

**REPORTS OF INTERNATIONAL
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**RECUEIL DES SENTENCES
ARBITRALES**

Landreau claim (USA v. Peru)

26 October 1922

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IX.

LANDREAU CLAIM¹.

PARTIES : U.S.A. *versus* Peru.

SPECIAL AGREEMENT : May 21, 1921.

ARBITRATORS : Barton Smith, Esquire (U.S.A.), Carlos a Prevost, Esquire (Peru), The Right Honourable Viscount Finlay, C.C.M.G. (U.K.).

JUDGMENT : London, October 26, 1922.

Claim on behalf of John Celestin Landreau for money due to him as a share in a co-partnership for discovery of guano deposits.—Validity of a contract with a government.—Government decree nullifying contract.—Interpretation of Peruvian laws of 1833 and 1847.—Effect of a release to government given by a co-partner of claimant.—Fairness and justice of claim.—Nationality of claim.

¹ For bibliography, index and tables, see Volume III.

Protocol for Arbitration of the Landreau Claim against Peru.

The Government of the United States of America and the Government of the Republic of Peru, not having been able to reach an agreement concerning the claim against Peru of the heirs and assigns of the American citizen, John Celestin Landreau, arising out of a decree of October 24th, 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, which claim is supported by the Government of the United States, have resolved to submit the question for decision to an International Arbitral Commission, and to that end have named their respective plenipotentiaries, that is to say, the President of the United States, William E. Gonzales, Ambassador of the United States at Lima, and the President of Peru, doctor Alberto Salomón, Minister of Foreign Relations, who, after having exchanged their full powers, found to be in due and proper form, have agreed upon the following articles:

Article I.

The questions to be determined by the Arbitral Commission 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 all claims were not thereby extinguished then, second: what sum if any is equitably due the heirs or assigns of John Celestin Landreau.

Article II.

The Commission shall be composed of three members as follows:

The Government of the United States and the Government of Peru shall each, within thirty days after this Protocol becomes effective, appoint one Commissioner, and these two shall, within ninety days after this Protocol becomes effective, select a third Commissioner, who shall act as President of the Commission, and shall be a national of either Denmark, Great Britain or the Netherlands.

If, at the termination of the ninety days period just mentioned, they are unable to agree upon a third Commissioner, he shall be selected, within a further period of thirty days, by the Queen of the Netherlands, provided she is willing.

Article III.

All vacancies occurring from death, resignation or otherwise, in the membership of the Commission, shall be filled as was the original appointment, within thirty days from the occurrence of such vacancy.

Article IV.

The Commission shall, with the consent of the respective Government, meet at the residence place of the President of the Commission, within sixty days after the case is ready for consideration, according to the 2nd paragraph of article X of this protocol, and shall hold all of its sessions in the same place.

Article V.

The concurrent action of any two members of the Commission shall be adequate for a decision on all matters coming before them, including the making of the final award.

Article VI.

The Government of the United States and the Government of Peru shall each be entitled to appoint an Agent for the presentation and argument of its case before the Commission.

Article VII.

The Commission shall keep a record of all its proceedings. For this purpose the President of the Commission shall appoint a Secretary who shall be of his own nationality.

Article VIII.

In the presentation of its documents, evidence, correspondence or arguments to the Commission, either party may use the English or the Spanish language.

Article IX.

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. If notice of the desired discovery be given too late to be answered ten days before the Commission herein provided for shall sit for hearings, then the answer desired thereto shall be filed with or documents produced before the Commission as speedily as possible.

Article X.

The case of the United States and supporting evidence shall be presented to the Government of Peru through its duly accredited representative at Washington as soon as possible, and, at the latest, within four months,

from the date when this agreement becomes effective. The Government of Peru shall submit in like manner, through its representative at Washington, its full answer to such case within five months from the date of the presentation of the case of the United States. The Government of the United States shall present in like manner its reply to the answer of the Peruvian Government, which reply shall contain only matters in reply to the case of the Government of Peru, within three months from the date of the filing of the Peruvian answer, and Peru may, in like manner, within four months, present a reply to the reply of the Government of the United States. The allegations and documents of each party shall be presented at least in quintuplicate.

The case shall then be ready for consideration by the Commission which shall hear arguments by the Agents of the respective Governments, and, in its discretion, may, after convening, call for further documents, evidence or correspondence from either Government; and such further documents, evidence or correspondence, shall if possible be furnished within sixty days from the date of the call. If not so furnished within the time specified, a decision in the case may be given without the use of said documents, evidence or correspondence.

Article XI.

The decision of the Commission shall be rendered within four months from the date of its first meeting, unless the Commission, for reasons which shall be communicated to both Governments, shall find it imperatively necessary to extend the time. The decision, when made, shall be forthwith communicated to the Governments at Washington and Lima. It shall be accepted as final and binding upon the two Governments.

Article XII.

The amount granted by the award, if there should be any, shall be made payable in gold coin of the United States, at the Department of State, Washington, within one year after the rendition of the decision by the Commission, with interest at six per centum per annum, beginning to run one month after the rendition of the decision.

Article XIII.

Each of the parties hereto shall pay its own expenses and one-half of the common expenses of the Arbitration. Each Government shall pay the salary and expenses of the Commissioner appointed by it, but the salary and expenses of the third Commissioner and of the Secretary shall be included in the common expenses of the Arbitration.

In faith whereof, they have drawn up the present protocol, in duplicate, in like terms in English and Spanish, signing and sealing it with their private seals, in Lima, this twenty-first day of May one thousand nine hundred and twenty one.

WILLIAM E. GONZALES. [SEAL.]

A. SALOMÓN. [SEAL.]

UNITED STATES OF AMERICA VERSUS
REPUBLIC OF PERU.

LANDREAU CLAIM.

Award.

WHEREAS by a Protocol signed and sealed in Lima, Peru, the twenty-first day of May, one thousand nine hundred and twenty-one, and made between the Governments of the United States of America and the Republic of Peru, it was recited that the said Governments, not having been able to reach an agreement concerning the claim against Peru of the heirs and assigns of the American citizen John Célestin Landreau, arising out of a decree of October 24, 1865, of the Government of Peru, providing for the payment of rewards to John Théophile Landreau, brother of John Célestin Landreau, for the discovery of guano deposits, and out of contracts of John Théophile Landreau and John Célestin Landreau, entered into on or about April 6, 1859, and October 29, 1875, which claim was supported by the Government of the United States, had resolved to submit the questions for decision to an International Arbitral Commission, and to that end had named their respective Plenipotentiaries, that is to say, the President of the United States, William E. Gonzales, Ambassador of the United States at Lima, and the President of Peru, Dr. Alberto Salomon, Minister of Foreign Relations, who, after having exchanged their full powers found to be in due order and proper form, had agreed upon the thirteen articles set out in the said Protocol after the said recital,

AND WHEREAS by article II of the said Protocol it was provided that the Commission should be composed of three members as follows: one to be appointed by the Government of the United States; one to be appointed by the Government of Peru; and the third who should act as president of the Commission and should be a national of either Denmark, Great Britain or the Netherlands, to be selected by the two Governments aforesaid,

AND WHEREAS in pursuance of the said article II, Barton Smith, Esquire, was duly appointed by the Government of the United States, and Carlos A. Prevost, Esquire, was duly appointed by the Government of Peru, and the Right Honourable Viscount Finlay, G.C.M.G., a national of Great Britain, residing in London, was duly appointed to be President of the Commission by the two said Governments,

AND WHEREAS by article IV thereof, it was provided that the Commission should meet at the residence place of the President of the Commission within sixty days after the case should be ready for consideration according to the second paragraph of article X of the said Protocol and should hold all its sessions in the same place,

AND WHEREAS by an agreement made between the Government of the United States and the Republic of Peru, dated August 4, 1922, it was agreed between the said Governments that the said article IV should be modified so as to provide that the Commission should meet in first session at London on such day and date between the second and tenth, both included, days of October, 1922, as the President of the Commission should determine,

AND WHEREAS the Commission thereafter met as so appointed and sat in London and heard the arguments of the agents for the said Governments, duly appointed under the said Protocol on the second, third, fourth, fifth, sixth, ninth, tenth, and eleventh days of October, 1922,

AND WHEREAS by article I of the said Protocol, the questions to be determined by the Commission are: first, whether the release granted the Peruvian Government in 1892 by John Théophile Landreau eliminated any claim which John Célestin Landreau, the American citizen, may have had against the Peruvian Government, and if all claims were not thereby extinguished: then, second, what sum, if any, is equitably due to the heirs or assigns of John Célestin Landreau.

NOW THEREFORE this Commission, having carefully considered the arguments of the agents and counsel for the said parties, and the printed cases and documents presented by either side, after due deliberation, FINDS AND AWARDS THAT the release granted the Peruvian Government in 1892, by John Théophile Landreau did not eliminate any claim which John Célestin Landreau, the American citizen, may have had against the Peruvian Government, and no claims were thereby extinguished, AND FURTHER FINDS AND AWARDS THAT there is equitably due the heirs or assigns of John Célestin Landreau the sum of one hundred and twenty-five thousand dollars of the United States of America in gold coin thereof.

Done at London, in triplicate original, the twenty-sixth day of October, 1922.

(Signed) FINLAY,
President.

(Signed) BARTON SMITH,
Commissioner.

(Signed) C. A. PREVOST,
Commissioner.

STATEMENT OF REASONS FOR THE AWARD.

Théophile and Célestin Landreau were both born in France and were French subjects. Théophile settled in Peru about 1846 and continued to reside there until his death in 1894; he always continued to be a French subject. Célestin in 1857, being then under age, emigrated to the United States and settled in Louisiana. In 1867 Célestin became a naturalized citizen of the United States and retained his American citizenship and domicile until his death on the 4th of March, 1919.

Théophile Landreau was a chemist, and from 1847 onwards was engaged in investigations for the purpose of discovering on the coast of Peru and the adjacent islands deposits of guano. These deposits belonged to the State. A law passed in 1833 provided that any person who discovered property of suppressed convents "or other properties belonging to the State by any title" should receive a third part thereof on giving information to the Government. It has been maintained by the claimants in the present case that this law applied to the discovery of deposits of guano. Another law published on the 21st April, 1847, provided that any discoverer of Government property should be allowed one third.

It appears to have been in the hope of earning such rewards that Théophile engaged in the search for guano deposits. He presented a petition for this purpose in 1856 and again in 1859 and in 1863.

In 1858 and 1859, Théophile applied to his brother Célestin in Louisiana for pecuniary assistance in prosecuting his search for guano. It appears from the correspondence between the brothers that about 1859 Théophile received from Célestin a remittance of 5,000 dollars on the terms that Célestin should have a half interest in any discoveries of guano by Théophile. A further grant of 2,000 dollars was made to Théophile by Célestin at a subsequent date. On the 29th October, 1875, there was a readjustment between the brothers as to their interest in the rewards that might be earned by such discoveries. By document of that date (U.S. Case, pages 56 and 57) it was provided that Théophile's interest should be 70 per cent and Célestin's 30 per cent of the whole claim for the reward. The present claim on behalf of Célestin's representatives is in respect of his interest under this readjustment.

In 1865 the contract which forms the basis of the present claim was entered into between Théophile Landreau and the Government of Peru (U.S. Case, page 172 to page 185). In that contract is set out *in extenso* the Supreme Decree of 24th October, 1865.

This decree recites that Théophile Landreau asserts that unknown deposits of guano exist and offers to make them known to the Government for the proportionate reward. The decree goes on to recite that it is just to agree if in reality the deposits were entirely unknown. The decree then provides that the petition of Théophile should be granted on certain conditions, of which some are the following:

1. Théophile Landreau was to make known that he accepted the decree and to disclose the deposits, the decree not applying to deposits already known.

2. The reward was to be a certain percentage varying from 10 per cent to 2 per cent on the net product of the guano according to the quantity up to 5,000,000 tons.

5. The Government might proceed to take out the guano as it thought proper.

The sixth condition was in the following terms: "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."

The instrument proceeds to state that Landreau accepted the concession on the terms of this decree.

This instrument was dated 2nd November, 1865. On the next day, the 3rd November, Landreau filed his list of discoveries of guano. This list is set out in the case for the United States, page 189. It was embodied in a petition to the Peruvian Government in which it is described as being an exact and detailed list of the deposits of guano, discovered by Landreau, and which are the object of his denouncement, adding that they are all unknown to the Government. This list specifies by name various cliffs, points, pampas, coves and islands in which it is stated that guano deposits exist and concludes thus:

"To the south of Arica there is guano in abundance between Cape
"Lobos, La Capilla and Madrid Point, as well as on Camarones,
"Point Gorda, the Island of Coloué, Pisagua Bay, and Pichalo and
"Megillones Points.

“Between Iquique and the River Loa there exist immense deposits of guano at certain distances, as, for example, on the beach of Cochapampa, Chuquinata, Puntagruesa, Barrancos, Patillos, Chucumata, Patache Point, Quebrada de Pica, Puerto Ingles, Blanca or Lobos Point, Chomache Point, Huanillos, Chipana, and the Bay of Los.”

The petition concludes by asking that the list should be made part of the record, “and that the Commission which is to examine and measure the deposits of guano which I have designated be named.”

Nothing appears to have been done by the Peruvian Government to carry into effect the survey and measurement of the guano beds under this contract of 1865.

In 1868, the Peruvian Government applied to Théophile Landreau for a fresh list on the ground that that supplied in 1865 had been lost. A fresh list was accordingly supplied (Document No. 14 U.S. Case, page 197 to 200). The fresh list is dated 9th December, 1868, and a short supplementary list was delivered on the 12th December, 1868 (U.S. Case, page 200 and page 201).

On the 12th December, 1868, the decree of that date was issued (Document 15 a, U.S. Case, page 202 and 203).

This decree recites a petition of Théophile Landreau for fulfilment of his contract with the Government, making known the deposits of guano placed by him at the disposition of the Government, and goes on to state that that contract cannot be accepted by the Government, “because it suffers from various defects which render it void”. The decree goes on to say that “the reward stipulated is of vast import and cannot be conceded 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”. The decree proceeds to state that “on these grounds the contract made with Landreau on November 2, 1865, is declared void; the “denouncement” made in this proceeding is accepted; and it is provided that as a basis for a new contract the new deposits of guano be examined by a Commission which shall be appointed for that purpose”.

Appended to the decree is a “rubric of His Excellency” in these terms: “Tell Landreau to indicate the reward that he demands for the denouncement that he has made, and let this resolution be published with the report annexed.”

This decree was published in the official paper *El Peruano* on December 31, 1868.

There is an undated letter of Théophile Landreau addressed to the Minister of the United States at Lima in the following terms (U.S. Case, page 201 and 202):

“As the representative of John Célestin Landreau, citizen of the U.S.A., I would respectfully beg leave to submit for the consideration of Your Excellency the annexed copy of a decree dated Lima, December 12, 1868, and published in the official paper *El Peruano* December 31, 1868.

“I pray Your Excellency may not deny me this protection, be it officially or otherwise, so that the Peruvian Government may fulfil said decree in sending the Commission named for the purpose of measuring the quantity and proving the quality of the guano deposits, etc., as per annexed copy published in *El Peruano* of January 2,

"1869." (The entry in *El Peruano* of January 2, 1869, would appear to have been some notice as to the Commission.)

From this letter, which must be taken to be written with the authority of Célestin, it would appear that the Landreau brothers contemplated accepting the rescission by Peru of the contract of 1865, and taking action under the decree of 12th December, 1868. There is frequent reference in the correspondence between the two brothers and in other documents in the case to the effect that the reward under the contract of 1865 was considerably less than that which the brothers claimed would have been due to them under the Peruvian laws of 1833 and 1847. But, on the other hand, this correspondence shows that they were also considering the possibility of measures to secure the carrying out of the contract of 1865. The first question which arises for determination is whether the contract of 1865 is to be regarded as still in existence. The act of the Peruvian Government in putting an end to this contract by the decree of 12th December, 1868, was no doubt wrongful as against the Landreau brothers; no authority has been produced for the proposition that the Government could justifiably put an end to a contract such as that of 1865. There has, however, been a long argument before the Commission on the question whether it should be taken that the Landreau brothers accepted the repudiation by Peru of the contract of 1865.

The attitude taken up by the Landreau brothers as to the contract of 1865 varied from time to time. There is a good deal of evidence tending to show that they considered it more to their advantage to accept the repudiation by the Peruvian Government, and to rely upon their rights or supposed rights under the laws of 1833 and 1847.

In addition to the letter already adverted to, asking for the assistance of the United States Minister in getting the decree of 12th December, 1868, carried out, there is a letter by Théophile Landreau on behalf of himself and Célestin to the Peruvian Government dated 25th May, 1874 (U.S. Case, page 210). This letter was written with reference to a decree of the Peruvian Government dated 21st April, 1874 (U.S. Case, pages 207-209), reducing the reward for the discovery of guano to 5 per cent of the net product of the sales. On the 28th May, 1874, Mr. Francis Thomas, the American Minister at Lima, forwarded to the Government of Peru the letter written by Théophile Landreau to the Minister of Treasury, Peru, on the 25th. In his covering letter Mr. Thomas stated that he made this communication with a view to the protection of any interest of Célestin Landreau, an American citizen who had acquired from Théophile a one-half interest in any premium which he might receive for discovery in reference to the lists which Théophile had supplied in 1856, and in 1865 and in 1868. The enclosed letter of Théophile made, on behalf of himself and his brother and partner Célestin, a protest against the decree of 21st April. This letter, after reference to Théophile's discoveries and lists supplied, proceeds as follows:

"Now, therefore, in the name of my brother and partner and also
 "of myself, I hereby solemnly protest against the provisions of the decree
 "of the 21st of April last, which decree conflicts with my rights as
 "discoverer of guano, and also for the reason that the premium proposed
 "in said decree is much less than that to which discoverers are entitled,
 "in virtue of Peruvian laws of the 13th of February, 1833, and the
 "17th of April, 1847, based upon the new compilation of laws, book 10

“and 6th law, which law is at present in full force, and by which law
 “is conceded to discoverers of guano the one-third part of the value
 “which said guano may be sold for.

“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. Célestin 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 acceptance 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 of February, 1833. I hereby declare that I have
 “not, nor never had the power or authority from my brother J. Célestin
 “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.”

It is clear that this protest proceeds on the view that the contract of 1865 is at an end and that the right of the Landreau brothers was to one-third of the guano under the laws of 1833 and 1847. It admits that Théophile had by the contract of 1865 accepted a premium much less than that specified in these laws but alleges that this acceptance was declared null and void by the decree of 12th December, 1868, and therefore claims for them the larger premium under these laws. The last sentence of this protest obviously means that the reduction of the premium from that given in 1833 and 1847 to the smaller amounts specified in the contract of 1865 was also void as against Célestin on the additional ground that he had never authorized any such reduction. It may be remarked that the argument in this last sentence was a very bad one, as it is clear that Célestin had adopted the contract of 1865.

In a letter from Théophile to Célestin dated 28th December, 1874 (Peruvian Case, pages 170-171), he presses upon him the propriety of getting their case taken up by some one of influence in the United States. The postscript is as follows:

“My discoveries of guano amount to more than 10,000 000 tons;
 “there is due to us, according to the Peruvian laws, one-third (or
 “33 per cent) of that amount; that is what you must have the person
 “understand who will be willing to take charge of your claim as an
 “American. In that case, it will have to be based on the decree of
 “December 12, 1868, by which the Government accepts all the said
 “deposits of guano and had them published in the official journal,
 “*El Peruano*, of the 31st of the same month.”

This letter therefore suggests a claim on the basis that the contract of 1865 had been effectively repudiated.

In a despatch of July 16, 1873, addressed by Mr. Francis Thomas, writing from Cumberland, Md., to the American Secretary of State, the Hon. Hamilton Fish (which despatch is set out among the exhibits to a petition by Célestin Landreau dated 6th December, 1895, addressed to

the Franco-Chilean Arbitral Tribunal). Mr. Thomas made a statement of the case of the Landreau brothers. This despatch is set out at pages 161 to 166 in the print of the petition by Célestin which has been supplied to the Commission. After referring to the claim of Théophile Landreau under the laws of 1833 and 1847, Mr. Thomas proceeds to say (page 163 of the print):

“Failing to pay this just debt, or any part of it, the Secretary of the Treasury and Treasurer of Peru published on the 24th of October, 1865, what is called a ‘Supreme Decree’ (see A. 3), averring that guano deposits, in different parts of the territory of Peru, constitute the principal riches of the nation, and inviting Landreau to state, with due particularity, where the deposits, which he claimed to have discovered, were situated. With that request Landreau complied and furnished to the Treasury Department of Peru a descriptive list of his discoveries, of which a copy will be found hereto appended (see A. 4). In this ‘Supreme Decree’ a proposition was made to J. T. Landreau, contemplating a compromise, under which he was to accept, and Peru on certain conditions agreed to pay him, a less sum of money than that he was entitled to under the law of 1833, and to those propositions Landreau gave his consent. But, as Peru failed to comply with the promises made in its behalf in this decree, and as afterwards, December 12, 1868, the Minister of the Treasury and Commerce, of Peru, published a decree declaring the Supreme Decree of 1865 null and void, it is clear that Landreau stands absolved from the obligations he had entered into on the 24th of October, 1865, and has a right to claim all that is due to him under the law of 1833, which, according to his estimates of the value of his discoveries, amounts to several million of soles.”

This despatch of 16th July, 1873, goes somewhat fully into the circumstances of the claim and must have been written on information supplied by the brothers. It shows that at that time the claim was based on the assumption that the contract of 1865 was at an end.

Célestin Landreau took up the same position in a memorial which he submitted to the United States and Chilean Claims Commission which sat under the Convention between the United States and Chile, dated August 7, 1892. In the decision upon his claim (Peruvian Case, pages 153 to 155) the Commission, as reported in Moore’s *International Arbitrations* (Vol. 4, pages 3571 *et seq.*), stated the effect of Célestin’s memorial thus:

“John C. Landreau in his memorial numbered 38, substantially says: “That he is a naturalized citizen of the United States and the legitimate owner of one undivided tenth part of certain guano deposits situated in the Republic of Peru.”

“That he derives title to said property from a transaction made by public instrument (*escritura publica*) on the 29th of October, 1873, with his brother J. Théophile Landreau, a French citizen, in which it was agreed that the claimant should have an interest of 30 per cent in the guano acquired by J. Théophile Landreau, and the latter was to retain the remaining 70 per cent.

“That the rights of J. Théophile Landreau grew out of certain discoveries of guano deposits made by him between the years 1844 and 1859, and which he reported to the Government of Peru in 1865.

“That by reason of said discoveries the said Jean Théophile Landreau “became entitled and had a right under the laws of Peru then in force “to one-third of the property discovered as provided in paragraph 6 “of the resolution of the Council of State of Peru of the 13th of February, “1833, and contained in Volume 4 of the *Collection of Laws by Quiroz*.

“The memorialist further states that on the 28th of October, 1865, “the said J. Théophile Landreau, representing both his interest and “that of the claimant, and with the consent of the latter by way of “compromise, and with the view of facilitating the settlement of their “interests, entered into a contract with the Government of Peru by “which they were to receive in compromise of their rights to one-third “of the guano deposits discovered by J. Théophile Landreau, a certain “proportion of five million tons of guano to be removed from said “deposits, and the claimant refers to said contract and annexes a copy “marked ‘Exhibit 6’.

“That Peru refused, however, to carry out said contract and “formally repudiated and attempted to annul it by decree of the “12th of December, 1868, whereby the memorialist and J. Théophile “Landreau were restored to their original rights as they existed prior “to October 28, 1865.”

Again, in 1895 Célestin presented a petition to the Franco-Chilean Arbitral Tribunal (Peruvian Case, pages 145-148). In this petition he stated his rights as against Peru in substantially the same way as previously before the United States and Chilean Claims Commission, as appears from the following extracts:

“To the Honorable the President of the Franco-Chilean Arbitral Tribunal :

“Your petitioner, John Célestin Landreau, respectfully represents “as follows, to wit:

“Allegations of Fact.”

“First. He is a naturalized citizen of the United States of “North America, residing in the County of Fairfax, in the State of “Virginia, having been born in France.

“Second. He claims the right to appear before this Honorable “Tribunal as a party entitled to the fund which is the subject-matter “of your deliberation, as will hereinafter specifically appear.

“Third. He is the only surviving brother and heir-at-law o. “Jean Théophile Landreau, deceased, and his assignee and grantee

“Fourth. He was, during the lifetime of said Jean Théophile “Landreau, a full equal co-partner in respect of the certain “guano deposits within the jurisdiction of the Republic of Peru, “South America, discovered by the said J. T. Landreau, and made “known to the said Republic of Peru under and in accordance with “the laws thereof, and more particularly set forth in the next succeeding “paragraph hereof, and which co-partnership continued in full force “and effect until on or about the 4th day of October, A.D. 1874, “when it was, by mutual understanding and agreement, terminated; “and thereafter, by like understanding and agreement, your petitioner “and the said J. T. Landreau stood in relation to the assets of the

“partnership as joint owners, each being entitled to an equal undivided
 “one-half interest therein, with the sole right of the control and
 “disposal of his own interest.

“And your petitioner respectfully but confidently asserts that the
 “failure of the Government of Peru to carry out its obligations incurred
 “by the terms of the compromise of ‘concession’ and its subsequent
 “attempt to annul it, restored *ipso facto* J. T. Landreau and your
 “petitioner, as his co-partner, to their rights as they originally existed.
 “When these several statutes and declaratory decrees are read and
 “construed together, as the well-settled rules of law require (laws in
 “*pari materia* must be construed with reference to each other, Bacon’s
 “Abridgment, Statute 13), your petitioner submits the conclusion
 “irresistibly follows, that J. T. Landreau and your petitioner became
 “the equitable owners of one-third of the guano deposits upon discovery
 “thereof, and the legal owners of such one-third when made known
 “to and accepted by Peru; that thereby a lien was created, not merely
 “upon the deposits of guano whilst they remained undisturbed, but
 “upon their removal or sale continued and attached to the proceeds
 “thereof.

“VI.

“Your petitioner submits the following propositions as consistent
 “with the principles of public justice, law, and equity; that when Peru
 “found it convenient and to her advantage to declare the contract
 “of October, 1865, null and void (although appropriating to herself
 “the fruits of the arduous labors, many sacrifices, and large expend-
 “itures incident to the explorations of J. T. Landreau), your petitioner
 “and his co-partner were remitted to their rights under their original
 “contract, and restored to the status thereunder, which entitled them
 “to receive one-third of the deposits of guano discovered and made
 “known, or to one-third of the proceeds thereof if such deposits had
 “been removed or sold.”

And the second and third of the conclusions in this petition by Célestin
 were as follows:

“II.

“That he was an equal co-partner of Jean Théophile Landreau,
 “deceased, a citizen of France, in his ownership of the one-third part
 “of the certain properties belonging to the Government of Peru, to
 “wit, divers valuable deposits of guano, theretofore unknown, to
 “which he was entitled, under and by virtue of the laws of Peru, as
 “discoverer, and which he duly made known to it, and which were
 “duly accepted by the Government of Peru in compliance with the
 “laws thereof.

“III.

“That such co-partnership continued in full force and effect until
 “on or about the 4th day of October, A.D. 1874, when it was termin-
 “ated by mutual understanding and agreement; and that thereafter
 “they, to wit, your petitioner and the said Jean Théophile Landreau,
 “became and remained the joint owners in said property interest,
 “each being entitled to an equal undivided one-half interest therein,

“with the sole right of the control and disposal of his own interest,
“until he, the petitioner, became the owner of said interests as afore-
“said.”

This petition contains a good deal of argument intended to support these contentions. The full print of the petition has been supplied to the Commission.

The circumstances, however, are somewhat different as regards Théophile Landreau.

In 1875, Théophile Landreau brought a suit based on the contract of 1865 against the Peruvian Government, in which he asked for the account of the sales of guano in order that he might claim the 10 per cent of the net proceeds in accordance with that contract. This was prayed in respect of the deposits known as Ballestas and Chanavaya as well as the other deposits denounced by Théophile, which might have been worked. Célestin is not mentioned in these proceedings and there is nothing to show that he was in any way privy to them. This suit is certainly strong evidence that Théophile Landreau had not accepted the repudiation of the contract of 1865. The suit lasted for three years and was decided against Théophile in all the courts, the ultimate decision being in 1878. A copy of the record has been supplied to this Commission.

Théophile further joined with Célestin in a protest of 31st October, 1882 (Peruvian Case, pages 144-145), addressed to the Minister of France in Peru, in which they claim to be creditors of Peru for a sum of nine million dollars in virtue of the contract of 1865 and the Supreme Decree therein set out. They protest against a sale by the Chilean Government at Santiago of a million tons of guano to their prejudice as creditors of Peru. This protest was signed by Théophile, and by Célestin “avec approbation mutuelle”.

Finally, in 1892, Théophile, treating the contract of 1865 as belonging entirely to himself released the Government of Peru from all obligations under it in consideration of payment in bonds and cash. There could not be a more definite assertion of the continued existence of that contract. Célestin was no party to this release in any form. There is no proof that he knew of it at the time, but in all probability he came to know of it soon after Théophile's death. In a letter to Célestin's attorney at Washington (Mr. Collier) from the United States consul at Callao (Jastremsky) dated 21st November, 1894, it is mentioned that Théophile had compromised his large claim against the Government of Peru in consideration of sums making a total of thirty-five thousand soles.

In the Franco-Chilean Arbitration, held in pursuance of the Convention between France and Chile dated July 23, 1892, the Government of Peru filed a Mémoire dated February, 1897, a copy of which has been put in evidence, and in this Mémoire the release is stated in the following terms:

“En effet, il suffit au Gouvernement de faire constater qu'il a payé
“à Jean-Théophile Landreau le montant définitivement arrêté à
“l'amiable des prétentions qu'il pouvait faire valoir contre le Pérou.
“Le 17 septembre 1892, Jean-Théophile Landreau a donné en due
“forme quittance définitive et sans réserve des prétentions pouvant
“résulter en sa faveur du contrat conclu par lui avec le Gouvernement
“le 2 novembre 1865.”

Célestin was in this Arbitration one of the claimants before the Commission.

The absence of any protest by Célestin in respect of this release in which Théophile treated himself as the sole owner of all rights in respect of the contract of 1865, is completely accounted for if Célestin had himself elected to treat that contract as at an end. It is only on this basis that the conduct of the brothers becomes intelligible. There are no doubt some claims made by Célestin together with Théophile which are inconsistent with a complete renunciation by Célestin of the 1865 contract, but on the balance of the whole evidence it appears to be established that he did so accept the repudiation by Peru of that contract.

There remains for examination under this head the correspondence between Théophile and Célestin, beginning with the letter of 1st December, 1865 (U.S. Case, page 132). There are no letters set out from Célestin, but the import of some of his letters may be collected from passages in Théophile's.

The letter of 1st December, 1865 (U.S. Case, pages 132-133), informs Célestin of the 1865 contract, and the filing of Théophile's list of deposits, but adds that all operations had been stopped by the outbreak of a revolution on the 6th November. He says that they must have patience and wait until things improve.

In a letter of 1st September, 1866, Théophile complains of the unworthy conduct of the Government in ignoring his right, and says:

"Since the present Government is entirely absolute and arbitrary, it might well happen that no attention is paid to my claim and that we shall 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 2nd November, 1865."

The next letter is of 27th May, 1867 (U.S. Case, page 135), and complains of the unsatisfactory state of things. He says that "there is every reason to believe that the head of the State will now listen to the advice of the Chambers and do me justice."

In the Peruvian Case, at pages 164 to 167, there appear three additional letters not set out in the case for the United States. They are dated 24th August, 1867, 27th December, 1867, and 26th April, 1868. In the first of those letters Théophile expresses a very bad opinion of one member of the Peruvian Government and says that Congress is about to adjourn and expresses his apprehensions that the contract of 1865 will not be respected. In the second of these letters (pages 165-166) Théophile complains of the "wicked" proceedings of the Government, and expresses hopes that something may come of a new revolution which had just broken out. In the third of these letters (pages 166-167), Théophile says that the new revolution has triumphed, but that there has been an outbreak of yellow fever, and expresses the hope that if he should die from that or any other cause, Célestin would prosecute the claim through the United States.

The next letter is dated 7th January, 1869 (U.S. Case, page 137). In that letter Théophile thanks Célestin for all he is doing in the guano matter. He informs him that in October, 1868, Congress had proclaimed Balta as President. He says that he had a personal conference with the new

President, at which it was agreed that Théophile should re-submit his list of deposits, and the President gave him his word of honor that he should be granted in cash a reward on all the amounts of guano. He says that he delivered his list with a petition on the next day to Mr. Calderon (the Finance Minister), who renewed the promise the President had given. Three days after, he says, he received a copy of the decree of 12th December, 1868, which he sets out in this letter *in extenso*. He says that he does not believe this decree to be just and sends a copy of the list of his discoveries which had appeared in *El Peruano* "for the purpose of ascertaining whether we ought to protest against the decree or if we ought to accept it such as it is".

In his next letter (U.S. Case. pages 141-146) Théophile acknowledges the receipt from Célestin of an opinion by United States lawyers that the contract should be observed by the Government of Peru. He suggests an energetic protest to the Government against the annulment. He goes on to say that it is useless to apply either to the courts or to the Legislative Chamber of Peru and that an appeal to the French Legation is not to be thought of. He asks Célestin to invoke the assistance of the United States, of which he says he is a citizen. In a postscript to this letter Théophile complains bitterly of the conduct of Pierola who had succeeded Calderon as Minister of Finance, saying that he tramples the contract of 1865 under foot and would not even recognize the decree of 12th December, 1868, and was throwing doubt on the novelty of Théophile's discoveries.

From Théophile's next letter (28th February, 1870, U.S. Case, page 147) it appears that Célestin had written to him advising that all means of justice and conciliation should be exhausted with the Government of Peru before invoking the protection of the United States. Théophile says in reply that nothing can be done in Peru and that Célestin should get a letter of recommendation to the Minister of the United States in Peru.

There are two more letters from Théophile dated 14th December, 1874, and 28th December, 1874, which appear in the Peruvian Case, pages 167 to 171. The first of these two letters (pages 167 to 170) contains many complaints of things in Peru and announces the postponement of his intended visit to the United States as a revolution is in progress in Peru which requires his attention. The second of these letters has so far as it is material been already referred to.

All that this correspondence shows is that Théophile was anxious that Célestin should get the United States Government to take action and that Théophile had no intention of abandoning the contract of 1865.

The result on the whole appears to be that Célestin Landreau did, while Théophile did not, accept the cancellation by Peru of the contract of 1865.

The present claim is on behalf of the representatives of Célestin in respect of the contract of 1865. As Célestin accepted the repudiation by Peru of the contract of 1865 and fell back on his rights under the laws of 1833 and 1847, it follows that no claim can be made good by his representatives for damages for the breach of that contract or on the basis that damages are to be measured by the amount which Célestin would have received if the contract had been fulfilled. No claim is made in the present proceedings on the basis of the laws of 1833 and 1847.

But it by no means follows that Peru escapes all liability. The claim is stated in the Protocol to be one "arising out of a decree of 24th October, 1865, of the Government of Peru providing for the payment of rewards" for the discovery of guano deposits. The questions stated in the first

article for the decision of the tribunal are whether the release of 1892 eliminated any claim by John Célestin Landreau "and if all claims were not thereby extinguished, then what sum if any is equitably due to the heirs or assigns of John Célestin Landreau". "Equitably" in this connection means "in justice and fairness".

It was an integral part of the scheme of the decree of 12th December, 1868, that the basis for a new contract regarding the guano deposits should be fixed by a special commission to be appointed for the purpose of examining them. The Peruvian Government never did anything to give effect to this proposal. On the face of the decree it was contemplated that a new contract should take the place of the rescinded decree of 1865. This was entirely ignored. But as the terms of the new contract were never ascertained, there are no materials for ascertaining damages for the failure of Peru in this respect. The matter had been allowed to remain rather in the sphere of honourable understanding than of binding obligation.

But the Government of Peru did not confine themselves to a repudiation which is admitted to be wrongful of the contract of 1865. The Government had received under that contract from Théophile Landreau lists of his discoveries of guano, and accepted them. It appears to be beyond doubt that the Government while repudiating the contract proceeded to take advantage of Théophile's discoveries by working for their own benefit the guano contained in these deposits. From this there inevitably follows a liability to pay to Théophile Landreau, his representatives, and assigns the fair value of the discoveries so communicated. The Government got the information on the footing of the contract of 1865 and having repudiated that contract by the decree of 12th December, 1868, they are bound to pay on a *quantum meruit* for the discoveries which they appropriated for their own benefit.

The principle on which the sum to be paid is to be computed is quite different from that on which the sum should have been assessed if Célestin was entitled to claim payment on the footing of that contract. In that case the question would have been how much would have been earned by him in respect of his share in Théophile's rights under the contract. The damage would have had to be assessed on the basis of what would have been payable in respect of the percentages on sales allowed by that contract. But as Célestin accepted the repudiation by Peru of that contract, the question is very different and is this: what was the fair value of the communication to Peru of the discoveries of guano which had been made by Théophile Landreau? This raises a question very different from that of the value of the remuneration which had been stipulated for in that contract.

The deposits were there and they would no doubt have been brought to the notice of the Peruvian Government sooner or later even if Théophile Landreau had never communicated any information about them. But of course the discovery by Landreau had a substantial value as bringing to the notice of the Government deposits, the existence of which would not have been discovered, it may be, until at some indefinite date in the future.

The value of these communications cannot in the nature of things be very accurately determined, but on the whole it appears that a sum of one hundred and twenty-five thousand gold American dollars should be allowed as representing Célestin's 30 per cent share, and that this should be paid under the award. In making this estimate, we have not assumed that the laws of 1833 and 1847 supplied the proper criterion of value. The law of 1833 applied primarily to the property of suppressed convents and

it is difficult to suppose that the words in article 6 "or other properties belonging to the State by any title" can properly be read as applying to property so entirely different in its nature as guano beds. Very little has been said about the law of 1847 and we do not think that it can be taken that the reward therein provided would be applicable in the present case.

The right to be paid on a *quantum meruit* for these discoveries is a claim arising out of the decree of 1865 within the meaning of the Protocol. Denouncements were made on the 3rd November, 1865, and on the 9th December, 1868, with a supplementary denouncement on the 12th December, 1868. When the wrongful repudiation by the decree of 12th December, 1868, had taken place, an obligation arose on the part of Peru to pay the fair value of these denouncements so far as Peru utilized them. This obligation, though it is not under the decree, is one arising out of it upon the repudiation coupled with the appropriation for the purpose of working of the information contained in the lists which had been supplied by Landreau.

There were raised on behalf of Peru in answer to the claim, three other points which call for notice. The first of these is the effect of the release of 16th September, 1892; the second is Célestin Landreau's French nationality of origin and the fact that he was not naturalized in the United States until 1867; and the third is the contention that the alleged assignment to Célestin of a share in his brother's rights does not entitle him or his representatives to make any claim against Peru.

I. *The release.*—In September, 1892, Théophile Landreau gave a release to the Government of Peru. (See Peruvian Case, pages 128-133.) The instrument which he executed is dated 16th September, 1892. It recites his desire to settle the controversy which had arisen between him and the Government of Peru arising out of the rescission of the contract of 2nd November, 1865 and acknowledges the good offices of the French Government through the Chargé d'Affaires at Lima, with whose knowledge it is stated that the deed was executed. The instrument goes on (Peruvian Case, page 129) to state, "I have agreed to cancel definitely and irrevocably the rights which in my favor have been derived or may be derived from the said contract of 1865 in exchange for the handing over of the following amounts". These amounts are 300,000 soles in bonds of the Peruvian internal debt and 20,000 soles in cash. The instrument proceeds, "In consequence all the rights claimed by me in Peruvian guano arising from the said contract are now totally and finally cancelled". etc. The instrument goes on:

"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 today, 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."

This deed was executed by Théophile on the 16th September, 1892, and there is annexed a Supreme Resolution of the Government of Peru of the same date (pages 130-131). This resolution refers to the decree of 24th October and the contract of 2nd November, 1865. This second clause

makes reference to the resolution of 12th December, 1868, and alleges that it does not "exactly mean the absolute cancelment of the rights acquired by the interested party on making the denouncement". The third paragraph refers to the acceptance by the decree of 12th December, 1868, of the denouncements and also to the Commission ordered for examination of the deposits, and states that Landreau was requested to indicate the price he asked. Paragraph 4 enumerates certain deposits as having been discovered by Landreau "from which there have been extracted or may be extracted now over two million tons of guano". Paragraph 7 states that there was nothing contrary to law in the contract of 1865 and adds "nor is it possible to contend that contracts of that nature can be rescinded without previous judgment of the courts". Paragraph 8 states that Landreau had a right to diplomatic intervention as he had failed to obtain redress against the decision of the contract either from Congress or from the Supreme Court. Paragraph 10 states that the French Government had insisted on this matter being resolved upon and provides that the payment stipulated should be placed at the disposal of the interested party by the intermediary, the French Legation at Lima.

These are somewhat remarkable documents, but although it appears that at this date Théophile Landreau was then ill and an inmate as paying patient of a hospital at Lima, there is no ground for contending, and it has not been contended, that the execution by him was other than valid.

Did this release affect Célestin? On the face of it it clearly does not; it is a release only of Théophile's interest in the contract.

It is true that it is stated in the release and in the accompanying resolution that there had been no assignment and that the whole interest was in Théophile. The Peruvian Government had in fact notice that 30 per cent of the claim had been assigned to Célestin.

Of course if there was anything to show that Célestin knew of this release at the time of its execution and abstained from putting forward his claim, he and his representatives would be estopped from making any claim against the Peruvian Government, but there is nothing to show that there was any such acquiescence in this transaction by Célestin. Théophile lived for nearly two years after the release, but it does not appear whether or not he informed Célestin that he had thus affected to dispose of the whole interest in the contract. Célestin was the heir of Théophile and in all probability he must have come to know of the release soon after Théophile's death in 1894. But there is no sufficient foundation for inferring that Célestin's representatives are estopped by any conduct on his part from asserting the right to their 30 per cent share.

It follows that this release does not prejudice the present claim.

II. *Célestin's nationality*.—A good deal of argument was addressed to the tribunal upon this point. It was contended that the claim was one which had accrued to him while he was still a French subject and that his subsequent naturalization as a citizen of the United States did not justify the United States in taking up his case.

It is difficult to appreciate this argument. As a matter of fact the United States has taken up the case and by the agreement between the United States and Peru embodied in the Protocol, this tribunal is asked to decide upon the claim. The fact that any claim had accrued before naturalization might form one element to be considered by the United States before deciding to take up the case, but it is quite impossible to say that

it would on such a ground be *ultra vires* of the United States to take it up. This tribunal cannot enter into the question whether it was proper for the United States Government to take up this case. All that the tribunal has to do is to decide the dispute in the terms of the Protocol. It may be added that although the contract of 1865 was before Célestin's naturalization in the United States, a good deal of what took place in connection with the claim was after that date.

III. *Validity of the assignment.*—It is contended that the assignment does not entitle Célestin, the assignee, to proceed against Peru in respect of the share in the claim assigned to him and that for this purpose it would have been necessary that Célestin should have received from Peru an admission of his right as an assignee, in other words that there should have been in the language of English law, an attornment by Peru to Célestin as assignee.

It is not necessary for this purpose to decide what may be the municipal law of Peru as to assignment of contract rights. There is no doubt that Théophile had, in consideration of Célestin's advances to him, bound himself to pay over to Célestin a certain share in anything Théophile should receive from the Peruvian Government in respect of his discoveries of guano. Whatever may be the municipal law of Peru as to such assignments, it is clear that as between the two brothers Célestin was entitled under the ultimate readjustment to 30 per cent of Théophile's claim, and that this was known to the Government of Peru. We are not embarrassed by any technicalities of municipal law. It is clear that in all justice and fairness Peru was bound to pay to Célestin his quota under the readjustment and could not set up as against him any payment to or settlement with any other person not authorized by Célestin to receive it. Mr. Francis Thomas, of the United States Legation, in transmitting the protest against the decree of 21st April, 1874, informed the Peruvian Government of Célestin's interest (U.S. Case, page 209). The interest of Célestin is from time to time referred to in the correspondence with the Peruvian Government. The document by which, on 29th October, 1875, the Landreau brothers readjusted their respective interests was formally notified to the Government of Peru by the Legation of the United States at Lima on the 20th August, 1877.

There is one other point which is mentioned only to show that it has not been overlooked by the tribunal. It was contended for Peru that the existence of guano off the coast of Peru was a notorious fact and that there was no true discovery. It is, however, quite clear that there might be discovery as to the localities in which deposits existed. We are not called upon to determine as to the merits of Théophile Landreau as a discoverer, but it is clear that his "denouncements" were accepted by Peru. This point entirely fails.
