the rupture or rescission of a treaty, according to one of those principles, only affects public interests sovereign to sovereign, but not private interests arising from concessions made to individuals by one of the contracting powers by virtue of the rights conferred upon it in the treaty—By the Boundary treaty of 1874 Chile ceded to Bolivia eminent domain over the revindicated territory.—As is known, this gives the power to administer and govern the ceded territory

and to dictate laws with respect to persons and things found therein. It is true the cession was made with certain limitations as that in Article four, but by none of them was the dominion of Bolivia restricted as to the power of conferring upon individuals rights over the ceded territory or over any properties existing in the same.—A careful perusal of the treaty shows that it contains no restriction whatever of this kind, and for this reason Mr. Wheelwright did not ask Chile's approval nor give her notice of the contract, contenting himself with publishing it for the purposes already named.—If Bolivia when she conceded rights to individuals over a part of her territory, and entered into contracts such as that executed as a public instrument on the 26th of December, 1876, did no more than to make use of the administrative and governmental powers belonging to her by virtue of the cession of 1874; if in doing all that she did not exceed the limitations of the same, should all those contracts and concessions be deemed annulled by the rescission of the treaty of 1874? Evidently, no, and all rights derived from them should be deemed as subsisting, as having been legally acquired from those who could legally confer them—The contrary would be the case, had the Government of Bolivia when she contracted with or made concessions to private individuals, not kept within the limitations or conditions of the cession. In such case, all those contracts and concessions would have had to meet with the same fate as the treaty of 1874—If the foregoing considerations are not erroneous, it follows that the rescission of the treaty of boundaries with Bolivia does not mean that of the public instrument of 26th of December, 1876, and that consequently the rights acquired by means of that document by Mr. Wheelwright in behalf of Messrs Alsop & Company are still subsistent.—Again, rights are property as much as any other thing and like other things are part of the private property of the owners—So, the rights conceded to Mr. Wheelwright form a part of the private property of the firm in whose behalf he acquired them—Chile at war and by the force of arms occupied, and is still in military occupation of the territory wherein are situated the mines to which those rights refer—With this antecedent, it is unquestionable that Chile must in justice and equity respect those rights in all their parts, if she is to conform with that precept of International law which prescribes respect for private property which constitutes one of the noblest conquests of modern civilization and is observed almost without exception by the most enlightened nations of the world.—Not to

make this representation too lengthy, I will content myself with transcribing in support of this practice, what M. G. Masse sets forth in his magnificent treatise on International Law in its relations with the rights of people and civil law. In the first volume, page 105, number 122 he says textually as follows:

“If a state of war does not authorize belligerents to treat as enemies the citizens of hostile nations, with less reason does it authorize to treat as enemies the citizens of neutral nations that take no part in the contest.”

Further on, page 123 numbers 148 and 149 he adds:

“Until now I have treated of the effects of war only as they concern individuals or those whose property is found in the enemy's territory; let us now proceed to the contrary hypothesis, to the rights of the enemy over persons and things found in territory which he invades or occupies by force of arms—War having no other object than to oblige the enemy to be just, everything having any relation morally necessary for that legitimate end is permissible, but nothing more. Hence the right of invading the enemy's territory of occupying and conquering it inasmuch as this is the only means of compelling him to give the satisfaction which he refuses—But the right of conquest cannot affect the property of private individuals, for a war is merely a condition between Nation and Nation it follows that either of the belligerents making conquests in the territory or the other, cannot acquire more rights than belonged to him whom he has substituted; and that as the invaded or defeated State had no right whatever over private property, so the invader or conqueror cannot legitimately exercise any (public) right over such property. Such is today the Public law of Europe, the maxims of which have corrected the barbarities of ancient customs, which subjected to the laws of war private as well as public properties.”

In this way, as on one hand the contract of 26th December, 1876, still subsists, and as the rights which by virtue thereof were acquired by Messrs Alsop & Co. form an integral part of their private property, it seems unquestionable that the allegations of those who deny this are absolutely without foundation.—The fact remains however that on the pretext of the Chilian occupation, Mr. Wheelwright's rights are not recognized, and difficulties and obstacles are thrown in his way which not only entail heavy expenses and occasion infinite troubles, but which have prevented him and still prevent him from realizing the purposes of his contract.—As there are many Public Instruction Estacas, it is clear that one person alone cannot work them all or any considerable

part of them. To do this it will be necessary to organize companies or associations to provide the necessary funds for their exploitation—But the attacks made by some individuals against the rights of Mr. Wheelwright naturally deter capitalists, and for this reason it has been impossible for him to organize one single company for the working and exploitation of these properties; so that Mr. Wheelwright has had to content himself until now by examining and working a few of them, and these studies and works have to a certain point assisted in keeping alive and maintaining the movement of the Caracoles mineral—The working of the Public Instruction Estacas on a large scale, would benefit not only Messrs Alsop & Co. by enabling them perhaps to pay themselves the amount due to them by the Government of Bolivia, but likewise the country generally for it would tend to increase the public wealth by developing the mining industry of so vast and very important a mineral district as is that of Caracoles, without taking into account the duties that the Government would receive on the exportation of silver that might be produced—Mr. Wheelwright believing therefore that the contract made by him with the Government of Bolivia concerning the Public Instruction Estacas is perfectly valid; that said contract has continued in force notwithstanding the rescission of the treaty of boundaries of 1874; and that not only in equity but also in justice Chile should respect that contract; and that if he could assure the rights acquired under that contract by Messrs Alsop & Co., it would be more easy for him to organize private associations for the working and exploitation of the Estacas, with benefit to his principals and to the country itself, he deems it opportune and convenient to address himself now to the Government of Your Excey, inasmuch as his former communications which were accompanied by the respective antecedents, have produced no results whatever, to the end that in the treaty of peace that may be made with the Government of Bolivia, or in any arrangements whatever they may be concluded with the same, or in any other efficacious manner, the contract embraced in the public instrument of 26th December, 1876, made by him with the Government of Bolivia, may be recognized as valid and in force, and that he be guaranteed the full and free exchange of all the rights conferred upon him therein, exactly as though there had been no change whatever in the dominion over the territory in which the Estacas are located.

Most Excellent Sir, it is grace and for this, &c—

JOHN STEWART JACKSON.

ORDER.

MINISTRY OF THE TREASURY, CHILE,

Valparaiso, March 21st, 1884.

To be seen by the Attorney of the Treasury. Let it be noted.

BARRÓS LUCO.

Exhibit 20.

[Copia.]

1^a Solicitud ^a EXCELENTÍSIMO SEÑOR: Juan Stewart Jackson apoderado de Juan Wheelwright, socio liquidador de la Casa de Alsop y Compañía, tiene el honor de representar a V. E. con debido respeto que en varias ocasiones ha puesto en conocimiento del Supremo Gobierno, los documentos que acreditan el derecho de Juan Wheelwright al usufructo de las minas llamadas Estacas de Instrucción del Gobierno de Bolivia existentes en el territorio actualmente ocupado por las fuerzas de la Nación Chilena, y en la Memoria que se presentó con fecha once de Setiembre de mil ochocientos ochenta y dos,^b se acompañó una copia de los documentos y el poder que acreditó su personería. Como es mui probable que luego se celebrará un tratado entre las dos naciones creo que ha llegado el momento oportuno para llamar nuevamente a la atención de V. E. los hechos, suplicando a V. E. se sirva tenerlos presente al tiempo de arreglar un tratado con la República de Bolivia.—La relacion fiel de los hechos es como sigue:—El veintitres de Julio del año de mil ochocientos cincuenta y dos, el Gobierno de Bolivia, deseando crear a la Instrucción Pública del País una fuente de entradas, espidió un decreto por el cual dispuso que en todo descubrimiento de minas de plata, oro u otro metal, cualquiera, pertenecería de pleno derecho al Tesoro de Instrucción Pública la Estaca siguiente a las que correspondiesen al descubridor segun el Código de Minería—Desde la fecha de este decreto, en todo descubrimiento, despues de medirse al descubridor las pertenencias a que la lei le daba derecho, se ha medida al Fisco una de sesenta varas de lonjitud por treinta de latitud—Tal es el orijen de las minas conocidas en Bolivia con el nombre de Estacas de Instrucción Pública. Muchas otras disposiciones, ya lejislativas ya gubernativas dictadas con posterioridad, confirmaron el decreto de veintitres de Julio de mil ochocientos cincuenta y dos, asegurando al mismo tiempo al Estado la propiedad y posesion de

^a For translation, see Exhibit 19, p. 200, *supra*.^b See p. 135, *supra*.

estas minas, y por la lei de diez i nueve de Octubre de mil ochocientos setenta y uno se autorizó al Gobierno para darlas en arrendamiento, o esplotarlas en sociedad con terceras personas. La Casa de comercio que jiraba en Valparaiso bajo la razon social de Alsop y Compañía, suministró en cierta época a Don Pedro Lopez Gama gruesas sumas de dinero para que hiciese adelantos al Gobierno de Bolivia por cuenta de contratos para la esportacion del Guano del Litoral boliviano y para la administracion del mismo negocio. Estas cantidades ascendieron a mas de un million de pesos, y en pago de ellas el Señor López Gama por escritura pública otorgada en Valparaiso el catorce de Abril de mil ochocientos setenta y cinco cedió a los señores Alsop y Compañía ciertos derechos que en virtud de contratos anteriores habia adquirido de Bolivia. Verificada esta cesion, Don Juan Wheelwright uno de los socios liquidadores de la Casa de Alsop y Compañía se dirijió a La Paz con el objeto de reclamar del Gobierno de Bolivia el cumplimiento de las obligaciones que habia contraido a favor del Señor Lopez Gama y que éste habia cedido a sus representados. Despues de largas y multiplicadas negociaciones que impusieron al Señor Wheelwright gastos y molestias de consideracion, y despues de mil vicisitudes que seriá ocioso consignar aquí, al fin Diciembre del año de mil ochocientos setenta y seis logró arribar a la transaccion constante de los decretos de veintitres y veinticuatro de Diciembre de ese año y que fué reducida a escritura pública en la Paz ante el Notario de Hacienda, Don Patricio Barrera el veintiseis de Diciembre. Por el artículo primero del decreto de veinticuatro de Diciembre el Gobierno de Bolivia, aceptando la personería del Señor Wheelwright, celebró con él un contrato por el cual se reconoció deudor de los Señores Alsop y Compañía como cesionarios de Don Pedro Lopez Gama por la suma de ochocientos treinta y cinco mil bolivianos con el interes anual de un cinco por ciento desde la fecha de la escritura del contrato. Por el artículo segunda se comprometió a pagar dicho capital e intereses con letras jiradas en su totalidad en proporciones trimestrales sobre el escedente que desde la fecha en que terminase el contrato aduanero, que tenía celebrado con el Perú, hubiese en la percepcion de derechos de la Aduana del Norte correspondiente a Bolivia, sobre los cuatrocientos cinco mil pesos que abonaba el Gobierno del Perú, sea que se renovase el tratado aduanero con esa República, sea que se restableciese la Aduana Nacional. En el artículo tercero adjudicó a la amortizacion de la misma deuda

todas las Estacaminas de plata del Estado en el Departamento Litoral, debiendo verificarse dicha amortizacion con un cuarenta por ciento de las utilidades líquidas de cada una ménos tratándose de la Estaca denominada "Flor del Desierto", la que, con otra que el Señor Wheelwright tenía derecho de elegir, fué adjudicada por el artículo cuarto al pago de los intereses devengados. Por el artículo primero del decreto de veintitres de Diciembre, que reglamentó la explotacion de las Estaca-minas adjudicadas, se concedió al Señor Wheelwright el término de tres años para el estudio de las minas y para buscar los capitales necesarios para ponerlas en trabajo. Por el artículo segundo se le autorizo para organizar sociedades colectivas o anónimas para la explotacion de una o mas Estacas, y para contratarla con los propietarios de minas colindantes. Por el artículo sexto se determinó que la duracion del pacto sería de veinticinco años—Esto fué en sus puntos capitales, todo lo que el Señor Wheelwright pudo obtener del Gobierno de Bolivia, despues de jestionar durante algun tiempo en favor del reconocimiento de los derechos que el Señor Lopez Gama había cedido a sus mandantes en pago del millon y pico de pesos fuertes que estos habían entregado a aquél para que hiciese al Gobierno de Bolivia los anticipos de que mas arriba he hecho mérito. De este contrato nacen tambien, por consiguiente, los derechos que al Señor Wheelwright corresponden respecto de las minas de plata del Litoral de Bolivia conocidas con el nombre de Estacas de Instruccion Pública. Inmediatamente despues de reducido el contrato a escritura pública el Señor Wheelwright dió a luz en La Paz y en Caracoles un aviso en su carácter de adjudicatario de las Estacas, invitando a entenderse con él a todos aquellos que tuviesen interes en trabajar alguna o algunas de ellas. Tambien publicó el contrato en el Mercurio de Valparaiso para llamar sobre él la atencion de los mineros y de los capitalistas. En seguida, y casi hasta la fecha mismo de la ocupacion del Litoral por el Ejército Chileno, el Gobierno de Bolivia espidió numerosísimas resoluciones ordenando a las autoridades del Litoral el cumplimiento en todas sus partes del contrato que habia celebrado con el Señor Wheelwright. Al ajustar este pacto, el Gobierno de Bolivia no hizo mas que usar de la autorizacion que la lei de diez y nueve de Octubre de mil ochocientos setenta y una ya citada le había conferido respecto de las Estacas de Instruccion Pública, y de la que la lei de veintidos de Noviembre de mil ochocientos setenta y dos le confirió mas tarde para celebrar transacciones sobre ciertos intereses del Estado que se hallaban en litijio o sobre los

cuales pendía algun reclamo. Parecia, pues, que el contrato de veintiseis de Diciembre de mil ochocientos setenta y seis no necesitaba para su validez de la aprobacion del Congreso. Sin embargo, habiendo el Señor Ministro de Hacienda Don José Salvatierra dado cuenta de haberlo celebrado a la lejislatura de mil ochocientos setenta y siete en su Memoria de ese año, entre cuyo anexos figuran los derechos [decretos] de veintitres y veinticuatro de Diciembre de mil ochocientos setenta y seis, se presentó al Congreso un proyecto de lei proponiendo la aprobacion de todos los actos políticos y administrativos del Gobierno provisorio de Don Hilarion Daza con el cual se celebró el contrato en cuestion y el doce de Febrero de mil ochocientos setenta y ocho, despues de oidos los informes de las comisiones de Industria y Hacienda, votó una lei concediendo su aprobacion a todas las medidas que el referido Gobierno había dictado en el ramo de Haciendo. De lo espuesto hasta aquí resulta que el Gobierno de Bolivia, reconociéndose deudor de los Señores Alsop y Compañía, cesionarios de Don Pedro Lopez Gama, se obligó a pagar al Señor Wheelwright como representante de los Señores Alsop y Compañía con las entradas de aduana a que alude el artículo segundo del decreto de veinticuatro de Diciembre y con un cuarenta por ciento de las utilidades líquidas de las Estacas de Instruccion Pública del Litoral de que hace mencion el artículo tercero, que al efecto se le adjudicaron por el contrato. Resulta ademas que aunque el Gobierno de Bolivia procedió a celebrar este contrato con facultades bastantes, las que le daban las leyes de diezinueve de Octubre de mil ochocientos setenta y uno y de veintidos de Noviembre de mil ochocientos setenta y dos, el Congreso Nacional aprobó mas tarde la transaccion por medio de una lei espresa y terminante. Si a esto se agrega que, como ya se ha espresado, el Señor Wheelwright entró en posesion de las Estacas inmediatamente despues de la fecha del contrato y que el Gobierno recomendó a sus ajentes subalternos su estricto cumplimiento en cuanto de ellos dependiera, parece que no cabe la mas pequeña duda acerca de la validez del contrato y acerca de la lejitimidad de los derechos del Señor Wheelwright respecto de las Estacas de Instruccion Pública del Litoral. Confiado en esto y habiendo tropezado con dificultades por razon de la guerra actual para percibir la parte de entradas de aduana que se destinaron a la amortizacion de la deuda, el Señor Wheelwright consagró esclusivamente sus esfuerzos a las Estacas de Instruccion Pública, emprendiendo su estudio y procurando el trabajo de ellas personalmente o por medio de contratistas.

Pero aun no habían trascurrido los tres años que se le concedieron para el estudio de las minas cuando estalló la guerra con Bolivia y desde entónces, ya por la situacion escepcional a que ésta ha dado oríjen en el Litoral, ya por la circunstancia de haberse desconocido sus derechos por los mineros a quienes interesaba conservar o apoderarse de alguna de las Estacas o internarse a ellos, el Señor Wheelwright no ha podido ni con mucho organizar como se proponía el trabajo de las Estacas, y se ha visto en la necesidad de sostener con muchas personas, para la conservacion de sus derechos, pleitos dispendiosísimos que le han ocupado una parte considerable del tiempo que tenía para fomentar el trabajo de las minas. En efecto, habiéndose enrolado en el Ejército muchos de los operarios con que contaba la industria minera en el Litoral, el número de estos llegó a ser tan escaso que muchas veces ha habido que reducir o paralizar el trabajo de algunas minas por falta de operarios. Se comprende sin esfuerzo que este inconveniente había sido mucho mas grave para el Señor Wheelwright, que tenía tantas minas a las cuales estaba en su propio interes el poner trabajo por sí o por medio de pirquineros. Por lo que toca a la segunda de las circunstancias que se han apuntado, algunos individuos llevados de su interes particular y pensando de buena o mala fé que por haberse resuelto el tratado de límites con Bolivia del año de mil ochocientos setenta y cuatro y por haber ocupado Chile el territorio comprendido entre los paralelos veintitres y veinticuatro de Latitud Sur, había caducado el contrato de veintiseis de Diciembre de mil ochocientos setenta y seis, han considerado las Estacas de Instruccion Pública, como terreno vacante y han pretendido privar al Señor Wheelwright de los derechos que le corresponden respecto de ellos, pormedio de pedimentos o de denuncios sin embargo de que por resolucion Suprema de Bolivia no son susceptibles de denuncia; denilando sus linderos para hacer desaparecer su individualidad o internándose a sus cuadras. Y no han faltado personas que, aplicando aquella teoría, aun a las Estacas que se hallan situados fuera del territorio, que se dice reivindicado y que es de mera ocupacion militar, hayan promovido, al Señor Wheelwright en cuanto a éstas las mismas dificultades de que se acaba de hacer mencion. Por supuesto, cada uno de estos atentados, que se han repetido, con mucha frecuencia desde el principio de la guerra ha obligado al Señor Wheelwright, para evitar el despojo de que se ha intentado hacerle víctima a sostener un largo y dispendioso pleito. Entre tanto ni puede revocarse en duda la validez del contrato celebrado por el Señor Wheelwright

con el Gobierno de Bolivia, segun ya se ha demostrado ni es arre-
glada a los preceptos del derecho internacional la pretension de
los particulares en cuanto suponen que el Señor Wheelwright ha
perdido sus derechos a las Estacas de Instruccion Pública por el
hecho de haber ocupado Chile con sus armas el territorio en que
se hallan. No será difícil establecer lo último invocando alguno
de los principios del derecho internacional que hacen a la cuestion.
Los efectos de la ruptura o anulamiento de un tratado, segun uno
de esos principios, solo afecta los intereses públicos de soberano a
soberano, mas no los intereses privados nacidos de concesiones
hechas a particulares por una de las potencias contratantes en
virtud de los derechos que se le confieron en el tratado. Por el de
límites de mil ochocientos setenta y cuatro, Chile cedió a Bolivia
el dominio eminente sobre el territorio reivindicado. Como se
sabe, este dominio de la facultad de administrar y gobernar el
territorio cedido y de dictar leyes respecto de las personas y cosas
que se encuentran en él. La cesion, es cierto, fué con algunas
limitaciones como la del artículo cuarto, pero por ninguna de ellos
se restringió el dominio de Bolivia en cuanto a la facultad de confe-
rir a particulares derechos sobre el territorio cedido o sobre algunos
de los bienes en él existentes. Leyendo el tratado con atencion,
se vé que no contiene restriccion alguna de esta especie, y por lo
mismo el Señor Wheelwright no buscó la aprobacion de Chile ni
le dió noticia del contrato limitándose a publicarlo para los efectos
ya espresados. Si Bolivia, al conceder derechos a particulares
sobre una parte de este territorio y al celebrar contratos como el
escriturado el veintiseis de Diciembre de mil ochocientos setenta
y seis, no hizo mas que poner en ejercicio las facultades adminis-
trativas y gubernativas que le correspondían en virtud de la
cesion de mil ochocientos setenta y cuatro; si al hacer todo eso, no
ha excedido los límites de ésta y deberán entenderse anulados todos
esos contratos y concesiones por la resolucion del tratado de mil
ochocientos setenta y cuatro? Es evidente que nó, y que los
derechos que derivan de ellos deben considerarse subsistentes por
haber sido adquiridos lejítimamente de quien lejítimamente podía
conferirlos. Sucedería lo contrario si al contratar o hacer con-
cesiones a particulares, el Gobierno de Bolivia, no se hubiera
mantenido dentro de los límites o condiciones de la cesion. En este
caso aquellos contratos y concesiones tendrían que correr la misma
suerte que el tratado de mil ochocientos setenta y cuatro. Si las
consideraciones que preceden no son erróneas, debe reputarse que
la resolucion del tratado de límites con Bolivia no entraña la del

constante de la escritura de veintiseis de Diciembre de mil ochocientos setenta y seis, y que, en consecuencia, los derechos que por medio de este adquirió el Señor Wheelwright para los Señores Alsop y Compañía están subsistentes. Por otra parte, los derechos son bienes como cualesquiera otros y forman como éstos parte de la propiedad privada de los que los poseen. Así los derechos que se concedieron al Señor Wheelwright, constituyen una parte de la propiedad particular de la sociedad para la cual los adquirió. Chile en guerra y por la fuerza de las armas ha ocupado y ocupa militarmente el territorio en que las minas a que esos derechos se refieren, se hallan situadas. Dado este antecedente, es incuestionable que Chile debe en justicia y en equidad respetarlos en todas sus partes si ha de conformarse con el precepto de derecho Internacional que prescribe el respeto de la propiedad privada y que constituyendo una de las mas preciosas conquistas de la civilizacion moderna, es practicado casi sin escepcion por todas las naciones cultas del orbe. Para no dar a esta esposicion proporciones desmedidas, me limitaré a trascribir en apoyo de esta práctica lo que M. G. Massé sostiene en su magnífico tratado de Derecho Internacional en sus relaciones con el derecho de jentes y el derecho civil. En el tomo primero, página ciento cinco número ciento veintidos dice testualmente lo que sigue: "Si el Estado de guerra no autoriza a los beligerantes para tratar como enemigos a los ciudadanos de las naciones enemigas, con ménos razon autoriza para tratar como enemigos a los ciudadanos de las naciones neutrales que no toman parte en la contienda". Mas adelante, en la página ciento veintitres números ciento cuarenta y ocho y ciento cuarenta y nueve agrega: "Hasta aquí no me he ocupado de los efectos de la guerra sino en lo que toca a los particulares o aquellos de sus bienes que se encuentran en territorio enemigo; pasemos ahora a la hipótesis contraria, a los derechos del enemigo sobre las personas y las cosas que se encuentran en el territorio que invade u ocupa, por las armas. No teniendo la guerra otro objeto que obligar al enemigo a ser justo, todo lo que tenga una relacion moralmente necesaria con este fin lejítimo es permitido, pero nada mas. De allí el derecho de invadir el territorio del enemigo, de ocuparlo y de conquistarlo puesto que este es el único medio de compelerlo a dar la satisfaccion que rehusa. Pero el derecho de conquista no puede afectar a las propiedades de los particulares, no siendo la guerra sino una relacion de Estado a Estado, resulta que aquel de los beligerentes que hace conquistas en el territorio del otro, no puede adquirir mas derechos que aquel

a quien se ha sustituido; y que así como el Estado invadido o vencido no tenía derecho alguno sobre las propiedades particulares, así tambien el invasor o vencedor no puede ejercer lejítimamente ningun derecho (público) sobre esas propiedades. Tal es hoi día el derecho Público de Europa, cuyas máximas han correjido la barbarie de los antiguos usos que sometían a las leyes de la guerra las propiedades privadas así como las propiedades públicas". De esta manera, subsistiendo por una parte el contrato de veintiseis de Diciembre de mil ochocientos setenta y seis y formando los derechos que en virtud de él adquirieron los Señores Alsop y Compañía parte integrante de su propiedad particular, parece indudable que las alegaciones de los que lo combaten son completamente infundados. El hecho es, sin embargo, que bajo el pretexto de la ocupacion chilena se desconocen al Señor Wheelwright sus derechos, y se le promueven entorpecimientos y dificultades que no solo le imponen mil molestias y gastos, sino que le han impedido y le impiden todavia realizar el objeto de su contrato. Siendo muchas las Estacas de Instruccion Pública, es evidente que una sola persona no podría trabajarlas todas o una parte considerable de ellas. Para esto sería menester organizar compañías o sociedades que concurriesen con los fondos necesarios para la explotacion. Pero los ataques que algunos particulares dirijen contra los derechos del Señor Wheelwright retraen como es natural a los capitalistas, y le ha sido imposible por este motivo formar una solá compañía para el trabajo y explotacion de estas pertenencias; habiendo tenido el Señor Wheelwright que contentarse hasta ahora con reconocer y trabajar unas cuantas, estudio y trabajos que han contribuido hasta cierto punta a la vida y sostenimiento del mineral de Caracoles. El trabajo de las Estacas de Instruccion Pública en grande escala beneficiaría no solo a los señores Alsop y Compañía en cuanto podrían talvez pagarse de su deuda contra el Gobierno de Bolivia, sino tambien al pais en jeneral en cuanto tendería a aumentar la riqueza pública procurando el desarrollo de la industria minera en un mineral tan vasto y de tanta importancia como es el de Caracoles, sin tomar en cuenta los derechos que el Gobierno percibiría sobre la esportacion de la plata que se produjese. Estimando, pues, el Señor Wheelwright que es perfectamente válido el contrato que celebró con el Gobierno de Bolivia sobre las estacas de Instruccion Pública; que ese contrato ha quedado subsistente a pesar de la resolucion del tratado de límites del año de mil ochocientos setenta y cuatro; que no solo es equitativo sino aun justo el que Chile respete ese

con residencia en Valparaiso, República de Chile y de tránsito en ésta, también casado; mayores de edad e idóneos para este otorgamiento, a quienes de conocerlos doi fé y dijeron: Que para consolidar y amortizar sus créditos pendientes con el Estado por transferencia de los derechos que fueron reconocidos en favor de Don Pedro Lopez Gama, se ha expedido con fecha veinticuatro de los corrientes la resolución Suprema en que consta la transacción, definitiva, ordenándose la extensión de la escritura; y es como sigue—Ministerio de Hacienda—La Paz, Diciembre veinticuatro de mil ochocientos setenta y seis—Teniendo en consideración la propuesta del Señor Don Juan Wheelwright, socio y representante de los señores Alsop y Compañía de Valparaiso en liquidación para consolidar y amortizar sus créditos pendientes con el Estado por transferencia de los derechos que fueron reconocidos en favor de Don Pedro Lopez Gama, se ha acordado en consejo de Gabinete, con el citado Señor Wheelwright una nueva transacción que termine definitivamente este asunto, formalizado 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 e intereses será amortizado con letras jiradas en su totalidad en proporciones trimestrales sobre el excedente de la [desde la] fecha en que termine el actual contrato aduanero con el Perú, haya en la percepción de derechos de la aduana del Norte correspondiente a Bolivia, sobre los cuatrocientos cinco mil bolivianos que ahora abona el Gobierno del Perú, sea que se renueve el tratado aduanero con esa República, o sea que se restablezca la Aduana Nacional—Tercero—Se adjudica a la misma amortización todas las estacaminas de plata del Estado en el Departamento Litoral, debiendo verificarse ello con un cuarenta por ciento de la utilidad líquida, más en 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 dieziocho de Diciembre de mil ochocientos setenta y cinco, y setenta mil bolivianos correspondientes al año que espira. En la estaca “Flor del Desierto” la cuota correspondiente al Estado, y aplicable a esta amortización será el cincuenta por ciento del producto neto, y en la otra el cuarenta por ciento, como en las

demás estacas concedidas. El sobrante después de hecha la amortización de estos intereses, será aplicable al pago del capital reconocido, como se dispone en la cláusula tercera; siendo condición que si una o ambas estacas no producen nada o producen poco, quedan definitivamente cancelados, este cargo y toda reclamación por dichos intereses devengados—Quinto—La explotación de las estacaminas del Estado adjudicadas en los artículos anteriores queda sujeta al contrato que en esta misma fecha se celebra sobre la materia; pudiendo ser transferidos esos derechos y esta transacción a las personas o sociedades que crea conveniente el interesado, dando de ello aviso al Gobierno—Sesto—En todos los casos de entrega o recibo de cantidades se considerará el peso chileno o sol peruano de plata sellada equivalente al boliviano, sea en este contrato o en el de estacaminas—Otórguese la correspondiente escritura insertándose en ella esta transacción y el contrato relativo de que se hace mérito—Rejístrese—Daza—Salvatierra—Oblitas—Carpio Villegas—Manuel Peñafiel—Oficial Mayor—En veintiseis de los corrientes, a horas once, hice saber la Resolución Suprema que antecede al Señor Juan Wheelwright, socio y representante de los Señores Alsop y Compañía, quien enterado de su contenido aceptó en legal forma el contrato por ante mí el Notario de Hacienda y firmó de que doi fé—Juan Wheelwright—Patricio Barrera—Notario de Hacienda, Gobierno y Guerra—Ministerio de Hacienda e Industria—La Paz, Diciembre veintitres de mil ochocientos setenta y seis—En conformidad a la transacción 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 explotación de las estacaminas del Estado, que en aquella han sido adjudicadas a dicha casa, se haga bajo las bases y condiciones siguientes—Primera—El Señor Juan Wheelwright tendrá el término de tres años para hacer los estudios de las minas de plata del Estado y buscar los capitales necesarios para ponerlas en trabajo, debiendo apresurarse a adoptar en el menor tiempo posible las medidas y disposiciones preliminares conducentes a ello—Durante estos tres años, las minas quedarán a disposición del empresario facilitándole el Gobierno con su recomendación a las autoridades, su posesión efectiva—Segunda—En virtud de la adjudicación que se le tiene hecha, el empresario está en su derecho para organizar, ya sea en la costa o en el extranjero sociedades colectivas o anónimas para la explotación de una o más estacas; o bien para contratar los

medios mas seguros de esplotacion con los propietarios de minas colindantes, a efecto de trabajar todos o cualquiera de dichas estacas, que a juicio de la empresa o sociedades organizadas, sean provechosas o por lo ménos costeen los gastos de su laboreo, en las vetas descubiertas o que se descubrieren durante los tres años del término asignado en la base primera—Tercera—Los empresarios podrán contratar y ocupar en sus trabajos de minas, ingenieros, empleados y trabajadores estranjeros o nacionales, quienes durante el tiempo de su compromiso serán esceptuados de todo servicio militar y de todo cargo civil o consejil, salvos los casos de atencion a la tranquilidad y órden públicos—Cuarta—La empresa o sociedades encargadas del trabajo presentarán 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 a la amortizacion de la deuda el los términos conveniendos el la transaccion de esta fecha, y un sesenta por ciento a favor del peticionario—Quinta—El Gobierno pondrá en todos los trabajos que se formalicen el Interventor o Interventores necesarios, los que serán notados con el fondo comun de la empresa—Sesta—Este contrato durará por veinticinco años; en cuyo tiempo, si hubiese sobrante, despues de amortizada la deuda del Estado, en los términos de la transaccion, se entregará al mismo Estado—Sétima—Si en los primeros tres años o en adelante hasta el vencimiento de los veinticinco espresados en el artículo anterior, hubiese individuos o sociedades que se propongan esplotar alguna o algunas estacas de las contenidas en este contrato, podrán hacerlo si la empresa no tiene por conveniente encargarse de la esplotacion, manifestándolo por escrito ante el Gobierno u omitiendo deliberadamente esta manifestacion—Octava—El Gobierno Supremo cederá a favor del peticionario y gratuitamente, miéntras dure este contrato, los terrenos del Estado que sean necesarios para la plantacion de sus casas y establecimientos de sus minas—Daza—Salvatierra—Oblitas—Carpio—Villegas—Manuel Peñafiel—Oficial Mayor—En veintiseis 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 Compañía, quien enterado de su contenido, aceptó en legal forma—Doi fé—Juan Wheelwright—Patricio Barrera—Notario de Hacienda, Gobierno y Guerra—En cuya conformidad, ratificándose respectivamente en las dos Resoluciones Supremas preinsertas que orijinales quedan retenidas en la coleccion minutaria, bajo número cuatrocientos

diez, despues de rubricadas por mí el Notario, por el tenor de la presente y en la forma que mas haya lugar en derecho, otorgan: que se comprometen y obligan, a nombre de sus representados y por sí el último como socio, a la observancia y cumplimiento de todas y cada una de las cláusulas contenidas en ámbas Supremas Resoluciones. En su testimonio así dijeron, la otorgaron y firmaron ante los testigos que presentes se hallaron los doctores Manuel Vargas P. y Benjamin Martinez, vecinos de ésta, solteros, abogados y mayores de edad, ante quienes se leyó de principio a fin y no se opuso reparo alguno contra su tenor, de que signando doi fé—Manuel T. Salvatierra—Juan Wheelwright—Manuel Vargas P.—Benjamin Martinez—Aqui un signo—Ante mí—Patricio Barrera—Notario de Hacienda, Gobierno y Guerra—Pasó ante mí y consta a fojas mil noventa y ocho vuelta de mi registro vijésimo segundo de escrituras y contratos públicos—Pongo el presente orijinal a pedimento verbal a pedimento verbal, del interesado Señor Don Juan Wheelwright, de conformidad con el artículo veintiocho de la Lei del Notariado de cinco de Marzo de mil ochocientos cincuenta y ocho, despues de correjido y confrontado fiel y legalmente; en fé de ello lo autorizo, signo y firmo en la ciudad de La Paz de Ayacucho a horas cuatro de la tarde del día veintisiete del mes de Diciembre de mil ochocientos setenta y seis años—Hai un sello—Patricio Barrera—Notario de Hacienda, Gobierna y Guerra—Los infrascritos, Notarios de primera clase de este distrito judicial, certificamos y damos fé: que el ciudadano Patricio Barrera, que autoriza el presenté testimonio, es tal Notario de Hacienda, Gobierno y Guerra como se titula y nombra, actualmente en el ejercicio de sus funciones: que los documentos que autoriza y pasan por ante él, merecen entera fé y crédito judicial y extrajudicialmente; en fé de ello lo signamos y firmamos—La Paz, Diciembre veintiocho de mil ochocientos setenta y seis años—Hai un sello Basilio Fran. Guachallos—Notario de primera clase—Francisco Luis Ballon—El ciudadano Pedro Villamil, Jeneral de Brigada del Ejército Boliviano y Prefecto del Departamento etcétera—Certifica que es legal la anotacion que precede a veintiocho de Diciembre de mil ochocientos setenta y seis años—Hai un sello—Pedro Vallamil—Hai un sello—La Paz, Diciembre veintinueve de mil ochocientos setenta y seis—Legalizado—J. Oblitas—Consulado Jeneral de la República Argentina—Certifico la autenticidad de la firma “J. Oblitas” que antecede—La Paz, Diciembre veintinueve de mil ochocientos setenta y seis—Hai un sello—Geo. M. Bowen—Can-

ciller del Consulado—Concuerta con el testimonio orijinal a que he hecho referencia al comienzo de esta copia. Antofagasta, abril veintinueve de mil ochocientos ochenta y quatro—Francisco Martínez G.—Notario Público y Conservador.

2ª Solicitud

EXCELENTÍSSIMO SEÑOR :^a Juan Stewart Jackson por Don Juan Wheelwright en su calidad de contratista de las minas del Litoral de Bolivia ocupadas por Chile, conocidas con el nombre de Estacas de Instrucción Pública segun el contrato que acompaño en copia autorizada ante V. E. respetuosamente espongo:—En su natural interes por obtener de parte del Supremo Gobierno de Chile el reconomiento de su contrato, el señor Wheelwright a presentado a V. E. en distintas ocasiones solicitudes tendentes a la consecucion de ese objeto, pero hasta ahora no ha recaido en ellas ninguna resolucion que ponga término al estado de incertidumbre en que por lo que toca a los derechos que le confiere el contrato se encuentra despues de la ocupacion del Litoral Boliviano por las armas de Chile. Hace poco, cuando se trataba de arreglar la cuestion internacional pendiente entre Chile y Bolivia, presenté en su nombre una nueva peticion para que en el tratado de paz, tregua u otro cualquiera a que se arribase se tuviera presente su contrato y se consignara en el pacto que se celebrase una cláusula por la cual el Supremo Gobierno de Chile, como era justo, se comprometiese a reconocer y respetar el contrato en cuestion en los mismos términos que Bolivia—Al cabo de algun tiempo se pactó la tregua indefinida de que da constancia el pacto que ha visto la luz pública, en el que a pesar de mis jestioness ni siguiera se hace mencion del contrato del Señor Wheelwright sin que hasta ahora me haya dado cuenta de esa omision—Como el Señor Wheelwright desea ver definida su situacion cuanto ántes, ocurro nuevamente a V. E. en su nombre para que en mérito de las razones aducidas en mi última solicitud, y en vista tanto del Tratado de Paz con el Perú quanto del Pacto de Tregua con Bolivia reclamando los, derechos conferidos por el contrato adjunto y especialmente en la segunda cláusula del Decreto Supremo de veinticuatro de Diciembre de mil ochocientos setenta y seis incorporado en el referido contrato, para que en mérito de las razones aducidas en mi última solicitud se digne acceder al reconocimientto que en ella he pedido, ya que ese reconocimientto no tuvo cabida en el pacto de

^a For translation of this document (pp. 221-2), see Exhibit 5 H, p. 151, *supra*.

tregua con Bolivia—es justicia y para ella—Juan Stewart Jackson—Ministerio de Hacienda—Santiago, Agosto veinticinco de mil ochocientos ochenta y cuatro—Pase al Fiscal de Hacienda que conoce de este negocio—Anótese—Barros Luco—

Vista Fiscal SEÑOR MINISTRO ^a Don Juan Stewart Jackson, en la presentacion proveida con fecha veinticinco de Agosto último, dice, a nombre de Don Juan Wheelwright, que su representado, como contratista de las minas del Litoral de Bolivia conocidas con la denominacion de Estacas de Instruccion Pública, ha jestionado en diversas ocasiones a fin de obtener que el Gobierno de Chile reconociera su contrato; que, cuando se trataba de arreglar la cuestion internacional pendiente entre Chile y Bolivia, presentó una nueva peticion para que en el tratado de paz o tregua a que se arribase, se tuviese presente dicho contrato y se consignase una cláusula por la cual el Gobierno de Chile se comprometiese a reconocerlo y respetarlo; que en el pacto de tregua indefinida que ha visto la luz pública ni siguiera se hace mencion de él, sin que hasta ahora haya podido darse cuenta de esa omision; y que, como el Señor Wheelwright desea ver definida su situacion cuanto ántes, ocurre al Supremo Gobierno para que se digne acceder al reconocimiento pedido en su última solicitud, ya que él no tuvo cabida en el pacto de tregua con Bolivia—La última solicitud a que se alude es, segun parece, la que fué promovida en Valparaiso con fecha veintiuno de Marzo de mil ochocientos ochenta y cuatro. En ella el Señor Wheelwright pide que, en el tratado de paz que se ajuste con el Gobierno de Bolivia, o en los arreglos a que con él se arribe, o de otra manera eficaz, se reconozca como válido y subsistente el contrato que celebró con el Gobierno de Bolivia en veintiseis de Diciembre de mil ochocientos setenta y seis, y se le garantice el libre y completo ejercicio de todos los derechos que le confiere—Segun el solicitante, este contrato es una transaccion a virtud de lo que el Gobierno de Bolivia se reconoció deudor de los señores Alsop y Compañía, de cuyo sociedad Don Juan Wheelwright se titula socio liquidor, como cesionario de Don Pedro Lopez Gama, por la suma de ochocientos treinta y cinco mil bolivianos al cinco por ciento de interes anual, y se comprometió a pagar este capital y los intereses con letras jiradas en su totalidad, en proporciones trimestrales, sobre el excedente que desde la fecha en que terminarse el contrato aduanero que tenía

^a For translation of this document (pp. 222-5), see Exhibit 25, p. 276, *infra*.

celebrado con el Perú, hubiese, en la percepcion de derechos de la aduana del norte correspondiente a Bolivia, sobre los cuatrocientos cinco mil pesos que abonaba el Gobierno del Perú, sea que se renovase el contrato aduanero celebrado con esa República, sea que se restableciese la aduana nacional—Se convino tambien en aplicar a la amortizacion de la misma deuda todas las Estacaminas de plata del Estado en el departamento Litoral, debiendo verificarse la amortizacion con un cuarenta por ciento de las utilidades líquidas de cada una—Para el estudio de las minas y buscar los capitales necesarios para ponerlas en trabajo, se concedió al Señor Wheelwright el término de tres años—La declaracion de este contrato se fijó en veinticinco años—Como V. S. puede notar, por este contrato cuya parte sustancial he transcrito, el Gobierno de Bolivia se reconoce deudor de una suma de dinero y se obliga a pagarla en la forma que especialmente se determina—Ahora bien, la presentacion de Don Juan Wheelwright se encamina a obtener que el Gobierno de Chile reconozca de una manera eficaz como válido y subsistente el contrato mencionado, y que garantice el libre y completo ejercicio de todos los derechos que confiere, exactamente como si no hubiera tenido lugar cambio alguno de dominacion en el territorio en que las Estacas se encuentran situadas— Por consiguiente, lo que en realidad se pretende es que el Gobierno de Chile, aceptando como obligatorio el contrato celebrado por el solicitante con el Gobierno de Bolivia en Diciembre de mil ochocientos setenta y seis, se reconozca deudor de la Casa de Alsop y Compañía por la suma de ochocientos treinta y cinco mil bolivianos y sus intereses y que, al propio tiempo, asegure el pago de esta suma por lo ménos en la misma forma y de la misma manera que el Gobierno de Bolivia—He reproducido los antecedentes capitales invocados por Don Juan Wheelwright para fijar claramente la significacion y alcance de su solicitud. Me abstengo de hacer mérito de las observaciones con que se propone establecer que es válido y eficaz para el Gobierno de Chile el contrato de veintiseis de diciembre de mil ochocientos setenta y seis, porque en mi concepto es menester resolver previamente si el Gobierno puede por sí solo reconocer dicho contrato, mandarlo respetar y garantir el libre y completo ejercicio de todos los derechos que confiere—La solicitud de Don Juan Wheelwright se presta a ser considerada bajo dos diversos aspectos: o bien importa una simple peticion de gracia; o bien un reclamo que debe su oríjen a una violacion de derechos que al reclamante asisten, encaminado en

consecuencia a obtener el reconocimiento de esos derechos por la parte en quien se supone residen las obligaciones correlativas. Como medio conducente, el solicitante procura alcanzar una resolucion del Gobierno que le ponga a cubierto de dificultades y tropiezos procedentes de actos ejecutados aun por particulares—Contemplada la solicitud en su primer aspecto, el Fiscal cree que ninguna opinion le es permitido emitir. Si deba o nó otorgarse una gracia, es cuestion que este Ministerio no se encuentra en situacion de apreciar. Observaré únicamente que, importando la aceptacion del contrato y la declaracion de respetarlo, el reconocimiento de una deuda, este reconocimiento solo podría hacerse a virtud de una lei—Ésta misma observacion es aplicable al segundo aspecto de la reclamacion Wheelwright. Los contratos celebrados por el Gobierno de Bolivia ántes de la ocupacion del litoral y que con éste tengan alguna relacion, serán o nó obligatorios para el Gobierno de Chile, segun las determinaciones que el lejislador adopte a este respecto. El tratado de tregua o el de paz que se celebre es la lei que debe definir de una manera seria y estable las relaciones de Chile y Bolivia, y las de los Gobiernos de estos paises con terceros, que procedan de contratos debidamente celebrados—Antes de que esta lei se dicte, solo existe la situacion transitoria creada por la ocupacion militar, y esta situacion obsta a que el Gobierno adopte resoluciones de efectos jenerales y permanentes—Mientras esta situacion subsista, el Gobierno de Chile no puede hacerse responsable de las deudas contraidas por el Estado a quien pertenece el territorio ocupado, aun cuando de algun modo afecten a este territorio, porque la entidad o persona que las contrajo no ha desaparecido por el solo hecho de la ocupacion. El Gobierno no tiene, pues, obligacion alguna de reconocer y ménos aun de garantizar los contratos celebrados por el Gobierno de Bolivia sobre las Estacas de Instruccion Pública, situadas en el Litoral. Lo mas que podría exigirse sería que el Estado ocupante, sin declaraciones de ninguna clase, respetara de hecho el órden de cosas existente antes de la ocupacion—Ya este respecto, debe tenerse presente que Don Juan Wheelwright no imputa al Gobierno de Chile ni a las autoridades chilenas acto alguno de perturbacion en ese órden de cosas. Los entorpecimientos y dificultades de que se queja provienen de actos ejecutados por particulares, quienes, segun se expresa, obedecen únicamente a su interes personal. En este jénero de dificultades, el Gobierno no puede injerirse. Las controversias entre particulares, cualquiera que sea su origen, las cuestiones que sobre sus derechos se susciten, deben ventilarse ante

los Tribunales de Justicia—En resumen, la solicitud que motiva este informe no puede, en concepto del Fiscal, ser materia de una resolucion Gubernativa—Santiago, Octubre nueve de mil ochocientos ochenta y cuatro—Prado. República de Chile—Ministerio

Providencia.^a

de Hacienda—Santiago, octubre veintisiete de mil ochocientos ochenta y cuatro—Informe el Gobernador de Antofagasta sobre el estado de esplotacion de las estacaminas llamadas de “Instruccion Pública,” haciendo respetar entre tanto la situacion legal en que dichas estacaminas se encontraban al tiempo de la reivindicacion del territorio de Antofagasta—Anótese—Barros Luco—Gobernacion del Litoral del Norte—Chile—Antofagasta, Noviembre dieziocho de mil ochocientos ochenta y cuatro—En cumplimiento de la resolucion precedente, paso a

Informe.^b

indicar a usía que para evacuar el informe que se me pide me he dirijido al Subdelegado de Caracoles Don Enrique Villegas que es persona competente y que por su larga residencia está al corriente de los trabajos que se han seguido y del estado de todas las minas de aquel asiento mineral en donde el señor Juan Wheelwright tiene gran parte de las estacas llamadas de Instruccion Pública—Adjunto a la presente remito a usía el informe que aquel subdelegado acaba de pasarme y que se refiere al pedido de la precedente resolucion de usía—El Señor Wheelwright está tambien en posesion de varias otras estacas de Instruccion en diversos minerales al norte del paralelo veintitres, sobre las cuales es algo difícil un informe en el sentido que se desea porque no hai en aquellas rejiones autoridades competentes que puedan evacuarlo. Encontrándose mui diseminadas las pertenencias aludidas y para poder por esto informar sobre ellas habría necesidad de mandar peritos especiales, para lo cual el infrascrito no se cree autorizado—Es todo lo que puedo decir en cumplimiento de lo dispuesto por usía—Dios guarde a usía—R. Rivera Jofré—Gobernacion^o del Litoral del Norte—Chile—Al Subdelegado de Caracoles—Número seiscientos ochenta y nueve—Antofagasta, Noviembre doce de mil ochocientos ochenta y cuatro—Adjunto a la presente un espediente relativo a un reclamo entablado ante el Supremo Gobierno por Don Juan Wheelwright sobre las estacas de minas conocidas en tiempo de la dominacion boliviana con el nombre de “Estacas de Instruccion Pública”—Como el espresado señor Ministro pide al infrascrito informe sobre

^a For translation, see p. 231, *infra*.

^c For translation, see p. 232, *infra*.

^b For translation, see p. 227, *infra*.

el estado de explotación de aquellas estacas y como usted puede ilustrar con mejor conocimiento sobre el particular, espero que se servirá informar a esta Gobernación sobre este asunto—Dios guarde a usted—R. Rivera Jofré.

Informe. ^a

Subdelegación de Caracoles—Caracoles, Noviembre quince de mil ochocientos ochenta y cuatro—El infrascrito, evacuando el informe que usía le pide en la nota precedente, después de impuesto del espediente que en ella se menciona, refiriéndose únicamente al mineral de Caracoles, espone: Que le consta que desde un año ántes poco más o ménos de la ocupación de este territorio por las armas chilenas, el Señor Juan Wheelwright ha mantenido y mantiene hasta la fecha, aquí, un representante legal y espensado, para que atiende y cuida de las pertenencias mineras llamadas Estacas de Instrucción Pública y que ha trabajado durante este lapso de tiempo, indistintamente, ya por su propia cuenta o por contratos con industriales, entre otras, las siguientes Estacas: la de la mina “Flor de Desierto”, la de la id. “Rosales”, “Esmeralda del Sur”, “Al fin Hallada”, “Cautiva”, “San Martín”, “Santa Isabel”, “San Rafael”, “Buena Esperanza”, “Compañía”, “Julia”, “Vallenar”, “Juana”, “Frontera”, “Teresa”, “Reventón”, “Disputa”, “Mapocho”, “Merceditas”, “Tres Amigos”, “Empalme”, “Limbo”, “San José”, “Invitación”, “Zoila”, “Francholino”, “Candeleros”, “Rosario”, y “Transacción”—Es cuanto sobre el particular tengo que esponer a usía—Dios guarde a usía—E. Villegas.

Concuerda la copia que precede con su original que existe en el Archivo del Ministerio de Hacienda. *Santiago, diecinueve de Junio de mil ochocientos ochenta y nueve.*

[L. S.]

F. PINTOR Y

Archivero.

Visada.

[L. S.]

MAM. VARGAS

Sub-Sectio.

Legalizada en el Ministerio de Relaciones Exteriores de Chile, la firma, M. Vargas, Sub Secretario de Hacienda, *Santiago 10 de Julio de 1893.*

El Sub-Secretario.

[L. S.]

A. BASCUÑAN.

^a For translation, see p. 232, *infra*.

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I, Owen McGarr, Secretary of the United States Legation at Santiago, Chile, do hereby certify that the signature A. Bascuñan on the foregoing page 81 is the true and genuine signature of Aurelio Bascuñan, the Sub-Secretary of Foreign Relations of the Republic of Chile.

Witness my hand and seal of the Legation at Santiago, Chile this the 11th day of July, A. D. 1893.

[SEAL.]

OWEN MCGARR,
Secretary of Legation.

REPUBLIC OF CHILE,^a
MINISTER OF FINANCE,
Santiago Oct. 27th 1884.

Let the Governor of Antofagasta report as to the condition of the workings of the Estaca mines called "Public Instruction," meanwhile causing the legal status to be respected as said estaca mines were at the time of the revindication of the territory of Antofagasta. Let it be noted.

BARROS LUCO.

REPORT.^b

GOVERNMENT OF THE COAST OF THE NORTH CHILE,
Antofagasta November 18th, 1884.

Complying with the preceding resolution, I have to say to Your Honor that in order to make the report called for, I addressed myself to the subdelegate at Caracoles, Don Enrique Villegas, a very competent person and who by his long residence there, is fully informed as to the work that has been performed and of the con-

^a For Spanish text, see p. 225, *supra*. ^b For Spanish text, see p. 225, *supra*.

dition of all the mines in that mineral district, where Mr. John Wheelwright has a large part of the so-called Public Instruction estacas. Annexed hereto I send you the report just sent to me by that subdelegate, which refers to what is called for in the preceding resolution of Your Honor. Mr. Wheelwright is also in possession of various other Instruction estacas in several mineral districts north of Latitude 23, concerning which it is somewhat difficult to report as asked, there being in those parts no competent authorities to give information. As the properties alluded to are scattered about it would be necessary to send special experts to report thereupon, and the undersigned does not deem himself authorized to do this. This is all that I can say in obedience to your order.

God preserve Your Honor.

R. RIVERA JOFRÉ.

Exhibit 21.

W.

[Translation.]

Laws, &c., referred to in the judicial sentences in the suits with the owners of the mines "Justicia" and "Amonita."

ARTICLE 12 OF THE CONSTITUTION OF CHILI.

The Constitution insures to all the inhabitants of the Republic:

- 1.....
- 2.....
- 3.....
- 4.....

5. The inviolability of all possessions without distinction of those which may belong to private individuals or communities, and that no one can be deprived of his proprietorship, nor of a part of it, however small it may be, or of the right which he may have to it, unless in virtue of a judicial sentence, except in the case in which the need of the State, qualified by a law, may exact the use or alienation of any; which shall have effect giving previously to the owner the indemnification which should be adjusted with him, or should be valued according to the judgment of competent men.

ARTICLE 117 OF THE LAW OF THE 15TH OCTOBER, 1875.

Of the civil accusations or demands which may be presented against one or more members of the Courts of Appeal, in order to make effective their criminal or civil responsibility, and in the

trials of prizes, of extradition, and others, which ought to be judged according to international right, one of the Ministers of the Supreme Court shall take cognizance in first instance, agreeably to the turn which the President of the Tribunal may establish for the purpose.

LAW OF THE 3D APRIL, 1879.

ARTICLE 1.—The rupture of the treaty of the 6th August, 1874, which existed with the Republic of Bolivia, and the consequent occupation of the territory comprised between the 23d and 24th parallels of south latitude, is approved.

ARTICLES OF CIVIL CODE.

ARTICLE 16.—Possessions situated in Chili are subject to the Chilian laws, although their owners be foreigners and do not reside in Chili.

This disposition shall be understood to be without prejudice to the stipulations contained in contracts validly executed in a foreign country.

But the effect of contracts executed in a foreign country, in order to be accomplished in Chili, shall be arranged according to the Chilian laws.

ARTICLE 591.—The State is owner of all the mines of gold, silver, copper, quicksilver, tin, precious stones, and other fossil substances, notwithstanding the dominion of corporations, or of private individuals, over the surface of the ground in whose entrails they may be situated.

But to private individuals is conceded the faculty of prospecting and excavating in ground of any dominion whatever, in order to search for the mines to which the preceding paragraph refers, that of working and developing the said mines, and that of disposing of them as owners, with the requisites, and under the regulations which the Mining Code prescribes.

ARTICLE 764.—The right of usufruct is a real right, which consists in the faculty of enjoying a thing with the obligation of preserving its form and substance, and of restoring it to its owner if the thing is not susceptible of being destroyed by use, or with the obligation of returning an equal quantity and quality of the same article, or of paying its value, if the thing is susceptible of being destroyed by use.

ARTICLE 1698.—It is incumbent on him who alleges obligations, or their extinction, to prove the same.

The proofs consist in public or private instruments, witnesses, presumptions, confession of party, deferred oath, and personal inspection of the judge.

ARTICLE 2435.—Anticresis is a contract by which landed property is delivered to the creditor in order that he may pay himself with its fruits.

ARTICLE 2437.—The Contract of Anticresis is perfected by the tradition of landed property.

PROCLAMATION OF THE 25TH MARCH, 1880.

I, Marco Aurelio Arriagada, Commandant General of Arms of Antofagasta, and Chief of the Forces of occupation of the Territory comprised up to the river Loa, in virtue of the faculties which belong to me from the military authority which I exercise, make known to all the inhabitants of the said Territory:

Inasmuch as, to the north of the 23d parallel, and as far as the river Loa, there are no authorities who may administer civil justice in all its branches, and criminal justice for ordinary offences, and the imperious necessity of attending to this important public service being evident, I Decree:

ARTICLE 1.—Let the Judge of Letters of Antofagasta be commissioned in order that he may exercise the administration of civil and criminal justice with respect to the territory which extends from the 23d parallel to the north up to the river Loa, including Calama, and other points which depend on this military district.

ARTICLE 2.....

ARTICLE 3.—With respect to landed property situated in the territory to which this decree refers, the Judge shall limit himself, for the present, to secure to the persons to whom by right it may belong, the possession or tenure, or to protect them therein, without judging as yet, respecting the dominion.

ARTICLE 4.—In the sentences or decisions which may be pronounced in civil matters, the laws in force in the territory at the time of the celebration of the respective acts or contracts shall be applied respecting that which is judged.

ARTICLE 5.—The civil acts or contracts, which may be executed or celebrated fifteen days after the publication of the present decree, shall be judged in conformity with the Chilean laws.

EXTRACTS FROM A REPRESENTATION MADE BY THE MINISTER OF FOREIGN AFFAIRS, DATED SANTIAGO, 18TH FEBRUARY, 1879.

The expedients of conciliation which her anxiety for the tranquility of America causes Chili to put in unceasing exercise being exhausted; all the remonstrances which were addressed to Bolivia respecting the fulfilment of obligations legally covenanted in the Treaty of 1874 being ignored and disdained, there remained to Chili no other course than to plant anew her flag on the territory of which she was the owner, and with it to restore to the numerous Chilian and foreign population, to the industries and capitals there implanted, the tranquility, confidence and well-being of which the Bolivian administration had deprived them.

A pact destined to create or modify the obligations of two countries cannot destroy the rights of third parties who have not been consulted, nor have intervened therein.

EXTRACT FROM A CIRCULAR.

Addressed by the Minister of Foreign Affairs to the Foreign Ministers, dated Santiago, 3d March, 1879.

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 Chilian law has now resumed its sway.

[Translation.]

REPUBLIC OF CHILI, MINISTRY OF FINANCE.

The undersigned, Chief Secretary of the Ministry of Finance, certifies: That in reference to the memorial presented by Mr. John Stewart Jackson, as representative of Mr. John Wheelwright, asking that the rights of his principal be recognized to certain mining sets (*estacas-minas*) situated in the Coast Province of the North, otherwise called Public Instruction Mines, the following decree has been signed thereon.

Santiago, 27th October, 1884.^a

Let the Governor of Antofagasta report on the state of the workings of the mining sets called the Public Instruction Mines, causing meanwhile the legal position in which these mining sets were, at the time of the revindication of the territory of Antofagasta, to be respected.

Let the same be duly noted.

(Signed.)

BARROS LUCO.

^a For Spanish text, see p. 225, *supra*.

The above is in conformity with the original.

(Signed.) R. SOTOMAYOR VALDEZ,
Chief Secretary.

[Stamp of the Ministry of Finance.]

No. 689.]

OFFICE OF GOVERNMENT OF THE
LITTORAL OF THE NORTH,
Chili, Antofagasta, 12th November, 1884.^a

I annex to the present a dispatch relative to a claim brought before the Supreme Government by Mr. John Wheelwright respecting the estacas of mines known in the time of the Bolivian dominion by the name of Estacas of Public Instruction.

As the said Minister asks the undersigned for a report respecting the state of exploitation of these estacas, and as you are in a better position to give information respecting the matter, I beg that you will be good enough to report to this office on the subject.

May God be with you.

(Signed.) R. RIVERA JOFIÉ.

Caracoles, 15th November, 1884.^b

To the Sub-Delegate of Caracoles.

The undersigned, in fulfilment of the Report which your Honor asks in the present note, after having acquainted himself with the dispatch mentioned therein, which refers solely to the mineral district of Caracoles, sets forth: That he knows that since about a year before the occupation of this territory by the Chilian arms, Mr. John Wheelwright has maintained and does maintain here, up to the present date, a legal and salaried representative for the purpose of attending to and looking after the mining sets called Estacas of Public Instruction, and that, during that period of time, he has worked indiscriminately, either on his own account or by contracts with miners, amongst others the following estacas: That of the mine "Flor del Desierto," that of the mine "Rosales," "Esmeralda del Sur," "Alfin Hallada," "Cantiva," "San Martin," "Santa Isabel," "San Rafael," "Buena Esperanza," "Compañia," "Julia," "Vallenar," "Juana," "Frontera," "Teresa," "Reventon," "Disputa," "Mapocho," "Merceditas," "Tres Amigos," "Empalme," "Limbo," "San José," "Invitacion," "Zoila," "Francholina," "Candeleros," "Rosario," y "Transaccion."

^a For Spanish text, see p. 225, *supra*.

^b For Spanish text, see p. 225, *supra*.

The foregoing is all that I have to report to your Honour about the matter.

May God be with your Honour.

(Signed.) E. VILLEGAS.

I, David Sim of Antofagasta, in the Republic of Chili, gentleman, make oath and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.
3. That I have carefully examined and compared the paper writings in the English language hereunto annexed, headed "Laws, &c., referred to in the judicial sentences in the suits with the owners of the mines 'Justicia' and 'Amonita,'" and consisting of six pages, with the corresponding printed papers in the Spanish language which have been produced to me in Antofagasta aforesaid by Mr. John Wheelwright, for the purpose of my making the said comparisons, the said printed papers being first, "The Political Constitution of the Republic of Chili," from which Article 12 of the said Constitution has been taken; secondly, the "Chilian Codes," from which Article 117 of the Law of the 15th October, 1875, and Articles 16, 591, 764, 1698, 2435 and 2437 of the Civil Code have been taken; thirdly, Book 47 of the "Bulletin of Laws and Decrees of the Government," from which Article 1 of the Law of the 3rd April, 1879 has been taken; fourthly, the newspaper "La Patria," of Caracoles, of the 2d April, 1880, from which the Proclamation of the 25th March, 1880, has been taken; and, fifthly, the "Report of Foreign Affairs and of Colonization presented to the National Congress of 1879," from which the Extracts from a Representation made by the Minister of Foreign Affairs, dated Santiago, the 18th February, 1879, and the Extract from a Circular addressed by the Minister of Foreign Affairs to the Foreign Ministers, dated Santiago, 3rd March, 1879, have been taken.
4. That I have carefully examined and compared the paper writings in the English language hereunto annexed, headed Republic of Chili, Ministry of Finance, and consisting of three pages, with the corresponding paper writings in the Spanish language, which have been produced to me in Antofagasta aforesaid by Mr. John Wheelwright, for the purpose of my making the said comparisons.
5. That the said paper writings hereunto annexed, and so as aforesaid headed respectively, "Laws referred to in the judicial

sentences in the suits with the owners of the mines 'Justicia' and 'Amonita,'” and “Republic of Chili, Ministry of Finance,” are respectively correct and faithful translations into the English language of the said printed papers and paper writings of which they respectively purport to be translations.

DAVID SIM.

Sworn at Antofagasta in the Republic of Chili, this ninth day of May, one thousand eight hundred and eighty-five, before me.

BRITISH VICE-CONSUL.

I, John Barnett, Esquire, British Vice-Consul at Antofagasta do hereby certify that Mr. David Sim is well known to me and that he is well acquainted with the English and Spanish languages, and is a fit and competent person to make the translations referred to in the above or before written affidavit.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Antofagasta, this ninth day of May, one thousand eight hundred and eighty-five.

BRITISH VICE-CONSUL.

Exhibit 22.^a

PIDE COPIAS.

S. J. L.

EDUARDO JACKSON, a U. S. respetuosamente digo: que necesito tener en mi poder copia autorizada de los siguientes documentos que se registran en la causa seguida por don Juan Wheelwright con los socios de la mina “Justicia” sobre entrega de una Estaca de Instruccion.

1° Escritura de transacción i resoluciones supremas compulsadas de fs. 83 a fs. 88 vta.

2° Decretos corrientes desde fs. 151 vta., hasta fs. 153 donde dice Melquíades Loaiza con el Conforme del secretario del Juzgado don Clodomiro Mujica inserto a fs. 154 vta.

3° Memoria i demas piezas que se registran desde fs. 114 hasta fs. 119 vta.

4° Certificado del escribano-receptor don José del C. Gonzalez M. corriente a fs. 154 vta., del escrito de fs. 148 su proveido i notificaciones i de las leyes i decretos insertos en el escrito de réplica de fs. 57 aludidos en el mismo certificado, i,

5° Resolución de 12 de octubre de 1871 que se registra de fs. 184 vta. a fs. 185 vta.

^a A complete translation of this Exhibit, made subsequent to the sitting of the Commission, will be found in Appendix I.

Debo advertir al Juzgado que la causa a que me refiero se encuentra definitivamente concluida por sentencias de 1^a i 2^a instancia, i que pido las compulsas espresadas fuera de juicio i para los fines que me convengan; de manera que U. S. tendrá a bien mandarlas estender, como lo espero, sin mas trámite, desarchivándose, los autos si fuere necesario.

Por tanto,

Ruego a U. S. se sirva proveer como lo dejo pedido.

EDUARDO JACKSON.

Antofagasta, Julio 31 de 1893.

Dese las compulsas que se solicitan, y con citación y previo desarchivo de los autos a que se hace referencia.

M. CARVALLO.
CONCHA.

En treinta y uno de Julio notifiqué a don Eduardo Jackson.

EDUARDO JACKSON.
CONCHA.

En primero de Agosto notifiqué al Senor Promotor Fiscal.

VALENZUELA.
MANCILLA. R.

Se entienda con el señor Promotor Fiscal la citación a que se refiere.

S. J. L.

Eduardo Jackson en la petición que he presentado solicitando ciertas compulsas fuera de juicio, a U. S. respetuosamente digo: que necesito las compulsas referidas para hacerlos valer ante el Tribunal Arbitral que funciona en Washington y como U. S. ha dispuesto que se den con citación, conviene a mi derecho que este trámite se entienda con el señor Promotor Fiscal y solamente con el, pues nada tienen que ver con este asunto las partes que figuran en el juicio sobre entrega de la estaca de instruccion de la mina Justicia.

Por tanto,

Ruego a U. S. tenga a bien proveer como lo dejo pedido. Enmendado U. S.—vale.

EDUARDO JACKSON.

Antofagasta, julio 31 de 1893.

Entiéndose con el Promotor Fiscal la citación ordenada por auto de esta misma fecha en la solicitud del compareciente, pidiendo las copias á que hace referencia.

M. CARVALLO.
CONCHA.

En treinta y uno de julio notifiqué á don Eduardo Jackson.

EDUARDO JACKSON.
CONCHA.

En primero de Agosto notifiqué al Señor Promotor Fiscal.

VALENZUELA.
MANCILLA. R.

Certifico que las copias a que se refiere la solicitud que precede, son del tenor siguiente:—Certifico que la copia de la escritura que se manda devolver dejándose copia en autos, a la letra es como sigue:—Numero cuatrocientos diez:^a *Transacción* otorgada entre el Señor Ministro de Hacienda é Industria, doctor Manuel Ignacio Salvatierra en representación de los intereses nacionales y el señor Juan Wheelwright, socio i representante de los señores Alsop y Compañía de Valparaiso, para consolidar i amortizar sus créditos pendientes con el Estado. En la ciudad de La Paz de Ayacucho a horas *once del dia veintiseis del mes de Diciembre de mil ochocientos setenta i 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 e Industria, en representacion de los intereses nacionales, natural de la ciudad de Santa Cruz con residencia en esta capital, de profesion abogado, casado, i de otra el señor Don Juan Wheelwright socio i representante de los señores Alsop y Compañía de Valparaiso, natural de los Estados Unidos de Norte América, comerciante, con residencia en Valparaiso, República de Chile, i de tránsito en esta, tambien casado, mayores de edad, e idóneos para este otorgamiento, a quienes de conocerlos doi 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 veinticuatro de los corrientes la *Resolucion Suprema* en que consta la transacción definitiva, ordenándose la estension de la escritura, y es como sigue:

Ministerio de Hacienda—La Paz, Diciembre veinticuatro de mil ochocientos setenta i seis: Teniendo en consideración la propuesta del señor don Juan Wheelwright, sócio y representante de los señores Alsop y Compañía de Valparaiso, en liquidación, 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 acordado en Consejo de Gabinete con el citado señor

^a For English translation (pp. 236-240), see pp. 69-75, *supra*.

Wheelwright, una nueva transacción que termine definitivamente este asunto, formalizados 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 interes anual del cinco por ciento no capitalizable, que correrá desde la fecha del otorgamiento de la escritura de este contrato.—Segundo.—Dicho capital é interes será amortizado con letras jiradas en su totalidad en proporciones trimestrales sobre el excedente 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 a Bolivia, sobre los cuatrocientos cinco mil bolivianos que ahora abona el Gobierno del Perú, sea que se renueve el tratado aduanero con esa República, o sea que se restablezca la aduana nacional. Tercero:—Se adjudica a la misma amortización todas las estacas minas de plata del Estado en el Departamento Litoral, debiéndose verificarse ella con un cuarenta por ciento de la utilidad líquida, ménos en 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 los del Estado que elijirá el interesado, al pago de los intereses devengados que se reclaman, y son ciento sesenta mil setecientos bolivianos anteriores al diez i ocho de Diciembre de mil ochocientos setenta y cinco, y setenta mil bolivianos correspondientes al año que espira. En la estaca “Flor del Desierto” la cuota correspondiente al Estado y aplicable a esta amortización, será el cincuenta por ciento del producto neto, y en la otra el cuarenta por ciento como en las demas estacas concedidas. El sobrante despues de hecha la amortización de estos intereses, será aplicable al pago del capital reconocido, como se dispone en la cláusula tercera; siendo condicion que si una o ámbas estacas no producen nada, o producen poco, quedan definitivamente cancelados este cargo y toda reclamación por dichos intereses devengados. Quinto.—La explotación 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 transacción a las personas o sociedades que crea conveniente el interesado, dando de ello aviso al Gobierno. Sexto.—En todas las casas de entrega o recibo de cantidades se considerará el peso chileno o sol peruano de plata sellada, equivalente al boliviano, sea en este contrato o en el de estaca minas. Otórguese la correspondiente escritura insertándose en ella esta transacción y el con-

trato relativo de que se hace mérito. Rejístrese.—Daza.—Salvatierra.—Oblitas.—Carpio.—Villegas.—Manuel Peñafiel, Oficial.—*En veintiseis de los corrientes, horas once, hize saber la Resolucion Suprema que antecede al Senor Juan Wheelwright, sócio i 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 doi fé.*—Juan Wheelwright.—Patricio Barrera, Notario de Hacienda, Gobierno y Guerra.—*Ministerio de Hacienda e Industria. La Paz, Diciembre veintitres de mil ochocientos setenta i seis.*—En conformidad a la transacción de la fecha se ha convenido por el Gobierno en Consejo de gabinete con el señor don Juan Wheelwright, representante de la casa de Alsop y Compañía, que la explotacion de las estaca minas del Estado, que en aquella han sido adjudicadas a dicha casa se haga bajo las bases y condiciones siguientes.—Primera.—El señor Juan Wheelwright tendrá el término 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 a adoptar en el menor tiempo posible las medidas y disposiciones preliminares conducentes a ello. Durante estos tres años las minas quedarán a disposicion del empresario, facilitándole el Gobierno, con su recomendacion a las autoridades su posesión efectiva. Segunda.—En virtud de la adjudicación que se le tiene hecha, el empresario está en su derecho para organizar, ya sea en la costa o en el extranjero, sociedades colectivas o anónimas para la explotación de una o mas estacas, o bien para contratar los medios mas seguros de explotacion con los propietarios de minas colindantes, a efecto de trabajar todas o cualquiera de dichas estacas que a juicio de la empresa o sociedades organizadas, sean provechosas o por lo ménos costeen los gastos de su laboreo en las vetas descubiertas o que se descubieren durante los tres años del término asignado en la base primera. Tercera.—Los empresarios podran contratar y ocupar en sus trabajos de minas, ingenieros, empleados y trabajadores extranjeros o nacionales, quienes durante el tiempo de su compromiso, serán esceptuados de todo servicio militar i de todo cargo civil o consejil, salvo los casos de atención a la tranquilidad i órden publico. Cuarta.—La empresa o sociedades encargadas del trabajo, presentarán balances semestrales, para en virtud de ella y de lo que conste en los libros, hacer la distribución del producto neto en un cuarenta por ciento que se aplicará por parte del Estado a la amortización de la deuda en los términos convenidos en la transaccion de esta

fecha, i un sesenta por ciento a favor del peticionario. Quinta.—El Gobierno pondrá en todos los trabajos que se formalicen, el Interventor o interventores necesarios, los que seran dotados con el fondo comun de la empresa. Sesta.—Este contrato durará por el término de veinticinco años, en cuyo tiempo, si hubiere sobrante despues de amortizada la deuda del Estado en los términos de la transaccion, se entrará al mismo Estado. Séptima.—Si en los primeros tres años o en adelante hasta el vencimiento de los veinticinco espresados en el artículo anterior hubiere individuos o sociedades que se propongan explotar alguna o algunas estacas contenidas en este contrato, podrán hacerlo si la empresa no tiene por conveniente encargarse de la explotacion, manifestándolo por escrito ante el Gobierno, u omitiendo deliberadamente esta manifestacion. Octava.—El Gobierno Supremo cederá a favor del peticionario y gratuitamente mientras dure este contrato, los terrenos del Estado que sean necesarios para la planteacion de sus casas y establecimientos de sus minas. Daza.—Oblitas.—Salvatierra Cárpio.—Villegas.—Manuel Peñafiel, Oficial mayor. *En veintiseis del que rije horas once hize saber la Resolucion Suprema que precede al señor don Juan Wheelwright, socio i representante de lbs señores Alsop y Compañia, quien enterado de su contenida, aceptó en legal forma; doi fé.*—Juan Wheelwright.—Patricio Barrera, Notario de Hacienda Gobierno y Guerra. En cuya conformidad ratificándose respectivamente en las dos Resoluciones Supremas preinsertas que originales quedan retenidas en la coleccion minutaria, bajo número cuatrocientos diez, despues de rubricadas por mí el Notario, por el tenor de la presente y en la forma que mas haya lugar en derecho, otorgan: que se comprometen y obligan a nombre de sus representados, y por sí el último, como sócio, a la observancia y cumplimiento de todas i cada una de las cláusulas contenidas en ámbas Supremas Resoluciones. En su testimonio así dijeron lo otorgaron y firmaron ante los testigos que presentes se hallaron, los doctores Manuel Vargas P. y Benjamin Martinez, vecinos de esta, solteros, abogados y mayores de edad, ante quienes se leyó de principio a fin i no se opuso reparo alguno contra su tenor de que signando doi fé.—Manuel J. Salvatierra, Juan Wheelwright.—Manuel Vargas P.—Benjamin Martinez. Aquí un signo. Ante mi, Patricio Barrera, Notario de Hacienda, Gobierno y Guerra.—Pasó ante mi i consta a fojas mil noventa y ocho vuelta de mi registro vijésimo segundo de escrituras y contratos públicos. *Pongo el presente original a pedimento verbal del interesado señor don Juan Wheel-*

wright, de conformidad con el artículo veintiocho de la ley del Notariado de cinco de Marzo de mil ochocientos cincuenta i ocho, despues de correjido y confrontado fiel y legalmente, en fé de ello lo autoriso, firmo y signo en la ciudad de *La Paz de Ayacucho a horas cuatro de la tarde del dia veintisiete de Diciembre de mil ochocientos setenta i seis años.*—Patricio Barrera, Notario de Hacienda Gobierno y Guerra. Los infrascritos Notarios de primera clase de este distrito judicial certificamos y damos fé: que el ciudadano Patricio Barrera que autoriza el precedente testimonio, es tal Notario de Hacienda, Gobierno y Guerra como se titula y nombra, actualmente en el ejercicio de sus funciones: que los documentos que autoriza y pasan por ante él merecen entera fé y crédito judicial y extrajudicialmente, en fé de ello lo signamos y firmamos, *La Paz, Diciembre veintiocho de mil ochocientos setenta y seis años.*—Bacilio Francisco Guachallas, Notario de primera clase Francisco Luis Ballon, Notario de primera clase. El ciudadano Pedro Villamil, jeneral de brigada del Ejercito boliviano y prefecto del Departamento, etcétera, certifica: que es legal la anotacion que precede a veintiocho de Diciembre de mil ochocientos setenta i seis años.—Pedro Villamil.—*La Paz, Diciembre veintinueve de mil ochocientos setenta i seis. Legalizado.*—J. Oblitas.—Consulado General de la República Argentina. Certifico la autenticidad de la firma J. Oblitas que antecede. *La Paz, Diciembre veintinueve de mil ochocientos setenta i seis.* Guillermo Bowen, Cancilla del Consulado. *Es conforme. Antofagasta, Agosto veintitres de mil ochocientos ochenta. Clodomiro Mujica V.*—Certifico que las copias que se pide se agreguen en el quinto otrosí del escrito precedente, son del tenor siguiente: En cumplimiento de lo decretado por el Señor Gobernador con fecha veintitres del presente mes, doi copia de los documentos siguientes:—*Sello del Ministro de Hacienda e Industria. Número ciento setenta y cuatro. La Paz, Agosto veintidos de mil ochocientos setenta i ocho.* Al señor Prefecto del Departamento de Cobija. Señor.—En la solicitud del ciudadano José Santos Monroi, apoderado del Señor don Juan Wheelwright sobre la declaratoria que pide se ha espido la resolucion siguiente:—*Ministerio de Hacienda e Industria.*^a *La Paz, Agosto veintiuno de mil ochocientos, setenta y ocho.* A mérito de las razones a que se funda esta solicitud y considerando que el señor Juan Wheelwright tomó a su cargo las estaca minas fiscales mediante los contratos de transaccion de veinticuatro de Diciembre

^aFor translation, see Exhibit 5, Document No. 11, p. 147, *supra*.

de mil ochocientos setenta i seis, como representante del fisco se declara: que como tal debe gozar de los mismos privilejios que el Estado en las jestioncs judiciales que inicie y sostenga para entrar y mantenerse en la posesión de las referidas estacas minas fiscales. Tómese razon, trascribasc y publíquese.—Daza.—D. Medina.—Lo que me es grato transcribirle para su conocimiento y demas fines. Dios guarde a Usted.—Eulojio D. Medina.—Un sello.—Es copia fiel del original.—Antofagasta, Setiembre veintiseis de mil ochocientos setenta i nueve. Alejandro Gonzalez P. Secretario.—*Ministerio de Justicia Instruccion Pública y Culto.*—*La Paz, Febrero cinco de mil ochocientos setenta y nueve.*—Al Señor Fiscal del Distrito Litoral. Señor: Repetidos reclamos se han elevado al Gobierno por parte del Señor Juan Wheelwright que en sociedad con el Estado explota las estaca minas fiscales de ese distrito; y a fin de hacer efectiva su acción como Jerente que es de ella en virtud del contrato que se tiene celebrado, me encarga decir a Usted el Señor Presidente de la República que trasmite al ministerio fiscal las siguientes prevenciones:—Primera—Que el Fiscal de Partido de Caracoles que por las leyes representa los derechos del Fisco, debe ejercitar las acciones legales que el contratista deduzca, pues, que no procede por intereses privados sino como socio del Gobierno en vez de entorpecerlas como aparece de los espedientes que ha adjuntado a uno de sus reclamos.—Segundo, Que permitiéndolo el artículo ciento sesenta y ocho, inciso segundo del Código de Minería que el vecino tenga entrada libre a una mina cuando presume o teme un mal, al contratista Señor Wheelwright no puede negársele el derecho de investigar por sí o por medio de apoderado, la introduccion del vecino a las cuadras de la estaca fiscal a fin de proponer la demanda que corresponda ante la autoridad competente realizados que sean sus temores sin que ese derecho de procedimiento meramente administrativo por otra parte pueda ser coartado por una oposicion cualquiera.—Tercera.—En el caso de suscitarse alguna contencion fundada en derecho se pasará al conocimiento del asunto al Juez competente en la forma prescrita entre o tras disposiciones por la ley de quince de Noviembre de mil ochocientos setenta y tres. Como se ve, el Gobierno en las Prevenciones que preceden nada nuevo resuelve, no hace mas que recordar las disposiciones legales que ha mencionado para que tengan su mas fiel y exacto cumplimiento. Dios gñe. a. U.

^a For translation, see Exhibit 5, Doc. 14, p. 148, *supra*.

Daza.—Serapio Reyes Ortiz.—Dado a petición verbal del interesado como apoderado que es del señor Wheelwright, el señor José Santos Monroi. Un sello. El Jefe de la Sección de Justicia.—Melquiades Loaisa.—Conforme con los originales de su referencia y cuyos originales se entregaron a la parte interesada según decreto. Antofagasta, Noviembre veinte de mil ochocientos ochenta.

Clodomiro Mujica.—Certifico que la copia que se manda agregar es del tenor siguiente:—*Memoria que presenta el Ministro de Hacienda e Industria a la Representación nacional reunida en mil ochocientos setenta y siete.* La Paz, Mil ochocientos setenta y siete. Primero—Apercibido el Gobierno desde su inauguración, del mal estado financiero procuró atenuarlo con algunas providencias. Entre ellas la circular de cinco de Julio de mil ochocientos setenta i seis (2) que suspendió los pagos de servicios anteriores al cuatro 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 Secretaria General dictó en diez i siete de Octubre del mismo año un decreto de imposición sobre la varilla de cobre (3) recurso, aunque exiguo, muy oportuno en la penuria que se experimentaba. Produjo el ingreso anual de quince mil bolivianos (15,000 Bs) en letras a plazo. Cuando se instaló el Ministerio pendía la cuestión de subsistencia del contrato de don Juan G. Meiggs sobre el arrendamiento de las salitieras 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 dio curso en consejo de Gabinete después de haberse considerado la cuestión jurídicamente. Esto produjo de pronto el fondo de setenta mil soles que se devengaban hasta Diciembre último, fondo que acreció en tres mil quinientos bolivianos (3,500 Bs) por el premio que cuide 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 este llevaba y quería continuar llevando por el jiro de letras de fondos del Estado de una a otra de sus oficinas. Se obtuvo, también en letras a término el ingreso del impuesto de pastas por el cuatrimestre que corría desde el primero de Diciembre de mil ochocientos setenta i seis al treinta y uno de Marzo del presente año. Alcanzo a la cantidad de cuarenta i nueve mil novecientos cuarenta y seis bolivianos (49,946 Bs).—Segundo—Este fondo era

el único aprovechable como consignado en el presupuesto. Los demas que no lo estaban y, cuales quiera otros que hubieran podida arbitrarse debian corresponder a don Juan Wheelwright, representante del crédito de Lopez Gama, a quien por los decretos de diez y ocho de Diciembre de mil ochocientos setenta y cinco y veintidos de Enero de mil ochocientos setenta i seis se le habian adjudicado todos los ingresos no previstos en el presupuesto. Ademas el contrato aceptado por estos decretos privaba al fisco de setenta mil bolivianos (70,000 Bs) efectivos del Tesoro de Cobija que se habian asignado anualmente para pagar de intereses de la deuda reconocida a aquel. Estos intereses eran excesivos, tazados 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 a la amortizacion de aquella deuda todos los extraordinarios o de nueva creacion. No podia ser mas ominoso ese contrato por el embarazo y dificultad en que colocaba al Gobierno para poder atender a las necesidades del servicio y administracion. Fué preciso, en vista de una nueva propuesta del señor Wheelwright escojitar y estipular una transaccion que mejorase las condiciones del contrato favoreciendo y aliviando al fisco y dando al Gobierno libertad y recursos para proporcionarse fondos. Así se consignó en la de veinticuatro de Diciembre de mil ochocientos setenta y seis (4) en la que se rebajó del capital reconocido el interes que ya se habia abonado y se redujo este al cinco por ciento no capitalizable debiendo amortizarse aquel 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 barilla y las salitreras, porque si bien los de estas eran considerados por la resolucion de treinta de Marzo de mil ochocientos setenta y seis como no comprendidos en el contrato de diez i ocho de Diciembre de mil ochocientos setenta y cinco, podia disputarse el valor de esta resolucion por el tenor del mismo contrato. Décimo Sétimo. Veis, señores, que a la manera que el esclavo se considera feliz tan solo por haber sacudido el yugo de la servidumbre, así Bolivia debe reputarse i es verdaderamente feliz cuando compara su situacion actual de exencion y desahogo económico con la en que se hallaba, no hace un año, abrumada bajo el peso de uno enorme deuda exterior y aminorada por la penuria en el interior. Esta situacion tan lisonjera es debida, justo es confesarlo, a la elevacion de espíritu, nobleza de

sentimientos y acendrado patriotismo del joven presidente, que con la pureza de sus intenciones y su enérgica resolución para el bien, ha sabido, en armonía, con mis dignos colegas, acoger mi modesta iniciativa en las medidas económicas y ponerlas en práctica, decididamente y sin hesitación. Pero en ello, si hai motivo de complacencia y satisfacción, no lo hai de vanagloria y jactancia. No debemos olvidar que la inspiración del acierto solo procede de la Fuente de Sabiduría increada. A la Majestad de la eterna Sabiduría, a Dios óptimo máximo, elevemos nuestro mas ferviente agradecimiento, adoremos su providencia, bendigamos su misericordia y glorifiquemos su excelso nombre, exclamando con el Profeta Rey: "Non nobis, Domine, non nobis sed nomini tuo da gloriam."—La Paz, Noviembre veinte de mil ochocientos setenta y siete.—Manuel I. Salvatierra.—*Aprobacion de los actos del Gobierno Provisorio. La Paz, Imprenta de El Ciudadano, calle de Illimani, número treinta i uno Mil ochocientos setenta y ocho. La* asamblea Nacional Constituyente. Considerando:—Que el Gobierno Provisorio establecido el cuatro de Mayo de mil ochocientos setenta i seis ha verificado reformas importantes exigidas por la opinion pública y de las que ha dado cuenta a la Asamblea por conducto de los diferentes Ministerios de Estado: Decreta:—Artículo único—Se aprueban todos los actos políticos y administrativos del Gobierno establecido el cuatro de Mayo de mil ochocientos setenta y seis. Comuníquese al Poder Ejecutivo para su ejecucion y cumplimiento. Dado en la ciudad de La Paz a los diez dias del mes de Diciembre de mil ochocientos setenta y siete.—Luciano Valle.—B. Leus.—Ceferino Mendes.—Secretaria de la Asamblea Nacional. La Paz, Enero, siete de mil ochocientos setenta y ocho: A la comision de Constitución. P. O. del Señor P. S. Achá, Diputado Secretario. Soberano Señor. La Comision de Hacienda cumpliendo con el madato de la Cámara para examinar los actos y determinaciones que el Supremo Gobierno ha dado en el importante ramo financiero, a fin de que sobre ellos recaiga la aprobacion o reprobacion de la Asamblea, tiene la honra de emitir su dictámen: que tocante a cada uno de dichos actos o determinaciones la Comision ha prestado un informe especial segun consta de los diversos proyectos que en el curso de sus trabajos ha presentado a la Mesa a esepcion del supremo decreto de depreciacion de la moneda feble. Limitándose por ahora la comision a reproducir cuanto tiene espuesto en los espresados proyectos, solo agrega, que nada, absolutamente nada tiene que juzgar sobre la

depreciacion de aquel moneda cuyos resultados y consecuencias se encuentran en el rango de los hechos del todo consumados que el pais se ha visto obligado a aceptar, esperando que el Supremo Gobierno, fiel a sus sagrados promesas procurará segun procura indemnizar con la mas debida preferencia el quebranto que han sufrido los capitales depreciados. Es cuanto puede informar en obsequio de la verdad y justicia. Sostienen el debate los señores Tamaya y Carrasco. La Paz, a veintinueve de Enero de mil ochocientos setenta y ocho.—Buitrago.—Carrasco.—Tuarzo.—Tamayo.—Maldonado.—Villegas.—Arancibia.—Nogales.—Secretaria de la Asamblea Nacional. La Paz, Enero siete de mil ochocientos setenta y ocho. A sus antecedentes. P. O. del Señor P. Ondarza. Diputado Secretario. Soberano Señor. Vuestra comision de Industria habiendo examinado con toda atencion y prolijidad los actos del actual Gobierno desde Mayo de mil ochocientos setenta y seis hasta la época presente, tan solo en lo concerniente a asuntos puramente industriales, tiene a bien presentaros el siguiente informe. En el Ministerio de Hacienda e Industria desde el movimiento político de cuatro de Mayo hasta la reunion de la presente legislatura se han verificado innovaciones mui importantes y de un caracter sério y bastante trascendental que, a no dudarlo influirán de una manera inmediata en la situacion económica de la República. Los actos del Gobierno en la importante esfera industrial se hallan consignados de una manera sencilla y detallada en la memoria respectiva, los cuales deben ser conocidos, como es de suponer por cada uno de los Señores Diputados, puesto que, muchos de ellos i los mas importantes han sido resueltos ya en el seno de la cámara. La Comision ha analizado una a una todas las resoluciones que son análogas a su competencia y ha visto que seria inútil el prestar un informe especial en la esfera ya indicada, tanto porque la mayor parte de esos actos no son sino una consecuencia lógica del poder administrativo, cuanto porque el ramo de Industria que se halla anuado con el de Hacienda, éste último ha prestado ya su asentimiento en la manera i forma que conoce la República Nacional. En esta virtud, nuestra comision de Industria opina porque no existiendo ninguna observación sustancial sean aprobados los actos del actual Gobierno en fuerza de las razones aducidas en el ramo de Industria. Sala de la Comision. La Paz, Enero treinta y uno de mil ochocientos setenta y ocho. Sostienen el debate los señores Velasco y Torres. José M. Velasco, Manuel Maria Abasto, Feliz Leiton. Abelino Torres. P Benjamin

Velasco. Secretaria de la Asamblea Nacional. La Paz, Febrero tres de mil ochocientos setenta y ocho. A sus antecedentes. P. O. del Sr. P. Ondarza. Diputado Secretario. La Asamblea Nacional Constituyente.^a Habiendo oido el informe de sus distintas Comisiones acerca de los actos del Gobierno Provisorio y despues haber debatido, en consecuencia cada uno de los asuntos con sujeción al reglamento interior, Decreta: Artículo único. Se aprueba los actos del Gobierno Provisorio en la forma siguiente. Primero.—Estando sancionada la constitucion del Estado y dictadas las bases para la formacion de reglamentos de elecciones y Municipalidades, se declara inoficiosa pronunciar decisión alguna sobre los decretos reglamentarios de quince de Diciembre de mil ochocientos setenta y seis y treinta de Marzo de mil ochocientos setenta y siete.—Segundo: Las medidas dictadas en el ramo de Hacienda quedan aprobadas fuera de las que han sido derogadas y modificadas por espresa disposicion de la presente Asamblea.—Tercero.—En el Departamento de la Guerra se aprueba las medidas del Gobierno relativas a la organizacion del ejército y de las columnas de guarnición, la provisión de armamento municiones y demas útiles de guerra; y el ascenso y rehabilitacion a la alta clase de jenerales de los antiguos jefes mencionados en la memoria del Honorable Señor Ministro de la Guerra.—Cuarto—Quedan aprobados todos los decretos y resoluciones dictados por el Ejecutivo en materia de justicia autorizándole para que someta a la Corte Suprema las modificaciones propuestas por la respectiva Comision y formule en consecuencia las reformas necesarias con calidad de dar cuenta a la próxima lejislatura.—Quinto—Se aprueba los actos del Gobierno concerniente a materias esclesiásticas, incluyendo la suspension de temporalidades decretada contra el Ilustrísimo Arsobispo de la Plata, por haberse negado a dar concurso a los curatos vacantes en la Arquidiocesis. Sesto.—Queda aprobado el decreto de diez de Agosto de mil ochocientos setenta y siete, que restablece la ensenanza oficial al frente de la que se da por empresas particulares.—Sétimo.—Se confirma los decretos que tienen por objeto variaciones introducidas en las circunstancias provinciales de los Departamentos de Cochabamba, Potosí y Tarija.—Octavo. Se aprueba los actos que se refieren al ramo de Industria. Comuníquese al Poder Ejecutivo para su ejecucion y cumplimiento. Sala de Sesiones en La Paz de Ayacucho a los doce dias del mes de Febrero de mil ochocientos setenta y ocho.—A. Quijarro, Presidente.—Samuel Velasco. Flor.—Diputado Secretario.—Abdon S.

^a For translation, see Exhibit 2, p. 75 *supra*.

Ondarza, Diputado Secretario.—Ministerio de Gobierno i Relaciones exteriores. La Paz, catorce de Febrero de mil ochocientos setenta y ocho.—Ejecútese.—H. Daza.—J. M. del Carpio.—Es conforme. Antofagasta, Noviembre trece de mil ochocientos ochenta.—Clodomiro Mujica V.—*Certifico que las leyes i decretos de Bolivia insertos en el escrito de réplica corriente a fojas cincuenta y siete son copias exactas de sus originales con los cuales los he comparado. Doi este certificado en cumplimiento del decreto fecha diez y siete de Noviembre último, librado por U. S. en virtud de lo pedido con el segundo otrosí del escrito precedente. Antofagasta, Diciembre primero de mil ochocientos ochenta. José del C. Gonzalez M. R. S.*—Señor Juez Letrado.—Juan Wheelwright en autos con don Benjamin Fisher y otros sobre entrega de la estaca de Instruccion de la mina “Justicia” y lo demas deducido, a Usia respetuosamente digo: que, estando esta causa en prueba, conviene a mi derecho que se tengan en parte de tal los documentos que presento i que son: Primero—Dos informes i dos planos hechos por el Injeniero don Hugo Rock por encargo del Gobierno de Bolivia.—Segundo—Dos notas del mismo Gobierno relativas al contrato de fs.—Tercero—Una copia de los planos A. B. y C., presentados por los socios de la “Justicia,” en el juicio que les sigo sobre internacion y hechos por el Injeniero de Estado don Enrique Cavada y adicionados por don Cárlos R. de la Mahotiere. Por tanto, a usia suplico se sírva resolver conforme al exhordio.—Primer otrosí:—Sírvasse usia disponer que el Secretario del Juzgado compare las copias a que se refiere el número tercero de este escrito con los originales, y certifique en parte de prueba si son exactos.—Segundo otrosí.—Sírvasse usia disponer que un ministro de fé compare las leyes y decretos de Bolivia que he insertado en mi escrito de réplica con los originales que existen en los respectivos boletines, y certifique en parte de prueba si son copias exactas de estos.—Tercer otrosí.—Sírvasse usia disponer que el Secretario del Juzgado certifique en parte de prueba si en su archivo existen los libros de la Diputacion Territorial (en que se anotaban los títulos de las minas durante la dominacion boliviana) anteriores al año de mil ochocientos setenta y dos, y si en los que existen figuran los títulos de la mina “Justicia” de Caracoles correspondientes al año de mil ochocientos setenta i uno. Cuarto otrosí.—Sírvasse usia disponer que el mismo funcionario, en parte de prueba agregue a los autos del espediente de la causa que sigo contra los socios de la “Justicia” sobre internacion, copia de la solicitud de fojas qui-

nientas veintiseis y de los informes de don Carlos R. de la Maho-
 tiere corrientes a fojas quinientas veintisiete.—Quinto otrosí.—
 Necesitando para otros usos los documentos a que se refiere los
 números primero y segundo de lo principal de este escrito, sírvase
 usia mandar se me devuelvan una vez que se hayan agregado a los
 autos las copias que de ellos solicito.—Juan Wheelwright.—Anto-
 fagasta, Noviembre diez i siete de mil ochocientos ochenta.—En lo
 principal y otrosí, como se pide con citacion.—Tagle J. Mujica.
 En diez i siete de Noviembre notifiqué a don Demetrio Acosta.—
 Acosta.—Mujica.—En diez y siete de Noviembre notifiqué
 a don Juan Wheelwright.—Juan Wheelwright.—Mujica.—Las
 estacas de Instrucción pública fueron creadas por el *decreto*
de vientitres de Julio de mil ochocientos cincuenta y dos. El artículo
 primero de este decreto dice: “En toda mina o veta de plata, oro
 o cualquiera otro metal se aplica de pleno derecho el interes o
 estaca siguiente a las que correspondan al descubridor o denun-
 ciante, segun las Ordenanzas vigentes al Tesoro de Instrucción
 Pública.”—“*Ministerio de Hacienda e Industria, Sucre, Octubre*
nueve de mil ochocientos setenta y uno. Circular.—A S. G. el
Prefecto del Departamento de —. Señor. Para por si acaso hubiese
 duda en la inteligencia y aplicación del supremo decreto de veinti-
 nueve de Setiembre último, relativo a la toma de posesión de las
 Estacas que pertenecen al Estado, S. E. el presidente de la Repú-
 blica, me ha ordenado dictar las siguientes prescripciones:—Primera.
 —En virtud del artículo diez i seis párrafo primero del Código de
 Minería, pertenecen al descubridor de una mina en cerro vírjen tres
 estacas; por consiguiente, la cuarta estaca, despues de la del primer
 descubridor, es de la propiedad del Estado;—Segunda—De la
 misma manera, correspondiendo por el artículo veinte del citado
 Código, dos estacas en cada veta al descubridor de ella, en asiento
 mineral conocido, es consiguiente que en este caso, la tercera estaca
 es la que pertenece al Estado;—Tercera—Para determinar las
 espresadas propiedades del Estado, se entenderá por punto de par-
 tida, el punto del rumbo que hubiese señalado el descubridor, lo
 cual quedará manifiesto por la operación de registro i amojo-
 namiento de la mina, cuyo documento se exigirá al descubridor. En
 caso de que se rehusare presentar dicho documento, los mensurador-
 es del Estado determinarán el rumbo tomando siempre por punto
 de partida el principio de la primera estaca. Toda ocultación ma-
 liciosa del documento de registro, hará incurso al ocultador en la
 sanción del artículo quinto del citado supremo decreto de veinti-

nueve de Setiembre último. Lo que comunico a V. G. para su conocimiento y para que despues de transmitirlos a las autoridades de su dependencia, las manda publicar en el periódico oficial de esa ciudad, a fin de que llegue a noticia de todos." Dios guarde a V. G. Rubrica de S. E.—Casimiro Corral"—Mas tarde, en el año de mil ochocientos setenta y tres, don Pedro Lopez Gama celebró con el Gobierno de Bolivia un contrato por el cual tomó a su cargo bajo las condiciones estipuladas, el laboreo i explotacion de todas las estacas minas de plata pertenecientes al Estado. Uno de los primeros actos del contratista fué solicitar del Prefecto de Cobija una declaracion categórica acerca de las estacas que correspondian al Fisco y de que él debía tomar posesion en virtud de su contrato. Aquel funcionario tuvo por conveniente al Gobierno sobre la petición del Señor Lopez Gama, y absolviéndolo su consulta, *el Ministerio de Hacienda, entre otras cosas, le dijo por oficio de veintidos de Octubre de mil ochocientos setenta y tres*, lo que sigue: "La situacion de cada una de las estacas de (interes) de interes fiscal en los diferentes registros de vetas de plata que han tenido lugar en ese Departamento, se halla determinada por la lei con toda precisión. El supremo decreto del veintitres de Julio de mil ochocientos cincuenta y dos, reconocido por actos legislativos como lei del Estado, aplica al Tesoro de Instrucción pública la estaca siguiente a las que corresponden al descubridor o denunciante en toda veta de plata o cual otro metal. Partiéndolo de este antecedente y teniendo en vista las disposiciones del Código de Minería concernientes al objeto, no debe ofrecer duda la designación de las pertenencias fiscales de que el Señor Pedro Lopez Gama ha de tomar posesión. Por el artículo diez y seis del mencionado código, al que se refiere tambien el diez i nueve, los descubridores mediante cateo de vetas en cerro vírjen gozan tres estacas, y en ellas corresponde al Estado la cuarta. Por el artículo veinte los descubridores de veta en asiento mineral conocido y en otras partes trabajado, gozan solamente dos estacas, siendo en estas la tercera la que corresponde al Estado. La aplicación exacta de las citadas disposiciones en los minerales del Litoral destruye cualquiera objecion o dificultad que pueda oponer el interes individual. Si algunos empresarios de ese distrito, que se créen con derecho a las terceras estacas, invocan el decreto de veintinueve de Setiembre del setenta y uno, que por equivocación espresó ser siempre la cuarta estaca del fisco, es mui estraño que olviden el tenor de la órden circular explicatoria de nueve de Octubre del mismo, que rectificando la espresion inexacta

del decreto, declara que son las cuartas i las terceras respectivamente en los propios terminos que estatuye el Código las que pertenecen al Estado." Con el mérito de lo espuesto en la parte del oficio que acaba de trascribir, el Prefecto de Cobija procedió a resolver la cuestion que le habia propuesto el Señor Lopez Gama, y en *Noviembre de mil ochocientos setenta y tres, pronunció el siguiente fallo:—Prefectura del Departamento, Lamar, Noviembre catorce de mil ochocientos setenta y tres.* Vistos, y considerando:—Primero—que los descubrimientos de vetas de plata hechos por el Señor Diaz Gana, por medio de diversos cateadores, tuvieron lugar en una parte desconocida del desierto de Atacama, a la que el mismo descubridor dió mas tarde el nombre de Caracoles;—Segundo, que segun el inciso primero del artículo diez i seis corroborado por el diez y nueve del Código de Minería corresponden a todo descubridor en cerro vírjen tres estacas; Tercero, que el artículo veinte establece solamente como escepcion el hecho de que el descubrimiento ha tenido lugar en asiento mineral conocido o en otras partes trabajado; se declara de conformidad con el decreto supremo de veintitres de Octubre de mil ochocientos setenta y uno y los artículos diez i seis, diez i nueve y veinte del Código de Minería que el contratista Señor don Pedro Lopez Gama debe tomar posesion de la cuarta estaca en todas las vetas descubiertas por don José Diaz Gana y cateadores, que fueron rejistradas antes de haberse establecido trabajo de ninguna clase en el mineral de Caracoles, y de las terceras estacas en las demas, salvo el caso previsto por el artículo ciento noventa i nueve del código citado. Rejístrese y notifíquese al contratista don Pedro Lopez Gama y elévese al Supremo Gobierno. Fernandez Costas." El Gobierno, reviendo esta resolucion en Diciembre de mil ochocientos setenta y tres, despues de dictada la ley de quince de Noviembre del mismo año por la cual se mandó que el Ejecutivo tomara posesion de las estaca minas de instruccion, la aprobó en los términos que siguen:—"*Ministerio de Hacienda e Industria.—Nucchoo, Diciembre veinte de mil ochocientos setenta y tres.* Vistos en consejo de Gabinete la consulta dirigida por la Prefectura de Cobija, lo espuesto por el Fiscal General, y el dictámen del Consejo de Estado y considerando que segun los términos de la propuesta aceptada en primero de Abril del año corriente, el Señor Pedro Lopez 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 concesión

que se acompañan en testimonio tomado del Libro de Rejístros públicos de la Prefectura de Cobija, consta que adjudicaron sucesivamente al ramo de Instrucción estacas determinados con toda claridad en cada uno de los rejistros: 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 Señor Lopez Gama debe tomar posesion; se aprueba la resolucion expedido en este espediente por la Prefectura de Cobija en catorce de Noviembre último. Rejístrese y devuélvese. Ballivian.—Mariano Baptista.—Daniel Calvo.—Mariano Ballivian.—Pantaleon Dalence”—Despues de varios otros decretos relativos a las estaca minas del Estado en jeneral o especialmente a las de plata del Litoral, que seria largo enumerar, se dictó la ley de quince de Noviembre de mil ochocientos setenta y tres por la cual se ordenó al Ejecutivo que tomase posesion de las estaca minas de instruccion pública. Esta ley se italla concebida en los términos siguientes:—*Lei de quince de Noviembre.* Estacas minas de Instruccion. Se manda que el Ejecutivo tome posesion de ellas. La Asamblea Nacional Estraordinaria decreta: “Artículo primero.—El Poder Ejecutivo mandará tomar posesión inmediatamente de todas las estaca minas de Instruccion pública prévia las formalidades de citacion de colindantes, mensura y demas prescritas por el Código de Minería, y en vista de los títulos que serán exhibidos por los adjudicatarios en cada una de las operaciones. Artículo segundo.—Por ningun motivo o causal se suspenderá la posesión del Estado, salvo que se suscite oposicion por los poseedores que tengan trabajos establecidos, en cuyo caso esta se ventilará ante los tribunales ordinarios; debiéndole limitarse la autoridad administrativa a colocar un Interventor, a efecto de que el producto líquido sea depositada en el Banco Nacional de Bolivia, hasta que se pronuncie el fallo respectivo. Artículo tercero.—Se autoriza el Poder Ejecutivo para celebrar transacciones sobre litijios de dichas estacas con aprobacion del Poder Lejislativo. Artículo cuarto. Quedan derogadas todas las disposiciones contrarias a la presente lei. Comuníquese al Poder Ejecutivo para su ejecucion y cumplimiento. Sala de Sesiones, Sucre, Noviembre catorce de mil ochocientos setenta y tres. Jenaro Palazuelos, Presidente, Belisario Boeto. Macedonio D. Medina, diputados secretarios. Casa de Gobierno,

Sucre, Noviembre quince de mil ochocientos setenta y tres.—Ejecútese.—Adolfo Ballivian.—El Ministro de Hacienda e Industria.—Pantaleon Dalence.”—*Ley de diez i nueve de Octubre.*—Ejecutivo.—Autorizaciones jenerales para promover el adelanto del pais. La Asamblea Nacional Constituyente, decreta:—Artículo único.—Autorízase al Ejecutivo, con cargo de dar cuenta a la próxima Asamblea, para los objetos siguientes:—Primero:—Para organizar distritos territoriales en las regiones que por falta de poblacion no pueden erijirse en provincias, a fin de fomentar el incremento de la riqueza y del comercio nacional.—Segundo:—Para habilitar puertos y establecer las aduanas convenientes que a consecuencia de la navegacion de los rios del oriente y del lago de Titicaca, sean absolutamente necesarios. Esta autorización es estensiva al distrito litoral. Tercero.—Para reglamentar la manera de adjudicar los minerales o mantos de sustancias inorgánicas no metalíferas.—Cuarta. Para reglamentar la explotacion de las guaneras de Mejillones y de todo el litoral.—Quinto.—Para celebrar contratos de arrendamiento o explotar en sociedad, todas las estaca minas pertenecientes al Estado, en los minerales de la República. Sexto.—Para reglamentar la explotación de minerales o sustancias inorgánicas por el litoral o por cualquiera de las fronteras.—Séptimo.—Para aceptar propuestas de caminos carreteros o cualesquiera otros en todos los departamentos, con dictámen afirmativo del Consejo Municipal respectiva.—Octavo.—Para aceptar propuestas para el establecimiento de telégrafos eléctricos.—Comuníquese al Poder Ejecutivo para su ejecucion y cumplimiento. Sala de Sesiones en la ilustre y heroica capital Sucre, a diez i nueve de Octubre de mil ochocientos setenta y uno. Tomas Frias, Presidente.—Mariano Navarro, diputado secretario.—Eulojio D. Medina, diputado secretario.—(Lugar de sello)—Palacio de Suprema Gobierno en Sucre, a diez i nueve de Octubre de mil ochocientos setenta i uno.—Ejecútese.—Firmado.—Agustin Morales.—Refrendado. El Ministro de de Gobierno y Relaciones Exteriores.—Casimiro Corral.—Por último, el siete de Enero de mil ochocientos setenta y ocho se presentó a la Asamblea Nacional Constituyente un proyecto de lei proponiendo la aprobacion de todos los actos políticos y administrativos del Gobierno el cuatro de Mayo de mil ochocientos setenta i seis, con el cual celebré mi contrato. Pasado en informe a la comision de Hacienda, *la Asamblea votó el catorce de Febrero del mismo año una lei concebida en los términos siguientes:*—La Asamblea Nacional Constituyente, ha-

biendo oído el informe de sus distintas Comisiones acerca de los actos del Gobierno Provisorio, y despues de haber debatido en su consecuencia cada uno de los asuntos con sujeción al reglamento interior, decreta:—Artículo único.—Se aprueba los actos del Gobierno Provisorio en la forma siguiente:—Primero,—Estando sancionada la Constitución del Estado y dictadas las bases para la formacion de reglamentos de elecciones y municipalidades, se declara inoficioso pronunciar decision alguna sobre los decretos reglamentarios de quince de Diciembre de mil ochocientos setenta i seis y treinta de Marzo de mil ochocientos setenta i siete.—Segundo,—Las medidas dictadas en el ramo de Hacienda quedan aprobadas, fuera de las que han sido derogadas y modificadas por espresa disposición de la presente Asamblea:—Tercero,—En el Departamento de la Guerra se aprueba las medidas del Gobierno relativas a la organización del Ejército y de las columnas de guarnición, la provision de armamento, municiones y demas útiles de guerra; y el ascenso y rehabilitación a la alta clase de Jenerales de los antiguos jefes mencionados en la Memoria del H. Señor Ministro de la Guerra.—Cuarto;—Quedan aprobados todos los decretos y resoluciones dictados por el Ejecutivo en materia de justicia, autorizándole para que someta a la Corte Suprema las modificaciones propuestas por la respectiva. Comision y fórmule en consecuencia las reformas necesarias, con calidad de dar cuenta a la próxima lejislatura.—Quinto,—Se aprueba los actos del Gobierno concernientes a materias eclesiásticas, incluyendo la suspension de temporalidades decretadas contra el Ilustrísimo Arzobispo de la Plata, por haberse negado a dar concurso de los curatos vacantes en las Arquidiócesis.—Sesto,—Queda aprobada el decreto de diez de Agosto de mil ochocientos setenta y siete, que restablece la enseñanza oficial al frente de la que se dá por empresas particulares.—Séptimo,—Se confirma los décretos que tienen por objeto variaciones introducidas en las circunscripciones provinciales de los departamentos de Cochabamba, Potosí y Tarija.—Octavo,—Se aprueba los actos que se refieren al ramo de industria.—Comuníquese al Poder Ejecutivo para su ejecucion y cumplimiento.—Sala de Sesiones en la Paz de Ayacucho, a los doce dias del mes de Febrero de mil ochocientos setenta y ocho.—A. Quijarro, presidente.—Samuel Velasco Flor, diputado secretario.—Abdon S. Ondarza, diputado secretario.—Ministerio de Gobierno y relaciones exteriores. La Paz, catorce de Febrero de mil ochocientos setenta y ocho.—Ejecútese.—H. Daza.—J. M. del Carpio.—Al

ocupar este territorio, el coronel don Emilio Sotomayor, encargado de la expedición, declaró a nombre de Chile que la propiedad particular sería debidamente respetada. El documento en que se hizo esta declaración es aquí de notoriedad pública.—En el penúltimo aparte de la nota con que el Ministro de Relaciones Exteriores acompañó a los agentes diplomáticos extranjeros el manifiesto en que daba cuenta a las potencias neutrales de las causas de la guerra con Bolivia, se dice:—“No necesito asegurar a U. S. que sus nacionales hallarán en el territorio en que ahora ha vuelta a imperar la ley chilena, toda clase de garantías en sus personas e intereses.” *En el manifiesto de diez i ocho de Febrero de mil ochocientos setenta y nueve, el Ministro de Relaciones Exteriores (3^{er} aparte de la página 83 de la Memoria respectiva) se expresa en los términos siguientes:*—“Agotados los expedientes de conciliación que su anhelo por la tranquilidad de la América hacia Chile poner en incesante ejercicio; desoidas y desdeñadas por Bolivia todos los llamamientos que se le dirijian al cumplimiento de obligaciones legalmente pactadas en el tratado de mil ochocientos setenta y cuatro, 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 población chilena y extranjera, a sus industrias y capitales allí radicados, la tranquilidad, la confianza y el bienestar de que la administración boliviana les había hecho carecer.” Al final del mismo manifiesto (páj. 114 de la Memoria) se leen estas palabras:—“Cincuenta horas más tarde, la ley chilena imperaba en aquella región, colocando bajo su amparo los intereses chilenos i extranjeros, sin derramar una gota de sangre y en medio del entusiasmo patriótico de las poblaciones redimidas.”—El Ministro de Relaciones Exteriores don Domingo Santa María, en la página veinte de su Memoria, dice: “En el curso de las hostilidades Chile no ha perdido de vista, en ninguna ocasión, el respeto a la propiedad é intereses neutrales y se ha esmerado en evitarles todo daño que no sea exigido por el deber de consultar eficazmente los fines primordiales de la guerra.”—Certifico que la copia que se manda agregar es del tenor siguiente:—*Resolución de doce de Octubre.—Minería.—Las estacas del Estado son imprescriptibles. Ministerio de Hacienda e Industria, Sucre, Octubre doce de mil ochocientos setenta y uno.—Circular A. S. G. el prefecto del Departamento de —Señor:—En la consulta que elevó al Gobierno el Subprefecto de la provincia de Chayanta, sobre el despueblo de las estacas minas que corresponden a instrucción pública, con esta fecha se ha re-*

suelto en contestacion a ella, lo siguiente:—Señor puesto a despacho en este Ministerio los asuntos pendientes de los ramos de hacienda é industria, me ha impuesto de la consulta que elevó Usia en su nota de nueve de Julio último, sobre la denuncia que hizo el doctor José Lino Mendoza, por despueble de las estacas de Instrucción pública en las vetas “Embudo” y “Melgarejo,” del cerro de Anconaza, mineral de Aullagas.—Demaciado estraña y aun absurda ha sido la denuncia del Señor Lino Mendoza y mas estraño es todavia que el Ministerio público de esa provincia, hubiese opinado que las estacas denunciadas incurrieron en el despueble, como si los bienes del Estado pudieran prescribirse. Este despueble no rije ni puede rejir para las estacas de Beneficencia o de Instruccion, que como dictamina el fiscal jeneral de la República, son bienes nacionales y estan amparados tuitivamente por el decreto de su adjudicacion, que tiene en mira la creacion de fondos para atender a una de las necesidades mas vitales de la administracion pública. Por consiguiente señor Subprefecto, no hai despueble en los bienes nacionales, que no son otra cosa las estaca minas del Estado. Lo que de órden de S. E. comunico a U. S. para que lo mande publicar en los cantones y asientos minerales de esa provincia.—Dios guarde a U. S.—Rúbrica de S. E.—Casimiro Corral.—Lo que trascribo a U. G. para su debido conocimiento y para que lo trasmita a las autoridades de su dependencia, mandando su publicacion por el periódico oficial de esa ciudad a fin de que llegando a noticia, sirva de regla jeneral. Dios guarde a U. G.—Casimiro Corral. Es conforme. Antofagasta, Enero tres de mil ochocientos ochenta i uno. Clodomiro Mujica.

Es conforme. Antofagasta, Agosto siete de mil ochocientos noventa y tres.

J. DEL J. CONCHA.

secretario.

PIDE COPIA.

S. J. L.

Eduardo Jackson, en la jestión que he iniciado para que se me dé por el secretario, con citación del señor Promotor Fiscal, algunas compulsas relativas a los juicios seguidos por don Juan Wheelwright sobre las estacas de Instrucción pública, a U. S. respetuosamente digo: que conviene a mi derecho que esas compulsas se hagan estensivas a la sentencia pronunciada el 2 de Mayo de 1882,

en el juicio sostenido por el mencionado señor Wheelwright contra don Benigno Barrios sobre la estaca "Armonita"

Por tanto,

Sírvase U. S. ordenar que se agregue compulsa de esa sentencia, tomándola de la causa o del copiador de sentencias, también con citación del señor Promotor Fiscal.

EDUARDO JACKSON.

Antofagasta, Agosto 1° de 1893.

Como se pide

M. CARVALLO.

CONCHA.

s.

En primero de Agosto notifiqué a don Eduardo Jackson.

EDUARDO JACKSON.

CONCHA.

s.

En dos de Agosto notifiqué al señor Promotor Fiscal.

VALENZUELA.

CONCHA.

s.

Certifico que la copia a que se refiere la solicitud que precede dice como sigue: Antofagasta, Mayo dos de mil ochocientos ochenta y dos.—Vistos: Don Teodoro Hohmann por don Juan Wheelwright demanda a don Benigno Barrios para que se declare que la mina "Amonita" pertenece al Fisco boliviano, cuyos derechos representa su comitente condenándosele a la restitucion de ella con los frutos percibidos durante el tiempo de su posesion.—Fundando la demanda de fojas veintinueve y a nombre de don Juan Wheelwright dice: que de acuerdo con las cláusulas del contrato respectivo pidió la entrega y posesion de varias de las pertenencias denominadas fiscales enumerando entre ellas la correspondiente a la veta "Blanca Torre"; y que constituido el Diputado de minas en el terreno que debía mensurarse para entregarle la posesion de la Estaca referida, don Benigno Barrios se opuso a dicha diligencia por lo cual pide la entrega de la estaca fiscal que retiene indebidamente con el nombre de "Amonita" y cuya adjudicacion obtuvo subrepticiamente por haberla denunciado bajo el falso concepto de ser una propiedad particular.—Don Emilio Garcia Ramirez por don Benigno Barrios contestando a fojas ciento cincuenta y

cinco la demanda de fojas veintinueve, pide que se absuelva de ella a su comitente; y fundando su derecho sostiene: Primero; que la mina "Amonita" no ha sido jamas Estaca de Instruccion; Segundo: que su mandante la obtuvo por despueble el trece de Agosto de mil ochocientos setenta y cinco, hecho que basta para comprender que antes de él, otro, que no fué el Fisco de Bolivia, la habia trabajado; Tercero: que en la hipótesis de que la mina "Amonita" hubiese sido Estaca de Instruccion, el Gobierno de Bolivia ha perdido el dominio que tenia al territorio en que está situada y conjuntamente el derecho a las llamadas "Estacas de Instruccion", y Cuarto: que el contrato celebrado por don Juan Wheelwright fué nulo: primero: porque el Gobierno de Bolivia necesitó una autorizacion del Congreso que no hubo; y segundo: porque esos contratos no fueron reducidos a escrituras públicas:— En la réplica el demandante, impugnando los argumentos de su contendor dice: que segun los documentos corrientes en copia a fojas sesenta y una y fojas sesenta i dos consta que el cuatro de Julio de mil ochocientos setenta don Francisco B. Latulle pidió con el nombre de "Amonita", una estaca sobre la corrida de la veta "Blanca Torre" al Sur Sureste de la Descubridora, y el diez y nueve del mismo mes se le adjudicó la estaca a continuacion de la correspondiente al Tesoro de Instruccion Pública, salvedad que hizo el Sub-prefecto porque el decreto de veinte tres de Julio de mil ochocientos cincuenta y dos aplicaba de pleno derecho al Tesoro de dicho ramo el interes siguiente a los que correspondian al descubridor, que cinco años despues el demandado denunció por despueble la mina "Amonita" manifestando los títulos corrientes de fojas tres a fojas trece que la estaca, objeto de este denuncia, fué la mina "Amonita". Agrega que el demandado no puede alegar la prescripcion en este caso, como lo hace a fojas ciento ochenta y ocho ni el denuncia por despueble; pues, por la suprema resolucion del doce de Octubre de mil ochocientos setenta y uno, bajo cuyo imperio fué celebrado el contrato de que dá constancia la escritura acompañada, se declaró que las Estacas de Instruccion Publica no podian prescribirse, ni denunciarse por despueble.—Pasando en seguida a rebatir el tercer fundamento de la contestacion espone: que siendo internacional la cuestion entre Chile i Bolivia sus consecuencias, deben juzgarse con arreglo al Derecho de Jentes; que habiéndosele adjudicado por el contrato de Diciembre de mil ochocientos setenta y seis el usufructo de las

Estacas de Instrucción Pública de este Litoral, por el término de veinticinco años y en pago de ochocientos y tantos miles de pesos, los derechos que adquirió por él forman parte integrante de su propiedad privada; que si hai algun punto en que los autores y la práctica de las Naciones esten de acuerdo es en reconocer que siempre que alguna potencia se apodera por la fuerza de cualquiera porcion del territorio de otra, las propiedades particulares que en ella existan o que en ella tengan su orijen, son sagradas é inviolables; que admitiéndolo que solamente los derechos reales sean los que deban respetarse, el suyo si encuentra en este caso, pues, por el contrato citado, se le dió el usufructo de las Estacas de Instrucción que es un derecho real; y que aun en el supuesto de que no sea usufructo, siempre seria real su derecho: primero, porque los Tribunales de Bolivia lo admitieron a jestionar por las Estacas en contra de toda clase de personas; segundo: porque el Ministro de Hacienda lo recomendó mas de una vez a las autoridades subalternas para que le facilitaran la posesion de las Estacas; tercero: por la facultad que se le concedió en la nota copiada a fojas ciento veinte vuelta para entablar demandas; y cuarto, por las diferentes facultades que se le conceden en várias cláusulas del mencionado contrato. Por fin, fundando la validez del contrato de Diciembre de mil ochocientos setenta y seis, el demandante dice: que el artículo quinto de la ley de diez i nueve de Octubre de mil ochocientos setenta y uno autorizó al Ejecutivo para arrendar o explotar en sociedad las Estacas de Instrucción y el contrato se encuentra comprendido en esa autorizacion; y que este fué reducido a escritura pública en tiempo oportuno y aprobado aun esplicitamente por el Congreso Boliviano.—El demandado a su vez no acepta como buenas las observaciones que anteceden y en su escrito de réplica, reforzando sus razones respecto a que la mina "Amonita" no ha sido jamas Estaca de Instrucción, a la validez de su denuncia por despueblo, a la prescripcion que alega ya la nulidad del contrato de Diciembre de mil ochocientos setenta y seis, agrega relativamente al segundo punto de la réplica: que Chile no ha conquistado ninguna parte de territorio ajeno si no que por haber faltado Bolivia al cumplimiento de la condicion prescrita por el tratado de mil ochocientos setenta y seis hizo lo que hace todo individuo cuando condicionalmente cede una cosa y la condicion no se cumple: reivindica la cosa que aun no ha dejado de pertenecerle; que don Juan Wheelwright no tiene ni alega siguiera un derecho de propiedad a las llamadas estacas de Instrucción, las cuales, como propiedades de Bolivia, pasaron

al dominio de Chile ipso facto por la guerra; que el contrato de Diciembre de mil ochocientos setenta y seis no es usufructo sinó anticrécis y que las mismas facultades que las autoridades bolivianas dieron a Wheelwright estan manifestando que no era real el derecho de éste y por esto fue que en la demanda pidió que se declarase que la "Amonita" pertenecia al Tesoro de Instruccion del Gobierno de Bolivia.—La causa se recibió a prueba y se ha rendido la que corre en autos.—Considerando: primero, que ocupado a título de reivindicacion por las armas chilenas el territorio que media entre los paralelos veintitres y veinticuatro de latitud sur y aprobada por la ley patria del tres de Abril de mil ochocientos setenta y nueve la resolucion del tratado del seis de Agosto de mil ochocientos setenta y cuatro, Chile recuperó su dominio sobre los bienes nacionales que Bolivia habia adquerido en virtud de aquel tratado; Segundo, que don Juan Wheelwright ha reconocido y justificado plenamente con las declaraciones de los testigos que responden al interrogatorio de fojas doscientos diez y ocho que la mina "Amonita" denunciada por despueblo y ocupada actualmente por don Benigno Barrios, fué la Estaca de Instruccion de la Blanca Torre: tercero, que entre los bienes nacionales de Bolivia recuperados por Chile se contaban las Estacas de Instruccion establecidas por el decreto Supremo del veintitres de Julio de mil ochocientos cincuenta y dos; cuarto: que la convencion celebrada en Diciembre veinticuatro de mil ochocientos setenta y seis entre el Gobierno Boliviano y don Juan Wheelwright, sócio i representante de la casa mercantil de Alsop y Compañía, segun los términos de la escritura pública que en copia corre a fojas ciento ochenta, fué un contrato de anticrécis en que el Gobierno de Bolivia concedió a don Juan Wheelwright las Estacas de Instruccion de las minas del llamado entonces "Litoral del Norte" para que por el término de veinticinco años, se pagase con sus frutos de la cantidad de ochocientos treinta y cinco mil bolivianos y de sus intereses, que el espresado Gobierno reconoció deberle (artículo 2435 del Código Civil); quinto: que esta misma clasificación ha sido hecha en el auto de fojas ciento treinta i seis vuelta y aceptada por la Ilustrísima Corte de la Serena confirmando dicho auto a fojas ciento cincuenta y una vuelta; Sesto: que la anticrécis no dá por si sola al acreedor ningun derecho real sobre el inmueble afecto a ella ni aun despues de la entrega que perfecciona el contrato, segun el artículo dos mil cuatrocientos treinta y siete del Código citado; Séptimo: que no teniendo don Juan Wheelwright un derecho real

sobre las Estacas de Instruccion cedidas por el contrato referido, ni habiendole sido jamas entregada la que posee el demandado con el nombre de "Amonita", no puede ampararse siquiera en la

- Doctrina de aquellos autores del Derecho Teórico de Jentes, que reconociendo el principio positivo del Derecho Real que autoriza el vencedor en una guerra para apropiarse todos los bienes que hacen parte del dominio público del Estado enemigo, aconsejan sin embargo a las naciones que conquistan un territorio el respecto por los derechos reales constituidos en propiedades fiscales de la nacion cuyo es el territorio conquistado; ni ménos para hacer valer su título anticrético e imperfecto en contra de un particular poseedor de una mina que con todas las otras del Litoral del Norte pasaran a ser propiedades nacionales de la República de Chile por la reivindicacion y ocupación efectiva del mencionado Litoral y a ser rejida por nuestro Código de Mineria; Octavo;—que si se diera lugar a la demanda de fojas veintinueve y lojicamente a todas aquellas que pretendiesen devolucion al Fisco boliviano de las Estacas de Instruccion de las minas situadas entre los paralelos veintitres y veinticuatro de latitud sur, resultaria la inconsecuencia ostensible de que los Tribunales de Chile restituirian a la República de Bolivia partes importantísimas de los territorios reivindicados y ocupados por las armas de nuestra República; y noveno, finalmente, que sentadas estas premisas y debiendo fallarse conforme a ellas no hai para que averiguar ni resolver si fué o no legal el contrato en virtud del cual se ha pedido en la demanda de fojas veintinueve la declaración de que la mina "Amonita" pertenece al Fisco boliviano, ni para que pronunciarse sobre la validez del despueblo de dicha mina y prescripcion que el demandado ha hecho valer tambien en apoyo de sus derechos a la espresada mina: en virtud de ostos considerandos y disposiciones citadas, del artículo quinientos noventa y uno del Código Civil y ley treinta y dos, título diez i seis, partida tercera, se declara sin lugar la demanda de fojas veintinueve.—Anótase.—Fuenzalida.—Mujica.—Es conforme. Clodomiro Mujica. Es conforme. Antofagasta, Agosto siete de mil ochocientos noventa y tres.

Entre paréntesis—interes—no vale.

J. DEL T. CONCHA

secretario.

Certifico que la firma precedente y la que corre al pié de la foja 28 de los títulos precedentes corresponden a las que usa don José

del Tránsito Concha, Secretario del Juzgado de Letras de este departamento. Antofagasta, Agosto 8 de 1893.—Enmendado, 38, vale.

[L. s.]

P. P. ALVAREZ.

[Estampilla.]

N° i Cr

José M. Walker, Intendente y Comandante Jeneral de Armas de la Provincia de Antofagasta, Chile, certifica: que la firma precedente es la que usa en sus actos públicos el Notario y Conservador de Bienes Raices del Departamento de Antofagasta, don Pedro P. Alvarez;—

Antofagasta Agosto 8 del 1893.

[L. s.]

JOSÉ M. WALKER.

BRITISH VICE CONSULATE, *Antofagasta.*

I the undersigned British Vice-Consul at Antofagasta do hereby certify that Don José M. Walker whose signature is at foot of the preceding document, is to me personally well known as Intendente and Comandante Jeneral de Armas of the province of Antofagasta in the Republic of Chile, and that as such his said signature is worthy of all faith and credit.

In testimony whereof I hereunto set my hand and Seal of office at Antofagasta aforesaid this eighth day of August one thousand eight hundred and ninety three.

[SEAL.]

JOHN BARNETT, *Vice Consul*

[Stamp.]

BRITISH VICE CONSULATE, *Lima.*

I hereby certify that the signature at the foot of the preceding page is that of John Barness, British Vice-Consul at Antofagasta.

In testimony whereof I hereunto set my hand and seal at Lima, Peru, this twenty fifth day of August, one thousand eight hundred and ninety three.

[Stamp.]

CHAS. WATSON, Jr.

[SEAL.]

British Vice-Consul.

UNITED STATES LEGATION,

Lima Peru, August 25, 1893.

I hereby certify that the above signature of Chas. Watson, Jr. British Vice Consul at Lima, Peru, is correct.

[SEAL.]

RICHARD R. NEILL.

United States Secretary of Legation.

Exhibit 23.

R.

[Translation.]

Valparaiso, 21st November, 1883.

YOUR EXCELLENCY: John Stewart Jackson, referring to the petition and the documents accompanying same, which, as the representative of Mr. John Wheelwright, he had the honor of addressing to your Excellency on the 11th September, 1882, now finds himself under the necessity of making the following representation on behalf of the same gentleman, with respect to the rights lawfully belonging to him in his capacity of contractor of the mines known as the "Mines of Public Instruction" (Estacas Minas de Instruccion Publica) of the Government of Bolivia.

On the twenty-third of July of the year one thousand eight hundred and fifty-two, the Government of Bolivia, desiring to create a source of revenue for the public instruction of the country, issued a decree, by which it resolved that in every discovery of mines of silver, gold or other metal whatsoever, there should belong of full right to the Treasury of Public Instruction the mine (estaca), following those which might correspond to the discoverer, according to the Mining Code.

Since the date of this decree, in every discovery, after measuring to the discoverer the properties to which the law entitled him, there has been measured to the State one of sixty yards (varas) in length by thirty in breadth.

Such is the origin of the mines known in Bolivia by the name of "Mines of Public Instruction" (Estacas de Instruccion Publica).

Many other resolutions, both legislative and administrative, dictated subsequently, confirmed the decree of the twenty-third of July, one thousand eight hundred and fifty-two, insuring to the State at the same time the proprietorship and possession of these mines, and, by the law of the nineteenth of October of one thousand eight hundred and seventy-one, the Government was authorized to rent them, or to work them in association with third parties.

The commercial firm which carried on business in Valparaiso under the style of Alsop and Company, furnished Mr. Pedro Lopez Gama, at a certain epoch, with large sums of money in order that he might make advances to the Bolivian Government on account of contracts for the exportation of the guano of the Bolivian coast, and for the administration of the same business. These sums

amounted to more than a million of dollars, and, in payment of them, Mr. Lopez Gama, by a public deed, executed in Valparaiso on the fourteenth of April, one thousand eight hundred and seventy-five, ceded to Messrs. Alsop and Company certain rights which in virtue of previous contracts he had acquired from Bolivia.

This cession having been accomplished, Mr. John Wheelwright, one of the liquidating partners of the house of Alsop and Company, proceeded to La Paz with the object of claiming from the Bolivian Government the fulfilment of the obligations which it had contracted in favor of Mr. Lopez Gama, and which he had ceded to his representatives.

After long and oft-repeated negotiations which put Mr. Wheelwright to very considerable expense and trouble, and after a thousand vicissitudes which it would be fruitless to mention here, at the end of December of the year one thousand eight hundred and seventy-six, he succeeded in effecting the settlement consisting of the decrees of the 23d and 24th of December of that year, and which was put into the shape of a public deed in La Paz before the Notary of Finance, Mr. Patricio Barrera, on the 26th of December.

By the first article of the decree of the 24th of December, the Bolivian Government, accepting the representativeship of Mr. Wheelwright, celebrated with him a contract by which it acknowledged itself the debtor of Messrs. Alsop and Company, as cessionaries of Mr. Pedro Lopez Gama, for the sum of eight hundred and thirty-five thousand Bolivian dollars (\$835,000), together with the annual interest of five per cent. from the date of the execution of the contract.

By the second article it compromised itself to pay the said capital and interest by drafts drawn for the full amount, in tri-monthly proportions, on the excess which, from the date of the termination of the Customs Contract with Peru, there might be in the receipt of duties from the Northern Custom House, corresponding to Bolivia, over and above the four hundred and five thousand dollars (\$405,000) rendered by the Peruvian Government, whether the customs treaty should be renewed with that Republic, or whether the National Custom House should be re-established.

By the third article there was adjudicated to the amortization of the same debt all the Mining Setts of Silver (*Estacas Minas de plata*) belonging to the State in the Coast Department, the said amortization to be carried into effect with forty per cent. of the net profits of each, with the exception of the Mine (*Estaca*) called

"Flor del Desierto," which, with another which Mr. Wheelwright has the right to select, was adjudicated by the fourth article to the payment of the interest then due.

By the first article of the decree of the twenty-third of December, which regulated the working of the adjudicated mines, the term of three years was conceded to Mr. Wheelwright for the investigation of the mines and for looking for the necessary capital to place work on them.

By the second article he was authorized to organize collective or anonymous societies for the exploitation of one or more mines, and to contract for same with the proprietors of adjacent mines.

By the sixth article it was determined that the duration of the contract should be twenty-five years.

This was, in its essential points, all that Mr. Wheelwright could obtain from the Bolivian Government, after endeavoring for some time to procure the recognition of the rights which Mr. Lopez Gama had ceded to his representatives in payment of the million and more of hard dollars which the latter had delivered to him in order that he might make to the Bolivian Government the advances of which I have made mention above.

From this contract there consequently also arise the rights which belong to Mr. Wheelwright with respect to the Silver Mines of the Coast Department known by the name of Mining Setts of Public Instruction.

Immediately after the contract had been reduced to a public deed, Mr. Wheelwright published in La Paz and in Caracoles a notice, in his character of adjudicatory of the mines, inviting all those who might have an interest in working any one or any of them to communicate with him. He also published the contract in the "*Mercurio*" of Valparaiso in order to call the attention of miners and capitalists to it. Thereafter, and almost up to the very date of the occupation of the Coast Department by the Chilean army, the Bolivian Government issued numerous decrees, demanding from the coast authorities the fulfilment in all of its parts of the contract which it had celebrated with Mr. Wheelwright.

In adjusting this contract the Bolivian Government did no more than make use of the authorization which the law of the 19th October, 1871, already cited, had conferred upon it respecting the Mines of Public Instruction, and of that which the law of the 22d November, 1872, conferred upon it later on, to enter into arrangements respecting certain interests of the State which were in liti-

gation, and respecting which some claim was pending. It appeared, therefore, that the contract of the 26th December, 1876, did not require the approval of the Government for its validity. Nevertheless, the Minister of Finance, Mr. Manuel Ignacio Salvatierra, having mentioned its celebration to the Legislature of 1877, in his report of that year, amongst the annexes to which appear the decrees of the 23d and 24th December, 1876, a bill was presented to Congress proposing the approval of all the public and administrative acts of the Provisional Government of Mr. Hilarion Daza, with which the contract in question was celebrated, and, on the 12th February, 1878, after having heard the reports of the Commissions of Industry and Finance, a law was voted granting approval to all the measures which the said Government had dictated in the Department of Finance.

From what has been explained up to the present, it follows that the Bolivian Government, recognizing itself the debtor of Messrs. Alsop & Company, the cessionaries of Mr. Pedro Lopez Gama, obliged itself to pay Mr. Wheelwright, as the representative of Messrs. Alsop & Company, with the Custom House receipts alluded to in the second article of the decree of the 24th December, and with forty per cent. of the net profits of the Mines of Public Instruction of the Coast Department, mentioned in the third article, which, with that object, were adjudicated to him by the contract. It follows, moreover, that, although the Bolivian Government proceeded to the celebration of this contract with ample powers, namely, those given it by the laws of the 19th October, 1871, and of the 26th November, 1872, the National Congress approved the transaction afterwards by means of an express and definite law.

If to this it be added that, as has already been stated, Mr. Wheelwright entered into possession of the mines immediately after the date of the contract, and that the Government charged its subordinate agents with its strict fulfilment, in so far as it depended on them, it seems that there can not be the slightest doubt respecting the validity of the contract and respecting the legitimacy of Mr. Wheelwright's rights with respect to the Mines of Public Instruction of the Coast Department.

Being confident in this, and having met with difficulties, on account of the war, in obtaining the part of the Custom House receipts, which were destined to the amortization of the debt, Mr. Wheelwright devoted his efforts exclusively to the Mines of Public Instruction, engaging in the investigation thereof, and procuring their working, either personally or by means of contractors.

But the three years conceded for the study of the mines had not yet elapsed when the war with Bolivia broke out, and since then, now on account of the exceptional situation to which this has given rise on the coast, now from the fact of his rights being ignored by miners whose interest it was to retain or obtain possession of some of the mines, or to penetrate to them, Mr. Wheelwright has not been able, to any extent, to organize, as he proposed, the working of the mines, and has found himself under the necessity of sustaining with many persons, for the conservation of his rights, most expensive lawsuits, which have occupied a considerable part of the time which he had for advancing the work of the mines.

In fact, many of the workmen, on whom the mining industry of the coast relied, having joined the army, the number of these became so limited that it has often been necessary to reduce or paralyze the work of some mines for the want of workmen. It can be readily understood that this inconvenience was much more serious for Mr. Wheelwright, who had so many mines on which it was his particular interest to place work, either personally or by means of sub-contractors.

As regards the second of the circumstances which have been noted, some individuals, carried away by their particular interest, and thinking, in good or bad faith, that, on account of the treaty of limits with Bolivia of 1874 having been abrogated, and on account of Chili having occupied the territory comprised between the twenty-third and twenty-fourth parallels of south latitude, the contract of the 26th December, 1876, had become void, have considered the Mines of Public Instruction as vacant ground, and have attempted to deprive Mr. Wheelwright of the rights which belong to him respecting them by means of petitions or denouncements, notwithstanding that, by a supreme resolution of Bolivia, they are not susceptible of denouncement, removing their boundary marks in order to make their individuality disappear, or penetrating within their limits. And persons have not been wanting who, applying that theory even to the mines situated without the territory termed revindicated, and which is of mere military occupation, have caused Mr. Wheelwright, in regard to these, the same difficulties of which mention has just been made. Of course, each of these attempts, which have been repeated with much frequency from the beginning of the war, has obliged Mr. Wheelwright, in order to escape the spoliation of which it has been endeavored to make him the victim, to sustain a long and expensive lawsuit.

In the meantime, neither can the validity of the contract celebrated by Mr. Wheelwright with the Government of Bolivia be questioned, as has already been demonstrated, nor is the pretension of the individuals in conformity with the precepts of international right when they suppose that Mr. Wheelwright has lost his rights to the Mines of Public Instruction from the fact of Chili having occupied with its arms the territory in which they are situated.

It will not be difficult to establish the last position appealing to some of the principles of international right which bear on the question.

The effects of the rupture or annulment of a treaty, according to one of those principles, only affects the public interests from sovereign to sovereign, but not private interests arising out of concessions made to particular individuals by one of the contracting powers in virtue of the rights which were conferred upon them in the treaty.

By that of limits of 1874 Chili ceded to Bolivia the high dominion over the revindicated territory.

As it is known, this dominion gives the power of administering and governing the ceded territory, and of dictating laws respecting the persons and things found in it. The cession is certain; with some limitation it was like that of Article Fourth, but by none of them was the Dominion of Bolivia restricted as regards the faculty of conferring on particular individuals rights over the ceded territory, and over any of the property existing in it. Reading the treaty with attention, it will be seen that it contains no restriction whatever of this nature, and, accordingly, Mr. Wheelwright did not seek the approval of Chili, nor did he give it notice of the contract, confining himself to the publication of it for the purposes already mentioned.

If Bolivia, in conceding rights to individuals over a part of this territory, and in celebrating Contracts such as that made into a public deed on the 26th December, 1876, did no more than put in exercise the administrative and gubernative faculties which belonged to her in virtue of the cession of 1874; if in doing all this she has not exceeded the limits thereof, should all these contracts and concessions be considered annulled by the rupture of the Treaty of 1874? It is evident that such is not the case, and that the rights derived therefrom should be considered subsisting, as having been legitimately acquired from the party who could legitimately confer them.

The contrary would be the case if, in making contracts with or granting concessions to individuals, the Bolivian Government had not confined itself within the limits and conditions of the cession. In this case, these contracts or concessions would have had to share the same fate as the Treaty of 1874.

If the preceding considerations are not erroneous, it must be admitted that the abrogation of the Treaty of Limits with Bolivia does not entail that of the effectiveness of the deed of the 26th December, 1876, and that in consequence the rights which by means thereof Mr. Wheelwright acquired for Messrs. Alsop & Company, are subsistent.

On the other hand, the rights are possessions, just as any others, and form, like these, part of the private property of those who possess them.

Thus the rights which were granted to Mr. Wheelwright constitute part of the private property of the Society, on account of which he acquired them.

Chili, in war and by force of arms, has occupied and does occupy militarily the territory in which the mines to which these rights refer are situated.

The antecedents being granted, it is unquestionable that Chili ought, in justice and in equity, to respect them in all their parts if she is to conform to the precept of international right which prescribes respect to private property and which, constituting one of the most precious conquests of modern civilization, is practiced almost without exception by all the cultivated nations of the globe.

Not to give to this exposition unbecoming proportions I will limit myself to transcribing in support of that practice what M. S. Massé sustains in his magnificent treatise on International right in its relations with the right of nations and with civil right. In the first volume, page 105, No. 122, he says textually as follows:

“If the state of war does not authorize the belligerents to treat as enemies the citizens of hostile nations, with less reason does it authorize them to treat as enemies the citizens of neutral nations who may not take part in the contest.”

Further on, at page 123, Nos. 148 and 149, he adds:

“Hitherto I have not treated of the effects of war except as they affect private persons or such of their possessions as are found in hostile territory; let us proceed now to the contrary hypothesis, to the rights of the enemy over the persons and things which are found in the territory which is invaded or occupied by force of arms.

“War having no other object than to compel the enemy to be just, all which may have a relation morally necessary to this legiti-

mate end is permitted, but nothing more. Hence the right of invading the enemy's territory—of occupying and conquering it—because this is the only means of compelling him to give the satisfaction which he refuses.

“But the right of conquest cannot affect the property of private persons. War being only a relation of State to State, it follows that that one of the belligerents who makes conquests in the territory of the other cannot acquire more rights than the one whom he has 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 right of Europe, whose nations have corrected the barbarism of ancient customs, which consigned private as well as public property to martial law.”

The Contract of the 26th December, 1876, thus subsisting on the one hand, and the rights which Messrs. Alsop and Company acquired in virtue thereof, forming an integral part of their private property, it appears unquestionable that the allegations of those who contest it are completely unfounded.

The fact is, nevertheless, that under pretext of the Chilian occupation, the rights of Mr. Wheelwright are ignored, and impediments and difficulties are thrown in his way, which not only occasion him a thousand annoyances and expenses, but which have prevented, and do prevent, him from realizing the object of his contract.

The Mines of Public Instruction being numerous, it is evident that a single person could not work the whole or a considerable part of them. To do so it would be necessary to organize companies or societies which could contribute the funds necessary for the exploitation.

But the attacks which some private persons direct against the rights of Mr. Wheelwright naturally deter capitalists, and on this account it has been impossible for him to form a single company for the working and exploitation of these properties, Mr. Wheelwright having had to content himself till now with examining and working some of them, a study and work which has contributed in some measure to the life and support of the mineral district of Caracoles.

The working of the Mines of Public Instruction on a large scale would benefit not only Messrs. Alsop and Company, inasmuch as they would probably be enabled to pay themselves their debt against the Bolivian Government, but also the country in general, as it would tend to augment the public wealth, bringing about the development of the mining industry in a mineral district of such

extent and importance as is that of Caracoles, without taking into account the duties which the Government would receive on the export of the silver which it would produce.

Mr. Wheelwright, therefore, considering that the Contract which he celebrated with the Bolivian Government respecting the Mines of Public Instruction is perfectly valid; that the said Contract has remained subsistent, notwithstanding the rupture of the treaty of limits of the year 1874; that not only is it equitable, but even just, that Chili should respect that Contract; and that, possessing the security of the rights which by it he acquired for Messrs. Alsop and Company, it would be easier for him to organize private undertakings for the working and exploitation of the Mines, with advantage to those whom he represents and to the country itself, has deemed it opportune and convenient to direct himself at this time to your Excellency's Government, now that his previous efforts, which were accompanied by the respective antecedents, have not given him any result whatever, in order that in the treaty of peace which may be adjusted with the Bolivian Government. or in any other effective manner, the Contract which he celebrated with the Government of Bolivia, and which was put into the form of a public deed on the 26th December, 1876, may be recognized as valid and subsistent, and that he may be guaranteed the free and complete exercise of all the rights which it confers upon him, exactly as if no change whatever of dominion had taken place in the territory in which the Mines are situated—which is justice, &c.

(Signed.) J. STEWART JACKSON.

Let the Attorney of the Government report.

Valparaiso, 21st March, 1884.

[SEAL.] (Signed.) BARROS LUCO.

Translations of Laws and Decrees referred to in the foregoing Representations.

[Taken from "Coleccion Oficial de Leyes, Decretos, Ordens, &c.," for 1852.]

DECREE OF THE 23d JULY, 1852.

The Constitutional President of the Republic, considering:

1. That, according to the principles of universal Jurisprudence and the existing Statutes of the Republic, every description of metallic lode found in the territory of the nation belongs to the

dominion of the State, not conceding to the discoverers thereof more than three interests or "estacas," and the rest remaining public property.

2. That the want of funds of Instruction to fulfil its important and varied requirements, and the failure of some of its branches of income, impose on the Government the duty of searching for means of adjusting both without having recourse to the increase of taxes, ever prejudicial to the citizens.

DECREES.

ARTICLE 1. In every mine, or lode of silver, gold, or other metal whatsoever, the interest or "estaca" following those which may correspond to the discoverer or denouncer, according to the existing statutes, is applied of full right to the Treasury of Public Instruction.

2. The administrators of these funds in the Capitals of Departments and the Governors in the Provinces shall take possession of the said estaca, giving account to the Prefect of the Department, and the latter to the Government, of the number and quantity of estacas adjudicated to the Department.

3. In consideration of the advantages which the sale or lease of the estaca might produce in favor of the funds of Public Instruction, the Government shall cause it to be sold or rented, in accordance with the formalities established by law.

4. Only the administration of the proceeds of the adjudicated estaca belongs to the respective departmental Treasury, the Government reserving to itself, in consideration of the national derivation thereof, the right of applying them or expending them on the Establishments of Public Instruction of the Department that it may judge most convenient.

5. This decree shall be submitted to the next Legislative Chambers.

Let it be printed, published and circulated.

Given in the Palace of Government, in the illustrious and heroic Capital, Sucre, the 23d July, 1852, the 44th of the Independence and 4th of Liberty.

MANUEL ISIDORO BELZU.

(Signed.)

RAFAEL BUSTILLO,

*Minister of Public Instruction and
Foreign Relations.*

[Taken from the "Anuario de Leyes y Supremas Disposiciones" for 1871.]

Resolution of the 12th October, 1871.

Department of Mining. The Estacas of the State are in-
describable.

MINISTRY OF FINANCE AND INDUSTRY,
Sucre, 12th October, 1871.

CIRCULAR.

To His Honor the Prefect of the Department of ———

SIR: In the inquiry which the Sub-Prefect of the province of Chayanta directed to the Government respecting the abandonment of the mines (Estacas minas) which belong to Public Instruction, there has, under this date, been resolved in answer thereto, the following:

SIR: The matters pending in the Departments of Finance and Industry having been placed for settlement in this Ministry, I have made myself acquainted with the inquiry which you conveyed in your note of the 9th July last respecting the denouncement which Dr. José Lino Mendoza made, on account of abandonment, of the mines of Public Instruction in the lodes "Embudo" and "Melgarejo" of the hill of Anconaza, mineral district of Aullágas.

Most singular and even absurd has been the denouncement of Mr. Lino Mendoza, and stranger still is it that the public minister of that province should have been of opinion that the mines denounced had become liable to abandonment, as if the possessions of the State could be prescribed.

This abandonment does not, nor can it hold good with respect to the mines of Beneficence or of Instruction, which (as the Attorney General of the Republic pronounces), are national possessions, and are amply protected by the decree of their adjudication, which has in view the creation of funds to meet one of the most vital necessities of the public administration.

Consequently, Mr. Sub-Prefect, there is no abandonment in the national possessions, which the mines of the State are and nothing else.

Which, by order of his Excellency, I communicate to you Worship, in order that you may cause it to be published in the cantons and mineral districts of that province.

May God be with your Worship.

Rubric of his Excellency.

CASIMIRO CORRAL.

Which I transcribe to your Honor for your needful information, and in order that you may transmit it to the authorities within your jurisdiction, ordering its publication by the official periodical of that city, so that, becoming known, it may serve as a general rule.

May God be with your Honor.

(Signed.) CASIMIRO CORRAL.

[Taken from the "Anuario de Supremas Disposiciones" for 1871.]

Law of the 19th October, 1871.

Executive. General Authorizations for the purpose of promoting the progress of the Country.

The National Congress Assembly decrees:

Sole Article.—Let the Executive be authorized, under the obligation of reporting to the next Assembly, for the following objects:

Fifth.—To celebrate contracts of renting or working in partnership all the mines (Estacas Minas) belonging to the State, in the mineral districts of the Republic.

Let this be communicated to the Executive Power for its execution and fulfilment. Hall of Sessions in the illustrious and heroic capitol, Sucre, the 19th October, 1871. Tomas Frias, president; Mariano Navarro, Deputy Secretary; Eulojio D. Medina, Deputy Secretary.

Palace of the Supreme Government in Sucre, the 19th October, 1871. Let this be executed.

[Seal.] (Signed.) AGUSTIN MORALES.

(Countersigned.) CASIMIRO CORRAL,
Minister of Government and Foreign Relations.

[Taken from the "Anuario de Leyes y Supremas Disposiciones" for 1872.]

Law of the 22d November, 1872.

Claims against the State. Authorization to the Government to enter into arrangements respecting them.

The National Assembly decrees:

ARTICLE I. The claims of foreign citizens for indemnifications arising out of concessions or contracts celebrated with the Government shall be brought before the Supreme Court of Justice, which shall try them in contentious litigation, the Public Minister representing the national interests.

ARTICLE 2. The Executive is authorized to enter into settlements about indemnifications and other claims actually pending against the State, whether by natives or foreigners, and to arrange with the interested parties the most convenient form in which their respective obligations will have to be fulfilled; deferring these matters, only in case of not coming to an agreement, to the decision of the Supreme Court, with the obligation of reporting to the next Legislature.

ARTICLE 3. The claims which the Supreme Court may find established shall pass to the Government, together with the specification of the net sum to which the credit amounts.

ARTICLE 4. The general estimate shall specify the funds for the payment of these indemnifications.

Let this be communicated to the Executive Power for its fulfilment. Hall of Sessions, La Paz of Ayacucho, the 22d November, 1872. Juan de Dios Bosque, president; Napoleon Dalens, secretary; José Manuel Guachalla, secretary.

Palace of the Supreme Government, La Paz, the 22d November, 1872. Let it be executed.

AGUSTIN MORALES.

PEDRO GARCIA,

Minister of Finance and Industry.

I, David Sim, of Antofagasta, in the Republic of Chili, gentleman, make oath, and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.
3. That I have carefully examined and compared the paper writing in the English language hereunto annexed, headed "Valparaiso, 21st November, 1883," and consisting of pages Nos. 1 to 16 inclusive, and also the paper writing in the English language, headed "Translations of Laws and Decrees," and consisting of pages Nos. 17 to 23 inclusive, with the corresponding paper writing and printed papers in the Spanish language, which have been produced to me in Antofagasta, aforesaid, by Mr. John Wheelwright for the purpose of my making the said comparisons.

4. That the said paper writings hereunto annexed, and so as aforesaid, headed "Valparaiso, 21st November, 1883," and "Translations of Laws and Decrees," are respectively correct and faithful translations into the English language, of the said written and

printed documents, of which they respectively purport to be translations.

DAVID SIM.

Sworn at Antofagasta in the Republic of Chili, this tenth day of April, one thousand eight hundred and eighty-five.

Before me,

British Vice Consul.

I, John Barnett, Esquire, British Vice Consul at Antofagasta, do hereby certify that Mr. David Sim is well known to me, and that he is well acquainted with the English and Spanish languages, and is a fit and competent person to make the translations referred to in the above written affidavit.

In testimony, whereof I have hereunto set my hand, and affixed my seal of office at Antofagasta, this tenth day of April, one thousand eight hundred and eighty-five.

British Vice Consul.

Exhibit 24.^a

[L. s.]

La Paz, Julio 25, de 1878.

Remitase esta representacion al Señor Prefecto del Dpto. de Cobija, paraque, requiera eficazmente de acuerdo con el Señor Fiscal del Distrito al Fiscal y funcionarios públicos de Caracoles, afin de que, presten en la esfera de sus atribuciones, la cooperacion mas activa al Señor Juan Wheelwright que representa los derechos del fisco, afin de que tome posesion de las Estaca minas del Estado, en cumplimiento de las transacciones de 24 de Dbre. de 1876. Rejistrese. Daza. D. Medina.

Es conforme.

El ofl. Mor.

[L. s.]

(f.)

MI. PEÑAFIEL.

El infrascrito Enviado Extraordinario y Ministro Plenipotenciario certifica la autenticidad de la firma que precede.

Lima á 4 de Agosto de 1893.

[L. s.] *Gratis.*

(f.)

J. M. BRAUN.

^a For translation, see Exhibit 5, Document No. 8, p. 145, *supra*.

U. S. LEGATION,
Lima, Peru, August 4, 1893.

I hereby certify that the above signature of Senor J. M. Braun, the Bolivian Minister in Lima, is correct.

(Signed.) RICHARD R. NEILL,
U. S. Secretary of Legation.

[SEAL.]

Exhibit 25.

P.

[Translation.]^a

REPUBLIC OF CHILI,
Ministry of Finance.

To the Minister of Finance:

John Stewart Jackson, in the Memorial which was answered under date the 26th of August last, says that, in the name of Mr. John Wheelwright, whom he represents as contractor of the mines of the Coast Department of Bolivia, known under the designation of "Mines of Public Instruction" (*Estacas de Instruccion Publica*), he has petitioned on several occasions with the object of obtaining the recognition of his contract on the part of the Government of Chili; that when the international question pending between Chili and Bolivia was about to be arranged, he presented a new petition in order that, in the treaty of peace or truce which should be adjusted, the said contract should be taken into account and a clause inserted by which the Government of Chili should compromise itself to recognize and respect it; that in the indefinite pact of truce which has been published no mention is even made of it, nor has he up to this date been able to obtain any information respecting that omission; and that, as Mr. Wheelwright desires, as soon as possible, to have his position defined, he recurs to the Supreme Government in order that it may accede to the recognition asked for in his last petition, since it was not incorporated in the pact of truce with Bolivia.

The last petition alluded to is, it appears, the one which was answered at Valparaiso under date of 21st of March, 1884. In it Mr. Wheelwright asks that in the treaty of peace to be adjusted with the Government of Bolivia, or in the arrangements which may be agreed upon, or in any other effective manner, the contract

^a For Spanish text, see Exhibit 20, p. 222, *supra*.

which he signed with the Government of Bolivia on the 26th of December, 1876, may be recognized as subsisting and valid, or that he be guaranteed the free and complete exercise of all the rights granted to him.

According to the petitioner, this contract is a settlement, in virtue of which the Government of Bolivia acknowledged its indebtedness to Messrs. Alsop & Company, of which firm Mr. John Wheelwright calls himself the liquidating partner, as cessionary of Mr. Pedro Lopez Gama, for the sum of eight hundred and thirty-five thousand Bolivian dollars (\$835,000), at five per cent. yearly interest, and it compromised itself to pay this capital and interest in drafts drawn for the entire sum in trimonthly proportions, on the excess which there might be, after the date of the termination of the Custom's contract with Peru on the receipt of duties of the Northern Custom House corresponding to Bolivia, over and above the four hundred and five thousand dollars (\$405,000) rendered by Peru, either by the renewal of the Custom's contract celebrated with that Republic, or by the establishment of a National Custom House.

It was also agreed to apply to the amortization of the same debt all the silver mines of the State situated in the Coast Department, said amortization being effected by forty per cent. of the net profits arising from each mine.

For investigating the mines and securing the capital necessary for the work a term of three years was granted to Mr. Wheelwright.

The duration of this contract was fixed at twenty-five years.

As your Excellency will observe by this contract, of which I have transcribed the essential part, the Government of Bolivia acknowledge its indebtedness for a sum of money, and obliges itself to pay it in the manner which is particularly specified.

In these circumstances Mr. Wheelwright's representation is directed to procure that the Government of Chili may recognize, in an effective manner, the said contract as valid and subsisting, and that it may guarantee the free and complete exercise of all the rights which it confers exactly as if no change whatever of dominion had taken place in the territory in which the mines are situated.

Consequently what is in reality sought for is that the Government of Chili, accepting as obligatory the contract celebrated by the petitioner with the Government of Bolivia in December, 1876,

may recognize the debt of the firm of Alsop & Company for the sum of eight hundred and thirty-five thousand Bolivian dollars (\$835,000) and the interest, and, at the proper time, insure the payment of this sum on the same terms and in the same manner as the Government of Bolivia.

I have reproduced the principal antecedents brought forward by Mr. John Wheelwright in order to fix clearly the signification and extent of his petition.

I do not enter into the merits of the observations by which he proposes to prove that the contract of 26th December, 1876, is valid and effective in regard to the Government of Chili, because, in my opinion, it is necessary to decide previously if the Government can, by itself alone, recognize the said contract, order its observance and guarantee the free and complete exercise of all the rights it confers.

The petition of Mr. John Wheelwright may be considered under two distinct aspects; on the one hand as a simple petition for a favor, and on the other as a claim arising out of a violation of rights conceded to the claimant, seeking therefore to obtain the recognition of those rights from the party with whom he supposes the correlative obligations to rest. As a conducive means, the petitioner endeavors to obtain a decision from the Government, which may free him from difficulties and impediments arising out of the acts committed even by private individuals.

Considering the petition in its first aspect, the attorney of the Government thinks that he is not permitted to emit any opinion on it. Whether a favor should or should not be granted is a question of which this Ministry is not in a position to judge. I shall only observe that as the acceptance of the contract and the declaration to respect it signifies the acknowledgment of a debt, such acknowledgment could only be made in virtue of a law.

This same observation is applicable to the second aspect of the Wheelwright claim. The contracts entered into by the Government of Bolivia before the occupation of the Coast Department, and which may have any connection with it, will or will not be binding on the Government of Chili, according to the determinations which the legislator may adopt in reference thereto. The treaty of truce or that of peace which is to be celebrated, is the law which should define in a precise and permanent manner the relations of Chili and Bolivia and those of the Governments of these countries with third parties, which arise from contracts duly

celebrated. Before this law is dictated there exists a state of transition arising out of the military occupation, and this situation prevents the Government from adopting measures of general and permanent effect.

While this state of things exists, the Government of Chili cannot become responsible for debts contracted by the State to whom the occupied territory belongs, even when they in any way affect this territory, because the entity or person who contracted them has not disappeared by the mere fact of the occupation. The Government, therefore, has no obligation to recognize, and much less to guarantee, the contracts celebrated by the Government of Bolivia, respecting the Mines of Public Instruction situated in the Coast Department. The most that can be demanded from the Government in possession is that, without declarations of any kind, it should, "*de facto*," respect the order of things which existed before the occupation.

And, in reference to this point it must be remembered that Mr. Wheelwright does not charge the Government of Chili nor any of the Chilian authorities with any act of disturbing that position of affairs.

The impediments and difficulties of which complaint is made, arise from acts done by particular individuals, who, as it is stated, are only acting from personal interest. In this class of difficulties the Government cannot interfere. The controversies between individuals, whatever may be their origin, and the questions which may arise regarding their rights, must be ventilated before the tribunals of justice.

Lastly, the petition which gives origin to this report cannot, in the opinion of the Government's attorney, be the subject of a Government Resolution.

Santiago, 9th October, 1884.

(Signed.) PRADO.

Santiago, 18th October, 1884.

This is correct.

(Signed.) R. SOTOMAYOR VALDES.

[Seal of the Ministry of Finance.]

I, David Sim, of Antofagasta, in the Republic of Chili, gentleman, make oath and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.

3. That I have carefully examined and compared the paper writing in the English language hereunto annexed, and headed "Republic of Chili, Ministry of Finance," and consisting of pages Nos. 1 to 7 inclusive, with the corresponding paper writing in the Spanish language, which has been produced to me in Antofagasta aforesaid by Mr John Wheelwright, for the purpose of my making the said comparison.

4. That the said paper writing hereunto annexed, and so as aforesaid headed "Republic of Chili, Ministry of Finance," is a correct and faithful translation into the English language of the said document of which it purports to be a translation.

DAVID SIM.

Sworn at Antofagasta, in the Republic of Chili, this thirtieth day of March, one thousand eight hundred and eighty-five. Before me,

British Vice-Consul.

I, John Barnett, Esquire, British Vice-Consul at Antofagasta, do hereby certify that Mr. David Sim is well known to me, and that he is well acquainted with the English and Spanish languages, and is a fit and competent person to make the translations referred to in the before written affidavit.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Antofagasta this thirtieth day of March, one thousand eight hundred and eighty-five.

British Vice-Consul.

Exhibit 26.

TRATADO CHILENO-BOLIVIANO.

Prima De "El Litoral" a Sus Suscritores.

[Antofagasta. Tipografía de El Litoral por M. Ivaldi. 1875.]

TOMÁS FRIAS, Presidente de la República de Bolivia.

A todos los que la presente vieren, salud.

Por cuanto, entre las Repúblicas de Bolivia y Chile se negoció, concluyó y firmó en la ciudad de Sucre el día 6 de Agosto de 1874, por medio de Plenipotenciarios competentemente facultados al

efecto, un Tratado de Límites cuyo tenor, copiado á la letra, es como sigue:

En el Nombre de Dios.

Las Repúblicas de Bolivia y de Chile, estando igualmente animadas del deseo de consolidar sus mútuas y buenas relaciones y de apartar por medio de pactos solemnes y amistosos todas las causas que puedan tender á enfriarlas ó entorpecerlas, han determinado celebrar un nuevo Tratado de Límites que modificando el celebrado en el año de 1866, asegure en lo sucesivo á los ciudadanos y á los Gobiernos de ambas Repúblicas la paz y la buena armonía necesarias para su libertad y progreso.

Al efecto han nombrado y constituido por sus Plenipotenciarios: la República de Bolivia á don Mariano Baptista, y la República de Chile á don Cárlos Walker Martinez, los cuales, despues de haberse comunicado sus plenos poderes y de haberlos hallado en debida forma, han convenido en los siguientes artículos:

ARTÍCULO I.

El paralelo del grado 24 desde el mar hasta la cordillera de los Andes en el *divortia aquarum* es el límite entre las Repúblicas de Bolivia y de Chile.

ARTÍCULO II.

Para los efectos de este Tratado se consideran firmes y subsistentes las líneas de los paralelos 23 y 24 fijadas por los Comisionados Pissis y Mujía, y de que dá testimonio el acta levantada el 10 de Febrero de 1870.

Si hubiere dudas acerca de la verdadera y exacta ubicacion del asiento minero de Caracoles ó de cualquier otro lugar productor de minerales, por considerarlos fuera de la zona comprendida entre esos paralelos, se procederá á determinar dicha ubicacion por una Comision de dos peritos nombrados uno por cada una de las partes contratantes, debiendo los mismos peritos nombrar un tercero en caso de discordia; y si no se aviniesen para ese nombramiento, lo efectuará S. M. el Emperador del Brazil. Hasta que no aparezca prueba en contrario relativa á esa determinacion, se seguirá entendiendo, como hasta aquí, que ese asiento minero está comprendido entre los paralelos indicados.

ARTÍCULO III.

Los depósitos de guano existentes ó que en adelante se descubran en el perímetro de que habla el artículo anterior, serán partibles

por mitad entre Bolivia y Chile; el sistema de esplotacion, administracion y venta se efectuará de comun acuerdo entre los Gobiernos de las dos Repúblicas en la forma y modo que se ha efectuado hasta el presente.

ARTÍCULO IV.

Los derechos de esportacion que se impongan sobre los minerales esplotados en la zona de terreno de que hablan los artículos precedentes, no exederán la cuota de la que actualmente se cobra; y las personas, industrias y capitales chilenos no quedarán sujetos á más contribuciones de cualquier clase que sean que á las que al presente existen.

La estipulacion contenida en ese artículo durará por el término de veinticinco años.

ARTÍCULO V.

Quedan libres y escentos del pago de todo derecho los productos naturales de Chile que se importáren por el Litoral Boliviano comprendido dentro de los paralelos 23 y 24; en reciprocidad quedan con idéntica liberacion los productos naturales de Bolivia que se importen al Litoral chileno dentro de los paralelos 24 y 25.

ARTÍCULO VI.

La República de Bolivia se obliga á la habilitacion permanente de Mejillones y Antofagasta como puertos mayores de su Litoral.

ARTÍCULO VII.

Queda desde esta fecha derogado en todas sus partes el Tratado de 10 de Agosto de 1866.

ARTÍCULO VIII.

El presente Tratado será ratificado por cada una de las Repúblicas contrantes, y canjeadas las ratificaciones en la ciudad de Sucre dentro del término de tres meses.

En fé de lo cual, los infrascritos, Plenipotenciarios de las Repúblicas de Bolivia y de Chile han firmado el presente Protocolo y puéstole sus respectivos sellos en Sucre, á los seis dias del mes de Agosto de mil ochocientos setenta y cuatro años.

(Firmado.)

MARIANO BAPTISTA.

(Firmado.)

CÁRLOS WALKER MARTINEZ.

Por tanto; y habiendo sido aprobado el Tratado preinserto por el Congreso Nacional en 6 de Noviembre de 1874, en uso de la atribucion que la Constitucion me concede, he venido en aceptarlo,

confirmarlo y ratificarlo, para que rija como ley del Estado, comprometiendo á su fiel observancia la fé pública y el honor nacional.

En fé de lo cual firmo la presente ratificacion, sellada con las armas de la República y refrendada, por el Ministro de Estado en el despacho de Relaciones Exteriores en la ciudad de La Paz, á los 28 dias del mes de Julio de 1875.

[GRAN SELLO DEL ESTADO.]

(Firmado.)

TOMAS FRIAS.

(Firmado.)

MARIANO BAPTISTA.

En la ciudad de La Paz, a los venticuatro dias del mes de Julio de mil ochocientos setenta y cinco, reunidos en el Ministerio de Relaciones Exteriores de Bolivia, el señor doctor Mariano Baptista, Ministro del ramo y el señor don Carlos Walker Martinez, Ministro Plenipotenciario de la República de Chile, suficientemente autorizados para efectuar el canje de las ratificaciones del señor Presidente de Bolivia y del señor Presidente de la República de Chile, del Tratado de Límites concluido entre ambos países en 6 de Agosto de mil ochocientos setenta y cuatro: procedieron á la lectura de los instrumentos orijinales de dichas ratificaciones, y habiéndolos hallado exactos y en buena y debida forma, realizaron el canje.

En fé de lo cual los infrascritos redactaron la presente acta firmándola por duplicado y sellándola con sus respectivos sellos.

[LUGAR DEL SELLO.]

(Firmado.)

MARIANO BAPTISTA.

[LUGAR DEL SELLO.]

(Firmado.)

C. WALKER MARTINEZ.

TOMÁS FRIAS, Presidente de la República de Bolivia.

Por cuanto entre la República de Bolivia y la República de Chile se negoció, concluyó y firmó el dia veintiuno de Julio último por medio de Plenipotenciarios debidamente autorizados al afecto un Tratado de Limites complementario del que en 6 de agosto de 1874 celebraron ambas Repúblicas, Tratado que copiado á la letra con el Protocolo que le precede, dice así:

“En la ciudad de La Paz, a los veintiun dias del mes de julio de 1875 reunidos en el despacho del Ministerio de Relaciones Exteriores de Bolivia el señor Ministro del Ramo doctor Mariano Baptista y el señor Ministro Plenipotenciario de Chile don Carlos Walker Martinez, convinieron, ántes de hacer el canje de las ratificaciones del Tratado de Sucre, del 6 de agosto de 1874 en suscribir el siguiente Protocolo con el fin de aclarar ciertas dudas que se han suscitado sobre la interpretacion de dicho Pacto.”

“De acuerdo con las notas cambiadas entre el Ministro de Relaciones Exteriores de Bolivia y el Ministro Plenipotenciario de Chili, con fechas del 25 y 27 de agosto de 1874, que fueron conocidas y sometidas á la deliberacion de la Asamblea Boliviana, fué firmado el Protocolo de 1° de noviembre, considerándosele desde el principio como parte complementaria del Tratado de 6 de agosto. Prévía esta interpretacion, lo aprobó la Asamblea en sesion del 6 de Noviembre del mismo año, quedando en consecuencia el Gobierno Boliviano plenamente facultado para hacer el canje de las ratificaciones, bajo el supuesto de la modificacion de los artículos 3. y 10. del Pacto citado.”

“El señor Ministro de Relaciones Exteriores de Bolivia se halla en el caso de declarar lo mismo respecto á la prescripcion insinuada por la Asamblea Boliviana que consigna el principio de sujetar á arbitraje toda cuestion que llegáre á suscribirse entre las dos altas partes contratantes. La Cancillería Boliviana, transmitiendo las deliberaciones de su Asamblea, consignó y precisó en los términos de su despacho de 10 de noviembre de 1874 este concepto, refiriéndose únicamente á las cuestiones á que diese lugar la intelijencia y ejecucion del mismo Tratado.”

“Con estos antecedentes el Gobierno de Bolivia entiende como un acto consumado por su parte todo lo que atañe á las estipulaciones comprendidas en los artículos 3° y 10° del referido Tratado y á la interpretacion del inciso 4° de la ley de la Asamblea Boliviana.”

“Sin embargo, para mayor claridad los negociadores respectivos han acordado reproducir las anteriores estipulaciones y reducir las á la forma de un nuevo Tratado complementario, en los siguientes términos:

En el Nombre de Dios.

“Los Plenipotenciarios de las Repúblicas de Bolivia y de Chile, don Mariano Baptista y don Carlos Walker Martinez, debidamente autorizados por sus respectivos Gobiernos, convienen en los siguientes artículos que se tendrán como incorporados al Tratado de Sucre del 6 de agosto de 1874.”

ARTÍCULO I.

“Se declara que el sentido que debe darse á la comunidad en la explotacion de guanos descubiertos y por descubrirse de que habla el artículo 3° del Tratado del 6 de Agosto de 1874, se refiere al territorio comprendido entre los paralelos 23 y 25 de Latitud Sur.”

ARTÍCULO II.

“Todas las cuestiones á que diere lugar la intelijencia y ejecucion del Tratado del 6 de Agosto de 1874, deberán someterse al arbitraje.”

ARTÍCULO III.

“El presente Tratado será ratificado dentro del plazo mas breve posible y canjeadas las ratificaciones en alguna ciudad de Bolivia.”

“En fé de lo cual, los infrascritos Plenipotenciarios de las Repúblicas de Bolivia y Chile, han firmado el presente Protocolo, y puéstole sus respectivos sellos en La Paz, á los veintium días del mes de Julio de mil ochocientos setenta y cinco.”

[LUGAR DEL SELLO.]

(Firmado.)

MARIANO BAPTISTA.

[LUGAR DEL SELLO.]

(Firmado.)

C. WALKER MARTINEZ.”

Y por cuanto las estipulaciones del preinserto Tratado han sido negociadas conforme á la ley espedida por la Asamblea Nacional de Bolivia en 6 de Noviembre de 1874.

Por tanto en uso de la atribucion que la Constitucion me concede, he venido en aceptarlo, confirmarlo y ratificarlo, para que rija como ley del Estado, comprometiendo á su fiel observancia el honor nacional.

En fé de lo cual, firmo la presente ratificacion, sellada con las armas de la República y refrendada por el Ministro de Estado en el Despacho de Relaciones Exteriores, en la ciudad de La Paz, á los 22 dias del mes de Setiembre del año de 1875.

[GRAN SELLO DEL ESTADO.]

(Firmado.)

TOMÁS FRIAS.

(Firmado.)

MARIANO BAPTISTA.

En la ciudad de La Paz, á los veintidos dias del mes de Setiembre de mil ochocientos setenta y cinco, reunidos en el Ministerio de Relaciones Exteriores de Bolivia, el Sr. D. Carlos Walker Martinez Ministro Plenipotenciarios de Chile y el señor don Mariano Baptista Ministro de Relaciones Exteriores de Bolivia, suficientemente autorizados para efectuar el canje de las ratificaciones del señor Presidente de Bolivia, y del señor Presidente de la República de Chile del Tratado complementario del de 6 de Agosto de 1874, concluido entre ámbos paises en 21 de Julio del presente año: procedieron á la lectura de los instrumentos orijinales de dichas

ratificaciones y habiéndolos hallado exactos y en buena y debida forma, realizaron el canje.

En fé de lo cual, los infrascritos redactaron la presente, acta firmándola por duplicado y sellándola con sus respectivos sellos.

[LUGAR DEL SELLO.]

MARIANO BAPTISTA.

[LUGAR DEL SELLO.]

C. WALKER MARTINEZ.

PROTOCOLO 2.º

En la ciudad de Sudre á 6 de agosto de 1874, reunidos en el despacho de Relaciones Exteriores de Bolivia el señor Ministro del ramo y el señor encargado de Negocios de Chile, convinieron en acordar, para los efectos del artículo 5º. del Tratado hecho con esta misma fecha que se entenderán por productos naturales de Chile los siguientes: afrecho, aceites, almendras, cueros, cáñamo, carbon de piedra, carbon de espinos, carne, cebada, cera, charqui, frutas frescas y secas, frejoles, ganado vacuno y lanar, garvanzos, galletas, grasa, harinas, jabon, járcias, lentejas, lanas, leña, linaza, ladrillos, legumbres de toda clase, maiz, manteca, mantequilla, miel de aveja, maderas, nueces, paja, pasto aprensado en ramo y picado, quesos, sacos, suelas, sebo, turba, trigo, velas de sebo, vinos y licores chilenos etc., etc.

Conviene igualmente para los efectos del artículo 7º. en que el tribunal de arbitraje que se nombre por las altas partes contratantes procederá para determinar la suma que adeude Bolivia á Chile en calidad de jurados, tomando en cuenta los derechos á que renuncia Chile con la derogacion dal tratado del 66, los que correspondieren á Bolivia sobre los productos análogos en la zona comprendida enre los paralelos 24 y 25, el conjunto del Tratado, las ventajas recíprocas y asegurada para ambos países, etc, etc, deducida la suma, el Tribunal fijará ó por anualidades ó de la manera que juzgue mas convenienté y fácil el modo del pago.

En fé de lo cual los infrascritos, Plenipotenciarios de las Repúblicas de Chile y de Bolivia, han firmado el presente protocolo y puestole sus respectivos sellos.

MARIANO BAPTISTA.

C. WALKER MARTINEZ.

LEY DE 12 DE NOVIEMBRE.

La Asamblea Nacional decreta:

ART. 1. Apruébase el tratado de límites entre Bolivia y Chile ajustado en esta ciudad el 6 de agosto de 1874 por los respectivos plenipotenciarios, con cargo de negociarse antes del canje de las

ratificaciones la cancelacion de los artículos 7º. y 8º. considerándose como suficiente compensacion las ventajas y franquicias acordadas en este tratado por la recíproca renuncia que hacen las altas partes contratantes de la medianería sobre derechos de esportacion de minerales, establecida en el tratado de 10 de agosto de 1866.

Las garantias de que habla el 2.º periodo del artículo 4º. se hacen estensivas á los capitales, industrias y personas de los habitantes del Departamento Litoral.

En el artículo 1º. se hará la aclaracion de que el limite oriental de Chile es la cordillera occidental de los Andes en sus altas cumbres, conforme al acta de los comisarios Pissis y Mujia, que señalaron los puntos del Llullayacu y el Pular.

Se estipulará que toda cuestion, que llegare á suscitarse entre las dos altas partes contratantes se resolverá por arbitraje.

ART. 2. El ejecutivo negociará con el gobierno de Chile separada ó conjuntamente con las anteriores modificaciones la cancelacion de la medianeria de los huanos por descubrirse en la zona comprendida entre los grados 23 y 25.

Comuníquese al Poder Ejecutivo para su ejecucion y cumplimiento. Sala de sesiones en Sucre, 6 de noviembre de 1874.—Martin Lanza, Presidente.—Juan Francisco Velarde, Diputado Secretario.—Nicolás Acosta, Diputado Secretario.

CASA DE GOBIERNO EN SUCRE, á 12 de noviembre de 1874.
Ejécútese.

TOMAS FRIAS.

El Ministro de Gobierno y Relaciones Exteriores.

MARIANO BAPTISTA.

[Translation.]

Exhibit 26.

CHILI—BOLIVIAN TREATY.

TOMAS FRIAS, President of the Republic of Bolivia

To all to whom these Presents shall come, Greeting:

Whereas, a boundary treaty between the Republics of Bolivia and Chile was negotiated, concluded and signed in the city of Sucre, on the 6th of August, 1874, by Plenipotentiaries duly authorized to that effect, the tenor of which copied to the letter, is as follows:

In the name of God.

¶ The Republics of Bolivia and Chile being equally animated by the desire to strengthen their mutual and good relations and to

avert by means of a solemn and friendly compact all the causes that may tend to weaken or thwart them, have decided to conclude a new Boundary Treaty which while modifying that of the year 1866, may insure hereafter to the citizens and Governments of both Republics the peace and good harmony necessary to their liberty and progress.

To this effect they have named and constituted as their Plenipotentiaries; the Republic of Bolivia, Mr. Mariano Baptista, and the Republic of Chile Mr. Carlos Walker Martinez, who, after having communicated to each other their full powers, found in good and true form, have agreed upon the following articles.

ARTICLE I.

The parallel of the 24th degree, from the sea to the Cordillera of the Andes in the *divortia aquarum*, is the boundary between the Republics of Bolivia and Chile.

ARTICLE II.

For the effects of this Treaty the lines of parallels 23 and 24 fixed by the Commissioners Pissis and Mujia, and testimony of which is the minute drawn on the 10th of February, 1870.

If there were any doubts in regard to the true and exact location of the mining sets of Caracoles or of any other mining place, as considered out of the zone comprised between the two parallels, it will be proceeded to determine the said location by a Commission of two experts appointed one by each of the contracting parties, the same experts shall nominate a third one in case of disagreement, and should they not agree as to such nomination, it will be made by H. M. the Emperor of Brazil. Until it shall not appear proof to the contrary in relation to that determination, it shall be understood as to the present time, that this mining set is comprised between the specified parallels.

ARTICLE III

The existing guano beds or that may be discovered in the future within the perimater spoken of in the preceding article, will be equally divided between Bolivia and Chile, the system for the working, management and sale thereof will be carried into effect by mutual accord between the Governments of the two Republics in the same shape and form in which it has been effected up to the present date.

ARTICLE IV

The export duties that may be established on the minerals worked within the zone mentioned in the preceding articles, shall not exceed the quota that is collected at present, and the Chilean subjects, establishments and capitals, shall not be subject to any tax of any kind whatever but to those now existing.

The stipulation contained in this article will last for the term of twenty-five years.

ARTICLE V.

The natural products of Chile, that may be imported through the Bolivian Littoral comprised within the parallels 23 and 24, will be free and exempt from the payment of every duty; in reciprocity the natural products of Bolivia that may be imported in the Chilean Littoral within the parallels 24 and 25 will enjoy an identical franchise.

ARTICLE VI

The Republic of Bolivia binds itself to the maintenance of Mejillones and Antofogasta as permanent ports of entry on its Littoral

ARTICLE VII

The treaty of August 10, 1866, remains from this date abrogated in all its parts.

ARTICLE VIII

The present Treaty shall be ratified by each of the contracting Republics, and the ratification shall be exchanged in the city of Sucre within the term of three mouths.

In testimony whereof, the undersigned, Plenipotentiaries of the Republics of Bolivia and Chile have signed the present Protocol and hereunto affixed their respective seals, on the sixth day of August of one thousand eight hundred and seventy four

(Signed.) MARIANO BAPTISTA.

(Signed.) CARLOS WALKER MARTINEZ.

And whereas the foregoing Treaty has been approved of by the National Congress on the 6th of November, 1874, in the exercise of the attribution vested on me by the Constitution, I have decided to accept, confirm, and ratify the same to the end that it may be in force as a law of the State binding to its faithful observance the public faith and the national honor.

In witness whereof I have hereunto set my hand to the present ratification, and caused the seal of the arms of the Republic to be affixed, and authorized by the Minister of State in the Department of Foreign Relations in the city of La Paz, on the 28th day of July, 1875

[GREAT SEAL OF THE STATE.]

(Signed.)

TOMAS FRIAS.

(Signed.)

MARIANO BAPTISTA.

In the city of La Paz, on the 28th day of July, in the year one thousand eight hundred and seventy five, being present at the Department of Foreign Relations of Bolivia, Doctor Don Mariano Baptista, Minister of the Department, and Senor Don Carlos Walker Martinez, Minister Plenipotentiary for the Republic of Chile, amply authorized to carry into effect the exchange of the ratifications of the President of Bolivia and the President of Chile of the Boundary-Treaty concluded between the two countries on the 6th of August, 1874: proceeded to the reading of the original instruments of the said ratifications, and having found them exact and in good and true form, made the exchange.

In witness whereof the undersigned committed to writing the present minute and signing it in duplicate and affixing thereunto their respective seals.

[SEAL.]

(Signed.)

MARIANO BAPTISTA.

[SEAL.]

(Signed.)

C. WALKER MARTINEZ.

TOMAS FRIAS, President of the Republic of Bolivia.

Whereas, a Boundary Treaty complimentary to that concluded between both Republics on the 6th of August, 1874, was negotiated, concluded and signed on the 21st day of July ultimo, by Plenipotentiaries duly authorized to that effect, which treaty copied to the letter with the preceeding protocol, read as follows:

“In the city of La Paz on the 21st day of July, 1875, the Minister of Foreign Affairs, Senor Don Mariano Baptista and Senor Don Carlos Walker Martinez, Minister Plenipotentiary for Chile, having met together at the Department of Foreign Affairs of Bolivia, previous to the exchange of the ratifications of the Treaty of Sucre of August 6, 1874, agreed upon signing the following Protocol to the end of explaining certain doubts which have grown out of the interpretation of the said Treaty.

“In accordance with the notes exchanged between the Minister of Foreign Relations of Bolivia and the Minister Plenipotentiary of Chile, under dates of the 25th and 27th of August, 1874, which were known and submitted to the deliberation of the Bolivian Assembly, the Protocol of November 1st was signed, it being regarded from the beginning as a complement of the Treaty of the 6th of August. Previous this interpretation the Assembly approved of it at the session of November 6th of the same year, the Bolivian government remaining therefore fully authorized to exchange the ratifications, under the supposition of the modification of the two Articles 3rd and 10th of the mentioned Treaty.”

“The Minister of Foreign Relations of Bolivia finds himself in the case of stating the same as respects the provision suggested by the Bolivian assembly establishing the principle of submitting to arbitration every question which may arise between the two high contracting parties. The Bolivian Foreign Office, on communicating the deliberations of its assembly, set down and precised in the terms of its despatch of November 10, 1874, this thought, referring itself only to the questions growing out of the meaning and execution of the same treaty.”

“With these precedents the Government of Bolivia considers as an accomplished act on its part everything concerning the stipulations contained in the articles 3rd and 10th of the Treaty referred to and the interpretation of paragraph 4th of the law of the Bolivian Assembly.”

“However, for greater clearness, the respective negotiators have agreed to reproduce the above stipulations and put them in the form of a new complimentary Treaty, in the following terms:

In the name of God:

“The Plenipotentiaries of the Republics of Bolivia and Chile, Don Mariano Baptista and Don Carlos Walker Martinez, duly authorized by their respective governments, agree upon the following articles which shall be held as embodied in the Treaty of Sucre of the 6th of August, 1874.”

ARTICLE I

“It is declared that the meaning which must be attached to the community in the exploitation of guanós discovered and to be discovered spoken of in Article 3rd of the Treaty of August 6, 1874, refers to the territory comprised within parallels 23 and 25 South latitude.

ARTICLE II

All the differences growing out of the meaning and execution of the Treaty of August 6, 1874, shall be submitted to arbitration.

ARTICLE III

The present Treaty shall be ratified at as early a day as may be possible, and the ratifications exchanged in any city of Bolivia.

In witness whereof, the undersigned Plenipotentiaries of the Republics of Bolivia and Chile, have signed the present Protocol and hereunto affixed their respective seals, at La Paz, on the 21st day of July, 1875

| | | |
|---------|-----------|---------------------|
| [SEAL.] | (Signed.) | MARIANO BAPTISTA. |
| [SEAL.] | (Signed.) | C. WALKER MARTINEZ. |

And whereas the stipulations of the foregoing Protocol have been negotiated in accordance with the law enacted by the National Assembly of Bolivia, on the 6th day of November, 1874

Therefore in the exercise of the attribution which the Constitution confers me, I have resolved to accept, confirm, and ratify it, to the end that it may be observed as a law of the State, binding to its faithful observance the national honor.

In witness thereof I sign the present ratification under the seal with the arms of the Republic, and authorized by the Minister of State in the Department of Foreign Relations, in the City of La Paz, on the 22nd day of September, 1875.

| | | |
|------------------|-----------|-------------------|
| [SEAL OF STATE.] | (Signed.) | TOMAS FRIAS. |
| | (Signed.) | MARIANO BAPTISTA. |

In the city of La Paz, on the 22nd day of September, 1875, Senor Don Carlos Walker Martinez, Minister Plenipotentiary of Chile and Senor Don Mariano Baptista, Minister of Foreign Relations of Bolivia having met together at the Department of Foreign Relations of Bolivia, duly authorized to carry into effect the exchange of the ratifications by the President of Bolivia and the President of the Republic of Chile, of the complementary Agreement to that of August 6, 1874, concluded between both countries on the 21st of July 1874 of the current year, proceeded to the reading of the original instruments of said ratifications, and having found them exact and in good and true form, carried into effect the exchange thereof.

In witness whereof, the undersigned set down in writing the present minute, signing it in duplicate and hereunto affixing their respective seals.

[SEAL.]

MARIANO BAPTISTA.

[SEAL.]

C. WALKER MARTINEZ.

PROTOCOL, 2ND.

In the city of Sucre, on the 6th of August, 1874, the Minister of Foreign Relations and the Charge d'Affaires of Chile having met together at the Department of Foreign Relations of Bolivia, came to the agreement that, for the effects of the article 5th of the Treaty done on this same date, it should be understood as natural products of Chile the following: bran, oils, almond, hides, hemp, coal, charcoal, beef, barley, wax, jerked-beef, fruits, fresh and dried, beans, cattle bovine, Spanish-beans, biscuits, grease, flours, soap, copes, lentils, wools, wood, linseed, bricks, all kind of vegetables, corn, lard, butter, honey, lumber, nuts, straw, fodder, pressed, in branches and cut, cheeses, bags, soles, tallow, peat, wheat, tallow candles, Chilean wines and liquors, etc etc.

They also agree to the effects of article 7th that the court of arbitration that will be named by the high contracting parties shall proceed to determine the amount that Bolivia may owe Chile in the capacity of jurors, taking in consideration the rights renounced by Chile on account of the abrogation of the Treaty of 66, which rights would belong to Bolivia over the products in the zone comprised within the parallels 24 and 25, the whole contents of the Treaty, the reciprocal advantages and insured for both countries, etc. etc. the sum deducted thereupon, the court will fix the form of payment, either by annuities or the manner it may deem more convenient and easy

In witness whereof the undersigned, Plenipotentiaries of the Republics of Chile and Bolivia have signed the present protocol and hereunto affixed their respective seals.

MARIANO BAPTISTA.

C. WALKER MARTINEZ.

LAW OF NOVEMBER 12, 1874.

The National Assembly decrees:

ART. 1° Let it be approved of the Boundary Treaty between Bolivia and Chile concluded in this city on the 6th of August 1874 by the Plenipotentiaries, subject to negotiate previous to the

exchange of the ratifications the amendment of articles 7th and 8th, it being considered as a sufficient compensation the advantages and franchises granted by this Treaty for the reciprocal renunciation made by the high contracting parties of the moiety of the export duties on minerals established by the Treaty of August 10, 1866.

The guarantees spoken of in the 2nd period of Article 4th are extended to the capitals, industries and persons of the inhabitants in the Department of the Coast.

The explanation will be made in Article 1st that the eastern boundary of Chile is the western Cordillera of the Andes at its high summits, according to the minute of the Commissioners Pissis and Mujia, who marked the points of Llullayacu and El Pilar.

It will be stipulated that all differences which may arise between the two contracting parties shall be settled by arbitration.

ART. 2nd. The Executive Power will negotiate with the Government of Chile separately or conjointly with the preceding modifications the announcement of the moiety of the guanos to be discovered in the zone comprised between the degrees 23 and 25

Be it communicated to the Executive Power for its execution and fulfillment. Hall of sessions in Sucre, November 6, 1874. Martin Lanza, President—Juan Francisco Velarde, Deputy Secretary,—Nicolas Acosta, Deputy Secretary.

House of the Government in Sucre, November 2, 1874.

Be it executed.

TOMAS FRIAS.

The Minister of Foreign Relations.

MARIANO BAPTISTA.

Exhibit 27.

Copia.]

REPUBLICA DE CHILE,

Ministerio de Hacienda.

Exelentísimo Señor, Juan Stewart Jackson por don Juan Wheelwright en su calidad de Contratista de las minas del Litoral de Bolivia ocupadas por Chile, conocidas con el nombre de Estacas de Instrucción Pública según el contrato que acompaño en copia autorizada ante V. E. respetuosamente espongo. En su natural interés por obtener de parte del Supremo Gobierno de Chile el reconocimiento de su Contrato, el Señor Wheelwright ha presentadô

á V. E. en distintas ocasiones solicitudes tendentes á la Consecucion de ese objeto; pero hasta ahora no ha recaido en ellas ninguna resolucion que ponga término al estado de incertidumbre en que por lo que toca á los derechos que le Confiere el Contrato se encuentra, despues de la ocupacion del Litoral Boliviano por las armas de Chile. Hace poco, Cuando se trataba de arreglar la Cuestion internacional pendiente entre Chile y Bolivia, presenté en su nombre una nueva peticion para que en el tratado de paz, tregua ó otro cualquiera á que se arribase se tuviera presente su Contrato y se consignara en el pacto que se Celebrase una cláusula por la cual el Supremo Gobierno de Chile como era justo se comprometiese á reconocer y respetar el Contrato en Cuestion en los mismos términos que Bolivia. Al cabo de algun tiempo se pactó la tregua indefinida de que dá Constancia el pacto que ha visto la luz pública, en el que a pesar de mis gestiones no siquiera se hace mencion del Contrato del Señor Wheelwright sin que hasta ahora me haya dado cuenta de esa omision. Como el Señor Wheelwright desea ver definida su situacion quanto ántes, ocurro nuevamente á V. E. en su nombre para que en mérito de las razones aducidas en mi última solicitud y en vista tanto del Tratado de Paz con el Perú quanto del pacto de tregua con Bolivia reclamando los derechos conferidos por el Contrato adjunto y especialmente en la Segunda Cláusula del Decreto Supremo de veinticuatro de Diciembre de mil ochocientos setenta y seis incorporado en el referido Contrato, para que en mérito de las razones aducidas en mi última solicitud se digne acceder al reconocimiento que en élla he pedido ya que ese reconocimiento no tuvo Cabido en el pacto de tregua con Bolivia. Es justicia y para ella.

J. STEWART JACKSON.

Santiago, Agosto, cuatro, de Agosto de 1893.

Es copia Conforme con el orijinal.

[L. S.]

(f.)

E. U. BARREDO CÓNDELL,

Archivero.

Vo. Bo.

(f.)

TORO C.

Legalizada en el Ministerio de Relaciones Exteriores de Chile, la firma anterior que dice Toro C, etc. etc.

Santiago 5 de Agosto 1893.

El Sub-Secretario.

[ESTAMPILLA.]

(f.)

A. BASCUÑAN, M.

I, Owen McGarr, Secretary of the Legation of the United States at Santiago, hereby certify that the above signature, A. Bascuñan,

M., is the true and genuine signature of Aurelio Bascuñan, M. the Sub-Secretary of Foreign Relations of Chile.

In witness whereof I have hereunto set my hand and affixed the seal of the Legation, at Santiago, this the Seventh of August, A. D. 1893.

[SEAL.]

(Signed.)

OWEN MCGARR,
Secretary of Legation

[Translation.]

Copy.]

Republic of Chili, Ministry of Finance.

HIS EXCELLENCY: I, John Stewart Jackson, in behalf of Mr. John Wheelwright in his capacity of contractor of the mines in the Littoral of Bolivia, occupied by Chili, known as "Escatas de Instruccion Publica", under the contract the exemplified copy of which I accompany herewith, respectfully represent before Your Excellency:—Mr. Wheelwright, in his natural interest for obtaining from the Supreme Government of Chili the recognition of his contract, has presented to Your Excellency on different occasions, petitions tending toward obtaining that object; but no resolution has until now been enacted thereupon which may put an end to the state of uncertainty in which he is placed since the occupation of the Bolivian littoral by the Chilean forces, in regard to his rights that the Contracts vest on him. Not long ago, when the international question pending between Chili and Bolivia was about to be settled, I presented in his name a new petition with a view to having his contract kept in mind in the treaty of peace, truce, or any other one that might be brought about and to having a clause inserted therein, by which the Supreme Government of Chili, as it was just, should engage itself to recognize and respect the contract under discussion under the same terms as Bolivia. After some time, the treaty of indefinite truce was agreed on as it appears from the agreement that has been published, in which, despite my own representations, not even a simple mention is made of Mr. Wheelwright's contract, without being able to account for such omission. Inasmuch as Mr. Wheelwright desires to get his situation defined as early as possible, I anew address myself to Your Excellency in his behalf in order that on the merit of the reasons adduced in my last petition and in consideration of the treaty of peace with Peru as well as of the treaty of truce with Bolivia, claiming the rights vested by the contract annexed hereto and especially by the 2nd clause of the Supreme Decree of December

24, 1876, embodied in the said contract, be pleased to grant the recognition that I have asked for therein, so long as such recognition has found no room in the treaty of truce with Bolivia. It is justice and for it—&c.

J. STEWART JACKSON.

Santiago, August 4, 1893.

It is copy according with its original.

(Signed.)

ED. BARREDO CONDELL,

[SEAL.]

Recorder V^o-B^o.

Certified in the Department of Foreign Affairs of Chili, the above signature that says: Toro C. Santiago, August 5, 1893.

The Sub-Secretary,

(Signed.)

A. BASCUÑAN M.

Exhibit 28.

MANDATO ESPL. PROTO. 21. 2^o SEMESTRE DE 1878.
COMPETENTE.

En Valparaiso, Republica de Chile, a veinticinco de Octubre de mil ochocientos setenta i ocho. Ante Julio César Escala, Notario público de esta ciudad i testigos ideóneos cuyos nombres se espresarán a la conclusion compareció el Señor Juan Wheelwright, mayor de edad, de este domicilio, a quien doi fe conozco, dijo: Que confiere especial poder, tan bastante i necesario, quanto se requiera en derecho, al Señor Juan Stewart Jackson, para que represente al mandante por todas los derechos que tiene a las Estacas Minas de Intruccion en los minerales de Bolivia a virtud de concesiones constantes de Supremos decretos de aquel Gobierno de veintitres i veinticuatro de Diciembre de mil ochocientos setenta i seis hechas al mandante como socio i representante de Alsop i Compañía en liquidacion en todo logue se relacione con sociedades ó particulares en Chile; facultando al mandatario ampliamente para celebrar las transacciones, arreglos, convenios, ventas, formar sociedades i todo otro acto o contrato, formando los documentos públicos ó privados del Caso, percibir i tomar posesion de productos ó cualquiera valor que proceda de esos actos, hacer dipositos, jiros, i ejecutar quanto conduzca al mejor desempeño de este mandato que podrá delegar, revocar delegados, nombrar otros i reasumir. Se dio testimonio en papel de quinta clase. Lo otorgó i firmó con los testigos don Juan Usaveaga i don Juan Evanjelista Diaz; doi fé.

Juan Wheelwright. Juan Usaveaga. Juan E. Diaz. Ante mí
Julio César Escala, Notario Público.

En testimonio de verdad, sello i firmo.

[L. s.]

(f.)

JULIO CESAR ESCALA

[Dros. \$4.00.]

N. P.

UNITED STATES CONSULATE,

Valparaiso, Chile, June 23, 1893.

I, Corvis M. Barre, Consul of the United States of America at Valparaiso, do hereby certify that the foregoing is the true and genuine signature of Señor Julio César Escala, Notary Public at this city on the date of the execution of the within document, and as such is entitled to full faith and credit.

Given under my hand and the Consular Seal, the day and year aforesaid.

(Signed.)

CORVIS M. BARRE,

United States Consul.

[SEAL.]

—————
[Translation.]

Exhibit 28.

SPECIAL POWER OF ATTORNEY. REGISTERED 21. 2° HALF-YEAR
1878. COMPETENT.

[Stamp.]

In Valparaiso, Republic of Chili, on the twenty-fifth of October, one thousand eight hundred and seventy-eight Before Julio Cesar Escala, Notary Public of this city and certified witnesses whose names will be expressed at the foot, there appeared Mr. John Wheelwright, of full age, of this place and neighborhood, whom I certify that I know, and said: That he confers a special power, as ample and necessary as it may be required in law to Mr. John Stewart Jackson to represent the principal in all the rights that he holds over the *estacas-minas* called "of Instruction" in the mining sets of Bolivia by virtue of concessions under Supreme Decrees from that Government of the twenty-third and the twenty-fourth of December one thousand eight hundred and seventy six, granted to the principal as partner and representative of Alsop and Company in liquidation in everything relating to societies or individuals in Chili, amply empowering the attorney to conclude transactions, settlements, agreements, sales, to organize companies, and any other deed or contract, signing the necessary public or private documents, to collect and take possession of the proceeds or of

any sum whatsoever proceeding from those acts, to make deposits, drafts and to execute anything that may lead to the best fulfilment of this power of attorney, which he shall be able to delegate, to revoke delegates, to appoint others, to resume it. An exemplified act on paper of the fifth class was issued. Signed and executed before witnesses:

Messeurs JUAN USARCAGA,
JUAN EVANGELISTA DIAZ.

I certify—JUAN WHEELWRIGHT.

JUAN USARCAGA—JUAN E. DIAZ.

Before me, JULIO CESAR ESCALA, *Notary Public*.

In testimony thereof I sealed and sign,

[Fees, \$4.00.]

JULIO CESAR ESCALA, *N. P.*

Exhibit 29.

PETITION OF JOHN WHEELWRIGHT.^a

To the Honorable THOMAS F. BAYARD,

*Secretary of State of
the United States.*

SIR: Your petitioner, John Wheelwright, is a citizen of the United States by birth; he has never renounced his nationality, and he is now a resident of Antofagasta, in the Republic of Chili.

Your petitioner was formerly a member of the firm of Alsop & Co., the partners of which firm were all American citizens; the style of the firm, the names of the partners and the interest of each in said partnership are fully and truly set forth in the document marked Exhibit No. 1, which is annexed to this petition and made part thereof.

This commercial firm carried on business at Valparaiso, in the Republic of Chili.

Your petitioner further represents that during the existence of said partnership as before stated, one Pedro Lopez Gama, a subject of the Empire of Brazil, became largely indebted to said firm. This indebtedness grew out, mostly of his large money advances to the government of the Republic of Bolivia, on account of contracts for the exportation of guano and for various operations connected with the same. Said sums amounted at one time to

^a This petition was accompanied by a number of documents, all of which are embodied in the various exhibits filed before the Claims Commission and published herein, under their appropriate titles.

more than one million dollars; and in consideration of said money advances and with a view to repay said sums, Pedro Lopez Gama executed at Valparaiso, in the Republic of Chili, an instrument in writing dated April 14, 1875, by which he assigned, set over, and transferred to Alsop & Co. certain rights, titles, and interests which he had previously acquired from the government of Bolivia.

In the meantime, the firm of Alsop & Co. having gone into liquidation, John Wheelwright, who had been duly appointed one of the liquidating partners, (see document attached to this petition and marked Exhibit No. 2), proceeded to La Paz, the capital of Bolivia, for the purpose of claiming of the Bolivian government the fulfilment of its obligations growing out of the transactions of said government with Pedro Lopez Gama.

After tedious and protracted negotiations which put your petitioner to great expense, an understanding was reached about the end of the month of December, 1876, and certain agreements and contracts were executed in writing and were made public according to the laws of Bolivia; copies of said agreements are attached to this petition and marked, respectively, Exhibits No. 3 and No. 4.

It appears from these last-named documents that your petitioner's rights as liquidator of the firm of Alsop & Co. were fully recognized, (see the decree of December 24, 1876, issued by the government of Bolivia), and that said government acknowledged its indebtedness to the aforesaid firm as assignees of Gama to the amount of eight hundred and thirty-five thousand Bolivian dollars, together with interest at the rate of 5% from the date of the execution of this contract. (See Article 1 of contract, marked Exhibit No. 4.)

The Bolivian government agreed to pay said capital and interest by means of ninety days' drafts drawn for the full amount against the proceeds of the northern custom-house that might be due to Bolivia over and above the first \$405,000 dollars to be paid to the Bolivian government by the Republic of Peru out of said proceeds. It was also provided that said agreement should be carried into effect in case the above-recited contract with Peru should be renewed and extended, or in case it should be terminated. (Art. II of Exhibit No. 4.)

Further, Article III provided for another mode of payment of the indebtedness of Bolivia to Alsop & Co. It was agreed (Art. III) that out of all the silver mines (*estacas minas de plata*) owned by the Republic of Bolivia in the coast department forty per cent.

of the net profits of all said mines should be applied to the payment of the capital due to Alsop & Co.; and it was further provided that the proceeds of the mine called "Flor de Desierto," together with those of one other mine, which your petitioner had the right to select, should be applied to the payment of the accruing interest. (See Art. IV, Exhibit No. 3.)

According to Article 1 of the decree of the 23d of December, 1876, (Exhibit No. 4), a term of three years was granted to your petitioner for the preliminary survey and examination of said mines, and for raising the capital required to set them in operation.

Article II authorized your petitioner to organize companies for the working of said mines, and to enter into contracts with the owners of contiguous mines.

Article VI provided that said contract should last and remain in force for a period of 25 years.

Such was, in substance, the compromise agreed upon between the Bolivian government and your petitioner; it did not recognize all the rights claimed by your petitioner, but it was accepted as a final settlement of pending difficulties, equally binding upon both parties.

As soon as this contract was executed and accepted by your petitioner, according to the Bolivian law your petition caused a notice of said contract to be published in La Paz and in Coracoles, (Exhibit No. 5); further, a copy of the contract was printed in the newspaper called the "*Mercurio*," of Valparaiso, in the Republic of Chili.

II.

That the Bolivian government had the right to enter upon said contract is a fact that cannot be questioned. Indeed, the convention signed at La Paz on the 15th of December, 1872, between Chili and Bolivia, provided in Article 1 that "the oriental limits of Chili, as defined in Article 1 of the treaty of 1866, are stated to be the highest peaks of the Andes; and the boundary line between Chili and Bolivia is the 24th degree, south latitude, on the Pacific Ocean, and the highest point of the Andes." (See Marten's *nouveau recueil des traites*, vol. iii, p. 486.)

This instrument recognized the rights of Bolivia to the territories north of said line, therefore the title of Bolivia to said mines, which are situated north of the 24th degree, could not have been questioned at that time. It is true that difficulties arose in or about 1874, between Chili and Bolivia, in regard to said mining

districts, but said difficulties were settled by a new convention bearing date the 6th of August, 1874, by which Chili abandoned in favor of Bolivia all her claims of right to said mining districts. (See Exhibit No. 6, Section 20.)

Therefore, at the time Bolivia entered upon the above-stated agreement with your petitioner, she had a full and unquestioned jurisdiction over the mining districts in which said mines granted as aforesaid were situated.

III.

Your petitioner states, further, that the government of Bolivia was duly authorized by the municipal laws then in force in the country to enter upon the contract of December, 1876, and that said contract, when made, was duly ratified by the legislative branch of the government. The decree of the 23d of July, 1852, asserted the rights of the government to the ownership of all mineral lands that might be found in the territory of Bolivia, and it enacted among other provisions that "in every mine or lode of silver, gold, or other metal whatsoever, the interest (*estaca*) following those which may pertain to the discoverer, or to the 'denouncer,' under the existing laws is held to belong in full to the treasury of public instruction."

The existing laws to which this decree refers are those of Mexico, of Peru, and the ordinances of New Spain, as set forth in the Royal Schedule of the 8th of December, 1785, which expressly reserved for the king, in its 23d declaration, the existence of the *estaca* as provided for by the 18th ordinance, chapter 1, of Peru. The independence of Bolivia having been declared, an order of August 5, 1829, asserted the validity of the ordinances previously existing, and more especially those of Mexico formerly adopted by Peru, and which thus continued in force until the decree of the 23d day of July, 1852, already mentioned. Under said last decree, which re-enacted the former laws, the appropriation was assigned to the department of public instruction. But subsequently to the issuing of said decree various legislative and executive provisions recognized and enforced the legal existence of the public "*estacas*" as belonging to public instruction, and provided for the working of said mines. Such are, among others, the circular of the 21st of May, 1860, ordering that the decree of the 23d of July should be enforced; the decrees of the 29th of September and of the 9th of October, 1871, in relation to the *estacas* belonging to the State; the law of the 12th of October, 1871 enacting that said "*estacas*"

could not be held adversely to the State; the act of the 19th of October of same year, which authorizes the executive to make contracts with third parties for the working of said mines; and lastly, the act of the 15th of November, 1873, which provides that the executive government shall enter into possession of said "estacas." On the other hand, the mining code of Bolivia enacted in 1852 defines as discoverer the person who finds metal in lode, vein, or otherwise on the surface of the ground or underneath said surface. (Art. 15.) Said code provides, also, that any discoverer who will enter the discovery of metal in unknown ground shall be entitled to the ownership of three "estacas," and that in grounds already known said discoverer shall be entitled to the ownership of two "estacas." These provisions are identical with the ancient laws of Mexico, and from an examination of these various provisions it appears that in one case three, and in the other case two "estacas" were reserved to the discoverer. Therefore, in the former, the "estaca" of the State covered one-fourth of the discovered mines, and the latter one-third [half].

IV.

As to the right of the executive to make the aforesaid contract with your petitioner. The act of the 19th of October, 1871, conferred upon the executive the right to make contracts for the working of all the mines where the State had "estacas," and it was in compliance with said provisions that the decrees of the 2d of November, 1871, of the 7th of March, of the 29th of May, and of the 19th of September, 1872, were issued.

After the contract between the executive branch of the government of Bolivia, as represented by the Minister of Finance, and your petitioner was duly signed and executed, it was submitted to the National Assembly and duly ratified among other decrees or orders of the said Minister of Finance. (See Exhibit No. 7.)

V.

Your petitioner has shown already that according to the terms of the agreement of the 23d of December, 1876, marked Exhibit No. 4, a period of three years was granted your petitioner, his agents or assignees, to make a preliminary examination of said mines and to raise the capital needed for the purpose of working them.

That no time was lost by your petitioner is fully established by proof. He entered at once into possession of said mines, and the

government of Bolivia directed its agents to assist him in the work which he had agreed to perform. (See judicial decision marked Exhibit No. 6, and attached to this petition.)

But while your petitioner was proceeding in good faith and with all possible diligence to perform said preliminary work within the three years next following the execution of the contract, the late war between the Republic of Chili and that of Bolivia broke out, and it interrupted the work then going on in the mineral district. Said war was ended by a convention of truce intended to operate as a permanent treaty of peace and which was signed on the 4th of April, 1884. The attention of the Secretary of State is called respectfully to Article II of said convention of truce.

“The Republic of Chili, during the existence of this truce, shall continue to govern in conformity with the political and administrative system which the Chilian law establishes, the territories comprised from the 23d parallel up to the mouth of the river Zoa in the Pacific.”

Such were the territories conquered by Chili during the war from 1879 to 1884; and they comprised the districts where the mines described in the contract of the 23d of December, 1876, between the Bolivian government and John Wheelwright, are situated.

VI.

Your petitioner further represents that at a time prior to the signature of the above-mentioned convention of truce, he duly apprised the government of Chili of the lawful existence of the contract between the government of Bolivia and himself. This was done through the attorney of your petitioner, John Stewart Jackson, in a petition presented by him to the government of Chili. This document was dated Valparaiso, September 11, 1882, and it sets forth at great length the afore stated facts. The Minister of Justice of Chili did not make an answer to this petition.

VI.

In the meantime your petitioner brought various lawsuits to assert his rights on the aforesaid “estacas”. Said suits were brought against various persons, mostly of Chilian nationality, who had undertaken to occupy the said “estacas” in violation of the rights vested in John Wheelwright, as liquidator of Alsop & Co. One of said suits, and the first of all that was heard, was decided, in the court of first instance, in favor of your petitioner’s rights, but said judgment was reversed in the court above upon grounds

to which the attention of the Honorable Secretary of State is most earnestly invited. For this purpose the whole of said judgment is inserted herein:

[Translation by a sworn interpreter.]

“*Serena, 19th May, 1882.*”

“Reproducing the expository part of the sentence in first instance, and considering:

“1. That the convention celebrated in the city of La Paz on the 26th December, 1876, between the Government of the Republic of Bolivia and Mr. John Wheelwright, representative of the firm of Alsop and Company, is a Contract of ‘anticresis,’ by which convention there was recognized in favour of this firm a debt of eight hundred and thirty-five thousand Bolivian dollars, and there were adjudicated to him the estacas-mines of silver belonging to the State in the Coast Department, in order that the said debt should be paid with forty per cent. of their net products, during the term of twenty-five years.

“2. That on that contract Wheelwright founds the demand of folio 1, in which he asks that the defendants may deliver up to him the part of ground of the Government estaca of the mine ‘Justicia,’ situated in the mineral district of Caracoles, which they have invaded.

“3. That from the act of measurement of the said mine, ‘Justicia,’ executed on the 12th October, 1878, which is extended in attested copy at folio 6 of the added writing, it appears that the Government estaca was not measured on that lode, on account of the Deputy of Mining having so ordered it, in consequence of the ground which the said estaca should have occupied being in dispute.

“4. That it has not been shown that, in the time elapsed since that day, the 12th October, 1878, until the date on which the district of Caracoles was reincorporated in the territory of the Republic of Chili, the said estaca should have been measured and the plaintiff put in possession of it.

“5. That from such antecedents it results that the said estaca did not have real and positive existence, nor in that which relates to it, did the said contract of the 26th December, 1876, have full effect while the district of Caracoles remained under the dominion of the Republic of Bolivia.

“6. That the plaintiff has asked that effect may be given to that contract celebrated in Bolivia and with the Government of that Republic, and supporting his claim on the privileges which the laws of that country conceded to the estacas-mines called of instruction when the territory in which the mine treated of is situated, has returned to the dominion of the Republic of Chili.

“7. That the effects of the said contract, referring to an immovable property situated to-day in Chili, ought to be arranged according to the laws of this country, inasmuch as the sovereignty is indivisible, and it would cease to be so in the present case if the district of Caracoles, which at present is a portion of Chilian territory, should be governed by laws emanated from another Sovereign.

"8. That the admission of the demand, by ordering the measurement and delivery of the estaca claim, would not mean in reality the mere recognition of a right definitely constituted beforehand, but a mandate to the effect that a right should now be constituted in virtue of laws which ought not to rule in any part of the Republic, nor serve as a basis for the decisions of its Tribunals.

"9. That the estaca which the plaintiff claims in virtue of his Contract of 'anticresis' not having been delivered to him in the time of the Bolivian dominion in Caracoles, and such Contract not being perfected except by the tradition of immovable property, that convention remained without effect with respect to the said estaca.

"In conformity with these bases, and with that which is determined in the 16th and 2437th Articles of the Civil Code, and in the 1st Law, 14th title, 3rd paragraph, it is declared that the demand of folio 1 is without foundation. Let the sentence appealed from of the 14th May of the past year extended at folio 230 be repealed.

"This decision has been resolved unanimously. Minister Varas records, in a special opinion, the reasons on which, for his part, he founds the repeal.

"Let it be published, and the documents returned.

| | |
|------------|---------|
| "(Signed.) | ROJAS. |
| "(Signed.) | VARAS. |
| "(Signed.) | CAVADA. |
| "(Signed.) | AGUINE. |

"Dispatched and signed by the Most Illustrious Court of Appeals.

| | |
|------------|----------|
| "(Signed.) | CUELLAR. |
|------------|----------|

"On the 20th May, I notified Mr. Andres, 2d Contador.

| | |
|------------|----------|
| "(Signed.) | CUELLAR. |
|------------|----------|

"On the 20th May, I notified Mr. Ramon Irigoyen.

| | |
|------------|-----------|
| "(Signed.) | IRIGOYEN. |
| "(Signed.) | CUELLAR. |

"On the 20th May, I notified Mr. Francisco A. Gonzalez.

| | |
|------------|-----------|
| "(Signed.) | GONZALEZ. |
| "(Signed.) | CUELLAR. |

"In conformity with the originals referred to which are extended in the writing to which the preceding Petition refers.

"*Antofagasta, 20th April, 1885.*

| | |
|------------|-------------------|
| "(Signed.) | CLDOMIRA MUJICA." |
|------------|-------------------|

In answer to the statements therein contained in paragraphs marked 1, 2, 3, 4, and 5, respectively, it is plain that even were the facts and the law as they are stated by the court—and this is contradicted by the official document attached to this petition, and marked Exhibit No. 7 (documents marked No. 9 and following)—the judgment shows on its face that the three years provided for by the contract for the surveying of said mines had not elapsed at the time the war was declared by Chili against Bolivia.

The contract was executed on the 23d and 24th of December, 1876, and the territory in which said mines were situated was occupied by Chili, and claimed as part of its sovereign jurisdiction, as early as the 12th of October, 1878; that is to say, in less than two years after the contract between Bolivia and your petitioner was duly executed.

Such is the very argument—most extraordinary as it may appear—which underlies paragraphs 6, 7, 8, and 9 of said judgment. Section 9 holds that the “*estaca*” claimed by your petitioner not having been delivered to him by the Bolivian government while in possession of said mining district, the title is not perfect, but is void. But the climax of said decision by the Appellate Court is reached in the following words:

“In conformity with these bases, and with that which is determined in the 16th and 2437th article of the Civil Code, and in the 1st law, 14th article, 3d paragraph, it is declared that the demand is without foundation.”

The laws thus referred to in said sentence are Chilian laws and not Bolivian laws. Thus under and by virtue of a simple military occupation, and by sheer force of arms the laws regulating private transactions in the country occupied by the victorious army are substituted at once for the laws that formerly governed relations between private citizens; and, still more astounding, the legal relations existing prior to the time of occupation between the vanquished government and neutral citizens are disregarded. It is submitted that this proposition when set forth by a court of law, and when made the basis of a decree against a neutral, and enforced against him, amounts to a denial of justice, and becomes a proper subject for diplomatic action on the part of the government to which the neutral belongs.

VII.

Your petitioner further states that other decisions of like character were made by the same Court.

VIII.

Your petitioner respectfully represents that this action on the part of Chili is in open and direct violation of the principles of international law, and that decisions so rendered are tantamount to an actual seizure and confiscation of your petitioner's property, for which deprivation of his rights he is entitled to a full compensation. The measure of damages to be awarded to him being determined by the contract with Bolivia of December 24, 1876, to which interest must be added.

IX.

Your petitioner, as a citizen of the United States and a neutral resident in a country at peace with his own Government, was entitled to the full protection of his rights on the part of the belligerent forces of Chili. All and each of the international commissions that have been established in the United States and elsewhere between various Powers have asserted this principle in many and varied instances.

Your petitioner submits further that Chili was not only bound to protect him during the belligerent occupation of the country, he being then in the actual occupancy of said mines, but that that government was bound by the contract between your petitioner and the government of Bolivia. This was a matter of right and not of favor. Such are the principles of public law that govern the matter, and it is submitted that they have always been recognized and asserted by the United States. Among other instances your petitioner will refer to the treaty of Guadaloupe, between the United States and the Republic of Mexico. In the protocol of the 24th of May, 1848, explanatory of said treaty, it was said:

“Conformably to the law of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 24th of May, 1846, and in Texas to the 2d of May, 1836.”

Such is the principle of law recognized by the United States, and your petitioner submits that it merely sets forth and embodies a principle of international law which a most eminent French author, Mr. Massé, has expounded in the following way:

“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.” (See Massé, C., *Rapports du droit des gens avec le droit civil*, Vol. 1, p. 123, § 148-149.)

Your petitioner having shown his good faith when he entered upon the agreement of the 24th of December with the government of Bolivia, then the lawful owner of the territories where the mines were situated, and having made due diligence to carry out the

provisions of said contract, has a just ground of complaint against the Republic of Chili, which became guilty of the tortious acts as above set forth.

And finally, your petitioner prays for the intervention of the government of the United States that he may obtain redress for the injuries so inflicted upon him by the Republic of Chili.

JOHN WHEELWRIGHT,
By GEO. S. BOUTWELL,
his Attorney-in-fact.

Letter of Geo. S. Boutwell to George H. Shields, transmitting exhibits.

Washington, D. C., January 8, 1894.

HON. GEO. H. SHIELDS,

*Agent and Counsel for the United States,
Washington, D. C.*

DEAR SIR: I transmit herewith certain documents to be filed as exhibits and numbered in the case of Henry Chauncey vs. The Republic of Chile, No. 3, namely:

Exhibit 7, certified copy of the pact of truce between Chile and Bolivia as reported in the "Diario Oficial", No. 2292, dated Santiago, 9th December, 1884, with printed translation.

Exhibit 8, extracts from various newspapers of the years 1876, 1877, and 1878, some of which are translations, and of the others the translations are furnished but not printed.

Exhibit 9, an extract from the "diario Oficial" of the 4th of April, 1879, authorizing the declaration of war against the Government of Bolivia, dated April 3, 1879, and translation of the same, not printed.

Exhibit 10, petition of one Jose Santos Monroy, and the declaration of the Government of Bolivia thereon.

Exhibit 11, a publication of the agreement between Bolivia and John Wheelwright, as published in the "El Titicaca" dated January 15, 1877, and also a notice of his being in possession of the said mines of Littoral with a translation thereof.

Exhibit 12, an official statement as to the present condition of the suit concerning the mine Amonita, with a translation of the same.

Exhibit 13, an order of the Prefect of the Department of Cobija of the 9th of August, 1878 in regard to measurements and surveys of silver mines; and also an order of the Ministry of Finance and Industry, dated the 21st of August, 1878, with printed translations.

Exhibit 14, agreement between John Stewart Jackson and John Wheelwright as to a certain amount of money to be furnished by Jackson for the working of the mines, and a translation of the same in print.

Exhibit 15, official notice from the Minister of the Treasury of Bolivia, dated March 28, 1878, and a translation of the same appended to exhibit 14.

Exhibit 16, statement of John Wheelwright in regard to his position as liquidator of the American firm of Alsop and Company in English, dated 25th day of March, 1885.

Exhibit 17, correspondence between John Wheelwright and B. Salinas, dated respectively the 23d. of November and the 11th of December, 1883 and translations of the same in English.

Exhibit 18, statement under oath of Henry S. Prevost as to his appointment as liquidator of the affairs of Alsop and Company, and also a declaration that he had appointed Henry Chauncey to act as his attorney in support of the claim of Alsop and Company vs. The Republic of Chile.

Exhibit 19, petition of John Stewart Jackson to the Government of Chile calling attention to John Wheelwright's rights, and a translation of the same in English.

Exhibit 20, petition of Jackson and certified copy of an agreement between Wheelwright and Bolivia and report of the Government Attorney on the same, with translations; one of the translations is in print.

Exhibit 21, copies of certain laws of Chile referred to in the decisions in the Amonita and Justicia cases, and Article 12 of the Constitution of Chile, translated.

Exhibit 22, duly certified copies of decrees, petitions and extracts from laws of Chile, as stated in a more particular account in typewriting appendix to the exhibit.

Exhibit 23, certified translation of the petition of J. Stewart Jackson with a report of the State Attorney thereon with a decree and extracts from the laws.

Exhibit 24, an order from the Minister of the Treasury of Bolivia, dated July 25, 1878 to the Prefect of the Department of Cobija. Translation in English may be found in the original memorial filed with the Secretary of State of the United States, being document No. 8.

Exhibit 25, report of Chilean Government's Attorney, dated the 9th of October, 1884.

Exhibit 26, boundary treaty of 1875 between Chile and Bolivia, with a translation of the same.

Exhibit 27, petition of J. Stewart Jackson and a translation of the same in English.

Exhibit 28, power of attorney from John Wheelwright to J. Stewart Jackson with translation of the same.

Exhibit 29, petition of John Wheelwright to the Hon. Thomas F. Bayard, Secretary of State of the United States, dated November 3, 1885, with translations of various documents, the originals of which have been filed in the several exhibits.

Very respectfully,

(Signed.)

GEO. S. BOUTWELL.

Jan'y 8, 1894.

Exhibit 30.

Revenue from the Arica Custom House from 1883 to 1889, inclusive.

[Taken from the memorias of the Ministerio de Hacienda.]

| | Total | Bolivia 35 % | Bolivia 40 % | Chile Balance. |
|-----------|----------------|----------------|----------------|----------------|
| 1883----- | \$1,463,200.02 | \$0 | \$0 | \$1,463,200.02 |
| 1884----- | 836,649.13 | 0 | 0 | 836,649.13 |
| 1885----- | 1,860,161.95 | 611,399. | 698,399.64 | 550,363.31 |
| 1886----- | 1,039,129.62 | 358,615.92 | 409,846.77 | 270,666.93 |
| 1887----- | 1,198,376.02 | 412,403.18 | 471,317.02 | 314,655.82 |
| 1888----- | 1,281,365.33 | 441,189.66 | 504,216.79 | 335,958.88 |
| 1889----- | 1,192,774.98 | 410,602.07 | 469,259.50 | 312,913.41 |
| | \$8,871,657.05 | \$2,234,209.83 | \$2,553,039.72 | \$4,084,407.50 |

The arrangement commenced in 1885 with Bolivia

Bolivia has rec'd. 35% direct..... 2,254,209.83

& 40% paid for Chile claims..... 2,553,039.72

\$4,787,249.55

or an average of..... " 957,449.91

per annum in Chile currency, or..... 640,000 Bolivianos

Excess over 405,000..... 235,000 do.

per annum, or in the 5 years..... 1,175,000

NOTE.—Average exchange

1885----- 25.39

1886----- 23.63

1887----- 24.80

1888----- 26.66

1889----- 26.44

average 5 years..... 25.39

recargo based on 38 pence 50% \$957,449.91 Chile currency, equal to 640,000 Bolivianos.

UNITED STATES LEGATION,
Lima, Peru, July 12, 1893.

I hereby certify that on this day personally appeared before me Henry S. Prevost, Esq. a citizen of the United States resident in this City, to me known as one of the Partners of the late commercial firm of Mess Allsop and Company established in the City of Valparaiso, Chile, and declared under oath that the document hereunto annexed, and marked No. 2, is a true and correct statement of the revenues of the Custom House of the Port of Arica and of the apportionment thereof between the years 1883 to 1889 both inclusive, as taken from the Official Reports (memorias) issued by the Government of the Republic of Chile, corresponding to those years, and that the said apportionment is in conformity with the stipulations of the Treaty of truce, signed in Valparaiso under date of April 4th 1884, which now rules the international relations of the Republic of Chile and Bolivia.

In Testimony whereof, I have hereunto subscribed my name and affixed the Seal of this Legation, the day and year last above written.

[SEAL.] (Signed.) RICHARD R. NEILL,
U. S. Secretary of Legation.

JANUARY 9, 1894.

SIR: I enclose herewith a statement of the receipts of the Arica Custom House from 1883 to 1889, inclusive, marked exhibit No. 30, which you will please file in the case of Henry Chauncey v. the Republic of Chile No. 3.

Very truly, GEO. S. BOUTWELL.

To the Hon. GEO. H. SHIELDS,
*Agent of the United States, United States and
Chilean Claims Commission, Washington, D. C.*

Unnumbered exhibit filed January 11, 1894.

[Printed slip giving substance of Matta-Reyes protocol, 19 May, 1891.]

DIPLOMACIA BOLIVIANA.

[De "La Vos del Pueblo" de Cochabamba.]

El 19 de Mayo se suscribió el protocolo Matta-Reyes.

Según él, hé aquí los puntos que fueron convenidos.

I. Bolivia cede el litoral en los límites de la actual situación Chilena.

II. Chile paga la deuda boliviana exterior.

III. Esa deuda consta de las siguientes cantidades.

| | |
|------------------------------|-------------|
| Huanchaca | 1, 200, 000 |
| Corocoro | 1, 600, 000 |
| Compañía Oruro | 252, 000 |
| Lopez Gama | 850, 000 |
| Banco Garantizador | 788, 000 |
| Ferrocarril Mejillones | 250, 000 |
| Deuda Garday | 50, 000 |
| Intereses adeudados | 1, 614, 000 |
| | <hr/> |
| Bs. | 6, 604, 000 |

IV. Las internaciones de artículos chilenos pagarán en Bolivia derechos aduaneros en la proporción y cuota que los similares bolivianos reconocen.

Chile concede libre tránsito á Bolivia para todos sus puertos de contacto inmediato en las fronteras, reconociéndole libre y absoluta soberanía aduanera.

V. Los alcoholes chilenos pagarán el mismo impuesto que los extranjeros.

Sometido este negociado al conocimiento de las Cámaras, su resolución fué:

El Congreso Nacional *crée acceptable* la bases de un tratado de paz acordadas con el representante de la Junta de Gobierno de Iquique y confía en que el Ejecutivo adelantará las gestiones diplomáticas del caso, inspirándose en las discusiones parlamentarias á que esta consideración ha dado lugar.

[Translation.]

Filed January 13, 1894.

BOLIVIAN DIPLOMACY.

[From "La Vos del Pueblo" of Cochabamba.]

On the 19th of May the Matta-Reyes Protocol was signed.

The matters agreed upon therein follow:

I. Bolivia cedes the coast line within the limits now held by Chile.

II. Chile pays the Bolivian foreign debt.

III. This debt is made up of the following amounts:

| | |
|---------------------------|-------------|
| Huanchaca | 1, 200, 000 |
| Corocoro | 1, 600, 000 |
| Oruro Company | 252, 000 |
| Lopez Gama | 850, 000 |
| Garanpizador Bank | 788, 000 |
| Mejillones Railroad | 250, 000 |
| Garday debt | 50, 000 |
| Interest due | 1, 614, 000 |
| | <hr/> |
| Bolivianos | 6, 604, 000 |

IV. The importation of Chilean goods will pay in Bolivia customs duties in the same proportion and at the same rate as similar Bolivian goods.

Chile concedes free transit to Bolivia through all her ports next adjoining her frontier, giving her free and absolute customs jurisdiction.

V. Chilean spirits will pay the same duties as the foreign.

This negotiation having been submitted to the two Chambers their resolution was:

The National Congress *believes acceptable* the bases of a treaty of peace agreed upon with the representative of the Governing Junta of Iquique and trusts that the Executive will press the diplomatic steps in the case, animated by the Parliamentary discussions to which this question has given rise.

AFFIDAVIT OF HENRY STANHOPE PREVOST, FILED JANUARY, 11, 1894.

UNITED STATES LEGATION,

Lima Peru, December 11, 1893.

I the undersigned do hereby certify, that on this day personally appeared before me Henry Stanhope Prevost Esq, to me personally known as a Citizen of the United States of America at present residing in this City, who, after being by me duly sworn, declared under oath, as follows: That he, deponent, was born in this City of Lima, Republic of Peru, on the 18th day of November 1846, where his Father the late Stanhope Prevost, Esq. (of New York.) resided at the time as Consul of the United States of America. That his Father aforesaid was a Native born Citizen of the State of New York, of the United States of America.

That he, Deponent, has ever claimed and preserved his own status as a native born citizen of the United States of America; and that he is now such citizen, never having relinquished or forfeited his status as such Citizen or committed any act inconsistent with such status, which came to him and has ever been and is still held by him by right of birth.

That he, deponent, last left the United States of America on the 31st day of May 1884, and that it is his intention to return there, sooner or later, with the purpose of residing and performing the duties of Citizenship therein.

That he, deponent, is the same person to whom the following Passports have been issued, viz:

No 3831, dated in the year 1869, issued by the Department of State of the United States of America, and signed by the Honorable Hamilton Fish, then Secretary of State.

No 10, dated the 7th of November 1879, issued in Lima Peru, by the Honorable Isaac P. Christiancy then the United States Minister to Peru.

No. 1, dated the 11th day of December 1893, issued in Lima, Peru by the Honorable James A. McKenzie, the Present United States to Peru.

In Testimony whereof deponent has hereunto set his name in my presence.

HENRY S. PREVOST

UNITED STATES LEGATION

Lima, Peru, December 11, 1893.

I, Richard R. Neill, the Secretary of the United States Legation do hereby certify that the foregoing deposition is, to the best of my knowledge, true in all its parts; and that it has been executed and signed in my presence, and that Deponent is personally known to me.

In Witness whereof I have hereunto set my hand and affixed the Seal of this Legation at Lima, Peru, this day and year next above written.

[SEAL.]

RICHARD R. NEILL,
United States Secretary of Legation.

Unnumbered Exhibit Filed January 11, 1894.

Deposition of Henry Chauncey.

UNITED STATES AND CHILEAN CLAIMS COMMISSION.

HENRY CHAUNCEY
against
THE REPUBLIC OF CHILE. } No. 3.

To J. FRANCISCO VERGARA DONOSA,
Agent and Counsel for Chile.

You will please take notice that depositions of witnesses will be taken in the above entitled case in behalf of the claimants, in the city and county of New York in the State of New York at the office of Nathaniel Prentiss, No. 120 Broadway, New York, on the 10th day of January, 1894, between the hours of 9 A. M. and 6 P. M.,

and continuously from day to day, between the same hours, till completed. The names and residences of said witnesses and the subjects on which they will be examined are as follows:

Henry Chauncey, of Garden City, N. Y. Henry M. Barnes, of Brooklyn, N. Y. and Charles H. Coster, of New York City.

And the subjects of the examination: The citizenship and residence of the claimants or of the members of the firm of Alsop and Company at the time the claim herein originated and at the time of filing the memorial herein, transfers or devolutions of interest in said claim and causes, nature and amount thereof, amounts of money or indemnity if any received on account of said claim and efforts made to recover the same in any tribunal or elsewhere.

GEORGE H. SHIELDS,
Agent and Counsel for the U. S.

Service of a copy of the above notice acknowledged this 29th day of December, 1893, at Washington, D. C.

J. F. VEGARA DONOSA,
Agent and Counsel for Chile.

| | | |
|------------------------|---|-------|
| HENRY CHAUNCEY | } | No 3. |
| <i>vs.</i> | | |
| THE REPUBLIC OF CHILE. | | |

Before the United States and Chilean Claims Commission.

Depositions of witnesses taken in above entitled cause on behalf of the United States and the claimant, in pursuance of the annexed notice, at the office of Nathaniel A. Prentiss, No. 120 Broadway, New York, on the 10th of January, 1894, between the hours of 9 a. m. and 6 p. m. of that day, before me, Nathaniel S. Smith, a Notary Public in and for the City and County of New York.

Appearances as follows: On the part of the claimant and the United States Nathaniel A. Prentiss, Esq., who was duly appointed to represent the United States in taking these depositions; on the part of the Republic of Chile S. G. Hopkins Esq.,—who was duly appointed to represent said Republic in the taking of these depositions.

HENRY CHAUNCEY, of lawful age, being produced as a witness on behalf of the claimant and the United States, and being duly sworn by me to tell the truth, the whole truth and nothing but the truth relative to the said matter in which he was about to testify, deposed and saith as follows:

(Mr Prentiss files his authorization to appear for the U. S. Government and the claimant, marked Exhibit 1.)

Q. What is your name and residence and occupation?—A. Henry Chauncey, resides at Garden City, Long Island, and have no occupation, am retired merchant.

Q. Were you a member of the firm of Alsop & Company of Valparaiso in 1876?—A. I was.

Q. And prior to that time?—A. I have been a member of it since the death of my father in 1865, I think it was.

Q. And were such a member until the firm went into liquidation?—A. I was.

Q. And are still?—A. And am still.

Q. What countryman are you Mr Chauncey, as to your citizenship?—A. A citizen of the United States.

Q. Native born?—A. Native born.

Q. Never renounced that allegiance?—A. Never.

Q. Who composed that firm in 1876?—A. It is on record that the articles of co-partnership had been filed; Joseph W. Alsop, Edward McCall, George G. Hobson, George J. Foster Theodore W. Riley, Henry S. Prevost, Henry Chauncey, John Wheelwright, George Frederick Hoppin and Henry W. Alsop.

Q. Please state if you know, which of those individuals and how many of them were American citizens in 1876?—A. All were American citizens to the best of my knowledge and belief.

Q. Please to state where they and each of them resided in 1876 if you know?—A. Joseph W. Alsop resided in New York; Edward McCall had died previously to 1876; George G. Hobson resided in Leamington, England; George J. Foster resided in New York, Theodore W. Riley was dead, Henry S. Prevost resided in Lima, John Wheelwright was at La Paz, Bolivia; George Frederick Hoppin in Valparaiso, Chili, and Henry W. Alsop lived in New York State, and Henry Chauncey was temporarily residing in London, England.

Q. Please to state, if you know, how many of those partners were alive on the date of filing this memorial, that is in October last?—A. All were dead excepting Henry S. Prevost, Henry W. Alsop and myself.

Q. Please to state if you know, where Henry S. Prevost was residing at that time?—A. At Lima, Peru.

Q. And also if you know, please to state where Henry W. Alsop was then residing?—A. At Moorhead, Minnesota.

Q. You have an interest in this claim as one of the surviving partners, have you not Mr. Chauncey?—A. I have.

Cross-examination, by Mr. Hopkins:

Q. Mr Chauncey how do you know that the members of the firm of Alsop & Company, of which you have just spoken, were all citizens of the United States?—A. I have always heard that they were, and have never heard anything to the contrary.

Q. You have no personal knowledge as to their birth?—A. I was not present at their birth.

Q. You only testify then from common report?—A. Well, it is rather more than common report, some of them I have seen voting, and have always heard that they were citizens of the United States.

Re-direct examination:

Q. Mr Chauncey, Mr Joseph W. Alsop and Mr Henry W. Alsop were relatives of yours were they not?—A. Yes.

Q. And also Mr George Frederick Hoppin was distantly connected, was he not?—A. He was.

Q. Were you personally associated with all of these gentlemen in business for many years?—A. From my father's death I had a share in Alsop & Company and it continued up to the time of liquidation.

Q. That was from when to when?—A. From 1865 to 1876, I had intimate business relations in that way with Alsop & Company.

(Signed.) HENRY CHAUNCEY

It is stipulated by the respective parties that the stenographer's minutes of testimony when written out by typewriter, may be signed by the witness with the same force and effect as if taken in script and signed by him.

HENRY CHAUNCEY

CITY AND COUNTY OF NEW YORK, ss:

I certify that the above witness, Henry Chauncey a resident of Garden City, Long Island, N. Y. were by me duly sworn as required in Rule XII of the Rules governing the United States and Chilean Claims Commission under the Convention of August 7, 1892, between the United States and the Republic of Chile, the questions asked and the answers which were given thereto were taken by a stenographer in the presence of the counsel for the respective parties, and typewritten by her in pursuance of the foregoing stipulation, and that the witness signed his name thereto in my

presence; that said deposition was taken at the time and place and between the hours specified in the annexed notice.

IN WITNESS WHEREOF I hereto sign my name as Notary Public aforesaid, having no official seal.

Done in the city of New York State of New York this 10th day of January 1894

NATH'L S SMITH,
Notary Public (288)
N Y Co

STATE OF NEW YORK, }
City and County of New York, }^{ss}

I, Henry D. Purroy, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, DO HEREBY CERTIFY, That Nath'l S Smith before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said City and County, duly appointed and sworn, and authorized to administer oaths to be used in any Court in said State, and for general purposes; that I am well acquainted with the handwriting of said Notary, and that his signature thereto is genuine, as I verily believe.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the said Court and County, the 10 day of January 1894.

[SEAL.]

HENRY D. PURROY, *Clerk.*

DEC. 29—93.

Nathaniel A Prentiss Esq. is authorized to represent the United States in taking the depositions in the case of Henry Chauncey vs. The Republic of Chile in New York January 10th, 1894.

(Signed.) GEO. H. SHIELDS, *Agt. U. S.*

Unnumbered Exhibit Filed January 13, 1894.

Copy]

No. 314.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, 22nd June, 1892.

Honorable WILLIAM F. WHARTON,

Acting Secretary of State,
Washington, D. C.

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 contracts 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.

I remain Sir,

YOUR OBEDIENT SERVANT,

Patrick Egan.

Enclosures:

No. 1 note Señor Errazuriz to Mr. Egan

2 Translation No 1

3 note of Mr Egan to Señor Errazuriz.

[Enclosure No. 1 in No. 314.]

Copy]

[No. 1284.]

REPUBLICA DE CHILE
MINISTERIO DE RELACIONES ESTERIORES,

Santiago, 18 de Junio de 1892.

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

Alude V. S. a su comunicacion 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

exije el pago de una suma ascendiente a 835,000 pesos bolivianos con un interes anual del 5% a partir de 1876.

Manifiesta que esta deuda fué solemnamente reconocida por el Gobierno de Bolivia en la forma que V. S. indica i que, a consecuencia de la ocupacion de Tacna i Arica par las fuerzas Chilenas los convenios celebrados con Bolivia fueron “arbitrariamente desconocidos por el Gobierno de Chile.”

Agrega V. S. algunos antecedentes de este asunto, cuya solucion, segun V. S. se sirve espresarlo, del Gobierno de V. S. ha retardo varias veces por consideraciones de amistad hácia el Gobierno i pueblo chilenos i termina pidiendo al Gobierno de Chile que tome en consideracion este reclamo en cualquier arreglo que celebre con Bolivia.

En respústa, tengo el agrado de manifestar a V. 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 Alsóp i Cia., que V. S. amparaba por la suma indicada por V. S. o sea la de \$835,000 bolivianos.

En cuanto al pago de interes a que V. S. hace referencia, el Gobierno del infrascrito espera que la negociacion secundaria se haga ante el Gobierno ante el Gobierno que reconoció la obligacion 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 V. S., a ofrecer que tomaré mui en cuenta la resolucion que adopte el Gobierno boliviano acerca de 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 en asunto a que se refiere la comunicacion de V. S. a que tengo la honra de dar respuesta.

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

ISIDORO ERRAZURIZ.

Al Enviado Estraordinario i Ministro Plenipotenciario de los Estados Unidos de Norte America—

Señor PATRICK EGAN.

[Enclosure No. 2 in No. 314.]

[Translation.]

No. 1284.]

REPUBLIC OF CHILE
DEPARTMENT OF FOREIGN RELATIONS,
Santiago, 18th June 1892.

SIR: I have had the honor to receive Y.E.'s communication dated 3rd 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 the 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 pesos 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 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 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 Chile 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 of the opportunity, Mr. Minister, to offer to Y. E. the assurances of my high consideration.

ISIDORO ERRAZURIZ.

Mr. PATRICK EGAN,

*The Envoy Extraordinary and Minister Plenipotentiary
of the United States of North America.*

[Enclosure No 3 in No 314.]

LEGATION OF THE UNITED STATES,

[Copy.]

Santiago, Chile, 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 Chili 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 Compañía el capital de ochocientos

trienta y cinco mil bolivianos con el interes anual del cinco por ciento, no capitalizable, que correrá 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 Señor Ministro de Hacienda i Industria, Doctor Manuel Ignacio Salvatierra, en representacion de los intereses nacionales y el Señor Juan Wheelwright, socio i representante de los Señores Alsop y Compañía 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 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 Minister in connection with this same case.

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

I have the honor to remain, Y. E. obedient servant,

(Signed.) PATRICK EGAN.

Honorable ISIDORO ERRAZURIZ,

Minister of Foreign Relations.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I Certify That the documents hereto annexed are true copies from the files of this Department.

In testimony whereof I, Walter Q. Gresham Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 13th day of January, A. D., 1894, and of the Independence of the United States of America the one hundred and eighteenth.

[SEAL OF DEPARTMENT OF STATE.]

W. Q. GRESHAM.

Unnumbered Exhibit Filed March 5, 1894.

[Translation.]^a

[Taken from the "Diario Oficial," No. 2292, dated Santiago, 9th December, 1884.]

Ministry of Foreign Affairs and Colonization. Domingo Santa Maria, President of the Republic of Chili.

^a For Spanish text, see Exhibit 7, p. 165, *supra*.

Inasmuch as the Republic of Chili and the Republic of Bolivia concluded and signed at Valparaiso, on the 4th and 8th days of April of the present year, by means of plenipotentiaries duly authorized for the purpose, the Treaty of Truce and the additional protocol which, copied literally, state as follows:

PACT OF TRUCE BETWEEN CHILI AND BOLIVIA.

Until the opportunity arrives of celebrating a definite treaty of peace between the Republics of Chili and Bolivia, both countries being duly represented—the first, by the Minister of Foreign Affairs, Mr. Aniceto Vergara Albano; and the second, by Messrs. Belisario Salinas and Belisario Boeto—have, in the meantime, agreed in adjusting a pact of truce in conformity with the following bases:

First.—The Republics of Chili and Bolivia celebrate an indefinite truce, and, consequently, declare that the state of war is finished, and that neither of the contracting parties can return to it without notifying the other, at least one year in advance, of its resolution to resume hostilities. The notification, in this case, shall be made direct, or by means of the diplomatic representative of a friendly nation.

Second.—The Republic of Chili, during the existence of this truce, shall continue to govern, in conformity with the political and administrative system which the Chilean law establishes, the territories comprised from the twenty-third parallel up to the mouth of the river Loa in the Pacific, the eastern limit of said territories being a straight line, starting from Sapalegui from the intersection with the boundary which divides them from the Argentine Republic to the volcano of Licancaur. From this point it will follow in a straight line to the summit of the extinct volcano Cabana. From this it will follow another straight line, up to the spring of water which is most to the south at the Ascotan Lake; and from this point another straight line, which, crossing the length of the said lake, may terminate at the volcano Ollagua. From this point another straight line, to the volcano Tua; after which it will follow the existing dividing line between the Department of Tarapaca and Bolivia.

In the event of difficulties arising, both parties shall name a commission of engineers to fix the limit now traced, subject to the points here specified.

Third.—The properties sequestered in Bolivia from Chilean citizens by decrees of the Government, or by measures emanating from

civil and military authorities, shall be immediately returned to their owners or to the representatives constituted by them, with sufficient powers.

The product which the Government of Bolivia may have received from said properties, and which may be proved by documents relating thereto, shall likewise be returned.

The losses which may have been suffered by Chilian citizens through the causes mentioned, or by the destruction of their properties, shall be indemnified in virtue of the demands which the interested parties shall bring before the Government of Bolivia.

Fourth.—If the Government of Bolivia and the parties concerned should not come to an agreement respecting the amount and indemnity for losses and the manner of payment, the points at issue shall be submitted to the arbitration of a commission composed of one member named by Chili, another by Bolivia, and a third named in Chili, by mutual accord, from amongst the neutral representatives accredited to this country. This nomination shall be made as soon as possible.

Fifth.—The commercial relations between Chili and Bolivia are re-established. In future, the natural products of Chili, and those manufactured from them, shall enter Bolivia free of all Custom House duties, and the Bolivian products of the same class and those manufactured in the same way, shall enjoy an equal franchise in Chili, whether imported or exported through Chilian ports.

The commercial franchises, of which the manufactured products of Chili and Bolivia are respectively to benefit, as also the enumeration of these products, shall be the subject of a special protocol.

Nationalized merchandise, which may be introduced through the port of Arica, shall be considered as foreign merchandise in regard to its importation.

Foreign merchandise, which may be introduced into Bolivia through Antofagasta, shall have free transit, without prejudice to the measures which the Chilian Government may take to prevent contraband. While there is no convention to the contrary, Chili and Bolivia shall enjoy the commercial advantages and exemptions which either the one or the other may grant to the most favored nation.

Sixth.—In the port of Arica the import duties on foreign goods destined for consumption in Bolivia shall be recovered in conformity with the Chilian tariff, and these goods shall not be subject to the imposition of any other duty in the interior. The returns of that Custom House shall be divided in this manner: Twenty-five

per cent. shall be applied to the service of the Custom House and to the part which corresponds to Chili for the despatch of the merchandise for consumption in the territories of Tacna and Arica, and seventy-five per cent. for Bolivia. This seventy-five per cent. shall be divided, for the present, in the following manner: Forty parts shall be retained by the Chilian Administration for the payment of the sums which may result as owing by Bolivia in the settlements which may take place, according to the third clause of this pact, and to cover the unpaid part of the Bolivian Loan raised in Chili in 1867, and the balance shall be delivered to the Bolivian Government in currency or in drafts to its order. In the settlement and payment of the loan, it shall be considered on equal terms with the claimants for damages in the war.

The Bolivian Government, at its convenience, can inspect, by means of its Customs' Agents, the accounts of the Arica Custom House.

When the indemnities referred to in the third article have been paid, and the retention of the aforesaid fortieth part shall, on this account, have ceased, Bolivia can establish her interior Custom Houses in the part of her territory which she may deem convenient. In this case foreign merchandise shall have free transit through Arica.

Seventh.—Acts of the subordinate authorities of either country which may tend to alter the situation created by the present Pact of Truce, especially as regards the limits of the territories which Chili continues to occupy, shall be repressed or punished by the respective Governments, proceeding officially or at the request of the interested party.

Eighth.—As the object of the contracting parties, in celebrating this Pact of Truce, is to prepare and facilitate the adjustment of a solid and permanent peace between the two Republics, they reciprocally compromise themselves to pursue the negotiations conducive to this end.

This Treaty shall be ratified by the Government of Bolivia in the term of forty days, and the ratifications exchanged in Santiago within the month of June next.

In testimony of which, the Minister of Foreign Affairs of Chili, and the Plenipotentiaries of Bolivia who presented their respective credentials, sign in duplicate the present Treaty of Truce in Valparaiso on the fourth day of the month of April, one thousand eight hundred and eighty-four.

(Signed.)

A. VERGARA ALBANO.

(Signed.)

BELISARIO SALINAS.

(Signed.)

BELISARIO BOETO.

ADDITIONAL PROTOCOL TO THE PACT OF TRUCE BETWEEN CHILI
AND BOLIVIA.^a

In Valparaiso, on the eighth day of the month of April, one thousand eight hundred and eighty-four, at a meeting held in the Ministry of Foreign Affairs between the Minister of that Department and the Envoys of Bolivia, the latter stated:

That, after having signed the Pact of Truce, they observed that the term fixed for the exchange of the ratifications was limited, since the Congress of Bolivia would open its annual sessions in the month of August, and before that time it would be very difficult to arrange that it should meet.

That they solicited, consequently, that the term for the said exchange should be extended up to the month of September next inclusive, but nevertheless if, by any circumstance, the Bolivian Congress should previously meet, the Pact of Truce would be submitted for its information; and that, with regard to the approval of it on the part of the Government, they believed it would be obtained within the time specified, and that, this being secured, they were of opinion that there would be no objection in having the said Pact at once carried into effect.

The Minister of Foreign Affairs answered: That in view of the explanations and reasons expressed, he would defer with pleasure to the indication of the Ministers Plenipotentiaries of Bolivia.

The Minister of Foreign Affairs then stated that, according to the different versions ascribed to the sixth clause, in the part referring to the division which, for the present, is to be made of the seventy-five per cent. corresponding to Bolivia, it might be interpreted in a sense contrary to the wish of the contracting parties; and that, to avoid all difficulty in future, he considered it necessary that it should be declared that, of the total of the receipts of the Arica Custom House, twenty-five per cent. corresponded to the Government of Chili, forty per cent. for the indemnities, of which the third clause speaks, and the payment of the Bolivian Loan of 1867, and thirty-five per cent. to the Government of Bolivia, thus completing the one hundred per cent. which was taken to begin with.

The Bolivian Ministers expressed their conformity with this declaration, since that was the spirit of the sixth clause, and what was agreed upon at the conferences which preceded the Pact of Truce.

^a For Spanish text, see Exhibit 7, p. 167, *supra*.

Finally it was agreed to subscribe the present Supplementary Protocol of the Pact of Truce, signing, in fact, two copies of the same tenor.

| | |
|-----------|--------------------|
| (Signed.) | A. VERGARA ALBANO. |
| (Signed.) | BELISARIO SALINAS. |
| (Signed.) | BELISARIO BOËTO. |

And inasmuch as the foregoing Treaty and Protocol have been ratified by me after the approval of the National Congress, and the respective ratifications have been exchanged in this City of Santiago, on the 29th day of November last, between the Plenipotentiaries of both countries;

Therefore, making use of the authority which the nineteenth part of the 82d Article of the Political Constitution of the State confers upon me, I direct and order that the said Treaty and Protocol be complied with and carried into effect in all its parts as a Law of the Republic.

Signed in my official Cabinet, on the second day of the month of December, of the year one thousand eight hundred and eighty-four.

DOMINGO SANTA MARIA.
A. VERGARA ALBANO.

I, David Sim, of Antofagasta, in the Republic of Chili, gentleman, make oath and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.
3. That I have carefully examined and compared the paper writing in the English language hereunto annexed, and headed "Ministry of Foreign Affairs and Colonization," and consisting of pages Nos. 1 to 9 inclusive, with the corresponding printed paper in the Spanish language, which has been produced to me in Antofagasta aforesaid by Mr. John Wheelwright, for the purpose of my making the said comparison.
4. That the said paper writing hereunto annexed, and so as aforesaid headed "Ministry of Foreign Affairs and Colonization," is a correct and faithful translation into the English language of the said printed paper of which it purports to be a translation.

DAVID SIM.

Sworn at Antofagasta, in the Republic of Chili, this thirteenth day of April, one thousand eight hundred and eighty-five. Before me,

[Seal.]

JOHN BARNETT,
British Vice-Consul.

I, John Barnett, Esquire, British Vice-Consul at Antofagasta, do hereby certify that Mr. David Sim is well known to me, and that he is well acquainted with the English and Spanish languages, and is a fit and competent person to make translations referred to in the before written affidavit.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Antofagasta, this thirteenth day of April, one thousand eight hundred and eighty-five.

[Seal.]
No. 464.]

JOHN BARNETT,
British Vice-Consul.

Ramon Rivera Jofré, Gobernador Civil y Comandante Jeneral de Armas de Antofagasta (Chile) certifica: que la firma puesta al pie del documento precedente, es la que usa en sus actos publicos don Juan Barnett, Vice-Consul de S. M. B. en este puesto.

Antofagasta, Abril 15 de 1885.

[Stamp.]

R. RIVERA JOFRÉ.

I, the undersigned, Consul of the United States of America for Iquique and the dependencies thereof, do hereby certify that the foregoing signature is that of R. Rivera Jofré, the Poticial and Military Governor of Antofagasta of my Consular jurisdiction.

[Seal.]
[Stamp.]

J. W. MERRIAM,
U. S. Consul.

Iquique 18th April, 1885.

[Translation.]

[From "El Mercurio" of Valparaiso of the 3d June, 1885, and "Diario Oficial," No. 2432.]

COMPLEMENTAL PROTOCOL OF THE TREATY OF TRUCE BETWEEN CHILI AND BOLIVIA.

To-day the following has been made public:

In Santiago, on the 30th day of the month of May of 1885, there being assembled in the office of the Ministry of Foreign Affairs of Chili, the Minister of that Department, Mr. Aniceto Vergara Albano, and the Envoy Extraordinary and Minister Plenipotentiary of Bolivia, Mr. Aniceto Arce, with the object of obviating any difficulty which might present itself in the execution of the stipulations contained in the pact of truce of the 4th of April, 1884, and

of determining the commercial franchises which the manufactured products of both countries may have to enjoy, according to the nomenclature which is actually about to be made, they resolved the following:

First.—That thirty-five per cent. of the Customs revenue of Arica, which corresponds to Bolivia, according to what is established in the 6th article of the said pact of truce, should be deposited monthly in the Bank or a commercial house of Tacna, or may be delivered to the person whom the Government of Bolivia may appoint, to which effect official notice shall be given to that of Chili of the determination which the former have taken in this respect.

Secondly.—That the forty per cent. of the product of the revenue of the said Custom House, destined to pay the indemnities to which the 3d and 6th articles of the pact of truce refer, should likewise be deposited monthly in the National Bank of Chili, at the disposition of the Chilean Government, which then remains exempt from all responsibility, whatever may be the circumstances which may happen. This deposit, together with its interest, shall be distributed "*pro rata*" between the interested parties who shall have obtained from the Government of Bolivia the liquidation of their credits, or who shall obtain it from the Commission of Arbitration established by the 4th article of the forecited pact.

Thirdly.—For the effects of the disposition contained in the 4th article of the said Treaty of Truce, it is declared that the third member of the Commission of Arbitration, which shall have to estimate and decide the claims deduced by Chilean citizens against the Government of Bolivia, shall only enter upon the exercise of his functions when, in the appreciation of any of the claims, disagreement may be produced between the Commissioners named on the part of Chili and Bolivia.

Fourthly.—That the Government of Bolivia, for the effects of what is stipulated in the 2d paragraph of the 6th article of the said pact, shall constitute a Customs agent when it may deem it convenient, giving information thereof to the Government of Chili. This agent shall have power to take cognizance of the accounts of the Arica Custom House, previous official notice being given to the Intendant of the Province and the Administrator of the Custom House, in order that the books and documents which he may desire to become cognizant of and inspect may be placed at his disposition.

If the person appointed should wish to take copy of the liquidated policies of the goods which the Custom House might have dispatched for the interior of Bolivia, the said copies shall be furnished, also that of any other document of which he should deem it opportune to give account to his Government.

Fifthly.—The dispatch of correspondence and transportation of the mails between Chili and Bolivia shall be subject to the same system of reciprocity as is observed and is in force between Chili and the Argentine Republic.

Sixthly.—The repair and conservation of the roads of Antofagasta to Potosi, and of Tacna to La Paz, being of urgent necessity, as well as the establishment of telegraphic lines which may run parallel to these roads, the Governments of Chili and Bolivia compromise themselves to expend the sum which these works may demand, within the territory subject to the jurisdiction of each, the transit of the roads remaining free from all toll, and the telegraphic lines being subject to the tariff of charges which each Government may deem convenient to establish.

Seventhly.—It is declared that the articles which are enumerated in continuation are free of all export or import duty, in conformity with what is stipulated in the 5th article of the already mentioned pact.

(Here follows a list of the articles referred to).

Consequently, the Minister of Foreign Affairs of Chili and the Envoy Extraordinary and Minister Plenipotentiary of Bolivia, duly authorized for the purpose by their respective Governments, sign the present protocol in duplicate, and seal it with their private seals.

| | | |
|---------|-----------|--------------------|
| [SEAL.] | (Signed.) | A. VERGARA ALBANO. |
| [SEAL.] | (Signed.) | ANICETO ARCE. |

I, David Sim, of Antofagasta, in the Republic of Chili, gentleman, make oath and say as follows:

1. That I am now of the age of fifty-three years and upwards.
2. That I am well acquainted with the English and Spanish languages.

3. That I have carefully examined and compared the paper writing in the English language hereunto annexed, headed "Complemental Protocol of the Treaty of Truce between Chili and Bolivia," and consisting of four pages, with the corresponding printed paper in the Spanish language, which has been produced to me in

Antofagasta, aforesaid, by Mr. John Wheelwright, for the purpose of my making the said comparison.

4. That the said paper writing hereunto annexed, and so, as aforesaid, headed "Complemental Protocol of the Treaty of Truce between Chili and Bolivia," is a correct and faithful translation into the English language of the said printed paper of which it purports to be a translation.

DAVID SIM.

Sworn at Antofagasta, in the Republic of Chili, this ninth day of June, one thousand eight hundred and eighty-five, before me

BRITISH VICE-CONSUL.

I, John Barnett, Esquire, British Vice-Consul at Antofagasta, do hereby certify that Mr. David Sim is well known to me, and that he is well acquainted with the English and Spanish languages, and is a fit and competent person to make the translations referred to in the above or before written affidavit.

In testimony whereof, I have hereunto set my hand and affixed my seal of office at Antofagasta, this ninth day of June, one thousand eight hundred and eighty-five.

BRITISH VICE-CONSUL.

Unnumbered Exhibit, Filed March 13, 1894.

TREASURY DEPARTMENT,
BUREAU OF THE MINT,
Washington, D. C., March 10, 1894.

GEORGE H. SHIELDS, Esq.,
*Agent and Counsel for the United States,
U. S. and Chilean Claims Commission,
Washington, D. C.*

SIR: In answer to your request of March 8th, for a statement of the gold value of the Peruvian dollar for each year from 1882 to the present time, I enclose herewith a table giving the desired information. In this connection I would say that under the act approved October 1, 1890, the Director of the Mint is required to estimate the values of foreign coins quarterly, instead of annually, as heretofore.

Very respectfully,

R. E. PRESTON,
Director of the Mint.

Gold value of the Peruvian sol, from 1882 to March 9th, 1894, inclusive.

| Year. | Value. | Year. | Value. |
|----------------------|----------|----------------------|----------|
| 1882..... | \$o. 823 | 1891, July 1..... | \$o. 736 |
| 1883..... | . 812 | " " October 1..... | . 723 |
| 1884..... | . 806 | 1892, January 1..... | . 691 |
| 1885..... | . 795 | " " April 1..... | . 665 |
| 1886..... | . 751 | " " July 1..... | . 649 |
| 1887..... | . 727 | " " October 1..... | . 616 |
| 1888..... | . 699 | 1893, January 1..... | . 613 |
| 1889..... | . 680 | " " April 1..... | . 610 |
| 1890, January 1..... | . 698 | " " July 1..... | . 604 |
| " " October 1..... | . 850 | " " October 1..... | . 531 |
| 1891, January 1..... | . 771 | 1894, January 1..... | . 516 |
| " " April 1..... | . 735 | " " March 9..... | . 435 |

I certify that the above is correct.

R. E. PRESTON,
Director of the Mint.

BUREAU OF THE MINT.

Unnumbered exhibit filed March 13, 1894.

El Eccmo Gobierno de Bolivia en cta cte con Alsop y Cia en Liquidacion, Cuenta Intereses.

| | | Debe. | Haber. |
|---------------|--|--------------|--------|
| Dicbre 26/76. | A Importe intereses devengados en esta fecha | B/ 230000 | |
| | " Intereses sobre esta suma hasta la fecha 15½ años al 5%..... | " 178250 | |
| | | B/. 408250 | |
| Junio 30/92 | A 408,250 Bolivianos al cambio de % en moneda Chilena: | | |
| " " " | Por 50% del producto neto de la mina, Estaca de Instruccion "Flor del Desierto," hasta la fecha..... | \$92,040. 75 | |
| " " " | " 40% del producto neto de la mina Estaca de Instruccion "Disputa" hasta la fecha..... | 42,702. 53 | |
| " " " | " Saldo para igualar. | | |

Junio 30/92 A. Saldo en contra a la fecha.

S. E. ú O.

Valparaiso, Junio 30 de 1892.

J. STEWART 2º JACKSON,
Liquidador de Alsop y Cia.

Cuenta Corriente de la Estaca de Instruccion de la mina "Flor del Desierto" en 30 de Junio de 1892.

| | | Debe. | Haber. |
|--|--|----------------|----------------|
| 1892. | | | |
| Junio 30 | Por Producto Liquido hasta la fecha segun Estado | ----- | \$234, 584. 78 |
| " " | A 20% del producto liquido \$234.584.78 pagado á la Comp ^a Esplotadora de Caracoles por el uso del pique de la mina "Calameña" para la extraccion de los metales segun contrato | 46, 916. 95 | |
| " " | " Gastos sobre remate de la estaca | 6. 55 | |
| " " | " Intereses devengados en diversas ocasiones segun memorias de Caracoles | 1, 426. 86 | |
| " " | " id id segun libros de Sothers y Cia | 2, 152. 92 | |
| " " | " Saldo | 184, 081. 50 | |
| | | ----- | ----- |
| | | \$234, 584. 78 | \$234, 584. 78 |
| Por saldo siendo Ganancia hasta la fecha | | ----- | 184, 081. 50 |

S. E. ú O.

Valparaiso, Junio 30 de 1892.

J. STEWART 2º JACKSON,
Liquidador de Alsop y Cia.

*Estado de Gastos y Productos de la Estaca de Instruccion de la mina "Flor del Desierto"
desde su principio hasta el 30 de Junio 1892.*

| Año | Epoca | Productos | Gastos | Ganancias liquidas | Perdidas liquidas |
|--|--------------|--------------|--------------|-----------------------|----------------------|
| 1877 | 1er Semestre | \$8,307.03 | \$8,474.37 | | \$167.34 |
| " | 20 " | 3,058.46 | 5,168.46 | | 2,110. " |
| 1878 | 1er " | 99.87 | 2,034.88 | | 1,935.01 |
| " | 20 " | 30,070.78 | 11,178.81 | \$18,891.97 | |
| 1879 | 1er " | 115,322.96 | 20,935.53 | 94,387.43 | |
| " | 20 " | 59,789.69 | 21,572.52 | 38,217.17 | |
| 1880 | 1er " | 11,859.54 | 16,907.45 | | 5,047.91 |
| " | 20 " | 11,304.62 | 16,065.34 | | 4,760.72 |
| 1881 | 1er " | 48,230.43 | 24,630.94 | 23,599.49 | |
| " | 20 " | 57,140.93 | 28,599.48 | 28,541.45 | |
| 1882 | 1er " | 4,634.43 | 19,045.55 | | 14,411.12 |
| " | 20 " | 33,620.29 | 24,314.37 | 9,305.92 | |
| 1883 | 1er " | 63,178.20 | 37,585.52 | 25,592.68 | |
| " | 20 " | 17,535.65 | 33,294.61 | | 15,758.96 |
| 1884 | 1er " | 8,583.67 | 12,514.14 | | 3,930.47 |
| " | 20 " | 19,745.27 | 10,560.87 | 9,184.40 | |
| 1885 | 1er " | 22,156.95 | 13,202.91 | 8,954.04 | |
| " | 20 " | 9,142.76 | 7,885.49 | 1,257.27 | |
| 1886 | 1er " | 8,635.61 | 7,224.13 | 1,411.48 | |
| " | 20 " | 5,832.76 | 6,332.47 | | 499.71 |
| 1887 | 1er " | 3,411.32 | 3,313.17 | 98.15 | |
| " | 20 " | 737.76 | 2,197.49 | | 1,459.73 |
| 1888 | 1er " | 288.71 | 1,329.62 | | 1,040.91 |
| " | 20 " | | 1,309.29 | | 1,309.29 |
| 1889 | 1er " | | 602.62 | | 602.62 |
| " | 20 " | | 68.73 | | 68.73 |
| 1890 | 1er " | 512.09 | 401.95 | 110.14 | |
| " | 20 " | 16,367.59 | 11,966.98 | 4,400.61 | |
| 1891 | 1er " | 26,928.76 | 18,107.34 | 8,821.42 | |
| " | 20 " | 29,886.14 | 18,600.07 | 11,286.07 | |
| 1892 | 1er " | 14,157.27 | 10,529.66 | 3,627.61 | |
| Saldo siendo Producto Liquido hasta el 30 de Junio 1892 | | | 234,584.78 | | 234,584.78 |
| | | \$630,539.54 | \$630,539.54 | \$287,687.30 | \$287,687.30 |
| Saldo siendo Producto Liquido | | | | \$234,584.78 | |

S. E. ú O.

Valparaíso, Junio 30 de 1892.

J. STEWART 2º JACKSON,
Liquidador de Alsop y Cia.

Estado de los Gastos y Productos de la Estaca de Instruccion de la Mina "Disputa" desde su principio hasta 30 de Junio de 1892.

| Año | Epoca. | Productos | Gastos | Ganancia Líquida | Pérdida Líquida |
|------|---|--------------|--------------|---------------------|--------------------|
| 1881 | 1er Semestre | \$30,478.02 | \$12,592.53 | \$17,885.49 | |
| " | 2o " | 33,227.26 | 9,442.60 | 23,784.66 | |
| 1882 | 1er " | 7,476.75 | 9,643.83 | | \$2,167.08 |
| " | 2o " | 26,755.84 | 18,751.14 | 8,004.70 | |
| 1883 | 1er " | 3,206.86 | | 3,206.86 | |
| " | 2o " | 2,653.22 | 12 | 2,641.22 | |
| 1884 | 1er " | 2,551.51 | | 2,551.51 | |
| " | 2o " | 1,060.99 | 200 | 860.99 | |
| 1885 | 1er " | 180.34 | 13.46 | 166.88 | |
| 1890 | el año | 12,336.42 | | 12,336.42 | |
| 1891 | el año | 26,194.35 | 20.90 | 26,173.45 | |
| 1892 | 1er Semestre | 11,311.22 | | 11,311.22 | |
| | Saldo siendo el Producto Líquido hasta 30 de Junio de 1892 | | 106,756.32 | | 106,756.32 |
| | | \$157,432.78 | \$157,432.78 | \$108,923.40 | \$108,923.40 |
| | Saldo siendo Producto Líquido | | | \$106,756.32 | |

S. E. ú O.

Valparaiso, Junio 30 de 1892.

J. STEWART 2º JACKSON,
Liquidador de Alsoy y Cía

Estados de Gastos y Productos de las siguientes Estacas de Instruccion trabajadas por el Liquidador de Alsop y Cia en liquid.

| | Debe | Haber |
|-------------------------------|------------|------------|
| Estaca "Acullico"----- | \$23 | |
| " "Al fin Hallada"----- | | \$7,144.70 |
| " "Alhambra"----- | 4.30 | |
| " "Amelia"----- | 7.10 | |
| " "Andacollo"----- | 17.60 | |
| " "Araña"----- | 3.95 | |
| " "Aventura"----- | 4.20 | |
| " "Beneficiadora"----- | 81.55 | |
| " "Blanca Torre"----- | 918.95 | |
| " "Buena Esperanza"----- | 13.10 | |
| " "California"----- | 1.60 | |
| " "Candelaria"----- | 15.85 | |
| " "Candeleros"----- | 53.15 | |
| " "Carmen de Bonilla"----- | 6.20 | |
| " "Cautiva"----- | 20 | |
| " "Chilena"----- | 1.50 | |
| " "Compania"----- | 228.39 | |
| " "Consoladora"----- | 2 | |
| " "Desempeño"----- | 832.01 | |
| " "Dolora"----- | 4.75 | |
| " "Dorita" (antes Paris)----- | 5.10 | |
| " "Dos Amigos"----- | 17 | |
| " "Empalme"----- | 363.60 | |
| " "Ernestina"----- | 4 | |
| " "Escapada"----- | 47.60 | |
| " "Esmeralda"----- | 3,347.05 | |
| " "Espatriada"----- | 5.10 | |
| " "Esperanza"----- | 2.75 | |
| " "Francholina"----- | 72.95 | |
| A la vuelta----- | \$6,104.35 | "7,144.70 |

Estados de Gastos y Productos de las siguientes Estacas de Instruccion trabajadas por el Liquidador de Alsop y Cia en liquid—Continúa.

| | Debe | Haber |
|--------------------------|-------------|-------------|
| De la vuelta | \$6,104.35 | \$7,144.70 |
| Estaca "Frontera" | 83.15 | |
| " "Garmendia" | 195.07 | |
| " "Gualeva" | 136.35 | |
| " "Hortencia" | 4.25 | |
| " "Independencia" | 1.20 | |
| " "Invitacion" | 1,293.27 | |
| " "Jenerosa" | 1.30 | |
| " "Juana 2a" | 6 | |
| " "Julia" | 97.80 | |
| " "Justicia" | 9,312.90 | |
| " "Lechera" | 3.75 | |
| " "Limari" | 18 | |
| " "Limbo" | 429.88 | |
| " "Litijiosa" | 43.10 | |
| " "Loreto" | 42 | |
| " "Mapocho" | | \$5,813.36 |
| " "Maria Antonia" | 192.97 | |
| " "Maria Mercedes" | 25.50 | |
| " "Maximiliana" | 47.10 | |
| " "Merceditas" | 732.62 | |
| " "Olivia" | 22.50 | |
| " "Renquina" | 7.20 | |
| " "Restauradora" | 12.85 | |
| " "Reventon" | | 24,492.23 |
| " "Rita" | 14.70 | |
| " "Rosa" | 37.50 | |
| " "Rosales" | | 7,650.35 |
| " "Rosario" | 69.70 | |
| " "San Carlos" | 5.50 | |
| A la vuelta | \$18,940.51 | \$45,100.64 |

UNITED STATES CONSULATE,
Valparaiso, Chile.

Before me, Corvis M. Barre, Consul of the United States of America at Valparaiso, personally came and appeared J. Stewart 2° Jackson, of this city, and made oath, in due form of law, that the hereunto annexed accounts and statements bearing his signature as liquidator of Messrs. Alsop and Co. are true and correct.

J. STEWART 2° JACKSON.

Subscribed and sworn to before me this 30th day of June, A. D. 1893.

[L. s.]

CORVIS M. BARRE,
United States Consul.

JOHN WHEELWRIGHT,
Antofagasta.

Antofagasta, Julio 1 de 1893.

Señor PEDRO N. PINEDA,
La Serena.

MUI SEÑOR MIO: En años pasados mientras que Ud servia de abogado i consejero profesional al señor Don Juan Wheelwright, liquidador de la casa de Alsop i Cia. de Valparaiso, en el juicio seguido por dicho señor con los socios de la mina Justicia sobre entrega de una estaca de Instruccion, recayeron las siguientes sentencias. La de primera instancia dada por el señor Juez Tagle Jordan fué favorable, el 14 de Mayo 1881.

La de segunda instancia dada por la Corte de Apelaciones de Serena Mayo 19, 1882 revocó la primera. No dudo que Ud recuerda perfectamente estos hechos, así como que por causa de la indicada resolucion de la Corte de la Serena quedo el juicio definitivamente perdido para el señor Wheelwright. Estimaria a Ud se sirviera espresarme a continuacion la exactitud de lo que déjo espuesto, así como los fundamentos legales de la opinion dada por Ud entonces al señor Wheelwright, de no haber lugar al recurso de nulidad ante la Corte Suprema, i de faltar por consiguiente toda medida legal para emendar la adversa resolucion de la Corte de la Serena.

Pido a Ud éste servicio en interes de la memoria del Señor Juan Wheelwright, i a fin de dejar a salvo ante los que fuéron sus socios toda responsabilidad de su parte por no haber intentado presentar recurso de nulidad a la Corte Suprema, y anticipándole mis agradecimientos por la respuesta, que solicito de Ud en el particular me repito de Ud.

Su aff. i S. S.

(f.) EDUARD JACKSON.

La Serena, Julio 9 de 1893.

S. D. EDUARDO JACKSON,
Antofagasta.

MUI SEÑOR MIO: Contestando a la apreciable de U. que precede, debo decir a U. que, segun mis recuerdos, recayeron en el juicio con los comuneros de la mina Justicia sobre entrega de la Estaca de Instruccion de la misma, las sentencias de 1^a i de 2^a instancia a que U. se refiere.

No se interpuso recurso de nulidad, por que, dadas las circunstancias del caso, ese recurso no era procedente, atendidas las leyes que entre nosotros rijen en esa materia. Esta resolucion se adopto despues de oir sobre el particular, si mal no recuerdo, la opinion de mas de un abogado.

En lo demas, he de espresar a U. que, en mi concepto, el señor Wheelwright hizo cuanto legal i humanamente era posible hacer en defensa de los intereses de Alsop i Ca. en liquidacion que tenia a su cargo. Entre ótras cosas, lo prueban las numerosísimas cuestiones, judiciales o administrativas, algunas de ellas mui laboriosas, que con tal objeto se vió en la precion de sostener.

Creyendo dejar con esto satisfechos sus deseos, me es grato repetirme de U. atento i S. S.

(f.) PEDRO N. PINEDA.

UNITED STATES LEGATION,
Lima, Peru, July 31, 1893.

I hereby certify that on this day appeared before me Henry S. Prevost Esq. a citizen of the United States at present residing in this City to me personally known as one of the partners of the late firm of Messr Alsop and Company established in the City of Valparaiso Chile, and declared under oath that the signature of Eduardo Jackson Esq. at the foot of the first of the two letters hereunto annexed dated Antofogasta, July 1st, 1893, is to his full knowledge and belief the true and genuine signature of Mr Eduardo Jackson who is the person at present in charge of the interests of the liquidation of Messr Alsop and Company in Antofogasta; and further that the signature of Señor Pedro N. Pineda at the foot of the Second Letter aforesaid dated La Serena July 9, 1893, is likewise to his full knowledge and belief the true and genuine signature of Señor Pedro Nolaseo Pineda, a citizen of the Republic of Chile and a Barrister qualified and admitted by and in the exercise of his professional duties before the Courts

of Justice of Chile; who as such Barrister and in his professional capacity was the Advocate and legal adviser of the late John Wheelwright Esq liquidator of the firm of Messrs Alsop and Company in the law suit, between the said John Wheelwright Esq. and the would be owners of the "Estaca Mina Justicia," and also in the various other law suits of a similar nature forced on Mr. Wheelwright, after the occupation of Antofogasta by the Government of Chile, in the defense of his rights emanating from his contract with the Government of Bolivia dated La Paz Bolivia, December 26, 1876, for the working of the "Estaca Minas de Instruccion" of the Government of Bolivia, radicated in the said territory of Antofogasta.

In Witness whereof I hereunto affix my name and the Seal of this Legation on the day and year first above written.

HENRY S. PREVOST.

RICHARD R. NEILL,
U. S. Secretary of Legation.

[SEAL.]

S. D. EDWARD JACKSON,
Antofogasta.

DEAR SIR: Answering your valued favor from which precedes, I should tell you that according to my recollection the sentences of the 1st and 2nd Instance to which you refer were based upon the proceeding against the joint owners of the mine Justicia, regarding the delivery of the estoca of instruction of the same. No petition of nullity was interposed, because considering the circumstances of the case this recourse was not in order taking into consideration the laws which govern among us in this matter.

This resolution was adopted after consulting on the point, if I do not disremember the opinion of more than one lawyer.

Besides, I have to express to you that according to my thinking, Mr. Wheelwright did all that was legally and humanly possible to make the defense of the interests of Alsop & Co. in liquidation, that he held in his charge. Among other things the numerous judicial and administrative questions prove it, some of them very complex, that with such an object he saw himself under the necessity of maintaining.

Believing to leave with this your desires satisfied, it is pleasing to repeat myself your attentive servant.

PEDRO M. PINEDA.

Unnumbered Exhibit Filed March 13, 1894.

UNITED STATES LEGATION,
Lima, Jaunary 8, 1894.

Señor Doctor Don CARLOS M. ESPINOSA,
Attorney at Law,
Pte.

DEAR SIR: I hereby authorize you to represent the interest of the United States in the taking of depositions in Peru in the case of Henry Chauncey *vs* The Republic of Chile now pending before the United States and Chilean Claims Commission—which depositions I am informed by the Peruvian Foreign Office, may be legally taken before Doctor Emiliano A. Carvallo, Judge of the 1st Instance.

You will apply to Doctor Carvallo, for the designation of the time and place for the taking of such depositions, and in order that notice be given to the defendant party, which in this case is the Chilean Legation in this city, of the names of the witnesses who are to depose and of the matters in regard to which they are to testify.

Great diligence should be used in the taking of these depositions considering the shortness of the time within which the same may be available.

You will look to the claimant in this case for your fee.

I have the honor to be, Sir, Your obedient Servant
[SEAL.] J. A. MCKENZIE,
United States Minister.

[Traduccion.]

MINISTERIO DE RELACIONES EXTERIORES,
LEGACION DE LOS ESTADOS UNIDOS,
Lima, Enero 8 de 1894

Sor Dr. Don CARLOS M. ESPINOSA,
Procurador Legal.
Pte.

MUY SEÑOR MIO: Por la presente confiero á V. poder para que represente los intereses de los EE. UU. en las declaraciones que han de tomarse en el Perú, en el caso del Señor Enrique Chanucey con la Republica de Chile actualmente pendiente ante la Comision de reclamos Chileno-Americana; declaraciones que, segun he sido informado por el Ministerio de Relaciones Exteriores del Perú, se prestarán ante el Señor Doctor Don Emiliano A. Carvallo, juez de 1ª Instancia, quien indicará á V. el dia, hora y lugar en que ten-

dran lugar dichas declaraciones, á fin de que se comuniqué á la contraria, que es la Legacion Chilena en esta ciudad, los nombres de los testigos que han de prestar las declaraciones y la materia sobre que estas versan

Es necesario proceder con mucha celeridad en la toma de las declaraciones, vista la cortedad del tiempo util de que se puede disponer.

El demandante en el presente caso satisfará á V. sus honorarios

Tengo el honor de suscribirme de V. muy atto. y S. S.

[L. s.]

(Firma.)

J. A. MCKENZIE,

Ministro de los EE. UU.

Es fiel traduccion.

El traductor oficial,

F. POLACK.

Preguntas que el que suscribe, nombrado al efecto por el Exmo Señor Ministro de los Estados Unidos de América en el Perú, hace al Señor Henrique S. Prevost, á pedimento y por disposicion de la Comision Mixta Arbitral Americano-Chilena, que actualmente funciona en la Ciudad de Washington, y como parte de prueba en el juicio seguido ante dicha Comision por el Señor Henrique Chauncey contra la República de Chile

Primera. Diga el declarante, si tiene interes propio, directo ó indirecto, en el éxito del Juicio que ha entablado el Señor Henrique Chauncey contra la República de Chile, ante la Comision Mixta Arbitral Americano-Chilena, que actualmente funciona en la Ciudad de Washington.

Segunda. Diga así mismo el declarante quienes fueron los socios que constituian la razon social de Alsop i Ca. que estuvo establecida en la plaza de Valparaiso en la República de Chile; Así mismo, cual era la nacionalidad de cada uno de ellos; así mismo, cuales de ellos viven aun, y cual es el punto de actual residencia de cada uno; Y así mismo cual era el punto de residencia de aquellos que aun vivian al tiempo de la ocupacion del puerto de Antofagasta y del territorio litoral de la República de Bolivia, por las fuerzas militares de la República de Chile, á principios del año 1879.

Tercera. Diga así mismo el declarente cual fue la estaca-Mina elejida por los representantes de Alsop i Ca. para su laboreo con el objeto de aplicar el liquido rendimiento de dicho laboreo, junta con el de la estaca-mina "Flor del Desierto" al pago de los intereses atrasados que expresa el contrato de transaccion y

arreglo definitivo celebrado entre el Gobierno de la República de Bolivia y el representante de la Sociedad Alsop i Ca. por instrumento público otorgado en la ciudad de La Paz con fecha 26 de Diciembre de 1876.

Cuarta. Diga así mismo el declarante cuales fueron las estacas-Minas que llegaron á ponerse en explotacion, con el objeto de aplicar el líquido rendimiento de su laboreo al pago del Capital de 835,000 pesos bolivianos, y de los intereses devengables por dicho Capital, segun tambien lo expresa el Contrato de 26 de Diciembre de 1876 celebrado entre el Gobierno de la República de Bolivia y el representante de Alsop i Ca.

Quinta. Diga así mismo el declarante si el Gobierno y las autoridades de la República de Chile opusieron, ó no, dificultades y tropiezos al libre laboreo de las estacas-Minas por los representantes de Alsop i Ca.; y caso de que lo hubieron hecho, si aquellas dificultades y tropiezos se extendieron tambien ó no, contra el laboreo de las estacas-Minas "Disputa" y "Flor del Desierto."

Sexta. Diga así mismo el declarante si los representantes de Alsop i Ca. han intentado, ó no, hacerse pago de sus créditos con los productos de la Aduana de Arica en la proporcion que, para este objeto, señala el mismo contrato de 26 de Diciembre de 1876, celebrado en la ciudad de La Paz.

Septima. Diga así mismo el declarante quienes han ejercido el cargo de representantes de los intereses de Alsop i Ca. para el laboreo de las estacas-Minas, y para las consiguientes gestiones ante el Gobierno y las Autoridades de la República de Chile; Así mismo para la defensa de dichos intereses ante la Comision Arbitral de Washington.

Octava. Diga así mismo el declarante, qué convenio ó arreglo rigió entre los Gobiernos de las Repúblicas del Perú y de Bolivia, para la distribucion entre ellos de los rendimientos de la Aduana de Arica, desde la fecha de la expiracion de la convencion aduanera que regia cuando se otorgó la escritura de arreglo con el representante de Alsop i Ca. en 26 de Dicbre de 1876, y la fecha de la ocupacion de Arica por las fuerzas militares de Chile en Junio de 1880.

Novena. Diga así mismo si es cierto que el Gobierno de la República de Bolivia ha gestionado ultimamente cerca del Gobierno de la República de Chile, para el pago por este, del crédito de aquel en favor de Alsop i Ca.

Lima Enero 9 de 1894.

CÁRLOS M. ESPINOSA.

Sor Juez de Derecho:

Carlos M. Espinosa, abogado de los tribunales de Justicia de la República, especialmente autorizado por el Excmo Sor Ministro de los Estados Unidos de América para intervenir en su representacion en las declaraciones que ante V S deberan prestarse con motivo de la reclamacion entablada ante la Comision Mixta Arbitral Americano-Chilena, por el Sor D. Henrique Chauncey, segun consta de la carta poder que en debida forma acompaño, digo: Que sugetándome á las instrucciones que al respecto tengo recibidas, solicito de la autoridad de V S se sirva ordenar la notificacion del Sor D. Henrique Stanhope Prevost, comerciante, domiciliado en la calle del Mascaron No. 94 de esta Capital para que comparezca al despacho de V. S. y previa citacion del sor Representante de la República de Chile, declare conforme al interrogatorio que en pliego abierto acompaño.

Por tanto á U. S. suplico se sirva señalar dia y hora para que tenga lugar la declaracion que solicito, oficiando al Sor Ministro de la República de Chile para que si lo estima conveniente pueda concurrir al acto de la declaracion.

Otrosi digo: Que entre las personas cuya declaracion se me ha encargado solicite se encuentran los S S. Eduardo Jackson y Pedro N. Pineda.—Mas hallándose establecido el 1º en el puerto de Antofagasta i el 2º en La Serena, lugares que están fuera de la jurisdiccion de V S. me veo en el caso de hecerlo presente al juzgado, á fin de que conste que si dichos Señores no declaran es por la circunstancia de hallarse domiciliados en lugares lejanos, que se hallan sometidos á distinta jurisdiccion.

Sírvase V S. tener presente el contenido de este otro si.

Lima, Enero 9 de 1894.

CÁRLOS M. ESPINOSA.

Lima, Enero diez de mil ochocientos noventa cuatro.

Por presentado el documento que se acompaña, notifíquese á Don Henrique S. Prevost, para que comparezca el viernes doce del presente de una á tres de la tarde, á prestar su declaracion, con citación del Señor Representante de la República de Chile, para lo que se le pasará el respectivo oficio: al otro si, tengase presente Carvallo.

Ante mí.

ELEODORO G. GASTAÑETA.

En diez de Enero del corriente año, siendo las cuatro de la tarde hice saber el auto que antecede á Don Enrique S. Prevost, en su domicilio Mascaron noventa y cuatro, firmó: doy fé

PREVOST

GASTAÑETA.

En diez del mismo Enero á las cinco de la tarde, hice otra al Doctor Don Carlos M. Espinosa en mi oficio, firmó: doy fé

ESPINOSA

GASTAÑETA.

En diez del mismo, se pasó la nota respectiva al Excelentísimo Señor Enviado Extraordinario y Ministro Plenipotenciario de la República de Chile: doy fé

GASTAÑETA.

Lima, 12 de Enero de 1894.

SEÑOR JUEZ: He recibido el oficio de V S. de fecha 10 de Enero del corriente año, con el cual me trasmite la providencia de la misma fecha, decretada por V S., en la solicitud del Doctor Don Carlos M. Espinosa, personero del Exmo Señor Ministro de los Estados Unidos de América, para que V S. reciba la declaracion del testigo Don Enrique S. Prevost en el juicio de la reclamacion entablada por Don Enrique Chauncey ante la Comision Mixta Arbitral Americano-Chilena.

En contestacion, siento decir á V S. que no me será posible presenciar la declaracion del referido testigo, mientras no se me dé conocimiento anticipado de los puntos sobre que, deba recaer.

Tengo el honor de ofrecer á V S. los sentimientos de mi distinguida consideracion.

J. VIAL DEL SOLAR

Al Señor Juez de Ia Instancia Don EMILIANO A. CARVALLO.

Lima, Enero diez i ocho de mil ochocientos noventa y cuatro.

A los autos; y pongase en conocimiento del Doctor Don Carlos M. Espinosa.

Ante mi.

GASTAÑETA.

En la misma fecha del decreto que antecede hice saber su contenido al Doctor Don Carlos M. Espinosa, en mi oficio, siendo los dos de la tarde y firmó: doy fé

ESPINOSA.

GASTAÑETA.

Sor Juez de Dro:

Carlos M. Espinosa en el expediente iniciado á nombre del Excmo Sor. Ministro de los Estados Unidos de América para obtener la declaracion de D. Henrique S. Prevost, digo: Que impuesto de los términos del oficio pasado por el Sor Representante de la República de Chile, en que manifiesta no serle posible presenciar la declaracion de D. H. S. Prevost, mientras no se le dé conocimiento anticipado de los puntos sobre que deba recaer, pido a V S. con el fin de evitar toda demora, se sirva oficiar nuevamente al Sor Representante de Chile incluyendole copia certificada del interrogatorio que tengo formulado en pliego abierto, señalando al mismo tiempo el día y hora que deba tener lugar la declaracion, que debera recibirse ante Ud como Juez de Vacaciones

Por tanto á V. S. suplico se sirva mandar como solicito i es de just^a.

Lima, Enero 18, 1894.

CÁRLOS M. ESPINOSA.

Lima, Enero diez y ocho de mil ochocientos noventa y cuatro.

En virtud, de lo que se expone en el presente recurso; señalase para la diligencia el lunes veintidos del presente á las doce del día, poniendose en conocimiento del Señor Ministro de Chile, para lo que se le pasará el respectivo oficio adjuntandosele la copia certificada del interrogatorio.

Ante mi

GASTAÑETA.

En la misma fecha del auto que antecede á las cuatro de la tarde hice saber su contenido al Doctor Don Carlos M. Espinosa instruido en mi oficio, no firmó, lo hizo el que suscribe: doy fé.

J. R. NAVAS

GASTAÑETA.

En seguida hice otra como la anterior á Don Enrique S. Prevost instruido en mi oficio, siendo las cuatro y cuarto de la tarde; no firmó, lo hizo el que suscribe: doy fé

J. R. NAVAS

GASTAÑETA.

En diez i ocho de Enero se remitió al Excelentísimo Señor Ministro de Chile copia certificada del interrogatorio: doy fé

GASTAÑETA.

En la misma fecha, se pasó el oficio respectivo al Señor Ministro EE. de la República de Chile: doy fé

GASTAÑETA.

En Lima, Enero veintidos de mil ochocientos noventa y cuatro, compareció al Juzgado Don Enrique S. Prevost, natural de Lima, pero ciudadano de los Estados Unidos de America, por derecho de nacimiento, mayor de edad, de estado casado y de profesion comerciante; á quien el Señor Juez le recibió el juramento respectivo, y examinado con arreglo al interrogatorio de fojas cuatro, dijo:

A la primera: Que tiene interes en el exito del juicio de que se trata, por haber sido socio de la razon social de Alsop y Compañia, que existió en la plaza de Valparaiso.

A la segunda: que los socios de la expresada razon social de Alsop y Compañia de Valparaiso fueron los Señores José W. Alsop, Eduardo McCall, Enrique Chauncey, Jorge J. Foster, Teodoro W. Riley, Jorge G. Hobson, Enrique S. Prevost (el declarante), Juan Wheelright, Jorge Federico Hoppin y Enrique W. Alsop, todos ellos ciudadanos de los Estados Unidos por derecho de nacimiento. De los expresados fueron socios capitalistas José W. Alsop, Chauncey, Foster, Riley, Hobson y el declarante, con responsabilidad limitada al monto del capital suscrito por cada uno de ellos; y fueron socios activos ó gestores, Wheelwright, Hoppin, y Enrique W. Alsop, con responsabilidad ilimitada. Todos los expresados caballeros han fallecido en la fecha, con ecepcion del declarante, quien reside en esta ciudad de Lima de la República del Perú; y de los Señores Chauncey y Enrique W. Alsop, quienes residen en los Estados Unidos de América. El primero en el Estado de Nueva York y el segunda en el Estado de Minnesota. Advierte el declarante que todos los expresados, ó quienes hoy representen sus respectivos intereses, tienen interes en el exito de este juicio, con excepcion de Jorge G. Hobson, quien, por no haber cumplido con aportar á la sociedad la cuota de capital que le correspondia, quedó, por tal motivo, del todo desligado de la misma y de Enrique W. Alsop, con quien, al haberse puesto la sociedad en liquidacion, se hicieron arreglos especiales, para la terminacion definitiva de su interes en la misma. Al tiempo de la ocupacion de Antofagasta á que se refiere esta pregunta, tanto el declarante, como Chauncey y Enrique W. Alsop residian en los mismos lugares ya indicadas como la residencia actual respectiva de cada uno de

ellos. Hoppin residia entonces en la Ciudad de Valparaiso de la República de Chile; y Wheelright en el Puerto de Antofagasta. Tiene seguridad que McCall habia entonces ya fallecido en esta ciudad de Lima y cree, pero sin tener de ello absoluta seguridad, que todos los demas habian entonces tambien ya fallecido en los Estados Unidos, con excepcion de Hobson, quien cree habia fallecido en Inglaterra. A la tercera: Que la estaca-Mina elejida por los representantes de Alsop y Compañia con el objeto indicado fué la llamada "Disputa." A la cuarta: Que no le es posible enumerar los nombres de todas las estacas-Minas que llegaron á ponerse en explotacion con el objeto indicado en esta pregunta, por no ser le posible recordarlos de memoria con exactitud y por ser prohibido, segun la ley Peruana, tener á la vista, al prestar una declaracion como la presente, papeles ó apuntes que le serian indispensables para hacer esa nomenclatura con exactitud.

A la quinta: Que el Gobierno y las Autoridades de la República de Chile, pusieron todo genero de obstáculos al libre laboreo de las estacas-Minas, inclusive al de las llamadas "Flor del Desierto" y "Disputa", haciendo practicamente imposible la ejecucion del contrato celebrado con el Gobierno de Bolivia en vientiseis de Diciembre de mil ochocientos setenta y seis. El fundamento de todos estos obstaculos fué el persistente desconocimiento, por los Tribunales y por las Autoridades de Chile, del derecho incontrovertible que tuvo el Gobierno de Bolivia para celebrar el referido contrato. Para mejor esplicacion de lo que deja expresado en el particular, hace presente el declarante, que las ordenanzas de Minería de Bolivia dan al Estado la propiedad de la cuarta estaca de cada mina que se denuncia, cuyas cuartas estacas constituyeron la base del contrato con Alsop y Compañia; siendo asi que las Ordenanzas de Minería de Chile no reconocen tales cuartas estacas de propiedad del Estado. El resultado fué que insistiendo las autoridades de Chile en que todas las propiedades mineras del Litoral de Bolivia se considerasen adjudicadas, teniendo tan solo en cuenta las ordenanzas Chilenas, los representantes de Alsop y Compañia no hallaban su derecho expedito para el laboreo de las cuartas estacas á que se refiere su contrato con el Gobierno de Bolivia. Siempre que

Prevost. intentaron poner trabajo en alguna cuarta estaca que ofrecia buena perspectiva, se opusieron á ello los explotadores de las tres estacas restantes de la mina. Los representantes de Alsop y Compañia apelaron á los Tribunales de Justicia, sin obtener otro resultado que fallos parciales que hacian

crecer, mas y mas, la oposicion al libre laboreo de las cuartas estacas y el insolente desden con que todos las habitantes Chilenos del territorio de Antofagasta miraban los derechos de Alsop y Compañia, emanados de su legitimo contrato con el Gobierno de Bolivia. Los archivos del Juzgado de Antofagasta y de la Corte de Apelaciones de la Serena abundan en la prueba de lo que se deja expresado, pues los juicios que se iniciaron fueron casi tantos, como el numero total de estacas en que se en que se intentó establecer trabajo y siempre con el mismo exito adverso. Los esfuerzos que se hicieron ante las autoridades administrativas, tampoco tuvieron otro resultado, que resoluciones en que se desconocia por completo la validez del contrato con Bolivia y alentaban mas y mas la oposicion que á dicho contrato se hacia por todos en Antofagasta. El resultado natural de tan incalificable proceder fué que, de hecho, se hizo nula y sin valor alguno practico la concesion hecha por el Gobierno de Bolivia en favor de Alsop y Compañia, en cuanto se referia á la explotacion de las estacas-Minas de propiedad del Estado; y lo fué tambien, que, á pesar de cuanto esfuerzo se ha hecho no ha sido posible reducir en lo menor la deuda reconocida por Bolivia, importando ochocientos treinta y cinco mil pesos bolivianos, sin que esto pueda achacarse á falta de diligencia ó de esfuerzos por parte de los representantes de Alsop y Compañia, quienes siempre escollaron contra la imposibilidad de hacer reconocer sus derechos.

A la sesta: que los representantes de Alsop y Compañia intentaron tambien que se les hiciese pago con los productos de la Aduana de Arica y que al efecto presentaron varios recursos suplicatorios al Gobierno de Chile, en tiempo oportuno, pero sin resultado alguno favorable. El declarante, sobre este punto, llama la atencion al hecho de que, en el tratado de tregua que hoy rige las relaciones internacionales de Chile y de ^{Prevost.} Bolivia, se ha despuesto y se dispone del producto de la referida Aduana de Arica, repartidendoselo entre los dos Gobiernos, sin tener para nada en cuenta los derechos de Alsop y Compañia; y al hecho tambien de que, segun los informes oficiales que periodicamente publica el Gobierno de Chile, el producto de la Aduana de Arica, desde que rige el mencionado pacto de tregua, ha dado mas que suficiente, para que se hubiese podido ya pagar el total del crédito de Alsop y Compañia, aunque para ello no se hubiese dedicado sino una parte reducida de aquel producto. Observa finalmente que esto es, tanto menos

justificado, cuanto que inmediatamente antes de la celebracion del mencionado pacto de tregua, los representantes de Alsop y Compañia hicieron presente sus derechos por medio de escritos presentados al Gobierno de Chile.

A la septima: que la representacion de los intereses á que se refiere esta pregunta fué ejercida, en primer lugar y hasta su fallecimiento, por el socio Juan Wheelright; En segunda, por el declarante; y en la actualidad es ejercida, ante la Comision Arbitral de Washington, por el socio Enrique Chauncey, quien ha sido ampliamente autorizado al efecto por todos los interesados en el exito del presente juicio.

A la octava: que al tiempo de celebrarse, en veintiseis de Diciembre de mil ochocientos setenta y seis, el contrato entre el Gobierno de Bolivia y el representante de la liquidacion de Alsop y Compañia, reja, entre las Repúblicas del Perú y de Bolivia el tratado aduanero fechado en veintitres de Julio de mil ochocientos setenta, cuya ratificaciones solo fueron canjeados y que solo principiá á surtir sus efectos en veinticuatro de Diciembre de mil ochocientos setenta y dos. Este tratado, que era desahuciable por cualquiera de las partes con aviso anticipado de diez y ocho meses, fué desahuciado por el Gobierno de Bolivia en el mes de Octubre de mil ochocientos setenta y seis, y, por lo tanto, debió haber caducado en el mes de Abril de mil ochocientos setenta y ocho, pero por consentimiento de ambas partes, siguió rigiendo

Prevost. hasta el mes de Mayo de mil ochocientos setenta y nueve, en cuya fecha se canjearon las ratificaciones, y principiá á rejir un nuevo tratado que habia sido firmado en el mes de Octubre de mil ochocientos setenta y ocho. Este nuevo tratado reja aun en la fecha de la ocupacion de Arica por las fuerzas militares de Chile en el mes de Junio de mil ochocientos ochenta y continuó rijiendo hasta el mes de Junio de mil ochocientos ochenta y uno, cuando empezó á rejir el tratado que todabia, al presente, regula los acuerdos aduaneros entre las Repúblicas del Perú y de Bolivia.

A la novena: que el declarante tiene seguridad que, en el protocolo preliminar de un tratado de Paz definitiva aun pendiente entre los Gobiernos de Bolivia i de Chile, figura el crédito de Alsop y Compañia entre aquellos que el Gobierno de Chile se compromete á pagar de cuenta del de Bolivia al aprobarse el referido tratado de Paz definitiva, entre las dos Repúblicas. El declarante ha tenido conocimiento de este hecho por haberlo comunicado asi,

oficialmente el Ministro de Relaciones Exteriores de Chile, en nota dirigida sobre el particular á la Legacion de los Estados Unidos de Santiago en el mes de Junio de mil ochocientos noventa y dos. Que lo declarado es la verdad en que se ratificó y firmó, haciendolo antes el Señor Juez: Doy fe —enmendado— setenta—vale

VILLAGARCIA.

HENRIQUE S. PREVOST.

Anti mí

ELEODORO G. GASTAÑETA.

Lima, Enero veinticinco de mil ochocientos noventa y cuatro.

Estando recibida la declaracion devuelvase lo actuado al interesado, para los usos que le convenga.

Ante mí

GASTAÑETA.

En veinticinco de Enero del corriente año siendo las cuatro de la tarde hice saber el decreto que antecede al Doctor Don Carlos M. Espinosa, instruido en mi oficio, no firmó, lo hizo el que suscribe: doy fe

J. R. NAVAS.

GASTAÑETA.

Legalizada la firma del frente del Juez de primera Instancia Doctor Don Adolfo Villagarcia, por el infrascrito Presidente del Tribunal Superior—Palacio de Justicia en Lima á 29 de Enero de 1894

[L. s.]

SANTIAGO FIGUEREDO.

Legalizada en el Ministerio de Justicias, Culto, Instruccion y Beneficencia.

Lima, a 29 de Enero de 1894.

El Ministro

[L. s.]

E. P. FIGUEROA.

Derechos percibidos 4 soles
Num. 25]

Legalizada en el Ministerio de Relaciones Exteriores del Perú.

Lima, Enero 29 de 1894

El Oficial Mayor

[L. s.]

CARLOS WIESSE

UNITED STATES LEGATION,
Lima, Peru, January 29, 1894.

I hereby certify that the above signature of Señor Doctor Don Carlos Wiese, Chief Clerk of the Peruvian Foreign Office is correct and worthy of full faith and credit.

[L. s.]

RICHARD R. NEILL
United States Secretary of Legation.

Lima, Enero 29, 1894.

EXCMO Sor. D. J. A. MCKENZIE

Ministro de los Estados Unidos de América en el Perú.

SOR. MINISTRO: Tan luego llegó á mis manos la estimable comunicacion de V E en que me comisionaba para que representara los intereses de los Estados Unidos en las declaraciones que debian tomarse en el Perú, con motivo de la reclamacion entablada por D. Henrique Chauncey contra el Gobierno de la República de Chile ante la Comision Mixta Arbitral Americano-Chilena que funciona en Washington, me presenté al Sor Juez Dr. D. Emiliano A. Carvalho para que ordenase la comparecencia ante él del Sor D. Henrique S. Prevost, uno de los testigos, con citacion del Sor Representante de la República de Chile y haciendo notar al mismo tiempo la imposibilidad en que se encontraban de declarar los otros dos testigos S. S. Eduardo Jackson y Pedro N. Pineda, por residir el uno en Antofagasta y el otro en La Serena, lugares lejanos y sometidos á distinta jurisdiccion.

Señalado el dia 12 pte. para que tuviera lugar la declaracion de D. Henrique S. Prevost, se ofició al Sor Ministro de Chile para que si lo estimaba conveniente concurriese al acto.

Llegado el dia de la declaracion y cuando ya nos hallabamos reunidos en el despacho del juzgado, el Sor Juez Dr. Carvalho, el declarante Sor Prevost, el actuario Gastañeta que debia intervenir y autorizar el acto conforme á las leyes del Perú y el infrascripto, fuimos sorprendidos con un oficio remitido á última hora por el Sor Representante de Chile en que se excusaba de asistir al acto mientras no se le diera conocimiento anticipado de los puntos sobre los que debia recaer la declaracion del Sor Prevost.

Aunque conforme á la ley de procedimiento del Perú, el Sor Representante de Chile no tenia derecho para formular tal peticion, no insistí en que inmediatamente se recibiera la declaracion del Sor Prevost, sino que convine en que por el momento se suspendiera el acto, á fin de que el Sor Ministro de Chile no tuviera el menor pretexto que alegar para tratar de desvirtuar el mérito y fuerza probatoria de la citada declaracion.

Con este motivo y á mérito de mi expreso allanamiento se pasó nuevo oficio al Sor Ministro de Chile incluyéndole copia del interrogatorio que debería absolver D. Henrique S. Prevost y comunicándole el nuevo día designado para la diligencia, que debería tener lugar no ya ante el Sr. Dr. Carvalho, sino ante el Sor Juez de vacaciones Dr. D. Adolfo Villagarcia, pues la postergacion ocasionada por la falta de asistencia del Sor Ministro de Chile á la primera citacion del Sr. Dr. Carvalho, dió lugar á que llegare el 15 de enero, fecha en que segun nuestra ley deben ponerse en receso los juzgados y tribunales, durante el período de vacaciones, quedando solo uno de ellos expedito para despachar los asuntos de urgencia, que en el presente año lo ha sido el Sor Dr. Villagarcia, quien, con igual autoridad y jurisdiccion que el Sor Dr. Carvalho y como Juez de Vacaciones, recibió con fecha 22 del pte. la declaracion del Sor D. Henrique S. Prevost, á cuyo acto tampoco tuvo á bien asistir el Sor Representante de Chile no obstante habersele oficiado con la debida anticipacion y de habersele remitido copia del interrogatorio que debía absolver D. Henrique S. Prevost conforme á sus deseos.

Todo lo que anteriormente dejo expuesto consta oficialmente del expediente original que adjunto remito á VE, dejando cumplida la comision que tuvo á bien encomendarme.

Tengo el honor de suscribirme de VE muy atto i S. S.

CÁRLOS M. ESPINOSA

UNITED STATES LEGATION,

Lima, Peru, January 29, 1894.

I hereby certify the above signature to be that of Doctor Carlos M. Espinosa Attorney of Law of this City, who by authorization from this Legation has represented the interests of the United States in the taking of depositions in the case of Henry Chauncey, versus the Republic of Chile, pending before the United States and Chilean Claims Commission, at Washington and as such is worthy of full faith and credit.

[SEAL.]

RICHARD R. NEILL.

United States Secretary of Legation.

[Translation.]

Questions which the subscriber appointed for the purpose by his Excellency, the Minister of the United States of America in Peru puts to Mr. Henry S. Prevost on the petition by order of the

American-Chilean Mixed Commission or Arbitration, which now is in session in Washington and as a part of the proof in the proceedings pending before said Commission Mr. Henry Chauncey vs. The Republic of Chile.

1. Let the deponent say if he has a personal interest direct or indirect, in the result of the proceeding which Mr. Henry Chauncey has initiated against the Republic of Chile and before the Mixed American Chilean Commission of Arbitration which now is in session in the city of Washington.

2. Let likewise the deponent tell who were the partners who joined the firm of Alsop & Co. which was established in the Plaza of Valparaiso in the Republic of Chile. Likewise what was the nationality of each of them. Likewise which of them still lives and what is the present place of residence of each of them? And also what was the place of residence of those who still lived at the time of the occupation of the port of Antofogasta and of the territory of the Republic of Bolivia by the military forces of the Republic of Chile at the beginning of the year 1879?

3. Let the deponent likewise tell what was the staked-out mine chosen by the representatives of Alsop & Co. for their working with the object of applying the net income of said working in connection with the staked-out mine "Flor del Desierto" to the payment of the interest in arrears which the contract of transaction and arrangement definitely executed between the Government of the Republic of Bolivia and the representative of the firm of Also & Co. expressed by a public instrument executed in the city of La Paz, dated December 26, 1876?

4. Let the deponent likewise tell what were the staked-out mines which were placed under exploitation with the object of applying the net income of its working to the payment of the capital of 835,000 Bolivian dollars and the interest earned by said capital according also as the contract of December 26, 1876 executed between the Government of the Republic of Bolivia and the representative of Alsop & Co. expresses it.

5. Let the deponent also tell whether the Government and the authorities of the Republic of Chile interposed or not difficulties and obstacles to the free working of the staked-out mine by the representative of Alsop & Co. and in case that it were done if such difficulties and obstacles were extended also or not against the working of staked-out mines "Disputa and Flor del Desierto."

Sixth. Let the deponent likewise state if the representative of Alsop & Co. have attempted or not to make payment to their

creditors with the proceeds of the Customs House of Arica in the proportion that for this object the same contract of December 26, 1876 executed in the city of La Paz indicates.

Seventh. Let the deponent also say who have exercised the offices of representatives of the interest of Alsop & Co. for the working of the staked out mines and for the necessary steps before the Government and the authorities of the Republic of Chile; also for the defence of said interest before the Commission of Arbitration in Washington.

Eighth. Let the deponent also tell, what contract or arrangement governed between the Government of the Republic of Peru and Bolivia, for the distribution between them of the revenues of the Custom House of Arica from the date of the expiration of the customs contract which governed when the writing of arrangement was executed with the representative of Alsop & Co. on December 26, 1876 and the date of the occupation of Arica by the military forces of Chile in June, 1880.

Ninth. Let him also state if it is true that the Government of the Republic of Bolivia has recently made effort before the Government of the Republic of Chile for the payment of the latter of the credit of the former in favor of Alsop & Co.

Lima, January 9, 1894.

CARLOS M. ESPINOSA.

Honorable Judge of Right:

I, Carlos M. Espenosa, Attorney of the Tribunals of Justice of the Republic, especially authorized by his Excellency the Minister of the United States of America, to act as his representative in the depositions which are to be taken before your Honor in regard to the reclamation filed before the Mixed American-Chilean Commission of Arbitration by Mr. Henry Chauncey, according to the statement of the power of attorney which in due form is annexed, I say: That subjecting myself to the instructions which I have received in this respect, I solicit of the authority of your Honor that you may order the notification of Mr. Prévost, a merchant residing in the street del Moscaron, No. 94 of this capital, in order that he may be summoned to the office of your Honor after notice of the representative of the Republic of Chile, he declares in conformity with the interrogatories on the open page hereby annexed.

Wherefore, I beg your Honor may indicate the day and hour in order that the deposition which I solicit may take place, com-

municating to the Minister of the Republic of Chile in order that if he deem it convenient he may be present at the said taking of the deposition.

Besides, I say, that among the persons whose depositions have been intrusted to me, are to be found Messrs. Edward Jackson, Pedro M. Pindra. But the first, finding himself established in the port of Antofogasta, and the second in La Serena, places which are outside of the jurisdiction of your Honor, I see myself in the position of calling the attention of the Tribunal in order that it may be shown that if said gentlemen do not testify, it is by circumstance of finding themselves domiciled in distant places that are under a distinct jurisdiction.

May it please your Honor to keep in mind the contents of this prayer.

Lima, January 9, 1894.

CARLOS M. ESPINOSA.

Lima, January 10, 1894.

Let the accompanying document be received, and notify Mr. Henry S. Prevost in order that he may appear Friday the 12th of the present month from 1 to 3 of the afternoon to give his deposition with the summons to the Honorable representative of the Republic of Chile, to which end the proper communication will be sent. Let the second prayer be noted of—Carvallo.

Before me

ETEDORO G. GASTAÑETA.

The tenth of January of the present year, it being four o'clock in the afternoon, the preceding order was made known to Don Henry S. Prevost at his residence, Masacaron 94—He signed—To which I certify.

PREVOST.

GASTAÑETA.
(Flourish.)

The tenth of the same January, at five in the afternoon, I notified Dr. Carlos M. Espinosa in my office. He signed.—

GASTAÑETA.
(Flourish.)

To which I certify.

ESPINOSA.

The tenth of the same month the respective note was passed to his Excellency, the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Chile—I certify.

GASTAÑETA
(Flourish.)

LEGATION OF CHILE,
Lima, January 12, 1894.

HONORABLE JUDGE: I have received the communication of your Honor dated January 10th of the present year, with which the action of this same date is transmitted to me. This was decreed by your Honor on the petition of Dr. Carlos M. Espinosa, Agent of his Excellency the Minister of the United States of America in order that your Honor may receive the deposition of the witness, Mr. Henry S. Prevost in the proceeding of the reclamation filed by Mr. Henry Chauncey before the Mixed American-Chilean Commission of Arbitration.

In reply I regret your Honor that it will not be possible for me to witness the deposition of the witness referred to, unless previous information is given me of the points upon which it is to be taken.

I have the honor to offer to your Honor the sentiments of my distinguished consideration.

JAVIER VIOL SOLVER.
(Flourish.)

To the records, let notice be given. Before me.

GASTAÑETA.
(Flourish.)

Dr. CARLOS M. ESPINOSA.
(Flourish.)

On the same date of the preceding order, its contents was made known to Dr. Carlos M. Espinosa in my office at 2 o'clock p. m. and he signed. To which I certify.

ESPINOSA.

GASTAÑETA.
(Flourish.)

Honorable Judge of Right:

I, Carlos Espinosa, in the document filed in the name of His Excellency, the Minister of the United States of America, in order to obtain the deposition of Mr. Henry S. Prevost, say: That informed of the time of the communication sent by the representative of the Republic of Chile, in which he manifested that it will not be possible for him to witness the deposition of Mr. H. S. Prevost unless previous notice be given to him of the points in which it is to be taken, I pray your Honor with the end of avoiding all delay that you may communicate again to the representative of Chile enclosing him a certified copy of the interrogatories that I have formulated in open sheet indicating at the same time the day and hour that the deposition should taken place, which should be received before your Honor as Judge in vacation. Wherefore, to your Honor, I pray that you may order as I have solicited. It is justice.

Lima, January 18, 1894.

CARLOS M. ESPINOSA.

Lima, January 18, 1894.

By virtue of that which is set forth in the present petition set for the proceeding Monday, January 22nd, of the present month at 12 o'clock noon, giving notice to the Minister of Chile, for which he will be sent the respective communication, adding the certified copy of the interrogatory. Before me.

GASTAÑETA.
(Rubric.)

The same date of the preceding judgment, at four p. m., the contents were made known to Dr. Carlos M. Espinosa in my office. He did not sign—the writer did.

I give faith.

G. R. NAVAS.

GASTAÑETA.
(Rubric.)

Eighteenth of January a certified copy of the interrogatory was transmitted to the Minister of Chile. To which I certify.

GASTAÑETA.
(Rubric.)

Immediately thereafter another notice was made known to Henry S. Prevost in my office, it being a quarter past 4 p. m. He did not sign. The subscriber did it, to which I certify.

G. R. NAVAS.
(Rubric.)

GASTAÑETA.
(Rubric.)

The same date the respective communication was sent to the Minister of the Republic of Chile. To which I certify.

GASTAÑETA.
(Rubric.)

Lima, January 22, 1894.

Don. Henry S. Prevost appeared before the Tribunal, a native of Lima, but a citizen of the United States of America by right of birth, of lawful age, married and by profession a merchant, from whom the Judge received the respective oath and examining conformably the interrogatory of folio 4. He answered to the first: That he has an interest in the outcome of the proceedings in question, having been a member of the firm of Alsop & Co., which existed in Valparaiso.

To the second: That the partners of the said firm of Alsop & Compania of Valparaiso were the Messrs. Joseph W. Alsop, Edward

McCall, Henry Chauncey, George J. Foster, Theodore W. Riley, George G. Hobson, Henry S. Prevost (the deponent), John Wheelwright, George Frederick Happin and Henry W. Alsop, all citizens of the United States by right of birth. Of those mentioned, Joseph W. Alsop, Chauncey, Foster, Riley and Hobson and the deponent were partners with capital, with limited responsibility to the sum total of the capital subscribed by each one of them; and Wheelwright, Happin and Henry W. Alsop were active partners and administration with unlimited responsibility. All the above mentioned gentlemen have died at this date with the exception of the deponent who resides in this city of Lima of the Republic of Peru, and of the Messrs. Chauncey and Henry W. Alsop and Happin resided then in the city of Valparaiso of the Republic of Chile, and Wheelwright in the port of Antofogasta. He was sure that McCall had then already died in this city of Lima; believed, but without being absolutely sure, that all the rest had also already died in the United States, with the exception of Hobson, whom he believes to have died in England.

To the third: That the staked-out mine chosen by the representatives of Alsop and Compania with the indicated object was the one called "Disputa."

To the fourth. That it is not possible to enumerate the names of all the staked-out mines that were put in working with the object indicated in this question, by it not being possible to recall them from memory with exactitude, being prohibited by Peruvian law to hold in view on giving a deposition like the present paper or memoranda which would be indispensable to him to enumerate the list with certainty.

To the fifth. That the Government and the authorities of the Republic of Chile placed all sorts of obstacles to the free working of the staked-out mines, including those called "Flor del Sesierto" and "Disputa" making practically impossible the execution of the contract made with the Government of Bolivia, the 25th of December, 1876. The foundation of all these obstacles was the persistent nonrecognition by the Tribunals and by the authorities of Chile of the incontrovertible right that the Government of Bolivia had to execute the contract referred to. For a better explanation of that which he has just expressed on this matter, the deponent asserted that the ordinances of mining in Bolivia give to the state the property of the fourth stake of each mine that is

declared and which fourth stake constitutes the base of the contract with Alsop & Co., it being thus that the mining ordinances of Chile do not recognize such fourth stakes as the property of the state. The result was that the authorities of Chile insisting that all the mineral properties on the shore of Bolivia should be considered to be adjudged taking solely into account the Chilean, statutes, the representation of Alsop & Co. did not find their right expedited by the working of the staked quarters referred to in their contract with the Government of Bolivia. Always when it was attempted to work any quarter stake that offered a good prospect, the workers of the three remaining sections of the mines were opposed to it.

The representatives of Alsop & Co. appealed to the Tribunal of Justice without obtaining other result than partial judgments, which made the opposition to the free working of the fourth section grow more and more, and the insolent disdain with which all the Chilean inhabitants of the territory of Antofogasta looked upon the rights of Alsop & Co. emanating from the legitimate contract with the Government of Bolivia. The archives of the Tribunal of Antofogasta and of the Court of Appeals of Serena abound with the proof of that which has been expressed for the proceedings which were filed were nearly all like the total number of stakes in which it was attempted to establish work, and always with the same adverse termination. The efforts which were made before the administration authorities had no other result than resolutions in which the solidity of the contract with Bolivia was completely ignored, and more and more the opposition to said contract was encouraged by all Antofogasta. The natural result of such an unqualifiable proceeding was that in fact the concession made by the Government of Bolivia in favor of Alsop & Co. was made null and without practical value, in so far as it referred to the working of staked mines belonging to the State and it was also that in spite of every effort which had been made it has not been possible to reduce in the least the debt recognized by Bolivia, amounting to 835,000 Bolivian dollars, without this being attributable to a lack of diligence or of effort on the part of the representatives of Alsop & Co., who always had to contend against the impossibility of having their right recognized.

To the sixth. That the representatives of Alsop and Co. attempted also to have payment made to them with the Custom House proceeds of Arica and to this end they presented various petitions to the Government of Chile in opportune time but

without any favorable result. The deponent on this point calls attention to the fact that in the treaty of truce that to-day governs the international relations of Chile and Bolivia, it is provided that the proceeds of the said Custom House of Arica distributing between the two Governments without taking account of the rights of Alsop and Co. and the fact also according to the official reports which the Government of Chile publishes periodically. The proceeds of the Custom House of Arica since the mentioned treaty of truce is enforced, has given more than sufficient to pay the total of the credit of Alsop & Co. although only a small part of that product should have been devoted to it. He observes finally that this is so much less justified since immediately before the execution of the treaty of truce mentioned, the representatives of Alsop & Co. made known their rights by writings presented to the Government of Chile.

To the seventh. That the representation of the interests to which this question refers was exercised in the first place and until his decease by the partner, John Wheelwright, followed by the deponent, and now is exercised before the Commission of Arbitration in Washington by the partner Henry Chauncey, who has been fully authorized to than end by all those interested in the transaction of the present judicial proceeding.

To the eighth. That at the time of the execution, December 1, (26) 1876, of the contract between the Government of Bolivia and the representative of the liquidation of Alsop and Co. there existed between the Republic of Peru and Bolivia the Customs treaty dated July 23, 1870, the ratifications of which were only exchanged and that only commenced to take effect the 24th of December, 1872. This treaty which was revokable by any one of the parties with previous notice of 18 months was revoked by the Government of Bolivia in the month of October of 1876. Therefore, it should have expired in the month of April, 1878, but by the consent of both parties it continued to govern until the month of May, 1879, at which date the ratifications were exchanged and a new treaty, which had been signed in the month of October, 1878, commenced to govern. This new treaty still governed at the date of the occupation of Arica by the military forces of Chile in the month of June, (1880) and continued to govern until the month of June, 1881 when the treaty which still at the present time regulates the custom house decisions between the Republic of Peru and Bolivia began to govern.

To the ninth. That the deponent is certain that the preliminary protocol of a definite treaty of peace is still pending between the Government of Bolivia and of Chile. The credit of Alsop & Co. figured among those that the Government of Chile binds itself to pay on account of that of Bolivia whenever the definite treaty of peace referred to, between the two Republics, is approved; the deponent has had knowledge of this fact, it having been communicated thus officially by the Minister of Foreign Affairs of Chile in a note directed on this subject to the legation of the United States at Santiago in the month of June, 1892. That which has been declared is the truth, it being ratified and signed, being done before the Honorable Judge—To which I certify.

VALLAFRANCO.

HENRY S. PREVOST.

(Flourish.)

Before me

ELEODORO T. GASTARUTAD.

Lima, January 25, 1894.

The deposition being received, let the document be returned to the one interested, for such uses as may suit him.

(Flourish.)

Before me.

GASTARUTAD

(Flourish.)

January 25th of the present year, at 4 p. m., the preceding decree was made known to Dr. Carlos M. Espinosa in my office. He did not sign. It was done by the writer.

G. R. NAVAS.

GASTARUTAD.

(Flourish.)

The signature of the Judge of First Instance Dr. Don Adolfo Villagarcia legalized by the undersigned President of the Supreme Court. Place of Justice in Lima, January 29, 1894.

[SEAL.]

SANTIAGO FIGUERERO.

(Flourish.)

Legalized in the Ministry of Justice, Worship, Instruction and Beneficence.

Lima, January 29, 1894.

Fees received 4 soles. The Minister.

[SEAL.]

E. P. FIGUEROA.

[3 soles stamps.]

(Flourish.)

Legalized in the Ministry of Foreign Affairs of Peru, Lima,
January 29, 1894.

Chief Clerk.

CARLOS WIESSE
(Flourish.)

(Certificate of Richard R Neill U. S. Secretary of Legation dated Jan'y 29 1894 to the official signature of Carlos Wiese Chief Clerk of the Foreign Office of Peru in English, which see.)

Lima, January 29, 1894.

Honorable J. A. MCKENZIE,

Minister of the U. S. A. in Peru.

Mr. MINISTER: AS soon as the estimable communication of your Honor reached my hands in which I was commissioned to represent the interests of the United States in the depositions which should be taken in Peru on account of the reclamation filed by Mr. Hency Chauncey against the Government of the Republic of Chile before the Mixed American-Chilean Commission of Arbitration, sitting in Washington, I presented myself to the Judge, Dr. Emilia A. Carvallo, that he might order the appearance before him of Henry S. Prevost, one of the witnesses, with notice to the Representative of the Republic of Chile, and making known at the same time the impossibility which was encountered to make the other two witnesses, Edward Jackson and Pedro N. Pineda testify, as one resides in Antofogasta and the other in La Serena, places which are distant and under distinct jurisdiction.

The 12th of the present month having been set for the taking of the deposition of Henry S. Prevost, it was communicated to the Minister of Chile in order that he should deem it convenient that he might witness the act. The day of the deposition having arrived and while we found ourselves gathered in the office of the Tribunal, the Honorable Judge, Don Cavallo, the deponent, Mr. Prevost, the Clerk of the Court Gastarnutad, who should mediate and authorize the act in conformance to the laws of Peru and the undersigned, we were surprised with a communication transmitted at the last hour by the representative of Chile in which he excused himself from assisting at the act unless previously knowledge was given of the points on which the deposition of Mr. Prevost should be taken.

Although in conformance with the law of procedure of Peru the representative of Chile had no right to formulate such a peti-

tion I did not insist that the deposition of Mr. Prevost should be taken immediately. But I agree the act should be suspended for the time being, in order that the Minister of Chile should not have the slightest pretext to allege in order to endeavor to invalidate the merits and force of the said deposition. On this account and by virtue of my expressed approval, a new communication was passed to the Minister of Chile, enclosing him a copy of the interrogatory which Mr. Prevost should answer, communication to him the new day set for the proceeding, which should take place no longer before Dr. Carvallo, but before the Judge in Vacation, Dr. Adolfo Villagaria, since the postponment occasioned by the failure of assistance of the Minister from Chile at the first notice of Dr. Carvallo, the 14th of January, arrived on a date at which according to our law the Tribunals and courts should be in recess, during the period of vacation, leaving only one ready to dispatch regular matters, who in the present year has been Dr. Villagarcia, who with equal authority and jurisdiction as Dr. Cavallo and as Judge in vacation received the date 22nd of the present month the deposition of Mr. Prevost, at which act the representative of Chile did not again assist, notwithstanding it having been communicated to him with the due anticipation of having sent him a copy of the interrogatory which H. S. Prevost should answer conformably to his desires.

All that which I have before expressed appear sufficiently in the original record, which annexed I send to your Excellency, having fulfilled the commission which you were pleased to intrust to me.

I have the honor to sign myself Your Excellency's attentive and humble servant.

CARLOS M. ESPINOSA,

UNITED STATES LEGATION,

Lima, Peru, January 29, 1894.

I hereby certify the above signature to be that of Dr. Carlos M. Espinosa, attorney at law of this city, who by authorization from this Legation has represented the interests of the United States in the taking of depositions in the case of Henry Chauncey versus the Republic of Chile, pending before the United States and Chilean Claims Commission at Washington, and as such is worthy of full faith and credit.

[SEAL.]

RICHARD R. NEILL,

United States Secretary of Legation

NOTE.—Document filed by Respondent on March 16, 1894, being Report of the Minister of the Treasury of Chile for the year 1889, will be found in separate volume.

Unnumbered Exhibit Filed March 20, 1894.

Entradas de la Aduana de Arica, desde el 1º de Enero de 1885 en que empezó a rejir el pacto de Tregua.

[Decreto del Ministerio de Hacienda de 19 de Diciembre de 1884.]

| Años. | Para el Gob. de Chile. | 35% para Bolivia. | 40% para Bolivia. | Total Jeneral. |
|--------------|------------------------|-------------------|-------------------|----------------|
| 1885..... | 553,088.27 | 612,841.51 | 700,332.21 | 1,866,261.99 |
| 1886..... | 276,606.18 | 358,615.96 | 409,846.77 | 1,045,068.91 |
| 1887..... | 322,050.17 | 412,403.18 | 471,317.93 | 1,205,771.28 |
| 1888..... | 335,958.88 | 441,189.66 | 504,216.79 | 1,281,365.33 |
| 1889..... | 312,912.71 | 410,630.66 | 469,259.50 | 1,192,802.87 |
| 1890..... | 316,112.51 | 425,002.43 | 485,717.07 | 1,226,832.01 |
| 1891..... | 348,205.25 | 471,792.97 | 539,191.95 | 1,359,190.17 |
| 1892..... | 335,178.88 | 449,026.98 | 513,173.69 | 1,297,379.55 |
| Totales..... | 2,800,112.85 | 3,581,503.35 | 4,093,055.91 | 10,474,672.11 |

DIRECCION JENERAL DE CONTABILIDAD,

18 de Octubre de 1893

A. DELGADO.

Direccion de Contabilidad Sub-Director.

Vº Bº

SANTIAGO.

SMITH.

Legalizada en el Ministerio de Relaciones Exteriores de Chile, las firmas que dicen "Smith" y "A. Delgado"

Santiago 20 de Octubre de 1893

El Sub-Secretario.

[L. S.]

A. BASCUÑÁN M.

Washington, 12 de Febrero/94.

Certifico que la firma A. Bascuñán M. es la del Sub-Secretario del Ministerio de Relaciones Exteriores de Chile.

[L. S.]

ANÍBAL CRUZ.

[Translation.]

Entries at the Custom House of Arica since January 1st 1885 when the compact went into effect.

[Decree of the Ministry of Finance of December 19, 1894. Filed Mar. 23, 1894.]

| Years. | For Chile. | 35 % for Bolivia. | 40 % for Bolivia | General total. |
|-----------|--------------|-------------------|------------------|----------------|
| 1885----- | 553,088.27 | 612,841.51 | 700,332.21 | 1,866,261.99 |
| 1886----- | 276,606.18 | 358,615.96 | 409,846.77 | 1,045,068.91 |
| 1887----- | 322,050.17 | 412,403.18 | 471,317.93 | 1,205,771.28 |
| 1888----- | 335,958.88 | 441,189.66 | 504,216.79 | 1,281,365.33 |
| 1889----- | 312,912.71 | 410,630.66 | 469,259.50 | 1,192,802.87 |
| 1890----- | 316,112.51 | 425,002.43 | 485,717.07 | 1,226,832.01 |
| 1891----- | 348,203.25 | 471,792.97 | 539,191.95 | 1,359,190.17 |
| 1892----- | 335,178.88 | 449,026.98 | 517,173.69 | 1,297,379.55 |
| | 2,800,112.85 | 3,581,503.35 | 4,093,055.91 | 10,479,672.11 |

GENERAL DIRECTORY OF ACCOUNTS, *October 18, 1893.*

A. DELGADO.

Correct:

SMITH.

(Certificate of Ministry of Foreign Relations and Chilean Legation in Washington, D. C.)

Unnumbered Exhibit, Filed March 20, 1894.

PROTOCOLO.

Reunidos en esta fecha en el Departamento de Relaciones Exteriores, el Ministro del ramo, doctor Serapio Reyes Ortiz, 2º, Vice-Presidente de la República de Bolivia, i el señor don Juan Gonzalo Matta, Ajente Confidencial de la Junta de Gobierno constituida en representacion del Congreso de la República de Chile, han celebrado diferentes conferencias sobre la necesidad de establecer relaciones estrechas entre los dos paises, tanto políticas como comerciales, a fin de arribar a tratados definitivos de paz i de comercio, que consulten los intereses reciprocos de ámbas naciones. En dichas conferencias, el Excelentísimo Ministro de Relaciones Exteriores de Bolivia espuso e insistió en que la base fundamental de todo pacto definitivo entre ámbos paises debia ser la devolucion a Bolivia de su departamento litoral habiendo Su Señoría el Ajente Confidencial de la Excelentísima Junta de

Gobierno manifestado, que en esa base era absolutamente inaceptable, por cuanto Chile no puede consentir en que se rompa la continuidad de su territorio situado al Sud del paralelo 23 con el que le ha trasferido la República del Perú al Norte del río Loa.

En consecuencia, animadas siempre ámbas partes del deseo sincero de arribar a un arreglo definitivo inspirado en la cordialidad que debe reinar entre ámbos países i que consulte en lo posible la equidad, han acordado sentar las bases de los tratados definitivos, que tendrán lugar tan luego como se haya restablecido la paz en Chile.

Ésas bases, detenidamente discutidas, i que han de hacer parte necesaria de los tratados definitivos de paz i de comercio, son las siguientes:

1^a. La República de Chile continuará en posesion i con dominio pleno i completo del territorio comprendido desde el paralelo 23 hasta la desembocadura del río Loa en el Pacífico con los límites orientales designados en el Pacto de Tregua en su artículo 2^o.

2^a. El Gobierno de Chile se hace cargo i se compromete al pago de las obligaciones reconocidas por el de Bolivia en favor de las empresas mineras de Huanchaca, Corocoro i Oruro, deducidas las cantidades con arreglo al Pacto de Tregua así como de los créditos que pesaban sobre las rentas del Litoral por motivo de él i que son el del Banco Garantizador de Valores de Chile, los bonos emitidos para la construcción del ferrocarril de Mejillónes, el crédito reconocido en favor de López Gama representado por la casa Alsop i Compañía de Valparaíso, i el de cuarenta mil bolivianos en favor de la familia Garday; quedando, en consecuencia libres de todo gravámen los rendimientos de las aduanas de Arica i Antofagasta por internaciones a Bolivia.

3^a. Las cantidades que arrojan los créditos a que se refiere la base anterior, tomadas de los libros del Tesoro Nacional de Bolivia son las siguientes:

| | |
|-----------------------------------|-------------|
| Compañía de Huanchaca..... | 1. 280. 000 |
| Id. Corocoro..... | 1. 634. 000 |
| Id. Oruro..... | 252. 000 |
| Banco Garantizado de Valores..... | 718. 000 |
| Ferrocarril de Mejillónes..... | 219. 000 |
| Crédito López Gama..... | 835. 000 |
| Id. Garday..... | 40. 000 |
| | <hr/> |
| | 4. 978. 000 |
| Fondos depositados..... | 535. 000 |
| | <hr/> |
| Suman..... | 4. 443. 000 |

Estas cantidades aproximadas son consideradas sin interes; i con ellos, segun liquidacion formada, alcanzan al monto de seis millones, seiscientos cuatro mil pesos.

Se consigna esta declaracion en virtud de que el cargo de intereses se halla observado por el Gobierno de Bolivia. Se declara, así mismo, que los convenios celebrados i las liquidaciones, con intereses, practicadas por el señor Heribito Gutierrez, estipulando una rebaja del veinticinco por ciento, han quedado sin efecto, por no haberse realizado el empréstito nacional a que estaban subordinados.

4^a. Los productos naturales de Chile o manufacturados como materia prima de esta República en su importacion a la de Bolivia no podrán ser gravados sino con el mismo derecho impuesto con anterioridad a similares de este pais i vice-versa.

5^a Los alcoholes de Chile no están comprendidos en la cláusula anterior, pero en ningun caso podrá imponerse sobre ellos una cuota mayor, que la del impuesto con que estén gravados los alcoholes del extranjero, entendiéndose por alcohol el aguardiente que pase de 25 grados.

Serán libres los puertos de Chile que estén en comunicacion con Bolivia para el tránsito de la importacion i esportacion de mercaderías.

Este convenio se celebra por parte de Su Señoría el Ajente confidencial don Juan Gonzalo Matta con la calidad de *ad referendum* para que sea ratificado por la Excelentísima Junta Gubernativa constituida en Iquique en la forma que tienen acordada.

En fe de lo cual lo firman, por duplicado, los infrascritos Ministro de Relaciones Exteriores de Bolivia i Ajente Confidencial de la Junta de Gobierno constituida en representacion del Congreso de Chile, en la ciudad de La Paz, a los diez i nueve dias del mes de mil ochocientos ochenta i un años.

(Firmadas) (L. S.) Juan G. Matta (L. S.) Serapio Reyes Ortiz.

El Subsecretario de Relaciones Exteriores de la República de Chile certifica que la copia anterior está conforme en todas i cada una de sus partes con el oriñinal archivado en este Departamento.

Santiago, 7 de setiembre de 1893

[L. S.]

A. BASCUÑAN M.

Certifico que la firma que precede es la de don A. Bascuñan M., Sub-Secretario del Ministerio de Relaciones Exteriores de Chile
Washington, Marzo 20 de 1894.

[L. S.]

ANIBAL CRUZ,

Secretario de la Lagacion de Chile.

[Translation.]

[Copy.]

REPUBLIC OF CHILE,
Ministry of Foreign Relations.

PROTOCOL.

On this date the Minister of Foreign Relations, Serapio Reyes Ortiz, 2nd Vice President of the Republic of Bolivia, and Mr. Gonzalo Matta, confidential Agent of the *Junta de Gobierno* organized, on behalf of the Congress of the Republic of Chile, met in the Department of Foreign Affairs, holding various conferences concerning the necessity of establishing firm relations between the two countries, political as well as commercial, in order to arrange a definite treaty of peace and commerce, involving the reciprocal interests of both nations. In said conferences, the Minister of Foreign Affairs of Bolivia stated and insisted that the fundamental base of all definite compact between both countries should be the return to Bolivia of its litoral department and the confidential Agent of the *Junta de Gobierno* manifested that this base was absolutely unacceptable, as Chile could not consent to part with the continuity of its territory situated south of parallel 23, which was transferred to it by Peru to the north of the Loa river.

In consequence, both parties being animated always with the sincere desire to arrive at a definite arrangement inspired by cordiality which should reign between both nations and recognizing equality in every possible manner, they have agreed to draft the bases of definite treaties which will be taken up when peace shall have been re-established in Chile. These bases, which will serve as a necessary part of the treaties of peace and commerce, were thoroughly discussed and are as follows:

1st. The Republic of Chile will continue in possession and with clear and complete control of the territory comprehended from parallel 23 to the mouth of the Loa river in the Pacific with the western limits designated in the Compact of Truce in Article 2nd.

2nd. 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, Corocoro and Oruro, deducting the amounts in accordance with the Compact of Truce, as well as the credits which encumbered the income from the Litoral by reason thereof and which are

that of the Garantizador de Valores Bank of Chile, the bonds issued for the construction of the railroad of Mejillones, the credit acknowledged in favor of Lopez Gama representing the house of Alsop & Co. of Valparaiso, and that of 40,000 bolivianos in favor of the Garday family; the products of the custom houses of Arica and Antofogasta, in consequence remaining free of all encumbrance on importations for Bolivia.

3rd. The sums which make up the credits referred to above as taken from the books of the National Treasury of Bolivia are as follows:

| | |
|------------------------------------|-------------|
| Huanchaca Co..... | 1, 280, 000 |
| Corococoro Co..... | 1, 634, 000 |
| Oruro..... | 252, 000 |
| Banco Garantizador de Valores..... | 718, 000 |
| Railroad of Mejillones..... | 219, 000 |
| Lopez Gama credit..... | 835, 000 |
| Garday credit..... | 40, 000 |
| | 4, 978, 000 |
| Funds deposited..... | 535, 000 |
| | 4, 443, 000 |

The sums approximated are considered without interest; and with which according to the liquidation made, reach the amount of six millions six hundred and four thousand pesos.

This declaration is made in virtue of the charge of interest, it having been observed by the Government of Bolivia. It was declared also, that the agreement reached and the liquidations with interest, made by Mr. Heriberto Gutierrez, stipulating a rebate of 25 per cent, have been without effect, as the national loan to which they were subordinate was not consummated.

4th. The national products of Chile or those manufactured of raw material of that republic in their importation into Bolivia shall be dutiable, only at the same rate imposed heretofore on similar goods of that nation and *vice versa*.

5th. Chilean spirits are not included in the foregoing class, but in no case can a greater duty be imposed thereon than that imposed on foreign spirits, it being understood that spirits signifies rum of over 25 degrees.

The ports of Chile, which are in communication with Bolivia, for the transportation of importation and exportations of merchandise, will be free.

This agreement is made on the part of the confidential Agent Juan Gonzalo Matta in the nature of *ad referendum*, in order

that it be ratified by the Junta de Gobierno constituted in Iquique in the manner aforesaid.

In testimony whereof the undersigned, the Minister of Foreign Affairs of Bolivia and the Confidential Agent of the Junta de Gobierno constituted in representation of the Congress of Chile, sign in duplicate in the city of La Paz, on the 19th day of May, 1891.

(Signed.) JUAN G. MATTA
SERAPIO REYES ORTIZ.

(Certificate Ministry of Foreign Relations of Chile and Chilean Legation in the United States.)

NOTE.—The six (6) documents filed by the United States on April 2, 1894, being Reports of the Ministry of the Treasury for the years 1880, 1881, 1882, 1883, 1884, and 1885, and a collection of treaties between Peru and Bolivia, will be found in separate volumes.

Unnumbered Exhibit, Filed April 4, 1894.

[From the Chilean law of the Organization and the Attributes of the Courts.]

TITLE III.

ART. 37. The Judges of Letters shall have jurisdiction: Exclusive, in accordance with the provisions of Art. 243.

* * * * * *

of commercial mining and treasury suits whatever the amount involved.

TITLE IV.

ART. 67. Courts of Appeals shall have cognizance:

1st. In the second instance, of civil and criminal causes the jurisdiction over which shall attach in the first instance to the Judges of Letters of their respective districts.

2nd. Exclusively, of the appeals in cessation that may be interposed against the judgments rendered by the same Judges of Letters.

TITLE V.

ART. 107. The Supreme Court shall have cognizance:

1st. Exclusively, of the appeal in cassation that may be taken from judgments rendered by the courts of appeal.

2nd. In the second instance, of suits of which the Courts of Appeal or a Minister of the Supreme Court have primary jurisdiction, in accordance with the provisions of Art. 117.

TITLE XII.

ART. 243. * * *

Judges of letters are competent to try in the same manner suits in which the amount involved shall not exceed three hundred *pesos*.

Brief for Claimants.

| | | |
|------------------------|---|--------|
| HENRY CHAUNCEY | } | No. 3. |
| against | | |
| THE REPUBLIC OF CHILI. | | |

STATEMENT OF FACTS.

The Republic of Bolivia being indebted to the firm of Alsop & Company (an American copartnership doing business at Valparaiso, New York and elsewhere), for a large sum of money, on December 26th 1876 made and entered into a formal agreement with said firm, Bolivia acting through its Minister of Finance and Industry pursuant to and embodying two decrees of the Bolivian Cabinet and Council dated respectively December 23d and 24th, 1876, and Alsop & Company acting by one John Wheelwright a partner in and representative of said firm, which agreement provided in substance as follows:

First.—Bolivia acknowledged its indebtedness to Alsop & Company for 835,000 Bolivian silver dollars with interest at five per cent. from the date of said agreement, not capitalizable.

Second.—It was agreed that said principal sum and interest should be liquidated by drafts drawn for the sum total in tri-monthly proportions 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, and to continue from that time forth whether the customs treaty with Peru were renewed or a national custom house were re-established by Bolivia.

Third.—This agreement further appropriated and set aside for the same purpose forty per cent. of the net profits of all the mining sets of silver belonging to the State (viz.: Bolivia) in the coast department, except the set or “estaca” known as “Flor del Desierto.”

Fourth.—Fifty per cent. of the net profit of said “Flor del Desierto” and forty per cent. of the net profit of another set belonging to the State (to be selected by Alsop & Company) were appropriated by said agreement to the payment of arrears of interest then due on said principal sum, namely, 160,700 Bolivian dollars interest due previous to December 18th 1875, and 70,000 dollars for the year expiring December 26th 1876.

The balance of the net profit of these two mines was to be applied to the payment of the principal debt in the same manner as the other mining sets above mentioned, and if neither of these two sets “produce anything or produce little,” the claim for such arrears of interest was to be cancelled.

Said agreement further provided that Alsop & Company were to have three years for making an examination of said silver mines belonging to the State and securing necessary capital for working them, and for the latter purpose were authorized to organize collective or anonymous companies either on that coast or abroad, or “to contract for the most secure working of them with the proprietors of adjoining mines,” and this agreement was to apply to all veins already discovered or which might be discovered during the three years then next ensuing.

The term of this contract was for the period of twenty-five years. The said contract contained sundry other provisions as will appear by reference to it. (See Exhibit N. 2.)

This agreement was subsequently ratified by the act of the Bolivian Congress, dated November 23, 1877. (See Exhibit No. 19.)

Public notice was immediately given of said agreement, and the same was recognized repeatedly by the Bolivian Government in public decrees. (See Exhibit No. 11.)

The then customs treaty with Peru, referred to in said agreement, by its terms did not expire except upon six months' notice given by one of said high contracting parties to the other, which notice was given on October 5th, 1876. (Collection of Treaties of Peru [1890] p. 416.)

So that the receipts of the custom house at Arica were not available in payment under this contract until the 5th day of April

1878, which time was subsequently extended to May 1879 by mutual consent. (See Deposition of H. S. Prevost 8th answer.)

Alsop & Company therefore immediately proceeded to take possession of some of the State mines, and selected under Section 4 of said agreement the mining set known as the "Disputa," the net proceeds of which were to be applied, together with those of the "Flor del Desierto," under the terms of said fourth section of the agreement.

Before the three years for the selection of mines under said agreement had expired and on or about February 14, 1879, war was declared against Bolivia by Chili, which latter Government proceeded at once to take military possession of the country wherein said State mining sets of Bolivia were situated, which possession has continued uninterruptedly down to the present time. This military occupation was thereafter and on or about the 3rd day of April 1879, ratified by the Chilian Congress and war with Bolivia formally declared (see law of April 3rd 1879, Exhibit No. 21) and the said territory continued under Chilian martial law until the Pact of Truce hereinafter mentioned.

Subsequently and on or about May 25, 1880, war was declared against Peru by Chili, and the Chilian Government took and has ever since remained in possession of the said custom house at Arica, referred to in said agreement as "The Northern Custom House."

Thereafter and on or about the 4th day of April 1884, Chili made and entered into a certain Protocol or Pact of Truce with Bolivia (supplemented by an additional Protocol on April 8th 1884 and by a complementary protocol on May 30th, 1885) (see Exhibit No. 7) whereby the territory containing said mines was to be held by, and governed by the laws of, Chili, and the entire income and receipts of said Custom House were appropriated to various purposes by her in entire disregard of the rights of Alsop & Company under said agreement, notwithstanding the fact that the attention of the Government of Chili was duly called to the claims and rights of Alsop & Company under the terms of their said agreement with Bolivia (see Exhibit No. 19), and the said income and receipts from said custom house have ever since continued to be applied pursuant to the terms of said Pact of Truce.

Alsop & Company proceeded to work those mining sets of which they had been able to obtain possession, and such work continued to some extent after Chili took possession of that territory.

After such occupation however, the work was impeded by many persons making claims to the mining properties, under the Chilean law, by which means the results of the work were greatly impaired and Alsop & Company were put to large expense in maintaining or defending law suits affecting their title to said mines.

In one of these actions at law, the case of the "Justicia" mine, (see Exhibit No. 3) it was decided by the Chilean Courts, having jurisdiction of such matters, in substance, that as regarded the State mines (of Bolivia) of which they (Alsop & Co.) had not actually taken possession, Alsop & Company, having only a right to work the mines under said agreement, *had not such property therein as Chili, the conquering power, was, under the law of nations, obliged to respect*; and it was further decided that as regarded those mines of which Alsop & Company had already taken possession and which were being worked by them, *they must be worked subject to the terms of the Chilean mining laws which then existed in that territory, and not under the Bolivian mining laws which were in force there at the time when and pursuant to which said agreement with Bolivia was made.*

In this latter respect this application of the Chilean laws interfered disastrously with the operation of said contract, for the reason: that under the Bolivian law each mining set, or estaca, was of small superficial extent, and in order to work it properly the owner must have the right to enter and follow his lode upon adjacent land, which right was given to Alsop & Company by said agreement. On the other hand the Chilean law gave larger superficial area, but did not permit the owner of one mining set to follow his lode into the adjacent property. (See Exhibit 5, Petition of J. Stewart Jackson.)

These mining sets of the State, having been measured under the Bolivian law, could not be worked with profit under the Chilean law, thus restricting the owners to their own limits.

Notwithstanding that it was made impossible for these reasons for Alsop & Company to work these mines at any profit, (excepting the two sets above specified), some work was maintained on them (see Exhibit No. 21) in order to preserve the rights of Alsop & Company under the mining laws of the territory which required a certain amount of work to be done in each year, which work, for the reasons aforesaid, resulted in an actual loss to Alsop & Company of some \$106,105.19. (Sworn statement of account of the working of said mines verified by J. Stewart and Jackson, herein.)

The above mentioned decision of the Chilean Courts, having been adopted in other cases (see case of the "Amonita" mine Exhibit No. 4) Alsop & Company appealed to the Government of Chili in a petition fully setting forth the facts (see petition of J. Stewart Jackson, dated Sept. 11th 1882. Exhibit No. 5) asking the protection of that Government in the enforcement of their rights under said contract, and if necessary the promulgation of a law for that purpose. To this petition the Government of Chili, through its Ministry of Justice, replied in substance that "claims of this class do not fall under the action of the Ministry of Justice", and that the petition involved "a question respecting support and recognition of private rights on fiscal property which from its nature belongs exclusively to the judicial power", and declined to interfere or furnish any relief in the matter and declared the petition inadmissible "*with the exception of the right of the petitioner to make good his claim before whom and in the form which he may deem convenient.*" (See decree of Chilean Minister of Justice dated October 18th 1882. Exhibit No. 5.) The work by Alsop & Company in the two mines "Flor del Desierto" and "Disputa" resulted in a net profit of which the portion applicable to said arrears of interest was some \$134,743.28.

The amount of the custom receipts collected and received by Chili at the Arica Custom House and distributed by her under the terms of the above mentioned Pact of Truce or otherwise, from 1883 to 1889 both included, was about \$8,871,657.05. This is exclusive of all receipts at said custom house between the date of its said seizure by Chili in May 1880 and 1883, and also of all such receipts since 1889, the amount of which is unknown to claimants and has not as yet been furnished by Chili though thereunto requested.

On or about the 19th of May 1891, a Protocol of a treaty was signed by and between Chili and Bolivia, known sometimes as the "Protocol of Iquiqui" and sometimes as the "Matta-Reyes Protocol", which Protocol is still in existence, though it has not yet been supplemented by a formal treaty, so far as is known to the public. (See Printed extract from said Protocol; also letter of Minister Errasuriz to Mr. Egan on file herein.)

By this treaty Chili acquires from Bolivia the territory in which the above mentioned mining sets are situated; and on her part (and it is to be presumed in consideration of such territorial acquisition) Chili agrees to pay sundry debts of Bolivia and among

them the above mentioned debt from Bolivia to Alsop & Company, to the amount of \$850,000.

The total amount of the claim herein with accrued interest was on December 26th, 1893, as follows, viz.:

| | | | |
|---|--------------|--------------|----------------|
| Principal due December 26, 1876..... | | \$835,000 00 | |
| Interest for twenty-seven years at 5% | | 1,127,250 00 | |
| | | | \$1,962,250 00 |
| Arrears of interest due December 26th, 1876..... | \$230,700 00 | | |
| Less amount received on account from product of Flor del Desierto and Disputa | 134,743 28 | | |
| | | \$95,956 72 | |
| Interest on balance for 27 years at 6 per cent..... | 155,449.88 | 251,406 60 | |
| Amount of loss incurred by Alsop & Co. in being com- pelled to work said mines under Chilean laws..... | 106,105 19 | | |
| Interest from June 1892, at 6 per cent..... | 9,478.69 | 115,583 88 | |
| | | | \$2,319,240 48 |
| Balance..... | | | |

The members of the firm of Alsop & Company were, and the survivors are, all native born citizens of the United States, and were wholly neutral at all times during the continuation of hostilities between Chili and Bolivia.

SYNOPSIS OF ARGUMENT.

I.—The agreement between Bolivia and Alsop & Company which is the basis of this claim, granted and conveyed absolutely to Alsop & Company

1st. A certain portion of the net profits of all the mining sets of silver belonging to Bolivia in the Coast Department together with the right to possess and work the same under the laws of Bolivia then existing in that territory, and

2d. All the excess of annual customs receipts at the Northern Custom House over \$405,000 from and after May 1879.

All of which thereby became and remains the private property of Alsop & Company.

II.—Being their private property, Alsop & Company, who were neutral aliens, were entitled under the laws of nations, to be protected in the use and enjoyment of said property and rights, as of all their other rights and property, by Chili upon her conquest and occupation of the territory where such property was located.

III.—Chili refused to recognize said rights and property and to protect Alsop & Company in the use and enjoyment thereof, in that;

1st. By both the judicial and the executive branches of her Governmental system, she prevented Alsop & Company from possessing, using and enjoying their said property according to the laws existing in Bolivia at the time said agreement was made.

2d. She has appropriated or diverted to other uses all the customs receipts of the Northern (or Arica) custom house and continues so to do.

IV.—By the Matta-Reyes protocol, Chili agreed to pay this claim (upon the ratification of the treaty) and thereby impliedly admitted her liability therefor.

V.—The measure of damages in this case includes the difference between the value of the Bolivian silver dollar at the date of the contract between Alsop & Company and Bolivia and its value at the present time.

VI.—As to the specific acts of Chili which were in controvention of the law of nations and the rights of these claimants.

VII.—A statement in detail of the amount of damages claimed by the claimants.

POINTS.

I.

The claim of Alsop & Company against Bolivia on December 26th, 1876, was admitted and adjusted by the contract dated on that day between Alsop & Company (by John Wheelwright) and the Bolivian Government, acting through its Minister of Finance and Industry, and subsequently ratified by the legislative body of that country.

The claim was as follows, viz.: \$835,000 Bolivian silver dollars with interest from December 26th, 1876 at five per cent. (not accumulative) also \$160,700 Bolivian dollars arrears of interest to December 18th, 1875; also \$70,000 arrears of interest from December 18th, 1875, to December 26th, 1876.

The justice and amount of this claim having been admitted by the official act of the Bolivian Government and ratified by its legislature and publicly proclaimed, cannot be questioned upon these proceedings.

To pay this debt Bolivia granted and conveyed certain property to Alsop & Company, and it is now to be considered what was the nature of the right and interest of Alsop & Company therein.

First.—As to the receipts of the Arica (or Northern) Custom House.

The contract with Bolivia provided that the said principal sum and interest namely, \$835,000 at five per cent. from December 26th, 1876: "*shall be liquidated* by drafts drawn for the sum total in trimonthly 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 405,000 Bolivian dollars 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."

The plain meaning of this clause is that all Bolivia's receipts at said custom house, over and above the sum of \$405,000 annually, were *granted and set over* to Alsop & Company and applied in payment of this debt, including principal and after accruing interest; such receipts to be so applied by means of drafts to be drawn every three months in favor of Alsop & Company on whatever surplus should appear over and above the proportionate part of said annual sum of \$405,000.

This was not a mere pledge or mortgage of these customs receipts nor a conditional assignment, but an *absolute grant* of them to Alsop & Company. These receipts were not given as collateral security for, but in payment of the debt. The word used in the contract is "liquidated", which means "paid or settled", and the contract plainly grants these customs receipts to Alsop & Company in payment of their claim; so that the actual property in such prospective receipts, as against any third party passed then and there to Alsop & Company, and the time and manner in which such property should be reduced to possession and delivered to them was particularly set forth in said agreement. There was an absolute transfer of property to Alsop & Company; and there was no contingency in the agreement excepting as to what might be the amount of the excess of said customs receipts over said annual sum of \$405,000. It was as if the Government of Bolivia had drawn a draft upon the custom house at Arica for the excess of annual revenues in favor of Alsop & Company, which draft had been duly accepted by the authorized representative in charge of said custom house and duly delivered to Alsop & Company. Whatever that excess might prove to be, Bolivia,

until this claim was paid, had no more claim or property in it than an utter stranger to the transaction.

Second.—As to the State mining sets of Bolivia.

The same remarks apply to “all mining sets of silver belonging to the State in the coast department”, which were by said contract declared to be “*subject to the same amortization*” as the said customs receipts.

“Amortization” is defined as “an alienation of lands in mortmain,” or in other words in *perpetuity*; which emphasizes the fact that all of said mining sets, to the extent of their claim, were granted absolutely to Alsop & Company, and applied in payment of said claim, and not merely hypothecated to secure such payment.

Here again, as in the case of the Arica customs receipts, the method in which this “amortization” shall be effected is particularly set forth, and it is “by the application of 40 per cent. of the net profits” (except in the case of the estaca Flor del Desierto &c.), and the manner in which this 40 per cent. shall be obtained, and the method of working said mining sets is further particularly set forth in a distinct contemporaneous agreement. (See Exhibit 2.)

Furthermore this agreement was made under and in pursuance of the laws of Bolivia which were then in force in that territory, and to be carried out and enforced according to the provisions of said laws. As between Bolivia and Alsop & Company those laws were as much a part of the agreement as if they had been actually incorporated in the written document. This is elementary. So that as against Bolivia Alsop & Company by that agreement not only acquired the property in the output of said mining sets, but the right to possess and operate them according to the terms of said agreement and *under the provisions of the then existing laws and usages of Bolivia applicable thereto.*

Third.—As to the arrears of interest.

These arrears were to be paid from the mining set “Flor del Desierto” and one other to be selected. The mine “Disputa” was so selected. (See Deposition of H. S. Prevost.)

And here again the words of the contract applied to these two sets are “*dedicated to the payment,*” &c. &c. Then follow provisions showing how this *dedication* was to be effected, and in what proportion from time to time the net profits of said two mines

were to be applied by Alsop & Company to said arrears of interest and to the principal debt.

In fact the words of the contract throughout show an *absolute grant* of all this property to Alsop & Company to the extent of their debt, and a *dedication* thereof to its payment.

The contract was not (as was contended for and maintained in the Chilian Courts in the case of the mine "Justicia", Exhibit No. 3) a contract of "antichresis". A contract of antichresis is "an agreement by which a debtor gives to the creditor the *income* from the property which he has *pledged*, in lieu of the *interest* on his debt." (Bouvier's L. Dict., Vol. I, p. 163.)

It was more similar to the "Vadium Vivum", whereby the debtor made over his property and estate to the creditor until he had received the amount of his claim out of the issues and profits of the land; a right of redemption thereafter being reserved. (Bouvier's Law Dict., Vol. II, p 777.)

The property of Alsop & Company in these mining sets was unlike that of a mortgagee, who is not entitled to a possession nor use of the mortgaged property. It was also unlike the case of a pledge, where the pledgee, though entitled to the possession, is not entitled to the use of the pledge. These mining sets were granted to Alsop & Company with full and sole right of possession and occupation and use, and as above said not *as security* for the payment of this claim, but *in payment* thereof; the property in them and their product to that extent, as against any third party, passing under the terms of the contract absolutely to Alsop & Company.

The question whether or not Bolivia had the right to convey these properties, cannot be raised here. No such question has ever been raised in regard to the Arica customs receipts. As to the mining sets the question was raised in the suit concerning the "Justicia" mining set (*supra*), and was there decided by a *Chilian Court* in the first instance, in favor of the right of Bolivia to dispose of the property as in the agreement with Alsop & Company.

This decision contains an able and exhaustive review of the laws and treaties bearing upon this question, and although the sentence of the Court was subsequently reversed upon appeal in cassation, such reversal was upon other grounds and did not affect the decision in first instance in the above respect.

II.

The property and rights of Alsop & Company in said annual excess of customs receipts and to this percentage of output of these mining sets and the possession, use and enjoyment of them according to the then existing laws and usages of Bolivia were not under the law of nations affected or modified by the fact of the seizure and hostile occupation by Chili of said custom house and of the territory in which said mining sets were located.

"A mere change of sovereignty does not produce any change in private rights of property in the soil, whether the interest was acquired by law under a grant from the State or by individual contract."

(Mutual Assurance Society v. Watts, 1 Wheaton R., 279.)

"The Sovereign who acquires an inhabited territory acquires full dominion over it, but this dominion does not divest the vested rights of individual property."

(Delassus v. U. S., 9 Peters, 117; Mitchell v. U. S., 9 Peters, 711; U. S. v. Percheman, 7 Peters, 51; Strother v. Lucas, 12 Peters, 410.)

"By the law of nations, conquest passes all rights belonging to conquered territory to the same extent as cession. In neither case is private property affected. The rights of sovereignty and public property only, pass by cession or conquest."

(Gardner's Institutes, pp. 52, 53, citing 8 Peters, 445, 7 Peters, 734; Vattel, Vol. 3, ch. 13, sec. 200; Wheaton's International Law, p. 4, ch. 2, §§ 6, 7.)

"Cession or conquest does not affect private rights in the soil already vested * * * * nor can a foreigner be divested of his title by the expiration of the treaty authorizing it."

(Same, at p. 394.)

"The modern usage of nations, which has become a law, would be violated, and that sense of justice and of right which is acknowledged and felt by the whole civilized world, would be outraged if private property should be generally confiscated and private rights annulled; their relation to their ancient sovereign is dissolved, but their relation to each other and their rights of property remain undisturbed."

"According to modern usage the victor may possess himself of the territory of the vanquished state, but he can never interfere with private rights of the enemy, nor infringe on the liberty of persons."

(Gallaudet's Manual of International Law, pp. 249, 251.)

"Much less can he interfere with the private rights of a NEUTRAL ALIEN."

"The Treaty of Peru does not affect private rights which had no relation to the war. Debts existing prior to the war but which had no part of the reason for undertaking it, remain entire and the remedies are revived."

(Kent's International Law, p. 413, citing Grotius, Book III, ch. XX, secs. 16, 18; Heffer, Sec. 8, 181.)

“The general principle is undisputed that the division of an empire works no forfeiture of a right of property previously acquired.”

(*Jones v. McMasters*, 20 Howard, 8; *Leitensdorfer & O’rs v. Webb*, 20 How., 176; *U. S. v. Moreno*, 1 Wallace, 400.)

“By the law of nations a change of Government does not affect pre-existing rights of property.”

(*U. S. v. Roscline & O’rs*, 15 How., 36; *Townsend v. Greeley*, 5 Wall., 326.)

“The cession of California to the United States did not impair the rights of private property. Its rights are consecrated by the law of nations.”

(*U. S. v. Moreno*, *supra*; see also the decision in the case of the rights of the Ancient Pueblo on site of the City of San Francisco, *Townsend v. Greeley*, *supra*.)

The conquering nation can acquire no more property or rights than those which were owned and possessed by the Sovereign whose territory was conquered.

Thus Chili took possession of the territory in question subject to the same conditions and agreements which existed as against Bolivia, and among them was not only Alsop & Company’s right to the possession and net profits of said mines, but to possess and enjoy said mines according to the “laws, usages and customs” existing in Bolivia at the date of the contract.

At the time of the cession of California to the United States, it was held by the United States Supreme Court, that the rights of the inhabitants of California to property claimed by them under grants from Spain and the Mexican Government, “must be governed by the stipulations of the treaty, the law of nations, and the laws, usages and customs of the former Government, &c.” (*U. S. v. Anguisola*, 1 Wall., 352.)

The attempt on the part of Chili, through her courts of justice in the case of the mine “Justicia” (Exhibit No. 3) to test the rights of Alsop & Company by applying to them her own laws and not the laws of Bolivia under which they vested, is no new thing. This alleged right has been previously asserted by Chili and distinctly repudiated by the Government of the United States.

Mr. Wharton says:

“It is asserted by the Government of Chili that a Sovereign when occupying a conquered territory has by international law, the right to test titles acquired under its 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 *can-*

not acquire more rights than the one for whom he is substituted, &c., &c.; such is to-day the public law of Europe,' &c., &c. (C. Masse', Rapport du Droit' du Gens, avec le Droit Civil,' Vol. I, p. 123, Sections 148 and 149)."

(Wharton's Int. Nat. Law Digest, Vol. I, p. 16.)

The position heretofore taken by the United States in regard to this question is well stated by Mr. Secretary Bayard in his instructions to Minister Roberts of March 20th 1886. He there says in substance that

"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 a transfer to another government. His remedies may be affected by the change of Sovereignty, but his *rights at the time of the change must be measured and determined by the law under which he acquired them. The Government of the United States is therefore prepared to insist on the validity of such title as held by citizens of the United States when attacked by foreign Governments succeeding that by which they were granted.*"

(Wharton Int. Nat. Law Dig., Section 3, p. 19.)

"In the territory conquered by Chili from Peru in the war of 1879, 1882. Citizens of the United States had acquired certain rights from the Peruvian Government, which after the conquest, the Chilian Government was inclined not to respect. In Mr. Bayard's opinion, *rights of individuals acquired under a former government should be respected in the case even of conquest by another Government.*"

"The Government of the United States therefore holds that titles derived from a duly constituted prior foreign sovereign 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. * * * Title to land, and landed improvements are by the law of nations a continuous right, not subject to be divested by any retroactive legislation of a new sovereign taking the place of that by which such title was lawfully granted."

(Opinion of Secretary Bayard, Dispatch to Minister Roberts March 20th, 1886.)

(See Snow's Cases on International Law, pp. 21-23.)

That this is but a re-statement of the position previously taken and always maintained by the government of the United States upon this question, appears from the manuscript instructions given by Mr. Adams when Secretary of State, to Mr. Everett on August 10, 1818. (1 Wharton Int. L. Dig., p. 19, § 5.)

That this view of the principles of international law bearing upon the question here at issue is not only well established, but has been recognized by Chili itself appears from the manuscript

instructions from Mr. Secretary Bayard to Mr. Corvie, dated June 10th, 1885, wherein he says in substance that

“Chili in taking possession at the close of the late war with Peru of the guano deposits belonging to Peru, took them subject to such liens as were binding under Peruvian law at the time of cession.”

(Same, page 24.)

Not only was it incumbent upon Chili to have regard to the then existing laws of Bolivia as fixing the rights of Alsop & Company under said agreement and to protect them in the exercise of all rights so fixed, but it was further incumbent upon her under the law of nations to, if necessary, enact laws to insure to them the means of enjoying those rights.

“The conquering nation must respect the private rights and titles to property of persons within the territory, and by proper laws and regulations insure to them the means of enjoying those rights.”

Citing—

(Field's "International Code," Vol. 2, p. 605; Dana's Wheaton, note 169, p. 434; Halleck International Law, pp. 830-838.)

Chili was requested by Alsop & Company to promulgate a law to obviate the difficulties arising from the action of the Chilian Courts (see petition of J. Stewart Jackson of Sept. 11, 1882, Exhibit No. 5), and through her Minister of Justice distinctly declined so to do (see decree of Minister of Justice of October 18, 1882, in reply to said petition Exhibit No. 5).

Furthermore Chili having taken possession of the territory wherein these mines are located and *having now also assumed control of the mines*, (see admission of the Agent for Chili on file herein in reply to request of claimants to produce documents,) is in equity and justice bound to pay this claim to which said territory is subject.

President Tyler in his annual message, December, 1844 (referring to the annexation of Texas) says,

“we could not with honor take the lands without assuming the full payment of all incumbrances on them.”

(Lawrence's Wheaton's Int'l Law, p. 53 n.)

“The conqueror who reduces a nation to his subjection receives it subject to all its engagements and duties towards others, the fulfillment of which then becomes HIS OWN DUTY.”

(1 Wharton Int. L. Dig., p. 19.)

In regard to the property of Alsop & Company in the case of annual receipts at the Arica Custom House over the sum of \$405,000.00, a similar question arose at the time of the annexation of Texas to the United States as to the liability of the United States

for bonds theretofore issued by Texas for which certain revenues had been pledged as security. In that case no decision was made upon the merits, inasmuch as the United States and Texas had by the treaty of annexation arranged to secure the payment of these bonds and no claim had ever been made against the United States on them, for which reasons they were held not to be within the provisions of the British American Mixed Commission of 1853, before which the matter was brought for consideration.

The matter was however discussed at length and the position taken by the British Commissioner was in substance as follows:

“That the obligation of Texas to pay her debts is not in dispute, nor has it been argued that the mere act of her annexation to the United States has transferred her liabilities to the federal government, though certainly as regards foreign governments the United States *is now bound* to see that the obligations of Texas are fulfilled. *It is the transfer of the integral Revenues of Texas to the federal government that is relied upon as creating the new liability.*”

The American Commissioner also seems to have conceded that any claim arising from the previous pledge of such duties would be valid to the extent of their value. (1 Wharton, Int. Dig., § 5.)

In commenting upon this case Mr. Wheaton says:

“By the annexation of Texas to the United States the power to lay and collect duties on imports passed to the latter, but Texas retained her public lands pledged to the payment of her debts, and the act of annexation declared that they should in no event be a charge on the United States.” * * * * *

“It certainly would not be satisfactory to say that the United States discharges its obligation to the creditors of Texas to whom her customs were pledged, by paying only the amount of the customs received. The United States determines what these duties shall be in reference to the interests and policy of the whole republic. The condition of Texas is changed by her annexation. The new government has a large control over the material resources of the inhabitants, in the way of Internal Revenues, excise or direct taxation, in its demands on the services of the people, and in the debts it can impose; in fact the entire public system of Texas has passed into other hands, and *no such state of things any longer exists as that to which the creditor looked.*

“It may be better or it may be worse: but it is not the same, and if the duties laid by the United States and collected in Texan ports did not in fact pay the debts, *it would be unjust for the United States to limit the payment of creditors to them.*

“*The truth is, by the annexation the United States changed the nature of the thing pledged and is bound generally to do equity to the creditors.*” (Dana’s Wheaton’s Int. Law, edn. 1866, p. 49 n. (b) 18.)

The foregoing reasoning of Mr. Wheaton applies even more forcibly to the case at bar. Not only has Chili assumed control of the customs at Arica both by making changes in the tariff and

in the management and collection of the duties, but *she has reduced the revenues by placing Chilean commodities upon the free list.* Besides all this she has, as above remarked, either applied to her own use or diverted according to her own wishes and for her own purposes the entire revenues received at that port since her occupation in 1880.

It is respectfully submitted that under the foregoing authorities Chili is "bound" in equity to pay this claim; and that beyond dispute she is chargeable with the payment of it to the amount of the revenues received by her and which have been granted by Bolivia to Alsop & Company for its payment, which amount as appears from the testimony herein, is largely in excess of said claim.

III.

The testimony before the Commission shows that the rights and property of Alsop & Company have been impaired by Chili in contravention of the established principles of international law.

First.—As to the mining sets.

The decisions of the Chilean Courts in effect nullified Alsop & Company's agreement with Bolivia, and made it practically worthless.

1st. These Courts held that Bolivia had no power to convey these mines to Alsop & Company by the agreement of December 26, 1876, for the reason, as claimed by Chili, that Chili, having ceded the territory in which these mining sets were located only conditionally and the condition having been broken by Bolivia, had "*revindicated*" the territory which had not ceased to belong to her. (See case of the "Amonita" mine, Exhibit 4.) and which was therefore unencumbered by any contracts or conditions which Bolivia had placed upon it. That this claim of Chili was unfounded was decided by her own Courts in the case of the "Justicia" mine in its sentence rendered in the first instance, and the laws and treaties therein cited. (See Exhibit No. 3.)

2d. Said Courts refused to allow the State mining sets, which had belonged to Bolivia, to be measured off for Alsop & Company, (or in case where the measurements had been lost, to be re-measured), notwithstanding all the data for such measurements were easily at hand; on the ground as claimed by Chili that not having been actually measured off before the occupation of the territory by Chili, these sets "did not have real and positive existence, nor in

that which relates to" them "did the said contract of the 26th December 1876. have full effect while the district of Caracoles remained under the dominion of Bolivia." (See Exhibit No. 3.)

3d. They applied to the working of these sets the laws of Chili instead of those of Bolivia, in contemplation of which the contract with Alsop & Company was made and their rights vested; thus denying to Alsop & Company, in working said mines, the right of access to the adjoining land which was permitted by the Bolivian law and especially incorporated in their contract with Bolivia; (and which was necessary owing to the smaller area of the sets measured under Bolivian laws), and with the effect that these mining sets measured off according to the Bolivian law had to be worked, if at all, according to the restrictions of the Chilian laws; and moreover enabled the owners of adjacent mines to trespass upon the mining sets thus granted to Alsop & Company without power on the part of Alsop & Company to prevent such a trespass. (See petition of J. Stewart Jackson Exhibit No. 5; also deposition of H. S. Prevost.)

It may be said that these acts of interference were merely the acts of private Chilian citizens for which the Chilian Government is not responsible. While this may be true of the physical acts, yet *these acts were rendered possible and inevitable only by these decisions of the Chilian Courts*, which constituted the judicial branch of the Government of Chili.

It may be farther said that Alsop & Company did not carry any of these law suits on appeal to the Supreme Court at Santiago, and therefore cannot be heard to say that their rights were impaired by these decisions which might have been reversed upon such appeal. But it is submitted that under the Civil Code of Chili no such appeal lies in cases of this kind: in which the appeal from the decision of the Court in first instance to the Court of Appeals was *an appeal in cassation*. (See Chilian Civil Code Tit. III arts. 37 and 243; Tit. IV. art. 67 and Tit. V. art. 107; also Opinion of Sr. Pinedoa.)

Moreover, even if such appeal lay, Chili will not be heard here to say that the decisions of her own Courts were contrary to her own laws. Especially is this true in as much as no question of this kind was raised by the Chilian Government when this whole matter was brought to its attention by the petition of Mr. J. Stewart Jackson acting as the representative of Alsop & Company. (See the petition of Jackson and reply of the Chilian Government Exhibit 5.)

And furthermore the Government of Chili is responsible under the law of nations for wrongful decisions of its Courts. This has been repeatedly held in the case of decisions of prize courts, and is true whether an appeal was prosecuted or not. (III. Wharton's International Digest § 329a, p. 194.)

It may be urged also that it does not appear that these mines would have produced enough to pay Alsop & Company's claim in any event. But these decisions of the Chilean Courts having failed to protect Alsop & Company in the use and enjoyment of their property, and Chili having thus wrongfully applied her own laws to the working of these mines by Alsop & Company instead of the laws of Bolivia and the result having been to render them practically valueless, she will not now be heard to say that Alsop & Company would not have realized their debt if they had been permitted to work the mines, as was their right, according to the mining laws and usages of Bolivia.

Furthermore *it is admitted on behalf of Chili that she now has all of these mines under her control and that they are let to private parties.* (see reply of the agent for Chili to claimant's request to produce documents herein), so that Alsop & Company are no longer able to work even the two mines which yielded any profit (Flor del Desierto and Disputa) and are therefore deprived of all means of repaying themselves the balance of deferred interest which was to be paid by the product of these two mines, for which sum with interest it is submitted that Chili is liable by reason of her action in taking and assuming control of said mines.

Second.—As to the custom receipts of Arica.

The customs treaty existing between Bolivia and Peru at the time of the agreement of Alsop & Company with Bolivia, was by its terms to continue in force until eighteen months from the day in which either party gave notice to the other of its abrogation. (See Treaty of Commerce and Custom House between Peru and Bolivia, dated July 23, 1870, and promulgated in Lima, 23d of December, 1872, Art. 8 and Art. 15. See collection of Treaties of Peru, Vol. II, pp. 414-415.)

Such notice was given by Bolivia to Peru on October 5th, 1876. (See same collection at p. 416.)

The treaty was however subsequently extended by consent of the two Governments until May 1879, at which time a new treaty which had been signed in October 1878 was to go into effect (see deposition of H. S. Prevost, 8th answer), so that on May 1st 1879

Alsop & Company had a vested right in all Bolivia's shares of the annual customs receipts at the Northern Custom House over and above the sum of \$405,000 *after that date* until the principal sum of their claim with interest at five per cent from December 26th, 1876, was paid.

Meantime war was declared by Chili against Bolivia on February 4th, 1879, and against Peru on April 4, 1879, and on May 25th, 1880, Chili took possession of the Arica custom house and has ever since held and controlled it.

The acts of Chili which were in derogation of the rights and property of Alsop & Co. and contrary to the laws of nations are

1st. That from May 25th 1880 to April 4th, 1884, the entire receipts of said custom house, so far as appears, were appropriated by Chili to its own uses.

2nd. On said 4th day of April 1884, a Pact of Truce, so called, was executed between Chili and Bolivia, whereby Chili reserved to herself 65 per cent of the annual receipts at said custom house, and this Pact of Truce has ever since continued to be and is now in force.

3rd. Moreover by this Pact of Truce Chili caused it to be stipulated that all "the natural products of Chili and those manufactured from them" should "enter Bolivia *free of all custom house duties,*" and that "in the port of Arica the import duties on foreign goods destined for consumption in Bolivia shall be *recovered in conformity with the Chilean tariff,* and these goods shall not be subject to the imposition of any other duty in the interior." (See Exhibit No. 7.)

So that it appears that before Alsop & Company had the right to call for drafts on said customs receipts war was declared by Chili against Bolivia, and within about a year thereafter, and from that time down to the present, all of the said customs receipts have been received or controlled by Chili and the tariff modified at her behest.

For the receipts of the Arica custom house and their disposition after the Chilean occupation (May 25th, 1880) it is submitted that Chili is solely responsible.

From May 25th, 1880 to 1885, *the entire receipts went to her,* and thereafter more than half of those pertaining to Bolivia (under said Pact of Truce with Chili) were taken by Chili; besides which by compelling Bolivia to adopt a new schedule whereby Chilean products were put upon the free list, the receipts were necessarily

diminished, and these results all arose from the hostile acts of Chili.

What the amount of such receipts was from May 25th 1880 to 1883, is known only to the Government of Chili, which has been called upon to produce a statement thereof herein.

In 1883 the total receipts amounted to \$1,463,200.02 and in 1884 to \$836,649.13 making a total of \$2,299,849.15 (see statement of receipts Exhibit No. 30), all of which were appropriated by Chili to her own use.

Under the Pact of Truce of April 4th, 1884 (which appears to have gone into effect in 1885), with its altered schedules, during the years 1885, 1886, 1887, 1888 and 1889, the total receipts were \$6,571,807.90, of which Chili retained 65 per cent., or about \$4,273,675.13, making a grand total of customs receipts appropriated by Chili of about \$6,573,444.28. After deducting from this sum the 25 per cent. allowed by said Pact of Truce for operating expenses of the custom house and also the said amount of \$405,000 annually for the seven years (to wit: the sums of \$1,643,386.07 and \$2,835,000 equalling in aggregate \$4,478,386.07) from the total amounts thus received by Chili since 1882, a balance remains of about \$4,478,386.07: *enough to have paid the claim of Alsop & Company with all arrears of interest nearly twice over*; and this exclusive of the receipts for the years 1880, 1881, 1882 and also 1890, 1891 and 1892, for which latter period it is fair to assume, in the absence of information from Chili on this point, that they were of the average amount of the other years.

IV.

In June, 1891, by the Protocol known as the "Matta-Reyes" protocol, Chili distinctly recognized this claim of Alsop & Company as a debt due from Bolivia, and in consideration of the terms of said protocol agreed to pay it to the amount of \$850,000. (See printed extract from this protocol on file herein.)

That this arrangement was intended to include the entire debt, principal and interest, appears from the correspondence between the representative of the United States and of Chili, from which it is evident that the only reason why interest on said claim was not included in specific terms, was that no detailed statement of the claim was brought to the attention of the parties by whom the protocol was negotiated.

This undertaking on the part of Chili was based upon valuable consideration, viz.: the cession to her of the lands wherein the mines and the custom house, of which the revenues granted to Alsop & Co., were located.

If the final treaty, toward which this protocol was a preliminary step, has been signed, this claim of Alsop & Company is a legal debt of Chili recognized not only by the principles of international but of *municipal* law; for such treaty is in legal effect *a promise made for a valuable consideration to one party for the payment of the claim of a third party.*

Whether or not this treaty has been formally ratified is known only to the high contracting parties to said protocol.

But the execution of the protocol itself, is a recognition of the principle that the sovereign power, which acquires by treaty or otherwise territory in which private individuals have vested rights, assumes with the dominion over such territory all burdens and claims with which it is encumbered; and is in that view an admission on the part of Chili that, inasmuch as she has taken possession of the territory in which Alsop & Company have vested rights and property and still retains it, she is liable to them for the amount and value of such rights and property.

And this admission is in accordance with the views expressed by President Tyler and by Mr. Secretary Adams hereinbefore cited. (Lawrence's *Wheaton's Int'l Law*, p. 53 n; 1 *Wharton Int. L. Dig.*, p. 19.)

V.

As hereinabove argued the rights of Alsop & Company were fixed by the laws and usages prevailing in Bolivia at the time of the signing of their Agreement and their rights were vested as of that time. Among their rights was that of receiving in payment Bolivian silver dollars at their then value according to the international standard of monetary value.

At that time a Bolivian silver dollar was worth about eighty four cents in gold coin of standard value.

Since that date the value of the Bolivian dollar has depreciated until it is now worth only forty-eight cents, or thereabout, according to the above standard, so that if payment be made in Bolivian silver dollars at their present market rate, the claimants would receive but little more than fifty per centum of their claim; and, the delay in collecting the claim having arisen from no fault of

their own but from the illegal acts of Chili, these claimants would be mulcted for her wrongful acts.

It may be said that *Bolivia* having agreed to pay in Bolivian silver dollars could only be compelled to pay in that coin, whatever its value, and that the claimants in making the agreement took the chance of any change in value of the medium of payment, and must look for compensation, for depreciation and for all other losses incident upon delay in payment, to the interest which is granted them by the contract at 5 per cent.

Whether or not this be the law as regards *Bolivia* is not material, for the claim is not here made against her, but against Chili; and moreover the complaint as against Chili sounds not only upon implied *contract* but in *tort*.

Irrespective of the claim which exists against Chili either as a quasi surety or guarantor of the debt of Bolivia or arising in equity out of the fact of her acquiring possession and control of the property which, by the agreement with Bolivia, had been subjected to the claim of Alsop & Company, there exists in favor of Alsop & Company a claim against her as a trespasser for her tortious acts both in appropriating and disposing of the receipts of the Arica custom house and in preventing Alsop & Company from the full and profitable enjoyment of their rights and property in said mines.

While in case of actions sounding only in contract the terms of the contract may be strictly followed in estimating the damages, in actions sounding in tort a different rule is applied. This rule briefly stated is, that the injured party must be put, so far as possible, in the position in which he would have been had it not been for the tortious acts of the wrong doer.

The rule laid down by Mr. Sedgwick is that—

“There are but two principles on which damages are decreed, namely, *compensation to the injured party*, and punishment of the wrong doer for example's sake.”

(Sedgwick on Measure of Damages, ed. of 1880, Vol. I, p. 213, note b.)

“Adequate pecuniary compensation for the wrong suffered.”

(Same, p. 217, note a.)

Among the wrongs suffered by these claimants is the delay of some fourteen years, during which the medium of payment under their contract with Bolivia has depreciated nearly 50 per cent. For this wrong it would be no “adequate pecuniary compensation” to be repaid by Chili in this depreciated money.

This very question was decided by the Privy Council in the case of "Pilkington and others," where it was held that the confiscating State,

"Was answerable for the debt in the currency at the time of the debtor's declaration, it not being a case between a debtor and creditor, but of reparation by a wrong doer."

(*Pilkington et. al. v. Commissioners for claims on France*, 2 Knapp's R., p. 7.)

In rendering the opinion in that case Sir William Grant says:

"There is a wrong act done by the French Government: then they are to undo that wrong act, and to put the party into the same situation as if they never had done it."

(Same case, p. 19.)

"It is not merely the case of a debtor paying a debt at the day it falls due, but it is the case of a wrong doer, who must undo, and completely undo, the wrongful act he has done."

(Same, p. 20.)

"And we think therefore, that the Commissioners have proceeded on a perfectly right principle in these cases in which we understand they have made an allowance for the depreciation of paper money."

(Same, p. 21; see also *Story on Conflict of Laws*, 6 Ed. Sections 313 a, 313 b; Citing *Vinnius, ad Instit. Liber 3, Tit. 15* and others.)

A similar doctrine as to contracts was laid down by the Supreme Court of Appeals of West Virginia in regard to payment of a debt contracted with reference to currency issued by the late Confederacy. (*Beirne vs. Brown's Admrs. &c.*, 10 W. Virg. Rep. 760; see also *Wilmington &c. R. R. Co. vs. King, Executor &c.* 1 Otto, 4.)

It is therefore submitted that in making any award in this case the Bolivian silver dollar should be estimated at its value in American gold on December 26, 1876.

It may be urged that even had there been no hostile occupation of the territory where the mines and custom house were situated, and had all the custom receipts been applied to the payment of this claim according to the provisions of the contract with Alsop & Company, the claim would not, as it appears, have been paid for some years, and therefore that Chili is responsible only for the subsequent delay.

This position is at variance with the decisions above cited. But even upon this, the most favorable view of the case for Chili, she should be held liable for all depreciation of the Bolivian silver dollar since the time when, as appears from the statement of custom receipts at the Arica custom house, the claim would have been paid if such receipts had been duly applied to such payments. This date can be ascertained by a simple mathematical process from the evidence before the Commission.

But in any event Chili must surely be held to account for the value of the money she has actually received at the time or times when she so received it.

VI.

The specific acts of Chili which were in contravention of the principles of international law in the premises, are as follows, viz.:

First.—As to the mining sets.

(a). The Courts of Chili by their decisions refused to acknowledge the right of Alsop & Company to any of the State mining sets of Bolivia that had not been actually measured off to them by Bolivia, holding that the contract was a contract of antichresis, and that delivery of possession was necessary to pass the property in the mines to Alsop & Company.

(b). These Courts also by their decisions refused to allow certain mining sets to be measured off to Alsop & Company in all cases where they had not been measured off before the commencement of hostilities, and also in cases where although already measured, the boundaries had been lost or destroyed.

(c). They compelled Alsop & Company to work these mining sets according to the Chilian mining laws, instead of according to those existing in that territory at the time when the agreement between Alsop & Company and Bolivia was executed, and by assuming control of said mines she has now also prevented them from any further working of *any* of said mines.

(d). When these decisions of the Courts and their effects upon the rights and property of Alsop & Company were brought to the notice of the Chilian Government, that Government refused to interfere, but relegated Alsop & Company to the jurisdiction of these same tribunals which had already wrongfully adjudged the matter against the rights of Alsop & Company.

(e). Though bound by the laws of nations to enact laws if necessary under the circumstances to protect Alsop & Company in their pre-existing rights, and though requested so to do by Alsop & Company, they distinctly refused to take such action.

(f). The Government of Chili has moreover now assumed the control of all these mining sets. (See the reply of the agent of the Chilian Government to the request to furnish facts concerning the output of these mines.)

The results and direct effects of these actions on the part of the Chilian authorities were—

That Alsop & Company were unable to take possession of all the mining sets belonging to Bolivia within the three years allowed them for that purpose under the agreement with the Government of Bolivia.

They were not able to work any of these mines (excepting the Flor del Desierto and Disputa) at a profit, and on the other hand were obliged to continue working upon them to prevent the loss and confiscation of their rights under the mining laws of Chili, which work resulted in a net loss on all of the mines, except the two last mentioned, of \$106,005.19.

Second.—As to the customs receipts of Arica.

(a). Chili took the whole of these receipts from May 25th, 1880, to 1885.

(b). From 1885 to this date Chili has taken 65 per cent. of the total net receipts, notwithstanding that she was duly notified of the rights of Alsop & Company in the premises.

(c). She has caused the duties to be removed from all Chilian products and the goods manufactured from them imported into Bolivia, regardless of the vested rights of Alsop & Company in the previously existing tariff schedules.

(d). She has prevented, and by Pact of Truce above mentioned, still prevents Bolivia from establishing any national custom-house in the interior.

(e). And furthermore by all of the foregoing acts Chili has delayed and prevented the payment of the claim of Alsop & Company during the period above mentioned, during which time the value of the Bolivian dollar, in which said claim was payable, has depreciated in value from about 84 cents to about 48 cents in the current fund of the United States.

VII.

The measure of the damages for which Chili has thus rendered herself liable is, it is respectfully submitted, as follows:

1. The principal sum of 835,000 Bolivian silver dollars with interest thereon from December 26th, 1876, to the present time at 5 per cent.

2. The unpaid balance of the said sum of 230,700 Bolivian dollars, (previously accrued interest) to wit, the sum of \$95,256.72 with interest thereon from December 26th, 1876, to the present time at 6 per cent.

And in converting the amount of these two sums into current money of the United States, the Bolivian silver dollar should be

reckoned at its value on December 26th, 1876, and not its value at the present time.

3. The sum of \$106,005.19 which was necessarily expended by Alsop & Company in working said mines in order to preserve their mining rights, which work they were compelled to do at a loss by reason of the Chilian Courts' refusal to apply the mining laws of Bolivia to such working.

It is further respectfully submitted that an award should be made in favor of said claimants herein for said sums with interest as hereinabove stated, and in making such award the Bolivian silver dollar should be estimated at its market value on December 26th, 1876.

GEORGE S. BOUTWELL,
Counsel for the Claimants.

NATHANIEL A. PRENTISS,
Associate Counsel.

Brief of the Agent for the Republic of Chile:

United States and Chilean Claims Commission.

| | |
|------------------------|----------|
| HENRY CHAUNCEY | } No. 3. |
| v. | |
| THE REPUBLIC OF CHILE. | |

Henry Chauncey, for himself and for Henry S. Prevost, alleges in his memorial:

That the two are the only survivors of the firm of Alsop & Co., which was domiciled in Valparaiso, Republic of Chile; that the said firm, duly represented by one of its liquidators, on the 26th day of December, 1876, entered into an agreement of settlement with the Government of Bolivia, in which the latter acknowledged its indebtedness to Alsop & Co., as owner of the credits of Don Pedro Lopez Gama against the State in the principal sum of 835,000 Bolivian silver dollars, with yearly interest on said sum at the rate of five per cent. from the date of said agreement, and 230,700 Bolivian dollars as interest on said principal sum prior to said date; that, in accordance with the stipulations of the said agreement, the said sums should be paid, first, out of the receipts of the Northern Custom-House, after the date of the expiration of the then existing customs treaty between Bolivia and Peru,

over and above the sum of 405,000 Bolivian dollars; and, second, with a certain percentage of the net profits of all the silver mines belonging to the State in the Coast Department; that, in consequence of the war on the Pacific, Chile took possession, at the beginning of the year 1879, of the territory wherein said mines were situated, and later on occupied the port of Arica, where the Northern Custom-House, subject to the payment of the debt, was located. Arica is up to the present time under the dominion of the Republic of Chile, and notwithstanding the fact that the time-limit of the customs treaty between Bolivia and Peru has long since expired, Alsop & Co. have not been able to secure the amount belonging to them from the receipts of the said custom-house, for the reason that Chile, pursuant to a certain compact of truce entered into with Bolivia, or through other means, has applied the duties collected, either wholly or in great part, to other uses or purposes; that Alsop & Co. then endeavored to secure the payment of the debt through the mining properties, and appealed to the courts of Chile, but was defeated in the cases instituted by several persons to claim said properties; that, in consequence of the foregoing, as a citizen of the United States, he appears before the Honorable Commission that it may adjudge and decree that the Republic of Chile pay to him and the party he represents the whole amount due to Alsop & Co. by the Republic of Bolivia.

I.

There is attached to the memorial, as "Exhibit No. 1," a copy of the partnership agreement to continue in the city of Valparaiso, under the firm name of Alsop & Co., the business of the former house of the same name.

The firm was a limited partnership, and should begin its operations on the 1st of January, 1881. It was stipulated further that all the provisions of the Chilean law regarding limited partnerships should be observed. The claimants formed a part of the said firm in the character of limited copartners.

This laid down, the first thing that arises on analyzing this case is the question of the jurisdiction of the Honorable Tribunal to give judgment on the merits of the case.

The right which it is now endeavored to enforce is derived from those which the firm of Alsop & Co., as creditor of the Republic of Bolivia, had as against the Government of Chile for acts of the

latter which made it impossible for the firm to collect its debt. The original owner of the claim was Alsop & Co., and, therefore, it must be first shown whether this firm would have had the right, within the terms of the Convention of the 7th of August, 1892, to appear before the Honorable Commission as a citizen of the United States injured by acts of the authorities of Chile.

Corporations, the same as individuals, have a national character. As they form an entity different from that of the members composing them, that character may be different, and the rights they may exercise may also be different. It does not follow from the fact that the majority or all of the members are foreigners, that the corporation is also foreign; its nationality is determined with respect to the country under whose laws it was created and exists.

Corporations not only assume the national character of the law creating them, but, differing from individuals, they have no existence outside the jurisdiction of the State in which they were created, nor have they any more capacity than that conferred by the laws of that State.

Mr. David D. Field, in his work *Outlines of an International Code*, says:

“ART. 5545. Corporations and other artificial persons have no existence beyond the jurisdiction of the power by virtue of which they exist, and have no capacity beyond that which is conferred by the laws of such power.”

As a general rule, the domicile of the corporation determines its nationality. So Mr. Francis Wharton considers as foreign corporations domiciled beyond the United States. *International Law Digest*, Secs. 207 and 217.

These are the principles uniformly admitted by the most eminent publicists and jurisconsults. (*Bluntschli, Droit International Codifié*, Arts. 22 and 23; *Heffter, Public International Law of Europe*, Secs. 14 and 15; *Calvo, Le Droit International*, Vol. II, Sec. 737, *et. seq.*; *Laurent, Principes de Droit Civil Français*, Vol. I, Nos. 306 and 307.

In this case what would be the nationality of the claimant firm? The answer is clear, since, as is set forth in the memorial itself, the domicile of the firm was Valparaiso, a port of the Republic of Chile; and since, in the text of the contract and the powers of attorney filed herein, the intention is shown to constitute a partnership to be governed entirely by the Chilean laws.

According to these laws, an association or company, either civil or commercial, may be a full or limited partnership, or a joint-

stock company (corporation). A limited partnership is that in which one or more of the members are liable only to the extent of their contributions. In every case, the association or company forms a *legal person, distinct from the members individually considered.* Arts. 2053 and 2061 of the *Civil Code of Chile.*

Wherefore, if, in view of the law under which it was organized and the seat of its business, the claimant company is a Chilean company; if a Chilean company is an entity distinct from the individuals composing it, all that remains to be investigated is whether such an entity could have appeared before the Honorable Commission interposing a claim against the Government of Chile, within the terms of the Convention of August, 1892.

Article I submits to the decision of the Honorable Commission all claims on the part of corporations, *companies*, or private individuals, *citizens* of the United States, upon the Government of Chile. Then a Chilean company has not been authorized to make a claim before this Tribunal.

But, if the Chilean firm of Alsop and Co. would not have had the right to appear before this Honorable Commission, can a private individual, a citizen of the United States, enforce the credits of that firm because he formed a part thereof, or because said credits were transferred to him?

Treating of the right of citizens of the United States, shareholders in a foreign corporation, to request the protection of their Government in behalf of a claim for injuries caused by another Government to the corporation of which they formed a part, Mr. Wharton in his *Digest of the International Law*, Sec. 217, refers to the precedent established in the instructions of Mr. Seward, Secretary of State, to Mr. Burton, Minister Plenipotentiary in Colombia, under date of April 27, 1866.

According to the communication referred to Mr. Seward did not believe that the fact that many citizens of the United States had an interest in the "*Compañía Unida de Navegación por vapor en el Río Magdalena*," a corporation established under the laws of Colombia, was sufficient for the Department under him to take into consideration the complaint made against the Government of the said country. And he concludes with these reasons:

"The association, as an entity, is to be assimilated to a citizen of Colombia. If it has sustained a wrong, is it not for it to pursue such remedy as it may have in the same manner as a private Colombian would be obliged to do, without the aid of any government external to Colombia?"

"It may well be that subjects of Great Britain, France, and Russia are stockholders in our national banks. Such persons may own all the shares except a few necessary to qualify the directors whom they select. Is it to be thought of that each of those powers shall intervene when their subjects consider the bank aggrieved by the operations of this Government? If it were tolerated, suppose England to agree to one mode of adjustment or one measure of damages, while France should insist upon another, what end is conceivable to the complications that might ensue?" (*Papers relating to foreign affairs*, Part III, page 522.)

If there was not, according to the foregoing, any ground for diplomatic action, much less can we conceive of an action before tribunals organized with jurisdiction limited to cases that come strictly within the terms of the treaty. And as the Honorable Commission has decided on more than one occasion, Articles I and II of the Convention of August, 1892, require that the party presenting a claim against the Republic of Chile shall not only be a citizen of the United States, but that the natural or legal person from whom the right to claim is derived should also be such citizen.

This preliminary question submitted to the judgment of the tribunal is not decided by the principles before expressed alone. There are precedents and judgments which decide the point at issue in harmony with our contention. We shall cite two cases:

1. In the claims filed against the Government of Colombia by one Signor Cerruti and other Italian subjects, which gave rise to the Protocol of Paris of the 21st of May, 1886, the mediating Government, which was that of Spain, was to decide the questions following: "Whether or not Signor Cerruti, or other Italian subjects, have lost in Colombia their character of neutral foreigners?" "Whether or not they have lost the rights, prerogatives and privileges which common law and the laws of Colombia grant to aliens?" "Whether or not Colombia should pay indemnities to Signor Cerruti or other Italian subjects?"

The umpire decided that Cerruti had not lost his character of a neutral alien, nor the rights and privileges which common law and the laws of Colombia grant to aliens, and that Colombia should pay (in the terms set forth in the award) indemnity to Signor Cerruti.

Very well, the property sequestered, subject of the claim, belonged to Ernesto Cerruti individually and to the commercial firm of E. Cerruti and Co.; and the umpire in his award stated that only the individual property of the claimant should be paid for, but not what he had in the mercantile firm of E. Cerruti and Co., since this firm could not be considered as Italian but Colombian.

The grounds of this decision, worthy to be taken into consideration, here follow:

“There is still in the case submitted to the mediation of Spain, another point of view of great interest, which grows out of the fact that the property seized in the hands of Cerruti belongs to a mercantile association which by itself is national and cannot be considered as alien.

“For, in effect, whatever the nationalities of the individuals forming a mercantile association may be, the latter can only develop and exist within the laws of the country where it is created, and all the reasons upon which the rights of nationality and alienship are founded do not attach when treating of a moral entity called a mercantile company. If the latter has offended, it is liable, and the nationality of its members has nothing to do with it. But in the present case, and for an inexplicable reason, the authorities of Cauca went so far as to declare that the interest of the member José Luilici would be respected, because he had been neutral, while they seized that of Cerruti, although recognizing him as an alien, because he had not been neutral.

“If this doctrine were admitted in private international law, the municipal legislation of a country in the most important matter of mercantile associations would be annulled, sufficing thereunto the introduction into the boards of management of a foreigner, or to make him sign copartnership agreements. And even when it should be said that, after liquidation of the company, his share in the liabilities would be separated from those of the others, it is evident that no liquidation could be reached nor any of its legal rules be applied without the intervention of the member excepted, who, under his right as an alien, might ask and obtain the intervention of his Government, and thereby completely annul the action of the domestic authorities. A more dangerous and, legally speaking, less admissible principle cannot be introduced in the relations of countries, and it is the duty of the mediating Government to take thereto the most emphatic exceptions.”

2. Another valuable precedent is that laid down by the United States and Venezuelan Claims Commission in case No. 24, *Lorenzo H. Finn v. The United States of Venezuela*.

The Conventions concluded between the two Republics for the settlement of claims contained the same stipulation as the Convention of 1892, to wit: “All claims on the part of corporations, companies, or individuals, citizens of the United States, upon the Government of Venezuela.”

Finn claimed, as partner of Doctor Buenaventura Soto, for his share in the merchandise, cattle, and money which the latter furnished the federal army commanded by General Francisco Linares Alcántara in 1859. The claim was dismissed because, among other reasons, in case said partnership existed, it would have been Venezuelan, and would have had no standing before the Commission.

The decision concludes in these words:

“In the treaty of 1803 between the United States and France, for the adjustment of claims, is this provision: ‘It is the express intention of the contracting parties not to extend the benefits of the present convention to reclamations of American citizens who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who by that reason and the nature of their commerce ought to be regarded as domiciliated in the places where such houses exist.’

“This provision, perhaps, simply embodies the international law on this subject.

“If Finn was in partnership with Soto, it is believed the business took its character from the place and was Venezuelan. As to the partnership business, was he not domiciliated in Venezuela, and a Venezuelan?”

The question of jurisdiction out of the way, I ought to make an observation before entering upon the merits of the case.

The memorial is defective in that it fails to express with certainty the actual interest due the claimants on the aggregate of the claim. It is true that they ask all the principal and the respective interest which would have been due the firm of Alsop & Company, or all its legitimate successors, up to the date of judgment; but the antecedent they invoke in nowise gives them any right to such a claim. The fact that Chauncey and Prevost are the only survivors of the commercial firm of Alsop & Co. does not indicate that they are now the only owners of the credit. Each one of the parties who composed the company is entitled to-day, personally or by his heirs, to the share in the credit against the Republic of Bolivia which the contract, filed as “Exhibit No. 1,” may determine; and in such case the claimants would only have the right to ask for the quota that might correspond to them through the provisions of Article V of said contract.

So true is this, that one of the claimants, Henry S. Prevost, has taken it upon himself to contradict the allegation of the memorial. In his answer to the second interrogatory, put at Lima within the time established by the rules to take proofs, the following appears: “The deponent announces that all the before named (in the partnership agreement), or those who to-day represent their respective interests, have a share in this claim, except George G. Hobson, who, not having furnished the company his contribution to the capital stock, was thereby debarred from the same, and Henry W. Alsop, with whom, when the company went into liquidation, special arrangements were made for the final termination of his interest therein.’

Moreover, even prior to the year 1876 the company went into liquidation. It becomes necessary then to prove the fate that overtook the credit against Bolivia in the liquidation. It may have been charged to the private account of persons other than the claimants; it may be unliquidated up to date; it may have been transferred to the memorialists. Only in the last case, and after legal proof of the fact, would they be entitled to frame their petition in the terms of the memorial.

In this regard, the point might be raised that Mr. Prevost declared on the 10th of October, 1893, in an affidavit which appears among the documents filed by the claimants, that "since the death of John Wheelwright, deponent, likewise with the consent and by appointment of all the parties interested in the liquidation, has acted, and continues to act, as the liquidator of the aforesaid firm of Messrs. Alsop & Co."

But even giving that affidavit a weight which it has not, in no case is the declaration of an agent sufficient to establish his character. As provided by Rule VI, "if the claim should be preferred through an agent or legal representative, his authority to act must be shown to the satisfaction of the Commission in accordance with the laws of the country under which he is appointed." And Mr. Prevost has not shown in what way the conditions required by §6, Title VII, of the Commercial Code of Chile have been observed.

So that Messrs. Chauncey and Prevost, under the most favorable construction, can be considered only as claimants for their share in the liquidation, in accordance with Article V of the partnership agreement.

II.

The suit of Chauncey and Prevost primarily bases the liability of the Government of Chile for the obligations of the Republic of Bolivia with respect to the firm of Alsop & Co., on Chile having occupied militarily the coast of Bolivia and conquered part of her territory. Let us see the weight of this fundamental question.

As is known, the war on the Pacific grew out of the persistent infractions on the part of the Government of Bolivia of the treaty concluded with the Republic of Chile on the 6th of August, 1874, which, after the abrogation of that of 1866, had put an end to the troublesome question of boundaries between the two countries. Chile had to uphold the national interests ignored by Bolivia and reclaim the territories she possessed before concluding said treaties. At the same time she occupied with her forces the Bolivian

coast line from parallel 23 to the boundary line of the Peruvian Department of Tarapacá.

That is to say, that the failure to observe a treaty brought as an immediate consequence: first, the remanding of things to their former status; returning to the sovereignty of Chile that which was under it previous to 1866; and, second, the temporary occupation of a department of the hostile nation. At the time when these events took place the Minister of Foreign Relations acquainted the foreign governments with the rights exercised by Chile, and afterwards, in the compact of truce of April 4, 1884, concluded between this Republic and that of Bolivia, those rights were recognized, provisions being made solely as to the condition of the regions situated north of parallel 23, occupied by Chilean forces. "The Republic of Chile," says the second article of the compact, "will continue during the existence of this truce to govern in accordance with the administrative and political system established by Chilean law the territories comprehended between parallel 23 and the mouth of the Loa river in the Pacific."

Up to the present time there has not been concluded between Chile and Bolivia any final treaty of peace, so that the present condition of those territories is the same as that established in the compact. Up to this time there has been no cession of territory from the conquered country to the conquering, and, consequently, it is not known how many are the obligations which a cession of territory might entail upon Chile.

I say *might* because the territory of a State passes to another free or encumbered, according to the stipulation in the treaties of peace.

The power to make treaties "necessarily extends to the alienation of public and private property when deemed necessary for the national safety or policy." (*Wheaton, Elem. Int. Law, by A. C. Boyd, Sec. 539.*)

"A power to make treaties of peace necessarily implies a power to decide the terms on which they shall be made, and foreign States could not deal safely with the Government on any other presumption. The power that is entrusted generally and largely, with authority to make valid treaties of peace, can, of course, bind the nation by alienation of part of its territory; and this is equally the case, whether the territory be already in the occupation of the enemy or remains in the possession of the nation, and whether the property be public or private." (*Kent's Com. on Amer. Law, Vol. I, Sec. 166.*)

“The right of making peace,” said Vattel, “authorizes the sovereign to dispose of things even belonging to private persons, and the eminent domain gives him this right.”

If such are the principles of international law, it is inconceivable how it is attempted to convert Chile into a successor of any obligation of Bolivia, when there has not yet been any transfer of territory, and when this transfer might take place without any encumbrances whatever for the country acquiring it.

Nor is it sufficient that in a treaty the cession of a portion of territory shall be recognized as a war indemnity for an obligation of the ceding to pass to the acquiring party, but it would be necessary to have an express stipulation. For, as Fiore says, “the treaty itself, by explicit clauses, must regulate the effects of territorial cessions in so far as concerns the obligations of the acquiring Government and ceding Government with respect to private parties, the distribution of the public debt, etc.” (*Le Droit International Codifié*, Art. 84.)

As a general rule, the debts of a State affect it alone while it preserves its personality. But “the personality of the State remains always intact and its life continues without interruption while it unites the essential conditions of its existence as a body politic. Change, the diminution of its population or its territorial possessions, do not modify that personality.” (*Ibid.*, Art. 85.)

Therefore in many treaties of peace territories have been transferred free from the general debt of the State to which they belonged. This was the case when Saxe-Coburg ceded Lichtenburg to Prussia in 1834, and when Austria, Sardinia, and some of the other Italian States rectified their boundaries in 1844. On the cession of Alsace and Lorraine by France in 1871, Germany refused to take upon herself any share of the French national debt. By the treaty of Berlin, 1878, the portions given to Russia were not charged, being taken as part payment of a war indemnity demanded by Russia from Turkey. *Wheaton*, by A. C. Boyd, Sec. 30a.

If the treaty is silent, the principle applied is that laid down by Mr. D. D. Field in article 23 of his said work, agreeing with article 47 of Bluntschli's *International Law Codified*: “Where part of the territory of one nation is annexed, by cession or otherwise, to the territory of another, the latter nation, by the act of annexation, acquires all the rights and becomes bound to fulfill all the obligations which pertained to the former nation, in respect of the territory acquired and its inhabitants and the property therein, but not others.”

Consequently, it is only when the annexation is secured through a treaty of peace (if it is expressly stipulated therein that Chile is liable for the credits against the Republic of Bolivia, or if it is proved that the credit claimed rested *exclusively* upon the portion of the territory annexed) that there would be grounds to institute a claim against the Government of Chile.

But we at present find ourselves still in that indefinite situation created by the compact of truce. There is one difference between our relations with Bolivia in 1884 and at this time. Owing to the fact that the said country recognized as a belligerent the Constitutional party in the civil war of 1891, it was thought that the opportunity had arrived to convert the uncertain state of truce into a final state of peace. In Iquique, where the Executive Junta of the Constitutional Government resided, the initiatory steps were taken, and in May, 1891, the preliminary protocol of a treaty of peace between Chile and Bolivia was drawn.

The second clause of that protocol, a legalized copy of which has been filed, says: "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 one Huanchaca, 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 Garantizador de Valores Bank of Chile, the bonds issued for the construction of the railroad of Mejillones, *the credit acknowledged in favor of Lopez Gama representing the house of Alsop and Co., of Valparaiso*, and that of 40,000 Bolivianos in favor of the Garday family; the products of the Custom-Houses of Arica and Antofagasta in consequence remaining free of all incumbrance on importations for Bolivia."

In view of this recognition of the credit of Alsop and Co., made by the Government of Bolivia seven years after the compact of truce, the Honorable Commission will be unable to comprehend the attempt of the claimants to charge the debt to another country which cannot assume another's liabilities without its express consent in a treaty solemnly concluded.

The claimant's endeavor to show the liability of Chile from the fact that the latter occupied the territories of Tacna and Arica, and annulled the guarantee that Bolivia had given to the credit of Alsop and Co. when it set apart for the payment of that credit the receipts of the Arica Custom-House over and above the sum of 405,000 *pesos* annually.

From what we have said above it is more than proved that the action instituted by Chauncey cannot be brought before the Tribunal organized under the Convention of the 7th of August, 1892. There might, perhaps, be grounds for a claim, if Bolivia had concluded that Convention with the United States; but as the Honorable Commission is not called upon to adjust Bolivian claims, there is no reason for our considering the merits upon which an action properly brought might rest.

Nevertheless, we shall reply to the charge noted.

Tacna and Arica are provinces of the Republic of Peru. By the treaty of peace concluded between this Republic and that of Chile it was agreed that the territory of those provinces should continue in the possession of Chile and subject to the Chilean laws and authorities for the period of ten years, reckoned from the ratification of the treaty. The introduction into the treaty of the limitation which referred to the participation that Bolivia had in the custom-house receipts pursuant to previous treaties with Peru was not secured, nor were limitations of any other character.

Chile has had the right, then, during the ten years of the occupation of that portion of the Peruvian territory, to manage the same and collect the receipts in accordance with Chilean laws, without reference to encumbrances which other States or individuals might have the right to invoke against Peru. In this case there was no transfer of territory, and consequently no credit lien could be enforced against the Government of Chile on the products of the provinces occupied.

On this point, and as a precedent of a similar tribunal, there might be cited the unanimous decision of the Anglo-Chilean Tribunal in the case of *Richard H. Anderson v. The Republic of Chile*. The claimant, as creditor of the Provincial Council at Lima, through the general mortgage of the property and revenues of the municipality, sued the Government of Chile which had collected the municipal revenues. The Tribunal dismissed the claim, considering, among other reasons, "that the temporary occupation of the property in question has not deprived the claimant of the integrity of his right to demand from his debtor the payment of whatever might be legitimately due him, from which it follows that the indirect damages resulting from the act which is the subject of the claim, are by their nature natural and inherent to the state of war and of those which, according to the provisions of universal international law, are not chargeable to the liability of a belligerent."

In the case cited the question was a hostile occupation; here it is a temporary occupation consequent upon war, but the same principle governs both cases.

Moreover, it is not easy to admit the right invoked by the claimant. A guarantee based on customs duties, such as it is alleged existed, conflicts with the notions we have on the constitution and organization of States. The method of establishing and modifying the revenue system is a prerogative that cannot be converted into security for the payment of a foreign debt.

Let us concede, however, for a moment that Chile was bound to respect the guarantee which is invoked, and we ask when and how did Chile annul that guarantee? Instead of annulling the guarantee, Chile has offered Bolivia means with which to pay not only the credit of Alsop and Co., but also some others that figure in the account against the Bolivian treasury.

By the compact of truce Bolivia was granted seventy-five per cent. of the receipts of the Arica Custom-House, and it was thus apportioned a revenue that it never secured during the existence of the customs treaty with Peru, and which it would not have secured by re-establishing the national custom-house of Bolivia.

The respondent has filed a statement of the receipts of the Arica Custom-House from the first of January, 1885, date of the existence of the compact; and the correctness of the statement is corroborated also by the deposition of Prevost and documents presented by the claimants. Very well: From the statement it appears that Bolivia has received money enough to pay the credit of Alsop and Co. three times over.

Bolivia has not paid that debt? But what liability does that attach to Chile? If the former State has not wished to fulfil its private obligations, Chile is not in duty bound to make her fulfil them by force, nor has she any right to do so. This is, however, what the claimant attempts to have decreed by the Honorable Arbitration Commission. Perhaps in the life of this Tribunal there has not cropped out a stranger pretension.

Finally, it is alleged that the mining properties granted in the Department of the Coast could not be worked through the fault of the Chilean administration, this second guarantee also disappearing.

Before going further it should be stated that the guarantee is subsidiary to that resting on the receipts of the Northern custom-house. So that, it being shown that the Arica custom-house pro-

duced for Bolivia a sum sufficient to pay the credit claimed, this guarantee cannot be invoked.

Next, there is shown no act of the Government tending to deprive the claimants of their alleged rights. In the memorial it is set forth that "Divers persons, ignoring or refusing to recognize the rights of the said Wheelwright as such representative of Alsop & Co. under said agreement and as established by the laws of Bolivia, and claiming or pretending as to some or all of said mining sets of instruction either that they had not been actually measured off to the Government of Bolivia or to said Wheelwright, or that the measurements thereof had been obliterated or destroyed and the identity of said sets thereby lost, or that by reason of said hostile occupation of said territory by Chile the said agreement between Bolivia and Wheelwright had become void and said mining sets of instruction had become vacant ground and susceptible of denouncement anew, or on some other ground, sought to retain or obtain possession thereof, or to penetrate into the same, and refused to deliver up or account for the profits thereof, in violation of the clear rights of the said Wheelwright as representative of Alsop & Co. therein, and took possession of some of said mining sets and withheld the product of others from the said Wheelwright, who by reason thereof and in order to assert or defend the rights of Alsop & Co. under said agreement became involved in numerous and expensive litigations and suits at law."

The Government is not liable for all the acts of the citizens. If there were persons who ignored the rights of Alsop and Co., the latter had the remedy accorded by the laws. The courts of justice were open to them.

And to them the claimants in effect appealed; but the courts did not consider that their rights were clear.

These decisions of the courts of Chile cannot be reviewed by the Honorable Commission. The Commission is a high international tribunal named by the United States and Chile, and before it the courts of either country are not foreign. The judgments of the courts of Chile as well as those of the United States have, therefore, the merit of *res judicata*, which, as is known, *pro veritate habetur*.

A claim growing out of the judgments of a court could only be founded on denial of justice or manifest injustice. On the antecedents produced by the claimant a claim of that kind cannot be based.

In the absolute independence with which high judicial and administrative officials exercise their functions, the denial given by the Government of Chile to the petitions of the representative of Alsop and Co., appearing among the exhibits annexed to the memorial, was logical.

The inability of the Government to accede to those petitions is more fully considered in the opinion of the Attorney-General presented in 1884, which appears among the same exhibits, and from which we copy the following paragraphs, with which we close our brief:

“The petition of Mr. John Wheelwright may be considered under two distinct aspects: On the one hand, as a simple petition for a favor, and on the other, as a claim arising out of a violation of rights conceded to the claimant, seeking, therefore, to obtain the recognition of those rights from the party with whom he supposes the correlative obligations to rest. As a conducive means the petitioner endeavors to obtain a decision from the Government, which may free him from difficulties and impediments arising out of the acts committed even by private individuals.

Considering the petition in its first aspect, the attorney of the Government thinks that he is not permitted to emit any opinion on it. Whether a favor should or should not be granted is a question of which the Ministry is not in a position to judge. I shall only observe that as the acceptance of the contract and the declaration to respect it signifies the acknowledgement of a debt, such acknowledgement could only be made in virtue of a law.

This same observation is applicable to the second aspect of the Wheelwright claim. The contracts entered into by the Government of Bolivia before the occupation of the Coast Department, and which may have any connection with it, will or will not be binding on the Government of Chile according to the determinations which the legislator may adopt in reference thereto. The treaty of truce or that of peace which is to be celebrated is the law which should define in a precise and permanent manner the relations of Chile and Bolivia, and those of the Governments of these countries with third parties, which arises from contracts duly celebrated. Before this law is dictated there exists a state of transition arising out of the military occupation, and this situation prevents the Government from adopting measures of general and permanent effect.

While this state of things exists the Government of Chile cannot become responsible for debts contracted by the State to whom the occupied territory belongs, even when they in any way affect this territory, because the entity or person who contracted them has not disappeared by the mere fact of the occupation. The Government,

therefore, has no obligation to recognize, and much less to guarantee the contracts celebrated by the Government of Bolivia respecting the mines of public instruction situated in the Coast Department. The most that can be demanded from the Government in possession is that, without declarations of any kind, it should '*de facto* respect the order of things which existed before the occupation.'

And, in reference to this point, it must be remembered that Mr. Wheelwright does not charge the Government of Chile nor any of the Chilean authorities with any act of disturbing that position of affairs.

The impediments and difficulties of which complaint is made arise from acts done by particular individuals, who, as it is stated, are only acting from personal interest. In this class of difficulties the Government cannot interfere. The controversies between individuals, whatever may be their origin, and the questions which may arise regarding their rights, must be ventilated before the tribunals of justice.

Lastly, the petition which gives origin to this report cannot, in the opinion of the Government attorney, be the subject of a Government resolution.

Santiago, 9th of October, 1884.

(Signed) PRADO,
Santiago."

By reason of the foregoing, I respectfully pray the Honorable Commission to dismiss this claim for want of jurisdiction; or, should it think otherwise, to acquit the respondent Government of the liability sought to be charged to it for the obligations of the Republic of Bolivia to the claimant.

J. FRANCISCO VERGARA D.,
Agent for the Republic of Chile.

Proceedings of Commission.

TWENTY-SECOND SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN CLAIMS
COMMISSION, NO. 2 LAFAYETTE SQUARE,
Washington, D. C., January 6, 1894.

The Commission met pursuant to adjournment and was called to order at 10:15 o'clock A. M.

Present: The Honorable Alfred de Claparède, presiding; the Honorable Commissioners and Agents of the United States and

Chile respectively; the Honorable George S. Boutwell, Assistant Counsel for Chile; and the Secretaries.

The Minutes of the previous session were read in English and Spanish, and were approved.

The Honorable President then delivered the unanimous decision of the Commission in the cases following, to wit:

William W. C. Dodge *vs.* The Republic of Chile, Claim No. 40, demurrer overruled.

North and South American Construction Co. *vs.* The Republic of Chile, Claim No. 7, motion to produce papers and documents, denied.

Andrew McKinstry *vs.* The Republic of Chile, claim No. 24, demurrer sustained under ruling of Commission in the case of Charles Wilson and Memorial dismissed for want of jurisdiction.

Patrick Shields *vs.* The Republic of Chile, claim No. 23, demurrer sustained and Memorial dismissed on the same grounds.

Frederick Selway *vs.* The Republic of Chile, claim No. 17, demurrer overruled.

The Honorable Agent of the United States then called up and argued in opposition thereto the motion to dismiss filed at the previous session by the Honorable Agent of Chile in the cases of Grace Bros. & Co. and William R. Grace *v.* The Republic of Chile. The Honorable George S. Boutwell replied on behalf of the motion, and the Honorable President announced that it would be taken under advisement and a decision would be rendered at the next meeting.

The demurrer filed in the case of Frederick H. Lovett *et als.* *v.* The Republic of Chile, claim No. 43, was then argued by the Honorable the Agents of the two Governments and the Assistant Counsel for Chile, and was submitted.

The Honorable Agent of the United States then moved the Commission as follows:

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| HENRY CHAUNCEY | } | No. 3. |
| <i>v.</i> | | |
| THE REPUBLIC OF CHILE. | | |

MOTION.

* And now at this day comes the Agent for the United States and moves this Honorable Commission for a rule upon the Agent of the Republic of Chile to produce, under the provisions of the

Convention herein, the following documents, being official papers in the control and custody of the defendant:

First. The treaty, protocol or agreement containing a reference or mention of the claim of Gama or Alsop & Co. *vs.* The Republic of Bolivia, executed by and on behalf of Chile and Bolivia on or about the spring of 1893.

Second. Any treaty, pact or agreement executed or signed by or on behalf of Chile and Bolivia, based upon or in pursuance of said above mentioned protocol, treaty, or agreement.

Third. The pact of truce executed by or on behalf of Chile and Bolivia on or about April 4th, 1884, and referring, among other things, to the customs receipts at the Custom-House or port of Arica, and all supplemental or additional treaties or agreements ratifying or extending the same or executed upon the basis or in pursuance thereof.

Fourth. Any other protocol, treaty, pact or agreement executed or signed by or on behalf of Chile and Bolivia since the outbreak of the war between said Republics in or about the years 1879 and 1880 and referring to either of the above matters.

Fifth. Also statement of the receipts at the Arica Custom-House and the disposition of the same during the time that said Custom-House has been under the control of Chile.

Sixth. Also a statement of the amounts received by the Republic of Chile from the working of the mines known as the "Disputa," and also the mine known as "Flor del Desierto," for the reasons:

First. That said papers are important for the just determination of the aforesaid claim now pending before the Commission.

Second. That the testimony is relevant and material to the issues in said case; and

Third. That the said papers and testimony are not within the control or custody of the undersigned.

The Honorable Agent of the United States read a communication from the private attorney for the North and South American Construction Co. which he stated he would put in the form of a motion to be presented at the next session and which was a call upon the respondent Government to produce certain papers and documents necessary to the prosecution of the said company's claim.

The Honorable Commissioner Goode announced in this connection that the ruling of the Commission in the previous motion of the said company to the same effect was that anything in the

archives of either Government may be produced by request of the Commission, but any public information that is accessible to either party ought not to be ordered to be produced by the Commission.

And thereupon the Commission adjourned to meet on Tuesday next, January 9, at 11 o'clock A. M.

ALFRED DE CLAPARÈDE,
President.

A. W. FERGUSSON,
M. A. MARTINEZ DE F.,
Secretaries.

THIRTY-FIRST SESSION.

UNITED STATES AND CHILEAN CLAIMS COMMISSION,
NO. 2 LAFAYETTE SQUARE,
Washington, D. C., February 24, 1894.

The Commission met pursuant to adjournment, and was called to order at 10:15 o'clock A. M.

Present: The Honorable Alfred de Claparède, presiding; the Honorable the Commissioners and Agents on the part of the United States and Chile, respectively; the Honorable George S. Boutwell, Assistant Counsel for Chile; and the Secretaries.

The Minutes of the previous session were read in English and Spanish, and were approved.

The Honorable Agent for the United States, referring to the case of Henry Chauncy *vs.* The Republic of Chile, claim No. 3, requested the Honorable Agent of Chile to produce the returns of the Arica Custom-House for the years 1880 to 1892. The latter gentleman stated that he would furnish the same as soon as the statement thereof should be ready.

The Honorable Agent of Chile then moved the Commission as follows:

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| GRACE BROS. & CO. | } | Nos. 16, 19, 20, 21, and 29. |
| <i>v.</i> | | |
| THE REPUBLIC OF CHILE. | | |
| WILLIAM R. GRACE & CO. | } | No. 22. |
| <i>v.</i> | | |
| THE REPUBLIC OF CHILE. | | |

And now comes the Agent for the Republic of Chile, and moves the Commission to request the Secretary of State to furnish the

Commission with a certified copy of a letter of C. A. Logan, formerly Minister of the United States to Chile, to Mr. Bayard, Secretary of State, dated September 1st, 1885, in regard to the claims of the house of Grace Bros. & Co. *v.* Chile.

The Commission granted the motion and ordered the request to be made.

The motion to dismiss, filed by the Honorable Agent of Chile in the above-entitled cases, was then taken up and was argued by the Honorable Assistant Counsel for Chile, who took up the morning hour. A recess was taken at 12:30 o'clock until 2:30 P. M., at which time, the Commission having resumed its session, the Honorable Agent of the United States entered upon his argument in behalf of the claimants, upon the termination of which the Honorable George S. Boutwell made his concluding argument in behalf of the motion, and the same was submitted to the Commission.

And thereupon, at 4:55 P. M., the Commission adjourned to meet on Tuesday next, February 27, at 4 o'clock P. M.

ALFRED DE CLAPARÈDE,

President.

A. W. FERGUSSON,

M. A. MARTINEZ DE F.,

Secretaries.

THIRTY-SECOND SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN CLAIMS

COMMISSION, 2 LAFAYETTE SQUARE,

Washington, D. C., February 27, 1894.

The Commission met pursuant to adjournment, and was called to order at 4:10 o'clock P. M.

Present: The Honorable Alfred de Claparède, presiding; the Honorable the Commissioners and Agents of the United States and Chile, respectively; the Honorable George S. Boutwell, Associate Counsel for Chile; and the Secretaries.

The Minutes of the previous session were read in English and Spanish and were approved.

The Honorable Agent for Chile stated that in the case of Henry Chauncey *vs.* The Republic of Chile, claim No. 3, he had only

asked his Government for the returns of the Arica Custom House from the year 1884 to 1892, and not from 1882, as requested by the Honorable Agent of the United States at the last session. The latter gentleman said that would be satisfactory.

The same Honorable Agent of the United States then announced that in the case of *William S. Shrigley v. The Republic of Chile*, claim No. 4, the Agents of the two Governments had signed and filed a stipulation agreeing to allow the respondent's depositions, which had been quashed on motion, and those of the claimant, filed on February 14, 1894, to be considered by the Commission waiving all objection as to non-conformance with the Rules, and to finally submit the case on March 10.

There being no further business before the Commission, it adjourned at this point to meet again on Monday next, March 5th, at 10 o'clock A. M.

ALFRED DE CLAPARÈDE,
President.

A. W. FERGUSSON,
M. A. MARTINEZ DE F.,
Secretaries.

FORTY-FIRST SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN CLAIMS
COMMISSION, NO. 2 LAFAYETTE SQUARE,
Washington, D. C., March 27, 1894.

The Commission met pursuant to adjournment, and was called to order at 10:15 A. M.

Present: The Honorable Alfred de Claparède, presiding; The Honorable the Commissioners and Agents on the part of the United States and Chile, and the Secretaries.

The minutes of the previous session were read in English and Spanish, and were approved.

The Honorable Agent of Chile then moved the Commission as follows:

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|------------------------|-----------|
| STEPHEN M. CHESTER | } No. 34. |
| v. | |
| THE REPUBLIC OF CHILE. | |

And now comes the Agent for the Republic of Chile and moves the Commission to make an entry of order dismissing the petition

in the above-named case, and for the reason that the memorialist has not filed testimony in support of the allegations contained in the memorial.”

The Commission made the order following:

“The motion of the Honorable Agent of Chile is granted, and the memorial in the case of Stephen M. Chester is dismissed, as the memorialist has not adduced any proofs in support of the allegations contained in the memorial.”

The arguments in the case of Frederick Selway and Peter Bacigalupi *v.* The Republic of Chile, claims Nos. 17 and 42 respectively on the assignment for the day, were made by the Honorable Agents of the United States and Chile on behalf of the claimants and respondent, respectively, and the cases were submitted.

The assignment for the next session was announced as follows: Henry Chauncey *vs.* The Republic of Chile, claim No. 3.

The Secretaries were instructed to cause to be reprinted in English all the memorials on file which do not conform in size to the other publications of the Commission.

Finally, Saturday March 31st, at 10 o'clock A. M., were designated as the day and hour for the next session.

And thereupon the Commission adjourned.

ALFRED DE CLAPARÈDE,

President.

A. W. FERGUSON,

M. A. MARTINEZ DE F.,

Secretaries.

FORTY-SECOND SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN CLAIMS
COMMISSION, NO. 2 LAFAYETTE SQUARE,
Washington, D. C., March 31, 1894.

The Commission met pursuant to adjournment, and was called to order at 10:15 o'clock A. M.

Present: The Honorable Alfred de Claparède, presiding; the Honorable the Commissioners and Agents for the United States and Chile, respectively; the Honorable George S. Boutwell, Assistant Counsel for Chile, and the Secretaries.

The minutes of the preceding session were read in English and Spanish, and were approved.

The Honorable Agent for the United States announced that as the brief of the respondent Government in the case of *H. Chauncey v. Chile*, claim No. 3, had just been handed to him at the moment, and the case was one involving a large sum of money and many points of law, he would ask the Commission to adjourn over till Monday next in order that he might have an opportunity to read the said brief and prepare himself to reply thereto. The Honorable Agent of Chile stated that the claimant's brief had also just been filed.

There being no objection, the Commission adjourned to meet on Monday next, April 2d, at 10 o'clock A. M.

ALFRED DE CLAPARÈDE,

President

A. W. FERGUSSON,

M. A. MARTINEZ DE F.,

Secretaries.

FORTY-THIRD SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN CLAIMS

COMMISSION, NO. 2 LAFAYETTE SQUARE,

Washington, D. C., April 2, 1894.

The Commission met pursuant to adjournment, and was called to order at 10:15 o'clock A. M.

Present: The Honorable Alfred de Claparède, presiding; the Honorable the Commissioners and Agents on the part of the United States and Chile, respectively; the Honorable George S. Boutwell, Assistant Counsel for Chile; and the Secretaries.

The Minutes of the previous session were read in English and Spanish, and were approved.

The Honorable President then read the unanimous decisions of the Commission in the cases of *Frederick Selway vs. The Republic of Chile*, claim No. 17, and *Jennie R. Read vs. the same*, claim No. 13, dismissing the former and making an award of \$1,137.98 in United States gold coin, in favor of the claimant, in the latter.

The assignment for the day being the argument in the case of *Henry Chauncey vs. The Republic of Chile*, claim No. 3, the Honorable Assistant Counsel for Chile stated to the Commission that on this occasion he could not appear in representation of the

said Government, he being one of the private counsel for the claimant. He explained the nature of the correspondence which had passed between the Honorable Commissioner on the part of Chile and himself with regard to this case, previous to the organization of the Commission, and the understanding with which he accepted the appointment as Assistant Counsel for Chile. He then drew the attention of the Commission to two errors in the memorial in the case, and requested that the corrections be noted.

The Honorable Agent for the United States then entered upon his opening argument in behalf of the claimant in the said case, and continued until 12:30 o'clock, when the Commission took a recess until 2 P. M.

The session having been resumed at that hour, the Secretary on the part of the United States read the brief and additional brief of the Honorable Agent of Chile, and the Honorable Agent of the United States delivered his closing argument. After a few remarks by the Honorable Agent of Chile the case was submitted.

The Honorable President announced that the Commissioners had discussed the advisability of hearing any more cases, and would like to get the views of the Honorable Agents thereon. The Honorable Agent of Chile said there were one or two cases that he had hoped might be heard, but that he interposed no objection to any course the Commission might desire to pursue. The Honorable Agent of the United States announced that there were several cases against Chile in which he was ready for trial but that the Agent of the latter country was not prepared. The Honorable Commissioner Goode expressed the view that as there were six cases already submitted to the Commission the records in some of which were very voluminous, it would be manifestly unfair to the claimants and the Commission to proceed further in the hearing of cases which would necessarily prevent them from giving proper consideration to those already submitted.

Without arriving at any decision upon the point, the Commission determined to meet again on Friday morning next, April 6th, at 10 A. M., and thereupon adjourned.

ALFRED DE CLAPARÈDE,

President.

ARTHUR W. FERGUSSON,

M. A. MARTINEZ DE F.,

Secretaries.

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FORTY-FIFTH SESSION.

OFFICE OF THE UNITED STATES AND CHILEAN CLAIMS
 COMMISSION, No. 2 LAFAYETTE SQUARE,
 Washington, D. C., April 9, 1894.

The Honorable President having postponed the session ordered for 12:30 o'clock until 1:30, the Commission met and was called to order at that hour.

Present: The Honorable Alfred de Claparède, presiding; the Honorable the Commissioners and Agents on the part of the United States and Chile, respectively; the Honorable George S. Boutwell, Assistant Counsel for Chile; and the Secretaries.

The minutes of the previous session were read in English and Spanish and were approved.

The Honorable President then made the announcements following:

“HENRY CHAUNCEY
vs.
 THE REPUBLIC OF CHILE. } No. 3.

When this case was argued and submitted by the Agents of the respective Governments, the Commission had already in its hands for consideration five other cases which had been previously argued and submitted.

Since that time the members of the Commission have been wholly occupied in the examination and decision of the cases referred to. Inasmuch as we have not been able to make such an examination of the voluminous testimony in this case and the important legal questions involved as would enable us to reach a satisfactory conclusion, we decline to render any judgment therein.”

“ANDREW MOSS
vs.
 THE REPUBLIC OF CHILE. } No. 25.

PETER BACIGALUPI
vs.
 THE REPUBLIC OF CHILE. } No. 42.

It appears from the documentary evidence on file, herein, that certain German and Italian claimants for damages resulting from the destruction of property at Chorillos and Miraflores

have received some compensation from the Government of Chile, but it does not appear upon what principle or upon what testimony such compensation was awarded. The Commission, believing that it would be more satisfactory to obtain such information before rendering a decision in these cases, and that the claimants should have further time to complete their proof upon this point, declines to render a decision either allowing or dismissing these claims, and leaves them for such disposition as may seem proper to the respective Governments.”

The Honorable President announced next the decision in the case of Edward C. Du Bois *vs.* The Republic of Chile, claim No. 2, awarding the claimant, by a majority vote, the sum of \$155,232.00, United States gold coin. The Honorable Commissioner for Chile reserved the right to file a dissenting opinion in the case.

A recess was then taken until seven o'clock P. M.

The Commission resumed its session at 7.15 o'clock P. M., all the members and officers being present.

The Honorable Agent of the United States submitted the resolution following:

“Whereas, under the provisions of the Treaty between the United States and Chile, signed at Santiago, August 7, 1892, under which this Commission has been acting, the Commissioners are ‘bound to examine and decide upon every claim within six months from the day of their first meeting for business,’ which said first meeting was held October 9th, 1893; and

“Whereas said six months expire April 9th, 1894; and

“Whereas there are still pending claims of the citizens of either country against the other country in which the evidence has not been completed under the rules of the Commission, and other cases are pending in which the United States has completed the testimony and closed the cases, but in which Chile has not yet completed her testimony, and other cases in which both countries have closed but not submitted, and other cases which have been closed and submitted, which said cases time will not permit this Commission to hear and consider; and

“Whereas it is evident that every endeavor of the parties has been made to submit these cases to the Commission, but the shortness of the time-limit of the treaty and the length of time required to take testimony in Chile and Peru have prevented any result of the proceedings of the Commission therein without fault on the part of claimants:

“*Therefore,* It is ordered that all cases presented to but not finally determined by the Commission be remitted to the respective Governments of the United States and Chile for such disposition as they may hereafter agree upon.”

The Commission ordered the resolution to be spread upon the minutes as adopted, and instructed the Secretaries to transmit a duly certified copy thereof to the two Governments.

The Honorable Agent of the United States then presented a draft of a final award and a schedule of cases considered and determined by the Commission, which were duly approved, adopted, and subscribed by the three Honorable Commissioners, and which are in the words and figures following, to wit:

“FINAL AWARD.

“We, the undersigned, Commissioners appointed under and in pursuance of Article 1 of the Convention between the United States of America and the Republic of Chile, signed at Santiago, August 7, 1892, do now make this our final award of and concerning the matters referred to us by said Convention which we have been able to consider within the time-limit of the treaty, as follows:

“I.

“We award that the Government of the Republic of Chile shall pay to the Government of the United States of America, within six months from the date hereof, the sum of two hundred and forty thousand five hundred and sixty-four dollars and thirty-five cents (\$240,564.35), without interest, in accordance with the provisions of Article IX of the Convention aforesaid, for and in full satisfaction of the several claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of the Republic of Chile, arising out of acts committed against the persons and property of citizens of the United States by the civil or military authorities of Chile, which have been determined by us, said sum being the aggregate of the principal sums and interest allowed to certain claimants by the several separate awards to that effect made in writing and signed by us, or such of us as assented to said separate awards, which are among the records of this Commission, and are hereby referred to for more definite information.

“II.

“All claims on the part of citizens of Chile against the United States, and on the part of citizens of the United States against the Republic of Chile, which have been presented to the Commission, except those in which awards have been made or which have been disallowed or dismissed in manner and form as will appear in the records of the Commission by the several separate judgments in writing concerning the same, are hereby remitted, without consideration on their merits and without any result or determination by the Commission, to the respective Governments of the United States and Chile for further action and disposition for the reason that the time-limit of the Convention under which this Commission is acting is so short as to prevent the hearing, consideration, and determination of the same by this Commission.

" III.

"We refer to the several separate awards made and signed as aforesaid as part of this final award in the cases which we have been able to consider, and to a list and statement thereof hereto attached giving the number of each claim, the name of the claimant, the character of the claim, the time when it arose, the amount claimed, the disposition of the claim, and, where an allowance has been made, the sum allowed in each case.

"Signed at Washington, D. C., this 9th day of April, A. D. 1894.

"ALFRED DE CLAPARÈDE,

*"President, and Commissioner appointed by the
President of the Swiss Confederation.*

"JOHN GOODE,

"Commissioner on the part of the United States.

"DOMINGO GANA,

"Commissioner on the part of Chile.

"Although the Commissioner on the part of the United States of America signs this final award, he solemnly declares that he does it reasserting the principles set forth by himself in the dissenting opinions that were filed by him in the respective cases as shown by the records of the Commission; that he withheld his acquiescence from the dismissals and disallowances in said cases of citizens of the United States against the Republic of Chile, and reasserts his abstention to participate in the aforesaid judgments, and he signs this final award this day made by the Commission under this formal reservation as to those cases in which he has dissented.

"JOHN GOODE.

"Although the Commissioner on the part of Chile signs this final award, he solemnly declares that he does it reasserting the principles set forth by himself in the dissenting opinions that were filed by him in the respective cases as shown by the records of the Commission; that he withheld his acquiescence from the awards in said cases of citizens of the United States against the Republic of Chile and reasserts his abstention to participate in the foregoing judgments, and he signs this final award this day made by the Commission under this formal reservation as to those cases in which he has dissented.

"DOMINGO GANA.

"SCHEDULE OF CASES CONSIDERED AND DETERMINED BY THE COMMISSION.

"Claim No. 1, Central and South American Telegraph Co. v. Chile, for damages to telegraph line, etc., in 1891, during Congressional Revolution; amount claimed \$163,858.55; award against Chile for \$40,725.89, Commissioner Gana dissenting.

"Claim No. 2, Edward C. Du Bois v. Chile, for damages and destruction of railroad property at Chimbote in 1880-1882, during war with Peru; amount claimed \$2,451,155.58; award against Chile for \$155,232.00, Commissioner Gana dissenting.

"Claim No. 4, Winfield S. Shrigley *v.* Chile, for destruction of property in 1891, during Congressional Revolution; amount claimed, \$12,717.51; award against Chile for \$5,086.00.

"Claim No. 5, Eugene L. Didier *et al.* *v.* Chile, for breach of contract with Chile in 1817; amount claimed, \$1,111,760.63; dismissed on demurrer, Commissioner Goode dissenting.

"Claim No. 6, John L. Thorndike *v.* Chile, for damages to railroad property at Mollendo in 1880, during war with Peru; amount claimed, \$190,361.34; dismissed on hearing, Commissioner Goode dissenting.

"Claim No. 9, Gilbert Bennet Borden *v.* Chile, for damages, false arrest, and detention of ship in 1883; amount claimed, \$32,209.10; award against Chile for \$9,187.50, Commissioner Gana dissenting.

"Claim No. 10, Wells, Fargo and Co. *v.* Chile, for seizure of Peruvian money tokens in 1880; amount claimed, \$58,389.97; compromise award for \$29,194.98.

"Claim No. 11, Charles G. Wilson *v.* Chile, for destruction of property in 1891, during Congressional Revolution; amount claimed \$142,487; dismissed on demurrer.

"Claim No. 13, Jennie R. Read *v.* Chile, for destruction of property in 1891, during Congressional Revolution; amount claimed, \$8,253.40; award against Chile for \$1,137.98.

"Claim No. 15, Charles Watson *v.* Chile, for destruction of property in 1880, during war with Peru; amount claimed, \$278,205.84; dismissed for failure to amend, Commissioner Goode dissenting on demurrer.

"Claim No. 16, Grace Bros. & Co. *v.* Chile, for damage to 200 bags of sugar in 1883; amount claimed, \$14,521.68; dismissed for want of jurisdiction, Commissioner Goode dissenting.

"Claim No. 17, Frederick Selway *v.* Chile, for personal damages in 1847; amount claimed, \$50,000 with interest at 6 per cent. from 1847; dismissed on merits.

"Claim No. 19, Grace Bros. and Co. *v.* Chile, for detention of vessel in 1880, during war with Peru; amount claimed, \$15,593.74; dismissed for want of jurisdiction, Commissioner Goode dissenting.

"Claim No. 20, Grace Bros. and Co. *v.* Chile, for seizure of cargo of coal in 1879, during war with Peru; amount claimed, \$3,989.20; dismissed for want of jurisdiction, Commissioner Goode dissenting.

"Claim No. 21, Grace Bros. and Co. *v.* Chile, for illegal seizure of guano and nitrate deposits in 1879, during war with Peru; amount claimed, \$240,040.26; dismissed for want of jurisdiction, Commissioner Goode dissenting.

"Claim No. 22, William R. Grace and Co. *v.* Chile, for seizure of nitrate deposits in 1879; amount claimed, \$1,076,764.67; dismissed for want of jurisdiction, Commissioner Goode dissenting.

"Claim No. 23, Patrick Shields *v.* Chile, for personal damages in 1891; amount claimed, \$100,000 and interest on the award; dismissed, on demurrer, for want of jurisdiction.

"Claim No. 24, Andrew McKinstry *v.* Chile, for personal damages in 1891; amount claimed, \$25,000; dismissed on demurrer, for want of jurisdiction.

"Claim No. 29, Grace Bros. and Co. *v.* Chile, for loss of shares in nitrate company of Peru in 1879 during war with Peru; amount

claimed, \$866,945.99; dismissed for want of jurisdiction, Commissioner Goode dissenting.

“Claim No. 34, Stephen M. Chester *v.* Chile, for personal damages in 1881, during war with Peru; amount claimed, \$86,000; dismissed for want of evidence.

“Claim No. 36, Elizabeth C. Murphy *et al.* *v.* Chile, for destruction of property in 1881, during war with Peru; amount claimed, \$17,122.50; dismissed on hearing, Commissioner Goode dissenting.

“Claim No. 38, John C. Landreau *v.* Chile, for damages for seizure of certain guano deposits in 1881, during war with Peru; amount claimed, \$5,000,000 with interest at 6 per cent. from 1882; dismissed on demurrer, Commissioner Goode dissenting.

“Claim No. 39, T. Ellet Hodgskin *v.* Chile, for damages for seizure of certain guano deposits in 1881, during war with Peru; amount claimed, \$3,333,000 with interest at 6 per cent. from 1882; dismissed on demurrer, Commissioner Goode dissenting.

“(Claims Nos. 38 and 39 are different claimants for the same subject-matter.)

“Claim No. 43, Frederick H. Lovett *v.* Chile, for personal damages, detention and loss of bark *Florida* in 1852; amount claimed, \$225,800; dismissed on demurrer.

“CASES AGAINST THE UNITED STATES DISPOSED OF.

“Claim No. 28, Ricardo L. Trumbull *v.* The United States, for personal damages in 1891; amount claimed, \$32,500; dismissed on demurrer.”

The Commission then announced the following orders:

Ordered, That the Secretaries be, and they hereby are, instructed to proceed at the earliest moment to properly arrange and index all the records and books of the Commission, enter therein all proceedings, decisions, resolutions, or orders thereof not recorded upon final adjournment; cause to be bound all the printed minutes and decisions, and to be printed and bound the reports of the Agents and Counsel in convenient form, not to exceed fifty copies, all of which said bound volumes they will distribute as follows: Ten copies to the President of the Commission, and one copy of each publication or volume to the members and officers of the Commission, and the remaining volumes equally between the Governments of the United States and Chile.

Ordered further, That after carrying out the foregoing instructions they shall deliver to the State Department of the United States all the papers, documents, and evidence on file before the Commission, and one copy of the original and attested records of the Commission, delivering at the same time one copy of said original and attested records to the Government of Chile, taking receipts therefor.

Ordered further, That the Secretaries be instructed and empowered to retain the necessary assistants to wind up, in the shortest possible time, the business and work of the Commission, in accordance with the foregoing orders.

Ordered, further, That the Secretaries, after completing the work indicated above, proceed to sell at public sale all the property belonging to the Commission, and pay over the proceeds thereof to the State Department of the United States for proper disposition.

These minutes were then read in English and Spanish and were approved.

The Honorable President next delivered the remarks following:

“We have arrived at the point established by Article VIII of the Convention of Santiago for bringing the work of our Commission to a close. We (and I now speak for myself) regret to have to state that eighteen claims which were filed in due season, and upon a part of which we have already pronounced judgment on demurrer, and others, will remain unsettled.

“We express here the hope that the two contracting Governments will, by a future understanding, afford the claimants whose claims have not been settled an opportunity to obtain judgment thereon, in harmony with the generous and peaceful intentions which animated the framing of the Convention of Santiago.

“In expressing this wish, and also the hope that our work has contributed to the cementing of the good relations that both contracting Governments are glad to maintain, I declare closed the sessions of our Commission in conformity with the provisions of Article VIII of the Convention of Santiago, and I take great pleasure, in the name of the members of the Commission, in expressing to the Honorable Agents of the contracting Governments, as well as to the Secretaries of this Commission, our sincerest thanks for the distinguished manner, the courtesy, the intelligent zeal, and the great tact with which they have performed their difficult functions.

“Gentlemen, please accept the assurance of my high consideration, of my profound esteem, and my best wishes for you all.”

And thereupon, at 8 o'clock P. M., the United States and Chilean Claims Commission adjourned *sine die*.

ALFRED DE CLAPARÈDE,

President.

A. W. FERGUSON,

M. A. MARTINEZ DE F.,

Secretaries.

Convention between the United States of America and the Republic of Chile to revive the Convention of August 7, 1892, to adjust amicably the claims of citizens of either country against the other. Signed at Washington, May 24, 1897. Ratification with amendment advised by the Senate, February 28, 1899. Ratified by the President, March 1, 1899. Ratified by the President of Chile. Ratifications exchanged, March 12, 1900. Proclaimed, March 12, 1900.

The Convention between the United States of America and the Republic of Chile, signed August 7, 1892, having expired, and the Commission thereunder established to adjust amicably the claims made by the citizens of either country against the Government of the other having failed, through limitation, to conclude its task, leaving certain claims duly presented to the said Commission unadjudicated, the Government of the United States of America and the Government of the Republic of Chile, desiring to remove every cause of difference in the friendly relations that happily exist between the two Nations, have agreed to revive the said Convention of August 7, 1892, and for that purpose have named as their Plenipotentiaries, to wit:

The President of the United States of America, the Honorable John Sherman, Secretary of State of the United States; and

The President of the Republic of Chile, Señor Don Domingo Gana, Envoy Extraordinary and Minister Plenipotentiary of Chile in the United States of America:

Who have agreed upon the articles following:

ARTICLE I.

The High Contracting Parties agree to revive the Convention of August 7, 1892, between the United States of America and the Republic of Chile, and that the Commission thereunder created shall be allowed for the transaction of its business a period of four months, to be reckoned from the day of its first meeting for business, and conforming, in other respects, with the provisions of the second paragraph of Article VIII of the said Convention. Never-

theless, if the period of four months before stipulated shall prove insufficient for the settlement of the claims, the Commissioners are authorized to extend, at their discretion, such period to one or two months more.

It is expressly stipulated that this Article shall in no wise extend or change the period designated by the first paragraph of Article VIII of the said Convention for the presentation of the claims; so that the new Commission shall be limited to considering the claims duly presented to the former Commission in conformity with the terms of the Convention and with the Rules that governed its labors, excepting claim No. 7, of the North and South American Construction Company, which was subsequently withdrawn, a direct and final settlement thereof having been arrived at by the interested parties.

ARTICLE II.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the President of the Republic of Chile, with the approbation of the National Congress thereof, and the ratifications shall be exchanged at Washington, at as early a day as possible [within six months from the date hereof].

In testimony whereof we have signed the present Convention in the English and Spanish languages, in duplicate, affixing thereto our respective seals, the Plenipotentiary of Chile declaring that he signs the same "*ad referendum*."

Done at the city of Washington, the 24th day of May in the year of Our Lord eighteen hundred and ninety-seven.

JOHN SHERMAN. [L. S.]

DOMINGO GANA. [L. S.]

Convention between the United States of America and the Republic of Chile, for the settlement of certain claims of the citizens of either country against the other. Signed at Santiago August 7, 1892. Ratification advised by the Senate December 8, 1892. Ratified by the President of the United States December 16, 1892. Ratifications exchanged January 26, 1893. Proclaimed January 28, 1893.

The United States of America and the Republic of Chile, animated by the desire to settle and adjust amicably the claims made by the citizens of either country against the government of the

other, growing out of acts committed by the civil or military authorities of either country, have agreed to make arrangements for that purpose, by means of a Convention, and have named as their Plenipotentiaries to confer and agree thereupon as follows:

The President of the United States of America, Patrick Egan, Envoy Extraordinary and Minister Plenipotentiary of the United States at Santiago, and the President of the Republic of Chile, Isidoro Errázuriz, Minister of Foreign Relations of Chile;

Who, after having communicated to each other their respective full powers, found in good and true form, have agreed upon the following articles:—

ARTICLE I.

All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Chile, arising out of acts committed against the persons or property of citizens of the United States not in the service of the enemies of Chile, or voluntarily giving aid and comfort to the same, by the civil or military authorities of Chile; and on the other hand, all claims on the part of corporations, companies or private individuals, citizens of Chile, upon the Government of the United States, arising out of acts committed against the persons or property of citizens of Chile, not in the service of the enemies of the United States, or voluntarily giving aid and comfort to the same, by the civil or military authorities of the Government of the United States, shall be referred to three Commissioners, one of whom shall be named by the President of the United States, and one by the President of the Republic of Chile, and the third to be selected by mutual accord between the President of the United States and the President of Chile. In case the President of the United States and the President of Chile shall not agree within three months from the exchange of the ratifications of this Convention to nominate such third Commissioner then said nomination of said third Commissioner shall be made by the President of the Swiss Confederation.

ARTICLE II.

The said Commission, thus constituted, shall be competent and obliged to examine and decide upon all claims of the aforesaid character presented to them by the citizens of either country.

ARTICLE III.

In case of the death, prolonged absence or incapacity to serve of one of the said Commissioners, or in the event of one Commissioner omitting, or declining, or ceasing to act as such, then the President of the United States, or the President of the Republic of Chile, or the President of the Swiss Confederation, as the case may be, shall forthwith proceed to fill the vacancy so occasioned by naming another Commissioner within three months from the occurrence of the vacancy.

ARTICLE IV.

The Commissioners named as hereinbefore provided shall meet in the city of Washington at the earliest convenient time within six months after the exchange of ratifications of this Convention, and shall, as their first act in so meeting, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to public law, justice, and equity, without fear, favor or affection, all claims within the description and true meaning of Articles I and II, which shall be laid before them on the part of the Governments of the United States and of Chile respectively; and such declaration shall be entered on the record of their proceedings; Provided, however, that the concurring judgment of any two Commissioners shall be adequate for every intermediate decision arising in the execution of their duty and for every final award.

ARTICLE V.

The Commissioners shall, without delay, after the organization of the Commission, proceed to examine and determine the claims specified in the preceding articles, and notice shall be given to the respective Governments of the day of their organization and readiness to proceed to the transaction of the business of the Commission. They shall investigate and decide said claims in such order and in such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of, or in answer to, any claim, and to hear,

if required, one person on each side whom it shall be competent for each Government to name as its Counsel or Agent to present and support claims on its behalf, on each and every separate claim. Each Government shall furnish at the request of the Commissioners, or of any two of them, the papers in its possession which may be important to the just determination of any of the claims laid before the Commission.

ARTICLE VI.

The concurring decisions of the Commissioners, or of any two of them, shall be conclusive and final. Said decisions shall in every case be given upon each individual claim, in writing, stating in the event of a pecuniary award being made, the amount or equivalent value of the same in gold coin of the United States; and in the event of interest being allowed on such award, the rate thereof and the period for which it is to be computed shall be fixed, which period shall not extend beyond the close of the Commission; and said decision shall be signed by the Commissioners concurring therein.

ARTICLE VII.

The High Contracting Parties hereby engage to consider the decision of the Commissioners, or of any two of them, as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objections, evasions, or delay whatever.

ARTICLE VIII.

Every claim shall be presented to the Commissioners within a period of two months reckoned from the day of their first meeting for business, after notice to the respective Governments as prescribed in Article V of this Convention. Nevertheless, where reasons for delay shall be established to the satisfaction of the Commissioners, or of any two of them, the period for presenting the claim may be extended by them to any time not exceeding two months longer.

The Commissioners shall be bound to examine and decide upon every claim within six months from the day of their first meeting for business as aforesaid; which period shall not be extended except only in case of the proceedings of the Commission

shall be interrupted by the death, incapacity, retirement or cessation of the functions of any one of the Commissioners, in which event the period of six months herein prescribed shall not be held to include the time during which such interruption may actually exist.

It shall be competent in each case for the said Commissioners to decide whether any claim has, or has not, been duly made, preferred, and laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this Convention.

ARTICLE IX.

All sums of money which may be awarded by the Commissioners as aforesaid, shall be paid by the one Government to the other, as the case may be, at the capital of the Government to receive such payment, within six months after the date of the final award, without interest, and without any deduction save as specified in Article X.

ARTICLE X.

The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof; and the Governments of the United States and of Chile may each appoint and employ a Secretary versed in the languages of both countries, and the Commissioners may appoint any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner, Secretary and Agent or Counsel, and at the same or equivalent rates of compensation, as near as may be, for like officers on the one side as on the other. All other expenses, including the compensation of the third Commissioner, which latter shall be equal or equivalent to that of the other Commissioners shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the Commissioners, provided always that such deduction shall not exceed the rate of five per centum on the sum so awarded. If the whole expenses shall exceed this rate, then the excess of expense shall be defrayed jointly by the two Governments in equal moieties.

ARTICLE XI.

The High Contracting Parties agree to consider the result of the proceedings of the Commission provided for by this Convention as a full, perfect and final settlement of any and every claim upon either Government within the description and true meaning of Articles I and II; and that every such claim, whether or not the same may have been presented to the notice of, made, preferred or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be treated and considered as finally settled, concluded and barred.

ARTICLE XII.

The present Convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof and by the President of the Republic of Chile, with the consent and approbation of the Congress of the same, and the ratifications shall be exchanged at Washington, at as early a day as may be possible within six months from the date hereof.

In testimony whereof the respective Plenipotentiaries have signed the present Convention, in the English and Spanish languages, in duplicate, and hereunto affixed their respective seals.

Done at the city of Santiago the seventh day of August, in the year of our Lord one thousand eight hundred and ninety-two.

[SEAL.]

PATRICK EGAN.

[SEAL.]

ISIDOR. ERRÁZURIZ.

Preliminary Proceedings of Commission.

FIRST SESSION.

Washington, D. C., June 15, 1900.

The Commissioner of the Swiss Confederation, J. B. Pioda; the Commissioner of the United States of America, William G. Gage; and the Commissioner of the Republic of Chile, Carlos Morla Vicuña, appointed under the Convention between the United States and the Republic of Chile to adjust amicably the claims of citizens of either country against the other, signed at Washington, May 24, 1897, and proclaimed March 12, 1900, met pursuant to arrangements at the office of the Secretary of State in the city of Washington, June 15, 1900, at eleven o'clock A. M., and having exhibited to each other their credentials in their behalf, did, as

their first act, make and subscribe, respectively, a solemn declaration as provided in said Convention. The declarations so made are in the words and figures following, to wit:

OFFICE OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,

Washington, June 15, 1900.

The Commissioners appointed pursuant to the Convention between the United States of America and the Republic of Chile, signed May 24, 1897, to revive the Convention of August 7, 1892, to adjust amicably the claims of citizens of either country against the other, that is to say, William G. Gage, a citizen of the State of Michigan, the Commissioner named by the President of the United States; Carlos Morla Vicuña, a citizen of the Republic of Chile, the Commissioner named by the President of that Republic; and J. B. Pioda, a citizen of the Swiss Confederation, the Commissioner named by the President of that Confederation, met this day in the presence of the Honorable John Hay, Secretary of State of the United States, at the Department of State, in the city of Washington, and made and subscribed the following declaration:

We, the undersigned Commissioners, appointed in pursuance of a Convention signed May 24, 1897, between the United States of America and the Republic of Chile, to revive the Convention of August 7, 1892, to adjust amicably the claims of citizens of either country against the other, do severally and solemnly declare that we will impartially and carefully examine and decide, to the best of our judgment and according to public law, justice and equity, without fear, favor, or affection, all claims within the description and true meaning of Article 1 of said new Convention which shall be laid before us on the parts of the Governments of the United States and of Chile, respectively.

In witness whereof we have this fifteenth day of June, one thousand nine hundred, made and subscribed this our solemn declaration.

J. B. PIODA,

Commissioner appointed by the President of the Swiss Confederation.

WILLIAM G. GAGE,

Commissioner appointed by the President of the United States.

C. MORLA VICUÑA,

Commissioner appointed by the President of the Republic of Chile.

DEPARTMENT OF STATE,

Washington, June 15, 1900.

I certify that the above declaration was signed at the Department of State this fifteenth day of June, one thousand nine hundred.

In witness whereof I have hereunto set my hand and caused the seal of the Department of State to be affixed.

[SEAL.]

JOHN HAY.

Secretary of State.

Thereupon, after the subscribing of the foregoing solemn declaration, the Honorable J. B. Pioda was elected President of the Commission by acclamation.

On motion of the Honorable William G. Gage, the Commissioner of the United States, Mr. J. H. Perry was recognized as the Agent and Counsel and Mr. John F. Baker as the Secretary on the part of the United States.

On motion of the Honorable Morla Vicuña, the Commissioner of Chile, Mr. Aníbal Cruz was recognized as the Agent and Counsel and Mr. Elidoro Infante as the Secretary *ad interim* on the part of Chile. His motion was supplemented with the statement that upon the arrival of Mr. Enrique Balmaceda the latter should be recognized as the Secretary.

The Honorable William G. Gage moved that the Secretaries be instructed to procure offices for the future sessions of the Commission and all the necessary appurtenances, such as a safe, stationery, furniture, typewriters, etc. Adopted.

On motion of the Honorable Morla Vicuña, it was

Ordered: That the Agents of the United States and Chile be instructed to prepare a draft of rules for the guidance of the deliberations of the Commission, said draft to be submitted thereto at its next meeting."

He suggested that the Agents be authorized to obtain from the Department of State the papers necessary to be printed.

Whereupon Mr. Gage offered the following resolutions, which were adopted:

Ordered: That the Agents of the High Contracting Parties select such of the memorials, exhibits and proofs as in their judgment should be printed for the purposes of the Commission, and that the Secretaries cause the documents so selected to be printed."

Ordered: That the State Department of the United States Government be requested to permit the Secretaries of the Com-

mission to withdraw from its archives the documents referred to in the preceding order for the purpose therein specified."

"*Ordered:* That when any paper is printed for the use of the Commission, fifty copies thereof shall be set apart and kept for ultimate deposit with the State Department of the United States Government."

On motion of Mr. Gage it was ordered to take a recess until November 15th, at which time the rules should be presented to the Commission and the first business day would be fixed for the meeting of the Commission.

On Mr. Gage's suggestion it was ordered that quarters be selected for the Commission not later than October first from which date the rent would be payable. The Commission then took a recess until November 15th, at ten o'clock A. M., when they will meet at the offices of the Commission, No. 1413 G St. N. W.

J. B. PIDDA
President.

JOHN F. BAKER
ENRIQUE BALMACEDA
Secretaries.

SECOND SESSION.

OFFICE OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., November 15, 1900.

The Commission met at 10 o'clock A. M. pursuant to the recess taken on the 15th of June, 1900.

Present: The Honorable J. B. Pioda, the Commissioner named by the Swiss Confederation, presiding; the Honorable William G. Gage, Commissioner on the part of the United States; the Honorable C. Morla Vicuña, Commissioner on the part of the Republic of Chile; the Honorable John H. Perry, Agent on the part of the United States; the Honorable Aníbal Cruz, Agent on the part of Chile; Mr. John F. Baker, Secretary on the part of the United States, and Mr. Enrique Balmaceda, Secretary on the part of Chile.

The Honorable President delivered a short address congratulating the members upon the favorable auspices under which they had reconvened and that they had been chosen to take part

in the proceedings of a commission appointed to arbitrate differences between the Governments of the two friendly Republics, parties to the Convention of May 24th, 1897.

He also expressed the hope and belief that the proceedings of the Commission would be conducted in the spirit of amity and justice, in which the Convention itself was conceived, and that the result of their deliberations would be such that the cause of peaceful arbitration of international disputes would be promoted and advanced among civilized nations.

The minutes of the previous meeting were read and approved.

On the motion of the Honorable Mr. Vicuña, the thanks of the Commission were extended to Mr. Infante for his services as Secretary for Chile since the organization of the Commission.

On motion of the Honorable Commissioner for Chile, Mr. Enrique Balmaceda was recognized as the Secretary on the part of Chile.

On motion of the Agent for Chile, Mr. Strobel was recognized as the Assistant Counsel for Chile.

On motion of Mr. Perry, it was ordered that a stenographer be employed at a salary of not more than \$100 a month. The Secretaries were authorized to make the appointment.

The Agent on the part of the United States presented a draft of the rules for the regulation of the Commission. He argued that this was a new Commission and not a continuation of the old Commission. The Agent on the part of Chile opposed the adoption of new rules and moved that the rules of the last Commission be accepted by the Commission. He offered the following resolutions:

“Whereas in the last meeting of the Commission established by the Convention of August 7, 1892, on April 9, 1894, on motion of the Agent of the United States it was agreed that ‘all cases presented to but not finally determined by the Commission be remitted to the respective Governments of the United States and Chile for such disposition as they may hereafter agree upon’; and

“Whereas the Commission adopted said motion in view of the facts stated in said motion as follows: ‘There are still pending claims of the citizens of either country against the other country in which evidence has not been completed under the rules of the Commission, and other cases are pending in which the United States has completed the testimony and closed the cases, but in which Chile has not yet completed the testimony, and other cases in which both countries have closed but not submitted, and other

cases which have been closed and submitted, which said cases time will not permit this Commission to hear and consider'; and

"Whereas the treaty between the United States and Chile of May 24, 1897, as a result of the above, states that 'the Convention between the United States of America and the Republic of Chile, signed August 7th, 1892, having expired and the Commission thereunder established to adjust amicably the claims made by citizens of either country against the Government of the other having failed through limitation to conclude its task, leaving certain claims duly presented to said Commission unadjudicated,' both countries agreed to revive the said Convention of August 7th, 1892; and

"Whereas the said Convention of May 24, 1897, allows to the Commission for the transaction of its business a period of four months, authorizing the Commissioners to extend such period to one or two months more; and

"Whereas in the last paragraph of Article 1 of said Convention of May 24, 1897, it is clearly stated that 'the new Commission shall be limited to considering the claims duly presented to the former Commission in conformity with the terms of the Convention (of 1892) and with the rules that governed its labors;'

"Therefore, It is declared that the new Commission created by the Convention of May 24, 1897, must be considered as a continuation of the Commission created by the Convention of August 7, 1892, and that the rules of January 5, 1894, which governed the labors of the Commission created by the Convention of August 7, 1892, shall be adopted by this Commission with the additional provision that each case shall be continued from the stage in the proceedings in which it was left by the former Commission, excepting that any case which was argued but not decided shall be reargued before the present Commission."

The Commission thereupon went into Executive Session to consider the arguments presented by the Agents.

Upon the reassembling of the Commission, the Honorable President stated that the Commission had decided to adopt its own rules and would therefore proceed to the consideration of the rules presented by the Agent of the United States.

After considerable discussion relative to the rules, the Honorable President, Mr. Pioda, moved that the entire matter be again referred to the Agents, with the instruction to agree upon, if possible, and report a set of rules for the guidance of the Commission

at its next meeting, having in consideration that the Commission desires to finish its duties if possible within the four months allowed by the Convention, and if not within that time then within the one to two months more allowed by said Convention, and that the claims are to be taken up in the condition in which they were left by the prior Commission.

Thereupon the Honorable Commission adjourned to meet on Friday, November the sixteenth, at ten A. M.

J. B. Pioda
President.

JOHN F. BAKER,
ENRIQUE BALMACEDA,
Secretaries.

THIRD SESSION.

OFFICE OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., November 16, 1900.

The session was called to order at 10 o'clock A. M.

Present: The Honorable J. B. Pioda, presiding, the Honorable Commissioners, and the Agents and Secretaries on the part of the United States and Chile.

The minutes of the previous session were read and approved.

On motion of the Commissioner for the United States it was

Ordered: That the Secretaries be authorized to audit and order the payment of all contingent accounts, such as rent, furniture, stationery, printing, safe, repairs of desks, typewriter, clerks, translators, messengers, etc."

The Secretary for the United States informed the Commission that in accordance with instructions, the Secretaries had appointed Mr. Henry C. Sheridan as stenographer and typewriter for the Commission at a salary of \$100. a month.

The Agent for the United States premising that officially he must take exception to the ruling of the Commission that the cases are to be considered as coming before it in the same condition in which they were left by the prior Commission, yet, inasmuch as it had been so ordered, he would report that the Agents were agreed upon a set of rules in conformity with the order in

question, a draft of which rules he then submitted; said rules as so reported were, after certain amendments by the Commission, adopted as follows:

Rules of the Commission for the Settlement of Claims under the Convention of May 24, 1897, between the United States of America and the Republic of Chile.

I.

The claims covered by the above designated Convention shall be entered in a docket provided for the purpose in their numerical order as numbered in the docket of the prior Commission.

II.

All the entries in the prior docket shall be copied into the new docket and the claims shall be deemed to come to this Commission in the same condition as they were left by the prior Commission.

III.

Memorials may be amended at any time before final submission upon leave granted by the Commission; but such amendment shall not include a new or different cause of action.

IV.

If the claim has been preferred through an agent or legal representative, his authority so to do must be shown to the satisfaction of the Commission in accordance with the laws of the country under which he is appointed.

V.

The respondent Government in cases already closed by the United States shall complete its proofs within seventy-five days after the date of the adoption of these Rules.

The claimant in cases not closed by him shall complete his proofs within the same length of time; and after the claimant announces that his proofs are complete, the respondent Government must complete its testimony within seventy-five days also. The Commission will allow testimony in rebuttal if necessary.

VI.

Testimony may be taken by deposition with or without written interrogatories. The party desiring to take it shall give at least ten days' notice thereof to the opposing party if taken within the United States and thirty-five days' notice if taken outside of the United States, stating particularly the place and time of taking the same, the names and residences of the witnesses intended to be examined, and the subject of the examination. The adverse party may appear and cross-examine. After the deposition has been completed either party may take the deposition of such other witnesses in that vicinity, as were discovered after the date of the notice aforesaid, first giving notice thereof—accompanied by the above mentioned particulars—to the local attorney or representative of the opposing party, and to the opposing party also if possible, and the same officer shall take such further testimony. The notice last above referred to shall be given as soon as the party taking the deposition or his representative learns of the witness and shall be given at least 24 hours in advance. Each witness shall state whether he has any interest direct, indirect or contingent in the claim in controversy, and if so what, and whether he is connected in business with, or anywise related to, the claimant.

Depositions may be taken by any officer competent so to do under the law of the place where taken. He shall first swear (or affirm) the witnesses to tell the truth, the whole truth, and nothing but the truth relative to the cause in which he is about to testify. He shall then write the questions desired, following each with the answer of the witness thereto, giving in every instance the exact words of the latter. If the attorney or agent of either party make any suggestions to the witness under examination as to his answer, the officer shall note the suggestion in the deposition. As soon as completed the witness shall subscribe his deposition and write his name on the margin of each sheet containing any part of it.

The officer shall give the title of the case in the caption of the deposition and note the time and place of taking the same, together with the names of the attorneys or agents appearing for the several parties. At the conclusion of the deposition he shall certify over his official signature and seal (if he have one), furnishing evidence of his official character with his certificate—that the witnesses were duly sworn (or affirmed) as required in this

rule before being examined; that he wrote the questions and answers which they severally gave thereto, and that he saw them sign the deposition, and that it was taken at the time and place specified in the caption. When the deposition shall have been completed and authenticated as aforesaid, he shall forthwith enclose the same in an envelope or package, on which, after being duly sealed, he shall endorse the title of the case and the names of the witnesses examined and having addressed the same to the Commission at Washington, D. C., deposit it in the proper post-office duly stamped. When received by the Commission it may be opened by the Secretaries at the request of either party.

VII.

The Commission may at any time authorize additional testimony to be taken, and may also, on motion, or of its own accord, require any claimant or witness to appear personally before it for examination or cross-examination.

Leading questions must not be put to a witness by the party calling him, and the officer who takes the deposition, while noting all objection of counsel shall not pass upon the same, but shall record the questions and answers as if unobjected to.

VIII.

On motion, any testimony, or paper filed as testimony, or any other matter, that is improper, incompetent, immaterial, or scandalous, will be stricken from the record. Objections to the notice for depositions, or to the form and manner of taking or returning the same, must be made in writing, and filed within one week after notice of the filing of the deposition, or they will be considered as waived.

IX.

The competency, relevancy, and effect of evidence and validity of memorials shall be determined by the Commission with reference to the convention under which it is created, the laws of the two nations, the public law, these rules, and the rules under which the evidence was produced or the memorials filed.

X.

When an original paper on file in the archives of either Government cannot be conveniently withdrawn, a duly certified copy may be received in evidence in lieu thereof. Public official docu-

ments, laws, orders and decrees, published by authority of either Government may be received in evidence, subject to objection as to relevancy and effect without further authentication.

XI.

Motions, briefs, and arguments shall be in the English language. All depositions which may be taken under these rules shall be taken in the language which the witness ordinarily uses, and if in any language other than the English, a faithful translation into English shall be provided as soon as possible after the evidence reaches the Commission. All documentary evidence shall be submitted in the original language in which it is written, and if in Spanish, shall be accompanied by a faithful translation into English.

XII.

All pleadings, motions, and briefs of counsel of the respective Governments shall be printed at the expense of the Commission, together with such other documents as in their judgment may be necessary.

XIII.

The order and mode of procedure which obtain in the courts of justice of both countries will be observed in proceedings before the Commission, so far as practicable and consistent with the convention and these rules.

XIV.

The Secretaries shall keep a record of the proceedings of the Commission in a book provided for the purpose for each day of its session, which shall be read at its next meeting, and if no objection be made, or when corrected, if correction be needed, it shall be approved and subscribed by the President of the Commission and counter-subscribed by the Secretaries.

They shall keep a notice book, in which entries may be made by the counsel for either Government, of which entries notice shall be forthwith given to the opposing counsel by one of the Secretaries.

They shall provide a book of printed forms, under the direction of the Commission, in which shall be recorded its several awards or decisions signed by the Commissioners concurring therein.

They shall be the custodians of the papers, documents and books of the Commission, and shall keep the same safe and in methodical order.

Upon each paper filed with the Commission they shall indorse the date of filing and enter a minute thereof in the docket, and they shall make brief memoranda in such docket under each case of all orders of the Commission pertaining thereto. While affording every reasonable opportunity to parties or their counsel to inspect, copy, or make extracts from papers and records they shall permit none to be withdrawn from the files of the Commission or taken from its office except by its direction duly entered of record.

XV.

The docket, minutes of proceedings, and record of awards or decisions shall be kept in duplicate, both in English and Spanish, one of which duplicates shall be delivered to each Government at the close of the Commission.

XVI.

The Commission will for sufficient cause suspend or modify any of the requirements of the foregoing rules, and will upon reasonable cause being shown, extend the time for pleading, argument, or taking evidence in any case.

On motion of the Agent for Chile it was

“Ordered: That 100 copies of the old rules and 200 copies of the new rules be printed in English and Spanish.”

On motion of the Honorable Commissioner for the United States it was

“Resolved, That the memorials, pleadings, and evidence in the cases to be brought before this Commission, under its rules, be treated as refiled with this Commission as of the 18th day of December, A. D. 1900.”

On motion of the Honorable Commissioner for Chile, the eighteenth day of December 1900 was then unanimously adopted as the date for the first meeting for business.

On motion of the Agent for the United States it was

“Ordered: That in conformity with Article 5 of the original convention, the Secretaries give notice to the respective Governments that the Commissioners on the 15th day of June, 1900, signed the declaration required by Article 4; that they took recess until the 15th day of November, 1900, and again until the following day, when they adopted a body of rules for the regulation of their proceedings; that they have fixed the 18th day of December, 1900, as the day of their first meeting for business, on which day

they will be ready to proceed with the performance of the duties with which they are charged.”

The Agent for the United States thereupon made a brief statement explaining the situation of the cases pending before the Commission as he understood it, and gave notice that he would make certain motions relative thereto on the first day for business.

Thereupon the Honorable Commission adjourned to meet on Tuesday, December the eighteenth, 1900, at ten o'clock A. M.

J. B. PIODA
President.

JOHN F. BAKER
ENRIQUE BALMACEDA
Secretaries.

UNITED STATES AND CHILEAN CLAIMS COMMISSION,
Washington, D. C., November 27, 1901.

His Excellency, JOHN HAY,
Secretary of State, Washington.

SIR: The Commissioners appointed under the Convention between the United States of America and the Republic of Chile for the settlement of claims of the citizens of either country against the other, concluded May 24, 1897, have directed us, on their behalf, to inform your Excellency that at a meeting of the Commission, held at Washington on the sixteenth day of November, 1900, the following order was adopted:

“*Ordered:* That in conformity with Article 5 of the original Convention, the Secretaries give notice to the respective Governments that the Commissioners, on the fifteenth day of June, 1900, signed the declaration required by Article 4: that they took recess until the fifteenth day of November, 1900, and again until the following day, when they adopted a body of rules for the regulation of their proceedings; that they have fixed the eighteenth day of December, 1900, as the day of their first meeting for business, on which day they will be ready to proceed with the performance of the duties with which they are charged.”

We beg, therefore, to accordingly advise you of this action of the Commission.

In witness whereof we have hereunto set our hands and caused the seal of the Commission to be affixed.

JOHN F. BAKER
Secretary on the part of the United States.

[SEAL.]

ENRIQUE BALMACEDA
Secretary on the part of Chile.

DOCKET OF THE COMMISSION OF THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF CHILE, CONVENTION OF MAY 24, 1897.

| | |
|-----------------------------------|----------|
| HENRY CHAUNCEY, <i>Claimant</i> , | } No. 3. |
| against | |
| THE REPUBLIC OF CHILE. | |

[NOTE.—This docket as set forth in the official "Docket of the Commission of the United States of America and the Republic of Chile, Convention of May 24, 1897," comprises, first, a textual copy of the docket of the first commission, which sat under the convention of August 7, 1892, this copy being entered under date of December 18, 1900; and, secondly, an addition to this docket of the following entries under dates indicated.]

1900.

Dec. 18. Filed: A1. Copy of Treaty of Peace and Friendship between Chile and Bolivia, May 18, 1895.

A2. Supplemental Memorial.

Dec. 20. A3. Treaty regarding the Transfer of Territories, dated May 18th, 1895, signed by Luis Barros Borgono and Heriberto Gutierrez.

A4. Treaty relating to Credits, dated the 28th day of May 1895, signed by Luis Barros Borgono, and Don Heriberto Gutierrez.

A5. Protocol relating to Territory, of Dec. 9th, 1895, signed at Sucre by the Minister of Foreign Affairs of Bolivia and the Minister Plenipotentiary of Chile.

A6. The Protocol of the 30th of April, 1896, signed at Santiago.

A7. The official note addressed by the Chilean Minister at Bolivia, Senor Konig to the Minister of Foreign Relations of Bolivia, dated at Lapaz, Aug. 13th, 1900.

A8. The report or memorial as far as it relates to Chile, of the Minister of Foreign Relations of Bolivia to the Congress of 1900, dated the 20th day of Aug. 1900.

A9. The Annual Message of the Constitutional President of Bolivia, dated the 6th of Aug. 1900, so far as it relates to Chile.

A10. Reply of Bolivian Minister of Foreign Affairs to Senor Konig dated Oct. 15 1900. (In same pamphlet with A7.)

CASE CLOSED BY CLAIMANT.

1901.

- Jan. 3. A11. Bond of Bolivian loan, (Spanish) negotiated in Chile 1867, with translation.
- Jan. 5. A12. Letter from Senor Adolfo Guerro to Senor Heriberto Gutierrez dated Santiago, April 29, 1896; and letter from Senor H. Gutierrez to Senor Adolfo Guerro dated Santiago, April 30, 1896.
- Jan. 8. A13. Agent for Chile files plea to the jurisdiction.
- Jan. 11., A14. Book: Recopilacion de Tratados y Convenciones celebrados entre La República de Chile y las Potencias Extranjeras. (1893-1897). With special reference to pages 282 & 302.
- Jan. 11., A15. Pamphlet entitled "Chile and Bolivia" containing circular addressed to Chilean Diplomatic Corps by the Foreign Relations Department of Chile, dated Santiago, September 30, 1900.
- A16. Pamphlet: Memoria del Ministro de Relaciones Exteriores Culto I Colonizacion presentada Al Congreso Nacional en 1900.
- Feb. 8. Case dismissed. (See Opinion Book Vol. 1, page 13.)

 Exhibit No. 3a 1. Filed December 18, 1900.

TREATY OF PEACE AND FRIENDSHIP.

The Republics of Chile and Bolivia, desiring to affirm by final Treaty of Peace the political relations which connect both countries, to consolidate thereby in a lasting and permanent manner the bonds of sincere friendship and good understanding, which happily exist between them, and to give practical form to the aspirations and purposes in favor of concord entertained by the high contracting parties ever since the conclusion by them of the truce of April 4, 1884, have decided to conclude a Treaty of Peace and Friendship, and to that effect have appointed their plenipotentiaries, as follows:

His Excellency the President of the Republic of Chile; Don Luis Barros Borgoña, Minister of Foreign Relations, and His Excellency the President of the Republic of Bolivia; Don

Heriberto Gutierrez, Envoy Extraordinary and Minister Plenipotentiary of Bolivia in Chile:

Who, after having exchanged their respective full powers and found them in good and due form, have agreed upon the following articles:

ARTICLE FIRST.

The Republic of Chile shall hereafter hold perpetually as absolute owner the territory held and governed by her up to this date under the agreement of truce of April 4, 1884. The sovereignty of Chile is, therefore, recognized over the territories south of the River Loa, from its mouth on the Pacific to the 23d parallel south, bounded on the east by the series of straight lines agreed upon in the Second Article of the above mentioned Truce—that is to say: A straight line starting from Zapalegui, at the intersection of the said territories with the frontier of the Argentine Republic, and ending at the Lincañaur volcano; another straight line starting from this place and ending at the top of the extinct volcano called Cabana, or the hill called Del Cajon; another straight line starting from this place and ending at the spring, south of the Ascotan lake; another straight line starting from these springs, crossing the lake lengthwise and ending at the Ollagua volcano, and another straight line direct from this place to the Tua volcano, and following thereafter the dividing line between Bolivia and the Department of Tarapacá.

ARTICLE SECOND.

The Government of Chile assumes the obligations recognized by the Government of Bolivia in favor of the mining enterprises of Huanchaca, Corocoro and Oruro, and binds itself to pay the same as well as the balance of the Bolivian loan raised in Chile in 1867, after deducting therefrom all the sums of money which, under Article Sixth of the Truce, are to be allowed in the settlement of this account. It binds itself furthermore to pay the following debts which encumbered the Bolivian littoral, namely: the bonds issued for the construction of the Mejillones and Caracoles Railroad; the credit of Don Pedro Lopez Gama, now represented by the firm of Alsop & Co., of Valparaiso; the credit of Don Enrique G. Meiggs, represented by Don Edward Squire, founded on contract of May 20, 1876, entered into between the above named Meiggs and the Government of Bolivia, for the

farming out of the fiscal nitrate beds at Toco, and the credit recognized in favor of Don Juan Garday.

All these credits shall be individually liquidated, item by item, in a protocol supplementary to the present treaty.

ARTICLE THIRD.

The Government of Chile does not recognize any obligations or responsibilities of any kind, whatever their nature or origin may be, affecting the territories which are the subject of this treaty, different from those which have been enumerated in the preceding article. The Government of Chile is also exempted from the obligations contracted under Article Sixth of the Truce; the yieldings of the Arica Custom-house shall be entirely free; and Bolivia shall be at liberty to establish her own Custom-houses at such places and in such forms as she may deem to be advisable.

ARTICLE FOURTH.

Should any difficulty arise out of the demarcation of the boundary between the two countries, the high contracting parties shall appoint a Commission of Engineers, whose duty shall be to determine by actual survey on the ground, the points enumerated in Article First of this Treaty. The boundary already surveyed, or hereafter to be surveyed, between the Chilean Province (formerly Department) of Tarapacá and the Republic of Bolivia shall be determined in the same way. If unfortunately the engineers entrusted with these operations find it impossible for them to reach an agreement, and the difficulty arising therefrom cannot be arranged by the Governments themselves directly, the question shall be submitted to the decision of a friendly Power.

ARTICLE FIFTH.

The ratifications of this treaty shall be exchanged within the period of six months, and the exchange shall take place at the city of Santiago.

In testimony whereof we, the Minister of Foreign Relations of Chile and the Envoy Extraordinary and Minister Plenipotentiary of Bolivia, affixed our signatures and seals to the present Treaty of Peace and Friendship, executed in duplicate, at the city of Santiago, on the eighteenth day of May, eighteen hundred and ninety-five.

[L. L.]

LUIS BARROS BORGÑO.

[L. L.]

H. GUTIERREZ.

Exhibit No. a 2. Filed December 18, 1900.

SUPPLEMENTAL MEMORIAL.

UNITED STATES AND CHILIAN CLAIMS COMMISSION.

| | | |
|------------------------|---|-------|
| HENRY CHAUNCEY, | } | No. 3 |
| against | | |
| THE REPUBLIC OF CHILE. | | |

To the Honorable Commissioners of the Joint Commission &c:

The above named Memorialist Henry Chauncey respectfully petitions the Honorable Commissioners for leave to amend or supplement the original Memorial, heretofore filed by him in the above entitled proceeding, by filing herein a supplemental memorial, in and by which supplemental memorial your Memorialist respectfully shows to the Honorable Commissioners that, as your Memorialist is informed and believes, the Government of the Republic of Chili, on divers occasions and by means of treaties, protocols and official communications of its duly constituted officers and representatives, has recognized its liability for and assumed the payment of the claim of said Alsop & Company; to wit, the claim mentioned in the original memorial herein, and has agreed to pay the same and has bound and charged itself with the payment thereof as a lien or charge upon certain Bolivian territory occupied by said Republic of Chili during the war between said Republic of Chili and Bolivia referred to in said original Memorial, which territory has been ever since and now is held by the said Republic of Chili, which Republic, as your Memorialist is informed and believes, still claims to and does exercise exclusive sovereignty over said territory, said territory including that in which the mines referred to in said original memorial are situated and also including that in which is situated the Custom-House of Arica, mentioned in said original memorial.

Wherefore and by reason of the facts herein and in said original memorial alleged, your Memorialist respectfully prays for the judgment and decree of this Honorable Joint Commission as prayed for in said original memorial herein;

And your Memorialist will ever pray &c,

HENRY CHAUNCEY.

STATE OF NEW YORK, }
 County of New York. } ss:

Henry Chauncey, the above named Memorialist, being duly sworn, deposes and says; that he has read the foregoing instrument or supplemental memorial subscribed by him and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

HENRY CHAUNCEY.

Sworn to before me this 14th day of December, 1900.

[SEAL.]

CLARENCE HOWLAND,

Notary Public, New York County.

[Certificate filed in Kings County.]

Exhibit A3. Filed December 20, 1900.

[Translation.]

TREATY BETWEEN CHILE AND BOLIVIA, FOR THE TRANSFER OF CERTAIN TERRITORIES, SIGNED AT SANTIAGO, MAY 18, 1895.

[Ratifications exchanged at Santiago, April 30, 1896.]

The Republic of Chile and the Republic of Bolivia, with the object of strengthening more and more the bonds of friendship which unites the two countries, and in accord with the higher necessity that the future development and commercial prosperity of Bolivia require for her free access to the sea, have decided to make a special Treaty in regard to transfer of territory, and for this purpose have named and constituted their Plenipotentiaries:

His Excellency the President of the Republic of Chile, Don Luis Barros Borgoño, Minister for Foreign Affairs in Chile; and

His Excellency the President of the Republic of Bolivia, Don Heriberto 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 upon the following bases:—

Art. I. If in consequence of the plebiscite which was to take place in conformity with the Treaty of Ancon, or if by virtue of direct arrangement, Chile should acquire dominion and permanent sovereignty over the territories of Tacna and Arica, she undertakes to transfer them to Bolivia in the same form and to the same extent in which she may acquire them, without prejudice to what is established in Article II.

The Republic of Bolivia shall pay as indemnity for the above transfer of territory the sum of 5,000,000 silver dollars of 25 grams of 9-10ths fineness, 40 per cent of the net yield of the Custom-house of Arica being specially affected to the above payment.

II. If the cession stipulated in the preceding Article be effected, it is understood that the Republic of Chile shall advance her frontier north of Camerones to the ravine of Vitor, from the sea up to the frontier which actually separates that district from Bolivia.

III. In order to effect the object enunciated in previous Articles the Government of Chile undertakes to use its utmost efforts, either separately or jointly with Bolivia, to obtain definite possession of Tacna and Arica.

IV. If Chile cannot obtain by plebiscite or by direct arrangement the definitive sovereignty of the zone in which are situated the cities of Tacna and Arica, she binds herself to cede to Bolivia the roadstead (caleta) of Vitor, or another analogous one, and in addition to the sum of 5,000,000 silver dollars of 25 grams and 9-10ths fineness.

V. A special arrangement shall determine the exact boundaries of the ceded territory in accordance with the present Treaty.

VI. Should the cession be effected in accordance with Article IV, and should deposits of nitrate of silver be found or discovered in the ceded zone, they cannot be worked or transferred until all the deposits existing in the Chilean territories have been exhausted, unless another arrangement be effected by special agreement of both Governments.

VII. This Treaty, which shall be signed at the same time as those of Peace and Commerce concluded between the same Republics, shall be considered confidential and shall not be published excepting by arrangement between the High Contracting Parties.

VIII. The ratifications of this Treaty shall be exchanged within the space of six months, and the exchange shall take place in Santiago.

In faith of which the Minister for Foreign Affairs of Chile and the Envoy Extraordinary and Minister Plenipotentiary of Bolivia sign and seal with their respective seals, in duplicate, the present special Treaty, in the city of Santiago, on the 18th May, 1895.

[L. s.]

LUIS BARROS BORGÑO.

[L. s.]

HERIBERTO GUTIERREZ.

Exhibit No. A4. Filed December 20, 1900.

PROTOCOL MAY 28, 1895.

The undersigned, Don Luis Barros Borgoño, Minister of Foreign Affairs of Chile; and Don Heriberto Gutierrez, Envoy Extraordinary and Minister Plenipotentiary of Bolivia in Chile; having met at the former's office at Santiago, Chile, on this 28th day of May 1895, for the purpose of defining and precisising the provisions stipulated in art. 2nd of the treaty of peace and amity which has been entered into between the two Republics have agreed to have constancy of the following bases which are to serve for the liquidation of the obligations enumerated in the aforesaid treaty.

1st. Those credits which, according to the pact of truce (between Chile and Bolivia) of 1884, were recognized by the Govt. of Bolivia, shall continue to be served with an amount equal to the 40 % of the receipts of the Arica Custom House. In order to establish the said amount, an average will be taken of the receipts of the said Custom House during the last five years.

2nd. The holders of the credits referred to in the preceding clause may receive in payment thereof bonds of the Internal Debt of the Republic of Chili, bearing interest at rate of 4 % or at rate of 5 % p. a. with 1 % for accumulative amortization, provided that such holders agree, for that purpose, to consider as subsisting the liquidations which, by the contracts executed in 1889, were agreed to by Don Heriberto Gutierrez, acting for the Govt. of Bolivia, and the said holders.

3rd. Those credits which are not included in the declaration aforesaid and which are those of the Mejillones and Caracoles Railway, of Pedro Lopez Gama, of Juan Garday and of John G. Meiggs, shall be examined by the Govt. of Chile, which Govt. in order to fix the definite amount due and to agree as to the form of payment thereof, will take into account the origen 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. (May 23rd 1895)

4th. Should Bolivia prefer to take to its charge the credits, or part of the credits referred to in the preceding clauses, the amounts to which these may reach are to be deducted from the amount which Bolivia is to pay to Chile in virtue of other stipulations contained in the treaties entered into on the 18th of the present month (treaty of peace and amity and treaty of transfer of territory)

5. The memorandum to which reference is made in this protocol (clause 3rd)* signed in this city by the Minister of Bolivia in Chile on the 23rd of the present month, is added as an annex thereto.

In faith whereof and in virtue of the full powers with which they are invested, the undersigned have signed this protocol in two copies.

. (Signed.) LUIS BARROS BORGONO.
HERIBERTO GUTIERREZ.

Exhibit A5. Filed December 20, 1900.

(Translation.)

PROTOCOL BETWEEN CHILE AND BOLIVIA, RESPECTING THE CONDITIONS AND OBLIGATIONS AGREED UPON IN THE TREATIES OF MAY 18, 1895.

[Signed at Sucre, December 9, 1895.]

The following have met at the Ministry of Foreign Affairs:

His Excellency Don Juan G. Matta, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Chile, and Dr. Don Emeterio Cano, Minister of Foreign Affairs, fully authorized by their respective Governments, with the object of fixing the conditions and obligations consigned in the Treaties of the 18th May of the present year and in the Supplementary Protocol of the 28th of the same month, have agreed:

Art. I. That both Contracting Parties make the Treaties of Peace and the Transfer of Territory one indivisible whole, and the stipulations contained therein reciprocal and integral the one with the other.

II. That the definitive cession of the littoral of Bolivia in favor of Chile shall remain without effect should Chile not deliver over to Bolivia, within the term of two years, the port on the Pacific Coast referred to in the Treaty of Transfer.

III. That the Government of Chile shall be under the obligation to employ every legal resource, within the Treaty of Ancon, or by direct negotiation, to acquire the port and territories of Arica and Tacna, with the unalterable purpose of handing them over to Bolivia to the extent determined by the Treaty of Transfer.

IV. That if, from circumstances beyond her control, Chile shall be unable to obtain the said port and territories, but shall be in a position to fulfill the other stipulations of the Treaty, the handing over of Vitor or some other analogous roadstead shall not be with-

held to acquit Chile or her obligations unless a port and zone shall also be delivered over so as to fully satisfy the present and future requirements of the commerce and industry of Bolivia.

V. That Bolivia does not recognize liabilities or responsibilities of any kind attaching to the territories that she shall transfer to Chile.

In complete agreement upon the points above laid down, we sign and seal this Protocol in duplicate at Sucre, the 9th December, 1895.

[L. s.]

JUAN GONZALO MATTA.

[L. s.]

EMETERIO CANO.

Exhibit 3a 6. Filed December 20, 1900.

[Translation.]

PROTOCOL BETWEEN CHILE AND BOLIVIA, EXPLANATORY OF THE
PROTOCOL OF THE 9TH DECEMBER, 1895.

[Signed at Santiago, April 30, 1896.]

Having met at the Ministry for Foreign Affairs of Chile, Señor Adolfo Guerrero, the Minister of that Department, and Señor Heriberto Gutierrez, Envoy Extraordinary and Minister Plenipotentiary of Bolivia, after having taken into consideration the difficulties which have arisen respecting the exchange of ratifications of the Treaties and Supplementary Protocols signed respectively in this capital on the 18th and 28th May, 1895, by Señor Luis Barros Borgoño, Minister of Foreign Affairs, and Don Heriberto Gutierrez, Envoy Extraordinary and Minister Plenipotentiary of Bolivia, in view of the circumstances that the Congress of Bolivia has, as yet, not given its approval to the Protocol of the 28th May respecting the liquidation of debts, and that the Government and Congress of Chile have not yet approved of the Protocol signed at Sucre on the 9th December, 1895, by Don Emeterio Cano, the Minister of Foreign Affairs of Bolivia, and Don Juan G. Matta, Envoy Extraordinary and Minister Plenipotentiary of Chile, to that Government; and animated by the desire to cause those difficulties to disappear and to establish an agreement upon both points, have agreed as follows:

Art. I. The Government of Chile approves, on its part, the Protocol of the 9th December 1895, which ratifies its principal undertaking to transfer to Bolivia the territories of Tacna and Arica, and Article IV of which, with reference to Article IV of the Treaty

of Transfer of 18th May, provides for the handing over of Vitor or some other analogous roadstead fulfilling the conditions of a port sufficient to meet the requirements of commerce, that is to say, with anchorage for merchant ships, with land upon which may be constructed a quay and fiscal buildings, and of sufficient extent for the establishment of a town, and which, by means of a railway to Bolivia, shall respond to the fiscal and economical service of the country.

II. The Government of Bolivia shall submit to the approval of the Congress of that Republic the Protocol relative to the liquidation of debts signed at Santiago on the 28th May, 1895, as also the explanation to which the preceding Article refers, defining the conditions of Article IV of the Protocol of the 9th December, 1895.

III. The Government of Chile shall solicit the approval of Congress to the above mentioned Protocol of the 9th December, with the foregoing explanation, as soon as the legislature of Bolivia shall have approved of the latter.

IV. The exchange of the ratifications shall be carried out in this capital of the Protocols of the 28th May, 1895, relative to the liquidation of debts, and the 9th December, 1895, respecting the Transfer of Territory, together with the explanation contained in the present Agreement, within a period of 60 days following the approval by the Congress of Chile of the latter Protocol.

In faith of which the present Protocol is signed in duplicate at Santiago, on the 30th day of April, 1896.

[L. S.]

ADOLF GUERRERO.

[L. S.]

H. GUTIERREZ.

Exhibit 3a 7. Filed December 20, 1900.

LEGACION DE CHILE,
La Paz, 13 de Agosto de 1900.

SEÑOR MINISTRO:

Por VE. he sabido la determinación del gobierno de Bolivia de dejar al congreso nacional el estudio y resolución de nuestras propuestas de arreglo, y, para facilitar una y otra cosa, tengo la honra de poner en manos de VE. la presente nota que contiene una suscita explicación de las bases definitivas de paz aceptadas por mi gobierno.

Sometidas dichas bases al juicio del congreso boliviano, he considerado útil que los representantes del pueblo tengan cabal conocimiento de su texto y de las razones que lo justifican.

En cumplimiento de las instrucciones de mi gobierno, y partiendo del antecedente aceptado por ambos países de que el antiguo litoral boliviano es y será para siempre de Chile, tuve el honor de presentar á V.E. las siguientes bases de un tratado de paz y amistad.

“El gobierno de Chile estará dispuesto, á trueque de celebrar el tratado de paz con Bolivia, á otorgar, en cambio de la cesión definitiva del litoral boliviano, que hoy ocupamos en virtud del pacto de tregua, las siguientes compensaciones:

(a) Hacerse cargo y comprometerse al pago de las obligaciones contraídas por el gobierno de Bolivia á favor de las empresas mineras de Huanchaca, Corocoro y Oruro, y del saldo del empréstito boliviano levantado en Chile en 1867, una vez deducidas las cantidades que hubiesen sido de abono á esa cuenta, según el artículo 6º del pacto de tregua.

Chile podría, asimismo, satisfacer los siguientes créditos que pesaban sobre el litoral boliviano: el que corresponde á los bonos emitidos para la construcción del ferrocarril de Mejillones á Caracoles: el crédito á favor de don Pedro López Gama representado en el actualidad por la casa de Alsop y C^a de Valparaíso; el de don Enrique Meiggs, representado por don Eduardo Squire, procedente del contrato celebrado por el primero con el gobierno de Bolivia en 20 de mayo de 1876 sobre arrendamiento de las salitreras fiscales de Toco, y el reconocido á favor de la familia de don Juan Garday. Estos créditos serán objeto de particular liquidación y de una especificación detallada en un protocolo complementario.

(b) Una suma de dinero que será fijada de común acuerdo por ambos gobiernos y que deberá invertirse en la construcción de un ferrocarril que, ó bien una algún puerto de nuestra costa con el interior de Bolivia, ó bien sea la prolongación del actual ferrocarril de Oruro. A juicio del infrascrito esta suma no deberá exceder de seis millones de pesos, y tanto la determinación de los puntos de partida y de término como el trazado y demás condiciones del ferrocarril serán resultados de común acuerdo por ambos gobiernos.

(c) El puerto elegido para punto de partida de este ferrocarril será declarado franco para los productos y mercaderías que por él se internen en tránsito para Bolivia y para los productos y mercaderías bolivianas que por el mismo se exporten.”

En las diversas conferencias que tuve con V. E. analizando las bases anteriormente transcritas, V. E. me manifestó que, á su juicio, las ofertas hechas no eran suficiente compensación del litoral boliviano, y que Bolivia necesitaba de un puerto y de absoluta

libertad comercial. El gobierno de Bolivia estima que el pacto de tregua, que favorece excepcionalmente el comercio de Chile, es gravoso para Bolivia y ha dado origen á reclamaciones de potencias europeas. Bolivia aspira á su independencia comercial como una consecuencia de su independencia política, y quiere quedar en libertad de desahuciar los tratados que le perjudican y de celebrar otros que le convengan, sin que esto signifique hostilidad á Chile, pues queda entendido que en adelante Bolivia ortogará á Chile las franquicias comerciales que conceda á otras naciones.

Días despues, y como resultado natural de las conferencias, V. E. me comunicó las proposiciones acordadas por el gobierno y que son las siguientes:

“El Gobierno de Chile se hace cargo de las obligaciones contraídas por Bolivia á favor de las empresas mineras de Huanchaca, Corocoro y Oruro y del saldo del empréstito boliviano levantado en Chile en 1867.—Se hará cargo igualmente de los siguientes créditos que pesan sobre el litoral boliviano: el que corresponde á los bonos emitidos para la construcción del ferrocarril de Mejillones á Caracoles; el crédito á favor de don Pedro Lopez Gama; el de don Enrique Meiggs procedente del contrato celebrado con Bolivia en 1876 sobre arrendamiento de las salitreras fiscales del Toco; el reconocido á favor de la familia de don Juan Garday.

“El gobierno de Chile se obliga á ceder á Bolivia, de sus posesiones de la costa del Pacífico, el dominio perpetuo de una zona, de territorio que comprenda uno de los puertos actualmente conocidos; la cual zona situada á la extremidad norte de aquellas posesiones, se entenderá hasta la frontera boliviana.

“Las relaciones comerciales continuarán entre ambos estados. En lo sucesivo, cada nación, consultando sus propias conveniencias, podrá gravar ó declarar libres de derechos fiscales y municipales los productos naturales y manufacturados que se importaren de la otra.

“Las mercaderías extranjeras que se introduzcan á Bolivia por cualquiera de los puertos chilenos, y productos naturales y manufacturados que se exporten por los mismos puertos al extranjero, tendrán libre tránsito.

“En cambio de estas condiciones, el gobierno de Bolivia está dispuesto á celebrar el tratado de paz que asegure la cesión definitiva del litoral boliviano ocupado por Chile.”

En las bases anteriores no se toma en cuenta la oferta de seis millones de pesos destinados á la construcción de un ferrocarril. Esta suma no es depreciable, y puedo repetir aquí á V. E. lo que he tenido ocasión de insinuarle diferentes veces, que mi gobierno estaría dispuesto á aumentarla si se aceptaran sus proposiciones de arreglo. No se menciona tampoco la concesión de un puerto franco enteramente favorable al comercio de Bolivia.

Sometidas las bases de la cancillería boliviana al estudio de mi gobierno, no hubo inconveniente para aceptar las dos cláusulas que se refieren á la libertad comercial.

Es entendido que Chile quedará en las mismas condiciones que las potencias que en adelante celebren tratados comerciales con Bolivia.

V. E. convendrá que esta explicación no significa ninguna concesión hecha á mi país. La libertad comercial de Bolivia, en un tratado celebrado con Chile, no lleva consigo la idea de hostilidad. Sería un contrasentido que mi país ajustara convenciones destinadas á perjudicar su comercio.

V. E. me repitió además que si Bolivia trabaja para conseguir su absoluta libertad comercial, lo hace por razón de su independencia de nación y también con el objeto de desahuciar tratados que han llegado á ser onerosos con el tiempo.

Como mi gobierno está animado de los mejores propósitos, no ha habido dificultad en aceptar estas cláusulas de libertad comercial, dando así una prueba manifiesta del deseo de concluir alguna vez con nuestras diferencias y de procurar el ensanche del comercio boliviano.

Chile renuncia las positivas ventajas consignadas en el pacto de tregua y en el protocolo complementario á dicho pacto que favorecen su comercio, á trueque de obtener una paz estable y beneficiosa para ambos pueblos. En adelante no tendrá otras franquicias comerciales que las que Bolivia tenga á bien acordar á otras potencias. Chile, en una palabra, hace una gran concesión á Bolivia.

De este estudio comparativo aparece que la única dificultad que existe y que impide un arreglo que reclaman á voces chilenos y bolivianos, es la segunda de las bases propuestas por el gobierno de Bolivia.

En obediencia, tal vez, á opiniones de otro tiempo, V. E. consigna como una aspiración del pueblo boliviano la de poseer á perpetuidad “una zona de territorio que comprenda uno de los puertos actualmente conocidos.” Esta zona deberá estar situada á la extremidad norte de las posesiones chilenas y se extenderá hasta la frontera boliviana.

He aquí una exigencia doblemente difícil y casi imposible de cumplir.

Donde encontraremos, señor ministro, una zona y un puerto que correspondan precisamente á la ubicación señalada con tanta precisión en la cláusula citada?

Nuestra costa llega por el norte hasta la quebrada de Camarones, en conformidad al tratado de paz celebrado con el Perú.

Siendo cosa sabida y entendida que Bolivia no preténde zona ni puerto en el territorio de su antiguo litoral, no diviso a la verdad de dónde podríamos nosotros entregar á Bolivia lo que pide.

No habría chileno capaz de firmar un tratado de paz con una cláusula semejante. Desde la quebrada de Camarones al sur hasta el estrecho de Magallanes, todas las poblaciones son chilenas, netamente chilenas, formadas, desarrolladas y sustentadas con nuestros nacionales, con nuestros capitales, con el sudor y el esfuerzo del pueblo chileno. En esas poblaciones, incluyendo también el antiguo litoral de Bolivia, no hay casi bolivianos. Conceder, pues, una zona y un puerto en esos lugares, sería entregar á nación extraña millares de familias chilenas, y esto en plena paz, por pura condescendencia graciosa.

Bolivia se presentaría en actitud hostil y no tranquila y pacífica por el hecho solo de sustentar tan temeraria pretensión.

Ya en 1884, en las conferencias que tuvieron lugar en Santiago, entre los ministros plenipotenciarios de Bolivia y el ministro de relaciones exteriores de Chile, y que dieron por resultado el pacto de tregua, se trató este punto y quedó eliminado por consentimiento de los mismos representantes de Bolivia.

Quedó convenido entonces que una salida al Pacífico, que produjera una solución de continuidad en el territorio chileno, es inaceptable por su propia naturaleza.

Y hace muy poco tiempo, en 1896, el enviado extraordinario y ministro plenipotenciario de Bolivia en Chile, en nota de 29 de abril del año citado, dirigida á nuestro ministro de relaciones exteriores, reconoce lo mismo que los plenipotenciarios bolivianos habían reconocido en 1884, esto es, que es inaceptable por su propia naturaleza solicitar una zona de terreno que produjera una solución de continuidad en el territorio de la república.

Creo, en consecuencia, que V. E. no ha fijado su pensamiento en el territorio que se extiende al sur de la quebrada de Camarones, y que, por el contrario, al redactar la cláusula de que me ocupo, ha tenido constantemente fija la atención en las provincias que se extienden al norte del límite apuntado.

Es cierto que por el tratado sobre transferencia de territorio, firmado el 18 de mayo de 1895 se estableció condicionalmente que "si á consecuencia del plebiscito que haya de tener lugar en conformidad al tratado de Ancón, ó á virtud de arreglos directos, adquiriese la república de Chile dominio y soberanía permanente sobre los territorios de Tacna y Arica, se obliga á transferirlos á

la república de Bolivia en la misma forma y con la misma extensión que las adquiriera, sin perjuicio de lo establecido en el artículo 20 ”; pero V. E. sabe que la condición no se ha cumplido y que su falta de cumplimiento no es imputable al gobierno de Chile.

En el momento actual, y es esto lo importante, la república de Chile no ha adquirido todavía dominio y soberanía premanente sobre los territorios de Tacna y Arica. Basar un tratado de paz en un acontecimiento que no se ha realizado, que depende en parte, de voluntad ajena, es hacer una obra deleznable y perecedera, suscitar dificultades en vez de ponerles término, es volver á caer en el mismo error que se padeció en 1895.

Sería penoso entrar á averiguar minuciosamente las causas que han retardado la aprobación constitucional de los tratados de 1895; pero V. E. no debe olvidar que no han sido extraños á esas causas el protocolo adicional de 9 de diciembre de 1895 y el aclaratorio del anterior de 30 de abril de 1896. Dichos protocolos, especialmente el primero que contiene exigencias bolivianas de última hora, forman con los tratados un solo cuerpo, de tal manera que, su falta de aprobación importa un desacuerdo sobre una base fundamental que hace ineficaces todos los tratados de mayo de 1895.

La redacción de los tratados y de los protocolos, la simple lectura de esos documentos, revela á las claras la buena voluntad del gobierno de Chile. Plenamente quedó demostrado entonces el vivo deseo que tenía Chile de ganar y conservar la buena amistad de Bolivia, pues al cederle lo más rico de las provincias de Tacna y Arica, todo espíritu imparcial tendrá que reconocer que procedía con estremada generosidad.

No se han perfeccionado esos pactos desgraciadamente; no se ha cumplido la condición estipulada. Fueron pactos prematuros, muertos antes de nacer.

No habiéndose realizado el plebiscito de que habla el tratado de Ancón, nos encontramos hoy en la misma situación jurídica que tenían ambos países en 1884.

Los plenipotenciaros bolivianos que negociaron el pacto de tregua pidieron con instancia una salida al Pacífico para Bolivia y creyeron que podrían obtenerla en el extremo norte del territorio cedido temporalmente por el Perú. El ministro de relaciones exteriores de Chile se negó terminantemente á esta petición. A su juicio, esta petición no estaba siquiera dentro de la esfera de acción y de las facultades del gobierno. Chile no ha adquirido el dominio de aquellos territorios sino una mera expectativa sujeta á los plazos

y condiciones estipulados en el tratado de Ancón. No es dueño todavía; y no debe entonces tratar como si lo fuera.

Hoy podemos repetir iguales conceptos. El plebiscito no se ha verificado; no es posible celebrar tratados tomando por base acontecimientos que no se han realizado y que dependen en parte de voluntad ajena.

El gobierno y el pueblo de Chile están vivamente interesados en que el plebiscito tenga lugar lo más pronto posible, y el gobierno y el pueblo desean que el acto se verifique en condiciones que satisfagan las legítimas aspiraciones nacionales. Cuando llegue el día de su celebración, esperamos con confianza que el plebiscito sea favorable á Chile.

V. E. sabe que la opinión pública de mi país se ha modificado notablemente á contar desde los últimos días de 1895. Hoy no se piensa como en años pasados.

Es digno tema de meditación para los hombres de estado de Bolivia investigar por qué un pueblo sesudo y justiciero como el pueblo chileno tiene sobre Tacna y Arica ideas uniformes muy distintas que las que manifestó públicamente en mayo de 1895.

Para hablar con la claridad que exigen á veces los negocios internacionales, menester es declarar que Bolivia no debe contar con la transferencia de los territorios de Tacna y Arica aunque el plebiscito sea favorable á Chile. El pueblo chileno, con una uniformidad que no se ve de ordinario en otras naciones, ha manifestado su voluntad de conservar esos territorios como una justa compensación de los sacrificios de todo orden impuestos al país.

No habría inconveniente para ceder una zona al norte de Arica, es decir el extremo norte de las posesiones chilenas en el Pacífico, conformándose así á la letra de la cláusula segunda de las proposiciones del gobierno de Bolivia; pero la naturaleza se opone á este buen deseo de nuestra parte. Al norte de Arica no hay puerto ni siquiera una caleta mediana; desde Arica hasta Sama la costa es brava y casi inabordable.

Después de lo dicho, la conclusión se impone por la fuerza. Chile no acepta la cesión de la zona y del puerto pedidos por Bolivia, porque, á pesar de sus buenos propósitos, está en la imposibilidad de satisfacer tales exigencias. No hay puerto que ceder. Al sur de Camarones todos los puertos son chilenos, habitados casi en su totalidad por ciudadanos chilenos; la concesión de una zona además en cualquiera latitud, traería por resultado la división de nuestro país en dos trozos separados, se produciría una solución de

continuidad, lo que es inaceptable. Entre la quebrada de Camarones y Arica, el único puerto que merece el nombre de tal es Arica, éste lo necesito nuestra país; el dominio de los territorios de Tacna y Arica no puede mantenerse sin la posesión y dominio del puerto. Al norte de Arica la vista se pierde siguiendo las sinuosidades de una costa inhospitalaria.

Aún en el caso de que mi país deseara vehementemente dar cumplimiento á la aspiraciones de Bolivia no sabria como realizarlas. Por la fuerza entónces tenemos que descartar esta exigencia, que viene á impedir un acuerdo amigable entre los dos pueblos.

Cabe preguntar aquí, señor ministro, si Bolivia tiene necesidad imprescindible de un puerto en el Pacífico.

Me atrevo á dar una respuesta negativa.

Son varias las consideraciones que se hacen valer en apoyo de la cesión de un puerto, pero todas ellas pueden condensarse en el siguiente pensamiento consignado en un importantísimo documento gubernativo: "No ha podido llegarse á ningun acuerdo [con Chile] porque se ha rechazado la muy legítima exigencia de Bolivia, de que, en compensación de su valioso litoral, se le conceda, por lo menos, la soberanía de un puerto, para su comunicación libre é independiente con los demás estados del mundo civilizado.

La legítima exigencia de un puerto se funda en que Bolivia quiere asegurar su comunicación libre é independiente con el resto del mundo.

En presencia de tal deseo, alguien se atrevería á pensar que Bolivia carece de una comunicación libre é independiente, ó que, por lo menos, el gobierno de Chile estorba de alguna manera la libertad de sus comunicaciones; pero V. E. sabe que ni una ni otra cosa son verdaderas.

El hecho público, positivo é incontestable es que el gobierno y el pueblo de Bolivia están en posesión de la más absoluta libertad é independencia para sus comunicaciones de todo género. El gobierno y el pueblo de Chile se encuentran en la misma situación, exactamente en la misma favorable condición que el gobierno y el pueblo bolivianos.

Abrigo la convicción de que un puerto propio no añadiría nada al comercio ni al poder de Bolivia.

Durante la paz, Bolivia exportará sus productos por los puertos chilenos y especialmente por Antofagasta y Arica que serán puntos de término de líneas férreas, por consiguiente, puertos francos.

Bolivia tendrá en ambos puertos sus empleados de aduana que dependerán exclusivamente de las autoridades de su país. Actualmente funcionan en Antofagasta empleados chilenos y bolivianos en la aduana de este puerto, con verdaderas ventajas para Bolivia y sin tropiezo de ninguna clase.

Si mas tarde intentase Bolivia levantar un empréstito en Europa dando como garantía la renta de sus aduanas, no sería ciertamente un estorbo para esta operación el hecho de que las entradas aduaneras de Bolivia afectas al pago de aquel empréstito se cobraran en un puerto chileno, ya que felizmente el crédito de mi país goza generalmente en el mundo de sólida y merecida reputación.

Lo que interesa vivamente á esta nacion son los caminos, las líneas ferreas sobre todo, que la pongan en contacto con los puertos chilenos. Fletes baratos, facilidad de comunicaciones, he aquí lo importante y vital para prosperar durante la paz.

En tiempo de guerra, las fuerzas de Chile se apoderarían del único puerto boliviano con la misma facilidad con que ocuparon todos los puertos del litoral de Bolivia en 1879.

Esto no es un vano orgullo, porque sabido es de todos los que conocen los recursos de mi país, que su poder ofensivo se ha centuplicado en los veinte años. Si todo lo dicho más arriba es verdadero, hay que confesar, señor ministro, que un puerto propio no es indispensable, y que su adquisición no aumentará el poder de Bolivia en tiempo de paz ni en tiempo de guerra.

Y si el dominio de una angosta faja de terreno ó de un puerto, que en nada aumentarían el poder productivo y guerrero de esta nación, es el único obstáculo que encontramos para firmar un tratado de paz, no es natural que los espíritus patriotas y bien inspirados dejen á un lado tales pretensiones y busquen otros caminos para llegar á una solución conveniente?

Manteniendo la exigencia de un puerto se va á lo desconocido, seagrava la situación actual de suyo precaria y llena de peligros; abandonándola se facilita el acuerdo entre los dos países, se quita el único obstáculo que impide la celebración de la paz.

En materia tan delicada es preciso juzgar con ánimo sereno y no apasionado, olvidar ideas preconcebidas y ver las cosas tales como son y no como pudieran ser.

El hombre de estado debe mirar más allá del día de mañana.

Es propio de políticos vulgares aferrarse á una idea que esté en armonía con el sentimiento público dominante; por que de esta

manera no hay necesidad de observar y estudiar, ni menos de combatir; basta y sobra con dejarse llevar.

Yo desearía, señor ministro, que un espíritu culto, inteligente y perspicaz como el de V. E. abandonara el camino fácil y trillado y entrara á investigar si conseguir la buena y perpetua amistad de Chile importa para Bolivia mucho más que una angosta faja de terreno estéril y un puerto enclavado en ella.

Medítese un momento y se llegará á esta conclusión: que la amistad de Chile puede ser en gran manera provechosa para Bolivia, al paso que la tirantez de relaciones entre ambos países no daría para ella el mismo resultado. Cualquier espíritu sereno se inclinará á creer que los hombres de estado de este país no trepedarán en la elección.

Hace muchos años que mi país desea convertir el pacto de tregua en tratado de paz, arreglar de una manera definitiva todas sus diferencias con Bolivia. Chile quiere dedicarse al trabajo con sosiego, sin sobresaltos, y aspira, como es natural, á una paz honorosa, permanente y que reporte utilidades á ambos pueblos. Una serie de acontecimientos, muy desagradables algunos, le han hecho ver además que hay absoluta necesidad de terminar cuanto antes todas éstas dificultades de vecindad.

No podemos esperar más; el gobierno y el pueblo de Chile consideran que han esperado con paciencia.

Según nuestro criterio, las bases propuestas por Chile son equitativas, las únicas compatibles con la situación actual. Sería una verdadera desgracia que el congreso boliviano pensara de distinta manera.

Es un error muy esparcido, y que se repite diariamente en la prensa y en la calle, el afirmar que Bolivia tiene derecho de exigir un puerto en compensación de su litoral.

No hay tal cosa. Chile ha ocupado el litoral y se ha apoderado de él con el mismo título con que Alemania anexó al Imperio la Alsacia y la Lorena, con el mismo título con que los Estados Unidos del Norte han tomado á Puerto Rico. Nuestros derechos nacen de la victoria, la ley suprema de las naciones.

Que el litoral es rico y vale muchos millones, eso ya lo sabíamos. Lo guardamos porque vale, porque si nada valiera no habría interés en su conservación.

Terminada la guerra, la nación vencedora impone sus condiciones y exige el pago de los gastos ocasionados. Bolivia fué vencida; no tenía con que pagar y entregó el litoral.

Esta entrega es indefinida, por tiempo indefinido, así lo dice el pacto de tregua indefinida: fué una entrega absoluta, incondicional, perpetua.

En consecuencia, Chile no debe nada, no está obligado á nada, mucho menos á la cesión de una zona de terreno y de un puerto.

En consecuencia tambien, las bases de paz propuestas y aceptadas por mi país, y que importan grandes concesiones á Bolivia, deben ser consideradas no solo como equitativas sino como generosas.

Es de esperar que los miembros del congreso, diputados y senadores, que conocen su país y desean su bienestar, procedan con el espíritu elevado y justiciero que se necesita para dar término á todas las dificultades pendientes.

Confiado en que al tomarse sobre éstos graves asuntos una resolución final que se inspire á la vez en los bien entendidos intereses de Bolivia y en las benévolas disposiciones de Chile, me es particularmente grato, señor ministro, dejar aquí constancia de la cordialidad en que se han inspirado las negociaciones que he tenido el honor de gestionar con V. E. y del elevado espíritu con que han sido sostenidas las discusiones á que ellas han dado lugar.

Aprovecho esta nueva oportunidad de renovar á V. E. los sentimientos de mi más alta y distinguida consideración y especial aprecio.

(Firmado.) ABRAHAM KONIG.

A. S. E. el señor ministro de relaciones exteriores de Bolivia, don Eleodoro Villazón.

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[Translation.]

LEGATION OF CHILE,

La Paz, August 13, 1900.

To His Excellency, the Minister of Foreign Relations of Bolivia,
Mr. ELIODORO VILLAZÓN.

MR. MINISTER: From Your Excellency I have learned the determination of the Government of Bolivia to leave to the National Congress the consideration and resolution of our proposals for a settlement, and in order to facilitate both, I have the honor to place in Your Excellency's hands the present communication, which contains a minute explanation of the final bases for peace accepted by my Government.

Since these bases are to be submitted to the judgment of the Bolivian Congress, I have deemed it expedient that the represent-

atives of the people should have a full knowledge of its text and the reasons which justify it.

In compliance with the instructions from my Government, and starting from the antecedent accepted by both countries, that the old Bolivian littoral is and shall always remain Chilean, I had the honor to submit to Your Excellency the following bases for a Treaty of Peace and Amity:

The Government of Chile will be disposed, in order to conclude the Treaty of Peace with Bolivia, to grant, in exchange for the definite cession of the Bolivian littoral we now occupy by virtue of the Pact of Truce, the following compensations:

(a) To take upon themselves, and to bind themselves to the payment of the obligations contracted by the Bolivian Government with the mining enterprises of Huanchaca, Corocoro, and Oruro, and the balance of the Bolivian loan contracted in Chile in 1867, after deducting such amounts which have been credited said account, according to Art. 6 of the Treaty of Truce.

Chile could also, in the same manner, pay the following liabilities affecting the Bolivian littoral: The one corresponding to the bonds issued for the construction of the railway from Mejillones to Caracoles; the liability in favor of Mr. Pedro Lopez Gama, at the present time represented by the house of Alsop & Co., of Valparaiso; that of Mr. Enrique Meiggs, represented by Eduardo Squire, resulting from the contract the former made with the Government of Bolivia on May 20, 1876, for the lease of the fiscal nitrate beds of Toco, and the one recognized in favor of the family of Mr. Juan Garday. These liabilities will be the object of a particular liquidation and of a detailed specification in a supplementary protocol.

(b) An amount of money to be fixed by mutual agreement between both governments, to be invested in the construction of a railway which shall either connect any port in our coast with the interior of Bolivia, or be the prolongation of the present Oruro Railway. In the judgment of the undersigned, this amount must not exceed six million *pesos*, and the determination of the starting and terminal points as well as the plans and other conditions of the railway to be resolved by mutual agreement between both governments.

(c) The port selected as starting point of this railway shall be declared free for the products and merchandise shipped through it in transit to Bolivia, and for the Bolivian products and merchandise exported through the same.

In the several conferences I had with Your Excellency, while analyzing the foregoing bases, Your Excellency informed me that in his judgment the concessions offered were not compensation enough for the Bolivian littoral, and that Bolivia needed a port and absolute commercial freedom. The Bolivian Government regards the Pact of Truce, which exceptionally favors Chilean commerce, as burdensome to Bolivia, and that it has given rise to claims on the part of European powers. Bolivia aspires to her commercial independence as a consequence of her political independence, and wishes to remain at liberty to reject the treaties which are detrimental and to make those which are convenient to her, this not being meant as a hostile feeling against Chile, as it is understood that thereafter Bolivia shall grant Chile the commercial franchises granted to other nations.

Several days after this, and as the natural result of the conferences, Your Excellency communicated to me the propositions agreed to by the Government, which are the following:

“The Government of Chile takes upon themselves the obligations contracted by Bolivia with the mining enterprises of Huanachaca, Corocoro and Oruro, and the balance of the Bolivian loan contracted in Chile in 1867. They will also take upon themselves the following liabilities which burden the Bolivian littoral: The one corresponding to the bonds issued for the construction of the railway from Mejillones to Caracoles; the liability in favor of Mr. Pedro Lopez Gama; that of Mr. Enrique Meiggs, resulting from the contract made with Bolivia in 1876 for the lease of the fiscal nitrate beds of Toco, and the one recognized in favor of the family of Mr. Juan Garday.

“The Government of Chile bind themselves to grant to Bolivia, from their (Chile's) possessions on the Pacific Coast, perpetual control over a belt of territory embracing one of the ports at present known, said belt to be situated at the northern extremity of said possessions, and to extend to the Bolivian frontier.

“Commercial relations shall continue between both states. Hereafter each nation, consulting its own convenience, may either levy upon or declare free of fiscal and municipal duties the natural and manufactured products the other may import.

“Foreign merchandise imported into Bolivia through any of the Chilean ports, and the natural and manufactured products exported abroad through the same ports, shall enjoy freedom of transit.

“In exchange for these terms the Government of Bolivia is ready to conclude the Treaty of Peace which shall insure the definite cession of the Bolivia littoral occupied by Chile.”

In the foregoing bases the offer of six million *pesos* devoted to the construction of a railway is not taken into consideration. This sum is not to be despised, and I may repeat here to Your

Excellency what I have already had occasion to insinuate several times, that my Government would be willing to increase it if their propositions for a settlement were accepted. Neither mention is made of the concession of a free port, which is entirely favorable to the commerce of Bolivia.

The bases of the Bolivian Department (Cancillería) having been submitted to the consideration of my Government, there was no obstacle to accept the two clauses in reference to the commercial freedom.

It is understood that Chile shall remain in the same conditions of the powers that may hereafter conclude commercial treaties with Bolivia.

Your Excellency will admit that this explanation does not signify any concession granted to my country. The commercial freedom of Bolivia, in a treaty concluded with Chile, does not involve the idea of hostility. It would be inconsistent that my country should negotiate a convention damaging to its commerce.

Your Excellency also repeated to me that if Bolivia labors to obtain absolute commercial freedom, it is by reason of her independence as a nation, and also with the object to reject treaties that have in the course of time become burdensome.

As my Government are animated by the best intentions, there has been no difficulty in accepting these clauses of commercial freedom, thus giving a plain proof of their desire to end some time our differences and to endeavor to develop the Bolivian commerce.

Chile renounces to the positive advantages set down in the Pact of Truce and in the Protocol supplementary to said Pact which favor their trade, in order to obtain a peace stable and beneficent for both countries. Hereafter it (Chile) shall not enjoy any other commercial franchises than those Bolivia may be pleased to grant other powers. In other words, Chile makes a great concession to Bolivia.

From this comparative study it appears that the only existing difficulty which prevents a settlement demanded aloud by both Chileans and Bolivians is the second of the bases proposed by the Government of Bolivia.

In deference, perhaps, to opinions of other times, Your Excellency states as an aspiration of the Bolivian people, that of possessing in perpetuity "a belt of territory embracing one of the ports known at present." This belt must be situated at the northern extremity of the Chilean possessions, and shall extend to the Bolivian frontier.

This is a demand doubly difficult and almost impossible to grant.

Where could we find, Mr. Minister, a belt and a point to correspond exactly with the conditions so precisely stated in the quoted clause?

Our coast reaches on the north to the Camarones Creek, in conformity with the Treaty of Peace concluded with Peru. It has been known and understood that Bolivia does not pretend to have a belt nor a port in the territory of her old littoral. I can not see, in truth, where we could give Bolivia what is asked for.

There could not be a Chilean capable of signing a Treaty of Peace embodying such a clause. From the Camarones Creek south to the straits of Magellan all the towns are Chilean, genuinely Chilean, formed, developed, and maintained by our native citizens, with the capital, the sweat, and the labors of the Chilean people. In those towns, even including the old littoral of Bolivia, there are almost no Bolivians. To grant, then, a belt and a port in those places would be to deliver to a foreign nation thousands of Chilean families, and this in the full enjoyment of peace, simply as a gracious condescension.

Bolivia would assume a hostile and not a peaceful and tranquil attitude by the mere fact of maintaining such inconsiderate pretensions.

Even in 1884, during the conferences held in Santiago between the Ministers Plenipotentiary of Bolivia and the Minister of Foreign Relations of Chile, resulting in the Pact of Truce, this point was considered and withdrawn by consent of the Bolivian representatives themselves.

It was then agreed that an outlet to the Pacific that would amount to a solution of continuity of Chilean territory is inadmissible by reason of its nature itself.

Not very long ago, in 1896, the Envoy Extraordinary and Minister Plenipotentiary of Bolivia in Chile in a communication dated April 29 of the same year, addressed to our Minister of Foreign Relations, does recognize that which the Bolivian Plenipotentiaries had acknowledged in 1884, viz: that by reason of its nature itself it is inadmissible to claim a belt of territory that would amount to a solution of continuity of the territory of the Republic.

I believe, therefore, that Your Excellency did not have in mind the territory extending south of the Camarones Creek, but on the contrary, at the time of writing the provision to which I refer,

his attention was fixed in the provinces extending north of the aforesaid boundary.

It is true that by the Treaty of Territorial Transfer, signed May 18, 1895, it was conditionally established that "if in consequence of the plebiscite which is to be held in conformity with the Treaty of Ancon, or by virtue of direct negotiations, the Republic of Chile should acquire permanent dominion and sovereignty over the territories of Tacna and Arica, it (the Republic of Chile) binds itself to transfer the same to the Republic of Bolivia, in the same form and with the same extension as acquired, without detriment to the provisions of Art. II." But Your Excellency knows that this condition has not been fulfilled, and that this lack of compliance can not be attributed to the Government of Chile.

At the present moment—and this is the most important fact—the Republic of Chile has not yet acquired permanent dominion and sovereignty over the territory of Tacna and Arica. To lay the foundations of a Treaty of Peace upon an event that has not taken place partly dependent from another's will, would be to make a flimsy and perishable work, to create difficulties instead of ending them, to fall again in the same error committed in 1895.

It would be a laborious task to investigate minutely the causes that have held back Constitutional approval of the treaties of 1895. But Your Excellency must not forget that the Additional Protocol of December 9, 1895, and that Explanatory to this one, dated April 30, 1896, have not been strange to this. Said protocols, especially the former, embodying Bolivian claims made at the last moment, form with the Treaties a single body in such manner that the failure of its approval is equivalent to a disagreement over a fundamental basis, making void all the treaties of 1895.

The wording of the treaties and protocols; the simple perusal of said documents, will clearly demonstrate the good will of the Chilean Government. It was then plainly shown the keen desire Chile had to gain and maintain the good friendship of Bolivia, as by granting her the richest portions of the provinces of Tacna and Arica, any impartial mind must acknowledge that it (Chile) acted with extreme generosity.

Unfortunately, said pacts have not been concluded; the stipulated conditions have not been fulfilled. These were premature, still-born acts.

The plebiscite mentioned in the Treaty of Ancon not having taken place, we find ourselves to-day in the same juridical situation which both countries occupied in 1884.

The Bolivian Plenipotentiaries who negotiated the Pact of Truce earnestly demanded for Bolivia an outlet to the Pacific, and participated in the belief that they could obtain it at the northern extremity of the territory temporarily ceded by Peru. The Minister of Foreign Relations of Chile gave a formal refusal to this demand. In his judgment this demand was not even within the sphere of action and authority of the Government. Chile has not acquired the control of those territories, but merely an expectancy subject to the terms and conditions stipulated by the Treaty of Ancon. It is not the owner as yet, and must not act as if it was.

We may repeat to-day the same words. The plebiscite has not taken place as yet; it is not possible to conclude treaties taking as a basis events that have not taken place and are dependents from another's will.

The Government and people of Chile are earnestly interested that the plebiscite should take place as soon as possible; and the Government and the people desire that this act should take place under such conditions as would satisfy the legitimate aspirations of the Nation. When the time comes when it will take place, we confidently expect that the plebiscite will be favorable to Chile.

Your Excellency knows that public opinion in my country has been notably modified since the last days of 1895. We do not think to-day as we did in years past.

A matter worthy of meditation on the part of the statesmen of Bolivia is why a judicious and justice-loving people such as Chile has in regard to Tacna and Arica uniform ideas very different from those publicly expressed in May, 1895.

To be as plain as international affairs demand it at times, it must be stated that Bolivia can not count upon the transfer of Tacna and Arica, even if the plebiscite be favorable to Chile. The Chilean people, with a uniformity which is seldom seen in other nations, has made manifest their will to preserve those territories as a just compensation for the sacrifices of all kinds imposed to the country.

There has been no obstacle to grant a belt north of Arica, that is to say, at the northern extremity of the Chilean possessions on the Pacific, thus conforming with the letter of the second

clause of the proposals of the Bolivian Government. Nature, however, opposes this good will on our side. North of Arica there is no port, not even a fair cove; from Arica to Sama the coast is rough and almost unapproachable.

After what has been said the conclusion imposes itself forcibly. Chile does not accept the cession of the belt and port demanded by Bolivia, because, notwithstanding its (Chile's) good intentions it finds itself in the impossibility to satisfy such demand. There is no port to grant. South of Camarones all the ports are Chilean, inhabited almost solely by Chilean citizens. Moreover, the cession of a belt in any latitude will result in the division of our country in two portions, thus producing a solution of continuity which is inadmissible. Between Camarones Creek and Arica the only port deserving of that name is Arica, and it is needed by our country; the control of the territories of Tacna and Arica could not be maintained without the possession and control of said port. North of Arica vision is exhausted, following the sinuosity of an unhospitable coast.

Even in the case that my country were eagerly desirous to satisfy the aspirations of Bolivia, she would not know what to do. We are forced, therefore, to lay aside this demand which comes to prevent an amicable understanding between the two countries.

It would not be amiss to question here, Mr. Minister, whether Bolivia has an imperative need of a port on the Pacific.

I would make bold to answer in the negative.

There are several considerations adduced in support of the cession of a port, but all may be condensed in the following language employed in a most important governmental document: "No agreement has been reached (with Chile) because of the refusal to the very legitimate demand of Bolivia, that in compensation for its valuable littoral the control of the port be granted, at least for its free and independent communication with the other States of the civilized world."

The legitimate demand for a port is based in that Bolivia wishes to insure its free and independent communication, or that at least the Government of Chile in some manner hinders the freedom of its (Bolivia's) communications. Your Excellency knows, however, that neither one nor the other case is true.

The public, positive, and incontestable fact is that the Government and people of Bolivia are in possession of the most absolute freedom and independence for their communications of

all kinds. The Government and people of Chile are similarly situated, enjoying exactly the same favorable conditions that the Government and people of Bolivia.

I am convinced that a port of her own shall add nothing to the commerce or power of Bolivia.

During peace, Bolivia will export her products through Chilean ports, especially through Antofagasta and Arica, which shall be terminals of railway lines, and consequently free ports. Bolivia will have at both ports her customs officers, exclusively dependent from the authorities of their own country. There are at present at Antofagasta Chilean and Bolivian officials discharging their duties at the custom-house of said port, with positive advantages for Bolivia and without any difficulty whatever.

Should Bolivia later on intend to contract a loan in Europe, giving as a guarantee her custom revenues, it would not certainly be an obstacle to this operation the fact that the custom receipts of Bolivia set aside for the payment of said loan are collected at a Chilean port, because, happily, the credit of my country enjoys generally in the world a solid and well-merited reputation.

What interests most this nation are roads, railroads above all, which place her in communication with Chilean ports. Cheap freight rates, transit facilities; this is important and vital to prosperity during peace.

In time of war the Chilean forces would take possession of the only Bolivian port as easily as they occupied all the ports on the littoral of Bolivia in 1897.

This is not a proud boast, because all those who are acquainted with the resources of my country know that her offensive power has increased a hundred fold in the last twenty years.

If all the aforesaid is true, it must be confessed, Mr. Minister, that a port of her own is not indispensable, and its acquisition will not increase Bolivia's power, neither in time of peace nor in time of war.

And if the control of a narrow strip of territory or of a port which in no wise would increase the productive and war powers of the nation is the only obstacle we find to sign a treaty of peace, is it not natural that the patriotic and well inspired minds should lay aside such pretensions and search for other means to arrive at a convenient solution?

To maintain the demand for a port only leads to the unknown. The present situation, precarious and full of danger as it is now, becomes aggravated. To abandon it facilitates an agreement

between the two countries, removes the only obstacle in the way to the conclusion of the Treaty of Peace.

In such delicate matters it is necessary to judge with a sober, not a passionate, mind; to forget the preconceived ideas and to see things as they are and not as they could have been.

A statesman must never look ahead beyond to-morrow.

It becomes ordinary politicians to cling to an idea in harmony with the prevailing public sentiment, because by doing thus there is no need of observing, studying, and much less combating; to let themselves be carried along is more than enough.

I would wish, Mr. Minister, that a person as learned, intelligent, and keen as Your Excellency is should abandon the easy and beaten path and undertake to investigate whether to obtain the good and everlasting friendship of Chile is more important to Bolivia than a narrow strip of arid territory containing a port.

One moment's thought will lead to this conclusion: That the friendship of Chile may in a large measure be profitable to Bolivia, while the strained relations between the two countries will not give the same result to her. Any thinking mind would be inclined to think that the statesmen of this country would not hesitate in the choice.

For many years my country has wished to exchange the Pact of Truce for a Treaty of Peace and settle in a final manner all her differences with Bolivia. Chile wishes to devote herself to work quietly and without misgivings, and aspires, as it is natural, to an honorable and permanent peace advantageous to both countries. A series of events, some of them very disagreeable, have demonstrated it (Chile) besides, that there is an absolute necessity to end as soon as possible these difficulties between neighbors.

We can not wait any longer; the Government and people of Chile believe that they have patiently waited.

To our mind the bases proposed by Chile are equitable, the only compatible with the present situation. It would be a real misfortune that the Bolivian Congress should deem it otherwise.

It is a widespread error, daily reasserted both by the press and in the street, to affirm that Bolivia has the right to demand a port as compensation for her littoral.

It is not so. Chile has occupied the littoral and taken possession of it by the same right Germany annexed to the Empire Alsace and Lorraine, by the same right the United States of America have taken Porto Rico. Our rights are the outcome of victory, the supreme law of nations.

That the littoral is rich and worth many millions, that we already know. We keep it because it is valuable; should it not be valuable, then there would be no interest in keeping it.

At the termination of a war the victorious nation imposes her conditions and demands the payment of the expenses incurred. Bolivia was vanquished, had no means to pay, and surrendered her littoral.

The surrender is indefinite, for an indefinite period. It was thus set down in the Pact of indefinite Truce. It was an absolute, unconditional surrender in perpetuity.

Chile, therefore, owes nothing, is bound to nothing, and much less to the cession of a belt of land and a port.

And, therefore, the bases for peace proposed and accepted by my Government, amounting to large concessions to Bolivia, must not only be considered as equitable but as generous as well.

It is to be hoped that the members of Congress, deputies and senators, knowing their country and wishing its welfare, should act in that elevated and justice-dealing spirit necessary to bring to a close all pending difficulties.

Being confident that upon taking a final resolution on this grave matter, such will be inspired both in the well-understood interests of Bolivia and the kind disposition of Chile, it is particularly gratifying to me, Mr. Minister, to state here the cordiality which has inspired the negotiations I have had the honor to conduct with Your Excellency, and the elevated spirit shown in the discussions to which they have given occasion.

I avail myself of this opportunity to renew to Your Excellency the sentiments of my highest consideration and particular esteem.

(Signed.) ABRAHAM KONIG.

Exhibit A 8.

[Extract from the Report of the Minister of Foreign Affairs of Bolivia to the Congress of Bolivia, 1900. Pages XXII-XXXI. Chile.]

CHILE.

Si se examina nuestra estadística nacional, se notará á primer golpe de vista que nuestras relaciones industriales y comerciales con la República de Chile, figuran en lugar preferente.—Nuestras poblaciones de la altiplanicie se prevén de las plazas de Chile de los artículos de consumo y de todo el material para los trabajos mineros.—La ciudad de Valparaiso veine á ser en este sentido el centro de nuestros pedidos comerciales más urgentes.

Recorriendo las diversas empresas industriales que existen en Bolivia, encontramos tambien que muchas y acaso las más valiosas y productivas pertenecen á capitalistas ó sociedades chilenas, no siendo tampoco escasa la colonia chilena desde Oruro hasta la frontera de Antofagasta.

Por consiguiente, se halla en las conveniencias bien entendidas de ambos Estados, definir las questionnes emergentes de la guerra del Pacífico, en condiciones que aseguren la paz y las buenas relaciones de amistad y de comercio. Con este objeto se celebraron los tratados de Mayo de 1895 y los protocolos complementarios de 9 de Diciembre del mismo año y de 30 de Abril de 1896.

Los representantes diplomáticos de Chile, y muy especialmente el señor Salinas, hicieron promesa de que su Cancillería recomendaría al Poder Lejislativo la aprobación de estos protocolos.

Han trascurrido cinco años y aquellos pactos han quedado abandonados y olvidados.

Bolivia, en cambio de su valioso litoral, había propuesto las condiciones más equitativas, siendo una de ellas y la principal la de que se le concediera un puerto en el Pacífico, capaz de satisfacer sus necesidades comerciales. Esta condición era de vital importancia: Bolivia tiene derecho á su independencía política, comercial y aduanera, y una larga y triste experiencia le ha enseñado que no la tendrá y que quedará subordinada á la voluntad de sus vecinos si no conserva libre comunicacón con los demás Estados del mundo.

Contra exigencia tan legítima, se ha pronunciado últimamente en contra la opinión del pueblo chileno y ha declarado por todos los órganos de publicidad, de que no concederá á Bolivia un palmo de territorio en la Costa.

S. E. el Representante diplomático de Chile, en conformidad con estas manifestaciones, ha presentado últimamente á nuestra Cancillería, nuevas bases de arreglo, que han sido materia de discusión, sin que se haya llegado á un acuerdo definitivo.—Estas proposiciones copiadas á la letra son las siguientes:

BASES.

“El Gobierno de Chile está dispuesto á hacerse cargo y comprometerse al pago de las obligaciones contraidas por el Gobierno de Bolivia, á favor de las empresas mineras de Huanchaca, Corocoro y Oruro, y del saldo del empréstito boliviano levantado en Chile en 1867, una vez deducidas las cantidades que hubieren sido de abono á esa cuenta, según el artículo 6º del Pacto de Tregua.

El Gobierno de Chile podría, así mismo, satisfacer los siguientes créditos que pesaban sobre el litoral boliviano: el que corresponde á los bonos emitidos para la construcción del ferrocarril de Mejillones á Caracoles; el crédito á favor de don Pedro López Gama, representado hoy por la casa Alsop y C^a; el de don Enrique Meiggs, representado por don Eduardo Squire, procedente del contrato celebrado por el primero con el Gobierno de Bolivia en 20 de Marzo de 1876, sobre arrendamiento de las salitreras fiscales del Toco; el reconocido á favor de la familia de don Juan Garday.

Estos créditos serán objeto de particular liquidación y de una especificación detallada en un Protocolo suplementario.

El Gobierno de Chile, abornerà, además, una suma de dinero, que será fijada de común acuerdo por ambos gobiernos, y que deberá invertirse en la construcción de un ferrocarril que una algún puerto de Chile con el interior de Bolivia, ó que continúe el ferrocarril actual de Oruro.

Tanto la suma como la determinación de los puntos de partida y de término, se fijarán de común acuerdo; pero puede avanzarse que el Gobierno de Chile está dispuesto á abonar hasta la cantidad de seis millones de pesos.

El punto elegido como inicial del ferrocarril, será declarado franco para los productos y mercaderías que por él se internen en tránsito para Bolivia, y para los productos y mercaderías bolivianas que por el mismo se exporten.

En cambio de estas concesiones, el Gobierno de Bolivia estará dispuesto á celebrar el Tratado de Paz, que asegure la cesión definitiva del litoral boliviano, ocupado por Chile, en virtud del Pacto de Tregua."

De nuestra parte, inspirándonos en la equidad y consultando las condiciones de independencia política y comercial de Bolivia, última exigencia de un pueblo que desea vehementemente la paz, hemos propuesto las siguientes:

BASES.

El Gobierno de Chile se hará cargo de las obligaciones contraídas por el Gobierno de Bolivia á favor de las empresas mineras de Huanchaca, Corocoro y Oruro, y del saldo del empréstito boliviano levantado en Chile en 1867.

Se hará cargo igualmente de los siguientes créditos que pesaban sobre el Litoral boliviano.

(a) El que corresponde á los bonos emitidos para la construcción del ferrocarril de Mejillones á Caracoles.

(b) El crédito á favor de don Pedro López Gama.

(c) El de don Enrique Meiggs, procedente del contrato celebrado con el Gobierno de Bolivia en 1876, sobre arrendamiento de las salitreras fiscales de Toco.

(d) El reconocido á favor de la familia de don Juan Garday.

El Gobierno de Chile se obliga á ceder á Bolivia, de sus posesiones de la costa del Pacífico, el dominio perpétuo de una zona de territorio, que comprenda uno de los puertos actualmente conocidos; la cual zona situada á la extremidad Norte de aquellas posesiones, se extenderá hasta la frontera boliviana.

Las relaciones comerciales continuarán entre ambos Estados. En lo sucesivo cada Nación consultando sus propias conveniencias podrá gravar ó declarar libres de derechos fiscales y municipales los productos naturales ó manufacturados que se importaren de la otra.

Las mercaderías extranjeras que se introduzcan á Bolivia por cualesquiera de los puertos chilenos y los productos naturales ó manufacturados de Bolivia, que se exportan por los mismos puertos al extranjero, tendrán libre tránsito.

En cambio de estas condiciones, el Gobierno de Bolivia está dispuesto á celebrar el Tratado de Paz, que asegure al cesión definitiva del Litoral boliviano ocupado por Chile.”

En conferencias posteriores y muy especialmente en una nota que S. E. el Ministro de Chile acaba de pasarme y que la someteré á vuestra consideración, se ha servido hacerme saber que su Gobierno, á trueque de llegar á la paz, aceptaría la cancelación de la cláusula de liberación de derechos, quedando Bolivia con la facultad de gravar los productos que se importan á su territorio.

Tambien ha explicado que la concesión de puertos francos, nos daría derecho al tránsito libre y á tener nuestras aduanas y empleados en los puertos de Chile.

Para mejor inteligencia me permito trascribir á continuación y á la letra, los puntos salientes de aquellas modificaciones y explicaciones;

“Chile renuncia, dice el señor Ministro, las positivas ventajas consignadas en el pacto de tregua y en el protocolo complementario á dicho pacto que favorecen su comercio, á trueque de obtener una paz estable y beneficiosa para ambos pueblos. En adelante no tendrá otras franquicias comerciales que las que Bolivia tenga á bien acordar á otras potencias

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Durante la paz, Bolivia exportará sus productos por los puertos chilenos y especialmente por Antofagasta y Arica, que serán puntos

de término de líneas férreas; por consiguiente puertos francos. Bolivia tendrá en ambos puertos sus empleados de aduana que dependerán exclusivamente de las autoridades de su país. ”

* * * * *

Con estas modificaciones las negociaciones toman un nuevo rumbo y merecen tomarse en consideración con espíritu sereno y reflexivo.

Por lo que á mi toca, yá que el señor Ministro de Chile ha explicado en un memorandum las nuevas condiciones, consignaré aquí, aunque muy ligeramente, lo que solo de palabre pensaba informaros.

No es un vano orgullo de poseer una estrecha faja de territorio sobre el Pacífico, lo que nos obliga á perseverar en esta condición, ni mucho menos el deseo de aumentar, por este medio, nuestro poder. Nuestra política es de paz y aspiramos á fundarla en condiciones “dignas y duraderas, que permitan á Bolivia dedicarse al trabajo con socio, una paz honrosa, permanente y que reporte utilidades para ambos pueblos.”

Para alcanzar esta solución, es indispensable en nuestro concepto, que Bolivia conserve la posesión de aquella zona bajo su soberanía; lo que le permitirá establecer sus aduanas, exportar sus productos é importar los del extranjero, sin trabas, guías ni tornaguías, reprimiendo el contrabando, sin tener en esta acción cuestiones odiosas ni la limitación de otra soberanía.

Con respecto a los demás Estados, esta independencia le permitirá modificar sus tratados en iguales condiciones para todos, lo que no ha podido realizar hasta ahora, por que para obtener el tránsito por territorio ajeno, se ha visto en la necesidad de aceptar condiciones más ó ménos onerosas.

Todo esto, sin contar con inconvenientes y perjuicios que ocurren para el comercio día á día bajo este sistema y que sería largo enumerar.

El tránsito, que bajo la denominación de puertos francos nos ofrece Chile, puede ciertamente resolver muchas de estas dificultades, pero al fin y al cabo no sería sino un derecho de que haríamos uso subordinándonos á sus leyes y autoridades. Esto nunca puede llamarse independencia.

Para apreciar la equidad de las bases hemos traído á consideración el valor del Litoral. Su adjudicación á perpetuidad es condición nueva y un derecho que no abdicó ni renunció Bolivia por el pacto de tregua. Tratándose de la cesión de este derecho, es

correcto discutir las compensaciones. En este supuesto el valor del Litoral puede calcularse en Bs. 100.000,000.—atenta su extensión, población, riquezas naturales, ventajas geográficas y su renta fiscal que pasa de 7.000,000.—anuales. Con estos datos hemos formado la convicción de que traspasando Bolivia la propiedad de su litoral, en cambio de que Chile se haga cargo de créditos que, en parte, gravan este mismo territorio y que en conjunto importan Bs. 8.000,000.—más ó menos, y de una zona árida de territorio con un puerto en el Pacífico, con un valor relativo solo por nuestro comercio y apreciable á lo sumo con 5 millones de bolivianos, Bolivia procedería con moderación y generosidad, dando así una prueba innegable de su amor á la concordia.

La concesión de una zona de territorio á Bolivia, no es por otra parte una novedad, ni una exigencia de última hora. Ha sido aconsejada por los mismos estadistas de Chile, propuesta y defendida por la prensa y estipulada por pactos diplomáticos aprobados por el Gobierno de Chile, tales como los siguientes:

El tratado reservado de transferencia de territorios, celebrado en Santiago, en 18 de Mayo de 1895, por el Ministro de Relaciones Exteriores, señor Luis Barros Borgoño y nuestra Plenipotenciario don Heriberto Gutiérrez.

El protocolo, fechado en Santiago, en 28 de Mayo del propio año, entre los mismos negociadores.

El protocolo de 9 de Diciembre de 1895, celebrado en Sucre, entre el Ministro de Relaciones Exteriores de Bolivia, don Emerico Cano y el Plenipotenciario de Chile don Juan G. Matta.

El protocolo, celebrado en Santiago, en 30 de Abril de 1896, entre el Ministro de Relaciones Exteriores, señor Adolfo Guerrero y nuestro Plenipotenciario don Heriberto Gutiérrez, ratificando á nombre del Gobierno de Chile los pactos anteriores.

Así pensaba, no hace mucho, el pueblo sesudo y eminentemente práctico de Chile, y sus directores comprendían que la solución de la política del Pacífico y el restablecimiento de la paz, dependían principalmente de dejar á Bolivia en posesión de un puerto.

A mérito de estos antecedentes, hemos perseverado en la cláusula, consignándola en términos generales, en la seguridad de que en un porvenir no lejano, podríamos completar el acuerdo sin menoscabar derechos ajenos y observando conducto leal y correcta. Desgraciadamente los problemas del Pacífico son tan complicados y dependientes de hechos que se imponen y que no está en nuestra voluntad el modificarlos, que no podemos proceder de otra manera.

Las negociaciones se hallan en este estado, y por lo que acabo de exponer, comprendereis que la condición principal se halla todavía en vía de discusión.

Corresponde á la Representación Nacional, prestar atención preferente á este grave y delecado asunto y comunicar al Ejecutivo el voto que le sirva de norma, para el desarrollo sucesivo de estas gestiones.

[Translation.]

[Extract of the Report of the Minister of Foreign Affairs to the Congress of Bolivia. Page 22.]

La Paz, August 20, 1900.

CHILE.

If our national statistics are examined, it will therefrom appear, at first sight, that our commercial and industrial relations with Chile figure in a very preferential manner. Our people on the high level plains receive from Chile their articles of consumption, and all the material required for their mining operations. The city of Valparaiso becomes thus, in that sense, the center of our more urgent commercial orders.

If we further look into the various enterprises existing in Bolivia, we also find that many, and possibly the most valuable and productive among them, belong to Chilean capitalists or societies. The number of Chilean citizens established from as far inland as Oruro, to the frontier of Antofogasta, is also not scarce.

It is therefore within the well understood conveniences of the two countries to define the question between them, derived from the war, on conditions that may assure peace and good relations of amity and of commerce. It was with such object that the treaties of May 1895, and the complimentary protocol of the 9 Dec. of the same year and of the 30 April 1896, were executed.

The Chilean Minister to this country, and especially so, Señor Salinas, have continually promised that their Govt. would recommend to their Legislative Power the approval of those protocols, but five years have elapsed, and the facts in question are allowed to lay abandoned and forgotten.

Bolivia therein proposed the most equitable conditions in exchange of her valuable Littoral. The principal one of them was that the cession be made to her of a Port in the Pacific, capable of satisfying her commercial needs. That condition is of vital importance. Bolivia has a right to her political commercial and

Customs independence and a long and sad experience has taught her that she will be deprived thereof, and that she will continue subordinate to the will of her neighbors, if she cannot maintain free communication with the other countries of the World.

The opinion of the people of Chile has pronounced itself lately against so legitimate an exigence, and all their organs of publicity have declared that they will not grant to Bolivia a single palm of territory on the Coast.

His Excellency the Chilean Minister (Señor König) has, in conformity with those manifestations, lately presented to this Office new bases for a settlement, that have given rise to a discussion without a definite agreement, thereon, having been reached. Those proposals, copied to the letter, are as follows:

BASES.

(Offered by Chile.)

[These are the same as appear in the note of Señor König of the 13 August 1900.] On our part, inspiring ourselves in equity, and consulting the conditions of political and of commercial independence in Bolivia, which is the last exigence of a people that vehemently wishes peace, we have proposed the following:

BASES.

(Proposed by Bolivia.)

[These are also the same as appear quoted in the same note of Señor König, afore referred to.] In subsequent conferences, and very specially in a communication that I have just received from the Chilean Minister [note of Señor König twice afore referred to] and which it is my intention to submit to your consideration, I am informed that the Govt. of Chile, in its desire of reaching a peace is willing to accept a cancelment of the clause stipulating freedom of Customs duties on their goods, which would leave to Bolivia the free right of taxing every product imported into her territory. It is therein further explained that the concession of free ports to be made to us, would give us the right of free transit, and that of having our own Custom House employees in the Chilean ports.

In order to make it more clear on this point, I quote to the letter, as follows, the more important parts of those modifications and explanations, as transmitted to me by the Chilean Minister.

[The pertinent part of the same note of Señor König is here literally quoted.]

In face of the foregoing modified proposals the negotiations take a new course that deserves to be taken into consideration in a tranquil and reflexive spirit.

And so far as I am concerned, since the Chilean Minister has explained in writings his new conditions, I must also herein state in writing, although briefly, what I had only intended to inform you of by word.

It is not a vain feeling of pride in possessing a narrow tongue of territory on the Pacific that obliges us to persevere in that condition. Much less so is it the desire of thereby increasing our power. Our policy is one of peace and we wish it based on conditions "worthy and lasting, that may permit Bolivia to devote herself to peaceful labor, and honorable and permanent peace, proving useful to the two countries."

Towards reaching such issue it is indispensable, in our opinion, that Bolivia should hold such tongue of territory under her sovereignty. She will thus be capable of establishing her own Custom Houses, and of exporting her own products, and of importing those from abroad, without difficulties, or the necessity of transit certificates, thus repressing all smuggling without limitations by another sovereignty, and free from troublesome questions. That independence will further permit her, in so far as third countries are concerned, to modify existing treaties on a basis of equality towards all, a thing that has hitherto proved impossible to realize owing to the fact that, in order to secure transit through foreign territory, she has been under the necessity of accepting more or less onerous conditions.

All this without taking into acct. the many inconveniences and prejudices that daily hamper our commerce under such a system, and that would be too large to enumerate.

Transit, as now offered by Chile under the denomination of "free ports," may certainly resolve many of these difficulties, but, in the end, it is only a right of which we would use under subordination to her laws and authorities. Such a thing can never be called independence.

In order to appreciate the fairness of our bases, we must take into consideration the value of our Littoral. The transfer thereof in perpetuity is a new condition, a right to which Bolivia neither renounced nor abdicated in the pact of truce. It being now a question of ceding that right, it is but correct to discuss the compensation therefor. The value of the Littoral, in view of its extent, of its population, of its natural wealth, of its geographical

advantages, and of its revenues, which exceeds \$7,000,000 *Bolivianos* a year, may be assessed as high as \$100,000,000 *Bolivianos*. Under the possession of that data we have acquired the conviction that Bolivia would be acting with moderation and generosity, and would give an undeniable proof of her love of concord, by transferring the ownership of her Littoral in exchange of the taking charge, by Chile, of credits aggregating more or less \$8,000,000 *Bol.* to the payment of which the said Littoral is in part affected; and, further, of a section of and territory with a port on the Pacific, the value of which is only relative in connection with our commerce, and which, at the highest, could not be valued at over \$5,000,000. *Bl.*

The cession of a section of territory to Bolivia, is furthermore, nothing new, nor a demand of the last moment. It has, on the contrary been recommended by the various statesmen of Chile. It has been put forward and defended by their press; and it has been stipulated as a condition of the following diplomatic pacts, approved by the Govt. of Chile.

(1) The private treaty of transfer of territory executed in Santiago on the 18 May 1895, by the Minister of Foreign Affairs, Luis Barros Borgoño, and our own Plenipotentiary, Heriberto Gutierrez.

(2) The protocol executed in Santiago on the 28 May of the same year by the two same negotiators.

(3) The protocol of the 9 Decr. 1895, executed in Sucre by the Minister of Foreign Affairs of Bolivia Emeterio Cano, and the Chilean Plenipotentiary, Juan G. Matta.

(4) The protocol executed in Santiago on the 30 April 1896 by the Minister of Foreign Affairs, Adolfo Guerrero, and our own Plenipotentiary, Heriberto Gutierrez; which protocol is a ratification, by the Govt. of Chile, of the other pacts preceding it.

Such was therefore the manner in which, not long since, the thoughtful and eminently practical people of Chile viewed the point, and their public men fully understood that the proper issue of the pending questions on the Pacific, and the re-establishment of peace, depended mainly on the possession of a port by Bolivia.

In view of antecedents thus brought to mind, we have persevered in our demand, consigning it in general terms, and feeling assured that, in a future not distant, we could have carried out such an agreement without prejudice to the rights of third parties, and within the observance of a legal and correct conduct. The

problems of the Pacific are unfortunately, so complicated and so dependent on self-imposing facts, that it is not within our power to modify, that we cannot proceed otherwise. Such is the present state of the negotiations, and judging in view of what I have expressed, you will understand that the principle condition of same is still under discussion.

It is now the duty of the National Congress to favor this serious and delicate matter with its best attention and to transmit their vote to the Executive in order that the latter be guided thereby in the future developments of the negotiations.

Exhibit No. A9.

[Extract from pages 3 and 4.]

**MENSAJE DEL PRESIDENTE CONSTITUCIONAL DE BOLIVIA GENERAL
JOSÉ MANUEL PANDO.**

“Con la República de Chile se cultiva relacioness cordiales y Bolivia ha tratado de inspirarse en la equidad y la moderación en sus cuestiones con aquel Estado. Es aspiración vehemente del Gobierno sustituir el oneroso pacto de tregua de 1884 con un Tratado de amistad, paz, comercio y límites.

No obstante de que las deliberaciones con el nuevo Ministro de Chile han tenido lugar en condiciones muy amistosos y de que el Excelentísimo señor Konig manifiesta verdadero interés por Bolivia, no ha podido llegarse á ningun acuerdo, porque se ha rechazado la muy legítima exigencia de Boliyia, de que, *en compensación de su valioso Litoral*, se le conceda por lo menos la Soberanía de un Puerto, para su comunicación libre é independiente con los demás Estados del mundo civilizado.”

[Translation.]

Exhibit A9. Filed Dec. 20, 1900.

[Extract from the Message of the President of Bolivia, General Jose Manuel Pando, at La Paz, August sixth, 1900. Pages 3 and 4.]

“Cordial relations are being fostered with the Republic of Chile and Bolivia has endeavored to act with equity and moderation in the questions arising with that State. It is the urgent wish of the Government to substitute for the burdensome truce pact of 1884 a Treaty of friendship, peace, commerce and boundaries.

In spite of the fact that the negotiations with the newly appointed Chilean Minister have been carried on under very friendly conditions, and his Excellency Senor Konig shows genuine interest in Bolivia, it has been impossible to reach any agreement, as the perfectly legitimate request of Bolivia to be granted at least the Sovereignty of a port for the purpose of untrammelled and independent communication with the other States of the civilized world in compensation for the loss of her valuable littoral has been refused."

Exhibit 3a 10. Filed December 20, 1900.

MINISTERIO DE RELACIONES EXTERIORES Y CULTO,

La Paz, 15 de Octubre de 1900.

SEÑOR MINISTRO: He tenido la honra de recibir su muy importante nota de 13 de agosto ultimo, en la que V. E. se sirve explicar las bases de paz, entre Bolivia y Chile aceptadas por su Gobierno. Habiendo informado de estas bases y negociaciones al Congreso, V. E. ha creído útil pasarme un memorandum de las razones que las justifican, para que los Representantes del pueblo tengan cabal conocimiento de su sentido y ventajas.

Accediendo con el mayor agrado, á la insinuación de V. E., dicha nota la he sometido á la apreciación del Congreso.

Aquí debiera haber terminado mi respuesta; pero como V. E. ha impugnado invariablemente los motivos en que mi Gobierno se apoyó para insistir en que se conceda á Bolivia un puerto y una zona de territorio sobre el Pacífico, de mi parte, creo llenar también con un deber indeclinable, exponiendo en esta ocasion, las razones que justifican esta legitima exigencia.

Estamos de acuerdo en que esta base es la única dificultad que impide un arreglo entre ambas Repúblicas. Extraña V. E. que, en cambio, no hubiese tomado en cuenta la oferta de seis millones de pesos destinados á la construcción de un ferrocarril, suma que su Gobierno estaría dispuesto á aumentar si se aceptasen sus proposiciones. Extraña igualmente, que tampoco hubiese mencionado la concesión de un puerto franco, enteramente favorable al comercio de Bolivia.

Estas condiciones han sido tomados en cuenta, con la sola circunstancia de que en su lugar se ha puesto una zona de territorio y un puerto de los conocidos en la actualidad, cuyo valor más ó menos seria equivalente. Así mi Gobierno, en vez de dinero y puerto franco, óptó por un puerto propio en el Pacífico,

por que comprendía que un puerto le proporciona á Bolivia inapreciables ventajas, superiores á toda indemnización pecuniaria, por crecida que ella fuese.

En lo sustancial de la nota, permitame manifestar mi juicio acerca de las bases propuestas por V. E., con el calificativo de "grandes concesiones." Diferimos de criterio; estas grandes concesiones son, para mí, restitución y reconocimiento de derechos, de los que fué privada Bolivia, por la fuerza.

Efectivamente, en el pacto de tregua se impuso á Bolivia la obligación de aceptar la importación de productos naturales y manufacturados de Chile, libres de derechos, en cambio de una reciprocidad nominal, porque Bolivia apenas tiene productos que llevar al mercado de Chile. Esta cláusula fué aceptada en 1884 por el imperio de las circunstancias, y para evitar mayores males, consiguientes á la guerra. No hay ejemplo de país vencedor, que después de la victoria hubiese hecho imposición tan absoluta; y todo tratado de paz, si no salvó los derechos aduaneros del vencido, por lo menos fijó un plazo para el período y goce de la franquicias. Una imposición de este género no establece derechos perfectos, porque la autoridad, inherente al Soberano, de arreglar las relaciones comerciales, es *un jus meræ facultatis*, que no se prescribe por el no uso. Por consiguiente, la cláusula de la cancelación de las franquicias comerciales, es la restitución de un derecho del que se privó á Bolivia, y no una gran concesión. Y si hubo reciprocidad, con la cancelación de las franquicias, cada Estado habria reasumido sus derechos y su libertad con ventajas idénticas.

Tampoco es una concesión para Bolivia lo que V. E. llama puerto franco, si ha de entenderse, como entiende mi Gobierno, el derecho de transitar por territorio y puertos ajenos. Según el Derecho Internacional, es una servidumbre que no admite controversia, y los Estados mediterráneos tienen el derecho de transitar por el territorio, puertos y ríos navegables de los vecinos, por cuanto que esta servidumbre es indispensable y de ventajas mútuas.

La obligación que se impone Chile de pagar los créditos que gravan el Litoral boliviano y que más ó menos ascienden á 4.000,000,—cotizables con rebaja, en rigor, tampoco significa una concesión. Quedándose con el Litoral que es el territorio gravado y percibiendo sus rentas que alcanzan á 7.500,000 pesos anuales, le corresponde pagar estos créditos en conformidad con los principios del Derecho Internacional.

De modo que en claros términos, la propuesta de V. E., quedaría reducida á lo siguiente:

1º. A pagar á los acreedores chilenos de las empresas de Huan-chaca, Corocoro y Oruro y el saldo del empréstito levantado en Chile en 1867, cuyo total alcanza á 5.300,000, también cotizables.

2º. A entregar á Bolivia 6.000,000 de pesos, que al cambio del día equivalen á 4.636,363 Bs. suma que se aplicaria á la construcción de un ferrocarril.

De parte de Bolivia, la primera cláusula sería igual y la segunda quedaría sustituida con una zona territorial, que contenga un puerto.

La discusión, señor Ministro, se concretaría dentro de estas condiciones precisas; advirtiéndose que la suma que se pagase á los acreedores chilenos y la que se invirtiese en el ferrocarril de la Costa, cederian indirectamente en provecho de Chile, por ser capitales colocados en Chile y en poder de acreedores chilenos.

V. E. tiene la idea de que solamente en obediencia á opiniones de otro tiempo, se ha consignado entre las bases propuestas por esta Cancillería, la aspiración del pueblo boliviano de poseer á perpetuidad una zona de territorio sobre el Pacífico, y se esfuerza en demostrar, con tal motivo, que no existen ni ese puerto, ni ese territorio, por cuanto que, los que posee Chile en la Costa, los necesita; y cualquiera concesión comprometeria la continuidad del territorio chileno. La respuesta es muy sencilla: Bolivia esperará que Chile defina sus derechos territoriales, concluyendo sus arreglos con la República del Perú, y cuando sean conocidas sus fronteras por ese lado, transferirá á Bolivia el último puerto que quede al Norte, y la zona necesaria para el tránsito á Bolivia. Esta cesión no comprometerá familias chilenas, ni la continuidad del territorio chileno.

Esta cláusula se ha consignado no sólo en obediencia á opiniones antiguas, sino también á las que se han mantenido invariablemente entre ambas cancillerías, por común inteligencia.

Es evidente que en las conferencias que precedieron al Pacto de Tregua de 1884, se convino que una salida al Pacífico que produjera la solución de continuidad, en el territorio chileno, sería inaceptable por su propia naturaleza; pero se salvó tácitamente para estipulaciones futuras la cesión de una zona de territorio, ubicada en la estremidad Norte de las posesiones de Chile. Por esta consideración, se celebró un pacto de tregua en lugar de un tratado definitivo de paz. Desde entonces la Cancillería de Chile ha mantenido á Bolivia con la esperanza de adquirir un puerto.

Podría citar muchos documentos, si no fuera tarea larga, y me limitaré solamente á los últimos años.

Cuando en el año de 1895, se quiso arreglar amistosamente las cuestiones emergentes de la guerra del Pacífico, territoriales, comerciales y de indemnización, los tratados respectivos no fueron propuestos por Bolivia. Ellos se redactaron en Chile por la Cancillería chilena, y Bolivia se limitó á aceptarlos. Entonces se estipuló por tratado reservado de 18 de mayo de 1895 entre el Ministro de Relaciones Exteriores, señor Luis Barros Borgoño y nuestro Plenipotenciario don Heriberto Gutiérrez, que si la República de Chile adquiriría el dominio permanente de los territorios de Tacna y Arica, los transferiría en iguales condiciones á Bolivia; en su defecto se obligó a entregar la caleta Vitor ú otra análoga con mas cinco millones de pesos.

Diez dias después se celebró otro protocolo entre los mismos negociadores, y se convino en él, que entrando en los propósitos de los altas partes contratantes, asegurar á Bolivia un puerto en el Pacífico, de condiciones suficientes y apropiadas para responder á las necesidades del comercio exterior de esta República, era entendido que ambos gobiernos propenderían á la adquisición de los territorios de Tacna y Arica, y el señor Ministro de Relaciones Exteriores de Chile expuso, de su parte, que trataría en primer término de obtener la solución prevista por el artículo 1°.

En el protocolo de 9 de diciembre de 1895, celebrado entre el Plenipotenciario de Chile don Juan Gonzalo Matta, y el Ministro de Relaciones Exteriores de Bolivia, aquellas estipulaciones fueron confirmadas con la única circunstancia de que de todos los tratados concluidos entre Bolivia y Chile se hizo un todo indivisible y en lugar de la caleta Vitor, se habló de un puerto que satisfaga ámpliamente las necesidades del comercio de Bolivia. Que éstas fueron exigencias de Bolivia, no es el momento de discutir; pero es el hecho que las aceptó el Representante de Chile y se consiguieron en pacto solemne

Lo que debe llamar la atención de V. E. es que el dia 30 de abril de 1896, un año después, el Gobierno de Chile aprobó por protocolo especial, el que acabo de mencionar, con las siguientes aclaraciones:

Que por caleta capaz de satisfacer las necesidades del comercio, se entendería la que tenga fondeadero para naves mercantes, terreno para construir edificios fiscales y establecer una población.

Que el Gobierno de Chile se obligaba á solicitar de las Cámaras la aprobación de estas convenciones.

Estas ya no eran de modo alguno exigencias de Bolivia; el protocolo se firmaba en Santiago y las aclaraciones fueron propuestas por el Ministro de Relaciones Exteriores de Chile, don Adolfo Guerrero.

Después de un año de madura reflexión, el Gobierno de Chile ratificaba los protocolos, con la notable circunstancia de que se obligaba á transformar la caleta en un verdadero puerto con un gasto que representaría algunos millones.

En lugar de solicitarse la aprobación legislativa de estos pactos, en Chile fueron abandonados y olvidados y poco á poco quedaron relegados al pasado, cual si no hubiesen existido.

Algunos años después, en febrero de 1898, se celebraron en Santiago nuevas conferencias oficiosas, entre los señores Joaquin Walker Martínez, don José Paravicini y el Ministro de Bolivia don Emeterio Cano. Entonces, se propuso de parte de Chile, entre otras bases, la de que su Gobierno sustituiría al de Bolivia en la garantía del ferrocarril de Uyuni á Oruro y garantizaría el servicio de intereses del capital que se emplease en prolongar este mismo ferrocarril hasta La Paz, ó puerto Ballivián.

De parte de Bolivia fueron varias las proposiciones y por su novedad merecen llamar la atención las siguientes:

Que Chile se haría cargo de la garantía del ferrocarril de Uyuni á Oruro.

Que entregaría \$25,000,000—aplicables á la construcción de ferrocarriles.

Otra proposición reducía este suma á 20 millones.

Otra, en fin, á pesos 600,000 anuales durante veinte años.

En todas las propuestas era común la base de que Chile se haría cargo de los créditos que gravaban el Litoral y los reconocidos en favor de las empresas mineras por indemnización.

Estas tentativas quedaron sin efecto porque no se arribó á ningún acuerdo y el Gobierno de Bolivia informado, las desautorizó.

Estas últimas conferencias no tienen ciertamente ninguna importancia oficial y si las traigo á consideración es para poner á la vista la conducta lógica de Bolivia y para justificar las comparaciones y conclusiones que haré más adelante, poniendo en claro que las bases nuevas no son mejores que las anteriores.

Por qué el Gobierno de Chile ha abandonado los primeros pactos sin haber expuesto oficialmente una sola palabra á Bolivia, de tan grave y súbita determinación?

V. E. es de parecer que fué por el protocolo de 9 de diciembre de 1895, que contenía exigencias bolivianas de última hora.

Siento infinito no estar conforme con esta apreciación. El Gobierno de Chile aprobó este protocolo por otro posterior, de 30 de abril de 1896 y despues de un año de madura deliberación. Lo que quiere decir que no debió ser ésta la causa.

Tampoco debió ser la exigencia de un puerto que satisfaga ámpliamente las necesidades comerciales de Bolivia. Esta condicion fué explicada en términos precisos en el protocolo que acabo de citar y Bolivia aceptó esa explicación. Hubo pleno acuerdo en este punto entre ambas Cancillerías.

Finalmente, la conducta del negociador chileno fué aprobada y esto basta para afirmar que el protocolo tantas veces citado, no ha entrado para nada en la determinación de los nuevos rumbos de la diplomacia chilena.

Tampoco estoy conforme con el argumento de V. E. de que el tratado de transferencia de territorios, de 18 de mayo de 1895, era condicional, dependiente de la ejecución del plebiscito estipulado en el tratado de Ancon y que no siendo imputable la falta de cumplimiento de esta condición á Chile, aquel tratado debía quedar sin efecto, por haber sido un pacto prematuro, "muerto antes de nacer," siendo por consiguiente la situación jurídica de hoy, la misma que la del año 1884.

En la hipótesis de que todo esto fuese evidente, la caducidad del tratado no debiera depender de la exclusiva voluntad de una sola de las partes; era menester que precediera una convención que hubiese establecido que la falta de cumplimiento de aquella condición no era imputable al Gobierno de Chile.

En el fondo diferimos, señor Ministro, sustancial y radicalmente en la apreciación de los hechos. Aquellos pactos fueron celebrados con espíritu sério, procediendo Chile, como V. E. dice "con estremada generosidad al ceder lo más rico de las provincias de Tacna y Arica."

Eran tratados obligatorios, concluidos con sujeción a las reglas del Derecho Internacional y no pactos prematuros y muertos antes de nacer. De otro modo no se comprendería aquella "extremada generosidad" de Chile.

Los tratados condicionales están permitidos en derecho y en el caso concreto habiéndose estipulado que de la ejecución del plebiscito dependería la transferencia de Tacna y Arica ú otra caleta con fondeadero para naves mercantes; lo correcto era esperar que esa condición se cumpliera. Bolivia, ahora como entonces, estaba dispuesta á esperar la realización del plebiscito y sus consecuencias.

Que el plebiscito se realizará, no cabe la menor duda, puesto que está estipulado en el pacto de Ancón y el Perú lo exige: Y si como V. E. asegura en su nota, el éxito tiene que ser necesariamente favorable para Chile, razón de más para que aquellos protocolos se hubiesen mantenido en todo su vigor, puesto que la previsión principal tiene que realizarse á satisfacción de Chile.

Y todavía me aventuraría á afirmar que el no cumplimiento del plebiscito es imputable á la Cancillería de Chile, puesto que se resiste á la exigencia del Perú que no pide otra cosa, que se proceda al plebiscito sin pérdida de tiempo, en ejecución del protocolo Billingham-La-Torre.

Por manera que, señor Ministro, y esto es lo incuestionable, la falta de cumplimiento de la condición, lejos de ser un motivo para la caducidad de los tratados, lo es para su vigencia y ejecución.

Pero, para qué cansarse en discutir ese punto; lo cierto es que como V. E. hace constar “el poder ofensivo de Chile ha centuplicado y para hablar con la claridad que exigen á veces los negocios internacionales, Bolivia no debe contar con la transferencia de los territorios de Tacna y Arica aunque el plebiscito sea favorable á Chile, porque el pueblo chileno con una uniformidad que no se vé de ordinario ha manifestado su voluntad de conservar esos territorios.”

En concepto de V. E., Bolivia no tiene necesidad imprescindible de un puerto y teniendo comunicación actualmente por los puertos poseidos por Chile, una estrecha faja de territorio no le es necesaria é indispensable, ó más claro, mejor se estaría con las condiciones geográficas presentes.

La falta de necesidad imprescindible, señor Ministro, no es una razón para negar un derecho ó desconocer una demanda ó exigencia legítima. Y si lo fuese, sería un argumento contra Chile. Esta República tiene una extensa Costa y muchos puertos y no es imprescindible que conserve todos, y muchos son acaso de más, inhabitados y desiertos; puede pues dejar para Bolivia uno de ellos sin menoscabo alguno de sus intereses.

Nunca mi Gobierno pensó que se desconociera la utilidad y ventajas de la posesión de un puerto. Este hecho fué reconocido no há mucho por el Gobierno y pueblo chilenos. Por ese creyó de más entrar en demostraciones sobre un punto que no admite contradicción.

Que un puerto sobre el Océano sea útil para una Nación es una verdad de evidencia incontestable. En América todos los Estados están dotados de una Costa mas ó menos extensa; la

única excepción es el Paraguay que en cambio posee un río navegable que le permite comunicar libremente con el mundo civilizado.

En Europa se puede citar otra excepción, la Suiza, lo que la ha sometido á una situación política especial garantida por los Estados que la rodean.

Hay pues un derecho natural, por encima de todas las convenciones que asigna á toda Nación por lo menos una pequeña Costa para sus relaciones políticas y comerciales.

Contra este derecho, Chile pretende adjudicarse la Costa perteneciente á Bolivia, excluyéndola del Océano y condenándola á un aislamiento excepcional en América. Esta sola consideración ya sería bastante para que las proposiciones de V. E. no fueran equitativas.

Ya que V. E. pone en duda las ventajas de un puerto, porque probablemente poseyendo Chile numerosos, no se tiene allí idea de esta necesidad, consignaré á continuación aunque muy someramente, algunas de estas ventajas.

Un puerto es indispensable para Bolivia:

1º. Para su comunicación comercial y política, libre é independiente con el mundo civilizado.

2º. Para el mejor arreglo de sus aduanas sin las trabas de las guías ni tornaguías y demás reglamentos que imponen las Naciones vecinas cuando solamente se goza del derecho de tránsito.

3º. Para modificar sus relaciones comerciales y aduaneras con los Estados vecinos, apoyándose en la independencia que le daría un puerto.

4º. Para fundar y levantar su crédito, haciendo conocer sus importaciones y exportaciones y ofreciendo con sus aduanas una garantía segura á sus acreedores.

5º. Para no depender directa ni indirectamente de la voluntad de otro Estado.

No consignaré el mayor poder y la importancia internacional que adquiriría Bolivia poseyendo un puerto. Estas son verdades que un espíritu tan ilustrado como el de V. E. no puede desconocer.

V. E. es de opinión que el hecho público, positivo é incontestable es que el Gobierno y el pueblo de Bolivia están en la más absoluta libertad é independencia para sus comunicaciones de todo género y que un puerto propio no es indispensable y que su adquisición no aumentaría el poder de Bolivia, ni en tiempo de paz, ni en tiempo de guerra.

Permítame, señor Ministro, manifestarle que esta aserción está contradicha por la realidad.

La situación comercial de Bolivia es excepcional. Por todas sus fronteras y en todas direcciones solo tiene el derecho de tránsito, sugeto á restricciones y formalidades reglamentarias en cambio de concesiones que tiene hechas para el uso y goce de esta servidumbre. Puertos hay donde tiene que subordinarse en lo absoluto al arancel extranjero, limitándose á percibir por derechos de aduana, una cuota proporcional. De esta manera su comercio de importación y exportación lo mantiene en lucha angustiosa y al través de inconvenientes de todo género.

La decadencia de Bolivia, su atraso en el camino del progreso, se debe en gran parte á la única causa de no haber tenido amplia y libre comunicación con el mundo civilizado, ora por los obstáculos enunciados, ora por su situación geográfica.

Aún en la época en que se hallaba en posesión de su Litoral, á causa del extenso desierto que le separaba hasta la Costa, tuvo que buscar otras vias de tránsito, celebrando tratados y haciendo concesiones de todo género. Puedo citar las siguientes:

El haber reconocido derechos de tránsito para mercaderías de ultramar, desde el 3 al 20 por ciento y para artículos determinados, el 15 por ciento.

Para el tránsito de productos naturales de Bolivia al extranjero, del 3 al 2 por ciento.

El haberse obligado á no levantar de cierto nivel, las tarifas en la aduana de Cobija.

El haber aceptado el regimen de las Aduanas extranjeras en lo absoluto, limitándose á recibir una subvención.

El haber aceptado invariablemente la libre importación de los productos naturales y manufacturados de los Estados vecinos.

Y todo esto, señor Ministro, sin contar con las dificultades en el tránsito y en los despachos, vejámenes y decomisos para el comercio.

Toda la historia de Bolivia desde su independendencia, todas sus dificultades internacionales han provenido de la única causa de no haber tenido libre é independiente comunicación.

El tratado celebrado en los primeros días de su independendencia para la adquisición de la provincia de Tarapacá, el de confederación, celebrado más tarde con el Perú y las guerras consiguientes, no obedecieron á otro fin que al de agregar á Bolivia una Costa suficiente en el Pacifico y por consiguiente á proporcionarle la anhelada independendencia comercial.

Hé aqui la dolorosa y triste experiencia que se trata de rematar con la exclusión á Bolivia del Pacifico y su clausura definitiva dentro de sus montañas.

Dados estos antecedentes, el libre tránsito que ofrece V. E. bajo la denominación de puertos francos y de facilidades comerciales y aduaneras, no puede considerarse jamás como una comunicación libre é independiente. Es más bién una servidumbre que se acuerda, en conformidad con el Derecho internacional, á un país vencido y débil para que no muera de asfixia y una servidumbre, con todos los inconvenientes de los reglamentos y restricciones que el soberano tiene derecho á imponer.

Según el parecer de V. E. "las bases propuestas por Chile son equitativas, las unicas compatibles con la situación actual, siendo un error el afirmar que Bolivia tenga derecho de exigir un puerto en cambio de su Litoral, importando poco que este Litoral sea rico y valga muchos millones."

"Terminada la guerra, la nación vencedora impuso las condiciones; Bolivia vencida tuvo que entregar su Litoral."

"En consecuencia, Chile no debe nada por que no está obligada á nada: la entrega del Litoral fué absoluta, incondicional y perfecta."

"En consecuencia, también, las bases propuestas y aceptadas por su país y que importan grandes concesiones á Bolivia deben ser consideradas no sólo como equitativas sino como generosas."

"Chile se ha apropiado del Litoral con el mismo título que la Alemania, de Alsacia y de Lorena y EE. UU. de la América del Norte, de Puerto Rico por el derecho de la victoria, la ley suprema de las Naciones."

Lamento sinceramente no estar tampoco de acuerdo con V. E. en estas conclusiones.

La entrega del Litoral no ha sido absoluta, incondicional y perfecta. Si así hubiera sido, V. E. no estaría empeñado en estas negociaciones, á las que les ha dado el carácter de apremiantes é inaplazables. Aquella entrega ha sido indefinida, en usufructo, para que Chile aproveche de las rentas, como indemnización de guerra. El artículo 2º del Pacto de Tregua, establece que solo durante su vigencia debiera poseer y gobernar Chile el Litoral. No ha habido pues cesión absoluta de propiedad y no habiéndola, la cesión que exige Chile, debería ser materia de nuevas negociaciones y estipulaciones y de ello se trata en la actualidad: por consiguiente, es legítimo comparar las bases y apreciar la equidad de ellas.

Con este fin he traído á consideración el valor del Litoral para poner en relieve que en cambio de ese valor solo se pedía una faja de territorio que representaba á lo sumo la vigésima parte.

El Litoral de Bolivia, señor Ministro, es muy rico por su valor intrínseco y por sus rentas y es de justicia poner á la vista este dato para que los Representantes de Chile se muestren equitativos en esas condiciones que las llaman generosas.

El Litoral boliviano comprende una superficie de 158,000 kilómetros cuadrados, con una población de 32,000 habitantes. Contiene cuatro puertos, Tocopilla, Antofagasta, Cobija y Mejillones, y siete caletas, Gatico, Guanillos, Michilla, Tames, Gualaguala, Cobre y Paquica.

Sus rentas fiscales y municipales alcanzaron en el año pasado a \$7 millones 500,000.

Contiene abundantes riquezas minerales de plata, cobre, oro, bórax, azufre, salitre y sal.

Las salitreras del Toco, son bien extensas y ellas solas producen al Fisco la renta anual de \$5.545,000.

Existen otras salitreras con ley de 70 á 40 por ciento en las regiones de la Joya, orillas del río Loa y otros parajes; y por recientes investigaciones y estudios, se calcula que comprenden una superficie de 190 kilómetros cuadrados.

Todas estas salitreras se explotarán con el tiempo y en pocos años mas, la renta del Litoral boliviano, pasará de \$10.000,000 anuales.

Las propiedades industriales y urbanas ubicadas dentro de este territorio, estan avaluadas hoy mismo; en cuarenta millones.

No es aventurado por consiguiente asegurar que el Litoral boliviano con estas riquezas representa por lo menos un valor de cien millones.

También hay que traer en cuenta que en los veinte años que Chile ha poseido aquel Litoral, desde el pacto de tregua, ha percibido por lo menos cien millones. Durante ese mismo tiempo ha importado sus productos naturales y manufacturados á Bolivia, libres de derechos aduaneros, aprovechando las ventajas consiguientes á estas franquicias.

En cambio de estas concesiones y de estos valores, cuáles han sido las exigencias de Bolivia? Una faja de territorio con un puerto, que equivale á lo sumo á la vigésima parte de lo que cede y la obligación para Chile de pagar los créditos que gravan aquel Litoral y los reconocidos en favor de empresas mineras chilenas, perjudicadas por el secuestro bélico de 1879, pago que indirectamente cederá en beneficio de Chile, porque todos los acreedores son chilenos y tienen domicilio en Chile.

Hé aquí probada hasta la última evidencia la generosidad de Bolivia, yá que V. E. emplea esa palabra, y los sacrificios que

hace para obtener la paz. V. E. no puede, no tiene motivos fundados para calificar la conducta de Bolivia, de refractaria á soluciones pacíficas por causa de exageradas pretensiones.

No me detendré sobre las declaraciones que V. E. ha creído conveniente consignar en el oficio al que contesto y según las cuales la victoria sería la ley suprema de las Naciones. Si bien V. E. de esta manera ha comprometido á nombre de su Gobierno, principios de derecho público que hasta hoy fueron universalmente admitidos, también es oportuno recordar que esos principios han sido nuevamente sancionados por las más grandes potencias, en el último Congreso Internacional reunido en La Haya; las cuales á pesar de las fuerzas militares de que disponen, han perseguido en sus memorables conferencias, fines altamente humanitarios, tratando de prevenir los inmensos males de la guerra y de asegurar el imperio del derecho y de la justicia.

Tampoco es fuera de propósito recordar las declaraciones del Congreso Americano de 18 de abril de 1890, contra la conquista y las cesiones territoriales, bajo la amenaza de la guerra ó la presión de la fuerza armada, y la notable conducta de las Potencias europeas, cuando al mediar en la última guerra entre la Turquía y la Grecia hicieron prevalecer la idea de que la indemnización no debiera ser ilimitada sinó proporcional á la capacidad financiera del vencido.

Ante estos antecedentes autorizados por el concurso de las primeras naciones militares, permítame V. E. expresar con profundo sentimiento, que solo un exagerado celo patriótico ha podido influir en su ánimo para negar estos principios al país que tengo el honor de representar.

“Hace muchos años que su país, señor Ministro, desea convertir el pacto de tregua en tratado de paz, arreglar de una manera definitiva sus diferencias con Bolivia. Gobierno y pueblo chilenos, no pueden esperar más; consideran que han esperado con paciencia.” Cualquiera que leyese estos renglones pensaría que Bolivia se ha resistido al arreglo de aquellas diferencias. No es exacto el cargo.

El pacto de tregua es ominoso y oneroso exclusivamente para Bolivia y por lo mismo está en sus intereses bien entendidos definir la actual situación. Con esta mira ha propuesto bases en varias ocasiones; unas veces ellas han sido rechazadas no por otra razón que por haber variado el pueblo chileno en sus aspiraciones; otras veces celebrados los tratados, pueblo y Congreso bolivianos

los aprobaron mientras que Chile los ha abandonado por propia voluntad. Los veinte años transcurridos en negociaciones estériles, se deben á la política de Chile, Nación fuerte, armada constantemente en guerra y por igual circunstancia, único agente de los hechos producidos y responsable de los acontecimientos.

Aunque á juicio de V. E., es propio de políticos vulgares aferrarse á un idea en armonía con el sentimiento público dominante, deberé dejar constancia, contestando á este punto, que en Bolivia los políticos se inspiraron siempre en el *mínimum* de las concesiones que el vencedor podría otorgar y conformándose en más de los casos con las proposiciones proyectadas y escritas por la misma Cancillería chilena. Es en Chile que el sentimiento público ha variado y con él la conducta de sus políticos; siendo, según la propia expresión de V. E., “digno tema de meditación para los hombres de Estado de Bolivia, investigar por qué un pueblo sesudo y justiciero, como el pueblo chileno, tiene sobre Tacna y Arica ideas muy distintas que las que manifestó públicamente en mayo de 1895.”

Como quiera que sea, mi país, señor Ministro, anhela sinceramente la paz y en esta vía ha dado numerosas pruebas, y el tenor, la forma de éste mismo documento y la exquisita cortesía desplegada por esta Cancillería, son una prueba más, al frente de la nota de V. E.

Habiendo cambiado Chile súbitamente las antiguas bases con otras nuevas é inesperadas, mi país tiene necesidad de reflexionar. Las cuestiones de Bolivia con Chile, son complejas y difíciles y comprenden territorios, fronteras, comercio, aduanas é indemnizaciones y no es á primera impresión que deban ni puedan ser arregladas definitivamente.

Bolivia, por débil que sea, es una Nación independiente y soberana, al nivel de las otras y en las negociaciones tiene derecho á proceder consultando tranquilamente sus conveniencias. No aceptaría la imposición en cualquiera forma que ella viniese y antes bien en condiciones semejantes, sería de su dignidad aplazar toda gestión diplomática.

El pacto de tregua de 4 de abril de 1884 puso fin al estado de guerra y fijó las relaciones políticas, comerciales y aduaneras de ambos Estados. En la realidad ha sido un tratado de paz, por mucho que se haya hecho mención de volver á las hostilidades, sin otra formalidad que el desahucio anticipado de un año.

La modificación de las cláusulas de este pacto es y debe ser materia de negociaciones conducidas con libre y amplia delibera-

ción, en ejecución del artículo 7º. que establece que al celebrar el Pacto de Tregua, el propósito de las partes contratantes era preparar y facilitar el ajuste de una paz sólida y estable, comprometiéndose recíprocamente á proseguir las negociaciones conducentes á este fin. Si por desgracia no se llegase á un nuevo tratado, quedaría vigente aquel pacto, mientras se presente la oportunidad de celebrar otro definitivo.

Dentro de estas convicciones el Congreso boliviano considerará las bases propuestas por ambas Cancillerías, sin perder de vista las afirmaciones categóricas de V. E. de que el Gobierno y pueblo chilenos, tienen el propósito irrevocable de conservar la posesión y dominio de los territorios que actualmente ocupan.

En la seguridad de que las presentes negociaciones continuarán desarrollándose en términos pacíficos y cordiales, en obsequio de los altos y delicados intereses que ellos comprometen, me es satisfactorio aprovechar esta nueva oportunidad para ofrecer á V. E. mis mas altas y distinguidas consideraciones.

[Firmando.] ELIODORO VILLAZÓN.

Al Excelentísimo señor don Abraham Konig, Enviado Extraordinario y Ministro Plenipotenciario de la República de Chile. Presente.

[Translation.]

DEPARTMENT (MINISTERIO) OF FOREIGN RELATIONS,
La Paz, October 15, 1900.

To His Excellency, ABRAHAM KONIG,

E. E. and Minister Plenipotentiary of the Republic of Chile.

Present.

MR. MINISTER: I have had the honor to receive your very important communication of the 13 August last, wherein Your Excellency is pleased to explain the bases of peace between Bolivia and Chile accepted by your Government. Having informed Congress of those bases and negotiations, Your Excellency has deemed it expedient to submit to me a memorandum of the reasons in their justification, so that the representatives of the people may have a perfect knowledge of their meaning and advantages.

Complying with the greatest pleasure with the suggestion of Your Excellency, I have submitted said communication to the consideration of Congress.

My reply could have ended here; but as Your Excellency has invariably impugned the motives in which my Government

found support to insist that a port and a belt of territory on the Pacific be granted to Bolivia, I also believe that my indeclinable duty is to explain in this occasion the reasons in justification of this legitimate demand.

We agree in that this basis is the only difficulty which prevents a settlement between both republics. Your Excellency finds strange that I should not have taken into consideration the offer of six million pesos, in exchange, destined to the construction of a railway, amount that your Government is disposed to increase, if their propositions were accepted. It is also found strange that no mention was made of the concession of a free port entirely favorable to Bolivia.

These conditions have been taken into consideration, with the only circumstance that it has been mentioned instead a belt of territory and a port from those known at present, the value of which would be about equivalent. It was thus that my Government instead of money and a free port chose a port of their own on the Pacific, because they felt that a port would offer Bolivia invaluable advantages, superior to any pecuniary indemnification, no matter how large this were.

As regards the substance of the communication, allow me to express my opinion as to the bases proposed by Your Excellency and qualified as "great concessions." We differ in opinion. These great concessions are, to my mind, restitution and an acknowledgment of the rights of which Bolivia was forcibly deprived.

In effect, in the Pact of Truce the obligation was imposed upon Bolivia to accept the importation of natural and manufactured products from Chile free of duty, in exchange for a nominal reciprocity, because Bolivia has scarcely any products to send to the Chilean markets. This clause was accepted in 1884 under the stress of circumstances, and to prevent greater ills, as a consequence of the war. There is no instance of a victorious country making such absolute imposition. All peace treaties if not leaving the customs duties to the vanquished, they at least fix a term for the enjoyment of franchises. An imposition of this kind does not establish a perfect right, because the authority inherent to a sovereign to settle the commercial relations is a *jus meræ facultatis* which does not prescribe because no use is made of it. Therefore, the clause of cancellation of the commercial franchises is the restitution of a right of which Bolivia was deprived and not a great concession. And if there was any reciprocity, with

the cancellation of the franchises each State would have resumed its rights and its liberty under identical advantages.

Neither is it a concession to Bolivia what Your Excellency calls a free port, if this is to be understood as my Government understands it, the right of transit through a territory and port belonging to another. According to international law, it is an easement which does not admit of controversy, and the mediterranean States have the right of transit over the territory, ports, and navigable rivers of their neighbors, as such easement is indispensable and of mutual advantage.

The obligation contracted by Chile to pay the liabilities affecting the Bolivian littoral, which amount to \$4,000,000, more or less, quotable at a discount, does not strictly mean a concession. By keeping the littoral, which is the burdened territory, and collecting its revenue, which amounts to \$7,500,000 annually, it is under the obligation to pay said liabilities according to the principles of international law.

Thus the proposition of Your Excellency is reduced to the following:

1. To pay the Chilean credits of the Huanchaca, Corocoro, and Oruro enterprises, and the balance of the loan contracted in Chile in 1867, the total amount of which is \$5,300,000, also quotable.

2. To deliver to Bolivia \$6,000,000, which at the rate of exchange of this date is equivalent to 4,636,363 bolivianos, such sum to be applied to the construction of a railroad.

On the part of Bolivia the first clause would remain the same and the second substituted for a territorial belt containing a port.

The discussion, Mr. Minister, would then be circumscribed within these precise conditions. It is to be remarked that the sum paid to Chilean creditors, as well as that invested in a coast railway, would be indirectly profitable to Chile, they being capitals placed in Chile in the hands of Chilean creditors. Your Excellency has an idea that it is only in deference to opinions of other times that among the bases proposed by this Department (Cancillerio) the aspiration has been set down of the Bolivian people to possess in perpetuity a belt of territory on the Pacific, and endeavors to show on this account that neither said territory nor said port exist, as Chile needs those it possesses on the coast, and any concession would compromise the continuity of Chilean territory. The answer is very simple: Bolivia will wait until Chile defines its territorial rights, when the settlement with Peru is concluded. And when its (Chile's) possessions on that side are defined, then it shall

transfer to Bolivia the last port on the north, and the necessary belt for transit to Bolivia. This cession shall not compromise any Chilean families nor the continuity of the Chilean territory.

This clause has been set down not only in deference to old opinions, but also to those that have been invariably maintained by both Departments (Cancillerias) by common consent.

It is evident that in the conferences which preceded the Pact of Truce of 1884, it was agreed that an outlet to the Pacific which should produce a solution of continuity of Chilean territory would be inadmissible of its own nature. But the cession of a belt of territory lying at the northern extremity of Chilean possessions was tacitly left for future negotiations. For these reasons a Pact of Truce was concluded, instead of a final Treaty of Peace.

Ever since, the Chilean Department (Cancilleria) has kept Bolivia in hopes of acquiring a port. I could quote many documents were it not a laborious task; I shall confine myself to the last few years only.

When in 1895 an endeavor was made to settle in a friendly way the territorial, commercial, and indemnification questions resulting from the war of the Pacific, the respective treaties were not proposed by Bolivia. They were prepared in Chile by the Chilean Department, and Bolivia limited herself to refuse their acceptance. It was then stipulated in a confidential treaty concluded the 18 May, 1895, between the Minister of Foreign Relations, Mr. Luis Barros Borgoño, and our Plenipotentiary, Mr. Heriberto Gutierrez, that if the Republic of Chile should acquire the permanent control of the territories of Tacna and Arica, they would be transferred in the same conditions to Bolivia. In default of this it (Chile) bound itself to deliver the Victor Cove, or any other similar one, and 5,000,000 pesos besides.

Ten days after this another protocol was concluded between the same negotiators, and in it it was agreed that the purpose of the high contracting parties being to insure Bolivia a port on the Pacific, sufficient and proper to respond to the necessities of the foreign commerce of this Republic, it was understood that both Governments would endeavor to obtain the acquisition of the territories of Tacna and Arica, and the Minister of Foreign Relations of Chile on his part said that he would try in the first place to obtain the solution provided in Article 1, and that the stipulations of Article 4 referred to the eventual case that Chile should not acquire the territories of Tacna and Arica, either by means of a direct settlement or by virtue of the plebiscite.

In the protocol of December 9, 1895, concluded between the Chilean Plenipotentiary, Mr. Juan Gonzalo Matta and the Minister of Foreign Relations of Bolivia, said stipulations were confirmed, the only difference being that of all the treaties concluded between Bolivia and Chile an indivisible whole was made, and that instead of the Victor Cove a port was mentioned to satisfy amply the needs of Bolivian trade. That these were Bolivian demands this is not the time to discuss. It is a fact, however, that they were accepted by the representative of Chile and set down in a solemn pact.

What should attract Your Excellency's attention is that on the 30th of April, 1896, one year after, the Chilean Government approved by a special protocol the one I have just mentioned, with the following explanations:

That by the Cove capable of satisfying the necessities of commerce should be understood one having an anchorage for merchant ships and grounds to build customs buildings and to found a town.

That the Government of Chile bind themselves to request from Congress the approval to these conventions.

These were in no way exigencies on the part of Bolivia. The protocol was signed at Santiago, and the explanations were proposed by the Minister of Foreign Relations of Chile, Mr. Adolfo Guerrero.

After a year of mature study the Government of Chile ratified the protocols, with the remarkable circumstance that they bound themselves to transform the Cove into a real port with an expense representing several millions.

Instead of requesting the legislative approval for these pacts in Chile they are abandoned, forgotten, and slowly remained relegated to the past, as if they had never existed.

Several years after, in February, 1898, new officious conferences took place in Santiago between Messrs. Joaquin Walker Martinez, José Paravicini, and the Minister of Bolivia, Mr. Emeterio Cano. It was then proposed on the part of Chile, among other bases, that the Government would substitute that of Bolivia in the guarantee for the railroad from Uyuni to Oruro and would guarantee the payment of the interest on the capital invested in extending said road to La Paz or Puerto Bolivian.

Several were the propositions on the part of Bolivia, and the following are worthy of attention on account of their novelty:

That Chile was to take charge of the guarantee of the railroad from Uyuni to Oruro.

That the sum of \$25,000,000 was to be delivered by Chile, to be applied to the construction of the railroads.

Another proposition reduced this amount to \$20,000,000.

Another, at last, to \$600,000 annually, during 20 years.

The base that Chile was to take charge of the liabilities affecting the littoral and those recognized in favor of the mining enterprises by way of indemnification, was common to all the proposals.

These attempts had no effect, because no agreement was reached and the Bolivian Government, being informed of the facts, disowned them. These last conferences have certainly no official importance, and if I mention them it is to show the logical conduct of Bolivia and to justify the comparisons and conclusions I will make further along, thus demonstrating that the new bases are no better than the former.

Why did the Government of Chile abandon the former Pacts without sending officially a single word to Bolivia in regard to such grave and sudden determination?

Your Excellency seems to believe that it was on account of the Protocol of December 9, 1895, which contained Bolivian exigencies made at the last hour.

I am deeply sorry not to agree with this opinion. The Government of Chile approved this protocol by a later one of April 30, 1896, and after a year of mature deliberation. This shows that such could not have been the cause.

Nor could it be the demand for a port that satisfies the commercial need of Bolivia. This condition was explained in precise terms in the protocol I have just mentioned, and Bolivia accepted the explanation. There was a perfect agreement on this point between both Departments (Cancilleries).

Finally, the conduct of the Chilean negotiator was approved, and this is sufficient to affirm that the protocol so frequently mentioned has had nothing to do with the determination of the new departure of the Chilean diplomacy.

Neither do I agree with Your Excellency's argument that the Treaty of territorial transfer of May 18, 1895, was conditional, depending from the meeting of the plebiscite, stipulated by the Treaty of Ancon, and that the failure to comply with this condition not being on the part of Chile, said Treaty must be ineffective, as it was a premature pact—"still-born"—the juridical situation of to-day being, consequently, the same as in the year 1884.

In the hypothesis that all this were evident, the caducity of the Treaty ought not to depend on the exclusive will of one of

the two parties; it was necessary that a convention should have preceded, to establish that the failure to comply with that condition was not to be charged to the Government of Chile.

We do substantially and radically differ in the essential facts, Mr. Minister. Those pacts were concluded in an earnest spirit, Chile, as Your Excellency states, "by granting the richest portions of the provinces of Tacna and Arica, acted with extreme generosity."

They were binding treaties, concluded according to the rules of international law, and not premature pacts, still-born. Otherwise that extreme generosity of Chile could not be understood.

Conditional treaties are permissible by law, and in this particular case, stipulations having been made that from the holding of the plebiscite the transfer of Tacna and Arica or another cove, with an anchorage for merchant ships, would be dependent, the proper step to take was to wait until such condition was fulfilled. Bolivia was then, as she is now, ready to wait for the realization of the plebiscite and its consequences.

That the plebiscite will take place there is not the slightest doubt, as it was thus stipulated in the Pact of Ancon, and Peru demands it; and if, as Your Excellency asserts in your communication, the outcome has to be necessarily favorable to Chile, then the more the reason for those protocols to have been preserved in force, since their main provision is to be fulfilled to the satisfaction of Chile.

And I would furthermore affirm that the failure to hold the plebiscite could be attributed to the Chilean Department (Cancilleria) as this refuses to accede to the demands of Peru, which does not ask but that the plebiscite be held without loss of time, in compliance with the Billinghurst-La Torre protocol.

Consequently, Mr. Minister, and this can not be disputed, the failure to comply with that condition, far from being a motive for caducity of the treaty, is a reason for its enforcement and fulfillment.

But why discuss this matter any further? The truth is, as Your Excellency states, that "the offensive power (of Chile) has increased a hundredfold, and to be as plain as international affairs demand it at times, Bolivia must not count upon the transfer of the territories of Tacna and Arica, even if the plebiscite be favorable to Chile, because the Chilean people with a uniformity that is seldom seen has made manifest their will to preserve those territories."

It is Your Excellency's opinion that Bolivia has no imperative need of a port, and having at present means of communication through the ports possessed by Chile, a narrow strip of territory is neither necessary nor indispensable, or plainer still, it would be better to preserve the actual geographical conditions.

The lack of imperative need, Mr. Minister, is not a reason to deny a right or disown a legitimate request. If this were so it would be an argument against Chile. Said Republic has an immense coast and many ports, and it is not imperious that she keep them all; many of them, besides, are uninhabited and deserted. Therefore, one of them could be granted to Bolivia without impairing her (Chile's) interests in the least.

My Government never thought that the advantages and usefulness of possessing a port could ever be disowned. This fact was acknowledged not long ago by the Chilean Government and people. On this account she (Bolivia) thought it superabundant to enter in the discussion of a point which does not admit of contradiction.

That an ocean port is useful to any nation is a self-evident truth. In America all the States are endowed with a more or less extended coast, except Paraguay, which in exchange possesses a navigable river, permitting free communication with the civilized world.

Another exception may be cited in Europe: Switzerland, and this has submitted her to a peculiar political situation guaranteed by the surrounding States.

Above all conventions there is a natural right which assigns all nations at least a small coast for its political and commercial relations.

Against this right Chile pretends to adjudicate to itself the coast belonging to Bolivia, thus excluding her from the ocean and condemning her to an isolation, exceptional in America. This consideration in itself would be enough to render Your Excellency's proposals inequitable.

Since Your Excellency doubts the advantages of a port—perhaps because possessing a number of them there is no idea in Chile of their necessity—I will state hereunder, although briefly, a few of these advantages.

(1) For its free and independent political and commercial intercourse with the civilized world.

(2) For the better service of its customs facilities without the hindrance of customs permits and return bills of lading, and other

regulations imposed by neighboring nations when only the right of transit is enjoyed.

(3) To modify its commercial customs relations with neighboring countries, based on the independence that a port would give it.

(4) To establish and increase its credit, making its imports and exports known, and offering to creditors a secure guarantee, that of its own customs houses.

(5) To be both directly and indirectly independent from the will of any other State.

I shall not mention the greater power and international importance which Bolivia would acquire by possessing a port. These are truths that a person as learned as Your Excellency can not but recognize.

Your Excellency is of the opinion that the positive and incontestable public fact is that the Government and people of Bolivia enjoy the most absolute freedom and independence for their intercourse of all kinds, and that a port of their own is not indispensable, and that its acquisition would not increase Bolivia's power, neither in time of peace nor in time of war.

Allow me, Mr. Minister, to state that this assertion is contradicted by the real facts.

The commercial conditions of Bolivia are exceptional. She enjoys only a right of transit over all her frontiers and in all directions, subject to reglamentary restrictions and formalities, in exchange for the concessions she has granted for the use and enjoyment of this easement. There are ports where she has to be absolutely subordinate to foreign tariffs, receiving only as customs duties a proportional quota. Thus her import and export trade has to struggle bitterly against obstacles of all kinds.

Bolivia's decadence, her backwardness in the path of progress, is due in a large measure to the only cause of lacking free intercourse with the civilized world, either by reason of the aforesaid obstacles or due to her geographical position.

Even at the time when she was in possession of her littoral, due to the extensive desert which separates her from the coast, she had to seek other transit facilities, concluding treaties and granting concessions of all kinds. I may quote the following:

To have admitted transit dues on foreign merchandise, ranging from 3 to 20 per cent, and for certain goods 15 per cent.

For the transit of natural products in their way abroad, from 3 to 2 per cent.

To have bound herself not to increase the tariff dues at Cobija beyond a certain point.

To have accepted in its entirety foreign customs regulations, limiting herself to receive a subsidy.

To have invariably accepted free of duty the importation of the natural and manufactured products of the neighboring States.

All this, Mr. Minister, leaving aside the obstacles to commerce resulting from transit, dispatch of merchandise, annoyances, and seizures.

The whole history of Bolivia since her independence, all her international difficulties are due to the sole cause of not having had free and independent communication.

The Treaty concluded in the first days of her independence for the acquisition of the Province of Tarapacá; that of Confederation concluded later on with Peru, and the consequent wars, did not obey to any other purpose than that of adding to Bolivia a port on the Pacific and to obtain for her the desired commercial independence.

This is the painful and sad experience which now it is purposed to crown with the exclusion of Bolivia from the Pacific and her final confinement within her mountains.

Under these conditions the free transit Your Excellency offers under the name of free ports and commercial and custom facilities can not be ever considered as free and independent communication. It is, rather, an easement, granted in conformity with international law to a conquered or weaker country, so that she may not die of asphyxia, and an easement with all the inconveniences of the regulations and restrictions the sovereign has a right to impose.

According to Your Excellency, "the bases proposed by Chile are equitable. The only compatible with the present situation, it being an error to affirm that Bolivia has a right to demand a port in exchange for her littoral, it being of no importance whether this littoral is rich and worth many millions."

"Upon the termination of war the victorious nation imposed her conditions; Bolivia being vanquished had to surrender her littoral."

"Chile therefore owes nothing, because she is bound to nothing. The surrender of the littoral was absolute, unconditional, and perfect."

"In consequence, therefore, the bases proposed and accepted by his country (Chile) amounting to large concessions to Bolivia must not be considered as equitable, but as generous as well."

“Chile has appropriated the littoral by the same right Germany had over Alsace and Lorraine, and the United States of North America in Porto Rico: by the right of victory, the supreme law of nations.”

I sincerely lament not to agree with Your Excellency in these conclusions.

The surrender of the littoral has not been absolute, unconditional and perfect. Had it been so, Your Excellency would not be engaged now in these negotiations, to which the character of pressing and not to be deferred has been given. Said surrender was indefinite, in usufruct, so that Chile might profit of the revenues as a war indemnification. Art. 2 of the Pact of Truce provides that only while it is in force Chile was to possess and control the littoral. There has been, therefore, no absolute cession of ownership, and this being the case the cession requested by Chile ought to be the subject of new negotiations and stipulations, and that is what is being done at present. It is, therefore, legitimate to compare the bases and weigh their equity.

To this end I have brought to the discussion the value of the littoral, to show that in exchange for that value, only a strip of territory was asked representing at the most the twentieth part of said value.

The littoral of Bolivia, Mr. Minister, is very rich both on account of its intrinsic value and its revenues, and it is proper to state this, so that the representatives of Chile may act in an equitable manner in the concessions they call generous.

The Bolivian littoral embraces an area of 158,000 square kilometers, with a population of 32,000 inhabitants. It contains four ports, Tocopilla, Antofagasta, Cobija, and Mejillones, and seven coves, Gatico, Guanillos, Michilla, Tames, Gualaguala, Cobre, and Paquico.

Its fiscal and municipal revenues amounted last year to \$7,500,000.

It contains an abundant wealth of silver, copper, gold, borax, sulphur, nitrate, and salt deposits.

The Toco nitrate fields are very extensive, and they alone produce to the Treasury a yearly income of \$5,545,000.

There are other nitrate fields with a standard of from 70 to 40 per cent in the Joya region, on the borders of the river Loa, and in other localities; and it has been recently ascertained by investigations and surveys that they embrace an area of 190 square kilometers.

All these nitrate fields will be worked in time, and in a few years the revenue derived from the Bolivian littoral will be over \$10,000,000 per annum.

The industrial and urban properties lying within this territory are estimated at present at forty millions.

It is not venturesome, therefore, to state that the Bolivian littoral with this wealth represents at least a value of one hundred millions.

There is also to be mentioned that during the twenty years Chile has been in possession of said littoral, since the Pact of Truce, she has received at least one hundred millions. During this same period she has imported her natural and manufactured products free of customs duties to Bolivia, thus profiting by the advantages resulting from said franchises.

In exchange for these concessions and these amounts, what have been the demands of Bolivia? A belt of territory containing a port which is equivalent at most to one-twentieth of what has been surrendered; the obligation of Chile to pay the liabilities affecting said littoral, and those recognized in favor of Chilean mining enterprises which suffered during the war seizure of 1879; payments which will indirectly benefit Chile, as all the creditors are Chileans, domiciled in Chile.

Thus Bolivia's generosity is most evidently shown, since Your Excellency uses such words, also the sacrifices she makes to obtain peace. Your Excellency can not, and has no well-founded reasons to qualify Bolivia's conduct as refractory to pacific solutions by reason of her exaggerated pretensions.

I shall not dwell upon the declarations Your Excellency has deemed expedient to make in the communication to which this is a reply, and according to which victory would be the supreme law of nations. By so stating Your Excellency has in the name of his Government compromised principles of public law heretofore universally admitted; and it is not amiss to remember that said principles have been newly sanctioned by the greatest powers in the last International Congress held at The Hague, which, notwithstanding the military forces at their disposal, have sought in their memorable conferences to attain highly humanitarian ends, endeavoring to prevent the great ills of war, and to insure the empire of right and justice.

Neither is it out of place to remember here the declarations of the American Congress of April 18, 1890, against conquest and territorial cessions under threat of war or pressure of armed forces

and the remarkable conduct of European powers when upon meditating in the last war between Turkey and Greece they caused the idea to prevail that indemnification ought not to be unlimited, but in proportion to the financial means of the vanquished.

Before these precedents, authorized by the agreement of the first military nations, Your Excellency will allow me to state with great sorrow that only an exaggerated patriotic zeal could have influenced you to deny these principles to the country I have the honor to represent.

“For many years, Mr. Minister, your country has wished to exchange the Pact of Truce for a Treaty of Peace, and settle in a final manner the differences with Bolivia. The Chilean Government and people can not wait any longer; they believe they have patiently waited.” Whoever should read these lines would think that Bolivia has resisted to settle said differences. This charge is not exact.

The Pact of Truce is both ominous and onerous to Bolivia exclusively, and for this same reason it is in her well-understood interests to define the present situation.

With this end in view, she has on several occasions proposed certain bases which sometimes have been rejected for no other reason than that the Chilean people had changed their aspirations; at other times treaties have been concluded and the Bolivian people and Congress approved them, while Chile has abandoned them of her own volition. The twenty years spent in fruitless negotiations are due to the policy of Chile, a strong nation constantly on a war footing, and for these reasons the only factor responsible for the events.

Although in the judgment of Your Excellency it becomes ordinary politicians to cling to an idea in harmony with the prevailing public sentiment, I must make the statement, while answering this point, that politicians in Bolivia have always been led by the minimum of the concessions the victor would grant, and have agreed in the majority of cases with the propositions, both projected and written by the Chilean Department (Cancilleria) itself. It is in Chile where public sentiment has changed at the same time that the conduct of her politicians, this being, in Your Excellency's words, “a matter worthy of meditation on the part of the statesmen of Bolivia to investigate why a judicious and justice-loving people such as Chile has in regard to Tacna and Arica ideas very different from those publicly expressed in May, 1895.”

Be it as it may, my country, Mr. Minister, sincerely yearns for peace and has given numerous proofs in this connection; the tenor, the form of this very document itself, the exquisite courtesy shown by this Department (Cancilleria) are further evidence of this, in the presence of Your Excellency's communication.

Chile having suddenly changed the old bases for new and unexpected ones, my country is in need of reflection upon them. The Bolivian questions with Chile are complex and difficult, embracing territories, frontiers, commerce, custom-houses, and indemnifications, and such matters can not be settled finally on first impression.

Bolivia, no matter how weak she is, is an independent and sovereign nation, on a level with the others, and in her negotiations has a right to proceed calmly, consulting her interests. She would not accept any imposition, no matter in what form; on the contrary, under such conditions it would be in her dignity to postpone all diplomatic negotiations.

The Pact of Truce of April 4, 1844, ended the state of war and determined the political, commercial and customs relations between the two States. It has been in reality a Treaty of Peace, no matter how frequently the return to hostilities has been mentioned, without further formality than one year's advice.

The amendments to the clauses of this pact is and must be a matter of negotiations with free and ample deliberation, as set forth in Art. 7, which provides that in entering into a Pact of Truce the purpose of the contracting parties was to prepare and facilitate the settlement of a solid and stable peace, reciprocally binding themselves to continue negotiations leading to this end. If, unfortunately, a new treaty were not concluded, said pact would remain in force while waiting for the opportunity to conclude a final one.

Upon these convictions the Bolivian Congress will consider the bases proposed by both Departments (Cancillerias), not losing sight of Your Excellency's categorical assertions that the Government and the Chilean people have the unflinching purpose to maintain their possession and domain over the territories in actual occupation by them.

With the assurances that the present negotiations shall continue on pacific and cordial terms, in deference to the high and delicate interests involved, I take pleasure in availing myself of this new opportunity to offer Your Excellency my highest and most distinguished consideration.

(Signed.)

ELIODORO VILLAZON.

Exhibit 3A 11.**EMPRÉSTITO BOLIVIANO.**

| | | |
|------------------|-------------------|------------------|
| (Valor del bono) | de 8 % anual | (Valor del bono) |
| Bono No. | [Hai una viñeta.] | Bono No. |
| | por \$1.333.400 | |

Ajente para el pago de intereses i amortizacion el Banco Chileno Garantizador de Valores

Yo Aniceto Vergara Albano, Enviado Extraordinario i Ministro Plenipotenciario de la República de Bolivia en Chile, en virtud del Pleno Poder conferido por acto de 1º de Diciembre de 1867 en la ciudad de La Paz por S. E. Don Mariano Melgarejo, Presidente de la República, i en conformidad a las instrucciones recibidas de mi Gobierno, para proceder “desde luego a la contratacion de dicho empréstito,” declaro: que para garantir el fiel pago de los intereses i amortizacion del empréstito, obligo irrevocablemente a la República de Bolivia, empeñando todas las rentas, i afecto especialmente la renta aduanera de la frontera del Perú i la explotacion de los guanos de Mejillones i derecho de explotacion de Metales.

Y yo el dicho Aniceto Vergara Albano declaro: que el portador del presente bono tiene derecho a la suma de — pesos del empréstito mencionado por ser este Bono parte del total de la emision de \$1.333.400 hecha con arreglo a las siguientes condiciones.

ARTº. 1º. Los bonos ganarán el interes del Ocho por ciento anual, pagadero por semestres vencidos el los dias 30 de Junio i 31 de Dicbre de cada año; en cambio del cupon respectivo. ARTº. 2º. El Gobierno de Bolivia destinará anualmente un 4% del monto total de los bonos para la amortizacion de este empréstito, que se cubrirá en la forma i condiciones i en los mismos dias designados para el pago de intereses. Este fondo se aumentará semestralmente con los intereses de los bonos redimidos en el semestre o semestres anteriores. ARTº. 3º. Tanto el pago de intereses como el del capital de los bonos que deben amortizarse se verificará en los dias espresados en los artículos anteriores, en la oficina del Banco Garantizador de Valores. A este fin, el Gobierno de Bolivia se obliga a remitir al citado Banco la suma de Ochenta mil cuatro pesos moneda de Chile, en cada semestre. El primer pago de intereses se verificará el 30 de Junio de 1868, i el último el 31 de Diciembre de 1881, en cuyo dia el Gobierno de Bolivia cubrirá el bono o bonos que pudieran quedar en circulacion. ARTº. 4º. La amortizacion de los bonos se verificará por propuestas cerradas o por sorteo a la par, segun convenga al Gobierno. Esta operacion tendrá lugar

diez días ántes, a lo ménos, del plazo fijado para el pago de intereses, en la oficina del Banco Garantizador, a presencia del representante del Gobierno de Bolivia o de la persona que comisionare al efecto i de un Notario público. ART°. 5°. Los números de los bonos sorteados o admitidos en las propuestas se anunciarán en dos diarios de los que se publiquen en Santiago, ántes del día designado para el pago de su importe, que se verificará juntamente con el de los intereses vencidos. Estos bonos dejarán de ganar interes desde el semestre siguiente a aquel en que se hubiese anunciado el sorteo o aceptacion de propuestas. ART°. 6°. Los bonos i cupones pagados se conservarán en la oficina del Banco Garantizador de Valores, debiendo inutilizarse con intervencion del representante de Bolivia i de un Notario público. ART°. 7°. Tanto los intereses como el fondo de amortizacion correspondiente serán pagados al tenedor cualquiera que sea la nacionalidad de éste, sin atender al estado de las relaciones de Bolivia con la nacion a que pertenezcan los tenedores. La negociacion i trasmision de derechos de los bonos se verificará conforme a las leyes de Chile.

ART°. 8°. Si por algun accidente se retardara el anuncio ^{Hai un} _{sello.} semestral que debe dar el Banco Garantizador para el pago de intereses v. g. por perdida de letras o estraño de las remesas, etc. el Gobierno de Bolivia considerará cada cupon como un bono que ganará el 8% anual desde el día que se defirio su pago hasta el día en que se verifique. Por último declaro perpetua e irrevocablemente ligada a la República de Bolivia i a su Gobierno al cumplimiento de cada una de las estipulaciones precedentes. En testimonio de lo cual, lo he firmado de mi mano i sellado con el sello de la Legacion el día 1° de Enero de 1868.

A. VERGARA ALBANO.

Certifico que el precedente es copia testual de un bono que he tenido a la vista, de los que se emitieron con ocasion del empréstito boliviano contratado en Chile el año mil ochocientos sesenta i siete—Santiago, 30 de Octubre de 1900.

MARIANO MELO E.

Notario.

Los Notarios que subscriben certifican la autenticidad de la firma anterior, de Don Mariano Melo Egaña, Notario Público de esta ciudad, en actual ejercicio de sus funciones. Santiago de Chile treinta de octubre de 1900

[Stamp.]

EDUARDO REYES,

Notario.

[Estampilla.]

ABRAHAM DEL RIO,

Notario.

El Ministro de Justicia de la República de Chile legaliza las firmas de los Notarios Públicos de Santiago ss Eduardo Reyes D. y Abraham del Rio.

Santiago 30 de Octubre de 1900

[L. s.]

RICARDO ANQUITA

Sub-Secretario

El Ministerio de Relaciones Exteriores de Chile certifica la Autenticidad de la firma del Señor don Ricardo Anquita Sub-Secretario del Mrio. de Justicia

Santiago 30 de Octubre de 1900

El Sub-Secretario.

[L. s.]

MANUEL FOSTER R.

Certifico la autenticidad de la firma del Sub-Secretario del Ministerio de Relaciones Exteriores de Chile, don Manuel Foster R.

Washington 28 de noviembre de 1900

[L. s.]

E. INFANTE V.

Secretario de la Legacion de Chile en Washington.

[Translation.]

BOLIVIAN LOAN.

(Value of the Bond)

of 8 % per annum

(Value of the Bond)

Bond No. -----

[Seal.]

Bond No. -----

For 1,333,400

Agent for the payment of interest and amortization, the "Banco Chileno Garantizador de Valores"

I, Anicelo Vergara Albano, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Bolivia in Chile, by virtue of full powers conferred upon me by an act of December 1, 1867, in the city of La Paz, by His Excellency Don Mariano Melgarejo, President of the Republic, and in accordance with the instructions received from my Government, to proceed "at once with the negotiation of said loan," declare; that in order to guarantee the faithful payment of the interest and the amortization of the loan, I irrevocably bind the Republic of Bolivia, by pledging all the revenues, and especially the customs revenues of the frontier of Peru and the working of the guanos of Mejillones and the right to the metal workings.

And I, the aforesaid Aniceto Vergara Albano, hereby declare; that the holder of this bond is entitled to the sum of pesos of the above mentioned loan, this bond being a portion of the total

issue of 1,333,400 made in accordance with the following conditions.

ART. 1. The bonds shall bear an interest of 8% per annum, payable at the expiration of every six months on June 30th and December 31st of every year, upon presentation of the respective coupon.

ART. 2. The Government of Bolivia will annually devote 4% of the total amount of the bonds for the amortization of this loan, which shall be taken up in the manner, under the conditions and upon the days fixed for the payment of interest. This fund shall be increased semiannually with the interest upon the bonds redeemed during the preceding half year or years.

ART. 3. The payment of the interest as well as of the principal of the bonds to be amortized shall take place upon the days mentioned in the foregoing articles, in the office of the "Banco Garantizador de Valores." For this purpose the government of Bolivia binds itself to forward to the said Bank the sum of eighty thousand four hundred pesos, Chilean money, every half year. The first payment of interest will take place on the 30th of June, 1868, and the last upon the 31st of December 1881, upon which day the government of Bolivia will take up the bond or bonds which may still be in circulation.

ART. 4. The amortization of the bonds shall take place by sealed bids or a drawing, as may best suit the government. The drawing or bidding will take place at least ten days before the period fixed for the payment of interest, in the office of the "Banco Garantizador" in the presence of the representative of the government of Bolivia, or of the person who may be commissioned therefor, and of a Notary Public.

ART. 5. The numbers of the bonds drawn or admitted in the bids shall be announced in the newspapers published in Santiago, before the day set for the payment of their value, which payment shall take place simultaneously with the payment of the interest due. These bonds shall cease drawing interest from the half year following that during which the drawing or acceptance of bids was announced.

ART. 6. The paid bonds and coupons shall be preserved in the office of the "Banco Garantizador de Valores" and must be destroyed in the presence of the representative of the government of Bolivia and of a Notary Public.

ART. 7. The interest as well as the amortization fund which may be proper shall be paid to the holder, whatever be his nationality, without considering the state of the relations of Bolivia

with the nation to which the holders may belong. The negotiation and transfer of the bonds shall take place in accordance with the laws of Chile.

ART. 8. If, by reason of any accident, the half-yearly announcement which the Banco Garantizador is to make for the payment of interest should be delayed, either through the loss of drafts or remittances, etc., the Government of Bolivia will consider each coupon as a bond drawing an interest of 8% per annum, from the day payment should have been made until it takes place. I declare, finally, the Republic of Bolivia and its government perpetually and irrevocably bound to fulfill each of the foregoing stipulations. In certification of which, I have signed it with my hand and sealed it with the seal of the Legation on the first day of January 1868.

[SEAL.] (Signed.) A. VERGARA ALBANO.

I hereby certify that the foregoing is a true copy of a bond which I have examined, of those issued upon the occasion of the Bolivian loan negotiated in Chile in the year one thousand eight hundred and sixty seven.

Santiago, October 30, 1900.

[Stamp.] (Signed.) M. MARIANO MELO E.

The undersigned Notaries hereby certify as to the authenticity of the foregoing signature of Don Mariano Melo Egafía, a Notary Public of this city, actually in the exercise of his functions.

Santiago de Chile, October 30, 1900.

[Stamp.] (Signed.) EDUARDO REYES,
[SEAL.] Notary.
[Stamp.] ABRAHAM DEL RIO,
[SEAL.] Notary.

The Ministry of Justice of the Republic of Chile certifies the signatures of the Notaries Public of Santiago, Messrs. Eduardo Reyes D. and Abraham del Rio.

Santiago, October 30, 1900.

[SEAL.] (Signed.) RICARDO ANQUITA,
Assistant Secretary.

The Ministry of Foreign Relations of Chile certifies as to the authenticity of the signature of Señor Don Ricardo Anquita, Assistant Secretary of the Ministry of Justice.

Santiago, October 30, 1900.

[SEAL.] (Signed.) MANUEL FOSTER R.

I hereby certify that the signature of the Assistant Secretary of the Ministry of Foreign Relations, Don Manuel Foster R. is authentic.

Washington, November 28, 1900.

[SEAL.]

(Signed.)

E. INFANTE V.

Secretary of the Legation of Chile at Washington.

Exhibit 3a 12. Filed January 5, 1901.

[Translation.]

[From the "Compilation of Treaties and Conventions between Chile and other Powers," published by authority of Supreme Government. 1893-97.]

The Chilean Minister for Foreign Affairs to the Bolivian Envoy.

MINISTRY OF FOREIGN AFFAIRS OF CHILE,

Santiago, April 29, 1896.

SIR: I have the honour to acknowledge the receipt of your Excellency's despatch of this date, in which you request that the insertion will not be insisted on of the phrase relative to the non-interruption of the continuity of the Chilean territory in the agreement now being drawn up for the definition of the meaning of Article 4 of the protocol of the ninth December 1895.

Your Excellency considers such declaration unnecessary because the continuity of the territory is preserved by the stipulation that it shall (be) Vitor or another analogous roadstead that Chile shall be obliged to deliver over to Bolivia in case the acquisition of Tacna and Arica shall not be obtained.

In view of the grounds adduced by your Excellency in demonstrating that it will be unnecessary to insert the phrase in the terms referred to, it gives me pleasure to accede to the suggestion made to me by you.

It is my duty, however, to signify to your Excellency that, as was expressed in our last conference, the failure by either of the Congresses to approve of the Protocol of the 9th December and the Protocol drawn up by us explanatory of the same implies a disagreement upon a fundamental basis of the Treaties of May which shall thereby become wholly without effect.

I renew etc.,

(Signed.)

ADOLFO GUERRERO.

Señor HERIBERTO GUTIERREZ.

[Translation.]

The Bolivian Envoy to the Chilean Minister for Foreign Affairs.

LEGATION OF BOLIVIA IN CHILE,

Santiago, April 30, 1896.

SIR: Your Excellency has been good enough to accept in your despatch of yesterday the proposal that I had the honor to make in my despatch of the same date relative to the continuity of Chilean territory.

In finally disposing of that declaration, I am to announce to your Excellency my perfect agreement with the contents of the second part of your despatch above mentioned, in order that it shall remain established that the failure by either of the Congresses to approve of the Protocol of the 9th December and the Protocol drawn up by us explanatory of the same implies a disagreement upon a fundamental basis of the Treaties of May which shall thereby become wholly without effect.

I renew etc.

(Signed.)

H. GUTIERREZ.

Señor ADOLFO GUERRERO.

Exhibit 3a 13. Filed January 8, 1901.

JANUARY 8, 1901.

| | | |
|------------------------|---|--------|
| HENRY CHAUNCEY | } | No. 3. |
| <i>vs.</i> | | |
| THE REPUBLIC OF CHILE. | | |

And now comes the Agent for the Republic of Chile and says that the claimants are not entitled to have or maintain their claim against the Republic of Chile.

GROUNDSS. .

I.

The claim is presented by Henry Chauncey as the surviving partner of and on the part of Alsop & Co., and payment to Alsop & Co. is demanded.

II.

The claim is based upon a contract entered into between Alsop & Co. and the Republic of Bolivia.

III.

Alsop & Co. is not an American co-partnership, but a Chilean Society; and as such Chilean Society, Alsop & Co. is a juridical person and a citizen of the Republic of Chile.

IV.

The claim is not, therefore, within the jurisdiction of the Commission, because the Treaty does not give to the Commission power to consider claims on the part of Chilean citizens against Chile.

(Signed.)

ANIBAL CRUZ.

Agent for Chile.

[NOTE.—Exhibit A14, filed January 11, 1901, being a book, entitled "Recopilacion de Tratados y Convenciones celebrados entre La Republica de Chile y las Potencias Extranjeras. (1893-1897)," with special reference to pages 282 and 302, will be found in separate volume.]

Exhibit No. 3a 15. Filed January 11, 1901.

CIRCULAR TO THE CHILIAN DIPLOMATIC CORPS.

FOREIGN RELATIONS DEPARTMENT OF CHILE,

Santiago, September 30th, 1900.

Consistently with our rule of keeping you, and through you that friendly Government, informed of the real condition of our relations with neighbouring countries with which we have pending questions that may directly or indirectly concern other nations I lost no time in apprising you, by my telegraphic despatch of the 26th instant, of the exact meaning of the note addressed in August 13, 1900, by the Minister Plenipotentiary of Chile at La Paz to the Bolivian Foreign Office.

The wrong interpretation given to that document, and the inevitable conciseness of a telegraphic communication, now lead me to explain to you more fully my Government's policy. I will not go beyond insinuating the capital points, for your personal knowledge of this matter will allow you to develop and complete them should it become necessary to vindicate Chile's proceedings.

You are aware that the Treaties that closed the war forced on our country in 1879 by the Peru-Bolivian alliance did not

definitively settle the difficulties in which it had entangled us. The Treaty of Ancon, 1883, secured to Chile the unconditional and perpetual possession of the department of Tarapaca, but it left in suspense the definitive nationality of those of Tacna and Arica which our country claimed as the necessary security for the safety of its frontier, stipulating that their future allegiance would be determined ten years later by their inhabitants in a popular vote.

Bolivia, by the Treaty of Truce of 1884, handed over to Chile the provisory possession of the Bolivian littoral included between the northern limit of Chile and the southern limit of the annexed department of Tarapaca, deferring to an indefinite date the final conclusion of peace.

Circumstances not under Chile's control and which our continuous efforts could not overcome, have, up to this date, hindered the holding of the plebiscite which is to determine forever the transitory condition of Tacna and Arica. Our constant and earnest endeavours to conclude a definitive Treaty of Peace with Bolivia have not been more successful. Numerous official and public documents I need not refer to give the rugged history of those negotiations which bear witness to the generosity and to the spirit of justice in which Chile has dealt with those vanquished countries.

I will nevertheless point out to your attention the principal cause which is the starting point of all the difficulties which have rendered useless our friendly and conciliatory action. In the course of the protracted and laborious discussion sustained during seventeen years between the Chilian and Peruvian Foreign Offices in view of concluding the plebiscitary protocol concerning Tacna and Arica, Peru repeatedly proposed a form of settlement which substantially consisted: in ceding to Chile the southern zone of the disputed territory, in reserving to itself the northern zone, and in restricting the popular vote to determine the future of the intermediary zone. Bolivia, in the meantime, renewed her pretention which seemed to be already discarded, of getting from Chile a stretch of coast on the Pacific Ocean.

Chile thought that it was about time to re-establish its own permanent peace, the greatest benefit for a nation; that it was about time to secure the tranquillity of the continent, continuously disturbed by those international squabbles, and Chile undertook to do it even at the expense of sacrifices that concerned the security of her frontiers, a circumstance that would tax her with

the permanent burden of keeping up the costly elements of an efficient defense. Chile, therefore, implicitly trusting in the expontaneous and repeated proposals of Peru, met Bolivia's persistent and unjustifiable demand, and concluded with her government a convention promising to cede to her the territory of Tacna and Arica or any portion thereof that Chile might acquire in virtue of the plebiscite or through direct negotiations. Chile was under the impression that she was thus generously and finally solving all pending difficulties. Peru's proposed form of settlement was thus accepted; Bolivia got thus her hobby of securing a port on the Pacific Ocean; Chile was the only one called to make a sacrifice, for she gave up the rights secured to her by existent Treaties, disregarded the very valuable interest of her citizens domiciled in the ceded territory, and drew back her boundary line towards the South where it became endangered, unsafe and of difficult defense. This sacrifice, excessive though it was, did not outweigh in the spirit of the Government of Chile its ardent wish of at length transforming a protracted condition of hostile mistrust into a situation of sincere friendship.

This generous and conciliatory policy adopted by Chile in her endeavor to give full satisfaction to all conflicting interests at the expense of her own, only brought to her a painful disappointment the worst feature of which was, not the sacrifice incurred by Chile, but its absolute uselessness. Actual facts convinced us that Chilian interests might be separately reconciled with those of Peru or with those of Bolivia, but that it is utterly impossible to overcome the latent but scarcely dessembled disagreements and jealousies which embitter the relations of those two quondam allies. The sad truth is, although it may seem incredible, that both the Peruvian and the Bolivian diplomacy, rendered blind by unreasonable resentments, appeared, from that very moment, bent, not on disentangling their respective countries from a difficult position, but on besetting themselves with difficulties, and reciprocally accusing each other of perfidy and disloyalty.

As soon as the Government of Peru became acquainted of the fact that Chile had concluded a convention with Bolivia engaging to transfer to her the dominion over Tacna and Arica in case she would eventually secure it in accordance with Treaty stipulations, it informed the Chilian Government that it would not go on negotiating for the conclusion of the plebiscitary protocol, but would wait to see what the decision of the Congress of Chile was in regard to the Chilo-Bolivian Convention. The Peruvian Repre-

representatives declared to us that the cession of territory formerly Peruvian to their quondam ally was regarded in Peru as a burning offense that public opinion would not endure.

The Government of Bolivia declared at the same time that it would postpone the conclusion of a definitive peace with Chile until the plebiscite had been held in Tacna and Arica; until according to its result, it could reckon upon the transferment to it of that territory.

Thiswise, when we thought we had reached, thanks to our long endeavours and to our dire sacrifices, a friendly solution we found ourselves confronted by obstacles unforeseen and in an inextricable situation. Peru refused to negotiate for the adjustment of the plebiscitary protocol until we would conclude with Bolivia a Treaty of Peace precluding all future possibility of her getting possession of Tacna and Arica; and Bolivia, on her turn, insisted on deferring the negotiations of a Treaty of Peace until we had concluded the plebiscitary protocol and even until the said plebiscite had been held.

You can readily understand that this condition of things although abnormal was advantageous to our interests. It allowed Chile, apparently against her own will and evidently coerced by her antagonists, to indefinitely continue to hold Tacna and Arica and the Bolivian littoral revindicated in 1879. To have proposed an equitable settlement, to have thereafter resigned herself to a condition of things forced upon her by her antagonists and to have, then, patiently awaited for them to wisely abandon the wrong way along which they had gone astray, was enough to set at rest Chile's conscience and to win to her all neutral opinion.

Chile, nevertheless, has oftentimes given precedence over her interests and over her most incontrovertible rights to considerations of a higher order, and those considerations induced her to forego an irregular although advantageous situation and decided her to persevere in negotiating for a solid and lasting agreement.

The peace of three nations will be constantly threatened and consequently the whole continent will necessarily be disturbed, whilst the nationality of Tacna and Arica is not definitively settled and the friendly relations between Chile and Bolivia are not thoroughly reestablished on the basis of a solemn Treaty. Antagonism and anxieties daily break out under the ominous shadow of such a lamentable condition of things, antagonisms and anxieties which relax and sever the traditional and beneficent

links of American brotherhood and which accumulate mistrusts, the explosion of which would cause the ruin of these young republics, bound to conjointly advance in their progressive ways.

Chile could not undertake the responsibility of such an ill-omened situation, notwithstanding that its maintenance might be to the advantage of her interests. The natural opposition of Peru to the transferment of Tacna and Arica to Bolivia, whom she regarded as a disloyal friend bent on profiting at the expense of her former ally, on the one hand, and the claim laid by Bolivia to that Territory on the other, blocked the way to a final settlement.

Chile's inevitable duty therefore consisted in suppressing, once for all, that source of insoluble difficulties. The defense of her own rights and the preservation of the general tranquillity required her to follow that policy; the defense of her right, for, under the treaty of Ancon, Chile and Peru are equally entitled to expect the permanent acquisition of the disputed territory, and the treaty eventually transferring it to Bolivia not being sanctioned, Chile is, in case it should secure it, under no obligation of transferring it to a third party; the preservation of the general tranquillity, because, once peace established between the three Republics and all causes of future conflicts thus eradicated, the uneasiness and alarm so deeply felt would disappear.

The Chilean Foreign Office, consequently, instructed its agents in Lima and La Paz to inform those Governments of the henceforward unchangeable policy it had adopted, viz: To that of Peru that Chile would fully exert the right secured to her by the treaty of Ancon and that she intended, should the plebiscite decide in her favor, keeping to herself the sovereignty over Tacna and Arica; and to that of Bolivia, that Chile was ready to grant her a generous compensation for the stretch of coast occupied as an adequate war indemnity, in exchange for an early settlement of a definite peace from the conditions of which all Bolivian pretensions over Tacna and Arica should be excluded, for that territory does not at present belong to Chile, and because Chile cannot subordinate her tranquillity to the accomplishment, in an indefinite time, of an uncertain condition.

Our Plenipotentiary Minister in La Paz addressed to the Bolivian Foreign Office his above-mentioned communication of August 13, 1900, in obedience to those instructions which express this Government's unalterable policy, a policy which it will consistently maintain until the solution of the problem is reached, a policy resulting from the painful experience of

seventeen years, and from the rooted conviction that to deviate from it is tantamount to abandoning the only way that leads to a complete settlement.

You will notice that the communication of the Chilean Plenipotentiary is an answer to several notes from the Minister of Foreign Affairs of Bolivia, proposing terms of peace. This fact proves how wrong it is to consider that document as an **ULTIMATUM**. **THERE IS NO ULTIMATUM** in discussing a series of propositions, in accepting some of them, in refusing a few deemed inadmissible on solid grounds, in suggesting the modification of others and in keeping the negotiation open. The government of Chile has not considered the bases proposed by that of Bolivia as an *Ultimatum*, and the Bolivian Government is not justified in attributing that character to the terms proposed by the Representative of Chile, simply because they previously and irrevocably discard the idea of the cession of a territory not in the possession of our country, a territory that may never belong to it, and of which it cannot therefore dispose.

I might end here this communication after having accomplished its principal object, which is to explain the circumstances that required, for the sake of the peace of the Continent and of the peace of the Republics of Peru and Bolivia as well, that the declaration contained in the note of the Chilean Minister in La Paz should be made, and I might leave entrusted to your discretion the explanation of a few incidents of the said note which may have unfavourably impressed the enlightened opinion of that country. I deem it convenient, nevertheless, to call your attention to certain subjects of special importance which require to be clearly stated in order to establish the honesty and legitimacy of Chile's conduct.

Even those that acknowledge the right of Chile to procure and hold the sovereignty over Tacna and Arica allege that she is equitably obliged to cede that territory or a part of it, or an equivalent one, to Bolivia, in order to endow her with a port and with a stretch of littoral, that Chile possesses in abundance and of which Bolivia has been deprived by conquest.

You are aware that among nations, as among persons, in regard to their private property, there is no equity obliging those that possess a greater extension of territory to cede part of it to those that possess less.

Moreover the historical inaccuracy of the ungrounded statement that the littoral lost by Bolivia in the war of 1879 was

acquired by Chile simply by the right of conquest and victory will have deeply surprised you.

The northern boundary of Chile was, from its earliest existence, at least the 23d parallel of south latitude. The most ancient and most authoritative historians, the legal enactments of the Spanish Sovereigns and the acts of jurisdiction exerted by Chilean authorities during the colonial period and during our existence as an independent nation, uniformly concur in establishing this fact, never contradicted until April, 1842.

It was only after that date, when Chilean initiative had discovered and Chilean capital had begun to develop the several mineral and organic resources of this territory that Bolivia came forward to dispute our rights of sovereignty and dominion, constantly exercised by Chile and repeatedly admitted by Bolivia herself. Our Government, after a protracted discussion between the Chancelleries and after victoriously establishing its rights, desirous of maintaining its friendly relations with Bolivia, ceded to her a part of the disputed territory down to the 24th parallel of south latitude in consideration of political and commercial privileges granted by her Government to our numerous citizens and their valuable interests domiciled in that territory. The treaty of 1866, the clauses of which binding Bolivia her Government never respected, although Chile fulfilled those stipulated in favor of Bolivia, bears witness as to this.

The same anomaly repeated itself even more offensively when a similar Treaty concluded in 1874 superseded that of 1866: Chile religiously kept all the engagements it had undertaken, and could not succeed in getting Bolivia to comply with any of those that regarded her. It would be too long and of no avail to renew here the afflicting history of those international compacts so loyally respected by one of the parties as systematically disregarded by the other. You know that the patient condescendence of Chile did not stop until the day in which Bolivia, after having *defacto* frustrated those treaties, explicitly and officially declared her decision of not executing them in the future, and passing from the provocation by word to the provocation by deed, inflicted on our country such extreme offenses that they seemed incomprehensible until they were explained by the revelation of a secret treaty of offensive alliance against Chile concluded by Peru and Bolivia.

No other way was left open to Chile but that which is pointed out by justice and his lawful right to a person who sells or ex-

changes his property and who, instead of receiving the stipulated price or even a promise for the future, only gets the explicit declaration that he will never be paid; Chile revindicated what belonged to her, what had never ceased being hers, the concessionary having never complied with the indispensable conditions upon which the cession was made.

It was therefore not on the title of conquest but on that of reversion that Chile recovered her northern territory up to the 23d parallel; she did not allege the right of victory but that of legitimate and traditional ownership; Bolivia was not deprived of a single inch of her territory, but she, through her own act, rendered null and void the treaty of cession concluded with Chile, and thus restored the condition of things which existed prior to 1866, and thereby returned the property, ceded in a contract annulled by the concessionary, to the dominium of its primitive owner.

At the conclusion of that war forced upon us which brought on our country unmeasurable sacrifices,* Peru transferred to Chile as a war indemnity, its department of Tarapaca. There remained then between the old northern boundary of Chile and the southern limit of the department recently annexed, viz: between parallel 23d and the mouth of river Loa, a narrow and little valuable belt of Bolivian littoral, which interrupted the continuity of the territory of Chile. Besides, the indemnity due by Bolivia for the damages caused by a war she had brought upon three nations had yet to be settled. Any one of those two reasons justified the acquisition by Chile of that narrow belt of land, the material value of which was entirely due to Chilian labour and to Chilian capital.

Both those points and specially the substantial necessity of avoiding the interruption of the national territory compelled Chile, for the sake of her own existence, to maintain her possession of that small Bolivian littoral. The acquisition of Tarapaca without that belt of land which intersected it from our northern boundary would have been ridiculous, dangerous and naturally absurd.

I must here call your attention to a reproach frequently made to our country by those that, carried away by a groundless sentimentalism or by an open animadversion, neglect to even superficially consider the real nature of things. They accuse us of covetousness, relying on computations that some regard as ingenious, but which are only extravagant, by means of which

they pretend to show that the war indemnity claimed by Chile exceeded several times the actual value of the sacrifices brought upon her by that war.

Chile, according to those doubtful counsellors, in order to be equitable should restore to Peru the territory of Tacna and Arica, renouncing, without any compensation, the rights conferred upon her by the Ancon Treaty and should grant Bolivia a sea border, renouncing, with equal disinterestedness, to all indemnity for the damages she inflicted upon her. In other terms Chile should declare herself pecuniarily paid and thoroughly satisfied with the glory of having vanquished, after being dragged to a sanguinary and most serious war of four years which cost her thousands of valuable lives and hundreds of millions dollars.

You may probably think that the mention of such irrelevant insinuations ought to be excused instead of raising them to the level of a serious discussion, but as they are too widely divulged and they may finally influence foreign opinion, I deem it advisable to state that the war indemnity received by Chile from Peru and Bolivia was not adequate compensation for the expenses and sacrifices that her antagonists forced upon her.

Apart from the fact that the intensity of a sacrifice can be better appreciated by he who endures it than by those that witness it, and not reckoning calamities that cannot be estimated in money, it has been proved beyond doubt that the department of Tarapaca, in the condition in which it was and in the actual value it had when it was handed over to Chile, was not worth the amount spent in the war. Whatever that territory may have produced thereafter and whatever it may be worth to-day has not been granted by Peru, but is the natural and remunerative result of Chilian labour and Chilian capital therein invested.

As for the small Bolivian littoral, Chile, who might have kept it as a moderate and even a deficient war indemnity, has always tendered and continues even now to tender to Bolivia, in exchange for it, pecuniary compensations and material advantages worth to her much more than the value of that territory. Bolivian statesmen acknowledge this and would readily accept what Chile offers as a liberal price for that littoral were it not for the feelings of self-pride that inspires them with the wish of having ports on the Pacific Ocean. The most exaggerated pecuniary estimations of that territory do not attain the amount at which are valued the offers made by Chile.

The covetousness reproached to our country does not therefore exist; Chile did not take possession of the Bolivian littoral attracted by an imaginary wealth and does not keep it for the sake of its material value. She recovered the most important part of it on a title of reversion and she keeps the rest of it because it is absolutely necessary for her existence, because it is an indispensable condition of her political, administrative and geographical nationality, that would otherwise become intersected, dislocated and an utter impossibility.

These are, Mr. Minister, in their general features, the antecedents of our conduct in regard to the questions now pending between us and Bolivia and Peru. I will not dwell on the mere literary criticisms made by some to the note of our representative at La Paz. The international policy of a State cannot be properly judged by the external form of a single document. It is worth mentioning, nevertheless, that those remarks have not been made in Bolivia, but abroad. The enlightened Bolivian Government has declared that the note and the propositions of the Chilean Minister deserve to be examined and my Government has reasons to hope that the said attentive and reflective consideration will lead to the complete restoration of the cordial relations between both countries, and to the adjustment of a definitive peace Chile has been seeking for many years with unfaltering energy. This people and its Government, anxious to deliver themselves in perfect security to their peaceful labours at home, in absolute oblivion of the cruel enmities the remnants of war, the last traces of which they strenuously try to obliterate, earnestly seek the opportunities of proving to those sister nations that Chile is bent not only on complying with the dictates of justice and equity, but also on convincing them of her cordial and benevolent feelings.

This is the policy my Government has adopted, an honest and unvarying policy, because it is thoroughly convinced that this is the only way of attaining a solution, but, at the same time, a friendly and benevolent policy because it sincerely desires that solution to be reciprocally honorable and satisfactory.

RAFAEL ERRAZURIZ URMENETA.

CIRCULAR AL CUERPO DIPLOMÁTICO CHILENO.

MINISTERIO DE RELACIONES ESTERIORES.

Núm 16.—Santiago, 30 de setiembre de 1900.—Consecuente con el propósito de mantener impuesto a US. i por su conducto a ese Gobierno amigo, del verdadero estado de nuestras relaciones con los países con los cuales tenemos en arreglo asuntos que puedan interesar directa o indirectamente a otras naciones, me he apresurado a informar a US., en mi comunicacion telegráfica de 26 del presente, sobre el recto significado de la nota que el señor Ministro Plenipotenciario de Chile en La Paz ha dirigido, con fecha 13 de agosto último, a la Cancillería boliviana.

La errada intelijencia que se ha dado a ese documento, por una parte, i por otra el laconismo obligado de una comunicacion por telégrafo, me inducen a espresar a US. el pensamiento de mi Gobierno con algun mayor detenimiento, aunque con la brevedad indicada por el conocimiento personal que US. tiene del asunto, i por mi propósito de limitarme a insinuar simplemente los puntos capitales que pueden servir, en caso necesario, para justificar los procedimientos de Chile, i que US. puede fácilmente ampliar i completar.

Como sabe US., los Tratados que pusieron término a la guerra a que nuestro país fué provocado en 1879 por la alianza peruano-boliviana, no despejaron definitivamente las dificultades en que ella nos envolvió. El Tratado de Ancon de 1883 dió a Chile la posesion incondicional i perpetua del departamento peruano de Tarapacá, pero dejó en suspenso la nacionalidad definitiva de los de Tacna i Arica, que nuestro país reclamaba como indispensable para la seguridad de sus fronteras i cuya suerte deberia decidirse diez años mas tarde, por votacion popular de sus habitantes. De la misma manera, el pacto de Tregua de 1884 con Bolivia otorgó a Chile la posesion provisoria de la zona litoral de esa República comprendida entre el límite norte de Chile i el límite sur del departamento anexado de Tarapacá, aplazando para época indefinida el convenio definitivo de paz.

Causas ajenas a la voluntad de Chile, i contra las cuales se han estrellado nuestros constantes esfuerzos, han impedido hasta hoi realizar el plebiscito que ha de resolver en forma permanente la situacion transitoria de Tacna i Arica. No han sido mas afortunadas nuestras continuas i solícitas jestioness para concluir un tratado definitivo de paz con Bolivia. La accidentada historia de estas negociaciones, que patentizan el espíritu de

justicia i de liberalidad con que Chile ha procedido para con los países vencidos, consta de numerosos documentos oficiales i públicos que me escusan de recordarla.

Sin embargo, he de indicar a la consideracion de US. el motivo primordial, que es como el jérmen i oríjen de todas las dificultades que han esterilizado nuestra accion amistosa i conciliadora. En el curso de la prolongada i laboriosa discusion de diecisiete años mantenida entre las cancillerías chilena i peruana para acordar el protocolo plebiscitario de Tacna i Arica, el Perú propuso reiteradas veces una fórmula de arreglo que consistia sustancialmente en ceder a Chile la faja austral del territorio disputado, en reservarse para sí la faja norte i en restringir la votacion popular a la zona intermedia. Juntamente con eso, Bolivia reivolvaba su pretension, que parecia ya eliminada del debate, de que Chile le diese una zona litoral en el Pacífico.

Aunque fuese a costa de sacrificios que podian importar la seguridad de sus fronteras, i que habian de imponerle el perpetuo gravámen de mantener costosísimos elementos de defensa, Chile creyó que era llegado el momento de recuperar establemente su propia paz; que estima el supremo bien de las naciones, i de asegurar, al mismo tiempo, la tranquilidad del continente, sin cesar perturbada por estos deplorables litijios internacionales. En consecuencia, fiando en las proposiciones espontáneas i repetidas del Perú, i accediendo a la pretension tan tenaz i tan injustificada de Bolivia, concluyó con ésta un convenio en virtud del cual le cedia el territorio de Tacna i Arica, o la parte que de él obtuviese en el plebiscito o mediante arreglos directos. Creyó con esto dar solucion final i jenerosa a todas las dificultades: el Perú veria así aceptada la fórmula de arreglo propuesta por él; Bolivia satisfacía su obsesion de tener un puerto en el Pacifico, i solo Chile se despojaba de los derechos que le aseguraban los tratados vijentes, se desentendia de los valiosísimos intereses de sus nacionales establecidos en el territorio cedido, i retiraba sus fronteras hácia el sur, hasta una línea insegura, peligrosa i de difícil defensa. Pero el sacrificio, con ser excesivamente gravoso, pesó ménos en el ánimo del Gobierno chileno que la prolongacion indefinida de la situacion recelosa i hostil que deseaba cambiar en cordial i amistosa.

El resultado de esta conciliadora i liberal conducta con que Chile consultaba i satisfacía todos los intereses en pugna, ménos los suyos propios, fué el penoso desencanto en que lo mas sensible no era la magnitud del sacrificio que aceptábamos, sino su absoluta esterilidad. Los hechos nos convencieron de que, si era posible

armonizar los intereses de Chile con los del Perú o con los de Bolivia, aisladamente, era imposible calmar las desavenencias i rivalidades latentes i no disimuladas entre los antiguos aliados de la guerra del Pacífico. Aunque parezca inverosímil, es la triste verdad que la diplomacia peruana i la boliviana, ofuscadas por un sentimiento irreflexivo, aunque esplicable, parecieron desde ese momento empeñadas mas que en evitar a su propio pais una situacion difícil, en crear dificultades al antiguo amigo a quien acusaban recíprocamente de infidencia i deslealtad.

En efecto: no bien tuvo el Gobierno del Perú conocimiento del convenio que habíamos celebrado con Bolivia para trasferirle, en caso de obtenerlo, el dominio de Tacna i Arica, significó al nuestro que suspendia la discusion del protocolo plebiscitario hasta saber si el Congreso chileno sancionaba ese pacto. Sus representantes mas autorizados nos declararon, al mismo tiempo, que esa cesion del territorio peruano a su antiguo aliado era considerada en el Perú como un hiriente agravio que no podria ser tolerado por el sentimiento público de su pais.

Simultáneamente, el Gobierno de Bolivia declaró que postergaba el arreglo definitivo de paz con Chile hasta tanto que se hubiera efectuado el plebiscito en Tacna i Arica, i hasta que su resultado le manifestase si podia contar con la adquisicion de ese territorio.

De esta manera, cuando merced a nuestro esfuerzo de largos años i a mui duros sacrificios, creíamos haber llegado al desenlace, veíamos surgir un nuevo imprevisto escollo, i se nos colocaba en una situacion sin salida. El Perú se negaba a discutir el protocolo plebiscitario hasta que hubiéramos concluido con Bolivia un tratado de paz del cual quedase eliminado para ésta todo derecho adventicio a la posesion de Tacna i Arica; i Bolivia, a su vez, aplazaba la discusion del tratado de paz hasta despues que conviniésemos con el Perú el protocolo plebiscitario i que efectuásemos el plebiscito.

Fácilmente comprenderá US. hasta qué punto esta situacion, con ser tan anormal e insoluble, era conveniente a nuestros intereses. Merced a ella, aparentemente contra su propia voluntad i esplicitamente obligado por sus mismos contendores, podia Chile conservar indefinidamente la posesion de Tacna i Arica i la del antiguo litoral boliviano que reivindicó en 1879. Bastaba a su satisfaccion i al juicio favorable de los neutrales haber propuesto una solucion equitativa primero, haber aceptado en seguida la situacion que sus adversarios le imponian, i esperar despues sin impaciencia que la

cordura de aquéllos los separase del errado camino en que habian entrado.

Hai, empero, consideraciones de un órden superior, a las cuales Chile ha pospuesto a menudo sus intereses i sus derechos mas incontrovertibles, i que lo indujeron tambien en esta emergencia a desestimar una situacion irregular, aunque tan ventajosa, i a proseguir con nuevo empeño las jestioncs conducentes a un arreglo sólido i durable.

Miéntras la nacionalidad de Tacna i Arica no se resuelva definitivamente, i miéntras un tratado solemne no restablezca en toda su amplitud las buenos relaciones de Chile con Bolivia, se verá constantemente amagada la paz de tres naciones, i de reflejo i necesariamente perturbada la tranquilidad de todo el continente. A la perniciosa sombra de este deplorable estado de cosas nacen antagonismos i zozobras que crecen cada dia, que relajan i cortan los antiguos i bienhechores lazos de confraternidad americana, que van amontonando recelos cuyo estallido seria una catástrofe para estas jóvenes Repúblicas llamadas a labrarse con comunes esfuerzos su camino hácia el progreso.

No podia Chile, no le era dado aceptar la responsabilidad de tan funesta situacion, por mas que su mantenimiento fuese provechoso, como queda dicho, a sus privativos intereses. La barrera que se oponia a un comun arreglo consistia, por una parte, en la natural resistencia del Perú a que el territorio de Tacna i Arica pasase a poder de Bolivia, a quien miraba como amigo desleal que procuraba beneficiarse a costa de su antiguo aliado; i por otra parte, en las pretensiones de Bolivia a la posesion de ese mismo territorio. Se imponia, pues, a Chile el deber ineludible de eliminar de una vez por todas ese jérmén de dificultades insalvables.

Consultaba, al proceder así, su propio derecho i las exigencias de la tranquilidad jeneral. Su propio derecho, puesto que el Tratado de Ancon le otorga las mismas espectativas que al Perú para la adquisicion permanente del territorio disputado, i puesto que, no sancionados los pactos de transferencia en Bolivia, nada lo obliga a ceder a otro el territorio que adquiriera.

I consultada la tranquilidad del continente, porque firmada de la paz entre las tres Repúblicas, i destruida en sus raíces toda causa de posibles conflictos, desaparecerán por el hecho mismo las inquietudes i alarmas que tan profundamente se hacen sentir en estos momentos.

En consecuencia, esta Cancillería impartió a sus representantes en Lima i en la Paz las instrucciones necesarias para que comuni-

casen a los respectivos gobiernos la linea de conducta, en adelante inderivable, que se habia propuesto, a saber: al Perú, que Chile haria uso de la amplitud del derecho que le otorgaba el Pacto de Ancon, i que entendia reservarse para sí el dominio de Tacna i Arica, en caso de serle favorable el plebiscito; i a Bolivia, que estaba dispuesto a compensarle jenerosamente el litoral ocupado a título de indemnizacion, en cambio de acordar cuanto ántes las bases de una paz definitiva, pero eliminando de esas bases sus exigencias sobre Tacna i Arica, por cuanto ese territorio no pertenecia a Chile, i por cuanto no podia éste subordinar su tranquilidad a una condicion eventual i de plazo indefinido.

Cumpliendo eses instrucciones que, lo repito, espresan el propósito inquebrantable de esta Cancillería, el propósito que mantendrá con indeclinable firmeza hasta llegar al desenlace final del litijio, propósito, en fin, que es el resultado de una penosa experiencia de diecisiete años i del convencimiento profundo de que desviarse de él es desviarse del único camino que puede conducir a un arreglo comun; cumpliendo eses instrucciones, decia, nuestro Plenipotenciario en La Paz dirijió a esa Cancillería la citada nota de 13 de agosto último.

Habrá observado US. que la nota del Ministro chileno es contestacion a diversas comunicaciones del señor Ministro de Relaciones Exteriores de Bolivia, proponiendo condiciones de paz. Esta circunstancia manifiesta cuán erradamente se ha calificado de *ultimatum* aquel documento. No hai *ultimatum* en el acto de discutir un cuerpo de proposiciones, de aceptar unas, de rechazar, con fundados argumentos las que son inadmisibles, de indicar en cambio otras, i de dejar abierta la discusion. Ni el Gobierno de Chile ha considerado como *ultimatum* las bases presentadas por el Gobierno de Bolivia, ni éste puede atribuir tal carácter a las que ha propuesto el Representante de Chile, declinando previamente i en forma irrevocable lo que se refiere a la cesion de un territorio de que nuestro pais no está en posesion, que puede no pertenecerle nunca, i del cual, por consiguiente, no se halla en aptitud de disponer.

Esplicado el motivo que hizo indispensable, en obsequio de la paz del continente i de las mismas Repúblicas del Perú i Bolivia, la declaracion contenida en la nota del Ministro de Chile en La Paz, i cumplido con ello el objeto principal de esta comunicacion, podria terminarla aquí, dejando confiada a la discreta sagacidad de US. la esplicacion de algunos accidentes que en la referida nota de 13 de agosto han bodido ser desfavorablemente apreciados por la

opinion ilustrada de ese pais. Quiero, sin embargo, llamar la atencion hácia algunos puntos que considero de especial importancia, que conviene a la rectitud i la lejitimidad de los procedimientos de Chile dejar claramente establecidos.

Aun los que reconocen el derecho estricto de nuestro pais a procurarse i conservar la soberania de Tacna i Arica alegan que Chile está obligádo por equidad a ceder a Bolivia ese territorio, o una parte de él, u otro análogo, a fin de dotarla de un puerto i zona litoral, que Chile posee en abundancia, i de que Bolivia carece desde que Chile la desposeyó (por hecho de conquista).

Ante todo, bien comprende US. que, lo mismo que sucede entre las personas con sus bienes individuales, sucede entre las naciones, que la equidad no obliga a las que poseen mayor estension de territorio a ceder una parte de él a las que poseen ménos.

I en seguida, habrá herido a US. la profunda inexactitud histórica i de hecho que contiene la antojadiza afirmacion de que el litoral perdido por Bolivia en la guerra de 1879 fué adquirido por Chile a título de conquista o por simple derecho de victoria.

El límite norte de Chile, desde los primeros años de su existencia, fué siempre el paralelo 23° por lo ménos. La autoridad de los mas antiguos i autorizados historiadores, las disposiciones legislativas de los soberanos españoles i los actos jurisdiccionales de las autoridades chilenas, durante la época del coloniaje i durante nuestra vida de nacion independiente, son contestes i uniformes en este punto jamas controvertido ántes de 1842.

Solamente con posterioridad a esta fecha, habiéndose descubierto por iniciativa i con dinero de Chile diversas riquezas minerales i orgánicas en aquella rejion, se presentó Bolivia a disputar nuestra soberanía i dominio constantemente ejercidos i en diversas ocasiones oficialmente reconocidos por Bolivia misma. Despues de un detenido debate de las cancillerías i cuando hubo probado victoriosamente su derecho, nuestro Gobierno, deseoso de no alterar las buenas relaciones que con aquel pais lo ligaban, le cedió una parte del territorio disputado hasta el paralelo 24° de latitud sur en cambio de concesiones políticas i comerciales otorgadas por aquél a nuestros numerosos nacionales i sus prósperos i valiosos intereses radicados en esa rejion. Así consta del tratado de 1866, que Bolivia no respetó jamás en ninguna de las estipulaciones que a ella le obligaban, despues de ver cumplidos por Chile todas las que le favorecian.

Renovado análogo pacto en 1874, se repitió la misma anomalía, con caractéres aun mas hirientes: Chile satisfizo relijiosamente

todos los compromisos que se imponia, sin que pudiese obtener de Bolivia el cumplimiento de uno solo de los que le afectaban. Largo i escusado seria renovar aquí la mortificante historia de esos contratos internacionales, tan hidalga i jenerosamente respetados por uno de los contratantes como sistemáticamente burlados por el otro. Sabe US. que la paciente condescendencia de Chile no tuvo término ni límites sino el dia en que Bolivia, despues de invalidar permanentemente en el hecho los tratados, declaró esplicita i oficialmente que no estaba dispuesto a cumplirlos en lo sucesivo. I uniendo a la provocacion de palabra la provocacion de hecho, infirió a nuestro pais agravios extremos, que parecian absolutamente incomprensibles hasta el dia en que vino a esplicarlos el descubrimiento de un Tratado secreto de alianza ofensiva firmada contra Chile por el Perú i Bolivia.

No quedaba a la República otro camino que aquel que la justicia i el buen derecho señalan a la persona que vende o trueca una propiedad, i que, en vez de recibir el precio estipulado, o siquiera una promesa para el porvenir, recibe la declaracion espresa de que no se le pagará jamas: recuperó lo que era suyo; lo que no habia dejado nunca de pertenecerle por no haber cumplido el concesionario las condiciones indispensables de la cesion. No fué, pues, a título de conquista sino por derecho de reivindicacion como Chile recobró su territorio norte hasta el paralelo 23°; no alegó para ello la razon del vencedor, sino la propiedad del dueño lejítimo i tradicional; Bolivia no fué despojada de una pulgada de suelo, sino que invalidó por acto propio el contrato de cesion celebrado con Chile, reponiendo así las cosas al estado en que se hallaban ántes de 1866, i pasando con ello al dominio de su primitivo dueño la propiedad cedida en virtud de un contrato anulado por el cesionario.

A término de aquella guerra a que fuimos provocados, i que tan incalculables sacrificios impuso a nuestro pais, el Perú transfirió a Chile, a título de indemnizacion bélica, su departamento de Tarapacá. Quedó entónces, entre el antiguo límite norte de Chile i el límite sur del departamento incorporado,—es decir, entre el paralelo 23° i la desembocadura del rio Loa—una angosta i poco valiosa zona de litoral bolivano, que se interponia como solucion de continuidad en el territorio de la República. Faltaba, ademas, arreglar la indemnizacion que Bolivia debia por los perjuicios causados en la guerra en que ella envolvió a tres naciones. Cualquiera de estos dos títulos bastaba para justificar la adquisicion por Chile de

aquella estrecha faja de suelo que, como queda dicho, no tenía mas valor material que el que le dieran el trabajo i el capital chilenos.

Ambos puntos i sobre todo la necesidad fundamental, ineludible, de no dejar interrumpida la continuidad del territorio nacional, imponia a Chile, por razon de existencia, la posesion del escaso litoral boliviano. La adquisicion de Tarapacá sin la faja de suelo que se interpone entre él i nuestro límite norte, habria sido no solo irrisoria i peligrosa, sino naturalmente absurda.

Debo aquí insinuar a la apreciacion de US. un reproche que suele hacerse a nuestro pais por aquellos que, dejándose arrastrar por un sentimentalismo infundado o por una reconocida animadversion, no se cuidan de examinar siquiera sea superficialmente la realidad de las cosas: es el reproche de codicia, fundado en cálculos que algunos tienen por ingeniosos, pero que no son mas que pueriles i extravagantes, i con los cuales se intenta demostrar que la indemnizacion de guerra exigida por Chile excede varias veces al valor efectivo de los sacrificios que ella le impuso.

Para ser abnegado, o por lo ménos equitativo, Chile, a juicio de esos consejeros de dudosa imparcialidad, debe devolver al Perú el territorio de Tacna i Arica, renunciando, i sin compensacion alguna, a los derechos que le confiere el tratado de Ancon; i debe dotar a Bolivia de un litoral, renunciando con igual desinteres a indemnizarse de los perjuicios que ésta le irrogó. En otros términos, despues de ser voluntariamente provocados a una sangrienta i gravísima guerra de cuatro años, que nos costó millares de existencias preciosas i centenares de millones de pesos, Chile debe declararse pecuniariamente pagado i malamente satisfecho con la gloria de haber vencido.

Talvez pensará US. que, mas que levantarlas a la altura de una discusion razonada, habria que pedir excusas para ocuparse en insinuaciones tan faltas de seriedad. Pero como ellas se propagan demasiado i pueden al fin impresionar la opinion ajena, conviene afirmar que la indemnizacion bélica recibida por Chile del Perú i Bolivia no alcanzó a cubrir a la República de los gastos i sacrificios a que sus adversarios la obligaron.

Sin hacer mérito de que la intensidad de su sacrificio puede ser mejor apreciada por quien lo sufre que por quien lo contempla tranquilamente, i sin tomar en cuenta las calamidades que son inavaluables en dinero, es un hecho irrefutablemente demostrado que el departamento de Tarapacá, en el estado i en los valores en que Chile lo recibió no alcanzaba importar el dinero efectivo gastado

en la guerra. Lo que ese territorio ha producido despues i lo que puede valer hoi, no ha sido dado por el Perú, sino que es el producto natural i remunerador del trabajo i del capital chilenos allí invertidos.

I en cuanto al escaso litoral boliviano, pudiendo Chile conservarlo como una módica i aun deficiente indemnizacion de guerra, ha ofrecido siempre i sigue ofreciendo todavía a Bolivia, en cambio de él, compensaciones pecuniarias i ventajas materiales que importan muchísimo mas para ella que el valor de ese territorio. Los estadistas mismos de Bolivia lo reconocen así; i si no fuera por la aspiracion de amor propio de tener puertos en el Pacífico, aceptarían sin vacilar lo que Chile ofrece, como un jeneroso precio del litoral ocupado. Las mas subidas avaluaciones pecuniarias que pudieran hacerse de ese territorio no llegarían a la cifra que importan las ofertas de Chile.

No existe, pues, la codicia de que se reprocha a nuestro pais; Chile no ocupó el litoral boliviano atraído por riquezas que no existen, ni lo conserva por su valor material. Recuperó su mejor i mas intensa porcion a titulo de reivindicacion, i conserva la otra parte porque ella es necesaria a su existencia, porque es condicion indispensable de su nacionalidad política, administrativa i jeográfica, que de otra manera se hallaría interrumpida, dislocada, imposible.

Tales son, señor Ministro, en sus razgos mas jenerales, los antecedentes de nuestra actitud en la tramitacion de los asuntos pendientes con Bolivia i con el Perú. No he de distraer la atencion de US. recojiendo las observaciones de mera redaccion que algunos hacen a la nota de nuestro representante en la Paz. No es discreto juzgar de la política internacional de un pais por la forma esterna, de un documento aislado. Es digno de observarse, empero, que no ha sido en Bolivia sino fuera de ella donde esas observaciones se han formulado; el ilustrado Gobierno de Bolivia ha declarado solemnemente que la nota i las proposiciones del plenipotenciario chileno son dignas de exámen, i mi Gobierno espera fundadamente que de ese exámen atento i reflexivo nacerá el restablecimiento completo de las cordiales relaciones entre ámbos paises, i la paz definitiva por la cual viene Chile trabajando sin desaliento tantos años. Anheloso de poder eutregarse sin inquietud de ninguna especie a las tranquilas labores del hogar, i olvidado en absoluto de las crueles enemistades de una guerra cuyas últimas huellas se empeña en borrar, este pais i su Gobierno

desean vivamente encontrar ocasiones no solo de probar a esas naciones hermanas que Chile está dispuesto á cumplir con los dictados de la justicia i la equidad, sino de convencerlos de sus sentimientos de cordialidad i benevolencia.

Tal es la línea de conducta que mi Gobierno se ha trazado: recta; indeclinable, porque es su mas íntimo convencimiento que ésa es la única manera de llegar a un desenlace; pero al mismo tiempo amistosa i benévola, porque anhela que ese desenlace sea mútuamente honroso i satisfactorio.

Dios guarde a US.

R. ERRÁZURIZ URMENETA.

[NOTE.—Exhibit A16, filed January 11, 1901, being a pamphlet entitled “Memoria del Ministro de Relaciones Exteriores, Culto i Colonizacion presentada al Congreso Nacional en 1900,” will be found in a separate volume.]

Proceedings of Commission.

FOURTH SESSION.

OFFICES OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., December 18, 1900.

The session was called to order at 10 o'clock A. M.

Present: The Honorable J. B. Pioda, presiding, the Honorable Commissioners and the Agents and Special Counsel and Secretaries on the part of the United States and Chile.

The minutes of the previous session were read and approved.

The Agent for the United States presented to the Commission Mr. Clifford Stevens Walton, of Washington, D. C., stating that he had been authorized by his Government to appoint him as Special Counsel to assist in matters pending before the Commission.

The Agent for Chile asked leave to file an amended memorial in case No. 18, which leave was granted by the Commission, there being no objection on the part of the Agent for the United States.

Page 5 of the memorial, as amended, will read as follows:

| | | | |
|---|----------|---------|------|
| Lease of vessel from April 6, 1891, date on which she began her voyage from Iquique to San Diego, until September 1, 1891, date of cessation of hostilities | £11,558. | 6. | 8 |
| Coal consumed on two voyages: 160 days at the rate of 30 tons daily, making 4,800 tons at 55 shillings per ton | | 13,200. | 0. 0 |

| | | | |
|---|----------|-----|---|
| Extraordinary repairs on machinery and boilers made necessary by the long voyages to and from San Diego, said machinery and boilers having been constructed purposely for short trips between ports on the coast..... | £5,000. | 0. | 0 |
| Maritime risk for 217 days at the rate of 8 per centum per annum on value of £60,000..... | 2,893. | 6. | 8 |
| Cost of cablegrams, legal fees, and miscellaneous expenses in the United States..... | 1,400. | 0. | 0 |
| Loss of use by reason of absence of steamer from Sept. 1, 1891, to Nov. 10, 1891, thus preventing the company from making four voyages, which, corresponding to conditions of trade, estimated at £2,500 per voyage, according to the books of the company, is..... | 10,000. | 0. | 0 |
| | | | |
| | £44,051. | 13. | 4 |

Page 6 of the Memorial, as amended, will read the same as now with the exception of total amount prayed for in line 2 of paragraph 5, which is changed from £46,551 16s 8d to £44,051 13s 4d.

It was ordered that 100 copies of the Amended Memorial be printed and to be so designated.

On motion of the Honorable Commissioner for Chile, the following rule was adopted:

In the oral argument of any matter pending, the party having the affirmative thereof shall have the opening and shall be followed by the party having the negative, to which the party having the affirmative may reply; the party having the negative shall thereupon close the argument, presenting matters only which are in reply to any new matter presented by the party for the affirmative in his closing argument.

No further oral argument shall be made by either side except by the consent of the Commissioners."

The Agent for the United States discussed the cases pending for adjudication. He claimed that case No. 1 being the case of the Central and South American Telegraph Company, in so far only as item No. 6 therein was concerned, should be included in the list of cases pending before this Commission, and argued at length in support of his contention. The Special Counsel for Chile presented his views in opposition. The Special Counsel for the United States was heard and also the Agent for Chile. The Commission reserved its decision.

A recess was taken from 12 M. until 2 P. M.

Upon reassembling, the Agent for Chile submitted the following resolution in connection with the consideration of case No. 3.

“Whereas it is the intention of the respondent Government to raise the question of jurisdiction of this Commission in this case under the Treaty, as a matter of convenience for the Commission and the Counsel, it is

“*Ordered:* That the arguments on point of jurisdiction be heard and decided alone as soon as practicable.”

The Agent for the United States objected to the resolution, and the Commission granted him until 5 P. M., December 19th, as the necessary time within which to file his written objections.

The Agent for the United States asked leave to file a supplemental Memorial in case No. 3, which leave was granted by the Commission, there being no objection on the part of the Agent for Chile, notwithstanding the fact that this case was closed, submitted, and argued before the prior Commission.

The Agent for Chile is allowed to file evidence in case No. 3.

The Agent for the United States desired to introduce more testimony in connection with case No. 12, which had been closed by the claimant before the prior Commission. To this the Agent for Chile objected.

The Commission considered this question in Executive Session, and ordered that the deposition of Kimball, if desired, might be taken in Washington, D. C., but not in San Francisco.

The Agent for the United States notified the Commission that he desired to take more evidence and some depositions in Washington, D. C., in case No. 25, in accordance with the terms of the decision rendered by the prior Commission.

No objections were made to the filing of documentary evidence in cases Nos. 26 and 31.

In case No. 32, the Agent for the United States demanded that the Agent for Chile produce certain documents, known as nitrate certificates, now in the possession of the Government of Chile, which he desired to use in evidence. The Agent for Chile stated that the certificates were either destroyed or cancelled. The Agent for the United States was satisfied with that answer to his request. The Agent for Chile insisted that the claimant in this case, or very recent power of attorney from said claimant, be presented to the court.

The Commission asked the Agent for the United States if there is a claimant in case No. 32, to which the Agent for the United States replied that he had no information on this question except the papers on file and the power of attorney to Heber J. May

from Mr. Mayers, which he presented to the Commission. The Special Counsel for the United States was heard. After an executive session the Commission rendered the following decision:

In this case, it appearing to the Commission by evidence filed on the part of the Respondent Government, that it contends that the claim has been paid by it and the nitrate certificates mentioned in the Memorial surrendered to it on or about Oct. 9, 1897; and it further appearing that it is uncertain whether the claimant desires further to prosecute his claim; and it appearing to the Commission that it is necessary to ascertain this fact before taking up the case in the regular order, and the Honorable Agent for the United States having very kindly offered to ascertain this fact and whether any power of attorney has been given by the claimant since Oct. 9, 1897, for the prosecution of the said claim, the Commission request the Honorable Agent for the United States to ascertain these facts and report to the Commission.

The Agent for the United States stated that he would do so.

Whereupon the Commission, at 6.30 P. M. adjourned until 3 P. M. Dec. 19th.

J. B. PIODA,
President.

JOHN F. BAKER,
ENRIQUE BALMACEIDA,
Secretaries.

FIFTH SESSION.

OFFICES OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., Dec. 19, 1900.

The Commission assembled at three o'clock P. M.

Present: The Honorable J. B. Pioda, presiding, the Honorable Commissioners and the Agents and Special Counsel and the Secretaries on the part of the United States and Chile.

The minutes of the previous session were read and after certain corrections approved.

The Agent for the United States moved that in case No. 12 further testimony be taken from Mr. O'Brien. The Agent for Chile opposed this motion. The Commission then went into

executive session. The result of its deliberations, as announced by the President was as follows:

"The proof in this case being closed by the Agent of the United States before the prior Commission and this case coming before this Commission in the state in which it was left by the prior Commission according to Art. 2 of this Commission's rules, and according to Art. 7 of the said rules, this Commission can authorize at any time additional testimony to be taken and O'Brien's deposition having already been taken before the prior Commission and this being a closed case, the majority of this Commission is of the opinion that the motion that a new deposition from O'Brien be taken be not allowed."

The Agent for the United States wanted to know that if in case Mr. Kimball came to Washington would his testimony be accepted by the Commission.

He could not promise to produce the witness but had made an effort to do so. The Commission confirmed the agreement already taken on the 18th and agreed to accept the Kimball testimony.

The Agent for the United States stated that he would obtain a written statement in regard to the desire of the claimant to press the sixth claim of case No. 1, if the Commission so desired.

In case No. 32, the Agent for the United States stated that he had sent to Mr. May and asked for the information desired.

The attorney had documents which he wished to file in case No. 25 that did not relate to the points referred to in the decision of the last Commission. The Agent asked permission of the Commission to file these documents, and take the deposition of a witness here in Washington.

The Agent for Chile stated that he made no objections. The Commissioner for Chile suggested that the rules regarding the taking of testimony in closed cases should not be violated.

The Agent for Chile desired that as to the deposition the matter be postponed until the Agent for the United States should inform the court as to the kind of evidence he would produce, to which the Agent for the U. S. agreed. As to the documentary evidence it was agreed that it might be introduced.

In case No. 3 the Agent for the United States in accordance with the instructions of the Commission at the previous session presented his written argument in opposition to the motion of

the agent for Chile for a separate argument on the question of jurisdiction.

Thereupon the Commission took a recess until 3 P. M. December 20th.

J. B. PIODA,
President.

JOHN F. BAKER
ENRIQUE BALMaceda.
Secretaries.

SIXTH SESSION.

OFFICES OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., Dec. 20, 1900.

The Commission was called to order at three o'clock P. M.

Present: The Honorable J. B. Pioda, presiding, the Honorable Commissioners and the Agents for the United States and Chile, the Special Counsel for the United States and the Secretaries on the part of the United States and Chile.

The minutes of the previous session were read and after some minor amendments approved.

In case No. 3 the Agent for Chile read and filed his written answer to the argument filed on the 19th by the Agent for the United States. After an Executive Session the Commission made the following statement:

"The Commission reserves for a future session the declaration of its decision on the motion of the Agent for Chile concerning the point of treating separately the question of jurisdiction from the merits of the case in No. 3 [Henry Chauncey *v.* Republic of Chile]."

The Commission then desired to hear further from the Agent for the United States as to the requirements in other cases coming before this Commission.

The Agent for the United States thereupon took up case No. 25, known as the Moss case, and advanced reasons why the depositions of Mr. Charles Hunt was important. The Agent for Chile objected. The Commissioner for Chile in accordance with Article II of the Rules was opposed to the taking of any cumulative evidence. The Commissioner for the United States considered that the Hunt deposition would come within the spirit of Article VII of the Rules and should be permitted to be taken.

The Honorable President was anxious that the character of the testimony proposed for Mr. Charles Hunt be made known to the Commission before its decision was given. After a clear statement from the Agent for the United States as to the testimony expected from Mr. Charles Hunt, the Commission made the following decision:

“The Commission rules that the claimant may take the deposition of Charles Hunt in Washington, but only upon matters which are substantial and pertinent and not cumulative of any substantial or pertinent evidence already in the case, but new.”

The Commissioner for the United States is however of the opinion that the proposed deposition of Mr. Hunt should be allowed to be taken.

The Commission thereupon took a recess until 10:30 o'clock A. M. Dec. 21st.

J. B. PIODA
President.

JOHN F. BAKER
ENRIQUE BALMACEDA.
Secretaries.

SEVENTH SESSION.

OFFICES OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., Dec. 21, 1900.

The Commission met at 10 o'clock A. M.

Present: The Honorable J. B. Pioda, presiding, the Honorable Commissioners, the Agents for the United States and Chile, the Special Counsel for the United States, and the Secretaries on the part of the United States and Chile.

The minutes of the previous session were read and approved.

The Agent for Chile informed the Commission that in the event the Commission should not grant the motion made by him in case No. 3, he would present a demurrer in this case, on the ground that this Commission had no jurisdiction under the Treaty.

The Agent for the United States asked leave to file an amended memorial in the Williams Case. The Agent for Chile objected and gave reasons for his position. This occasioned a lengthy discussion of the Williams' and Robinson's cases, No. 33. The Commission reserved its decision.

The Agent for the United States desired to file an amended memorial in the Levek Case, the language of which he stated would be an improvement over that of the old memorial, but did not include a new or different cause of action although it included a substantial increase in the amount of money demanded under the old cause of action. The Agent for Chile stated his objections.

In case No. 42 the Agent for the United States desired to introduce documentary evidence and take the deposition of Mr. Bacigaluppi either in San Francisco or Washington. The Agent for Chile objected. Permission was granted the Agent for the United States to file documentary evidence in this case, but the Commission reserved its decision on the question of taking the deposition of the claimant.

The following statement was made by the Agent of the United States

"In No. 27, *Trumbull vs. The United States*, before the old Commission, the Agent for the United States does not admit that the case is pending or within the jurisdiction of this Commission. He simply makes no claim either way on the subject. He reserves the right to raise these questions if he so desires at a later day, and after further deliberation on the subject."

The Agent for Chile thought the position assumed by his colleague was not a correct one, and urged the Commission to insist that the Agent for the United States define his position as soon as possible.

After deciding that when the Commission adjourn on Dec. 22d, 1900, it be to meet at 10:30 A. M. on Jan. 8, 1901, the Commission took a recess until 3:30 P. M. Dec. 22.

J. B. PIODA,
President.

JOHN F. BAKER
ENRIQUE BALMACEDA.
Secretaries.

NINTH SESSION.

OFFICES OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., January 8, 1901.

The Commission met in Executive Session at 10.30 o'clock A. M. The regular session was called to order at 3.30 o'clock P. M.

Present: The Honorable J. B. Pioda, presiding, the Honorable Commissioners, the Agent for Chile, the Special Counsel for the

United States, and the Secretaries on the part of the United States and Chile.

The minutes of the previous session were read and approved.

The Commission made the following rulings.

Upon Item No. 6 in case No. 1, the Central and South American Telegraph Company *vs.* the Republic of Chile, the majority of the Commission decided that this Commission had full jurisdiction in the premises.

In case No. 3, Henry Chauncey *et al. vs.* the Republic of Chile, the Commission decided that the question of jurisdiction should be considered alone before the case is taken up on its merits.

In the Levek Case, No. 41, the motion to amend the memorial was denied.

In No. 33, the Williams case, the Commission decided that the claimant should be allowed to amend the Memorial.

In the Trumbull case, No. 27, upon the suggestion of the Honorable President, the Special Counsel for the United States was instructed to obtain information and report to the Commission at the next meeting what attitude would be assumed by the United States on the question of jurisdiction.

The Agent for Chile in the Chauncey case No. 3, submitted in writing the points which he wished to discuss upon the question of jurisdiction.

In case No. 32, Geo. L. Mayers *vs.* the Republic of Chile, the Commission ordered that the Special Counsel for the United States make a definite statement at the next meeting as to whether or not this claim will be prosecuted.

The Agent for Chile begged to inform the Honorable Commission that although the attorney in the Moss Case (No. 25), Mr. May, was given permission only to examine Mr. Hunt upon substantial and pertinent matters which might be new, yet, he, the Agent, for Chile, took no advantage of this restriction, and not only made no objection to Mr. May questioning the witness freely upon all the points he desired, but expressly allowed him to make such full examination, which was done.

In regard to the Bacigalupi case, No. 42, the Honorable Commissioner for Chile stated that since Mr. Bacigalupi had only filed an affidavit before the last Commission, both the Agent for Chile and himself would accept Mr. Bacigalupi's deposition in Washington, notwithstanding the fact that the Commission had decided that no deposition would be allowed in this case which had been closed. The Special Counsel for the United States did not know

whether he desired to take the deposition as the case had been closed. He would inform the Commission at the next meeting if the representatives of the United States desired this deposition.

In the Chauncey & Walker cases, Nos. 26 & 31, the Agent for Chile called the attention of the Commission to the fact that he had objected to the filing of three or four affidavits in these cases on the ground that the permission granted to the Agent for the United States was for the filing of documentary evidence.

The Commission adjourned until 10:30 o'clock A. M., January 15th.

J. B. PIDDA,
President.

JOHN F. BAKER,
ENRIQUE BALMACEDA.
Secretaries.

TENTH SESSION.

OFFICES OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., January 15, 1901.

The Commission met at 10:30 A. M.

Present: The Honorable J. B. Pidda, presiding, the Honorable Commissioners, the Agent for Chile, the Special Counsel for the United States, and the Secretaries on the part of the United States and Chile.

The minutes of the previous session were read and approved.

It was ordered that the fact be placed on record that the United States and Chileans Claims Commission attended in a body the function given by the President of the United States at the Executive Mansion, and the breakfast reception tendered by the Secretary of State at his residence on January 1, 1901.

The Special Counsel for the United States moved that the evidence in the Chauncey case No. 26, might be considered in the Walker case, No. 31, and *vice versa*, to which the Agent for Chile assented. Adopted.

The Bacigalupi case, No. 42, was taken up. Whereupon the Agent for Chile asked to have the following statement placed on record:

“In case No. 42, Peter Bacigalupi *vs.* The Republic of Chile, the Agent for Chile desires to place on record the fact that every facility has been afforded by the Respondent Government to the claimant

for the purpose of enabling him to produce his deposition in the proper and legal way; and if such deposition is not produced the claimant is solely responsible for the consequences of such failure."

The Honorable Commissioner for Chile, during the discussion, endorsed the above statement.

The Special Counsel for the United States stated he had ascertained, since the last session, that upon the Commission's decision on December 21st, denying the permission to take Mr. Bacigalupi's deposition, this fact had been immediately communicated to the claimant; that the case was thereafter closed, and that at this late date circumstances had so changed that it was no longer convenient to take the deposition. Moreover, that it was properly within the province of the Counsel for the United States and not of the Commissioner or Agent for Chile to make any further requests in this direction. He objected to the statement of the Agent for Chile being recorded.

The Agent for Chile gave his reasons for desiring to have his position properly set forth on the records.

The Commissioner for the United States said that as the Commission had refused to allow taking of the Bacigalupi deposition he did not see how the Agent for Chile could ask that it be now taken unless he desired to take it himself.

The Commission, after an Executive Session, ordered that the statement of the Agent for Chile, as above noted, be placed on record.

The Honorable President laid before the Commission a communication from the Agent of the United States, in which he stated that in the Trumbull case No. 27, he would not be able to decide whether or not to raise the question of jurisdiction until January 22d. On account of illness the Agent for the United States had been unable to confer with the several parties interested in the case. The Commission ordered that the Agent for the United States notify the Secretaries for the United States and Chile, and the Agent for Chile, on or before January 22d as to his position on the question of jurisdiction in this case, and that the same should be recorded in the notice book of the Commission on or before the date herein mentioned.

The Mayers case, No. 32, coming up, the Special Counsel for the United States desired to submit a letter from Mr. May, an attorney in the case. The letter was read. The Agent for Chile objected to the consideration of the document and insisted that the case be stricken from the docket. The Special Counsel for the United

States suggested if such action were taken the words "without prejudice" should be added. To this the Agent for Chile objected. Pending action by the Commission a recess was taken.

The Commission reassembled at 3:30 P. M.

The Agent for Chile again moved that the Mayers case No. 32 be stricken from the docket. The Special Counsel for the United States submitted the following motion:

"Inasmuch as the United States State Department is the only depositary or court of record for the filing and giving notice to all parties in interest of powers of attorney, papers on file etc., thereby protecting assignments of record in respect to claims of citizens of the United States against foreign governments; and

"Inasmuch as there was an assignment of record in favor of Heber J. May, in the claim of George L. Mayers *vs.* Chile, prior to the settlement out of court of this claim without notice to the said May, the Special Counsel for the United States moves:

"That if this Commission, upon consideration of the statement of private counsel herewith submitted of the recent death of the claimant, should decide that the claim is no longer before the Commission and should order the case to be stricken from the docket, the words 'without prejudice' may be included in such a motion."

After an executive session the Commission rendered the following decision:

"It appearing to the Commission, from evidence filed by the Republic of Chile, that the nitrate certificates upon which the foregoing claim is based, have been paid by that Government, therefore, on motion of the Agent for Chile, it is

"*Ordered:* That the claim in said case be, and the same hereby is, dismissed."

The Agent for Chile suggested that the 30th day of January be fixed as the date upon which to take up the question of jurisdiction in the Chauncey case, No. 3. He announced that under the rules the 75 days will have expired on January 31st and that the following cases would be closed on that day: Nos. 33 (the Robinson case), and cases 35, 37, and 40. He would close Nos. 8, 26, 30, 31, and 41 on the same date. He would be ready to take up the Levek case No. 41 on February 5th.

The Agent for Chile stated that, although he would close the Trumbull case, No. 27, before January 31st, he might desire to file documentary evidence in respect to the power and status of the claimant's heirs after that date, if the Commission would

permit him to do so. The Special Counsel for the United States said that there was no objection on the part of the United States. The motion was granted. It was stated that the attorneys for the United States and Chile would be prepared to argue the question of jurisdiction in case No. 3, *Henry Chauncey et al. v. Republic of Chile*, on January 30th.

The Commission adjourned until 10.30 o'clock A. M. January 30.

J. B. PIODA

President.

JOHN F. BAKER,

ENRIQUE BALMACEDA.

Secretaries.

ELEVENTH SESSION.

OFFICES OF THE UNITED STATES AND

CHILEAN CLAIMS COMMISSION,

Washington, D. C., January 30, 1901.

The Commission was called to order at 10:30 o'clock A. M.

Present: The Honorable J. B. Pioda, presiding, the Honorable Commissioners, the Agents and Special Counsel for the United States and Chile, and the Secretaries on the part of the United States and Chile.

The minutes of the previous session were read and approved.

In case No. 3, *Henry Chauncey v. The Republic of Chile*, the motion of the Agent for Chile to dismiss the case for want of jurisdiction was taken up. The Special Counsel for Chile made the opening argument on the part of the respondent Government, after which the Commission took a recess until 2:30 o'clock P. M.

Upon reassembling, the Agent for the United States made reply on behalf of his Government. He was followed by the Special Counsel for the United States. The Agent for Chile and the Special Counsel for Chile closed the argument. The Commission reserved its decision.

In the Dodge case, No. 40, the Agent for the United States, stated that he had not been able to ascertain the whereabouts of the claimant, neither had the private attorney in the case. The Agent for Chile stated that as there was apparently no claimant the case could not be taken up. On his motion, and as a matter of courtesy, an additional two weeks from this date was allowed the Agent for the United States to pursue his investigation.

In the Levek case, No. 41, the Commission granted the Agent for the United States permission to take the deposition of Mr. Levek in rebuttal.

The Commission then adjourned to meet at 10:30 o'clock A. M. February 31st.

J. B. PIODA
President.

JOHN F. BAKER,
ENRIQUE BALMACEDA
Secretaries.

THIRTEENTH SESSION.

OFFICES OF THE UNITED STATES AND
CHILEAN CLAIMS COMMISSION,
Washington, D. C., February 8, 1901.

The Commission assembled at 10:30 o'clock A. M.

Present: The Honorable J. B. Pioda, presiding, the Honorable Commissioners, the Agents and Special Counsel for the United States and Chile, and the Secretaries.

The minutes of the previous session were read and approved.

The Honorable President announced that a majority of the Commission had decided to dismiss case No. 3, *Henry Chauncey v. The Republic of Chile*, on the ground that this court had no jurisdiction over the claim. The Honorable Commissioner for the United States filed his written dissenting opinion in the said case. (See Opinion Book, page 27.)

It was agreed that case No. 31, *Grant Walker et al v. The Republic of Chile*, would be argued on February 16th.

The following motion was submitted and taken under advisement by the Commission, after hearing the objection of the Agent for Chile, which was in effect that the motion should not be considered until the case came up for trial.

HENRY CHAUNCEY *et al* }
 vs. } No. 26.
REPUBLIC OF CHILE. }

GRANT WALKER *et al* }
 vs. } No. 31.
REPUBLIC OF CHILE. }

And now comes the Agent for the United States, and, pursuant to the provision of Rule VIII, moves that the letter of the Intendent's of Atacama, dated at Copiapo, January 18, 1858, introduced in evidence by the Agent for Chile, in the above entitled cases, and printed

at page 61 of his printed proofs, be stricken from the record as improper, incompetent and immaterial, in that the same relates to an occurrence which took place long after the matter referred to in the above entitled claims, and has no connection or bearing upon that matter whatsoever. It relates simply to alleged ignorance of maritime usages displayed long after the principal event by a person connected with the event complained of. It cannot possibly serve any lawful end in the cases in which it is filed, and consists simply of criticism of the personal conduct of the captain of the ship *Sportsman* on an occasion later than, and nowise connected with, the occasion referred to in those cases.

(Signed) JOHN HOYT PERRY,
Agent for United States.

The Honorable President requested the Agents to announce at the next meeting the assignment of cases for the remaining sessions of the Commission.

The Agent for Chile expressed a desire that case No. 8, *Kate E. Leach et al vs. Republic of Chile*, should be closed by the Agent for the United States as soon as possible.

The Commission adjourned to meet at 10:30 o'clock A. M., February 16th.

J. B. PIODA
President.

JOHN F. BAKER,
ENRIQUE BALMACEDA,
Secretaries.

Decision of Commission.

United States and Chilean Claims Commission.

Decision No. 4.

| | |
|------------------------|----------|
| HENRY CHAUNCEY | } No. 3. |
| v. | |
| THE REPUBLIC OF CHILE. | |

DECISION OF MAJORITY OF THE COMMISSION ON MOTION TO
DISMISS FOR WANT OF JURISDICTION.

This claim is brought by Henry Chauncey, a citizen of the United States, who alleges that he and two others, also citizens of the United States, are the sole surviving members or copartners of the firm of Alsop & Company.

The claim, which amounts to over a million Bolivian silver dollars, not including interest, is set out at length in a somewhat complicated statement of facts, but, stated briefly, may be said to be grounded upon the interference by Chile with certain prop-

erty or property rights which had been transferred in 1875 to Alsop & Company, and which rights, thereafter (the said firm of Alsop & Company having gone into liquidation), were embodied in a settlement consisting of and evidenced by a formal agreement or contract executed at La Paz on December 26, 1876, between John Wheelwright, as liquidating partner of Alsop & Company, and the government of Bolivia.

The sole question to be determined at present is whether or not this Commission can take jurisdiction of this claim.

The Convention of 1897, by which this Commission is created, is a revival of the Convention of 1892. Article I of said Convention is as follows:

“All claims on the part of corporations, companies or private individuals, citizens of the United States, upon the Government of Chile, arising out of acts committed against the persons or property of citizens of the United States * * * shall be referred to three Commissioners,” etc.

In view of the above article, what is the status of the claimant, Henry Chauncey?

This appears plainly from the evidence of Henry S. Prevost, taken at Lima, Peru, October 10, 1893, as follows:

“Sixth. That since the death of John Wheelwright, aforementioned, deponent likewise, with the consent and by appointment of all the parties interested in the liquidation, has acted, and continues to act, *as the liquidator of the aforesaid firm of Messrs. Alsop & Company*; and that, as such liquidator, *he hereby duly authorizes Henry Chauncey of New York*, aforementioned, and one of the only two other surviving partners of the firm, *to appear in support of the claims of Messrs. Alsop & Co. against the Republic of Chile.*”

It appears that the firm of Alsop & Company, formed in 1870, went into liquidation some time in 1875 or 1876, and appointed John Wheelwright its liquidator. The latter having died, Henry S. Prevost succeeded him as such liquidator, and in 1893 he appointed Henry Chauncey as agent to appear in support of the claims of Alsop & Company against the Republic of Chile.

Henry Chauncey, then, is the agent of the substituted liquidator, Henry S. Prevost, and stands in the shoes of the latter, who, as such substituted liquidator, is the representative of the firm of Alsop & Company.

This brings us to the status of Alsop & Company.

An examination of the articles of association shows that this commercial “Society of Copartnership” was formed under the law of Chile, with its domicile at Valparaiso, under the style or firm name of Alsop & Company, on the 31st day of December, 1870.

These articles of incorporation were duly registered at Valparaiso in accordance with the laws of Chile. The society consisted of three active partners (with unlimited liability), two of whom were residents of Valparaiso, though citizens of the United States, and one of whom was a resident and citizen of the United States; and seven special partners (with limited liability), all of whom were residents and citizens of the United States. The society did no business in the United States except through duly appointed special agents.

Under the laws of Chile, and indeed of all countries where the civil law obtains, there are three kinds of societies which may be formed for undertakings which the law describes as commercial. These are as follows:

(1) The society *colectiva*, in which all the members administer the business themselves or by means of an agent elected by common accord. The liability of each member is unlimited.

(2) The society *en comandita*, in which one or more of the members are bound only to the amount of their investment. There are two kinds of societies *en comandita*: simple and with shares.

(3) The society *anonima*, in which the capital is managed by shareholders who are responsible only to the value of their shares.

It is clear, and indeed it is admitted, that Alsop & Company belonged to the class known under the law of Chile as a society *en comandita* simple.

A society *en comandita* simple corresponds very closely to what is known in the United States as a limited partnership. *There is, however, a fundamental difference.* It is a well-settled principle of law in the United States (as well as in England) that a partnership, either general or limited, is not an entity. Under the common law, a partnership is not like a corporation, an artificial being existing only in contemplation of law. On the other hand, under the law of Chile, which is the civil law, it is a well-settled principle that an association of persons formed for commercial purposes, established by law, becomes an entity—a juridical person.

“The society or company is a contract by which two or more persons agree to join in an enterprise for the purpose of dividing the resulting profits. The society forms a *juridical person distinct from the members considered individually.*”

(Code of Chile, Title 28, Art. 2053.)

By the law of Chile, therefore, as well as by the law of all the countries where the civil law prevails, the three classes of business organizations, the *colectiva*, the *en comandita*, and the *anonima*,

with their subdivisions, ARE IN THE SAME CATEGORY FROM THE POINT OF VIEW OF THE JURIDICAL PERSONALITY. As in the case of incorporated companies in the United States, the individuals composing them are united in one body, and the members are lost in the corporate existence; it is not the individual members but the legal being, which acts and transacts business.

This general principle is laid down by Calvo, as follows:

“Ces trois espèces de sociétés différent, quant à leur constitution et à leurs effets, selon que les individus qui les forment, y engagent à la fois leur personne et leur fortune, ou selon qu'ils y engagent seulement un capital limité; mais elles ont ce point d'analogie qu'elles constituent, *toutes les trois, un corps moral* ayant une existence propre, une action particulière, et qu'elles ne se confondent jamais, tant qu'elles subsistent, avec la personne de leurs associés, solidaires ou non solidaires, suivant le genre de l'association.”

(Calvo, Droit International, Vol. 2, p. 399.)

In Louisiana, where the civil law prevails, this fundamental principle of the partnership is clearly recognized.

“The partnership once formed becomes in contemplation of law a moral being, distinct from the persons which compose it. It is a civil person, which has its peculiar rights and attributes. Hence, therefore, the partners are not the owners of the partnership property. The ideal being thus recognized by a fiction of law is the owner.”

(Smith v. McMicken, 3 La. Ann. 322.)

“Under the provision of the law of Louisiana a partnership is, so far as this question of jurisdiction is concerned, placed in the category of corporations. Both are creations of a State law and domiciled in that State. Both may have members who, by themselves, could not be brought within the jurisdiction of the court. Nevertheless, the Supreme Court has finally settled the doctrine that State corporations, domiciled within the State by which they are created, are, so far as relates to the enforcement of rights of action, citizens of that State. The reasoning which leads to this conclusion with reference to corporations leads to the same conclusion with reference to Louisiana commercial partnerships.”

(Liverpool Navigation Company v. Agar, 14 Fed. Rep. 615.)

The above principles are well recognized in all countries, including Chile, where the civil law is in force, and are (as the judge said in the case of Smith v. McMicken), “illustrated by rules so familiar that it would be unnecessary waste of time to argue in their defence.”

When these ten citizens of the United States created the society *en comandita simple* of Alsop & Company at Valparaiso, and sought the privileges and protection of the Chilean law, it must be presumed that their eyes were fully open, not only to the advantages and benefits to be enjoyed thereunder, but also to the disadvantages which might ensue. There was no necessity for

such incorporation under the Chilean law unless they needed the privileges which the Chilean law might confer. They might have formed a partnership, limited or unlimited, or a corporation, under the laws of any of the States of the Union, and carried on their business in Chile through agents. Under such circumstances, the property of the partnership or of the corporation having been injured through acts committed by Chile, there could be no question as to the jurisdiction of this Commission. These ten citizens preferred, doubtless for good and sufficient reason to create a Chilean society, which, as soon as created, became a juridical entity, to which was attached all the advantages as well as the disadvantages of the civil law.

Let us suppose that a number of Chilean citizens had come to the United States and formed a corporation of which they owned all the shares except the nominal few required by the law of the particular State of its creation to be held by local directors, and that, doing business in Chile, the property of this corporation were injured or destroyed by acts committed by Chile. In such a case, the corporation, being a citizen of the United States, this Commission could unquestionably take jurisdiction, even though practically all the stock of the corporation belonged to Chilean citizens domiciled in Chile.

This principle *that a juridical person takes the nationality of the country where it is created* is uniformly accepted by international law:

“From the fact that all the members of a corporation are foreigners, it does not absolutely follow that the corporation is a foreigner. We must not confuse the juridical qualities of the members, as private individuals, with the juridical qualities of the moral existence forming the collectivity. * * *

“It may, therefore, be said that moral persons borrow nationality of the State or of the Legislature from which they have received their existence.

“Thus, the moral persons created by the French law are French. On the contrary, those in whose birth the foreign legislature intervenes are foreigners.”

(Calvo, *International Law*, Vol. 2, p. 227.)

“The members of a foreign corporation are conclusively presumed to be aliens for the purpose of sustaining the jurisdiction of the Circuit Court over a suit brought by or against such a corporation.”

(2 Wharton's *Digest of International Law*, p. 528.)

In his project for an international code, David Dudley Field summarizes the principle as follows:

“Corporations and other moral persons have no existence beyond the jurisdiction of the power by whose act they exist; they have no other capacity than that which is conferred upon them by that power.” Art. 545.

In the case of the *Compania Unida de Navegacion*, Mr. Seward, Secretary of State, declined to present a claim to Colombia on behalf of the United States citizens, although they owned almost half the interest in the Company. He said:

“The association, as an entity, is to be assimilated to a citizen of Colombia. If it has sustained a wrong, is it not for it to pursue such remedy as it may have, as a private Colombian would be obliged to do, without the aid of any government external to Colombia?”

And the Supreme Court of the United States has held that:

“All the stockholders of a corporation are, for the purpose of jurisdiction, conclusively presumed to be citizens of the State which created it.”

(*Muller v. Dows*, 94 U. S. 444.)

Applying the principles hereinbefore stated to the question of jurisdiction, it seems clear that the Chilean society of *Alsop & Company* would not have the right to appear before this Commission, and, if this is the case, would the society of *Alsop & Company* in liquidation, through its liquidator, Henry S. Prevost, or through Henry Chauncey, the agent of the liquidator, have any better right?

It is asserted in the claimant's brief and it was strenuously argued by the Honorable Agent for the United States, that the claim herein presented is not the claim of *Alsop & Company*, and that *Alsop & Company* had no existence after December 31, 1873.

Upon a careful examination, it seems clear that neither of these contentions can hold.

The claim filed by Henry Chauncey is always in the memorials, in the testimony, in the claimant's briefs, described as the claim of *Alsop & Company*. This statement is repeated twenty or more times. For instance, in the Treaty of 1895, filed by claimant in support of his memorial, the claim of *Alsop & Company* is described as “the credit in favor of Don Pedro Lopez Gama, represented at the present time by the house of *Alsop & Company*, of Valparaiso.” And again, in one of his briefs: “This claim of *Alsop & Company* is a legal debt of Chile.” And again, in his supplemental memorial, the claimant says: “The Government of the Republic of Chile on divers occasions and by means of treaties, protocols, and official communications of its duly constituted officers or representatives, has recognized its liability for and assumed the payment of the claim of said *Alsop & Company*, to-wit, the claim mentioned in the original memorial herein.

If this were not the claim of Alsop & Company, or if Alsop & Company were not in existence, could it be contended that the Republic of Chile would "assume the payment of the claim of said Alsop & Company?"

Furthermore, the claimant, Henry Chauncey himself, in his evidence, states that he is *still a member* of the firm of Alsop & Company.

Nor is it a correct statement that the society of Alsop & Company went "into liquidation before the expiration of the term of three years."

Although by Article XIII of the "Society of copartnership," the society of Alsop & Company was established on December 31, 1870, in Valparaiso, for the term of three years, yet distinct provisions are made by Article XII for the carrying on of the business for the account of the majority of the parties to the contract "in case the society should be continued after the 31st of December, 1873"; and by the same article it is provided that "the special partners are obliged to notify the active partners on or before the first of April, 1873, of their intention to close the business of the house on the 31st of December, or to continue it for another term." In case of the death of any of the partners in Valparaiso, Article IX provides that "the special partners shall have the option of considering this contract terminated at once or to continue it, naming or not, as it may best suit them, another person to represent the deceased partner."

No evidence whatever has been offered to show that at the death of any of the partners, the option of "considering this contract terminated at once" was exercised, as provided by Article IX. No evidence has been offered to show that the notice by the special partners was given "of their intention to close the business of the house on December 31st," as provided by Article XII.

Under such circumstances it must be assumed that the society of Alsop & Company continued in active business after December 31, 1873, and that such is the case is conclusively proved by the averment of the claimant's memorial, which states that "the said Pedro Lopez Gama, on or about the 14th of April, 1875, assigned and transferred to the said firm of Alsop & Company certain claims and rights which he had previously collected from Bolivia."

The society of Alsop & Company was therefore in active business in April, 1875.

It appears from the same page of the claimant's memorial "that thereafter (after April, 1875), the said firm of Alsop & Company

having gone into liquidation, the said John Wheelwright * * * succeeded in effecting a settlement with the government of Bolivia of the said claims and rights so assigned to said firm of Alsop & Company, which said settlement consisted of and was evidenced by a formal agreement or contract duly executed by and between the government of Bolivia and said John Wheelwright, *as liquidating partner* and representative of Alsop & Company.”

The society of Alsop & Company went into liquidation; therefore, some time after April, 1875, and it is clear that it has been in liquidation ever since, is still in liquidation, and will probably remain in liquidation until after the claims or rights assigned to the society are paid to the liquidator.

The fact that Alsop & Company is still in liquidation is shown by repeated statements, too numerous to mention, both in the memorials, in the testimony, and in the briefs of the claimant.

John Wheelwright, the original liquidator, having died, he was succeeded as liquidator by Henry S. Prevost, and in the testimony of the latter, taken in 1893, the deponent states that he “*continues to act as the liquidator of the aforesaid firm of Messrs. Alsop & Company, and that as such liquidator, he hereby duly authorizes Henry Chauncey * * * to appear in support of the claims of Alsop & Company against the Republic of Chile.*”

Henry Chauncey, therefore, is, as already stated, the agent of the present liquidator of the society of Alsop & Company in liquidation.

Now what is the status of a commercial society in liquidation and of its liquidator?

It is a well settled principle of the civil law that commercial societies continue to exist in liquidation just as a corporation in the United States continues to exist during liquidation.

This principle is declared in most of the codes and is recognized by the courts in all countries where the civil law is in force.

For instance, the Code of Belgium says:

“Commercial societies are regarded as existing after their dissolution for purposes of liquidation.”

(Code of Belgium, Art. 111.)

And by the Commercial Code of Japan:

“Even after the dissolution, a partnership is deemed to continue in existence so far as is necessary for purposes of liquidation.”

(Commercial Code of Japan, Ch. 2, par. 6, Art. 84.)

And Article 410 of the Commercial Code of Chile, says:

“The liquidator is the true representative of the society.”

In a leading case in the Cour d'Appel, of Paris, the court said:

“Considering that this proposition is not true, that the liquidator is not the agent of the members, but that he is the representative of the society itself which, although dissolved, continues to exist for the purposes of liquidation, and to form a moral person having rights completely distinct from those members who compose it.”

And in the Court of Appeals of Orleans in the case of Société l'Industrielle, C. Sevin, the court said:

“The société nevertheless *preserves its moral personality until the completion of the liquidation.*”

On this point, Lyon-Caen & Renault, the authors of the leading treatise on commercial law, state as follows:

“In order to avoid these results, jurisprudence has admitted that in spite of their dissolution *the dissolved society exists still as a moral being for the purpose of its liquidation* as long as it is necessary to protect the rights acquired and not to interfere with the operations of the liquidation.

“The death, the failure, the loss of civil rights of a member, taking place after dissolution does not cause the function of the liquidator to cease. *The latter represents a moral being which survives the dissolution, and not the members considered as individuals.*”

(Lyon-Caen & Renault, *Droit Commercial*, Tome 2, pp. 241-243.)

It is plain that the question of denationalization or expatriation of the individual does not enter here. If any one of the partners of the society of Alsop & Company had been injured in person, or in his private property, by acts committed by Chile, his right to redress before this Commission, under the terms of Article 1 of the Convention of 1892, would have remained unimpaired.

It was under such circumstances that a Commission, under a Convention (1880) between the United States and France awarded damages to individual partners in the case of the Le Mores (cited by the Honorable Agent of the United States. See 4 Mores Int. Arb. p. 3310). The two Le More brothers, citizens of France and partners in the Louisiana firm of Gautherin & Company, were arrested in 1862 by General Butler on the ground of having given aid and comfort to the enemies of the United States. One was imprisoned with much indignity and suffering, while the other was simply imprisoned. The Commission held that the Le Mores were not guilty of giving aid and comfort to the enemies of the United States; that it was a case of unusual and arbitrary conduct on the part of General Butler, who had no right to inflict punishment (“unnecessary, extreme, and much too severe”) on the claimants, and consequently the Commission awarded heavy damages to each of the claimants for his imprisonment.

Such award was eminently just and proper, and is not in conflict with any of the principles or conclusions enunciated here.

Several other cases were cited by the special Counsel of the United States in support of the contention that various commissioners or arbitrators have maintained jurisdiction of the claims of the individual partner, as distinct from the society, for injury to his interest in the partnership property.

The principal case cited is the notorious Cerruti claim. In this case the whole property of the firm of Cerruti & Company, a society *en comandita simple* of Colombia, was confiscated or destroyed by the government of Colombia on the alleged ground that one of the members of the firm, Cerruti, an Italian citizen (who was owner of practically the whole partnership property), had violated neutrality during a revolution in Colombia. In addition to the confiscation and destruction, great outrages, including imprisonment were heaped upon Cerruti, and the situation finally grew so acute as to cause a cessation of diplomatic relations between Italy and Colombia. Finally, the government of Colombia entered into a convention to settle once and for all this matter, which had been for years a matter of constant irritation to the two governments, and had kept their relation strained. As Calvo says (*Int. Law*, Vol. 3, p. 426): "This case presents this particular feature, that the contending parties came to an agreement to prepare a compromise or a preliminary convention in which they settled the points on which the mediator should pass." Thus, when "the matter of the arbitration of the claim of the government of Italy (Cerruti was *not* the claimant) against the government of the Republic of Colombia" was presented to the arbitrator, Grover Cleveland, it had already been settled by the preliminaries that Colombia admitted that in the movable and immovable property and credits to be returned to Cerruti should be included those which constituted the property of the firm of Cerruti & Company. (See questions regarding the preliminary bases of the negotiations for settling the Cerruti question between the Italian Minister of Foreign Affairs and General Posada, of Colombia; *Italian Green Book*, March 13, 1900.)

At first objection was made by Colombia to the effect that E. Cerruti & Co., being a society *en comandita colectiva*, 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 & Co. 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.

Furthermore, there was vested in the arbitrator, Grover Cleveland, "full power and authority and jurisdiction to do and perform and cause to be performed all things *without any limitation whatsoever*," and this fact is twice mentioned by the arbitrator in his award.

The Cerruti case, therefore, was peculiar and unique, one of acute international complication, in which the preliminary questions had been discussed for years, and in which, also, the jurisdiction of the arbitrator was not restricted, as in this case, but was without any limitation whatsoever.

The other cases cited by the Honorable Agent of the United States can be differentiated from the present case; in any event they are not of sufficient weight to shake the principles enunciated above and illustrated by such cases directly in point as that of the *Compania Unida de Navegacion* in which Mr. Seward, Secretary of State, declared that a society, as an entity, is to be assimilated to a citizen of the State of its creation.

From the facts and principles hereinbefore stated, it results, then:

That the claimant, Henry Chauncey is the agent of Henry S. Prevost, who is the substituted liquidator of the firm of Alsop & Company in liquidation;

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;

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.

Dissenting opinion of Mr. Commissioner Gage.

From my point of view of the questions in the above case I find myself unable to concur in the decision of my honorable colleagues and dissent therefrom for the reasons herein stated. I refer to their opinion for a very clear and complete statement of the case.

1. The entire objection of the Honorable Agent for Chile to the jurisdiction of the Commission in this case, is covered by Point III of his motion, which reads as follows:

“Alsop & Company is not an American copartnership, but a Chilean society; and as such Chilean society, Alsop & Company is a juridical person and a citizen of the Republic of Chile.”

The questions, pending between the high contracting parties to the Convention of August 7, 1892, under which we are acting had been, many of them, of very long standing.

Their purpose in entering into that Convention is expressed in the preamble thereof, *i. e.*, “to settle amicably the claims made by the ‘citizens’ of either country against the other, growing out of acts committed by the civil or military authorities of either country,” etc.

Article I of the Convention reads: “All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Chile, arising out of acts committed against the person or property of citizens of the United States * * * shall be referred to three commissioners, etc.”

It was the evident intention of both countries to furnish a tribunal to which *all* claims of the “*citizens*” of either, of the character named, could be referred for decision.

The words “corporations, companies or private individuals,” was intended to embrace *all* the “*citizens*” of either country who might have such claims.

The members of the firm of Alsop & Company were “private individuals, citizens of the United States.” The claimants represent them. Therefore, if the firm of Alsop & Company does not belong to one of the classes of “citizens” of Chile mentioned in the Convention, and which classes were intended to include *all* of its “citizens,” it was not a citizen of Chile, within the meaning of the Convention, and the individual members, “private citizens of the United States,” are entitled to prefer this claim before this Convention.

We must ascertain, then, whether Alsop & Company was a “corporation or company,” a “*citizen* of Chile,” within the meaning of the Convention. To do this we must ascertain what the attributes and characteristics of a corporation or company are which give to it citizenship in a country.

2. We should bear in mind that, in the words of Article IV of the Convention, the Commission is required to “determine all

of the questions which come before it, according to their best judgment, and according to *public law*, justice and equity."

It is well to remember, also, the fact that there have been eight Conventions between the United States and other countries, beginning with the year 1853 and coming down to 1880, in which identically the same language has been used as in this Convention in reference to the claims that were to be presented to each Commission on the part of the United States. They are as follows:

| Country. | Year. |
|--------------------|---------------|
| Great Britain..... | 1853 and 1871 |
| Colombia..... | 1857 |
| Ecuador..... | 1864 |
| Mexico..... | 1868 |
| Peru..... | 1869 |
| Venezuela..... | 1869 |
| France..... | 1880 |

During that period of thirty-nine years, between 1853 and 1892, the date of this Convention, there must necessarily have been a large number of claims similar to this, coming before the Commissions acting under those Conventions, and it is significant that while six of those Conventions were with countries using the civil law, in no case has a claim been rejected for the reason urged here, although it is apparent from an examination of the cases that if it had been considered a tenable objection, it might have been urged frequently before those various Commissions, and, as we will find later, it has been occasionally raised, but never decided in favor of the respondent Government.

3. Under the terms of the Convention, only citizens of the United States have a right to present claims to this Convention on behalf of the United States, and only citizens of Chile on behalf of Chile. The word "citizens" in reference to "private individuals," has constantly received very strict construction before these various Commissions.

Dr. Lieber says on this subject, in the case of Baron, in construing these same words in the Convention with Mexico above referred to:

"It remains to answer this question: Does or does not our instrument take the word citizen in the quoted passage, in its fullest sense, including the idea of *allegiance*? * * * As to the mere *domicil* conferring citizenship, the question has been often discussed. It is possible that a person possesses a permanent dwelling-place and domestic establishment (*domicil*), in a country, and has settled there, without entering as a member into its political society, and in the same manner a person may possess real property in a country and cultivate the land without necessarily becoming a citizen.

"I am convinced that the word citizen is taken in the Convention of 1868 in its full and definite sense, and not in its conditional and limited sense. But no one can be a *citizen* in the complete sense of the word (in which it means, indeed, absolute *incorporation* in, and *assimilation* with the *political* society), of two States or governments at one and the same time."

This language was used with reference to a claim presented by two persons who were copartners in the house of Baron, Forbes & Co., who admitted that they were British citizens, but contended that the company of Baron, Forbes & Co. was a Mexican company, hence a "juridical person" and a Mexican citizen, and entitled to recover, as such, before said Commission, notwithstanding two of the individuals composing the company were admitted to be British subjects. Dr. Lieber overruled the contention and dismissed the claim. (Moore Arbitration, p. 2521, &c.)

One author says the "test of citizenship, according to the Constitutional jurists, other than those of England and the United States, is the right of being eligible as an elector." (Lawrence's Wheaton, p. 893.)

It is apparent, then, that the word "citizen," as qualifying the words "corporations" and "companies," is not used in the same sense as when it qualifies the words private individuals.

4. What, then, is the meaning of the word citizens when qualifying the words "corporations" and "companies," in this Convention? The words in the Spanish version are "*corporaciones*" and "*compañías*." To determine this question we must first consider what a corporation or company is; second, what attributes it has that give to it citizenship within the meaning of international law and of this Convention.

"A corporation is defined as an artificial person like the State." (Cook, Corporations, 3d Edition, par. 1.) "It is an artificial *being*, invisible, intangible and existing only in contemplation of law; it possesses only those properties which the *charter* of its creation confers upon it, either expressly or incidentally, to its very existence. These are such as are supposed to best effect the objects for which it was created. Among the most important are '*immortality*,' and, if the expression may be allowed, individuality, properties by which a succession of many persons are considered as the same, and may act as a single individual. By these means a *perpetual succession* of individuals are capable of acting for the promotion of the particular objects, like one

immortal being." (Marshall, C. J., Dartmouth College Case, 4th Wheaton, 636.)

In the broadest sense of the word, the "king" and the "State" are corporations. The individual may perish or be incapacitated, but the "king" and the "State" continue. The first charters granted to corporations were granted by the king for the government of cities. (Angel & Ames on Corp., 11th Ed., par. 22, p. 15.) Thus the sovereign first *delegated* by his *charter* to these corporations the authority to govern a portion of his dominion. They partook necessarily and naturally of the same attributes as the State itself; one, if not the chief of these, was "*perpetual succession.*"

These public corporations are so essentially a part of the sovereignty from which they derive their power, their abode is so absolutely fixed, their "immortality," in the corporate sense, is so perpetual that it is self-evident they owe allegiance to, have the nationality of, and are, in that sense, citizens of that sovereign.

"And from the conception of such an institution (*i. e.*, municipality), grew the idea of 'private corporations.'" (An. & Am. on Corp., 11th Ed., par. 22, p. 15.) These partook of the same attributes, and, for like reasons, have the nationality of the sovereign who gave them their *charter* or patent, and who became, in a sense, *sponsor* for them, and was, therefore, bound to protect them in their enterprises.

These charters to private corporations were granted on the theory that such organizations were for the "public good." The *public* benefit is deemed a sufficient consideration for a grant of corporate privileges. (An. & Am., par. 13, p. 7.) The principle is, and has so been laid down by Domat, that the design of a corporation is to provide for some good that is useful to the public. (An. and Am., p. 13, n. 4. 1st Bl. Com., p. 467.)

It is held "a corporation can be *created* only by the *sovereign* power." (Cook, Corp., 11th Ed., par. 1, Am. and Eng. Encl., 7 vol., p. 639). "It is *created* by *charter*, formerly granted by the king, later by the legislature." (Cook, Corp., par. 2.) A business corporation is a fictitious person, *created* either under a special or general charter. It has the power of indefinite succession, with the right to issue certificates of stock to the owners of its shares, the stock being transferable by the holder. It may sue or be sued, and transact all of its business in its corporate name. The shareholders, except under special provisions of statute, and to

a limited extent, are not responsible for its debts, nor at all for its torts. The death or disability of a stockholder in no way affects it.

“The powers of a corporation are *like its corporate existence*, derived from the legislature, and are *not*, as in the case of a *co-partnership*, co-extensive with the powers of the individuals who compose it. Its charter, therefore, is the *measure* of its power, and it can lawfully exercise only such powers as are expressly conferred upon it, by that instrument, or necessarily implied therefrom.” (7th A. and E. Encl. Law, 2d Ed., vol. 7, p. 695; August Bank v. Earle, 13 Peters, 587; N. Y. Fire Ins. Co. v. Ely, 5th Conn., p. 560.) The powers of a corporation cannot be enlarged by its *by-laws*. (7th A. and E. Encl., 2d Ed., 698; Brewster v. Hartley, 37 Cal. 15.) A corporation cannot, *like a partnership*, be constituted by agreement of the parties, but only by authority of the sovereign power. (1st Bl. Com. 474; Oliver v. L. L. & G., 100 Mass. 531.)

We see, then, that a corporation is dependent for all its powers, absolutely, upon its charter. It is the *sovereign* that confers upon it life. It is a *creature* of the State, which, through its *charter*, gives it being, and upon which it is dependent for its very existence. Usually it is vested with all of the rights and powers, for the conduct of its business and affairs, which a natural person possesses. It is frequently vested with the power of eminent domain, of collecting tolls and fares, issuing bank-notes, and other privileges which it would be utterly impracticable to confer on any being not having “perpetual succession.”

The migratory nature of its shares, changing day by day from hand to hand, now held by the citizens of one country and tomorrow by the citizens of a dozen different countries, makes it absolutely impracticable for the interests of the stockholders to be guarded and protected from injury and wrong by any, except the government of its creation.

This is one of the most cogent reasons why it must have the nationality of that country (a reason entirely inapplicable to copartnership).

In the language of Dr. Lieber, in the case of Baron, Forbes & Co., hereinbefore cited, “it is absolutely incorporated in and *assimilated* with the political society which gives it being.” Hence it has nationality—the nationality of the country which gives it birth, and it is therefore treated as a citizen of that country within the meaning of this and similar conventions.

5. In the Spanish version of the treaty, as we have stated, "corporations" and "companies" are called "corporaciones" and "compañías." If we find that Chile has, in her Code, "associations," which are there called "corporaciones" and others called "compañías," and which have all the characteristics and attributes of our corporations, then they have true nationality, for the reasons we have pointed out, and they, and they *only*, are the "corporaciones" and "compañías" mentioned in the Convention.

The "corporaciones" of the Convention are described in Articles 545 to 564 of the Chilean Civil Code.

They provide as follows: Article 546 provides: Foundations or corporations which have not been established by virtue of a law, or which have not been *approved* by the *President* of the *Republic*, with the advice and consent of the Council of State, are not juridical persons.

Article 547. Industrial *copartnerships* are not included in the provisions of this title.

Article 548. The statutes (charters) of corporations, drawn up by themselves, *shall be submitted for approval* to the *President* of the *Republic*, in concurrence of the Council of State.

Article 549 provides that the property of a corporation does not belong to the individual members, and they are not liable for the debts of the corporation. * * * If the corporation has no legal existence according to Article 546, their collective acts are binding upon each and every one of their members *in solido*. Article 550 provides for the government of the corporation by a majority of its stockholders. Article 556 provides that corporations may acquire property of all kinds.

Article 559 provides that corporations cannot dissolve themselves without the approval of the authority which legitimized their existence. But they may be dissolved by such authority or by provision of the charter, notwithstanding the wishes of the members to the contrary.

It appears from these extracts from the Chilean Code that these "corporaciones" have substantially the same powers and limitations as our corporations; that they *derive* their power from the *special authority granted them by the President and Council of State*, and that they *cannot change* their charter *without the approval* of the *same power*; that they have *perpetual succession* and are not affected by the death or incapacity of a member or members, and that they have the same characteristics and

attributes as the corporations and companies of the common law which have nationality. These, then, are the "corporaciones" which are called corporations in the English version, and for the reasons we have given they have the nationality of Chile.

6. It was assumed in respondent's brief, that the words "corporations and companies" mean the same thing, the first being more frequently used, it is there said, in the United States, and the latter in England. In some authorities they are treated as practically identical.

In *Angel & Ames on Corporations*, these words are used interchangeably, *but only in the sense* that the "company" has all the attributes which, we have pointed out, belong to a true corporation.

There are, however, associations both in Great Britain and the United States which are usually termed "companies" in the United States, and which are, properly speaking, *joint stock companies*. They are partnerships as to the liability of the members, but they have certificates of stock representing their shares which are transferable. But in many of the United States the law in reference to joint stock companies has been so modified as to give them all the powers and privileges of a true corporation, and where that is done the statutes, and in some of the States, the constitution provides that they shall be held to be corporations.

These latter companies, which have the essential attributes of a corporation, are the only companies in the United States (except business corporations), which can have nationality, and hence they are the "companies" mentioned in the Convention.

Chile, by its code, has provided for exactly this kind of an association, having distinctly and clearly all the essential attributes of a "corporation" as known to the common, and, in fact, to the civil law. To show what these provisions are we make the following extracts from that code:

Article 2061 states, in defining the different kinds of "*compañias*" it is a joint stock company when the common capital is contributed by shareholders who are liable only for the amount represented by the shares they hold, and when the partnership is not known by the name of an individual, but designated by the business in which the company is engaged.

In the *Commercial Code*, under Title VII, "*Sociedad Anónima*," it is provided: Article 427: "The *Sociedad Anónima* exists by virtue of a *decree* of the *President* of the Republic which authorizes them. This authorization is equally necessary in order to modify

their statutes (charters) in order to continue the companies, which have been constituted for a fixed term, and in order to dissolve them before the time or period stipulated, or in other cases not provided for by law.”

These companies are *created* by the *decree* of the President (the Sovereign) approving their *charters*. They have a perpetual succession, just like any other corporation; their stock is transferable like a corporation, and, as will be seen by the foregoing quotations from the Chilean Code, they are a true business corporation, or joint stock company possessing all the powers and attributes of our corporation, and they are dependent absolutely upon the charter granted by the President of the Republic for all their powers and existence, just as is our corporation. And they have, therefore, undoubted nationality. They are the only associations, known to the Chilean Code, except the “corporaciones” mentioned above, which *have* the attributes and characteristics of a “corporation.” They are included in the title of the Chilean Commercial Code which treats of “La Sociedad o Compañía,” and are unquestionably the “*compañías*” referred to in the treaty, by that name.

It is admitted by all that Alsop & Company did not belong to this “*Compañía Anónima*,” but to the association known under the Chilean Code as “*en comandita simple*.”

7. These business “corporations” and “companies” are very different, however, from a general or special partnership, such as those described in Articles 2053 to 2071 and Articles 2098–2103 of the Chilean Civil Code, and to which it is admitted Alsop & Company belonged. The partnerships there described are true partnerships, just as absolutely and effectively and having the same characteristics and attributes as those designated by that name in the United States.

They have none of the essential characteristics and attributes of a true corporation or of the “corporaciones” and “compañías anónimas.”

The following is a synopsis of that portion of the Civil Code of Chile which treats of these associations, which shows that there is no essential difference between them and partnerships under the common law except the fact that they may sue in their company name.

“ARTICLE 2053. A partnership or company is a *contract* in which two or more persons agree to join something in common for the purpose of dividing among themselves the profits arising therefrom.

A partnership constitutes a juridical person distinct from the parties considered individually. Article 2054 provides that in the deliberation of the partners a majority of votes shall be decisive. It also provides what shall constitute a majority where the contract does not state. Article 2058 provides that the nullity of the partnership agreement shall not effect the right of action of third persons against each and every one of the partners on account of the transactions of the partnership. Article 2061 provides that a partnership, whether civil or commercial, may be general, limited, or a joint stock company with limited liabilities. It is a general partnership when all the partners take part in the management or when it is managed by persons selected by common consent. It is a limited partnership when one or more of the partners limit their liability to the amount of the subscription. We have hereinbefore quoted the provision as to joint stock companies. Article 2063 provides that general partnerships may have one or more special partners. Article 2065 provides, among other things, that if the business for which it is organized is of limited duration that it shall be understood to have been entered into with reference to that period. Article 2066 states that the contracting parties may fix the rules for the division of profits and losses. Article 2068 provides that in the absence of express stipulations that it shall be understood the division of profit and loss shall be made in proportionate amount, as each partner may have contributed to the common capital. Article 2098 provides that the partnership is dissolved by the expiration of the period for which it is established. Article 2099 provides that partnerships shall be dissolved by the termination of the business for which it was entered into, or by the arrival of the period fixed in the articles of copartnership. Article 2100 provides that insolvency shall work dissolution. Article 2103 provides that a partnership is also dissolved by the natural or civil death of any of the partners, except when by provision of law or by the contract of the partnership, said partnership is continued between the surviving partners with the heirs of the deceased or without them."

8. The limited copartnerships, such as that provided for in the foregoing chapter, and to which class *Alsop & Company* belonged, is familiar to the business world and has been for centuries. In this country it was *borrowed* from the French code. (*Ames v. Downing*, 1st Brad. N. Y., 229; 3d Kent, Com. 36.) Under the name of "*Société en comandite*" it has existed since the Middle Ages. "*It was always considered a PROPER partnership.*" (See same case, where will be found a full history of limited copartnerships and full citations from the civil law, showing that there it is considered as a partnership and as a PARTNERSHIP SOLELY.)

The provisions for the formation, termination, dissolution, registration, and liability of general and special partners found in the Code of Chile are almost identical with the statutes on that subject for the District of Columbia, and in the Code of California.

Practically the same provisions as to limited partnerships are found in the Code of New York, in the Statutes of Michigan, and in nearly all the States of the Union.

The striking similarity between these and the Chilean Code in reference to this subject show conclusively that they all have a common origin, and that a limited partnership in Chile is no other or different thing from a limited partnership in any of the United States, except that in Chile it is given the right to sue in its company name. Certainly these limited partnerships do not derive their powers from their charter (for they have none) nor from the code.

Neither would any one claim that because the statute provides regulations for these limited partnerships, that it therefore conferred nationality upon the partnership.

That they are *not corporations* has been decided in a case in the State of New York, in which it was stated that "the company is domiciled in New York State, and constituted by written articles of association, whereby its capital is divided into shares, its shares are transferable. The death of a shareholder will not work a dissolution. The business is conducted by a board of managers. The property is vested in the exclusive possession of three trustees, and all legal proceedings are conducted in the name of the president or these trustees. Thus it is a *quasi corporation*, as between the members, *by their voluntary contract*. As to third persons it is a partnership. Inasmuch as a corporation is always created by *charter*, while this company is *self-constituted*," held this was a copartnership. (*Hoey v. Coleman*, 46 Fed. Rep. 241.)

There are these clear distinctions between a commercial corporation and a limited copartnership. The former, as we have pointed out, derives all its powers from the sovereign; the latter depends for its powers and existence upon the agreement of the partners; the former has corporate "immortality"; the latter ceases to exist by the civil or natural death of a general partner, and may be dissolved for other causes; in the former the stockholders are not liable for the debts or torts of the company; in the latter the partners are, even in Chile, eventually.

It will also be observed that, by Article 2058, in case of the nullity of the partnership for any reason, the right of action of third parties on account of all the transactions of the partnership, exists *against each and every one* of the partners.

9. It appears, then, that this Chilean Code does not attempt, any more than the codes in the various States of the American Union, to delegate any power or authority to the copartnership, and makes but few regulations for it. In fact, the partnership is there, as elsewhere, exclusively a matter of contract, just as much so as under the common law.

These copartnerships, then, are clearly distinguishable from the corporations or companies of the common law which have nationality, and also from the "corporaciones" and the "compania anonima" of the Chilean Code. There are these clear distinctions between the "corporaciones" and "compañia anónima" and the general and limited copartnerships of that code. It is not necessary for either the general or limited copartnerships, the "colectiva" or the "en comandita simple," to prepare and submit their charters to the *President of the Republic* and the Council of State, and procure a DECREE from them before they are empowered to do any business; but this *is* required of the "corporaciones" and the "compania anonima." (See Civil Code, 548, and Commercial Code, Article 427, *ante.*) The partnerships may be dissolved by act of the parties, or their agreement may be changed by their own contract, by simply filing the amended contract, without the necessity of any *decree*, and without power in any one to refuse the registry thereof. But the "corporaciones" and "compania anonima" cannot be dissolved by the corporators themselves, but only in the manner in which they were formed, or by the action of a court. The former has "perpetual succession," the latter has not. In the former the members are not liable for the debts or acts of the company, in the latter they are, eventually.

It has been well said that "the difference between a company (corporation) established for private hazard and profit by an act or *charter* of incorporation, and a copartnership, is obvious and striking. The latter is simply a *voluntary contract*, or the result of such a contract, whereby two or more persons agree to combine their property or labor, or both, for the purpose of a common undertaking, and the acquisition of a common profit; and the gain or loss is to be proportionately shared between them. But this definition greatly falls short of a company established as a body corporate, which, though originating in a voluntary contract, is the result, not only of that, but of its *confirmation*, by special legislative authority. This confirmation is *indispensable* to enable the parties to the compact to transmit their property in succession." (An. and Am. Corp., 11th Ed., par. 41.)

10: My learned colleagues, however, contend that under the law of Chile it is a well-settled principle that an association of persons formed for commercial purposes, established by law, becomes an entity, "a juridical person." To sustain this proposition they cite Article 2053, quoted *ante*, and then say that "by the law of Chile, therefore, as well as by the law of all the countries where the civil law prevails, the *three* classes of business companies, the '*colectiva*,' '*en comandita*,' and the '*anónima*,' are in the same category from the point of view of a '*juridical personality*.' As in the case of incorporated companies of the United States, the individuals composing them are united into one body and they are lost in the corporate existence; it is not the individual members but the legal being which acts and transacts business." They thereupon assume that because it is a "juridical person" that both the general and limited partnerships have the same attributes as corporations under the common law.

The first error in this statement is, as we have already pointed out, that they are not *created* or established by law, but as appears by the very paragraph quoted, Article 2053, are established by the *contract* of the parties; they are not established by a *charter* which confers upon them all the powers and privileges which they have, as are corporations in the United States, nor are they established, as in the case of "corporaciones" and "anonima," in Chile, by the *decree* of the President and Council of State.

The fact that the laws which regulate a partnership in Chile, in the District of Columbia, in California, and Louisiana, are codified, and that the laws which regulate a general partnership in most of the United States are not codified, has no significance.

Because the law regulating them is codified, it does not follow that they are *created* by that law, when the very law itself points out in its first paragraph that the partnership "is a *contract*," a *creation* of the *parties* thereto.

Because the contract of copartnership and the notice of dissolution thereof is required to be recorded in a public office, it does not follow that the *contract* is *created* or established by the State.

In the District of Columbia these same instruments and many others are required by statute to be recorded. They are not therefore "*creations*" of the State.

These Chilean partnerships have no true personality, because they have no "immortality" in the corporate sense, and because they are not created by the charter of the State. They are just as distinct from the true corporation as are partnerships in the

United States, save that they can sue and be sued in their company name. That fact certainly does not give them citizenship. The Code of Chile does not confer nationality upon them. No authorities have been cited holding that merely because this power has been conferred upon any person or persons that they thereby become endowed with nationality or citizenship.

11. Juridic or juridical is defined as relating to jurisprudence or for dispensation of justice. (See Worcester, Webster, and Anderson's Dictionary of Law.) "To juristic persons, we can only attribute a *domicil*, but *no proper nationality* in the technical sense. Nationality postulates, as its basis, a series of rights and duties as to which a more careful investigation alone can show whether they belong to juristic persons. The grant of citizenship, therefore, has, in general, no meaning for juristic persons, and is misleading." (Bar's Int. Law, 2d Ed., 1892, 227, n. 1.) The Chilean Code has undertaken to define what is meant by juridical persons.

Article 545 reads: "A juridical person is a fictitious person, capable of exercising civil rights and to contract civil obligations, and to be represented judicially as well as extrajudicially. There are *two* kinds of juridical persons—*corporations* and foundations (endowments) of public charities."

It cannot be said that these juridical persons have nationality because they have civil rights and the right to contract civil obligations, and to sue and be sued. If so, let us see what follows. By Article 57 of the Chilean Civil Code, it is provided that "foreigners in respect to the acquisition and enjoyment of *civil rights*, which the code regulates, shall be treated no different than Chileans." A foreigner, then, by virtue of the law of Chile is capable of exercising civil rights and contracting civil obligations, and can sue and be sued in the courts of Chile. Is he, therefore, a Chilean within the meaning of this Convention?

Neither can it be said that because these "juridical persons" are fictitious persons that they have the right of citizenship, for under the civil law a succession, where there are only collateral heirs who have not accepted it, has all the rights and liabilities of the deceased, it can acquire new rights and incur new liabilities. It may incur obligations *ex delicto* as by the default of a slave. The civil law, therefore, recognizes it as a legal entity and a "juridical person." Does it, therefore, have the nationality of the country where it is being probated?

Neither can it be said that, although a copartnership has none of the attributes of nationality, that the Chilean Government can, by designating it as a "juridical person," thereby confer citizenship upon it? Mexico in its constitution has provided by Section 11, Article 30, Subdivision 3, that "foreigners who acquire real estate in the Republic, or have Mexican children, provided they do not manifest their resolution to preserve their nationality, shall be Mexicans."

This provision has frequently come before international arbitrators and it has always been held to be ineffectual for the purpose of preventing a nation from interposing in behalf of its own citizens living in Mexico.

12. As before stated, several cases have arisen before commissions and arbitrators where individual partners have been given awards for injury to partnership property, or where the question as to nationality of these societies has been presented and passed upon more or less directly. We have already referred to the case of *Baron, Forbes & Co.* In the case of *L. S. Hargous v. Mexico*, opinion by Thornton, Umpire, United States and Mexican Claims Commission, it appeared that the association was a commercial house formed in Mexico; that the umpire allowed the claim of one of the partners, who was an American, and denied the right to recover on the part of the other partner, who was a German. (See *Moore Int. Arb.*, 2326, 2329.) A surviving partner of a Mexican company was given an award before the United States and Mexican Claims Commission. (*Garrison, Survivor, v. Mexico*, Lieber, Umpire, *Moore, Int. Arb.* 1356, n. 2.)

In a case before the United States and French Claims Commission, where the copartnership was a company in New Orleans (where the civil law is in force), the claimant lived in France. The claim arose during the American Civil War, and the claims of two partners living in Louisiana were each dismissed because they had given aid and comfort to the enemy, but the claimant in this case, the third partner, was allowed to recover for injury to the partnership property. (*Rochereau v. United States*, *Boutwell's Rep.* 124.)

In the case of *Cerruti*, referred to in the decision of the majority of the Commission, the claimant had been deprived of his individual property and his interest in a copartnership, organized in Colombia under a code similar to that of Chile. It was contended on the part of Colombia that no recovery could be had before the

arbitrator on account of the partnership property, because the company was a juridical person and a citizen of Colombia, and Cerruti's interests were not distinct and separate from that of the company itself. I have been unable to discover anything in the case that indicates that this contention on the part of Colombia was abandoned.

The important bearing of that case on the case presented here is the fact that Italy, a civil law country, made the claim in behalf of Cerruti, not only for his individual property, which was destroyed or confiscated by Colombia, but for damages to his interest in the copartnership of Cerruti & Co., and that Colombia, although a civil law country, had confiscated or destroyed the interest of Cerruti in Cerruti & Co., because it was claimed that he was not neutral in a war that had taken place in Colombia. Both countries thus recognizing the fact that a partner in a company has an interest in the copartnership property, separate and distinct from the copartnership itself. It is true, as before stated, that when the matter was presented to the arbitrator, Colombia by its brief assumed the contrary position, and endeavored to get the claim, so far as the injury to the property of Cerruti & Co. was concerned, rejected on the ground that Cerruti & Co. was a juridical entity, and therefore a citizen of Colombia.

If this had been correct, then the arbitrator, no matter what the terms of the Convention might be, unless the point were distinctly waived by the agreement for arbitration, could not award anything on account of the injury to Cerruti & Co., for it was a Colombian citizen and its property the property of a citizen of Colombia.

That the arbitrator was required to determine this question in the very outset is shown by the fact that in the first paragraph of the award the arbitrator, President Cleveland, announced that the claim of Cerruti for injuries to the firm of E. Cerruti & Co., was a proper claim for INTERNATIONAL ADJUDICATION. The arbitrator, therefore, proceeded to award a large sum to E. Cerruti for these losses, not only to his individual property, but for the damages which he suffered to the property of E. Cerruti & Co., which constituted much the greater part of the award.

13. Several cases are cited by my learned colleagues, in which the courts in this country have held that a certain copartnership formed in Louisiana constituted a juridical entity, and that for the purpose of giving jurisdiction to the United States courts in cases

arising between aliens and citizens, or citizens of the different States, these partnerships were to be considered citizens of Louisiana. A careful examination of these cases shows that they in no way uphold the contention that a partnership or limited partnership has nationality within the meaning of this Convention. If that be the doctrine of either of those cases it has been overruled.

The first case cited is *Smith against McMicken*, 3d La. An. Rep. 319. That case merely holds that the interest of an individual partner, in a partnership, formed in Louisiana, cannot be levied on for his individual debts, until the creditors of the copartnership have first been satisfied. But that there is no conflict between the civil and the common law doctrine on that subject, the court, in that case, recognizes in the following language:

“And if we look to the common law writers, we find in the general theory a substantial harmony with our own, with the French, and with the civil law on this point.”

That this quotation expresses the true doctrine of the common law on the point will be seen by an examination of the following authorities. (17th A. & E. Encl. Law, 1342, 1344; *Sanborn v. Royce*, 132 Mass. 595; 3d Kent Com. 65; *Bank v. Carlton* R. R. 11th Wall. 624; *Lindsay on Partnerships*, p. 359.) All else that was said in the case of *Smith v. McMicken* was mere dicta. It is apparent, then, that the point DECIDED has no bearing on the case at bar, but if it had, that there is no conflict as to that point between the common and the civil law.

To the same point is cited *Nav. Co. v. Agar & Co.*, 14th Fed. Rep. 615, the contention being that because the court there holds that *Agar & Co.*, a Louisiana copartnership, composed in part of foreign citizens, could be sued as a citizen of that State in the Circuit Court of the United States, under the provisions of the United States statutes giving jurisdiction to that court, in a suit between citizens of a State and an alien (U. S. Rev. Stat. 629), that therefore such a company is a citizen within the meaning of this Convention.

Nothing could be farther from the opinion than such a deduction from the case. It does not follow at all that because *Agar & Co.* was held to be a citizen of Louisiana within the purview of the above statute, that such a partnership is a citizen of the United States, or that the case brings the claim of such a partnership within the jurisdiction of this Commission, regardless of the nationality of the members of such a company.

The statute is a mere municipal regulation to determine the jurisdiction of the United States Circuit Courts in certain cases.

Whether a person has or has not citizenship of a State within the meaning of this statute, can have no bearing on the question of the jurisdiction of this Commission over the same person. To illustrate, a person who resides in the District of Columbia or in a Territory of the United States, although a native-born citizen of the United States, is not a citizen of a State within the meaning of this statute. (*Camden v. Hughes*, 127 U. S. 325.) Would any one say that therefore such a person was *not* a citizen of the United States within the meaning of this Convention?

To illustrate the point farther, we may refer to the case of *Railway Co. against Whitton*, 13 Wall. 270, where it is held that a corporation is a citizen of the State creating it, within the meaning of the above statute. But it is also pointed out in that case that it is *not a citizen* of such State within the meaning of several provisions of the United States Constitution.

It is not a citizen, for instance, within the meaning of Article IV, Section 2, of the Constitution of the United States, which provides, "that the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States." (*Paul v. Virginia*, 8th Wall. 168, 179.)

The reason why the court holds that a corporation is a citizen of the State creating it, within the meaning of the provisions of the R. S. 629 is that "the numerous and ever changing associates in such an association, cannot be allowed to allege the different citizenship of one or more of these stockholders, in order to defeat a plaintiff's privilege of suing it as the citizen of a State creating it." (And *vice versa*.) (*Marshall v. B. & O. R. R.*, 16 How. 328).

We do not think the doctrine in the case of *Agar* will be sustained by the Supreme Court, and it is certain that numerous later cases have been decided by that, and the Circuit Courts holding a contrary doctrine. In *Adams Exp. Co. v. May et al.*, 27 Fed. Rep. 907, it is held that such an association could not be sued in the United States Circuit Court. This is the same *Adams Express Co.* described in *Hoey v. Coleman ante*. In *Chapman v. Barney*, 129 U. S. 677, 682, it was held that a joint stock company is not a citizen within the meaning of the above statute. The same was held in reference to a limited copartnership, formed under the laws of Pennsylvania, where these companies have many of the attributes of a corporation. (*Carnegie & Co. v. Hobart*, 53 Fed. Rep. p. 10.)

Article 545, cited by my colleagues from Field's Proposed International Code, which is somewhat erroneously quoted, has no application here, as will be found by an examination of the principal case cited, by Judge Field, to support this article. The case is *Bank of Augusta v. Earle*, 13 Pet. 388. All that is stated in that case is that the laws of a State are not enforceable outside of its jurisdiction.

Thereupon the Court holds that a corporation *may* sue, in the courts of *another* State, on the contracts of such corporation made outside of its own State.

In the case of the *Compania Unida de Navegacion*, also cited, Mr. Seward did *not* hold that an ephemeral "juridical" copartnership, composed of two, or even ten persons, which can be dissolved on the next day after its *contract* is filed by the death of a single partner and, for various other causes, was to be assimilated to a citizen of Colombia.

What he did hold was, that this company, organized in Colombia by the *decree* of the Government, having *perpetual succession*, with shares of stock scattered, no doubt, to a large extent in various countries, was to be assimilated to a citizen of Colombia.

It was a society "Anónima," and a true corporation.

It will be seen, therefore, that the cases cited by my colleagues have no bearing on the question here and give no light as to the meaning of the word citizen as qualifying the words "corporations" and "companies" under this Convention.

14. Let us consider the question, briefly, of the right of these claimants before this Commission in the light of the broad principles of the "public law, justice and equity." Let us consider whether in reality the injuries complained of in the memorial in this case were committed against the *property* of the claimants, and whether *they* were *injured* by the acts complained of.

Alsop & Company went into liquidation before December, 1876, and John Wheelwright was made its liquidator. Among the assets of the firm was a claim against Bolivia for a large sum of money, and in the latter month the liquidator, in his capacity of liquidator, and in that capacity only, made an agreement with Bolivia under which he was to receive payment of this claim against Bolivia, through revenues collected at the Arica custom-house, in part, and in part from the proceeds of mines owned by Bolivia, and which it *granted* for that purpose, *to him*, for a limited number of years, as will appear by reading the agreement with Bolivia, on file in this case.

Therefore, when the war between Bolivia and Chile began, in 1879, this liquidator was in possession of a right to obtain payment of a claim, due to the old company, by means of certain custom-house receipts and the proceeds of certain mines. Claimants allege that Chile interfered with these rights of the liquidator, so that neither he nor his successors have been able to obtain payment of the claim, in accordance with the agreement with Bolivia.

The present claimants make their demands before this Commission, not upon the original claim or agreement with Bolivia, but for the injury caused by this wrongful interference. Claimants are citizens of the United States, but it is asserted that the acts of Chile, which are complained of, were not committed against *their* property.

These claimants are the persons who have the beneficial right to the *damage* which it is sought to recover. It would not be the "property" of the liquidator; he would be a mere *trustee*, for the real owner, and would have no *interest* in these damages, unless he be an ex-partner.

It is admitted that Mr. Chauncey would be ultimately liable in person for the debts of the old firm, and ultimately an owner of its assets. He is the party actually interested and the party whose "property" is at stake, and any award in this case would go to him as a matter of fact, even if it had to go to him through a process of bookkeeping in which the "liquidator" appeared as the channel. Mr. Chauncey's interests, then, have been injured by the acts of Chile since the firm went into liquidation, and his "property" has been injured, and it is common sense and an equitable conclusion that he is the person entitled to recover within the meaning of this Convention.

16. To decide that a limited partnership formed in Chile is a citizen of Chile, but that an association of precisely the same kind (except that it cannot sue and be sued in its company name), formed in the United States, is not a citizen of the United States, is to adopt one rule for Chile and another for the United States, which certainly is not according to "the public law, justice and equity."

It is a principle of international law that it is the duty of a nation to protect its citizens in a foreign country from injury by illegal acts of such country. In dealing with international questions arising under this conceded right, it is absolutely necessary, then, that whatever may be the local law, the word "citizen," as

applied to corporations, companies, or any other association, must have the same meaning everywhere.

The right of one government to intercede with another, on account of injury to any person by the acts of the latter, is confined to the cases of persons who have the nationality of the intervening government. It cannot intervene in behalf of any one not having its distinct nationality. It is not sufficient for the corporation, company, or association to be domiciled in the country, nor that, for some municipal or local reason, it is treated as a citizen, but it must have nationality within a uniform rule that can be applied internationally.

The circumstances or characteristics which confer citizenship or nationality upon it in one country, must according to international law, confer citizenship upon it in all other countries which recognize that law. Otherwise, there could be no common rule of action in the treatment of these associations internationally. Those having the characteristics and attributes of corporations, if they have nationality in one country must, under international law, have nationality in all countries. Those associations having the characteristics and attributes of partnerships, if they have nationality in one country must, under international law, have nationality in all countries. Or, to state it differently, the same characteristics and attributes which confer nationality upon a corporation or association, organized in one country, must confer nationality upon a corporation or association organized in any other country.

We have sought to point out (paragraph 5) for what reasons these corporations and companies do have nationality within the purview of the "public law." If such a uniform rule be not adopted, then France, for instance, would have the right to protect a company formed in its territory and on which it had conferred "juridical rights," and the United States or Great Britain, could not protect such a company having precisely the same characteristics and attributes under its law, but upon which it had not conferred "juridical rights."

To illustrate what would be the result of such a rule, let us suppose a convention, between the United States and France, identical with the one under which this Commission was organized. And suppose two claims to be presented to that Commission, one on behalf of the Government of France, and one on behalf of the Government of the United States, for substantially the same amount, and arising from similar injuries committed by the respective

Governments. The claim presented against the United States is one in behalf of a limited partnership organized and domiciled in France and composed of three persons, one a citizen of France, one of Great Britain, and one of the United States. The partnership is termed a "juridical person" by the Code of France, and hence the Commission holds that it has the nationality of France, and makes an award in favor of all these people—Americans, British, and French. On the other hand, the claim presented on behalf of the United States is a claim for injury to the property of a partnership, formed under the laws of the United States, and domiciled there, and composed just as the other was.

The law under which it was formed is taken from the French code, and is identical with it, except that it does not provide that the partnership shall be a "juridical person." The Commission, therefore, holds that the copartnership has no nationality in the United States; that the American has a right to recover on account of injury to his interest, and refuse relief to the others, because they are not citizens of the United States. If the same cases came before the State Departments of the respective Governments, no such rule would be adopted. Each would make claim, and could only make claim touching the interest of its own citizens in each copartnership.

Let us take another illustration. Suppose Alsop & Co., instead of being injured by Chile, had been injured by acts committed by the United States; could Chile, on behalf of Alsop & Co., composed entirely of American citizens, as it was, present any claim to the State Department of the United States or before this Commission on that account? We are confident it could not.

I.

In conclusion we say:

(a) That only such corporations and companies as are created by charter, patent, or decree of the sovereign power of the country have nationality, and hence the citizenship of that country.

(b) That a business corporation or company to be endowed with the nationality of a country must also have "perpetual succession."

(c) Alsop & Co. was not created by charter, or by decree of the President of Chile. It did not have "immortality," in the corporate sense. It was not, therefore, a citizen of Chile.

II.

The equitable, beneficial interest in the property injured in this case by the acts of Chile, was at the time of the injury and still is in the claimants. The motion to dismiss should be overruled.

WM. G. GAGE,
Commissioner for United States.

Attest:

JOHN F. BAKER,
ENRIQUE BALMACEDA,
Secretaries.

Delivered February 8, 1901.

