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LANDREAU CLAIM

United States of America

versus

Republic of Peru

Before the

International Arbitral Commission

Constituted under Protocol Signed in Lima May 21, 1921

At LONDON, October, 1922

ARGUMENT ON PART OF THE UNITED STATES OF AMERICA

JACKSON H. RALSTON,
of Counsel.

FREDERIC D. McKENNEY,
Agent and Counsel on Part of the United States of America.

LONDON: PRINTED BY WILLIAM CLOWES AND SONS, LTD.

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IF we believe that truth has an innate vitality which error can never possess, we must believe in its success despite many misunderstandings and defeats. Our problem is to study, find the truth, and then give it opportunity to work. There is no room for discouragement and, if we care for our fellows, less occasion for delaying our work. We are led to the conclusion that mankind can save itself from its baser elements and thus progress to a better civilization.

Condensed from
"A QUEST FOR INTERNATIONAL ORDER"
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ARGUMENT

on Part of

THE UNITED STATES OF AMERICA

in Support of the Claim of the Heirs and Assigns
of the American Citizen

JOHN CELESTIN LANDREAU

AGAINST

THE REPUBLIC OF PERU

PRELIMINARY

In International Arbitrations, as in the possibly more firmly established field of Municipal Arbitrations, it is settled that the functions and powers of the Arbitral Authority arise out of and are limited by terms of the agreement by which the contending opponents submit their differences to the determination of the impartial and disinterested third party. What in the Municipal field is commonly called the Articles of Submission in the International field is equally as commonly called the Protocol. Both generally contain a sufficient reference to the matter of dispute ; a statement of inability to agree ; an agreement to arbitrate ; an identification of the chosen arbitrator or provisions for his or its selection or erection, and a solemn agreement to abide by the determination and decision reached and announced.

In both fields the jurisdictional powers accorded the arbitral authority may be general, without restrictions, and the subject matter of dispute in its entirety, from its very beginnings, may be reviewed and minutely examined in its every detail, so that in every aspect of the controverted matter, from whatever angle viewed, justice and equity may be done as between the opponents. Equally so, in both fields the opponents, by their articles of agreement or protocol, may so limit the functions, duties and powers of the arbitral authority that but a single question or phase of the entire dispute—and that perhaps not necessarily a fundamental one—may be submitted for determination.

Arbitration in practice implies and conclusively assumes the exercise of judicial faculties, and International Arbitration in practice is necessarily the exercise of a judicial, and not a diplomatic function of government.

It is but logical, therefore, that the great publicists, authorities on International Law, should agree that awards of international arbitral tribunals may be set aside or even disregarded for, among other reasons, the exceeding by the tribunal of the powers conferred upon it by the protocol, and this notwithstanding the protocol may have contained the unqualified declaration that the "decision of the tribunal shall be final and conclusive," or, as in the instant case, that "It shall be accepted as final and binding upon the two Governments."

For example, Calvo, the hornbook of International Law for all Spanish-speaking America, including beyond peradventure Peru, states as an axiom that :—

> "Section 1774 (our translation) : From the fact that an award is binding without appeal the absolute inference cannot be drawn that the parties cannot combat it. There are, on the contrary, certain cases in which they are perfectly warranted in refusing to

accept and carry it out. Such cases may be summarized as follows :—

"If the award has been rendered without the arbitrators having been sufficiently authorized, or when they have gone (statue) outside or beyond the terms of the agreement to arbitrate."

Sir Travers Twiss, in "Law of Nations : On the Rights and Duties of Nations in Time of War," 2nd Edition, at p. 7, says :—

"When nations have agreed to refer any question in dispute between them to arbitration, their good faith is pledged to abide by the decision of the arbitrator, *unless the decision should involve a clear departure from the terms of the reference*" * * * * (italics supplied).

Hall, "International Law," 5th Edition, 1904, at p. 363, states the axiom thus :—

"An arbitral decision may be disregarded in the following cases, viz., when the tribunal has clearly exceeded the powers given to it by the instrument of submission," * * *

Taylor, "International Public Law," 1901, pp. 379-380 :—

"* * * It is generally admitted that the arbitral decision or award may be honorably disregarded when the tribunal has exceeded the powers conferred upon it by the articles of submission," * * *

It thus appears that upon the point of *ultima petita*

(* Calvo : "Section 1774. * * *).

"1. Si la sentence a été prononcée sans que les arbitres y aient été suffisamment autorisés, ou lorsqu'elle a statué en dehors ou au delà des termes du compromis," * * *

or the exceeding of the powers conferred and its effect, there is complete accord among the English, American and Spanish authorities.

In the field of Continental Authority accord upon the point is equally assured :—

> Bluntschli : "Das Moderne Völkerrecht der civilisirten Staten," 1878, sec. 495, p. 277.
>
> Heffter : "Das Europäische Völkerrecht der Gegenwart," 8th Edition, 1888, p. 233.
>
> Bonfils : "Manuel de droit International public," 5th Edition, 1908, p. 573, sec. 955.

Each and all state the principle in not dissimilar language, while Serge de Westman, in a note to his translation of Kamarowsky "Le Tribunal International" (p. 348), sums up the point as follows :—

> "The award may be rejected by the parties only on the following grounds :—
>
> 1. If the tribunal has violated one of the provisions of the treaty by virtue of which recourse was had to arbitration, or
>
> (*a*) Has exceeded the limits of its jurisdiction," * * *

citing immediately in support of this pronouncement :—

Goldschmidt, "Projet," pp. 34–6,
Phillimore, V., VI., p. 3,
Twiss, p. 11, chap. 1, p. 35,
Pierantoni, "Gli arb.," p. 96,
Calvo, p. 688,
Bluntschli and Brater, Political Dictionary, 1861,
Bluntschli, 495, and
Heffter, p. 109.

Much of the foregoing properly might be deemed superfluous, if not indeed objectionable, were it not for the fact

that certain suggestions and arguments, seriously put forth in the answer of the Republic of Peru, seem to be based upon the assumption that the instant Protocol makes a general and unrestricted submission to this Honorable Tribunal for its decision of the numerous matters, both of fact and law, which at one time or another, through the prolonged period of controversy, have been asserted, denied, contended for or controverted by one or other of the parties in interest.

The Protocol of May 21, 1921, providing for the constitution of this Honorable Commission, and defining its powers, is of the restricted rather than of the general or all included type.

It does not submit for investigation any question as to the nationality, native or acquired, of the deceased J. Celestin Landreau, nor does it ask or authorize the Tribunal to ascertain from or by a comparison of the names or descriptions of the guano deposits which may be found in the numerous lists composing parts of claimant's and respondent's "Cases" whether in fact J. Teophile Landreau made true original discoveries of any such deposits, or whether he only claimed to have discovered deposits which were already known to the Peruvian Government.

The Protocol itself, in its preamble, describes the subject matter in controversy between the two Governments as:—

> "the claim against Peru of the heirs and assigns of the American citizen, John Celestin Landreau, arising out of a decree of October 24, 1865, of the Government of Peru, providing for the payment of rewards to John Teophile Landreau, brother of John Celestin Landreau, for the discovery of guano deposits, and out of contracts between John Teophile Landreau and John Celestin Landreau entered into on or about April 6th, 1859, and October 29th, 1875."

It is the claim so described and defined, and none other, that "is supported by the Government of the United States," and which the contracting Powers resolved to submit "for decision to an International Arbitral Commission." But it is not even that claim in its *every* aspect that is submitted for the decision of the Arbitral Commission, but only those aspects of that claim which are expressly defined in Article 1 of the Protocol, and therein designated as "The questions to be determined."

Those questions are :—

> "First. Whether the release granted the Peruvian Government in 1892 by John Teophile Landreau eliminated any claim which John Celestin Landreau, the American citizen, may have had against the Peruvian Government," * * *

and if it did not, then :—

> "Second; what sum if any is equitably due the heirs or assigns of John Celestin Landreau."

This precise formulation of the only questions submitted for decision—save of course questions subordinate or purely incidental to those so expressed—would seem to afford no ground for discussing whether Teophile did or did not make original discovery of one or more of the deposits referred to in one or other of the various lists submitted by him to Peru and published from time to time, nor whether similarity of names or of localities appearing in certain of respondent's and claimant's documents detract from or tend to disprove John Teophile Landreau's claim to be the original discoverer of the deposits listed by him.

In view of the fact that many deposits, some known or discovered earlier than others, existed upon islands and in localities, the names and location of which are not and never have been in dispute, it would seem to be quite plain that

mere identity of such names appearing in the several lists is not a sufficient circumstance to refute John Teophile Landreau's claim as discoverer of *the particular deposits* on such islands or in such localities which he denounced, and which were subsequently identified and then worked by the respondent Government.

If the question as to original discovery *vel non* were open to discussion before and decision by the Commission, which we think it is not, it would seem that to afford basis for any such discussion, it was incumbent upon the respondent to show, or at least attempt to show, by pertinent documents or oral testimony, that the similar names of localities which appear in the Peacock, Montressor and other lists, some earlier and some later in date than the Landreau lists, actually correspond with the very deposits which Landreau claimed to have discovered, and which he denounced in his several lists submitted to the Peruvian officials. No attempt to adduce any such documents or oral testimony appears from respondent's case. In its absence the Commission could not justly, even if it should deem itself authorized to consider the point at all, find that Teophile was not in truth the original discoverer of those deposits which he claimed to have discovered and subsequently to have denounced to the Government of Peru.

But contention as to absence of discovery on part of Teophile, even if documents or oral testimony tending to support it had been adduced, would be futile, in face of the express admissions by the respondent Government evidenced by its Supreme Resolution of September 16, 1892, which forms an integral part of the release executed by Teophile on said date, upon which respondent solely relies for its defence in the instant proceedings. By sections 3, 4 and 5 of that Resolution (pp. 130–131, Respondent's Case) it is pointed out that by the Govern-

mental Decree of December 12, 1868 (hereinafter further referred to) :—

> (3) "the existence of the deposits denounced by Landreau was accepted *as distinguished from those up until then known* (and) it was ordered that a commission should examine them and Landreau was requested to indicate the price he asked for that denouncement."

Further :—

> (4) "That on examining carefully the documents and information *relating to the exploitation of guano on and before* 1865, it appears that Landreau discovered among others the deposits of :—
>
> Chipana,
> Huanillos,
> Chanaballa,
> Pataches,
> Patillos,
> Corcovado,
> Chao, and
> Ferrol,
>
> from which there have been extracted (or may be extracted*) now over two million tons of guano.†
>
> (5) "That *whatever the reduction* that may be established of the denouncements of Landreau, it cannot be less (more) than the hundredth part of what he names."

In addition to the admission contained in paragraph 4 (*supra*) that out of the particular deposits therein specifically named as original discoveries of Teophile Landreau, previous

* Imperfect translation.

† It is interesting to note that certain of the names here appearing, *e.g.*, Chipana ad H(J)unaillos appear in the "El Comercio" editorial of July 9, 1852, Respondent's Case, pp. 113, 114; in the Montressor report of 1861, *ibid.*, pp. 119, 121, and in the Garcia report of 1863, *ibid.*, pp. 122, 123.

to his denouncement thereof unknown to the Peruvian Government, there had been extracted " over two million tons of guano," it is further expressly admitted in section 6 of said Supreme Resolution (Respondent's Case, p. 131):—

> " That as the guano in Europe is generally sold at a high price, *the rights of Landreau on the guano exported from the deposits discovered by him*, could not but repay (help but represent) the enormous sum of 40,000 pounds sterling, or, say, 350,000 silver soles at to-day's (Sept. 16, 1892) rate of exchange."

Similarly, it may also be observed that this precise formulation of the questions submitted for decision does not open for discussion any question as to the effect, if any, of the fact that both Teophile and Celestin, whether mistakenly or otherwise, at one time or another denied the continued existence of the contract of 1865, and sought to bottom their respective claims upon the broader and supposedly more advantageous terms of the so-called Law or Decision of the Council of State of February 13, 1833; nor any question as to the character or quality of the American citizenship of the deceased John Celestin Landreau.

That the Contract of 1865 evidenced the valid and purposeful exercise of governmental power, is equally as solemnly admitted (paragraph 7, *ibid.*, p. 131).

Based upon such admissions, and the form and tenor of the release executed by Teophile, the French Citizen, the prime question submitted to this Arbitral Commission for decision by the Protocol is whether that release " eliminated (extinguished) any claim which John Celestin Landreau, the American Citizen, may have had against the Peruvian Government," the extent and character of such claim being ascertainable from the terms of the contracts

in writing between the brothers " entered into on or about April 6th, 1859, and October 29th, 1875."

As in the view of the United States the questions submitted for decision wholly depend upon the terms and conditions of the documents in writing referred to and identified by their dates as given in the preamble of the Protocol, such documents, for purposes of convenience, are here set forth—the text of the public document evidencing the release executed by Teophile Landreau and the Supreme Resolution of September 16, 1892, authorizing settlement between him and Peru, being taken from and with exceptions noted by brackets or footnotes precisely conforming to Respondent's Document No. 7 in its entirety.

LIMA, *December* 22, 1858.

MR. J. CELESTIN LANDREAU,
Hermitage City (*Louisiana*).

MY DEAR BROTHER :

It is with a lively joy that I received your letter that I awaited for such a long time. I see also with still greater pleasure that you have had an excellent cotton crop. I only regret that your health is not so good as in the past.

As regards myself, my dear brother, I have but very sad news to give you concerning my condition. As a physician and naturalist I had occasion to make discoveries of immense deposits of guano on the coast of Peru. On July 29, 1856, having announced these discoveries to the Peruvian Government for the purpose of obtaining the recompense or reward which the law fixes, a proceeding was begun that developed the cupidity and envy of some employés of the Government, who, from that time, never ceased to raise obstacles of every sort against me, even

going to the point of conspiring with a very rich Frenchman, my mortal enemy, to have me thrown into prison, and thereby to compel me to pursue a long criminal procedure from which I emerged safe and sound, but thereby losing my fortune.

Once at liberty and my trial over, I wanted to continue my procedure concerning my discoveries of guano. But what was my surprise to see that the employés of the Government had made all my documents disappear, no doubt to hinder me from attaining my purpose!

In this situation I do not know which way to turn, my resources being exhausted, what will become of me? And to think that I have discovered such great riches and that I shall not be able to enjoy them! It is enough to drive one crazy!

My dear Celestin, come to my assistance, I pray you. If you can send me funds to support me here while I maintain my rights, I shall from that moment consider you as my associate (partner) and pledge myself to recognize in you a half-interest in all my discoveries of guano. If you decide to put some thousands of dollars or *pesos* at my disposal, I am sure that, eventually, we shall succeed in making a large fortune in this matter, inasmuch as the laws of the country set aside a third part to those who, discovering unknown properties of the State, denounce them to it.

I have received news from our brother, Aimé; he is well, but does not say how our father or our uncles are. I should much like, therefore, to be informed concerning all our family.

Good-bye, my dear brother. Many kind regards from me to your wife, and do not forget to answer me as soon as possible.

J. TEOPHILE LANDREAU.

(U.S. Case, p. 119, Doc. No. 4.)

LIMA, *July* 15, 1859.

MR. J. CELESTIN LANDREAU,
Hermitage City (*Louisiana*).

MY DEAR BROTHER :

I have received your letter of April sixth last, in which you advise me of the good health of yourself and family.

I shall never be able to sufficiently express the pleasure you have given me in telling me that you will come to my assistance in the matter of my discovery of guano, of which I spoke to you in my letter of December 22, 1858. I accept, then, as fixed and proper, the conditions and terms that you make in this matter, and I await with impatience the remittance of the $5,000, of which you advise me.

You can already certainly count upon the large profits that this great undertaking is to bring us. On my part I promise you to keep my word concerning the portion that is to come to you, and for that purpose, if you deem it proper, I shall make you an assignment before the Legation or before a Notary.

Concerning the remittance of the $5,000, I advise you to take precautions regarding the person to whom you entrust them to deliver them to me.

The country continues here as always. I hope that your cotton crop will bring you the good results you anticipate.

Write always, as I do, to our good old father.

Embrace your wife and little children for me, and rely always upon the sincere attachment of your brother.

J. TEOPHILE LANDREAU.

(*Ibid.*, p. 121 ; Doc. 4*a*.)

LIMA, *January* 2, 1860.

MR. J. CELESTIN LANDREAU,
Hermitage City (*Louisiana*).

MY DEAR BROTHER:

Mr. Charles Johnson has delivered me your letter dated October fifteenth last, which gave me very great pleasure because of your kind brotherly sentiments towards me. This gentleman delivered me at the same time a small sealed package containing, as per your letter, 125 eagles and 250 half-eagles in American gold, the whole amounting to $5,000, of which I acknowledge receipt by the present letter. This sum shall be invested in the business concerning my discoveries of guano on the coast of Peru, and in which you are now my associate.

I am pleased to be able to advise you that I have just commenced before the Minister of Finance, under date of December thirtieth last, a new record concerning my said discoveries, inasmuch as the record begun in July 29, 1856, having been abstracted during the persecutions of which I have formerly spoken to you, there was no other record to protect my rights than the registration of this record under the letter "L" of the book of the same year at No. 56

* * * * *

(*Ibid.*, p. 123; Doc. 4 *b*.)

J. TEOPHILE LANDREAU.

Contract of October 24, 1865.

U.S. Case, pp. 172–185, Doc. No. 11.

(p. 178.)

Power of Attorney.—M. Jean Teophile Landreau to Mr. Thomas Charles Wright. In Lima, September twenty-

second of eighteen hundred and sixty-five. Before me, the notary public, and of mortgages, and the witnesses to be named, Jean Teophile Landreau, a resident of this capital, single, of lawful age, with contractual capacity, according to law, to which I certify, learned in the Spanish tongue, and whom I certify I know, and says: That he wishes to have raised to the category of a public instrument the draft whose tenor is *verbatim* as follows:—

Draft.—Mr. Secretary: You will be pleased to spread upon your Register of Public Instruments one from which it shall appear in due form that I, Jean Teophile Landreau, grant my special power of attorney to Mr. Thomas Charles Wright, Jr., in order that he may carry on the prosecution of the record until he shall obtain a final resolution thereon, which record I have initiated before the Supreme Government of Peru, relative to the denouncement of some deposits of guano and the designation of the remuneration corresponding to the said denouncement, Mr. Wright subjecting himself to the instructions which I give him for the purpose in writing. You will add the other clauses that shall serve to make this instrument firm and binding. Lima, September twenty-fifth of eighteen hundred and sixty-five.—Jean Teophile Landreau.—Wherefore, the party executing this being acquainted with and well informed of his rights in the premises, affirms and ratifies this power of attorney, which he executes with free, frank, and general administration, remission of expenses and authority of substitution, and to the carrying out of the foregoing binding his present and future property, with submission to the national laws and waiver of domicile and vicinage. He so said, executed, and signed, Don Marcos Navarro, Don Manuel Cruz, and Don Martin Abello being witnesses, the draft being annexed to its file and articles seven hundred and thirty-five *et seq.* of the Code of Procedure being complied with, to which I

certify. Jean Teophile Landreau.—Marcus Navarro.—Manuel Cruz.—Martin Abello.—Before me, Francisco Palacios.—It agrees with its original, which is found on the reverse of page six hundred and twenty-three of my register, to which I refer, and in testimony whereof I issue this first exemplified copy, which I sign and seal on the day of its execution, after consultation in accordance with law.—A seal.—Francisco Pelacios, Notary Public and of Mortgages.

Supreme Decree.

(p. 179.)

Lima, October twenty-fourth of eighteen hundred and sixty-five.

Considering this record of the Council of Ministers, and bearing in mind that the deposits of guano to be found in several localities of the territory of the Republic constitute the principal part of the national wealth, and that as new deposits of the said fertilizer are discovered the financial credit of the nation will become stronger and stronger ; that Jean Teophile Landreau, now represented by Thomas Charles Wright, asserts that absolutely unknown deposits of guano exist and offers to make them known to the Government, demanding for this service the proportionate reward ; that it is strict justice to agree to the said reward if in reality the deposits in interest are entirely unknown, in conformity with the unanimous vote of the Council, and with the opinion of the Attorney-General of the Supreme Court, let the petition of the said Landreau be granted under the conditions following :—

First. The said Landreau will indicate immediately that he accepts this decree, and that he will make the same known in a public writing, in which he will disclose which are the deposits, of which he calls himself the discoverer,

the said designation should be scrupulously exact, and it is understood that it cannot attach to deposits notoriously known up to the present.

Second. The reward to be accorded to the discoverer is ten per cent. on the net product of the guano he may discover, if the number of tons of the said fertilizer is one million or less; eight per cent. on the tons that shall exceed one million and not reach two; six per cent. on those exceeding two and not reaching three; four per cent. on those exceeding three and not reaching four, and two on those exceeding four millions and not reaching five, it being understood that for tons exceeding five million there shall be no recompense whatever, belonging exclusively to the State.

Third. Neither Landreau nor any other person or persons representing him can ever institute any proceedings by reason of the concession granted by this decree before any authorities or courts other than those of the Republic, and pursuant to the laws of the same, expressly waiving all diplomatic intervention, and it being an express clause that should this medium be attempted, by this very fact this resolution shall be null and, at no future time can any reward or indemnity whatever be claimed.

Fourth. What the discoverer or his representative are prohibited from doing is, to intervene directly or indirectly in the contracts of assignment, or any other contracts the Government may see fit to enter into with respect to the guano existing in the new deposits, since his rights are limited solely to demand the part which according to the respective accounts may belong to him as per the quota already designated.

Fifth. The Government may proceed to take out the guano from the new deposits so soon as it may think proper

without the discoverer or his representatives for any reason whatever demanding that the exploiting of the said deposits shall be begun at once.

Sixth. This concession shall be null in case it shall be proved fully that the Government or any other authority had official or personal notice of the existence of the deposits claimed to have been discovered by Landreau. Let it be referred to the General Directory of Finance in order that it may provide that the Departmental Treasury proceed to draw up and record the proper public instrument, after the acceptance of Landreau, or of his public representative. Let it be communicated and recorded. A rubric of His Excellency.—Loayza.

Decree.—Lima, October twenty-sixth of eighteen hundred and sixty-five. Refer to the Departmental Treasury that it may carry out the foregoing Supreme Decree, causing the proper public instrument to be executed as ordered.—Mendibru. (p. 181.)

Petition.—Mr. Director of the Treasury.—Thomas Charles Wright, Jr., representing M. Jean Teophile Landreau, in the record I have prosecuted, for the purpose of having accepted the denouncement I made of several deposits of guano, and of designating the reward corresponding thereto, say : That I have acquainted myself with the Supreme Decree, dated the twenty-fourth of this month, through which, accepting the denouncement, there is designated as a reward ten per cent. of the net proceeds of the guano that my principal may discover, provided that the number of tons shall be one million or less ; eight per cent. of the tons exceeding one

million and not reaching two ; six per cent. of those exceeding two and not reaching three ; four per cent. of those exceeding three and not reaching four ; and two per cent. of those exceeding four and not reaching five ; it being understood that those exceeding five shall not receive any reward whatever, there being added to the said decree some other conditions tending to prevent the raising of any question in the premises. Under these circumstances, and as the final part of the said Supreme Decree demands that after my acceptance or that of Landreau himself, the proper public instrument be drawn up, I have to say to Your Excellency that I accept the above-cited decree of the twenty-fourth instant, and that Your Excellency should order that the proper public instrument to be drawn up. Wherefore I pray Your Excellency to be pleased to consider my acceptance of the aforesaid Supreme Decree as presented in due form, and to order as I demand, and is just. Lima, October twenty-eighth, eighteen hundred and sixty-five.—Thomas Charles Wright Jr. (pp. 181–182.)

Order : Lima, October thirty-first of eighteen hundred and seventy-five. Refer to the Actuary of this office, Don Claudio José Suarez, in order that he may proceed to record the public instrument referred to in the Supreme Decree dated the twenty-fourth instant, the said decree and other documents appearing in this record serving as a sufficient draft.—Garcia. (pp. 182–83.)

Wherefore the Director, acting in the name and in representation of the State, and exercising the authority conferred upon him in this regard, declares by the tenor of these presents : That this concession shall be firm and binding in M. Jean Teophile Landreau in the terms expressed in the six conditions recorded in the Supreme Decree of the twenty-

fourth of October—of the month last past—which determination proves the true essence of this instrument, and against which no objection shall be raised at any time or in any manner, which objection will be advanced, however, in case the grantee, or whoever shall represent his rights, shall not carry out, in whole or in part, the Supreme Resolution approving the denouncement made relative to the guano belonging to the nation ; and should the case arise, the provisions of the sixth article of the Supreme Resolution aforesaid shall be strictly applied ; and should the party in interest comply with everything therein set forth, the said six conditions, principal basis of this instrument, shall, in like manner, and with the greatest punctuality, be carried out. And, being present and comprehending all that has been herein related and, consequently, instructed therein, M. Jean Teophile Landreau, single, of lawful age, a native of France, and a resident of this capital, who I also certify I know, and who has been represented in this matter, with sufficient power, by Thomas Charles Wright, agreeing to the contents hereof, and therefore fully acquainted herewith, the former declared that he accepted the concession aforesaid in his favor, and he bound himself in all legal form to comply in the strictest manner with everything which as discovered, and of his own free and spontaneous will, he has placed in the knowledge of the Supreme Government to the end of giving due fulfilment to the object of his petitions exclusively related to the increase of the fertilizer to which reference has been made in favour of the general resources and interests of the nation. In short, this instrument, according to the terms herein laid down, shall be upheld and carried out by the Director executing it pursuant to what has been ordered, and to the authority granted him for the purpose, as well as by the said Jean Teophile Landreau, as the initiator of this new discovery in so far

only as relates to the increase of the guano already known as the property of the State, in both cases. (pp. 183–184.)

*   *   *   *   *

Contract of Readjustment between J. Teophile Landreau and J. Celestin Landreau, October 29, 1875.

Whereas at the time J. Teophile Landreau, a resident of Lima, Peru, and a citizen of France, did, by correspondence and other documents executed, associate his brother John C. Landreau with him for one individual net half of his interest in a claim against the Government of Peru, growing out of the rights of said J. Teophile Landreau as the discoverer of certain deposits of guano within the jurisdiction of Peru, for a full description of which reference is hereby had to the maps, letters, and other documents on file at the legations of the United States and of France at Lima, Peru, and the Department of State at Washington, D. C.; and whereas J. Teophile Landreau has had since to part with some of his interest by assigning to Thomas Charles Wright, Fernando Palacios and Antoine Jaquet, and Etienne Huard, in order to obtain the means to prosecute said claim against the Peruvian Government, a certain share of his rights in said claim, thereby lessening the share of the said discoverer:

Now, therefore, in consideration of one dollar to me in hand paid, receipt whereof is hereby acknowledged, and for other valuable considerations, me hereunto moving, I, the said J. C. Landreau, do hereby transfer and assign unto J. Teophile Landreau forty per cent. of my half undivided interest in the said claim against Peru, thereby redividing and readjusting the parts belonging to J. Teophile Landreau and John C. Landreau as follows: The portion belonging

to J. Teophile Landreau shall be seventy per cent. of the whole claim and the portion belonging to John C. Landreau shall be thirty per cent. of the whole claim. And it is hereby mutually agreed by the parties hereto that this is a final settlement and adjustment of all questions connected with or growing out of the transaction hereinbefore mentioned.

In witness whereof the parties hereto herein set their hands and seals, at the city of Washington, D. C., this twenty-ninth day of October, eighteen hundred and seventy-five.

J. C. LANDREAU. [SEAL.]
J. TEOPHILE LANDREAU. [SEAL.]

Witnesses:

C. COLNE.
JOHN W. CORSON.

Signed, sealed, and acknowledged before me this twenty-ninth day of October, A.D. 1875, at ten o'clock a.m.

[SEAL.] JOHN W. CORSON,
Notary Public.

Release Executed by J. Teophile Landreau to the Government of Peru, September 16, 1892, *and "Supreme Decree" Authorizing the Settlement of the Claim of J. Teophile Landreau in Accord Therewith.*

(Peruvian Case, pp. 128–133; Doc. No. 7.)

In the City of Lima on the 16th day of September, 1892, before me the undersigned Notary Public, and witnesses which at the foot will be expressed, appeared don Juan Teophile Landreau, of age, bachelor, merchant, a French citizen, residing in this city, and with full knowledge of the

Spanish language and capable of contracting, to which I testify, and said: that I should draw a public deed of the cancellation he grants in favour of the Supreme Government of Peru, under the terms of the minute and supreme decree on the matter drawn as per copies handed me, and the tenor of both of which is as follows:—

Please insert in your register of public deeds one by which it will appear that I, Juan Teophile Landreau, being desirous of settling the controversies I have pending with the Government of Peru, arising from the rescission of the contract entered into between both on the 2nd of November, 1865, before a Notary Public, Claudio José Suarez, in virtue of which the Government granted me certain premiums for the denouncement of guano to which that contract refers, and wishing specially to express my deference of the good offices in which the French Government has insisted through its Chargé d'Affaires in this city, with whose knowledge I perform this deed; I have agreed to cancel definitely and irrevocably the rights which in my favour have been derived or may be derived from the said contract of 1865, in exchange for the handing over of the following amounts, which I am to receive on signing this instrument:—

(1) Three hundred thousand soles in bonds of the Peruvian Internal debt, of those issued according to law of June 12, 1889; and

(2) Twenty thousand soles that I am to receive in cash. In consequence I, Juan Teophile Landreau, declare myself to be irrevocably and definitely paid of the premium that was designated by the Supreme Decree of the 24th of October 1865, and by the contract of November 2nd of the same year, and of whatever might belong to me and my heirs for the denouncement of guano, to which those obligations of 1865 refer; in consequence all the rights claimed by me on

Peruvian guano, arising from the said contract, are now totally and finally cancelled, so that at no time or in any form or for any reason can they be revived. In the improbable case of there at any time appearing real or pretended assignees of my rights on the Peruvian guano, I also declare that what I cancel and is paid to me by this deed are not only the rights that belong to me to-day, in view of the contract of 1865, but the plenitude of such as that obligation granted me in the supreme decree of October 24, of the same year (1865) in which no one but myself has a right to interfere and of which the Government of Peru is unaware of there existing any sale or transfer of any kind. In consequence of this cancellation, the will made at the French Legation of date 19th December, 1891, is null and void. I, Juan Teophile Landreau, finally declare that this deed can at no time be objected to in any way, or at any time for any reason whatever, because considering the uncertainty of my rights under the contract of 1865, I agree of my own free will and in the form I have indicated to its cancellation, renouncing in favour of the Peruvian Government any difference there may be between what I am receiving and what I claimed on previous occasions. No eventuality, whatever it may be, can cause a revival in my favour or in that of my heirs of the effects of the obligations hereinbefore mentioned of 1865, nor such as might supposedly be derived from the supreme resolution of the 12th of December, 1868, by which the former was declared non-existent.

It is understood that the expenses that this deed may cause will be repaid by the Supreme Government of Peru. You, Mr. Notary, will add the usual clauses to give full validity to this deed.

Lima, September 16, 1892.

J. Teophile Landreau.

(*Ibid.*, pp. 128–130.)

SUPREME RESOLUTION.

Lima, September 16, 1892.

In view of these minutes of payment and cancellation signed by Juan Teophile Landreau, through the (good) offices of the Minister of Foreign Affairs, to reach the settlement to which the supreme resolution of the 1st instant refers, regarding the cancellation of the rights that the former claims on Peruvian guanos through the denouncements referred to in the contract entered into between him and the Government on the 2nd of November, 1865, and having in consideration :—

(1) That by the decree of the 24th of October, 1865, and the contract referred to of November 2, of the same year, the Government of Peru granted Landreau, as discoverer of some deposits of guano, a premium that varied between 2 and 10 per cent. of the net proceeds of the guano for the discovery, according to the quantities that might be found of that fertilizer ;

(2) That although by the supreme resolution of the 12th of December, 1868, the contract of the 2nd of November, 1865, referred to was declared non-existent, that was done under the conception that the contract had flaws which rendered it null, and that the stipulated premium was of too much importance for the Government to grant, and that it was advisable to see and examine, first, the deposits in question, which does not exactly mean the absolute cancelment of the rights acquired by the interested party on making the denouncement.

(3) That by the same decree of December 12, 1868, the existence of the deposit denounced by Landreau was accepted as distinguished from those up until then known, it was ordered that a commission should examine them, and Landreau was requested to indicate the price he asked for that denouncement.

(4) That on examining carefully the documents and information relating to the exploitation of guano on and before 1865, it appears that Landreau discovered among others the deposits of Chipana, Huanillos, Chanaballa, Pataches, Patillos, Corcovado, Chao and Ferrol, from which there have been extracted or may be extracted now over two million tons of guano.*

(5) That whatever the reduction that may be established of the denouncements of Landreau, it cannot be less (more) than the 100th part of what he names.

(6) That as the guano in Europe is generally sold at a high price, the rights of Landreau on the guano exported from the deposits discovered by him could not but repay the enormous sum of 40,000 pounds sterling, or, say, 350,000 silver soles at to-day's rate of exchange.

(7) That it is not contrary to law, the faculty with which the Government proceeded to celebrate the contract of the 2nd of November, 1865, and to fix the premium for the denouncement, nor is it possible to contend that contracts of

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* The original Spanish of paragraph 4 is as follows :—

"Cuarto": Que examinando con minuciosidad los documentos é informes relativos a la explotación del guano antes y despues de mil ochocientos sesenta y cinco, resulta que Landreau descubrió entre otros, los depósitos de "Chipana," "Huanillos," "Chanabalfa," "Pataches," "Patillas," "Corcobado," "Chao" y "Ferral," de los cuales se han extraido y se extraen actualmente mas de dos millones de toneladas de guano.

The Peruvian translation of this paragraph, as above, differs from the U S. translation following, as will appear by a comparison of the two:—

> "That having minutely examined the documents and reports relative to the exploitations of guano before and after 1865, it appears that Landreau discovered, amongst others, the deposits of Chipana, Huanillos, Chanabaya, Pataches, Patillos, Corcobado, Chao and Terral, from which there has been extracted and there is *actually* being extracted more than two million tons of guano." (See U.S. Case, p. 230, par. 4.)

that nature can be rescinded without a previous judgment of the courts.

(8) That Landreau having addressed himself to Congress and the Supreme Court of Justice to claim against the rescission by the administration of that contract, both declare themselves incompetent to decide on his complaint, thereby giving a right to diplomatic intervention.

(9) That although it is true that by the contract of November 2, 1865, it was stipulated that Landreau renounced diplomatic action, that renouncement cannot be claimed by the Government, once that the Government has denied the existence of that contract.

(10) That the French Government having insisted several times on this matter being resolved upon, the Government of Peru has a natural interest in terminating it in a form equitable to Landreau and in harmony with the state of Peruvian finances. For those considerations and with the unanimous vote of the Council of Ministers, let the said resolution be accepted and let it pass with this decree to the Ministry of Commerce and Finance for it to proceed on carrying out the corresponding public deed, on which there will be no payment of revenue stamps according to law and in order that the Minister of Foreign Affairs may provide the means stipulated in it, and which shall be placed at the disposal of the interested party by the intermediary, the French Legation, in the capital.

Let this be registered and laid before Congress in due course.

Seal of the President,
Larrabure y Unanue.

Lima, 16th September, 1892. Let the foregoing pass to the Director General of the Treasury for his fulfilment.

(*Ibid.*, pp. 130–131.) (Signed) Quiroz.

Statement of Pertinent Facts and Circumstances, antedating The Supreme Decree of October 24, 1865, and Explaining its Execution.

As already said, the claim of the heirs and assigns of John Celestin Landreau, which the Government of the United States supports and in the particulars specified in Article I of the Protocol presents to this Arbitral Tribunal for decision, arises out of and depends for its effect upon the terms and conditions of the Supreme Decree of the Government of Peru, dated October 24, 1865, which decree and its accompanying documents is referred to in the respective "Cases" and in this brief, as the Contract of 1865.

As is well understood, John Celestin Landreau was not a party signatory to that Contract. On its face it appeared to be of interest, on the one side, solely to Peru, and to John Teophile Landreau on the other. But by virtue of the contractual relations established by and between the brothers in 1858, Celestin's interest in the subject matter of the Contract, that is in the rewards accorded to and to be received by Teophile as the discoverer of previously unknown guano beds, which form a principal part of the national wealth of Peru, had already attached, although Peru had not then been apprised of the fact.

In order that this Arbitral Commission may be fully informed as to the entire situation, and be all the better able to appreciate the terms of said Contract of 1865 and the grounds and reasons for its execution, it is deemed both opportune and appropriate to set forth here the very interesting history of the conditions and circumstances which led up to and induced and justified the making of that Contract.

References, both here and in the " Case " itself, to the law of Peru as it existed between 1833 and 1865, are made merely in the historical sense, for purposes of explanation and enlightenment, and not at all, as might be inferred from certain parts of Respondent's answer, as affording any additional legal basis for the claim under consideration.

At least as early as February 13, 1833, it was the law of Peru that discoverers of " properties belonging to the State by any title " should " receive a third part thereof," and conversely those who made discoveries of such properties and did not declare them, upon being convicted of concealing them, were to be fined in double the value of the property concealed, " should they have property."

The law of February 13, 1833, which is in the form of a report or decision (vote) of the Council of State of Peru, approved by the President of the Republic (U.S. Case, Doc. 1, pp. 111–113) in principal part deals with the nationalization and disposition of the properties of suppressed convents. It does not, however, concern itself solely with such matters, as is stated in Respondent's Case (pp. 23–24), for in the sixth paragraph of the law it is expressly declared that its benefits and pains apply both to the " property of suppressed convents," and to " other properties belonging to the State by any title " (U.S. Case, p. 112).

The guano beds of Peru result from the deposits of fish-eating birds, mixed with a variety of other substances, such as the eggs and bodies of birds, and the deposits and bodies or bones of sea-lions, gravel, and sand. These beds, as Peru

herself has frequently stated in the papers pertaining to this proceeding, constitute the principal part of the National wealth of that Republic. Guano has been found in many places along her shores and upon her islands. Some of the beds are of greater size, and of better quality, and hence more valuable per ton than the others. The scene of commercial operations in the gathering and exportation of fertilizing material shifts from year to year. The islands of Peru are not of large size, and lie rather near to her mainland, that is, hardly more than ten or twelve miles distant therefrom, but they stretch along her shores from north to south through a distance of approximately thirteen hundred miles. All of the islands are rocky in character, many arising boldly and abruptly from the sea, and, speaking generally, vegetation is entirely absent therefrom.

The guano is usually found under a dry crust baked hard by the tropical sun and in the absence of moisture. The dry breezes which play across the islands sometimes cover the fresh deposits with sandy dust and the beds rarely are tainted by unpleasant odours.

Many islands of the Carribean Sea, and off the coast of Africa and in the far Pacific, contain beds of guano, but their quality is less desirable than that of Peru, because of the fact that the moist climates of the former release the nitrogen of the deposits which soon passes off in the form of ammonia, leaving to be gathered for agricultural uses only the more or less insoluble phosphates.

Peru is notably a land of heat and droughts, and her guano being laid down beneath a clear, hot sky, in a dry atmosphere, quickly bakes, and the nitrogen, its most valuable component, is promptly imprisoned and endures in strength for indefinite periods.

For a most interesting and instructive article upon this subject, see "Peru's Wealth-Producing Birds," by R. E.

Coker, in "The National Geographic Magazine," vol. 37, number 6, of June, 1920.

As is truly said in Respondent's Case, the great value of Peruvian guano—the nitrogenous guano—as a fertilizer for agricultural purposes, was known to the Incas of Peru, and by them it was used in fertilizing their fields.

It is also true that the Government of Peru, "recognizing the value of these deposits, both as a means of the improving of domestic agriculture and of financial profit" prior to 1840, asserted general ownership of all guano in Peru as a national asset (Peru, Case, p. 2), but the location of desirable beds of guano, like the location of veins of gold or silver, the national wealth of other lands, had to be discovered.

While the existence of guano on the islands and along the littoral of Peru had been vaguely known from early times, and some few beds or deposits had been identified and worked, for domestic use, the by far greater number of the beds containing uncounted millions of tons of the fertilizer remained undiscovered and unidentified until about 1840 and thereafter, and this notwithstanding the reward for the discovery of properties belonging to the State by any title, offered by the law, evidenced by the recorded vote of the Council of State of 1833. About 1845 extraction of Peruvian guano and its exportation to Great Britain and Europe was begun on a considerable scale, and the governmental revenues of Peru were promptly and materially augmented as a result. Seeking still further augmentation in such regard and, as said, "considering that according to information received by the Government, it is probable that there is much Municipal and Government property which produces nothing, because the state officers lack information and necessary knowledge on that subject," the Minister of Interior of Peru, Rio, issued the Supreme Decree of 1847

(U.S. Case, pp. 113–114) which was published in *El Peruano* —an official organ—of April 21, 1847, which directed the revenue officers to seek and discover all such properties and to note them on the public records, and by way of inducement and as reward for energy displayed in such regard proclaimed that for all such discoveries " said functionaries or (and) anyone else will be allowed one-third of the capital discovered and interests not discharged " according to the law of February 13, 1833, first above referred to.

Neither the law of 1833 nor the supplemental law, in the form of the Supreme Decree of 1847, by word or implication, differentiated between the national wealth furnished by the guano beds, which in the opening sentence of the Contract of October 24, 1865, and also in other documents now before this Commission, were stated officially to constitute " the principal part of the national wealth " (U.S. Case, p. 179) and other properties sources of wealth belonging to the State. By those laws all were urged to seek discovery and make denouncement of any and all sources of public wealth, without distinction as to its character.

Between 1847 and 1859 J. Teophile Landreau, a French national, residing in Peru, explored the coasts and islands of Peru and made numerous discoveries of previously unlocated and valuable beds of guano.

During the years 1846 to 1848 inclusive the Peruvian Government itself engaged in similar explorations, and, under date of May 7, 1852, President Echenique promulgated a Supreme Decree which declared the necessity for exercising " the greatest vigilance over the guano deposits, the property of the Government," and designated " the authorities who should carry out the orders of the Government in relation to the guano deposits on said islands."

This Decree contains a list by name and location of " The

guano deposits belonging to the Republic," and specifies the " districts on the coast to which they are nearest " and the Provinces to which " they should belong " (U.S. Case, pp. 159–160).

While this Supreme Decree does not declare the deposits named are *all* the deposits known and belonging to the Government at its date, the only reasonable inference to be drawn therefrom is that it actually was intended to and did identify *all*, as it clearly was intended to provide for and to protect *all*.

John Celestin Landreau, likewise a native-born subject of France, left that country " in the latter part of 1857," and arrived in the City of New Orleans, State of Louisiana, U.S.A., during the month of December in that year (U.S. Case, p. 115 ; Doc. No. 3).

December 22, 1858, Teophile wrote to his brother Celestin from Lima that—

> " As a physician and naturalist I had occasion to make discoveries of immense deposits of guano on the coast of Peru. On July 29, 1856, having announced these discoveries to the Peruvian Government for the purpose of obtaining the recompense or reward which the law fixes, a proceeding was begun that developed the cupidity and envy of some employees of the Government, who, from that time, never ceased to raise obstacles of every sort against me, even going to the point of conspiring with a very rich Frenchman, my mortal enemy, to have me thrown in prison, and thereby to compel me to pursue a long criminal procedure, from which I emerged safe and sound, but thereby losing my fortune.
>
> " Once at liberty and my trial over, I wanted to continue my procedure concerning my discoveries of guano. But what was my surprise to see that the employees of the Government had made all my

documents disappear, no doubt to hinder me from attaining my purpose.

"In this situation I do not know which way to turn. My resources being exhausted, what will become of me ? * * * * * *

"My dear Celestin, come to my assistance, I pray you. If you can send me funds to support me here while I maintain my rights, I shall from that moment consider you as my associate (*associé*) and pledge myself to recognize in you a half interest in all my discoveries of guano. If you decide to put some thousands of dollars or pesos at my disposal, I am sure that, eventually, we shall succeed in making a large fortune in this matter, inasmuch as the laws of the country set aside a third part to those who, discovering unknown properties of the State, denounce them to it." (U.S. Case, p. 120 ; Doc. 4.)

April 6, 1859, Celestin replied to this appeal, apparently agreeing to put Teophile in funds to the extent of Five Thousand Dollars. (U.S. Case, p. 116 ; Doc. 3.) No copy of this letter is known to be in existence, but on July 15, 1859, Teophile acknowledged receipt of the original, saying :

"I shall never be able to sufficiently express the pleasure you have given me in telling me that you will come to my assistance in the matter of my discovery of guano, of which I spoke to you in my letter of December 22, 1858. I accept, then, as fixed and proper, the conditions and terms that you make in this matter, and I await with impatience the remittance of the $5000.00, of which you advise me." (U.S. Case, p. 121 ; Doc. 4 *a*.)

December 30, 1859, Teophile in a petition of that date addressed to an official of the Peruvian Government, stated that he had

"knowledge of some deposits of guano existing on

the coasts of Peru, and consequently I am ready to indicate the location and present samples as may be proper as soon as the Supreme Government designates the part which ought to belong to me as such discoverer. Your Excellency being gracious enough to first order that the respective offices report what the deposits are which at present are known and those which are actually in possession of the National Treasury." (U.S. Case, p. 148; Doc. 5.)

This petition stands endorsed as follows:—

" *Decree,*

LIMA, *January* 4, 1860.

" Let the Direction General of the Treasury report.

GARCIA."

(U.S. Case, p. 149; Doc. No. 5.)

Pursuant to this endorsed order, the Direction General of the treasury, José de Mendiburo, under date of January 5, 1860, reported, among other things:

" that only in case that the deposits to which Mr. J. Teophile Landreau refers are completely unknown because they are not found in known quarters, it is possible that the concession which he solicits, of a part of their value as discoverer, should be granted, the designation of which portion it would be appropriate for Your Excellency to make, because as I understand that from the independence on there has been no determined, general law which designates what the reward for such discoveries shall be." (U.S. Case, pp. 149–150; Doc. 5 *a*.)

This report likewise stands endorsed under date of January 16, 1860, as follows:

" Let it pass to the Attorney General of the Supreme Court. SALCEDO."

(U.S. Case, p. 150.)

January 18th, 1816, Villaran, the then Attorney General of the Supreme Court, to whom the next above had been referred, recommended the making of an investigation

> "whereby the Ministry will learn whether after it has been made, through the advices of the offices of state or through the reports which the prefects of the departments may give, it comes to light that such deposits are entirely unknown, then Your Excellency may accept the denouncement of Landreau and allow as a reward the third part of the guano discovered, in accordance with the provisions of Paragraph 6 of the Vote of the Council of the State of February 13, 1833, with which the Government agreed, which is printed on page 266, volume 4, of the Collection of Laws of Quiroz, and which, besides, is the general law which governs this subject." (U.S. Case, p. 150 ; Doc. 5 *b*.)

This report of the Attorney General bears the following endorsement, or decree :—

February 9, 1860.

> "It being convenient to ascertain for the resolution of this matter what are the deposits of guano known up to the present in the Republic, let it pass to the Direction of the National Credit in order that it may report upon the subject.

(*Ibid.*, p. 151.) GARCIA."

Pursuant to this endorsement, report was made under date of January 25, 1860, that it was not possible to find "the advices which concerning the known guano deposits at Peru are requested in the Supreme decree preceding." (*Ibid.*, pp. 151–152.)

The receipt by the Government of Peru of this petition of December 30, 1859, is expressly admitted in the communication from the Director of the Treasury to Teophile Landreau,

forming the preamble to the contract of 1865, hereinafter referred to at length. (U.S. Case, p. 172 ; Doc. 11.)

January 2, 1860, Teophile, writing to Celestin, acknowledged the receipt from the hand of a Mr. Charles Johnson, of a letter from Celestin, dated October 15th previous, and also the receipt from the same hand (Mr. Charles Johnson) of sealed packets containing American gold Eagles and half Eagles, "the whole amounting to $5,000," and said : "This sum shall be invested in the business concerning my discoveries of guano on the coast of Peru, and in which you are now my associate." (U.S. Case, p. 122 ; Doc. 4 *b*.)

December 31, 1862, Teophile, again writing Celestin, stated that he had

> "succeeded in having the various bureaus of the Ministry to present a report in which are enumerated, one by one, all the deposits of guano known up to that date to the nation and of which the Government is in possession. * * * * * * The deposits discovered by me are not found comprised in this list. You will now understand that it will be very easy to have our rights recognized, and that it will be impossible for the Government of Peru to hinder us from obtaining the reward which is due us, inasmuch as it cannot henceforth say 'that the deposits of guano that I am going to show it are known to the nation.'
>
> "In case a misfortune might overtake me or that I might happen to die before our success, it is well that I should let you know, from now on, the principal deposits of guano which I have discovered, so that you may be acquainted with them and know they are entirely distinct from those of the Government. Here they are : (Here follows list.)
>
> "Thus you can see there are forty-three places designated where the deposits contained are absolutely unknown, and include more than twelve

millions of tons of guano of which no mention has been made in the registers of the Government. * * * If you can * * * send me some funds, to the end of pursuing this great undertaking." (U.S. Case, pp. 126–130 ; Doc. 4 *e*).

December 2, 1862, Teophile, again communicating with the Peruvian authorities, referred to the petition submitted by him in 1856 and reiterated in 1859, above referred to, and requested that said petition might—

> " be decided upon with the greatest brevity, because it is to my prejudice that, by only having seen my writings or having known that I had petitioned the Government for that right which the Constitution gives me, a multitude of persons should present themselves, soliciting this same right, only to do me harm or to obtain advantages which Your Excellency will not permit " * * * (U.S. Case, p. 157 ; Doc. 8.)

This communication, under date of December 4, 1862, was forwarded to the Custodian of the Archives " in order that he may amplify the report which he has given concerning the guano deposits of the Republic, with a view to the Supreme decree of May 7, 1852, in which the territorial location of the islands on which there are deposits of guano belonging to the Government is made and their geographical position is determined." (U.S. Case, p. 158.)

Under date of December 20, 1862, the Custodian of the Archives returned his report, advising—

> " that over and above those I indicated in my interior report there exists the islands " (naming them).
>
> (U.S. Case, pp. 157–159.)

It requires but slight consideration of the last of the above papers in connection with the Supreme Decree of May 7,

1852 (U.S. Case, p. 159; Doc. 8 *a*) to reach the conclusion that it was definitely intended by the terms of said Supreme Decree (previously referred to herein) and of this supplementary report, to fully indentify and proclaim all deposits of guano then known to and in possession of the Government.

June 25, 1863, Teophile again communicated with the Peruvian authorities, calling attention to his previous petitions and to the various reports of the Government officials endorsed thereon, and said:

> "By virtue of these and considering that being acquainted with all their contents, I can assure Your Excellency that the deposits—the subject matter of my denouncement—are not included in any of the points which the aforesaid reports cover, and therefore there is nothing else to be done, except to execute the proper instrument by virtue whereof the State shall agree and obligate itself to pay the one-third part of the guano which may be discovered on account of my denouncement, in accordance with the opinion of the Attorney General in his report on page 2, and paragraph 6 of the vote of the Council of State of the thirteenth of February, 1833, of which the Government agreed, which is found printed on page 266, of the 4th volume of the Collection of Laws of Quiroz, and which is, moreover, the law which governs the matter.
>
> "Therefore, I beg Your Excellency to be good enough to order that steps be taken for the execution of the proper instrument, in order that I may fulfil my part of the agreement to point out the deposits of guano denounced."

This petition bears the endorsement—

> "Let it pass to the examination of the Attorney General of the Supreme Court, Dr. Ureta.

(U.S. Case, pp. 165–166; Doc. No. 10.) GARCIA."

October 31, 1863, Dr. Ureta, the Attorney General of the Supreme Court, reported his opinion, which will be found spread at large at page 167 of the U.S. Case, being Document No. 10 *a*. After referring to the deposits known to and in possession of the Government as evidenced by the Supreme Decree of May 7, 1852, and certain others not important here to be enumerated, he states that—

> "Notwithstanding that the known deposits appear to have been designated, it cannot be stated with entire certainty that these are the only ones, as the coast of Peru is so extensive, and the use of guano for fertilizer for its lands is so old, and the papers filed away concerning the long-winded examinations which have had to be made are so incomplete." * * *

Referring to the opinion of Attorney General Villaran—his predecessor in the office of Attorney General of the Supreme Court—and commenting upon that opinion, but without in any manner decrying its fundamental soundness, or denying that the law of February 13, 1833, was generally applicable in the circumstances, he suggested that the specified reward of a "third part" was not necessarily absolute as to the proportion specified, saying:—

> "If from what has been said it is deduced that the reward of a one-third part cannot be considered as applicable so absolutely, it cannot be denied either that the man who discovers properties, whose known value augments forthwith the national richness deserves proper recompense. Among the legal principles that might be borne in mind, in order to fix the amount proper in the present case, the least inappropriate, without having a complete analogy, would be to consider Article 520 of the Civil Code, in which the reward of fifteen per cent. is designated

for the person who may discover goods belonging to another in the case of jettison or shipwreck. In this case there is no usurpation, a true owner exists, and there is a discoverer ; although the causes which have given rise to the situation of the goods found on the beach may be totally different from those of the situation of unknown guano deposits, which Landreau says he discovered.

* * * * *

"From these observations relative to the reward, the Attorney General concludes that the third part cannot be assigned in favour of Landreau ; that even fifteen per cent. would be excessive ; and that the surest means of adjusting this point would be by a contract with Landreau, who, being convinced of the weight of the reasons set forth above, would enter into a reasonable compromise, which would always be of great profit to him, if, as he says, the deposits, in the discovery and conservation of which he has not employed either labour or capital, are of considerable size.

* * * * *

Lima, October 31, 1863. URETA."
(U.S. Case, Doc. 10a, pp. 167, 169–171.)

In 1860 Celestin, who, since 1857, had resided and carried on business in the vicinity of New Orleans, in the State of Louisiana, U.S.A., made declaration of his intention to become a Citizen of the United States. (U.S. Case, p. 117.)

The court records at Pointe Coupée containing the evidence of such declaration were burned by the Confederates during the Civil War, but it is not denied that the purpose of becoming a Citizen of the United States, first formally expressed by Celestin at Pointe Coupée in 1857, was

fully and formally accomplished on June 3, 1867. (Respondent's answer, p. 15.)

Such was the situation of the affair when, on October 24, 1865, Teophile, acting by the hand of his attorney, in fact, Thomas Charles Wright, submitted a further petition to Peru, wherein he again prayed recognition of his labours and discoveries; the acceptance of his denouncements, and the settlement of a basis for his recompense or reward.

This petition, with all accompanying documents and the indications of the governmental actions based thereon, constitutes Document No. 11 of the Supporting Evidence, and every requirement thereof, such as the formal acceptance of its terms and conditions, and the filing of the requisite list and denouncement of his discoveries, was duly complied with by Teophile.

Formal acceptance of the list of the deposits discovered by Teophile and so denounced by him appears not to have been made at that time by the Peruvian Executive, this probably because of the necessity of making appropriate investigations, and owing to certain contentions of a Mr. Eucher Henry, who made claim to have been the first discoverer of certain of the deposits claimed to have been discovered by Teophile. This rival contention seems to have come under consideration of the Peruvian Congress in 1867, and a report thereon by the Practical Commission of Finance is set forth in Document No. 13, U.S. Case, pp. 194–196, but is of no serious importance here. (See also *ibid.*, pp. 135–136.)

This report was not favourable to either party, merely declaring that "it is not proved that the denouncement of Henry affects the same deposits to which Wright refers," and that it is not "the province of Congress to decide the fulfilment of the contract proved by the deed."

What subsequently became of the controversy between

Teophile and Eucher Henry is not made clear, but, apparently, it was dropped, leaving Teophile to prosecute his claim under the Contract of 1865 without further trouble from Henry.

Inasmuch as the Supreme Decree of October 24, 1865, above referred to as the Contract of 1865, between Peru and Teophile Landreau, affords the sole basis under the Protocol of May 21, 1921, for the instant claim against Peru, a brief analysis of its essential provisions will prove helpful and possibly also enlightening.

The *Considerandos* or preliminary paragraph declares that :—

> " Deposits of guano to be found in several localities of the territory of the Republic constitute the principal part of the national wealth, and that as new deposits of the said fertilizer are discovered the financial credit of the nation will become stronger and stronger ; "

that Jean Teophile Landreau, having offered to make known to the Government the existence and location of deposits previously absolutely unknown, and " demanding for this service the proportionate reward," it is but " strict justice to agree to the said reward if in reality the deposits in interest are entirely unknown," and that therefore Landreau's petition in such regard should be granted upon conditions which appear in full at page ante. (U.S. Case, p. 15, 172 *et seq.*)

On the same date as that of the Decree itself, Landreau by his Attorney in fact, Thomas Charles Wright, in a public manner made known his acceptance of the terms of said Decree, and demanded that the appropriate public instrument evidencing the Decree and such acceptance should be drawn up and recorded. (U.S. Case, p. 182.)

This was ordered done, the decree and other instru-

ments appearing in the record being referred "to the Actuary of" the Departmental Treasury, one Don Claudio Suarez, for such purpose.

As part of this public instrument the Government of Peru declared that the concession should be firm and binding "in the terms expressed in the (its) six conditions, * * * against which no objection shall be raised at any time or in any manner," but which will be advanced "in case the grantee, or whoever shall represent his rights, shall not carry out, in whole or in part, the Supreme Resolution approving the denouncement made relative to the guano belonging to the nation," * * * and should the party in interest comply with everything therein set forth, the said six conditions, principal basis of this instrument, shall, in like manner, *and with the greatest punctuality*, be carried out." (U.S. Case, pp. 183, 184.)

It remained for Teophile merely to disclose to the Government of Peru the deposits of guano of which he claimed to be the discoverer. This final step he performed by the hand of his attorney in fact, Wright, under date of November 3, 1865 (U.S. Case, p. 188, Doc. 12), and up to the filing of Respondent's answer before this Tribunal it does not appear to have been objected by any authority that the list so filed did not satisfactorily fulfil the requirements as to exactness prescribed by the first condition of the Contract.

In conjunction with Document 12 there appears, as part of the Claimant's Case, a more detailed list, with more exact definitions of location, which is certified by the American and British Consuls accredited to Callao, Peru, to have been taken in their presence from a sealed envelope opened which bears the following inscription :—

"This envelope contains the list of the deposits of

guano denounced by me to the Government of Peru some years since, and to which the decree of October 24, 1865, refers, as well as the public contract made before the notary of State on November 2 of the same year, 1865."

"Lima, February 8, 1867.

"J. TEOPHILE LANDREAU."

The reasons for depositing this list in the consulates or Callao of the United States, England and France is stated by Teophile in a letter to Celestin, dated December 1, 1866, reproduced in part below. (See U.S. Case, p. 134, Doc. 4 h.)

In this connection, however, and as rendering futile any discussion as to the sufficiency of this list of November 3, 1865, it is to be remembered that the Public Instrument of November 2, 1865, which evidences the Supreme Decree and Contract of that year, declares that Teophile Landreau, under date of December 30, 1859, had presented to the Supreme Government a petition, "limited to denouncing several deposits of guano which he states existed on the coasts of Peru, offering to deliver the samples opportunely, so soon as the proportion corresponding to him as discoverer of this fertilizer shall be designated" (U.S. Case, p. 172), and that, based upon a subsequent petition presented by (his) attorney in fact, Thomas Charles Wright, a Supreme Resolution had been adopted "approving the denouncement aforesaid." (U.S. Case, p. 173.)

It might have been supposed that with the execution and delivery of the Contract of 1865 Landreau's troubles respecting his discoveries of guano deposits and the establishment of his right to governmental rewards or compensation for the making of them known had come to an end. Sub-

sequent events tend to show that they had in fact but hardly begun.

In a letter from Teophile to Celestin, dated December 1, 1865, the former states that in virtue of the contract of 1865, he had "deposited list of my deposits with the Minister of Finance on the fourth" of November in that year. In this he evidently referred to the list, submitted by the attorney in fact, Wright, bearing date of November 3, 1865. But, as he says, when he believed he had attained his end and had seen his labours crowned with a favourable result, on the sixth of said month of November a revolution broke out, which would frustrate "our calculations for some time, until I come to an understanding with the Government which is proclaimed." (U.S. Case, p. 133, Doc. 4 g.)

September 1, 1866, Teophile again wrote to Celestin, in part as follows:—

> "I do not know when I shall be able to give you good news about our guano matter, since I see that the new Government of the Dictatorship seeks by unworthy methods to deprive us of a civilized and respected Government.
>
> "Imagine, my dear Celestin, that the present Minister of Finance, Mr. Manuel Pardo, knowing the importance of my discoveries, and wishing to avoid paying me the large sum which belongs to us, by reason of these discoveries, has clandestinely ordered that a secret commission should proceed to explore all the coast of Peru and to find the deposits of guano that I have denounced, which compelled me, in order to protect my rights, to protest energetically to the head of the nation, and to deposit, in the month of June last, in the Legations of France, England, and the United States, a list containing the geographic description of the places where said deposits of guano are found. This list is the same as that which the

letter I addressed you under date of December 31, 1862, contains.

"I have taken the precaution to protect our interests, and for the purpose, above all, that our rights may be more and more protected from the bad faith of intrigue and the rapacity of men without dignity and without honour.

"Since the present Government is entirely absolute and arbitrary, it might well happen that no attention is paid to my claims, and that we should be despoiled of what belongs to us.

"But I shall wait, if it is necessary, until there is another political upheaval and a constitutional Government is established to right things, and demand the fulfilment of my contract of November 2, 1865.

"Until that happens, I shall keep you informed of what goes on. * * *

"J. TEOPHILE LANDREAU."

May 27, 1867, Teophile wrote Celestin that the copy of the list of his discoveries, filed by him in the French Legation, had been "withdrawn" by a "Mr. Eucher Henry, an employee of that Legation," for the purpose of appropriating his discoveries and to get possession of his rewards, and he narrates the steps which he took to check Henry's machinations in such regard, resulting, as he says, in the Chamber (Congress) declaring itself without jurisdiction and referring the matter to the Executive for the purpose of clearing up the facts. (U.S. Case, p. 135, Doc. 4 i; see also Doc. 13. p. 195.)

January 7, 1869, he informed Celestin that the Congress in the previous month of October had proclaimed Mr. José Balta Constitutional President of the Republic of Peru; that upon coming into power this Chief of the Nation had "found the coffers of the treasury entirely empty and the national credit in bad repute," and had summoned him

(Teophile) to a conference at which it was agreed that the latter "should re-submit to the Minister of Finance the geographic list of all the deposits of guano that I (Teophile) had discovered," the President, Balta, giving "his word of honour that thereafter I should be granted in cash a reward on all the amounts of guano that these deposits might contain." (U.S. Case, p. 137, Doc. 4 j.)

As appears from this letter, this conversation with President Balta occurred December 8th (1868) in the presence of the respective Ministers of Interior, of Justice, and of Finance; that on the following day, December 9th, Teophile took his list of discoveries to the Ministry of Finance, and there delivered it to Garcia Calderon (the Minister of Finance) himself, and the latter, in the presence of two persons named, renewed the promises that President Balta had already made him; that same evening the list was the subject of conversation at the Palace "and caused great joy," and the semi-official paper "El Comercio," following the delivery of the list, promptly published in its editorial section an article announcing the disclosure of great quantities of guano.

Notwithstanding the promises of both President Balta and Minister of Finance Calderon, disappointment again awaited the Landreau brothers, for within three days after the making of such promises and the re-submission by Teophile, relying thereon, of the lists of guano deposits discovered by him, he was informed of a further Executive Decree, bearing date of December 12, 1868, which, after referring to Teophile's petition in which he asked precise fulfilment of the contract of November 2, 1865, and made known the deposits of guano which he placed at the disposition of the Government, declared:

> "the contract negotiated with Landreau cannot be accepted by the Government, because it suffers from

> various defects which render it void; that the reward stipulated is of vast import and cannot be conceded by the Government, and that it is proper to examine the deposits denounced and see if they contain guano of good quality and may produce benefit to the nation."

Upon such grounds the contract of November 2, 1865, was declared void, but "the denouncement made in this proceeding is (was) accepted" (*se acepta la denuncia hecha en esto recurso*), and it was "provided as a basis for a new contract," that the new deposits of guano should be examined by a commission to be appointed for such purpose, the commission "accompanied by the denouncer" being required to "proceed to the places that Landreau may designate" and "measure the various deposits of guano that are the subject of the denouncement, and extract from each one a determined quantity, in order that the corresponding tests being made, the quality of the fertilizer and its value may be ascertained."

This Decree concludes with an invitation to Landreau "to indicate the reward that he demands for the denouncement that he has made."

Respondent's Answer, at pages 8 and 31, complains that the U.S. translation of the Decree of December 13, 1868, as set forth in it supporting evidence (Doc. 15 a, p. 202) is neither a complete nor a correct translation of the original, saying (p. 8):

> "Because of lack of proof of J. Teophile Landreau's claims to the discovery of the guano deposits listed by him, the Government of Peru on Decemner 12, 1868, entered a decree declaring Landreau's contract of 1865 ineffective "*until the discoveries and the data concerning the deposits claimed by him are confirmed.*" (Respondent's Answer, Document No. 6, p. 127.)

The extract from this decree of 1868 exhibited on page 202 of Claimants' Case is not a complete nor a correct translation."

And further (p. 31) :

"A correct copy and translation is to be found in Respondent's Doc. 6, p. 127."

In order to clearly indicate the precise differences appearing in the two translations, we here set forth in parallel columns the parts in which differences of substance appear, and in order the more readily to test the accuracy of each, follow with the entire text of the Spanish original as published in *El Peruana* :

U.S. Translation. (U.S. Case, p. 202, Doc. 15 a.)	Peruvian Translation. (Answer, p. 127, Doc. 6.)
...... and taking into consideration that the contract negotiated with Landreau cannot be accepted by the Government, because	.... taking into consideration that the said contract cannot be accepted because
it suffers from various defects which render it void ; that the reward stipulated is of vast import	of various defects which render it null ; that the award stipulated to be paid him is so large
and cannot be conceded by the Government,	that the Government never can recognize it ;
and that it is proper to examine the deposits denounced	that it is well to examine the guano deposit discovered
and see if they contain guano of good quality	to see if they are of good quality
and may produce benefit to the nation :	and profitable to the Government.
on these grounds the contract made with Landreau on	*Because of these reasons it is declared : that the contract signed between the government and Landreau on*
November 2, 1865, *is declared void ; the denouncement made in this proceding is accepted ;*	*November* 2, 1865, *is null and void, UNTIL the discoveries and the data about the deposits made up by him ARE accepted,*
and it is provided that as a basis for a new contract	and it is decreed that the basis for a new contract
the *new* deposits of guano be examined	regarding the said guano deposits be fixed by a special committee.

Ministerio de Hacienda y Comercio.

Lima, *Diciembre* 12 *de* 1868.

Vista esta solicitad de D. Teofilo Landreau, en que reclamando los derechos procedentes de la contrata celebrada con el Gobierno, pide el cumplimiento exacto de esa contrata, y hace al mismo tiempo manifestación de los depósitos de guano que pone desde luego á disposición del Gobierno; y teniendo en consideración, que la contrata celebrada con Landreau no plede ser aceptada por el Gobierno, porque adolece de varios defectos que la hacen nula: que el premio estipulado es de mucha importancia, y no puede concederse por el Gobierno: que es conveniente examinar los depósitos denunciados, y ver si contienen guano de buena calidad, y pueden producir ventajas á la Nación: por estos fundamentos, se declara insubsistente la contrata celebrada con Landreau, en 2 de Noviembre de 1865: se acepta la denuncia hecha en este recurso; y se dispone que como base para una nueva contrata, sean examinados los nuevos depósitos de guano, por una comisión que se nombrara al efecto. Esta comisión, acompañada del denunciante se constituirá en los lugares que Landreau designe, medirá los diversos depósitos de guano que son objeto de la denuncia, y extraera de cada uno de ellos una porción determinda para que, hechos los ensayos correspondientes, se pueda apreciar la calidad del abono y su precio. Dígase a Landreau que indique el premio que solicita por la denuncia que la hecho, y publiquese esta resolución con la relación adjunta. Rúbrica de S. E.—Garcia Calderon.

It will be noted that the most important variation between the two translations appears in the phrase following that declaring the contract of 1865 void. While the United States' translation declares the denouncement made by Teophile in this proceeding to be "accepted," the Peruvian translation makes it to appear that such acceptance is still further postponed for future consideration.

While the matter is of no importance in view of paragraph 3 of the Settlement Agreement of September 16, 1892 (U.S. Case, Doc. 23, p. 230), where it is expressly stated that "by the Decree of December 12, 1868, the existence of deposits denounced by Landreau, as distinct from those known up to that date, was admitted," nevertheless, in view of the supposed carelessness in translation imputed to us, we submit with confidence that the original text affords

no basis whatever for the formulary adopted in Respondent's Document No. 6.

In connection with the publication of the Decree of December 12, 1868, announcing, as above stated, the acceptance of Landreau's denouncement of his discoveries, the list of deposits so submitted by him was likewise published to the world in the official paper, *El Peruana*, of December 31, 1868.

January 2, 1869, a like public announcement was made of the appointment of a commission of three persons named to take possession, make measurements, and carry on operations in the lands (*terreno*) designated by Teophile in which he asserted the existence of the unknown deposits of guano. (U.S. Case, p. 140.)

Landreau immediately protested against this arbitrary action on the part of Peru (U.S. Case, p. 142), and, calling Celestin's attention to his naturalization as a citizen of the United States, which had been completed June 3, 1867, urged him to ask the protection of the United States in the premises. December 13, 1869, Celestin, in reply, indicated that he would

> " ask the protection of the Government of the United States as soon as I (Teophile) shall have replied that I have exhausted all the means of justice and conciliation with the Government of Peru in order to reach an amicable settlement."

Beginning with September 23, 1870, Celestin Landreau, directly and indirectly through Teophile, applied to the appropriate officials of the United States for diplomatic intervention and protection. (U.S. Case, p. 203, Doc. 16; p. 209, Doc. 19, 19 a; p. 214, Doc. 20; and others.)

May 28, 1874, the Peruvian Government was officially notified by the American Minister, Mr. Thomas, of the "interest in these guano discoveries of J. C. Landreau, an American Citizen, who in 1859 purchased from and paid for to his brother, J. T. Landreau, *one-half of any premium which the Peruvian Government might pay for the discoveries made.*"

In this communication Mr. Thomas further said :

> "I am advised by J. T. Landreau that his discoveries were made in the year 1856, when a partial list of same was filed in the Treasury Department, and that in 1865 he furnished a complete list to the same department of these discoveries, which was made the basis of an agreement between said Landreau and the Government of Peru, and that in 1868 said Landreau again furnished a list of guano discoveries to the Government of Peru at the request of President Balta, which list was published in the *Peruana* of 31st December, 1868." (U.S. Case, p. 210, Doc. 19.)

Document No. 19 a (U.S. Case, p. 210) is the enclosure referred to by Minister Thomas.

The enclosure is a communication from Teophile Landreau to the Minister of the Peruvian Treasury, wherein for himself and in the name of his brother and partner, J. Celestin Landreau, a citizen of the United States, he protests against the application, in connection with the discoveries of guano made by him in 1856 and 1859—"a list of which discoveries was delivered to the Supreme Government on the 29th of July, 1856, and on the 2nd of November, 1865"—of a certain Decree of the Supreme Government of April, 1874, indicating the method "to be observed by all persons who claim to have made new

discoveries of guano," and limiting to 5 per cent. of the net product of sales of the guano discovered the reward to the discoverer. (U.S. Case, p. 207, Doc. 18.)

May 29, 1874, the Peruvian Minister of Foreign Affairs acknowledged receipt of Minister Thomas' communication and enclosure, and stated that he had passed the same "over to the Ministry of the Treasury, for their respective purposes." (U.S. Case, p. 214, Doc. 19 b.)

Again, on August 5, 1874, Minister Thomas forwarded to the Minister of Foreign Relations at Lima the protest of Teophile and his brother Celestin, "a citizen of the United States," requesting that same might be communicated "to the Minister of the Treasury and filed with the documents in the archives of his office." (*Ibid.*, p. 215, Docs. 20 and 20 a.)

Receipt of this communication and its enclosure was acknowledged by the Minister of Foreign Relations on September 3, 1874, with statement that he would "hasten to transmit said protest to the Minister of the Treasury in deference to the respectful recommendation of Your Excellency."

October 29, 1875, the Landreau brothers, Teophile and Celestin, entered into a contract readjusting their respective interests in the claim against the Government of Peru growing out of the rights of Teophile as discoverer of guano deposits. Because of the assignment by Teophile to certain persons named, of a share of his rights in such claim in order to obtain means to prosecute the same, it was agreed between the brothers to redivide and readjust the parts belonging to themselves respectively, so that

> "The portion belonging to J. Teophile Landreau shall be seventy per cent. of the whole claim, and the portion belonging to John C. Landreau shall be thirty per cent. of the whole claim." * * * (See *ante*, pp. 20-21.)

Certified copies of this "Contract of Readjustment" were communicated to the Secretary of State of the United States with a request that they "be forwarded to Mr. Gibbs, our Minister to Peru, with direction to file one copy with the proper Cabinet Minister there; and retain the other in the Legation, so that in case of a settlement the interests of John C. Landreau, an American citizen, may be fully protected." (U.S. Case, p. 219, Doc. 21.)

This request was complied with, and on August 28, 1877, Minister Gibbs advised the Secretary of State that he had enclosed a copy of the agreement between the Landreau brothers to the Minister of Foreign Affairs on the 20th instant (August, 1877) and that on the 21st instant he had received an acknowledgment of said communication.

In his communication to the Peruvian Minister of Foreign Affairs, Minister Gibbs stated that the enclosure, namely, copy of the contract of readjustment between the brothers, had been sent to him by the Department of State at Washington "to have it placed on record in Your Excellency's Department and also in the archives of this Legation." (*Ibid.*, p. 222, Doc. 21 e.)

The next day, that is, August 21, 1877, the Minister of Foreign Affairs replied that in deference to the Government of the United States he had "accepted and forwarded to the Secretary of the Treasury the copy of the Landreau agreement, without it being by this act understood that my Government recognize implicitly or explicitly any right in the claimants." (*Ibid.*, p. 223, Doc. 21 d.)

In June, 1875, Teophile, not having obtained any satisfaction whatever from the Executive branch of the Government, and understanding that guano in considerable quantities during several years preceding had been extracted from certain of the deposits of which he claimed to be both the discoverer and denouncer, petitioned the "First Chamber

of the Supreme Court " for a decree directing the Peruvian authorities to place before him " the accounts of sale of guano taken from deposits known as Ballestas and Chanavaya, as well as from the other deposits denounced which may have been worked."

This petition, so reasonable in its terms and purposes, was by the Court referred to the Attorney General of the Court, and evoked an opinion from that oficial to the effect that the petition was " not legal." This opinion of the Attorney General was adopted by the " First Chamber of the Supreme Court," and the petition was denied, the petitioner being left " at liberty to exercise his right when and where he might think proper." (U.S. Case, pp. 83–84.)

From this decision an appeal was taken to the " Second Chamber of the Supreme Court," which, on May 23, 1876, affirmed the decree of the lower court on the ground that as their jurisdiction only extended to " suits arising on contracts made by the Supreme Government—that is to say, on their interpretation, the validity, or nullity, to which class that brought up by John Teophile Landreau does not belong,"—they were " without jurisdiction, leaving to Landreau his right unprejudiced to exercise it where and when he might deem proper."

From this decree a writ of error was taken to the " High Court of Responsibility," and this proceeding, having in ordinary course been referred to its Attorney General, that officer, after seemingly prolonged consideration, on September 17, 1878, advised the High Court of Responsibility that he was of opinion that there was error in the decree appealed from in that, in his view, the petition of Landreau was legal, " treating as it does, an incident of the contract " of 1865, upon which it was based.

Notwithstanding this opinion of its enlightened Attorney

General, the High Court of Responsibility, on November 8, 1878, declared "that there was no error in the decision of the most excellent the Supreme Court," and the petition of Landreau was dismissed. (U.S. Case, pp. 84–85.)

In 1879 Landreau secured the opinions of Peruvian attorneys of note, all of whom agreed that these decisions of the courts of Peru were contrary to law, and that the data which Landreau had requested in his petition (which was nothing more than that he should be informed of the proceeds derived by Peru from the workings of the deposits which he had discovered and denounced) should be made known to him, in order that he might be informed as to the amount of reward or recompense which reasonably was payable to him; such reward or recompense being by the terms of the contract of 1865 absolutely dependent for its determination upon knowledge of the net receipts by Peru from such workings.

During several succeeding years the matter appears to have been the subject of repeated diplomatic communications between the Department of State at Washington and its Ministers at Lima, and also between the American diplomatic representatives at Lima and the officials of the Peruvian Foreign Office. These communications will be found in the U.S. Case, pp. 224 *et seq.* (See also pp. 87–107.)

As indicating the views of the American State Department upon the actions of the Peruvian Courts on the petition for an inspection of the guano accounts, special attention is called to the Department's instruction of July 25, 1874, to Minister Thomas, set forth at pages 87–89, inclusive, of the U.S. Case.

May 12, 1877, the Department requested Minister Gibbs to report as to whether "any proposition has been made by the Peruvian Government looking to the final adjustment and settlement of the matter." (U.S. Case, p. 89.)

In August, 1881, the Department again referring to the matter, in an instruction to Minister Hurlburt, said that while the claim belonged " to that class of claims regarding the settlement of which it is the settled practice of this Government not to interfere beyond the exercise of its good offices," and then only when " some special features are found to exist," informed him that: " Upon a recent examination of the case by this Department it has (had) reached the conclusion that the claim of Mr. Landreau is entitled to some consideration on these (such) grounds," and the Minister was instructed to use his " good offices, unofficially, in behalf of Mr. Landreau, with a view of securing for him from that Government (Peru) a speedy investigation and adjustment of his claim." (U.S. Case, pp. 89–90; Doc. 22, p. 224.)

In reply, Minister Hurlburt reported to the Department, September 14, 1881, that " in the Landreau case the proofs are sufficient, and the condition in which the Peruvian Government has left the complaint forms a just ground for a decided appeal to their sense of justice." (U.S. Case, p. 226, Doc. 22 a.)

In reply, Secretary Blaine, in approving Minister Hurlburt's course in the premises, took occasion to say, "But that claim must not, of course, be pressed in any manner that would seem to embarrass Peru in the hour of her great distress." (*Ibid.*, p. 228.)

So the matter tolled along until September 16, 1892, when Teophile Landreau, having grown old and become ill, both mentally and physically, entered into the settlement of that date with the Peruvian Government, which is set forth at length at pp. 21–26 *ante*. (See also U.S. Case, pp. 25–28, and pp. 229–232.)

In express terms this agreement of compromise and settlement, which covered and concluded the interest of

J. Teophile Landreau, the French subject, contains admissions on part of the Peruvian Government of prime import respecting the subject-matter in general which cannot fail to prove of great service in the instant case. It acknowledges that J. Teophile Landreau in truth made numerous discoveries of deposits, and specifies a number by name, but not nearly so many as are set down in Landreau's various lists on file, and it contains no suggestion that he had not in fact discovered all that he listed.

It expressly acknowledges that prior to its date from the workings named "there has been extracted and there is actually being extracted more than two million tons of guano, the rights of the discoverer in which could not help but represent the enormous sum of 40,000 pounds sterling." It acknowledges the validity and binding effect of the contract of 1865 and the invalidity and futility of the decree of 1868, which purported to annul the former. It acknowledges the non-applicability of that clause of the contract of 1865 which forbade diplomatic intervention (the so-called Calvo clause), and that the claim was ripe for settlement "in a manner equitable for Landreau and in harmony with the state of the Peruvian treasury." The settlement of the Teophile Landreau interest was brought about without doubt in some measure by the diplomatic intervention of the French Government, though the amount paid seems to have been determined by private arrangement.

In the settlement with Teophile every element essential to establish the validity of the claim as a whole was formally and solemnly admitted. There remained unadmitted but the single item of the total "net product of the guano" deposits discovered by Teophile, upon which "net product" the "reward" to the discoverer was to be calculated according to the percentages prescribed in and by condition Second of the Supreme Decree of October 24, 1865, as embodied in

the public contract of November 2, 1865. With respect to the assigned interest in the contract, and the "reward," timely and formal notice of the rights of the American assignee had been given to Peru through diplomatic channels, as is shown by the fact that, first in 1874 and again in 1877, the Peruvian Foreign Office acknowledged the receipt of documents which specified with precision the exact percentage of interest which the American Landreau possessed in any amount which had or might become payable on account of the product of the discoveries. Besides the above, between 1874 and 1890, the existence of the American interest in the claim was repeatedly brought to the attention of the Peruvian Foreign Office by the American diplomatic representatives near that Government. May 3, 1904, the American Minister (Mr. Dudley) was instructed to ascertain the probable disposition of the Peruvian Government toward a proposition to submit the American claim to arbitration. June 28, 1904, Minister Dudley forwarded a memorandum which he had just received from the Peruvian Minister of Foreign Affairs, in which the latter argued that the settlement of 1892 with J. Teophile Landreau settled the entire claim, including the assigned interest of the American claimant.

July 8, 1904, Minister Dudley again reported, enclosing a memorandum from the Peruvian Foreign Office, which suggested that J. Celestin Landreau should submit his claim personally and directly to the Peruvian Government, and that if this did not prove satisfactory, the Government of Peru would probably agree to arbitration. This suggestion seemingly was acted upon, but without success.

Between 1904 and 1910 frequent communications on behalf of J. Celestin Landreau passed between the American Minister at Lima and the Peruvian Foreign Office.

In December 1909, Peru, in order "to show a conciliatory

spirit," appears to have offered "to pay fifty thousand dollars gold to the J. C. Landreau claimants," and, if no settlement was reached, to submit the matter to arbitration. (U.S. Case, p. 257, Doc. 29.) To this the American State Department replied that it considered "fifty thousand dollars (an) inadequate offer." (*Ibid.*, p. 258, Doc. 30.)

Negotiation for settlement or arbitration continued. In course thereof, on December 30, 1911, Minister Howard reported that in an interview had the preceding day with President Leguia the latter had said :—

> "Mr. Minister, I consider the Landreau claim against Peru a perfectly just one, and we propose to settle it in a sum that will be adequate, remembering that ours is now a poor country. * * * The case is plain to me. The French Landreau assigned to his American brother fifty per cent. to his claim against Peru, and when a settlement was made, the American interest was entirely overlooked. It simply remains for the amount to be agreed upon." (U.S. Case, pp. 32–33.)

August 13, 1912, the Peruvian Minister of Foreign Affairs in a note to the American Minister reviewed the entire matter from the then Peruvian diplomatic standpoint, and in said communication made admissions in favour of the American Landreau claim of very pertinent and convincing sort. The pertinent parts of this communication will be found at pages 33–37 inclusive, of the U.S. Case. It concluded as follows :—

> "Consequently, the present situation for the heirs of Juan Celestino Landreau, who are supported by your Excellency, is reduced exclusively to being able to claim the payment of 30 per cent., calculated on the total amount, which the original creditor, the principal claimant, and the directly interested

party, Juan Teofilo Landreau, of his own free will fixed to the credit, which in an improper manner was recognized in his favour by the supreme resolution of September 16, 1892, which amount is on record in the deed of settlement concluded on the 16th of the same month and year ; and which, fixed definitely at the sum of 300,000 soles in internal debt bonds and 20,000 soles cash, makes that 30 per cent. maximum amount of 90,000 soles in internal debt bonds, plus 6,000 soles in cash.

The figures above given contain a résumé of all the rights which this Government is prepared to recognize in favour of the heirs of Juan Celestino Landreau, and represent the total which, with the object of settling the controversy, the Government of Peru is able to pay in favour of the heirs."

The suggestion for settlement thus put forth was likewise rejected by the American Government, it being unable to consent to the proposition that what had proved acceptable to Teophile should be accepted by Celestin also.

Negotiations between the two Governments with a view of reaching an amicable settlement of the controversy continued without definite outcome until the Protocol of May 21, 1921, providing for the constitution of this Honorable Commission, and prescribing its powers, was agreed on and executed.

The action of Teophile in agreeing and subscribing to the settlement agreement of September 16, 1892, was without the knowledge or prior authorization in any manner of Celestin, who had never given to Teophile any authorization for the control or disposition of all or any part of his indepen-

dent and individual interest as defined by the contract of readjustment of October 29, 1875, between Teophile and himself, the existence of which had been formally notified to the Peruvian Government. Nor did Celestin at any time, either directly or indirectly, receive any part of the money or other considerations stated to have been paid by Peru to Teophile in connection with or on account of said settlement; nor have the representatives, heirs or assigns of Celestin received anything on such account since his death; nor did Celestin in any way or at any time either ratify or recognize the action of Teophile in such regard. (See Affidavit of J. Celestin Landreau, U.S. Case, pp. 114, 118, 119, Doc. 3.)

Beyond indicating continued activity on part of Celestin in the agitation of his claim, the proceedings before the United States and Chilean Claims Commission of 1892–1893, and the Franco-Chilean Claims Commission of 1895, are of no importance whatever here. This for the reasons briefly set forth in the United States Case at pages 79–83, inclusive.

If desired, the proceedings before the said Commissions and the exact action taken by the respective Commissions thereon can be examined in their fullest detail. The first proceeding—that is, before the United States and Chilean Claims Commission—is reported in Moore's International Arbitrations, Vol. 4, pp. 3,571 *et seq.*, and in greater detail in the printed "Report of Agent for the United States, 1901, John Hoyt Perry, Agent."

In the second instance mentioned—that is the action before the Franco-Chileans Claims Commission, Lausanne, 1895, in which the Federal Court of Switzerland was the arbitrator—by the terms of the Convention itself the powers of the Commission were limited to the settlement of the claims of French citizens arising out of the Chilean occupation in Peru and Bolivia during the war between Chile and

those countries. The first allegation of Celestin's petition filed before that Commission declared that he was "a naturalized citizen of the United States of North America, residing in the County of Fairfax, State of Virginia, having been born in France," and it further appears from the report of the proceedings that the Arbitral Tribunal, under date of January 22, 1895, gave notice, which notice was not published until February 15, 1895, and then published only in France, that all claims must be presented to the Tribunal by or before March 31, 1895, in pain of "foreclusion," that is, for failing to appear and produce evidence in good time.

For some reason, not appearing in the report of proceedings, Celestin's petition was not filed until at least subsequent to the 6th day of December, 1895, on which day, as appears from Respondent's copy thereof (Respondent's Answer, pp. 145–148, Doc. 17) the petition was subscribed and sworn to at the City of Washington.

Without discussing either the merits or the matter of citizenship, the Commission appears to have dismissed this petition for failure to present same in accordance with its notice.

THE AMOUNT REASONABLY DUE.

Neither the number of tons of guano extracted by the Peruvian Government from the deposits denounced by Teophile, in the proceeds of which Celestin is interested, nor the net proceeds or profits derived therefrom, is known to the United States; nor so far as the United States is advised does such information appear in any publication or document issued or approved by Peru. Such information is peculiarly if not solely within the knowledge of Peru. The working of such deposits was under the control and direction of the Minister of Finance, and the original books of account and transcripts reasonably might be expected to be found in that Department.

Knowing that certain of his denouncements, accepted by Peru in 1868, were being worked, and having received neither pay nor any accounting with respect thereto, Teophile, between 1875 and 1878, made futile efforts before the Courts of Peru to compel production of accounts of sales of guano taken from the deposits known as Ballestas, and Chanavaya, and from other deposits discovered and denounced by him. In such regard the courts of Peru held themselves to be without jurisdiction to compel the disclosures which the Executive Department declined to make.

In order to insure the production before this Commission of the fullest possible information on every pertinent point, it was agreed between the two Governments by Article IX. of the Protocol, that either party might demand from the other "the discovery of *any fact* . . . deemed to be . . . evidence for the party asking it, . . . and the demanded discovery *shall be made by* delivering a statement of the fact . . . to the Foreign Office of the demanding Govern-

ment which *shall be given* opportunity to examine the original through its duly accredited diplomatic representatives."

Under this provision of the Protocol the United States as part of its case (see pages 302 and 303) demanded from Peru discovery as to the tonnage in question and as to the net amount received from sale thereof. In the absence of such discovery, and based upon considerations which afforded the best information which the United States had and yet has upon the subject, the latter asserted that Peru had extracted from the deposits discovered and denounced by J. Teophile Landreau in excess of five millions of tons of guano and had received and enjoyed a net revenue therefrom of not less than the equivalent of thirty (30) dollars per ton, or, say, $150,000,000.

Not having received any recognition of the demand so made, about October 1, 1921, the United States by the Secretary of State made a further demand for this so much desired and so necessary information, the demand diplomatically delivered being couched in the following form, the detailed list of deposits being omitted in printing :—

> "The United States of America, party with the Republic of Peru to the Protocol signed and sealed by the Plenipotentiaries of the contracting Powers duly empowered thereunto at Lima on the twenty-first day of May, nineteen hundred and twenty-one, hereby makes demand as provided in and by Article IX. of said Protocol, which pertinently reads as follows, to-wit—
>
> "'Either party may demand from the other the discovery of any fact or of any document deemed to be or to contain material evidence for the party asking it. Any document desired shall be described with sufficient accuracy for identification, and the demanded discovery shall be made by delivering

a statement of the fact or by depositing a copy of such document (certified by its lawful custodian, if it be a public document, and verified as such by the possessor, if a private one) to the Foreign Office of the demanding Government which shall be given opportunity to examine the original through its duly accredited diplomatic representatives,'—

"for the following information which is peculiarly, if not solely, within the knowledge and possession of the appropriate several departments of the Republic of Peru, viz :—

"1. The number of tons of guano and guano-bearing material extracted by the Republic of Peru, or by others, whether individuals, associations, societies, companies, corporations or Governments, municipal or other, thereunto authorized or permitted by the Republic of Peru or its subordinates from the deposits of guano identified by Jean Teophile Landreau as having been discovered by him prior to the year 1892, such deposits of guano remaining identified by the contents of various schedules or so-called geographic lists of deposits of guano submitted by said Landreau to the appropriate authorities of the Republic of Peru in connection with his denouncement of his discoveries of national wealth and resources as in said lists specified.

"2. In addition to the number of tons of guano and guano-bearing material so extracted, demand is also made for discovery—

"(*a*) As to the dates when and between which such materials were extracted; (*b*) as to the net product per ton received, realized, or which rightly should have been realized by the Republic of Peru or its subordinates or dependencies from the guano and guano-bearing material so extracted.

"It will be sufficient if the discoveries above demanded shall be made with reference to the lists and geographic descriptions of deposits of guano denounced by Jean Teophile Landreau in the years 1856 and 1859, and particularly designated in the list presented to the Government of the Republic of Peru on the third day of November, 1865, again presented, though in different form, to the representative of the Republic of Peru, Sr. Garcia Calderon of the Ministry of Finance, on the ninth (and twelfth) days of December, 1868, and published in the *El Peruano* of December 31, 1868, said lists reading as follows :—

(Omitted in printing.)

"'In connection with the lists so specified, reference is also made to, and there must be considered in the making of the discovery called for, the Explanatory List of Deposits of guano denounced by Jean Landreau Teophile subsequent to 1856, as same is set forth in a petition addressed apparently to the President of the Republic of Peru on the 26th day of April, 1872.

"'The discovery thus called for is for the purpose of enabling the United States of America to more exactly formulate the amount claimed to be due from the Republic of Peru under the terms of the Supreme Decree of October 24, 1865, embodied in the public or notorial contract of November 2, 1865.'"

Receipt of this demand was acknowledged October 17, 1921, by the Ambassador of Peru at Washington with the statement that the document had been forwarded to his Government.

February 15, 1922, the Ambassador of Peru, referring to and quoting from the demand as above, further answered as follows :—

"I have the honour to advise that my Govern-

ment has caused its archives and records to be carefully searched for the information demanded, but is unable to discover any papers or records throwing light upon the subject enquired about. My Government states that, as is historically known, all documents in connection with the exploitation of guano in Peru were, without the consent of Peru, taken from the offices of the Government of Peru at the time of the occupation of Lima in January 1881 by the armies of the Republic of Chile. The Government of Chile at that time took possession of all of the guano beds belonging to Peru and worked them for her own profit, and the records of the working of the deposits prior to the Chilean occupation were never returned to the Government of Peru.

" Because of the circumstances, the Government of Peru has no data from which the statement demanded could be compiled, and is therefore unable to comply with the demand."

Peru's Answer, at pages 52 and 53, reiterates this statement and leaves the demand for discovery totally uncomplied with, notwithstanding the express requirement of the Protocol that " the demanded discovery *shall be made* by delivering a statement of the fact."

In connection with this asserted inability on part of Peru to discover and make known the particular information desired, because of the removal by Chile in January 1881 of " all *documents* in connection with the exploitation of guano in Peru," it should not be overlooked that as late as September 16, 1892, the date of the so-called settlement with Teophile Landreau, the Peruvian Government then, eleven years after the occupation of Lima by Chile, at least had sufficient data respecting the exploitation of guano in Peru available to enable it to expressly declare that from a few only of the many deposits discovered and denounced

by Teophile, there had been extracted up to that time "more than two million tons of guano"; nor that in September, 1913, President Billinghurst, in a message to the Congress of Peru, was able officially to assert that up to the year 1879 "Peru has exported over 12,000,000 tons of that precious fertilizer (guano), with a net profit to the State of about £80,000,000"—circumstances which invite a reasonably critical consideration of the language used in replying to the demand made under the Protocol for discovery on this score.

Considering this language, it will be noted in the first place that Respondent states she has caused her archives and records to be carefully searched, but has been unable to discover "any papers or records *throwing light* upon the subject enquired about." She does not say that she did not have nor that she had been unable to discover any papers or records relating to the subject enquired about. By thus assuming to determine for herself whether what she found did or did not throw light upon the subject would seem to place her in the position of having usurped, to such extent, the function of this Commission.

Again, the reply itself of the Peruvian Foreign Office or of the Minister of Finance, as the case may be, is not furnished to us, but only what appears to be a paraphrase thereof, signed by the Ambassador at Washington.

Again, it is said in the reply that "*the records* of the working of the deposits prior to the Chilean occupation were never returned to the Government of Peru," but it is not said that the other "documents" taken away had not been returned, thus seemingly opening the door for the logical inference that all documents removed, other than the mere "records of the workings of the deposits" in fact had been returned. And this inference is plainly justified by the fact that in replying Peru seriously states that she had "caused

her archives and records to be carefully searched for the information demanded." If all documents and records pertaining to output of and receipts from guano were taken away by Chile in 1881 and none had been returned, why was it necessary for the Government of Peru to make search in her archives and records at all, and having searched what documents and records pertaining to output of and receipts from guano did she find at hand ?

Further, if all such documents and records were carried away in 1881 by Chile and none returned, what " documents and information relating to the exploitation of guano on or before 1865 " did Peru " minutely examine " to enable her to declare in paragraph 4 of the settlement agreement of September 16, 1892, relied upon here as her main ground of defence, that Teophile in fact had discovered " among others, the deposits of Chipana, Huanillos, Chanabella, Pataches, Patillos, Cocovado, Chao and Ferrol," and that over two million tons of guano had been extracted therefrom; and again, that " whatever reductions from the denouncements of Landreau might be established they could do no more than reach the one hundredth part of what he claims," and that the " rights of Landreau from the deposits discovered by him could not but represent the enormous sum of 40,000 pounds sterling or 350,000 sols silver at the present rate of exchange." (U.S. Case, p. 230.)

From such considerations the conclusion would seem irresistible that both in 1892 and 1913 Peru was possessed of records, documents or reports which as of such dates at least threw light upon the subject matter of this inquiry. As it is not suggested that Chile or any other power, since either of the last-mentioned dates, had again ravaged her archives, the presumption is at least persuasive, if indeed, not irresistible, that even now Peru has in her possession archives, documents, books of account, Government reports and the

like from which she could, if she would, furnish the simple information called for by the United States.

That she has failed, not to say declined, under the circumstances narrated to advise as to the number of tons extracted from Landreau's discoveries and the average net derived by her from the sale thereof, leads to the conclusion that disclosures in such regard would not be in her interest.

It both forces and justifies the United States to rely upon secondary evidence tending to throw light upon the subject of the inquiry. If, after considering such evidential matter as the United States has been able to supply, the Commission should prefer to be further enlightened, it is yet within its power, under the provisions of the second paragraph of Article X. of the Protocol to make further call in this or any other connection upon Peru for other documents and evidence, and it is provided that if any information or document called for be not furnished within sixty days from the call, decision in the case may be given without the use of said documents, evidence or correspondence.

It is submitted, however, that in the case as at present made up there is ample evidential matter to enable the Commission to act advisedly in the premises.

It is both significant and of the first importance that Peru makes no attempt whatever to deny that from the Landreau deposits she did in fact extract the full 5,000,000 tons contemplated by the contract of 1865. Nor does she in anywise question the assertion of the United States, based upon the information shown in Documents 38–38 j (U.S. Case, pp. 282–299), that her net receipts from such extraction averaged at least $30.00 per ton. Upon this basis, Celestin Landreau's interest in such net receipts as and when derived would equal the capital sum of $2,700,000.00. To this, of

course, should be added interest at some appropriate rate, not less than three (3) and not more than six (6) per centum, to be calculated from some appropriate date not later, certainly, than the first suggestion for an arbitration of the matter made by the United States in June, 1904 (Case, p. 235, Doc. 25). On such basis interest for eighteen (18) years at six (6) per centum would amount to 108 per centum of the principal sum, or a combined principal and interest total of $5,616,000.

With interest calculated at the rate of three (3) per centum the combined principal and interest total would be $4,158,000.00. In view of all the circumstances it might perhaps be considered fairer to fix the interest rate upon the capital sum so arrived at at some percentage between three (3) and six (6) per centum.

But what Peru at this later date cannot at all deny or argue away is that on September 16, 1892, she solemnly admitted that she had extracted from the deposits then admitted to have been discovered by Teophile "more than two million tons of guano." Upon this basis the net receipts of Peru from such extractions, were at least $60,000,000. Under the contract of 1865 the share guaranteed to Teophile was nine (9) per centum thereof, or $5,400,000. Of this latter amount, under the contract of 1875 between the brothers, Celestin's share was thirty (30) per centum or $1,620,000. Upon such sum interest at six (6) per centum (under the circumstances it should not be less) from the date of Peru's admission of indebtedness, viz., September 16, 1892, would amount to 180 per centum of the principal, or a combined principal and interest total of $4,536,000.

But again, if it should be thought that notwithstanding Peru's admissions of September 1892, interest nevertheless

should be allowed only from the first proposal on part of the United States to submit the matter to arbitration, and this notwithstanding Peru had furnished no tribunal to which the creditor could resort under local laws for the enforcement against the Government of his contract debt ; then interest would amount to 108 per centum of the principal and the combined principal and interest total would amount to $3,369,600.

All of the above figures respecting interest are stated in round numbers, upon the basis of whole years and without taking into account months and days.

Discussion of the Legal Propositions Advanced by Respondent's Answer.

There is no substantial disagreement between the contending Governments as to the material facts upon which this claim is based with the single exception of an element of fact involved in the question sought to be raised by Peru as to lack of original discovery on the part of Teophile Landreau.

With this exception, the defence of the claim is pitched upon certain propositions of law, and while many of these arguments are thought by the United States to be foreclosed by the terms of the Protocol under which this International Arbitral Commission is constituted (see *ante*, pp. 1–10), nevertheless, every point raised in the Answer of Peru, which on its face seems deserving of the least consideration, will be discussed in the pages which follow, the first point being the one above referred to as involving an element of fact, namely—that of actual discovery of Guano deposits by J. Teophile Landreau.

Teophile Landreau in fact did make Original Discoveries of Guano.

A brief discussion of this point has been indulged in in connection with the Preliminary Statement (*ante*, pp. 6–9), and doubtless the two lines of argument there pursued, namely, that the question is not a pertinent one under the terms of submission, and that the Government of Peru has formally and expressly admitted the fact of discovery, are quite sufficient. As, however, so much stress is laid upon this proposition in Respondent's Answer—indeed, it is treated as being crucial—a few further considerations will be put forward here.

Peru lies, as is geographically well known, on the west coast of South America. Her coast line extends along the Pacific for more than 1,300 miles, and her shores are lined with islands which stretch practically the entire length of her littoral. These islands are comparatively small, few of them being more than a few miles in extent, many arising abruptly and precipitously from the sea, and, not only at the initiation of this claim, but to-day, they are in great measure uninhabited. They are principally the roosting and rooking places of fish-eating birds that make their homes there, and Peruvian guano is the excrement of these birds that have roosted upon them and upon the shores of Peru through generations and generations. The guano is often covered by sand, sometimes covered by the ebb and flow of the tides with a mixture of salt and sand, and under the hot dry suns and light winds, which prevail in Peru, becomes baked into a hard densed mass, not infrequently, as appears from certain reports, indistinguishable from rock or stone. (See report of Engineers Hindle and Thierry, U.S. Case, Doc. 38 (a), p. 293 ; also article, " Peru's

Wealth Producing Birds," Nat'l Geographic Magazine, vol. 37, No. 6, June, 1920.)

In 1833 Peru had upon her statute books a law primarily relating to the properties of suppressed convents, proposing to give to the discoverer of concealed or unknown properties of such convents an interest amounting to a third thereof, but under the terms of its sixth article extending this reward of a third part to discoverers of other properties belonging to the State held by any title whatever. (U.S. Case, Doc. No. 1, p. 111.)

Of similar import was a later law, or Decree, of 1847, calling attention to the fact that " according to information received by the Government it is probable that there is much municipal and Government property which produces nothing, because the State Offices lack information and necessary knowledge on that subject," and, expressly referring to the previous law of 1833, provides a reward of one-third to any discoverer of such property. (U.S. Case, Doc. 2, p. 114.)

Thus it was that in the late forties Teophile Landreau, induced by the rewards held out by publication of the laws of Peru above referred to, started upon a campaign of exploration, chiefly directing his attention to the matter of guano deposits, knowing of their great importance and value.

Having pursued his explorations through the late forties and into the early fifties, in 1856 he formally notified the Peruvian Government that he had made these discoveries, and that he stood ready to hand over to them a detailed list upon their stating the terms with respect to the award to be paid him. (U.S. Case, Doc. No. 6, p. 153.)

Teophile's own reference to his discoveries, his announcement thereof to the Government in 1856, and his early efforts to secure compensation therefor, appears in his letter of December 22, 1858, to his brother Celestin :—

"As a physician and naturalist I had occasion to make discoveries of immense deposits of guano on the coast of Peru. On July 29, 1856, having announced these discoveries to the Peruvian Government for the purpose of obtaining the recompense or reward which the law fixes, a proceeding was begun that developed the cupidity and envy of some employees of the Government, who, from that time, never ceased to raise obstacles of every sort against me, even going to the point of conspiring with a very rich Frenchman, my mortal enemy, to have me thrown into prison, and thereby to compel me to pursue a long criminal procedure, from which I emerged safe and sound, but thereby losing my fortune.

"Once at liberty and my trial over, I wanted to continue my procedure concerning my discoveries of guano. But what was my surprise to see that the employees of the Government had made all my documents disappear, no doubt to hinder me from attaining my purpose." (U.S. case, Doc. No. 4, p. 120.)

In 1852, the Government of Peru realizing the value of her guano deposits, had caused to be promulgated a supreme decree, in which it was declared to be necessary to "exercise greatest vigilance over the guano deposits, the property of the Government, in order to prevent smuggling, or the fraudulent shipping of guano which forms to-day one of the greatest resources of the Government," and which proceeds to list by name and location all the guano deposits known to the Government at that day. (U.S. Case, Doc. No. 8 (a), p. 159.)

As appears from Teophile's letter to Celestin of December 31, 1862, he had obtained a copy of this decree of 1852 from the Peruvian officials, and in this letter he

carefully compares the deposits listed in the decree as being the ones known to the Government of Peru with the deposits claimed to have been discovered by him, demonstrating that the deposits claimed by him were not included in the Government list. (U.S. Case, Doc. 4 (e), p. 126.)

As the result of Landreau's continued efforts to secure recognition of his rights, and apparently in immediate consequence of the opinion of Attorney General Ureta, acting upon Landreau's petition to the Government of June 25, 1863 (U.S. Case, Docs. 10 and 10 (a), pp. 165–171) the notarial instrument or contract of November 2, 1865, was drawn up.

In accepting the provisions of this notarial instrument, Teophile, through his attorney, Wright, filed with the Government, as he was called upon to do, a detailed list of his discoveries. In connection with this list, particular attention is invited to the terms of Article 6 of the contract :—

> "Sixth. This concession shall be null *in case it shall be proved fully that the Government or any other authority had official or personal notice of the existence of the deposits claimed to have been discovered by Landreau.* Let it be referred to the General Directory of Finance in order that it may provide that the Departmental Treasury proceed to draw up and record the proper public instrument, after the acceptance of Landreau, or of his legal representative, Let it be communicated and recorded." (U.S. Case, Doc. 11, p. 181.)

Under the language of this article, we submit that filing by Landreau of his list of deposits on November 3, 1865, in conjunction with and as a part of the notarial instrument of the previous day, and the acceptance of that list by

Peru, by implication in 1865 and specifically in 1868, constitutes at least *prima facie* evidence of the fact of discovery.

The necessary effect of this language of Article 6 was to put upon Peru the burden of demonstrating fully the fact that any one of the specified deposits contained in Landreau's list had been known previously to the Government itself or some other municipal authority.

But the Government of Peru at no time during the existence of this claim has ever undertaken in any single instance to prove that under the terms of the sixth clause of the contract of 1865 any one of these deposits claimed to have been discovered by Landreau and denounced by him, in fact had been previously known to the Government at Lima or to any local authority.

Without again setting forth in full the admissions made by the Government of Peru with respect to the fact of discovery by Landreau, reference is made to pages 6–10 hereof where the admissions contained in the Decree of December 12, 1868, and in the Supreme Resolution of September 16, 1892, are set out in full and commented upon. It is reiterated, however, that the suggestion by Peru of absence of discovery is futile in the face of these express admissions, made in official governmental documents.

This discussion might well stop here so far as the Claimant is concerned, but the Answer of the respondent puts forth a very ingenuous argument based upon alleged existent and known facts, which preclude, according to their theory, any discovery of guano by Landreau. This is attempted by switching the burden of proof from the shoulder of Peru to the shoulder of Landreau, they asserting that the mere filing of lists by Landreau was not sufficient, but that it was his duty to go forward and prove that each and every one

of his alleged discoveries were, in fact, discoveries of material which previous to that time were totally unknown not only to the Government authorities or to local authorities, but also to the world at large.

And to sustain that point, they refer to two documents.

The first of these documents is a report made by an officer of the Peruvian Navy, Captain Garcia y Garcia, entitled, "Description of the Coast of Peru," and the other purports to be a report of a speech delivered in London in 1847 by Captain George Peacock.

The first of these documents, the Garcia report, purports to have been printed in 1863, the intimation being that whatever Captain Garcia y Garcia reported in 1863 thereby antedated by two years the filing in 1865 by Landreau of his list.

In citing and quoting from this report, the Respondent apparently attempts to apply the principle or doctrine of *idem sonans* by pointing out that certain of the names appearing in Teophile Landreau's list also appeared in the Garcia report; and, in fact, that practically every place named in Teophile's list is named in this report, and therefore Teophile made no discoveries because Garcia y Garcia had already made them before him.

But there is absolutely nothing in this report to support such an argument except the mere fact that the writer refers to Punta de Lobos, Pavellon de Pica, and a hundred other *physical points* on the coast by identically the same name as used by Landreau to describe the location of his discoveries, the writer thereby identifying localities generally, but not even purporting to identify deposits specifically, with the exception of five named points where known deposits had long existed, but which deposits were not in any way claimed by Landreau.

This book is not and does not purport to have been

compiled for any purpose whatever incident to the existence of guano or guano discoveries. It is what on its title page it purports to have been, a "Peruvian Coast Pilot."

The similarity of names appearing in Landreau's list and in Garcia's "Peruvian Coast Pilot" is incident solely and only to the fact that those were names of well known physical points upon the coast of Peru. Both parties were referring to physical marks, and while one has tied these physical points up with what he claimed to be discoveries by him of deposits of guano, the other was not concerned with guano discoveries in the slightest degree, and only incidentally mentions guano in connection with physical points where known deposits had long existed.

The second document referred to is entitled "Extracts from Pamphlet of Captain George Peacock, 'The Resources of Peru,' London, 1874," and as extracted therefrom there is quoted a "Letter of Captain George Peacock to Peruvian Charge d'Affaires, London, April 20, 1852." (Answer, Doc. 1, p. 110.)

Now, as appears from a copy of this pamphlet from the files of the British Museum, the entire letter quoted on pages 110–111 of the Answer was taken from the body of a speech made by Captain Peacock before a meeting of gentlemen interested in Peruvian bonds at some place in the City of London, about 1874, and there is no proof whatever that the statements made by Captain Peacock before this meeting had any solid basis in fact other than his own imagination, or his power to conceive and put forth in public an agreeable speech, which was either for the purpose of inducing subscriptions to Peruvian bonds or of bolstering up the failing faith and confidence of English holders of Peruvian securities.

There is no proof whatever that the letter quoted in this pamphlet and copied in the Peruvian Answer was actually

written in 1852, and it is only in 1874, nine years after Teophile Landreau had filed his first list with the Peruvian Government, and six years after the Peruvian Government had seen fit to publish in its official organ, "El Peruana," on December 31, 1868, the resubmitted list of 1865, that the letter makes it appearance.

If Peru seriously intended to rely upon this letter, supposed to have been written in 1852 to a Peruvian official, why is it that she quotes from this obscure pamphlet published in 1874, rather than by producing the original which might reasonably be supposed to be lodged in her archives, give to its statements some basis of evidential value ?

There is absolutely nothing tending to show that this letter, if it was written in 1852, actually was brought to the attention of Peruvian officials or got into Peruvian records, either in 1852 or at any subsequent time.

Peruvian Claim that Teophile and Celestin Landreau were partners, and that the Release executed by Teophile in 1892 was therefore binding upon Celestin.

Much of the argument of the Answer proceeds upon the theory that Teophile and Celestin Landreau are to be treated as partners. From this hypothesis it is argued that being partners, either had the right to bind the partnership, and that the document signed by Teophile Landreau in 1892 was of such a character as to bind the partnership and extinguish the right of both partners.

The reply of the United States to this is two-fold. First, it is denied that there was in any true sense of the term a partnership between the brothers. Second, even if such a partnership existed, the document signed by Teophile

Landreau was not of such a character as to have bound the partnership.

The idea of partnership involves the prosecution of a business, ordinarily of buying, selling or exchanging property or services in some shape. This was not the relationship between the brothers. They were no more partners in the discovery made by Teophile Landreau than are two joint owners of a patent or a piece of real estate. They were not engaged in buying and selling guano ; their only concern was that for the special information they possessed, they should receive what they regarded as a proper price. They had but a single object of sale, and when their price should be received their association would automatically dissolve.

This was at one time at least the Peruvian conception of the situation. Thus, there was endorsed on the petition of Celestin Landreau in the Peruvian Foreign Office on June 15, 1904, the following :—

> " Partnership does not exist when the owner of a credit interests therein a third party. J. Teophile treated in Peru as a discoverer and creditor ; according to those letters he interested J. Celestin in that credit ; there was therefore no enterprise or speculation which could constitute a partnership.
>
> " Neither does the partnership result from the fact that the Minister of the United States exercised his good offices to the end that consideration might be given to the credit of J. Teophile because of J. Celestin's interest in the payment ; a third person may have an interest in another's credit for various reasons, as creditor of the creditor, a participant (*participante*), etc., without there existing any partnership with the principal creditor.
>
> " Neither does the notice given the Government of the existence of that interest create a contract of partnership." (U.S. Case, Doc. 25 (a), p. 236.)

In Berthold *v.* Goldsmith, 65 U.S. (24 Howard) 536, it is pointed out that while every partnership is founded on a community of interest, every community of interest does not constitute a partnership; and Story on Partnership (7th edition, page 45) says that "Persons may not be partners, although they call themselves so."

The distinction between partnership and joint ownership, and co-tenancy and partnership is pointed out in 20 Ruling Case Law, pp. 806–7.

It is true that on several occasions Teophile referred to his brother as his "*Associé,*" and this word has been translated repeatedly as "partner." The relations between the parties, we need hardly insist, are not determined as to their character by the title which the parties concerned may erroneously give them. It is necessary to discover what in effect was the character of the relations, rather than the title which persons may have assumed to give them.

To ascertain the real meaning of the word "*Associé,*" for the purpose of showing how easy a mis-translation may be made, reference is made to the great French dictionary of Littré. It is there said that the word "*Association*" has much the same meaning as the corresponding English word, as, for instance, the union of several persons to a common end—thus, religious, commercial, and literary associations. The word "*Associé*" as a past participle signifies placed in union; associated by a community of interests. Reference is made to its meaning in connection with various academies, etc. To associate (associer) means to put in society, in union in "*partage.*"

At this point is reached exactly the meaning of the relation claimed by the United States to have existed between the two Landreaus because of their union in the common ownership of a discovery, and the position is borne out by a reference in the same authority to the word

"*partager*," which, as an active verb, means to divide a thing into several parts, as to divide a cake. A direct illustration is given under this word as having part or having right to a part as "*Il ne partage pas dans cette succession.*"

It will perhaps suffice to say that there is nothing more difficult than the exact translation of words of legal signification, this because the thing to which they have reference under different systems of law and customs are never exactly parallel. Assuredly, however, enough has been said to show that, accepting the French meaning of the word, and taking the closest English translation, instead of "partners" and "partnership," the translation should have been "co-owner" and "co-ownership." Nothing else would meet the clear idea of "association" in the sense of the word "*partager.*"

The second proposition is, in effect, that even if Celestin and Teophile Landreau were partners, the release is not so drawn as to be in any sense binding upon the partnership.

Suppose Celestin and Teophile Landreau were partners in the fullest acceptation of the term, and that it was within the right of Teophile to release for the firm the interest both of himself and of his "partner" Celestin? With this admission *arguendo* the case of Peru is not one whit advanced. The facts do not support her theory. This is not a case where one partner or associate or co-owner, or whatever he may be, has released the interests of himself or his associates to the debtor on the payment of a fixed sum, and only the most careless reading of the documents in the case could ever justify any such idea. For convenience we will refer to pages 128 and following of the Peruvian Answer, commencing with Document No. 7.

After reciting the desire of Teophile Landreau to settle

his difficulties with Peru, he is made to state (page 129, par. 2) that he declares himself to be irrevocably and definitely paid for whatever might belong to *him* and *his heirs* in consequence of rights claimed by *him* for the discoveries of deposits of Peruvian guano. He also refers to the improbable event of there appearing real or pretended assignees of *his* rights—but none such in the sense in which the word is used by him has ever appeared. The Peruvian Government knew of the part ownership by Celestin, and therefore Teophile could not say that as to him "the Government of Peru is unaware of there existing any sale or transfer of any kind." He declares that there cannot be any revival in *his* (*my*) favour, or in that of *his* (*my*) heirs of the effects of the obligations thereinbefore mentioned of 1865, nor such as might supposedly be derived from the supreme resolution of December 12, 1868, declaring it non-existent.

On page 132 (*ibid.*) it appears that Teophile acknowledged the receipt of the moneys and bonds which were to be paid him. On page 133 (*ibid.*), according to the Protocol of interview between the French Chargé d'Affaires and the Peruvian Minister of Foreign Affairs, they came together for the purpose of drawing up in due form the claim of Teophile Landreau for the revival of the contract of November 2, 1865, and the Minister having declared his intention to put an end to this claim in the name of his Government, the receipt of certain moneys was acknowledged in the name of France as putting at an end the claim of J. Teophile Landreau, holding the Government of Peru exonerated from further claims under the contract of November 2, 1865.

On page 134 (*ibid.*) reference is made to the decree of 1892 for the purpose of terminating the claim set up in favour of the *French* citizen, J. Teophile Landreau, in

regard to the location of guano, to which the contract of November 2, 1865, refers.

It appears sufficiently that in every instance Teophile Landreau spoke for himself, his own claim and his own heirs alone, and in every possible way avoided any attempt to speak on behalf of any associate in his claim (in fact, denied the existence of such), although Peru had full knowledge at the time that he had an associate.

The argument, made by the Peruvian Answer, that what Teophile Landreau did in 1892 was binding against any interest of Celestin, if the two brothers were partners, therefore appears to be baseless.

That any attempt on the part of Teophile Landreau to bind a co-partner could only have such an effect when Teophile Landreau was acting or purporting to act on behalf of the partnership, is manifest from the citations of Peru herself. Assuredly, when the very existence of a partnership is disclaimed and denied in the release itself, it is a most extraordinary argument to suggest that the putative partner can be bound thereby. Look at the quotation from Ruling Case Law, Vol. 20, p. 940 (Answer, p. 97) :—

> "Each partner has a right * * * to discharge or release debts due to the firm and may do it by means of a deed of release under his hand and seal *in the firm name*, although as between the parties he has no right to release more than his own moiety of the debt." (Italics ours.)

Article 1677 of the Civil Code of Peru, quoted on page 77 of the Answer, is even more explicit :—

> "In the absence of special agreements regarding

the administration the following rules will be followed :

> "1. Each partner is an administrator and as such can act *in the name of the society* (italics ours) without prejudice to the rights the others have of opposing themselves to any action before it is perfected (consummated)."

In view of all of the foregoing, the character of the suggestion that one can bind a partnership at the very instant he is denying its existence becomes completely apparent.

A further suggestion seems to be made on page 78 of the Answer that this agreement between the parties may have been regarded as a sleeping partnership. This idea is negatived by the very language of the Answer itself, however, which says that :—

> "This form of partnership is constituted by the informal consent of the parties, in which the principal partner admits other persons to a share in the business or enterprise *without giving notoriety to the fact.*" (Italics ours.) (Answer, p. 78.)

In the case at bar the fullest notoriety was given to the relation between the brothers to the party most vitally affected—the Government of Peru.

Touching the matter of notoriety, see the endorsement on the petition of Celestin Landreau in the Peruvian Foreign Office, under date June 15, 1904, which says :—

> "The relations he (J. Teophile) had with his brother were private, although they were known." (U.S. Case, Doc. 25 (a), p. 237.)

Theory of the United States as to the Relationship between the Brothers.

Notification to Peru of Celestin Landreau's Interest in the Claim.

In view of the alternative contention pressed by Peru, to the effect that Celestin Landreau was but an assignee of a part interest in an entire credit of which Teophile was the original and single owner, no rights against Peru had become fixed in Celestin because Peru had not formally accepted him as creditor, nor had Celestin sought to fix Peru with knowledge of the transfer by serving her with judicial notification of the existence of the assignment, it seems desirable to extend somewhat further this discussion as to the true relationship between the Landreau brothers.

Between 1858 and 1861 the rights of Teophile and Celestin Landreau were definitely fixed, and their character is indicated by reference to the letters set forth in the Case of the United States. (*ante*, pp. 10–13.)

It will be discovered (*ante*, p. 11) that upon the reception of certain moneys Teophile agreed to recognize Celestin as having a half interest, not in a credit against Peru, but in "all my discoveries of guano." This interest in property was to arise, as he believed, from his discoveries, on account of which he was entitled to claim under the law which allowed "a third part to those who, discovering unknown properties of the State, denounced them to it." (*ante*, p. 11.) Under date July 15, 1859, he expressed his gratification at an assurance that Celestin would come to his "assistance in the matter of my (his) discovery of guano." (*ante*, p. 12.)

The money to be paid for such recognition of a half interest in the discovery was paid and receipted for under date January 2, 1860, and subsequently a further payment was made. (*ante*, p. 13.)

Up to this point there is a sale by one brother to the other of an undivided half interest in a *discovery*, and not as contended on Peru's behalf in a *credit*; the credit came later. From the discovery there might proceed several things: (1) Peru might have, as Teophile expected, awarded to him and his associate a third of the physical guano discovered; (2) she might have allowed him to sell his rights to someone to whom the State would have granted permission to exploit, or (3) she might have done what in the end she did do, exploit the guano or have it exploited under her own charge, paying the discoverer a suitable reward.

Whatever the ultimate form of recovery might have been Celestin was the owner and was to enjoy half of the proceeds of the discovery.

By Peruvian law the exchange of letters between the brothers was entirely sufficient to consummate transfer of a half interest in a moveable object or right such as was here transferred, and no question of doubt upon this point has ever been suggested by Peru. The *résumé* of the Code Civil Peruvien published by Giard at Paris in 1906, page 166, shows clearly that this kind of contract is not subject to any special form, and on page 168, says that one can sell future things as, for instance, the growing crop, the increase of animals not yet born, or a litigious thing, if the purchaser is warned of the situation.

From the standpoint of principle in 1859 to 1861, the situation between the two brothers was precisely as if Teophile had made a discovery such as is usually treated of under the head of inventions, and was in doubt as to the

special character of the privilege which the Government might grant him because of his ingenuity or industry. He could have sold to Celestin an undivided half in such invention, whatever that undivided half might prove ultimately to be worth, or in whatever form the reward might come.

This relationship between Teophile and Celestin Landreau with regard to Teophile's discovery remained untouched and unimpaired until 1865, when the contract of that year with the Government of Peru was made.

In entering into this contract, Teophile acted as representative of himself and of an undisclosed and unmentioned principal, his brother Celestin.

At that time Peru believed, it may be assumed, that she was dealing with Teophile Landreau alone, and would be obliged to account to him only as the sole owner of the discovery. In this she was wrong, as events subsequently showed to her, for in 1874 she was formally notified of Celestin's connection with the business. (U.S. Case, Doc. 19, p. 209.)

It becomes, at this point, important to correctly apprehend the exact nature of the notification served upon Peru, because her contention is that the notice was strictly that of the assignment of a debt which could only be binding by acceptance or judicial notification.

Such a contention is so far technical and so inequitable as to call for careful examination before being accorded weight. When examined, it readily appears that the notice given to Peru was not at all a notice of the assignment of a debt.

The letter from Mr. Thomas to the Peruvian Minister of Foreign Relations, May 26, 1874 (U.S. Case, Doc. 19, page

209), forwards a letter from Teophile Landreau addressed to the Minister of the Treasury Department of Peru enclosing a map showing approximately the geographical position of the guano deposits of which he claimed to be the discoverer. This letter is written in the particular interest in these discoveries of Celestin Landreau "who in 1859 purchased from and paid for to his brother J. T. Landreau one-half of any premium which the Peruvian Government might pay for the discoveries made," and the letter from Teophile Landreau which immediately follows speaks of his rights as a discoverer of guano going back to 1856 and before, in which his brother was interested with him before November 2, 1865, the date of the contract with Peru.

The thing, therefore, of which Peru was notified was that from a period ante-dating by some six years the contract with her the real owners of such contract were Teophile and Celestin Landreau. This is far from being the same thing as an order upon Peru to pay half of any credits arising under the contract of 1865 to an assignee. It is an explanation to Peru that while on the face of the papers Teophile acted as sole owner, in point of fact his interest only extended to half of the claim, and the co-beneficiary was Celestin Landreau.

It was, therefore, in the presence of direct knowledge of the conditions of the original ownership, a knowledge confirmed by the joint conduct of the two owners, that Peru proceeded in 1892 to treat Teophile as if he alone were interested.

Before 1865 there had been no dereliction on the part of Peru, no cause of action against her, and there was no such cause of action, as we have pointed out in another connection, until there default occurred on part of Peru in the payment of the reward promised under the contract. The subsequent breach, however, did give rise to a cause of action. (6 Ruling Case Law, citing many authorities.)

In 1865 the party who held the legal title so far as Peru's then knowledge was concerned, held it as to a one half interest for another, and of this condition Peru subsequently received, as we have indicated, full knowledge.

Where one agrees to perform services in purchasing lands and another to supply the money and to take title in his name, each to take one-half the profits on a sale, this amounts to an agency and not a partnership ; but the party holding the legal title holds it trust for the other, and he has a lien thereon to the extent of his interest.

Seymour *v.* Freer, 75 U.S. (8 Wall.) 202, 19 L. Ed. 306, approved in Hapgood *v.* Berry, 157 Fed. 818, denied the existence of a partnership where one party was to buy, sell and rent lands on division of profits.

Bonner *v.* Cross County Rice Co. 113 Ark. 59, 167 s. W. 82, held an agreement between one furnishing capital and the other skill in buying lands to constitute a trust of which purchasers of the lands were bound to take notice.

Part, at least, of the difficulty involved in the Answer in connection with this branch of the argument seems to be due to certain confusion of thought, as to the meaning of the words used in Article 1469 of the Civil Code of Peru (Answer, p. 71). This code refers to the assignment of a right of action against the debtor, and has no reference to the original ownership of the thing upon which the later debt is based, and until Peru can show that, having definite knowledge of the real condition of ownership, and of the parties entitled to the money she was obligated to pay, she had a right to ignore the true ownership and pay the original holder, she should not, we submit, hope to escape liability in this proceeding.

It will at all times be borne in mind, of course, that this

is not a case in which the rights of a stranger are concerned, but that at every moment from and after 1874. Peru heard the united voices of the Landreaus telling her the extent of their respective interests in the claim, and consequently the extent of her liability to each of them.

But even admitting *arguendo*, that Peru may be right in considering that there was an assignment of a right of action, nevertheless, by the conclusions of the best authority we have relative to the Civil Law, *i.e.*, the Court of Cassation of France—this particular provision of the code is to protect the debtor from outside claims, and not to justify the debtor in ignoring notices of assignments duly received by him.

Section 1469 of the Civil Code of Peru is identical in its intent and purpose to Section 1690 of the Civil Code of France, which latter, with Section 1691, reads as follows :—

> "1690. Le cessionnaire n'est saisi a l'égard des tiers que par la signification du transport faite au débiteur.
>
> "Néanmoins le cessionnaire peut être également saisi par l'acceptation du transport faite par le débiteur dans un acte authentique.
>
> "1691. Si, avant que le cédant ou le cessionnaire eût signifié le transport au débiteur, celui-ci avait payé le cédant, il sera valablement libéré."

When, however, the debtor is perfectly informed of the transaction, notably, when he or his representatives may have had presented to him evidence showing this cession, or when the original owner has himself given notice of the cession of the credit, or even when in any manner whatso-

ever knowledge of the cession has been brought home to the debtor although he has wished to destroy the effect of these conditions, the giving of judicial notice or formal acceptance will not be essential.

We quote from the Répertoire Générale Alphabétique du Droit Français under the heading of " Cession de Créance," Sections 237, 238, 239, 240, as follows :—

237. Il a été jugé, à cet égard, que la signification d'un transport de créance peut être suppléée par la connaissance que le débiteur, cédé aurait eue du transport, notamment dans le cas où soit le débiteur, soit son mandataire, aurait en communication de pièces constatant cette cession. (Du moins, l'arrêt qui le décide ainsi par appréciation des circonstances, échappe à la censure de la Cour de cassation.—Cass., 13 juill. 1831. (S. et P. chr.)—Grenobel, 21 août 1828, Busco (S. chr., et sur pouvri).

238. Que la connaissance de l'existence de la cession d'une créance, donnée par le cessionnaire au débiteur cédé, peut, d'après les circonstances, suffire pour que cette cession soit opposable à ce dernier, et faire obstacle à ce qu'il se libère valablement entre les mains du cédant ; (que la signification du transport n'est pas, en ce cas, indispensable.)—Cass. 17 août, 1844, Nicod (S. 49. 1. 48, D. 45. 4. 508).

239. Que la connaissance purement officieuse de la cession d'une créance, donnée par le cedant au débiteur cédé, suffit pour que cette cession puisse être opposée à ce dernier, et fait obstacle à ce qu'il se libère valablement entre les mains du cedant.—Bastia, 2 mai, 1842, Nicod (S. 42. 2. 457, P. 42. 2. 721).

240. Que le cessionnaire d'une créance peut être considéré comme saisi vis-à-vis du cédé, même en l'absence de notification ou d'acceptation dans un acte authentique, alors qu'il est établi que celui-ci a eu connaissance du transport d'une manière quelconque, et qu'il a voulu frauduleusement

en paralyser l'effet.—Cass. 17 févr. 1874, Jacob (S. 75. 1. 399, P. 75. 1019, D. 74. 1. 289).*

Assignment.

With respect to the point made by the Peruvian Answer that there could be no valid assignment of a claim as against the Government of Peru, it is respectfully suggested that there is no known legal basis for objection to the assignment of claims against governments. The general rule, it is submitted, is that claims against governments, in the absence of express prohibitory statutory provision, are equally capable of being assigned as other claims existing between private parties.

The only difficulty about the assignment of a claim or an interest in a claim against a government is the ability to find a forum before which the assigned claim or the assigned share can be pressed, for most governments do not permit all classes and characters of claims to be urged against them.

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* 237. It has been decided, in this respect, that the signification of a transfer of debt can be made good by the knowledge that the debtor who yielded up, would have had from the transfer, notably in the case where, maybe the debtor, maybe his mandatary, should have in communication papers proving this cession.

238. That the knowledge of the existence of the cession of a debt given by the transferee to the debtor who yielded up, can in the circumstances suffice for this cession to be opposable to the latter, and to make an obstacle to that which he discharges validly into the hands of the transferrer.

239. That the knowledge purely officious of the cession of a debt, given by the transferror to the debtor who yielded up, suffices for this cession to be opposed to the latter, and make an obstacle to that which he discharges validly into the hands of the transferrer.

240. That the transferee of a debt may be considered as distrained in face of the yielder, even in the absence of notification or of acceptance in an authentic act, then that it is established that the one has had knowledge of the transfer in any way whatever, and that he has fraudulently wished to paralyze the effect of it.

If the assignment in this case is valid in form and substance, however, the two Powers directly concerned have provided a forum to adjudicate any rights which may be supposed to have arisen under it. So there is involved here merely the exercise of the generally recognised power of transfer or assignment of a debt, or credit, or claim, against a government, with an agreement by that government itself for the creation of a special forum before which the claim may be brought and submitted for consideration.

Peru has cited authorities for the purpose of showing that under the laws of the United States, of England, and of Peru, assignment of an interest in a debt or a claim is prohibited.

It is submitted with deference that such is not the law, in truth or in fact, in any one of the three countries named.

The American Authorities.

There are some fifteen pages of the Respondents' Answer which are devoted in great measure to citation of American cases and text books, which are assumed to support this proposition. Except in the aspect, which is perfectly well recognised, that under the Common Law, an assignee could not bring in his own name a suit at law on the contract, there is no substance in the argument which has been submitted in this regard.

The case of Kendall *v.* United States, 7 Wallace, page 113, is cited, and great stress laid upon it as establishing the principle that a claim against the United States cannot be assigned in whole or in part.

Now, what is the truth with respect to that case ? Kendall had entered into a contract with a band of the Cherokee tribe of Indians known as the Western Cherokees, not the

Cherokee nation itself, to prosecute a supposed claim with respect to moneys due them from the Government of the United States.

Kendall's contract with these members of the Western Cherokees provided that they were to pay him 5 per cent. of whatever money might eventually come out of the claim, which amount was to be paid to him directly by the United States, and was not to go through the hands of the Indian Agent or Representative.

As a matter of fact, Congress made an appropriation of a very large sum of money, and in the so-called Treaty, entered upon various settlements of different sorts and kinds outside of this particular claim, but at one point in the agreement for settlement expressly declared that no part of the money appropriated should be paid to any attorney or agent representing the Indians.

The United States did not deny at all that she knew about this outstanding contract between the Western Cherokees and Kendall, and his case, which was brought before the Court of Claims, was that as the United States knew all the time about this outstanding agreement between the Western Cherokees and himself, and that as the 5 per cent. was to be paid to him direct by the United States there had been established in his favour an equitable assignment of this five per cent. interest, of which the United States was bound to take notice.

The Court denied the applicability of the argument to the facts of the case, because the sum appropriated was a lump sum, not for the Western Cherokees, but for the *whole* of the Cherokee Indians. The Western Cherokees were but a branch of that tribe, and as the principle of distribution *per capita* had been adopted by the Legislative body, the Court ruled that that sort of distribution between the members of the tribe *inter se* could not afford

basis for the assignment of any particular portion or percentage of the whole.

There are set forth at various points in the Answer many other citations and extracts from both decisions and text-books, purporting to substantiate Peru's view upon this question of assignment, but singularly no attention has been paid to the distinctions which are raised in both series of citations between actions at law and actions in equity.

While it has always been true in the United States that upon a bill in favour of one where an interest has been assigned to another, the assignee cannot bring his suit at law upon that bill except in the name of his assignor, such is not the rule in equity, and never has been.

Peugh *v.* Porter, 112 U.S., page 737.

That case arose out of distribution of funds received in settlement of certain claims against the Mexican Government. An agreement had been made between the original claimants and certain parties prosecuting the claims for a division of any proceeds, and the parties who had undertaken the prosecution made a further assignment of half of their one-half share to two gentlemen named Peugh and Rittenhouse. Subsequently, the parties who had assigned the subordinate interest to Peugh and Rittenhouse for some reason made an assignment of their entire interest in the claim to one White, ignoring the outstanding claim in favour of Peugh.

This situation developed when the money came to be distributed by the American State Department, and by arrangement between all Parties concerned the 50 per cent. supposed to be covered by the subsequent assignment in favour of White—against whom Peugh claimed with respect to the 25 per cent. interest previously assigned to him, asserting that no proper assignment could have been made

to White in respect thereof—was left in the hands of the Secretary of State until there had been a judicial determination as to whether a subsequent attempt to assign the whole had the effect of cutting out the previous assignment of the 25 per cent. interest in favour of Peugh.

The case was carried to the Supreme Court of the United States, and that Court held, in an opinion delivered by Mr. Justice Matthews (1884) that the assignment in favour of Rittenhouse and Peugh was perfectly valid, and that it was not competent for the original assignee who owned the 50 per cent. to undertake by subsequent assignment to White to cut out the previous assignments in favour of Rittenhouse and Peugh.

In the case of Harris County *v.* Campbell, reported in 68 Texas 22, 2 American State Reports, 470, the Court, discussing this proposition, said :—

> "It now seems to be held by the great weight of authority that the assignment of a chose in action for a valuable consideration is good in equity, and that it may be made, either by direct transfer or by an order upon the particular fund.
>
> "In support of this doctrine, we have the very decided opinion of recent text writers of very high authority. See 1 Daniels on Negotiable Instruments, Sec. 23, p. 25 ; 3 Pomeroy's Eq. Jur. 291, Sec. 1280, and Note on p. 292. Mr. Parsons, in his work on bills and notes, seems to admit that this is the rule in courts of equity. 1 Parsons on Bills and Notes, 334, 335. Such is also the opinion of Judge Story, who delivered the opinion of the Court in Mandeville *v.* Welch, 5 Wheaten, 277 ; 1 Story's Eq. Jur., Sec. 1144."

In Gatzert *v.* Lucy, 218 Federal Reporter, 345, it was declared that the assignment of a mere possibility, such as that of an heir in the estate of his living ancestor, is good

in equity, as is one of a vested interest in property to come into existence in the future.

To like effect is Bridge *v.* Kedon, 163 California, 494, 43 L.R.A. (New Series), 404.

Peoples' Trust Co. *v.* U.S., 38 Ct. Claims Reports, p. 359, recognizes the right of giving notice to the United States of assignment of claims.

To complete the assignment the debtor must be notified, but the form of notice is immaterial. The Debtor cannot thereafter avail himself of any payment made to the assignor. (Ency. Law and Procedure, Vol. 2, p. 1099.)

The equitable force of assignments in America is recognized in 2 Ruling Case Law, 602, wherein it is said :—

> "As to monies due and to become due under a contract with the Government, it is well settled that an assignment thereof is valid unless prohibited by statute or by stipulation to the contrary."

See also Stett *v.* Franey, 20 Oregon, 410 ; 23 American State Reports, 132.

English Authorities.

The English rule is laid down in Brice *v.* Banister, 10 English Ruling Cases, 411 (1878) ; 3 Q.B., p. 569, sustaining a partial assignment of a claim before same became due, and this case was followed in Queen's Bench Division in a similar case, Buck *v.* Robson (1878), 3 Q.B.D. 686, and again by the Master of the Rolls (Sir George Jessell) in Fisher *v.* Calvert (1879), 27 W.R. 301. And all of these authorities were followed by the Court of Appeals of Ireland in Adams *v.* Morgan (1883), 14 L.R., Ireland 140. See also Ex Parte Hall, in *re* Whiting (C.A. 1879), 10 Ch. Div. 615 ; British Waggon Co. *v.* Lea (1880), 5 Q.B.D. 149, 154 ;

Walker *v*. Bradford Old Bank (1884), 12 Q.B.D. 54; Drew *v*. Josolyne (C.A. 1887), 18 Q.B.D. 490.

French Authorities.

The French law fully recognizes the making of partial as well as complete assignments. "Dalloz, Title, Obligations; Répertoire de Législation," etc., Vol. 28 (1860), p. 372, Sec. 1683, says :—

> " S'il y a eu transport d'une portion seulement de la créance, le debiteur peut exiger que le créancier et le subroge se réunissent pour recevoir " (c. nap. 1220–1224).

The French Civil Code, Sec. 1217 (p. 300, Translation), says :—

> " The obligation is divisible or indivisable accordingly as it has for its object either a thing which in its delivery, or an act which, in its execution, is or is not susceptible of division either material or intellectual."

" Nouveau Code Civil," Paris, 1905 :—

> " Si la même créance est successivement transportée pour partie a plusieurs, la priorité de date de la cession ne constitute pas, par elle seule une cause de préférence pour le premier cessionaire. Tous doivent être colloques au franc." Cités *inter alia* Cabry et Rau.

That assignments against governments have been recognized by International Arbitral Courts is shown by two cases, fully referred to in connection with the point as to citizenship, immediately following, namely: The Pious Fund Case and the Orinoco Steamship Case (pp. 103–111).

American Citizenship of Celestin Landreau. Effect of the Diplomatic Settlement by France.

From the point of view of the United States, the Peruvian Answer undertakes to raise issues entirely extraneous to those heretofore indicated as confining and limiting the jurisdiction of this Tribunal (*ante*, pp. 1–10). It may be treated as offering a plea in bar on points which the United States considers foreclosed—the suggestion being insisted upon that Celestin Landreau was French when the claim accrued, and further that a Government cannot intervene on behalf of a non-national claimant even if it thought it desirable so to do.

Without, therefore, admitting, and in fact rejecting the idea that it is within the competence of this Tribunal to follow the course undertaken to be marked out by the Answer, it will be endeavoured in a brief space to point out that even were such a plea permissible, it is entirely without justification under the essential facts of this Arbitration.

A fundamental error in which the Answer indulges relates to the time when the claim accrued, it being assumed on behalf of the Defendant Government that the claim arose in 1865, at the time of the execution of the contract between the Peruvian Government and Teophile Landreau.

The further argument is that Celestin Landreau, being at the time of the execution of that contract a French subject, there could be no right of action on the part of the United States in his favour before this Tribunal.

Consider for a moment what is meant by the word "Claim." A Claim, the Supreme Court of the United States in Prigg *v.* Pennsylvanian, 16 Peters, p. 539, has said: "Is

in a just juridical sense a demand of some matter as of right made by one person upon another to do or to forebear to do some act or thing as a matter of duty."

So, in Moore's International Arbitrations, Vol. I., p. 623, it is said to be "Something asked for or demanded on the one hand, and not admitted or allowed on the other." Applying these definitions to the facts at bar, the question arises, did Celestin Landreau or Teophile Landreau have the right in 1865 to demand any matter from Peru? The Contract specially provided that "The Government will begin operations on the new guano deposits as soon as it will deem it convenient, the discoverer or his representatives not having the right to demand when the exploitation of said deposits shall begin." (U.S. Case, Doc. 11, p. 181.)

The record in both Case and Answer indicates clearly that no operations under the Landreau Contract began until after at least the 1st of January, 1869. (U.S. Case, pp. 138-197, 201, 204, 240, 246, 283, 284, 285; Answer, p. 127.)

There existed, therefore, prior to 1869, no right to demand that the Government should begin operations, and consequently no right to demand any compensation for the results of any operations. It is clear, we think, from citations given that there can be no claim where no right exists to make a claim. No accounting could be asked for when there was nothing with relation to which to ask the accounting. There was no default in any contract and no grounds of complaint.

The claim did not, as the Answer suggests, accrue in 1865; there was but an inchoate right at that time to participate in possible future profits.

Celestin Landreau became fully naturalized June 3, 1867. (Answer, p. 15; U.S. Case, Doc. 3, p. 114, 117.)

The inchoate right to participate in possible future profits

first rose to the dignity of a claim subsequent to January 1, 1869, (*ante*).

It seems beyond dispute, therefore, that this claim, so far as Celestin's interest therein is concerned, was American, that is, national, both when it originated or came into being, and at the date of the instant Protocol and at all times between and since such epochs.

The distinction between the inception of a right as the basis of a claim, and the perfection of the claim itself, so far as citizens of another country are concerned, is well illustrated by the case of the Pious Fund of the Californias, heard before The Hague Permanent Court of Arbitration in 1902. According to the facts of the case referred to, the Mexican Government in 1840 took over all of the properties of what was known as the Pious Fund of the Californias, charging itself with the payment of 6 per cent. interest upon the capital sum. The beneficiary of this Fund was the Roman Catholic Church of California.

By the Treaty of Guadalupe Hildago, between the United States and Mexico in 1848, Upper California was ceded to the United States, and so much of the Roman Catholic Church corporation as pertained to Upper California became American by virtue of the treaty.

From 1840, the date of the taking, until 1848, Mexico's obligation was to its own citizen. After 1848 a part of the interest was claimed in some indeterminate proportion by the Catholic Church of Upper California, the newly created American Citizen and successor terrritorially to all the rights of its predecessor, the Mexican Citizen. No sums whatever having been paid by the Mexican Government to the Church of Upper California after 1848, when the United States-Mexico Mixed Claims Commission met in Washington

in 1869 the Bishops of Upper California presented before it a claim for what the Tribunal should find they were equitably entitled to receive for each of the preceding twenty-two years.

The matter went to the Umpire, Sir Edward Thornton, the then British Minister at Washington, and he found no difficulty in deciding in favour of the claimant, allotting to them a sum equal to 6 per cent. upon half of the original value of the Pious Fund, and Mexico paid the consequent award. Later, as she had failed to pay the instalments accruing after 1869, a Protocol to determine by arbitration the amount, if any, due therefor, was entered into in 1902 between the United States and Mexico, and the case was taken to the Hague Permanent Court of Arbitration for determination. That Court, upon the principle of *res adjudicata,* gave judgment for the United States and directed annual payments to be made thereafter in perpetuity.

This Honourable Tribunal will readily recognize the similarity in principle between the situation in the Pious Fund Case, and that prevailing in the pending Arbitration. Both claims originated in contract made when the ultimate beneficiary was a citizen of a country other than the United States ; in the one case the right to demand further payments was determined by efflux of time simply, and in the other by the positive action of the ultimately defendant Government, this offering no difference of principle.

Again, we find that the original claimant became naturalized in one instance by treaty, and in the other by general law and his voluntary action. Once more there is no variation in principle but merely in detail.

We next discover in effect that each new default constituted a new claim, and following this accepted principle in the Pious Fund Case, we may believe that each new

default committed by Peru under the Contract of 1865 constituted a new claim partaking under International Law of the national character of the claimant at the time of the default.

At this point it is submitted that the Representatives of Peru have fatally misunderstood some of their own calculations. As to the attitude of the United States Department of State, Borchard is quoted on page 151 of the Answer as saying :—

> "The Department of State has in a number of instances considered the rule (non-interference on behalf of non-nationals) *as not applicable to cases in which the injury is a continuing one* and constantly accruing, or where the injuries inflicted prior to and subsequent to naturalization may be separated. In such cases, which, however, are exceedingly rare, the Department has interposed to obtain redress for injuries sustained subsequent to naturalization." (Italics supplied.)

It becomes manifest, therefore, from what we have stated, that the instant case is precisely one of those cases of continuing and repeated violations of right which national departmental policy and practice does not hesitate to consider and to press.

The case at bar is again vastly different from those cited from the records of the Spanish American Mixed Claims Commission, where Spain had embargoed the property of certain of her subjects living in Cuba, who thereafter became citizens of the United States, and claimed damages. In these cases there was no continuing injury, but the wrong done by Spain was completely and absolutely accomplished when the embargo was levied, and the property taken over

during the existence of political allegiance to Spain. Here the retention of property once taken was not considered as the infliction of a new wrong, but included in the original offence. Such citations have, of course, no pertinence to the case at bar.

A confusion seems to exist in the Answer of Peru between Rules of Action adopted by the State Department and Rules of Decision as illustrated by citations from the opinions of various Mixed Claims Tribunals. For instance, there is cited on page 88, a letter from Mr. Bayard to Mr. Denby stating, among other things, that :—

> "It is a settled rule *in this Department* (ours) that a claim which the Department cannot take cognizance of in its inception because of the allegiance of the creditor, is not brought within the cognizance of this Department by its assignment to a citizen of the United States."

Again, on the same page, Mr. Gresham is quoted as saying :—

> "This Government will never recognize, etc., such assignment."

On page 89 a letter from Mr. Evarts is referred to which, in effect, states that such assignment "does not impose upon the United States any obligation to interfere," etc.

In essence the same thing is said by Mr. Blaine, on page 89, referring to the Cochet Claim. On page 99 reference is made to an application against Nicaragua, and the like lines of action followed.

All of these references show that in the conduct of diplomatic affairs, the American State Department usually will not assist diplomatically as against a foreign Government a

claim of an American citizen which has been acquired from a foreigner by assignment ; but, as applied by the State Department, this is a rule of action, and not a principle of International Law binding upon it. If it sees fit at some time to represent an American citizen under such circumstances, its right so to do may not be denied by the foreign government.

Somewhat parallel principles are followed by the State Department when it considers under what circumstances it will urge diplomatic relief to protect American citizens. If this Department finds a man has been neglectful of his duties as a citizen, it may refuse intervention on his behalf. This is a course of action adopted by the State Department—not a principle of International Law, of which an opposing nation may take advantage and rely upon.

In reported cases the United States has departed from the rule laid down as usually controlling the action of the State Department. An instance of this is the Orinoco Steamship Company Case, decided at The Hague in 1910.

In this case a company organized and registered in England was engaged in shipping between the British Isles and certain points on the Orinoco river in Venezuela. The shares of the company, however, were almost entirely owned by American capital.

As the company's ships flew the English flag and had English registry, appeal was made to the British Foreign Office for protection against and damages for certain depredations committed by the Venezuelan Government during the Castro régime. This appeal was not satisfactorily answered, and the American owners of the shares of the Company then appealed to the American State Department. That Department, by virtue of a well settled principle of departmental action, declined to go forward with representations against Venezuela until either the British Government

had joined with the United States in making such representations, or had indicated a total unwillingness to interfere in the matter.

Thereupon the Company made a further application to the British Foreign Office, and was informed by it that as the ownership of the company in its entirety was lodged in America the Foreign Office did not see its way clear to actively interfere in the premises.

It resulted that, with the cognizance of the American State Department, a Company known as the Orinoco Steamship Company was organized in the United States, and the entire outstanding credits of the old Company of every sort and kind were transferred to the American Company by a vote of the shareholders.

Shortly after the change of nationality of the Company by virtue of the direct assignment from the English company, the United States pressed upon Venezuela the reference to arbitration of claims arising out of the latter's supposed malfeasances. A Protocol was executed which allowed the decision of all claims "owned (poseidas) by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement."

Among the claims presented by the American Government was the claim of its very recent citizen, the Orinoco Steamship Company.

Venezuela most strongly contended that as the claim was not American in origin, and had only become American by an assignment, made for purpose of such presentation, it was beyond the power of the Commission to take cognizance of it. The matter was argued at considerable length, and the conclusion of the Commission was that whatever might be the ordinary rule of action, there was no principle of international law which would bar a government in taking up a claim of this sort and pressing it if it saw fit to do so;

and in any event, as the two nations had by the terms of the Protocol agreed to submit to that Commission the claims then owned by American citizens, and as this claim was then owned by an American Company, it therefore fell within the jurisdictional power of the Commission. And, on October 25, 1910, an award was made in favour of the United States. (Hague Cases, Wilson, p. 217.)

This discussion is probably rendered unnecessary by the suggestion that even if the United States had violated a principle of International Law in pressing for a determination of the claim of one of its citizens, however and whenever derived, and Peru consented to arbitrate it, as it has consented in this case, there is really nothing to discuss—it is the case of a *fait accompli*—all questions of right or propriety on part of the United States in pressing the claim internationally having been concluded by Peru's agreement to submit to the decision of a special tribunal.

Between pages 82 and 101 the Answer of Peru cites a large number of decisions of arbitral tribunals, some International Tribunals and others, like that of the Mexican-American Commission under the Treaty of 1848, purely national, to the effect that a claim must belong at its inception and continuously to the time of presentation, to a national of the demanding Government, and this is invoked again as if it were a rule of International Law, preventing absolutely submission by a Government of the claim of a non-national.

It need only be said that everyone of these decisions is based upon the express language of the particular Protocols, which invariably provided generally and not specifically for the determination of claims of citizens of the demanding Government. In the present case, instead of a provision that whoever presents a claim shall be a citizen of the complainant nation, there is the express reference to

arbitration of the claim of John Celestin Landreau an American Citizen under a certain contract. The question of citizenship, therefore, in this instance, is not a jurisdictional question as is ordinarily the case before arbitral tribunals, but citizenship is determined in advance by the joint agreement of the United States and Peru, and it is now too late to raise any question upon the subject.

Suggested Repudiation of the Contract of 1865 by Celestin Landreau.

The point of defence next to be discussed grows out of what Peru has called in her Answer the repudiation by J. Celestin Landreau of the contract of 1865.

In substantiation of the suggestion that Celestin Landreau at one time or another repudiated this contract, reference is made to and reliance placed upon certain memorials filed in the course of proceedings held before the United States and Chilean Claims Commission of 1892, which sat at Washington, and before the Franco-Chilean Claims Commission of 1893–1896, which sat at Lausanne, Switzerland.

It would seem to be sufficient to say that whatever Celestin Landreau did before either one of those Tribunals was not a matter in which Peru was directly concerned. The pleadings filed before those International Tribunals, based upon a theory of quasi-contractual rights, could not in any aspect, by even the most ingenuous mental conception, be twisted into a notification to Peru of an intent to either abandon or to accept an abandonment of the contract of 1865, in so far as the obligatory rights of Peru herself were directly concerned.

Again, it is argued that certain phrases appearing in a somewhat lengthy letter from Minister Thomas to the

Honourable Hamilton Fish, Secretary of State, dated at Cumberland, Maryland, July 16, 1873, when considered in connection with certain language contained in the letter of May 25, 1874, from Teophile Landreau to the Peruvian Minister of Foreign Affairs, which was forwarded through the good offices of Minister Thomas under cover of his letter of May 28, 1874 (U.S. Case, Doc. 19, p. 209) supports the contention that the Landreau brothers themselves repudiated the binding effect of the contract of 1865, or at least that they had abandoned all notion or intention of enforcing the provisions of that contract in order that they might avail themselves of the greater profit which might be supposed to flow to them under the provisions of the early statute of 1833, previously referred to.

The particular paragraph of Teophile's letter of May 25, 1874, to which attention has been called is as follows :—

> "It is true that on the 2nd of November, 1865, acting only in my name and without being authorized by my brother and partner, J. Celestin Landreau, a citizen of the United States, I consented to accept for my discoveries of Guano a premium much less than that specified by the above-mentioned laws, but this acceptation was declared null and void and illegal, and without any value by the decree of 12th of December, 1868, published in the 'Peruano,' and which should be found with the other papers in the Office of the Minister of Treasury. In this manner both myself and my brother are at liberty to claim, as we do at this time, claim the premium authorized by the laws cited, especially as our claims are acknowledged by the Attorney-General on the 18th of January, 1860, founding his decision on the law of 13th February, 1833. I hereby declare that I have not, nor never had the power or authority from my brother, J. Celestin Landreau, a citizen of the United States, to dispose of or reduce in the least any premium which he is entitled to as a partner in my discoveries." (*Ibid.*, pp. 212–213.)

If it could be assumed for a minute that this protest did in truth have the force and effect of striking down any right which Celestin may have had under the contract of 1865, then on the very face of the paper itself Teophile declares

that as of the date when the protest is made he has not, and never has had, authority to take away or reduce any right which Celestin may have had.

The protest is confined in its application to the Decree of April 21, 1874 (U.S. Case, Doc. 18, p. 207), which Teophile thought, if put into effective operation, would result in minimising in some way any rights which he and his brother may have had growing out of the discoveries of these guano deposits, and therefore he protests against the putting into effect of that Decree, and it is only incidentally that he refers to the fact that Peru in 1868 had declared the contract of 1865 null and void, and that the effect of such declaration, if any it had at all, was to leave himself and his brother free to claim, if they saw fit so to do, against Peru the larger sum which would flow to them out of a proper construction as application of the law of 1833.

In any case involving the question of repudiation or acceptance of repudiation, it is submitted there must be something on the part of the party who is about to be bound or affected by such repudiation, definitely and purposefully, evidencing the purpose to repudiate or the purpose and intent to accept repudiation and act upon it. It cannot be that rights of consequence can be held to be stricken down and effaced by a mere casual expression of opinion, or of a view or desire expressed in an incidental manner in the course of a general and more or less acrimonious discussion.

Under established law, as it has been reaffirmed recently by the House of Lords in the case of Forslind *v.* Bechely-Crundall (reported in Scot's Law Times, parts 39–44), a repudiation or cancellation of a contract cannot be effected by looking at a circumstance here or a circumstance there. As expressed by Lord Haldane, it is an appreciation of the entire facts bearing upon the matter which leads to the

conclusion whether or not the contract was abandoned or cancelled or intended so to be.

The great difficulty in that case was not on the point of law, about which there was apparently no difference of opinion, but was only as to the facts and effect of those facts. So, while that case cannot control the present one as a precedent, it is most instructive upon the principle of law which, in the view of the United States, must be applied to the point under discussion in the instant case, and that principle, it is repeated, was not what happened at this minute or that minute, or what was said in this letter or that letter, but, viewing the whole circumstances attending upon the transaction from beginning to end, is it certain that one party intended by his actions or by his sayings to repudiate, and that the other by his sayings and his actions combined intended to accept that repudiation ?

And so, it is submitted with confidence in this case, that it is not what Teophile Landreau incidentally said in the letter of May 25, 1874, to the Minister of Foreign Affairs, but what he and Celestin, beginning in 1868 and in subsequent years, did in connection with this matter that will determine whether the Contract of 1865 was repudiated by either party to it.

If this basic proposition of the law of recision or repudiation of contracts has been correctly stated, what was the situation which existed in 1868 when Peru is said to have taken the step which amounted to a repudiation of the contract of 1865, and eventuated, as it is suggested, in the total annihilation of that contract by the acceptance of such repudiation on the part of Celestin Landreau ?

Under the first section of the contract of 1865 the obligation of Teophile Landreau, and his sole and only obligation, was stated with precision. He was to declare in a public

instrument the places and localities of his discoveries in order that the Government might investigate and satisfy itself of the existence of the deposits and the quality of the guano.

It has not been denied that on November 3, 1865, in strict accordance with the requirements of the first section of the contract, Teophile Landreau, through his Attorney, Wright, filed the list prescribed and called for. When he filed that list Landreau had fully complied with every obligation put upon him. There was nothing for him to do from that day but wait until Peru, in her own way and in her own time, should begin to work the denounced deposits and profit by the output therefrom, at which time he was entitled to receive from Peru that which was due him in accordance with the terms of the contract.

Beyond the fact that from time to time Teophile was hammering at the doors of the Peruvian Government for compliance with the terms of the contract, nothing of consequence was done on the part of Peru, and nothing had either to be done or could be done or ought to have been done on the part of Teophile Landreau, until some time in 1868, when Teophile, moved by the possibility of losing benefits due him under the contract of 1865, communicated again with the Peruvian Government. The Government having been changed, and President Balta having come into the executive power, Teophile was summoned into conference with him and told that the list filed by him in compliance with the contract of 1865 had disappeared, and was asked to re-submit that list. This was done, and immediately upon such submission, which was accompanied with an absolute statement that payment would be forthcoming, the executive acting through the hand of the Minister of Treasury, Caldron, purported to cancel, by the Decree of December 12, 1868, the contract of 1865.

This decree of 1868 reads :—

> "Considering this petition of Teophile Landreau, in which, claiming the rights proceeding from the contract made with the Government, he asks the precise fulfilment of that contract, and at the same time he makes known the deposits of guano which he thereupon places at the disposition of the Government; and taking into consideration that the contract negotiated with Landreau cannot be accepted by the Government, because it suffers from various defects which render it void; that the reward stipulated is of vast import and cannot be conceded by the Government, and that it is proper to examine the deposits denounced and see if they contain guano of good quality and may produce benefit to the nation; on these grounds the contract made with Landreau on November 2, 1865, is declared void." (*ante*, pp. 49–50.)

Consider the situation. Landreau had fully performed every obligation placed upon him by the contract; there was nothing further for him to do except to receive from Peru his rewards, or his profits, as they accrued under the terms of the contract, and here with an effrontery probably unequalled before any Tribunal called upon to administer the Law of Contracts, the party who has not performed, the party who has not fulfilled in the slightest degree its obligation under the contract, the party who, by the terms of the contract is bound to the fullest extent to pay, declares that it repudiates the contract under which it and it alone is bound!

Of course, a repudiation can take place by the consent of the parties; it is understood that by the consent of both parties to the instrument contracts may be cancelled or revised or otherwise gotten out of the way; but where it is asserted that a party who has fully performed and has

nothing to do except to receive payment under the terms of the contract, did assent to a repudiation by the party whose sole duty under the contract was to pay, it requires more than ordinary credulity to agree that the so-called repudiation was accepted or intended to be accepted in fact.

What was there for Peru to repudiate ? Solely her obligation to pay the amounts which were becoming day by day larger and more capable of ascertainment. What was there for the Landreau brothers to accept as the result of the repudiation ? The knowledge that they would not receive moneys accruing due to them ?

The burden is upon Peru to show that this contract was agreed to be wiped out by the conscious intelligence of the two parties to it, and that burden Peru has not sustained.

But did Peru repudiate the contract of 1865 in any such way as is now suggested, and in any such way as it is suggested that Landreau accepted ? She reiterated her acceptance of the benefits of the discoveries of Landreau, saying that "The denouncements in this proceeding are accepted," just as though those denouncements, which were but a resubmission of the denouncement made in 1865, had not already been accepted.

Landreau had performed in 1865. What he did in 1868 was nothing more or less than a convenient acquiesance in the request of the Peruvian Government. He neither altered his position nor strengthened his position by resubmitting his list in 1868. It was a mere reiteration of the act which he did in 1865 that fastened his right with respect to the receipt of rewards under the terms of that agreement.

However, if in law an intentional repudiation on the part of Peru can be spelled out of this document, then that repudiation is coupled with the acceptance of the perform-

ance already made on the part of Landreau, and is accompanied by a direct and positive promise to pay either what Landreau and the Government authorities should agree was the value of that denouncement; or, in the eyes of the law at least, what that denouncement in value was reasonably worth to the Peruvian Government.

It was not an out and out statement of repudiation of a contract; it was an attempt to avoid what was regarded as the too onerous burden of the existing contract, and to minimise that burden by proposing to this man, who had done everything which under the contract he was required to do, to enter into a new contract upon a less advantageous position to himself.

But, considering the matter further, of course, it cannot be contended that the mere one-sided act of Peru looking to a lightening of her burden, and taking the form of a repudiation of the contract, could be effective in the slightest particular unless accepted and assented to by the other side. Now, what is relied upon as assent and acceptance? There certainly was never any express acceptance of this action on the part of Peru by Teophile Landreau, either for himself individually, or for himself and his brother Celestin jointly. None is shown, and none is even suggested; and the fact is, of course, that none took place.

What Teophile actually did after this repudiation, or alleged repudiation, in 1868, was to pass the matter on to his brother. The date of this Decree of alleged repudiation is December 12th, 1868, and on January 7th, 1869, Teophile informed his brother Celestin of this Decree, saying:—

> "I send you a copy, together with this letter, in order that you may take the advice of the leading lawyers of the United States for the purpose of ascertaining whether we ought to protest against the decree, or

> if we ought to accept it, such as it is. Inasmuch as having already acceded in 1865 to all the conditions which were imposed upon me at that time, I do not believe the decree of December twelfth last just, nor do I feel obliged to submit to it, much more so since there are laws that fix the reward due to denouncers of unknown properties of the State." (U.S. Case, Doc. 4 (j), p. 137.)

It is said that this Decree was accepted, yet within a month after its issuance, Teophile is querying his brother whether they shall accept or shall not accept. In June the brother answers, communicating the opinion given him by lawyers and jurisconsults of the United States :—

> "I see with much pleasure" (says Teophile, in his letter to Celestin of September 5th, 1869) "that the opinion of these jurisconsults is in our favour, in holding that the contract concluded with the Government of Peru should be religiously kept, by virtue of the principles of universal justice, and all the more so since that contract was executed and perfected by the delivery of the lists of my deposits of guano to the Government, which accepted it by its decree of December 12, 1868, and caused it to be officially published in its paper 'El Peruano' on the 31st of the same month." (U.S. Case, Doc. 4 (k), p. 141.)

It seems there that these jurisconsults in the United States with whom Celestin conferred, advised him that performance on the part of the Landreaus under the contract of 1865 having been completed, there was no power known amongst civilized nations governed by bodies of recognized laws, based upon established principles, which would enable Peru in such circumstances to make valid

repudiation of her duty in the premises. The letter continues :—

> "Nothing therefore remains for us to do according to the advice of the lawyers, than energetically to protest against this decree in writing, addressing the Government itself, which has never had the right to be judge and party at the same time, nor by itself and before itself to annul a contract between it and me. But I had already foreseen this situation, since I had already made this protest at the proper time and place in accordance with the advice which one of the best lawyers of Lima had given me, who, in doing this, relied upon the fact that, neither of the parties having complained concerning the tenor of the contract during the two years which the laws of the country designate, there is now no power that can annul it." (*Ibid.*, p. 142.)

September 23, 1870, Celestin wrote from his home in Hermitage, Louisiana, to the American Minister at Lima, asking that official to be good enough—

> "To give your aid and support to my brother, J. Teophile, in his reclamation for the discovery of guano. I am interested in the matter, being in partnership with J. Teophile Landreau since the year 1859. I am in the hope, Sir, that you will take the interest of a United States citizen who is far from Lima, being a resident of the State of Louisiana, and that you will look through the controversy of my brother and self with the Government of Peru." (U.S. Case, Doc. 16, p. 203.)

Celestin, having become a citizen of the United States in 1867, now invoked for the first time the protection of the country of his adoption, asking the United States, in this informal way, to lend its assistance to Teophile in what

he was doing in connection with the urging of their claim against the Peruvian Government.

Again, on August 9, 1871, three years after the decree of December 12, 1868, Celestin, writing to the Secretary of State from Hermitage, Louisiana, hung his rights in this dispute directly upon the continued existence of the contract of 1865. The pertinent portion of this letter is as follows :—

Hermitage, Louisiana,
August 9, 1871.

Hon. Hamilton Fish,
Secretary of State,
Washington, D.C.

Excellency,—

I am in receipt of your answer relative to my guano claim against the government of Peru and by which you inform me that a report has been sent to you intending to annul my claim. I cannot now state to your Excellency how this report has been brought about.

* * * * * *

Now I will beg to hand to your Excellency a list of all the documents in relation to my claim of Guano against the Peruvian Government * * * * as follows :—

1st.—My first letter to the Legation of the U.S. at Peru and dated Hermitage the 23d. of Sept. 1870.

2d.—Sent on the 22d. of Novb. 1870 the title of my claim ; legalized both in New Orleans and at Washington.

3d.—My power of attorney in favor of my Brother to represent my right at the Legation of the U.S. at Lima, Peru.

4d.—A package of sixteen (16) letters proving our co-partnership since 1858.

5d.—A certified and Legalized copy of the contract passed between the Peruvian government and my

Brother (my) power of attorney before Mr. Claude Suases, notary public at Lima November 2d. 1865, by which the government of Peru agreed to pay to my Brother the following :—

ten per centm (10%) for the first million of ton of guano shall be made known to it.
six per cent. (6%) for the third million of tonn
four per cent. (4%) for the fourth ,, ,,
two per cent. (2%) for the fifth ,, ,,

no remuneration for all other guano made known to said government.

* * * * * *

Yours most obdt. servt.

J. C. LANDREAU.

Thus, in 1871, Celestin placed his documents and his case in the hands of the United States Department of State, and never from that date in 1871 until the execution of the agreement to erect this tribunal in 1921 did the American State Department for one instant depart from the position that this claim against Peru was rested solely upon the contract of 1865. In the entire course of the correspondence between the two Governments, beginning in 1874 and running up to the date of the signing of the Protocol, there is not the slightest suggestion on part of Peru that there was any other basis of defence than, primarily, the fact that by the release of 1892 Peru had discharged her obligation, and, secondarily, at various times through the correspondence, a suggestion that there had never been any real liability in favour of the Landreaus, because Teophile had not in fact discovered unknown deposits of guano.

In April, 1872, Teophile wrote to the Minister of Foreign Relations enclosing an explanatory list, as he calls it, of

the list which he filed first in 1865 and again in 1868, saying—

> "I, J. Teophile Landreau, show to Your Excellency: That the failure to execute the Contract which I have concluded with the Constitutional Government of 1865, and the Decree of December 12, 1868, for the dispatch of a commission which should examine the deposits of guano which I have denounced since 1856, may enable unscrupulous speculators to take advantage of that delay, and, perhaps, of some gaps that I left (and which must necessarily be between the degrees of latitude that fix the places where my deposits are situated), and they appear denouncing as discoverers some deposits which, although they are not particularly mentioned, do not therefore cease to belong to the points designated in the last list." (U.S. Case, Doc. 17, p. 204.)

Thus from 1868, the date of the alleged repudiation, to 1874, there was not the slightest suggestion of acquiesence in the proposed repudiation of 1868 on the part of either one of the Landreaus, with the single exception of the letter of May 25, 1874. Six years had gone by and neither of these brothers had indicated the slightest disposition to acquiesce in the repudiation by Peru; six years had gone by and everything which had actually occurred was in the nature of a protest against the repudiation on the part of Peru.

In 1875, the very year after the writing of the letter upon which Peru predicates acceptance, Teophile Landreau in Lima, acting through his attorney, instituted proceedings before the Courts of Peru in an endeavour to procure the reward which had accrued to him under the contract of 1865, by virtue of Peru having worked certain of the deposits denounced by him.

Following the introductory part of his Petition to the Court, Teophile, through his attorney, sets out that :—

> "On the second of November of 1865 there was raised to the category of a public instrument the Supreme Decree of October 24 of the said year, by which the Supreme Government accepted the denouncement that my principal had made, years back, of several deposits of guano on sea and land, with more than five millions of tons, in which decree there were established the conditions of the acceptance of the denouncement, and they are set forth in the six clauses the said decree contains, which clauses were in turn also accepted by my principal in an express manner, as was demanded by the 6th clause of the decree being then, when the contract was concluded it was raised to the category of a public instrument before the Notary of the Treasury."
>
> * * * * * * *
>
> "There is then not the slightest doubt that my Principal has a perfect right to claim ten per cent. of the net proceeds of the guano taken out of the deposits he has denounced, and which are set forth in the lists he presented to the Ministry of the Treasury, and which the Supreme Government ordered to be published, and which were published in the 'Peruano' of December 31, 1868, and that to arrive at that price the accounts of sales shall be used as a basis, in conformity with the provisions of the fourth clause of the said Contract. Well then, my principal desiring to avoid every question, has appealed to the Supreme Government requesting the production of the accounts of sales relating to the working of the deposits of Ballestas and Chanavaya, and as he has been unable to secure any action whatever on his petitions, he finds himself in the harsh, but non-evadable necessity of appealing to Your Excellency to the end that the said accounts may be produced,

and that from their showing my principal may claim the ten per cent. of the net proceeds belonging to him."

Thus, in 1875, Teophile in the most solemn manner before the Courts of Peru demonstrated beyond a doubt that at that date, which was one year later than the letter containing the casual expression as a result of which Peru suggests that he accepted the repudiation of the contract, he was in fact relying for the fulfilment of his rights solely upon the contract which he had entered into on behalf of himself and his brother with the Peruvian Government in 1865 (*ante*, pp. 54–56; U.S. Case, pp. 83–86).

Laying aside for the moment the question of direct responsibility of Peru under the contract of 1865, let us consider whether even in the presence of acceptance of repudiation, as contended by Peru, she is not nevertheless liable under the terms of the Protocol under which this Tribunal is constituted and the facts in evidence.

The recitals of the first paragraph of the Protocol indicate a disagreement on the part of the Governments as to the liability of Peru arising (we may answer first) out of a decree of October 24, 1865, providing for the payment of certain awards, and (we may answer second) out of contracts between John Teophile Landreau and John Celestin Landreau.

These two propositions may be treated disjunctively or conjunctively, separated as they are by the repetition of the words "out of." For present purposes they will be treated disjunctively—the contract of 1865 thus being laid aside for the purpose of argument. So read, the Protocol provides for a reference to arbitration of the Celestin Landreau claim against Peru arising out of (and consequently because of) contracts between the two brothers.

Assume, therefore, that the Commission finds in favour of the United States on the first proposition, concluding that the release executed by Teophile did not eliminate any claim which Celestin Landreau had, and reaches the second question, seeking to discover "what sum, if any, *is equitably due* the heirs or assigns of John Celestin Landreau." Is it an answer to this to say that John Celestin Landreau, because of an incidental expression contained in a letter written by his representative, John Teophile Landreau, is thereby barred from any recovery whatever?

In order to answer this quetsion, one must in the first place examine carefully the language of the Decree of December 12, 1868 (U.S. Case, Doc. 15 (a), p. 202). Reference is made to Landreau's petition claiming rights under the contracts of 1865 and demanding exact fulfilment of the contract, and at the same time acknowledgment is made of the receipt of the re-submitted lists. Next follows a declaration that the contract cannot be accepted by the Government because defective in several respects which make it void; that the reward stipulated is of vast importance and cannot be granted, but that nevertheless it is proper to examine the deposits denounced to see if they contain guano of good quality and can produce profit to the nation—on these grounds the contract is declared null and void. If the document in question had stopped at this point, it might have been regarded as a refusal of all justice to Landreau, and to constitute entire repudiation of all obligation under the contract. But it did not stop there.

It expresses complete acceptance of Landreau's denouncements as a basis for a new contract, and directs the examination of the deposits by a commission to be appointed to that end. The final formal action resulting upon this appears to have been through engineers Hindle and Thierry,

who measured, as this Decree further directed, the various deposits and fixed in some fashion, their quality, and value. (U.S. Case, Doc. 38 (i), pp. 292–298.)

Let us consider a moment the position in which Landreau was left by the Decree and the effect of any acceptance of the repudiation of 1868. We have Peru offering to enter into a contract with him for what its then Government should consider fair, and notifying Landreau to inform it of the reward which he demanded. Suppose he had demanded one-third, as he thought he was entitled to by the Law of 1833, while the governmental estimate of the value to be paid remained unformulated. We would have the whole case then confined within a very small compass. Peru retained the benefit which she derived under the contract of 1865, and in 1872 received additional benefit (U.S. Case, Doc. 17, p. 204), subsequently enlarged by the development of the discoveries, but fails to announce the amount she would pay. We have Landreau claiming as the result of Peru's actions that he should receive a reward of one-third. The conflict then becomes an ordinary one between buyer and seller, and the seller having made delivery it becomes only necessary to determine what compensation the buyer should pay for the thing delivered.

Under Article I. of the Protocol it is made the duty of this Commission to determine such sum as is *equitably due* to the heirs or assigns of Celestin in such circumstances, and in arriving at the answer to this question, the Commission, it seems, should not ignore the fact that in 1865 the Peruvian Government recognized as just and proper the scale of percentages set forth in the contract of 1865, ranging from ten per cent. for the first million tons extracted from the Landreau deposits to two per cent. for the fifth million ton, averaging, on five million tons, six per cent. That this was considered a fair (equitable) allowance, not only

for Landreau, but for all other discoverers of guano is shown by paragraph 5 of the Decree of April 21, 1874 (U.S. Case, Doc. 18, p. 207), wherein a reward of five per cent. is stipulated for " all those who may discover deposits of guano " * * *

These percentages, put forth by Peru herself as just and equitable, when considered in connnection with the admission of 2,000,000 tons extracted from Landreau's deposits. (Release of 1892, U.S. Case, Doc. 23, p. 229 ; Respondents' Case, Doc. 7, p. 128) form a basis upon which the question—

> " What sum, if any, is equitably due the heirs or assigns of John Celestin Landreau "

may be fairly answered, regardless of all question as to the continuing effectiveness *vel non* of the contract of 1865 itself.

Conclusion.

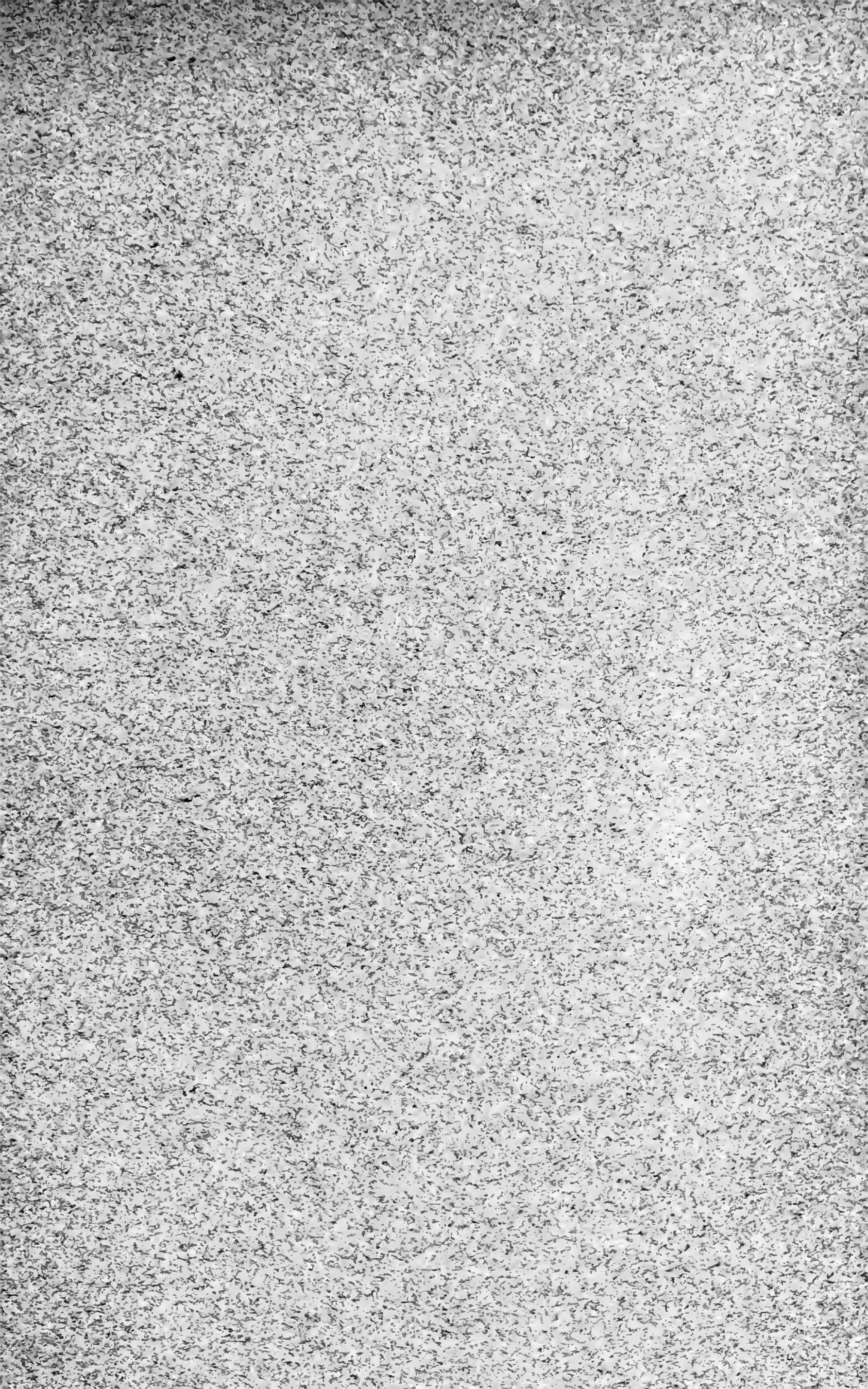
It is respectfully submitted that the release granted the Peruvian Government in 1892 by John Teophile Landreau did not eliminate any claim which John Celestin Landreau, the American citizen, had against Peru ; and, further, that there is justly due and should be awarded to the United States acting on behalf of its nationals, the heirs and assigns of said J. Celestin Landreau, a substantial sum of money, the amount to be ascertained from and determined by an equitable consideration of all the circumstances disclosed in the United States case and the Answer of Peru.

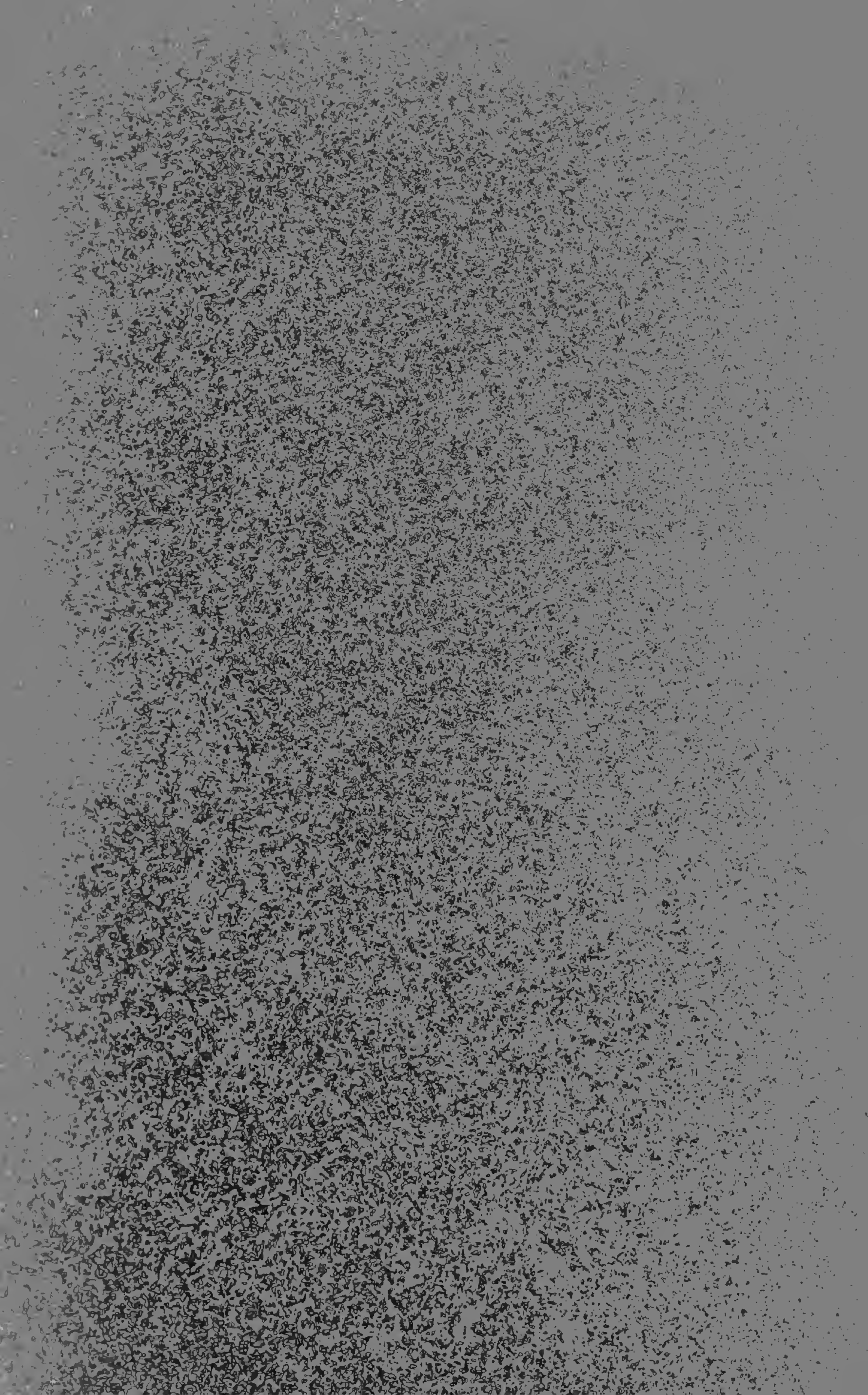
To such sum, when so ascertained, interest at a rate determined by the Arbitral Commission to be just to all parities should be added.

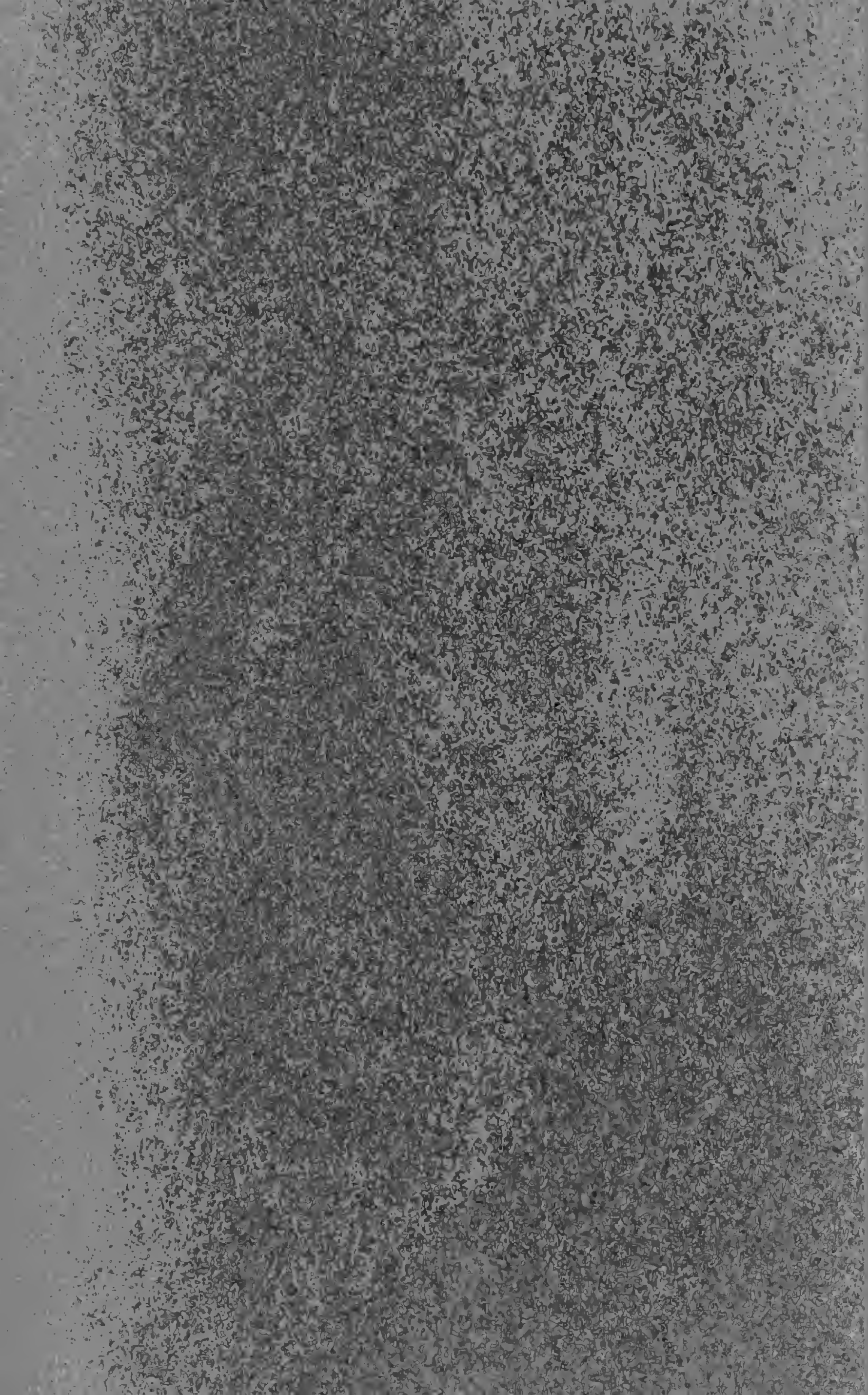
FREDERIC D. McKENNEY,

Agent and Counsel on part of the United States of America.

JACKSON H. RALSTON,
of Counsel.







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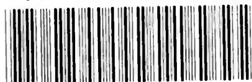
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