

**AWARD PRONOUNCED BY HIS MAJESTY
KING GEORGE V AS "AMIABLE
COMPOSITEUR" BETWEEN THE
UNITED STATES OF AMERICA AND THE
REPUBLIC OF CHILE IN THE MATTER OF
THE ALSOP CLAIM**

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Award pronounced by His Majesty King George V as "amiable compositeur" between the United States of America and the Republic of Chile in the matter of the Alsop claim by R. I. George

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AWARD

PRONOUNCED BY

HIS MAJESTY KING GEORGE V

AS "AMIABLE COMPOSITEUR"

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE REPUBLIC OF CHILE

IN THE MATTER OF THE

ALSOP CLAIM

LONDON, JULY 5, 1911

WASHINGTON
1911

WHEREAS by a Protocol dated the 1st day of December, 1909, the Government of the United States of America and the Government of the Republic of Chile resolved that, as they had not been able to agree as to the amount equitably due to the claimants in the Alsop case, they would submit the whole controversy to His late Majesty King Edward VII as an amiable compositeur to determine the amount equitably due to the said claimants; and

Whereas on account of his untimely death His late Majesty was not able to carry out the duty which he had undertaken; and

Whereas at the request of the two Governments We agreed to act in place of His late Majesty; and

Whereas We determined to designate a Commission to study the papers submitted to Us on either side, and submit a Report to Us for Our consideration as to the amount equitably due to the said claimants; and

Whereas We appointed for that purpose:—

Our right trusty and right well-beloved cousin Hamilton John Agmondesham, Earl of Desart, K.C.B., a Member of the Permanent Court of Arbitration;

Our right trusty and well-beloved William Snowden, Baron Robson, G.C.M.G., a Lord of Appeal in Ordinary, and a Member of Our Most Honourable Privy Council; and

Our trusty and well-beloved Cecil James Barrington Hurst, C.B., of the Middle Temple, Barrister-at-Law, Assistant Legal Adviser to Our Principal Secretary of State for Foreign Affairs; and

Whereas the said Commission have submitted unto Us for Our consideration the following Report:—

May it please Your Majesty:

ON the 1st December, 1909, the Government of the United States of America and the Government of the Republic of Chile

entered into the following Protocol submitting to His late Majesty what is known as the Alsop claim against the Republic of Chile:—

“ PROTOCOL.

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

Protocol of Submission.

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

“ Therefore, the two Governments have resolved to submit the whole controversy to His Britannic Majesty Edward VII, who as an 'amiable compositeur' shall determine what amount, if any, is, under all the facts and circumstances of the case, and taking into consideration all documents, evidence, correspondence, allegations, and arguments which may be presented by either Government, equitably due said claimants.

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

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

“ The decision by His Britannic Majesty shall be accepted as final and binding upon the two Governments.

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

“ Done in duplicate, at the City of Santiago, this first day of December, 1909.

(Seal)

“ SETH LOW PIERREPONT.

(Seal)

“ AGUSTIN EDWARDS.”

Your Majesty has been pleased at the request of the parties to the reference to consent to act as arbitrator in place of His late Majesty. The duty which Your Majesty has been pleased to undertake is one of pronouncing an award which shall do substantial justice between the Parties without attaching too great an importance to the technical points which may be raised on either side. This is what we conceive to be the function of an "amiable compositeur."

In accordance with the terms of the Protocol, Cases have been submitted to Your Majesty by both the above-named Governments. These Cases are very voluminous and elaborate, and the United States Government annexes three volumes of Appendices.

The arguments put forward are, in relation to some matters, of a very technical character, and in relation to all matters are elaborated at great length.

The United States Case runs into 352 pages, their Counter-Case into 198 pages, and there are, as stated above, three volumes of Appendices.

The Chilean Case is of 54 folio pages, the Counter-Case of 335 folio pages, but, the material documents being quoted over and over again in the Cases and Counter-Cases, only a short Appendix of documents is annexed.

Your Majesty has been pleased to do us the honour of directing us to give our consideration to the whole matter, and to report to Your Majesty thereon.

It was necessary for us for this purpose to consider and weigh the arguments set out in these books, and this occupied a considerable time, but we are glad to be able to state that in our judgment the issues raised and our conclusions can be set out for the consideration of Your Majesty in a comparatively small compass.

The firm of Alsop and Co. was registered in Chile, its seat of business being in Valparaiso, but it was composed of American citizens. The claim arises out of an agreement made with the Government of Bolivia so long ago as the year 1876.

In that year the firm was in liquidation, and through its liquidator, a Mr. Wheelwright, entered into arrangements with the Government of Bolivia for the settlement of a debt arising out of previous transactions between that Government and one Pedro Lopez Gama, a Brazilian citizen, which debt had been assigned to Alsop and Co.

These arrangements were set out in the form of a contract between the Bolivian Government and Wheelwright, called

herein, for convenience of reference, the Wheelwright contract, and it is in respect of the unfulfilled obligations of Bolivia under that contract, which obligations are alleged by the United States Government both to have fallen upon, and to have been specifically undertaken by, the Government of Chile, that the claim arises which has been submitted for the decision of Your Majesty.

The amount of the claim put forward by the United States Government on behalf of Alsop and Co. is for the sum of 2,803,370 dol. 36 c.

The Chilean Government admit that they have assumed Bolivia's liability under the Wheelwright contract to a limited extent by a treaty entered into between the two States in 1904, and have offered the payment of a certain sum in respect of the claim. This sum has been refused by the United States Government as being insufficient to satisfy either the just claim of Alsop and Co. on Bolivia or Chile, or the liability which Chile has herself undertaken on behalf of Bolivia.

The claim has now been the subject of discussion and controversy between the Governments of the United States and of Chile for more than twenty-five years, and the failure to arrive at any conclusion acceptable to both Governments has induced them to invite Your Majesty to pronounce an award which both parties have undertaken to accept as final and binding upon the two Governments.

It has already been stated that the object of the Wheelwright contract was to provide for the payment of a debt from the Government of Bolivia to Alsop and Co. as the assignees of Gama, who had been involved in various transactions of a complicated nature with the Government of Bolivia, resulting in that Government's admission that there was due a capital sum of 835,000 bolivianos and certain arrears of interest thereon.

The contract itself states that it is "for the consolidation and amortisation of the credits which he (Wheelwright) has pending against the State."

It is important to notice that, though the Wheelwright contract was made with the Government of Bolivia, it is against the Government of Chile that the Alsop claim is now put forward by the Government of the United States.

Bolivia admitted by this contract that she was then indebted to Alsop and Co. in the sum of 835,000 bolivianos, and agreed that the debt was to carry interest at the rate of 5 per cent. per annum, not compoundable. The contract provided for the liquidation of

this debt by giving Wheelwright the right to the sums by which the Bolivian share of certain customs receipts might exceed 405,000 bolivianos annually, and also by giving him the right to work the Government silver mines in the coast department of Bolivia for a term of twenty-five years upon the terms that the Government share of the proceeds of the mines should be retained by him and applied in reduction of the debt.

At the time of this contract these customs dues were collected in Peruvian territory, at the port of Arica, which was the natural port of access to a large part of the territory of Bolivia, and an arrangement was in force between the two Republics under which the customs duties levied at the port were divided between them, and no further duties were levied at the Bolivian frontier on goods going to that country. Under this arrangement Bolivia took a fixed annual sum of 405,000 bolivianos as her share, the balance, whatever its amount, going to Peru. Bolivia was, however, dissatisfied with the arrangement, and had given notice to terminate it; she hoped that under any new agreement her income from this source would be increased, and it was this anticipated increase which she agreed to apply towards the liquidation of the Alsop claim.

The origin of the Government silver mines, of which the proceeds were to be applied to the same purpose was as follows: Under the Bolivian mining law the discoverer of a mine was entitled to two, sometimes three, "estacas," or plots, of a certain size, which were first marked off along the reef or lode. Another "estaca" of 60 by 30 metres was then marked off, and was Government property. The right to work these small mines was given to the firm of Alsop and Co., upon the terms that 60 per cent. of the net proceeds were to go to the firm as a reward for its labours, and 40 per cent. was to be regarded as the share of the Government, but was to be retained by the firm and applied in liquidation of the debt.

Early in the year 1879, less than three years after the making of the Wheelwright contract, war broke out between Chile and Bolivia, and the coast province of Bolivia rapidly passed into the military occupation of the former republic. Shortly afterwards Peru also became engaged in the conflict, and by June, 1880, the port of Arica had passed into the possession of the Chilean Government.

The result of the war, therefore, was, that both the sources to which Alsop and Co. were entitled to look for the money which would pay their debt had passed out of the control of Bolivia into

the possession of Chile, and in Chile's possession they still remain. Her military occupation of the coast province of Bolivia was rendered permanent by the Pact of Indefinite Truce of 1884 between Bolivia and Chile, and this military occupation was definitely converted into sovereignty by the Treaty of Peace of 1904. Subject to a future plébiscite, Arica was transferred from Peru to Chile by the Treaty of Ancon, 1883.

- The debt admitted by Bolivia in 1876 as due to Alsop and Co. has never been paid, and though it is not alleged by the United States of America that the conquest of Arica, and of the coast province, would of itself affect the indebtedness of Bolivia, or transfer the liability to Chile, it is contended by them that, on other grounds, the firm of Alsop and Co. are now entitled to recover the amount of their claim from Chile.

These grounds are, (1) that Chile appropriated to her own use the proceeds of the customs house at Arica, thereby preventing any money coming to Bolivia which Alsop and Co. might claim under the Wheelwright contract to be applicable to the repayment of the debt; (2) that Chile prevented Alsop and Co. from working the Government silver mines in the coast province in the way they were entitled to work them by applying Chilean law in the province from the date of the military occupation, and thereby subjecting Alsop and Co. to more onerous terms than would have been the case under Bolivian law; and (3) that from time to time Chile undertook to pay the claim.

The Government of the United States of America began to put forward the claim of Alsop and Co. as a good claim against the Government of Chile from a comparatively early date, though it is only recently that the claim has assumed its present shape and magnitude. The United States, however, so far as concerns the original debt admitted in 1876 by the Government of Bolivia (viz., 835,000 bolivianos carrying interest at 5 per cent.), also allege that Bolivia is still the debtor.

The Republic of Bolivia is not a party to the submission of the matter to Your Majesty, and cannot be bound by the result, but her standpoint is that her liability has been entirely transferred to Chile as a result of her loss of the coast province, and of the arrangements concluded between her and Chile.

Chile, on the other hand, repudiates liability for the claim altogether so far as the claim is based on her appropriation of the Arica Customs, or on the application of Chilean law to the province she had conquered; and so far as the claim against her is based