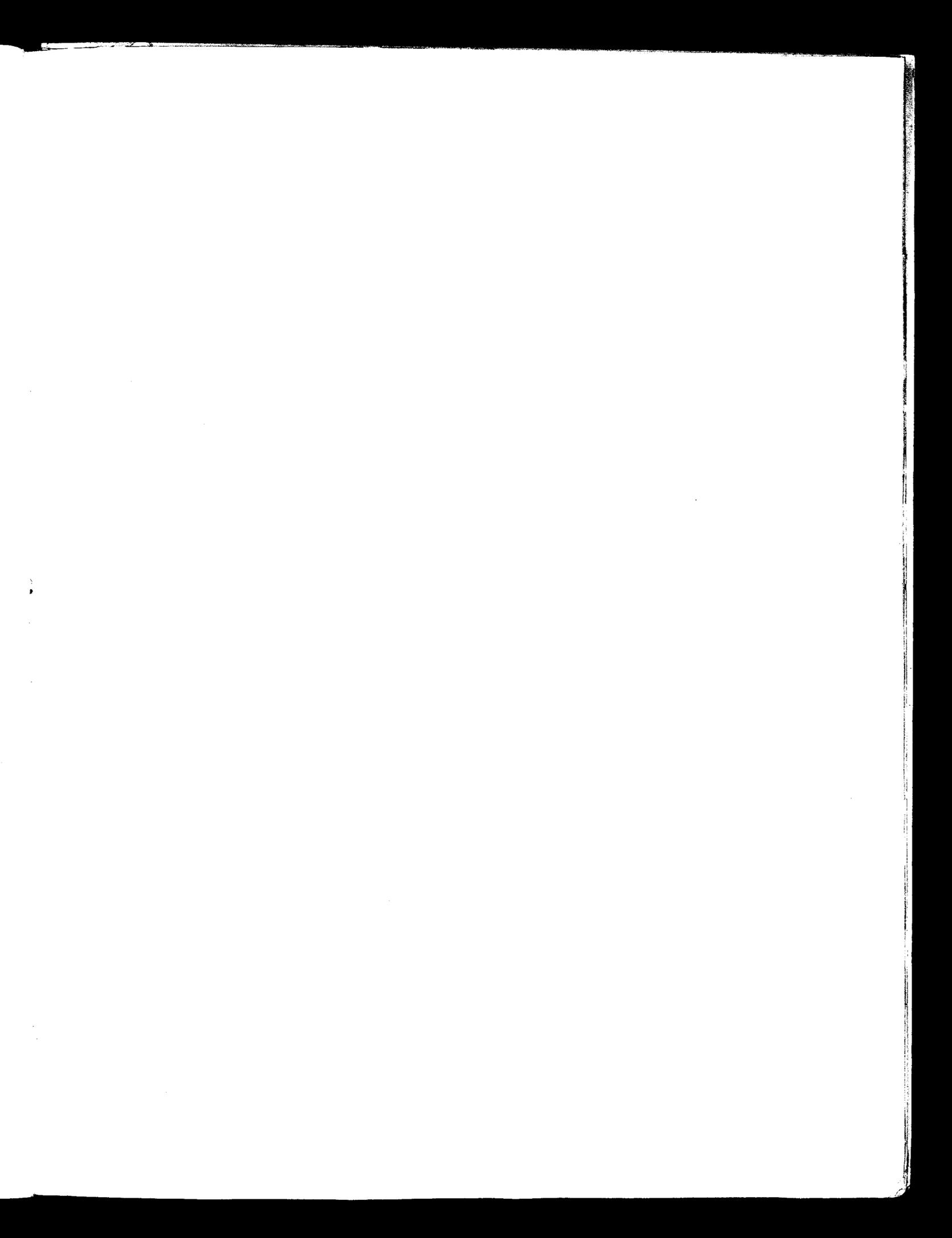
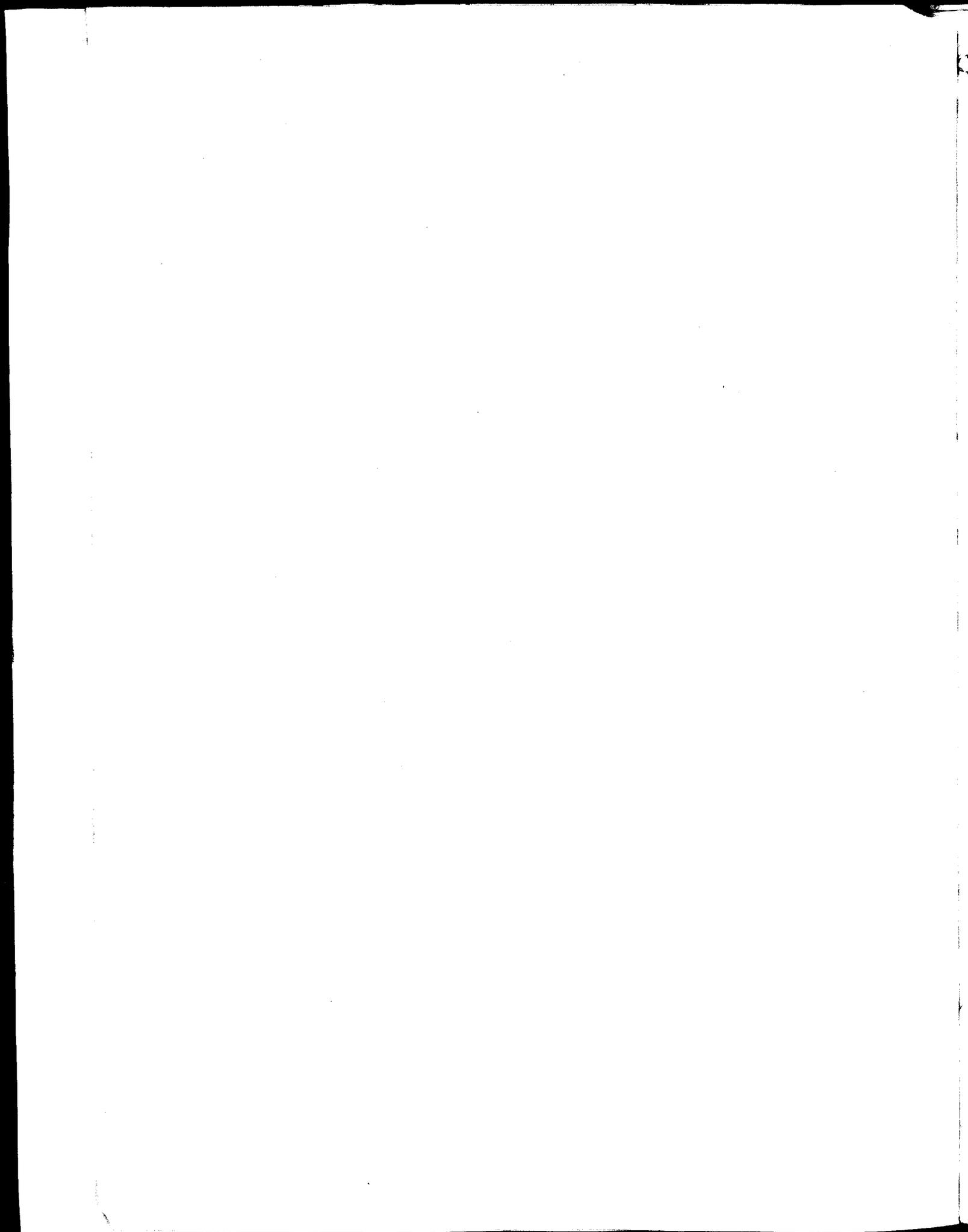


LAW
UNIVERSITY
OF CALIFORNIA
1952







Supplements
TO
Contract and Concession
FOR THE
CONSTRUCTION AND OPERATION OF
RAILWAYS.

THE REPUBLIC OF BOLIVIA

WITH

THE NATIONAL CITY BANK

AND

Messrs. SPEYER & CO.

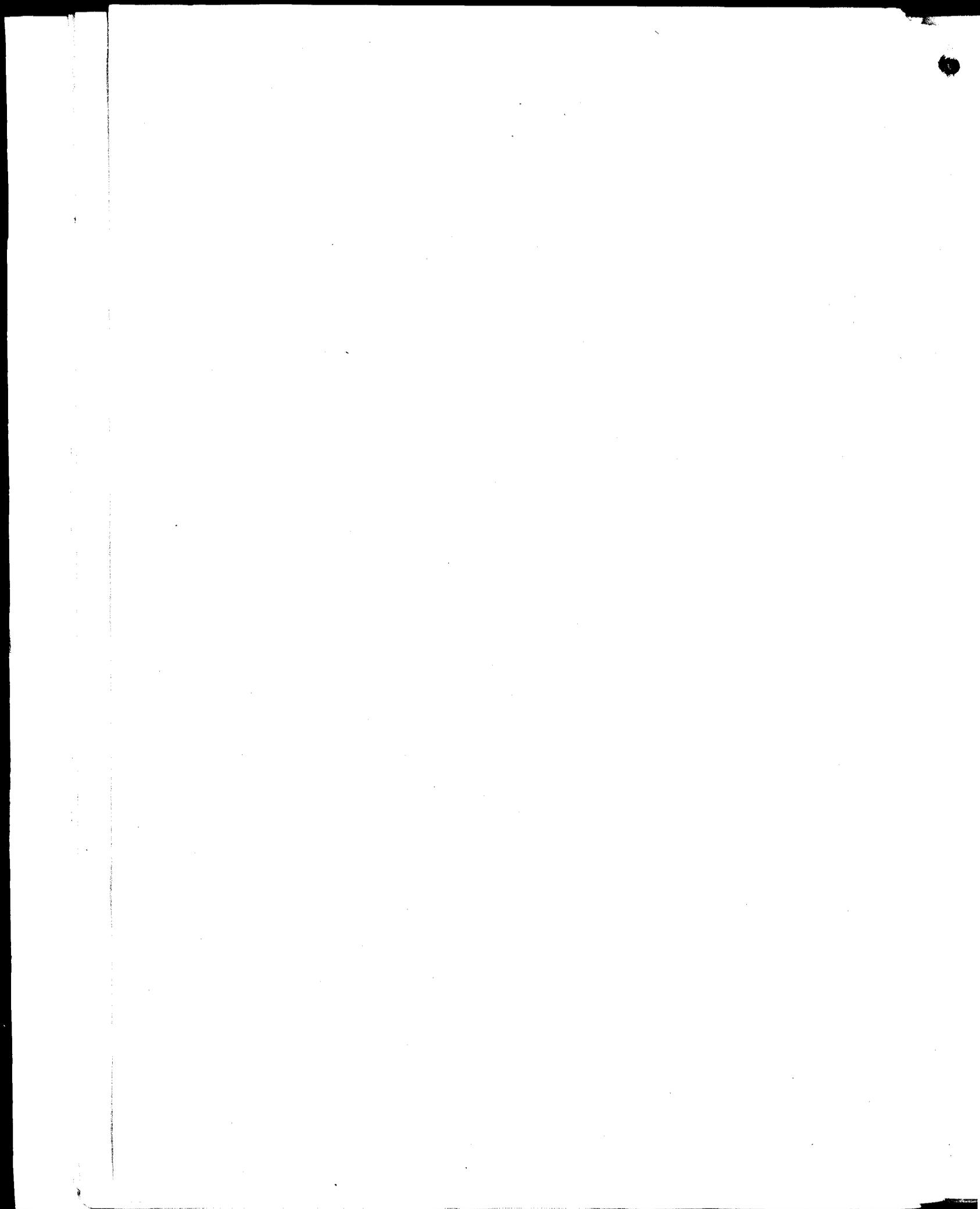
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247

CONTENTS.

	PAGE
A. Certified copy of the supplemental contract.....	1
B. Decree of the National Congress legalizing the original contract and its supplements	9
C. Legalized copy of the request for an interpretation of the first clause of the contract	14



(A.)

NUMBER TWELVE.

CERTIFIED COPY OF DEED SUPPLEMENTAL TO THE DEED EXECUTED ON MAY 22ND OF THE PRESENT YEAR, THIS SUPPLEMENTAL DEED BEING MADE BETWEEN THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC, COL. DR. DON ISMAEL MONTES AND HIS MINISTERS SEÑORES CLAUDIO PINILLA, ANIBAL CAPRILES, J. M. SARACHO, JOSÉ S. QUINTEROS, D. DEL CASTILLO, MANUEL VICENTE BALLIVIAN, AS PARTIES OF THE FIRST PART, AND MR. DAVID STEWART IGLEHART, ACTING ON BEHALF OF MESSRS. SPEYER & CO. AND THE NATIONAL CITY BANK, PARTY OF THE OTHER PART.

In the City of La Paz on the twenty-first day of October, one thousand nine hundred and six, at eight o'clock in the forenoon, before me, the citizen Joaquin Aramayo, Notary of the Treasury, Government, War and Colonies, residing in this Departmental Capital, and in the presence of the witnesses mentioned at the end of this instrument

APPEARED

as parties of the first part and representing the national interests, Senor Col. Dr. Ismael Montes, the Constitutional President of Bolivia, and his ministers, Senores Claudio Pinilla, Anibal Capriles, J. M. Saracho, José N. Quinteros, Daniel Del Castillo and Manuel Vicente Ballivian, all persons of lawful age, the first four of whom are lawyers and married, and the others property owners; and, as party of the other part, Senor David Stewart Iglehart, in representation of Messrs. Speyer & Co. and The National City Bank. The said Iglehart is a native of the United States of North America, residing in this city, unmarried and a merchant.

The parties hereto are legally competent to execute this instrument, and I certify that they are known to me.

In order to secure their insertion in the register of deeds and public contracts which is in my charge, the parties have presented to me certain documents which, copied literally, are as follows :

“TELEGRAPH COMPANY OF BOLIVIA.

Offices Arica, Tacna, Corocoro and La Paz.

Rapid Service to all parts of the World.

Date, OCTOBER 18th, 1906.

Number two hundred and six. Number of words twenty. MM.
Cablegram received from Washington 18.

To Relations (Department of Foreign Affairs.*)
La Paz, Bolivia.

Bankers delivered Legation. I shall forward Powers of Attorney to Iglehart to accept modifications in the contract and form a new contract.
CALDERON.

Received at 5.54 p. m. Telegrapher. Telegraph Company of Bolivia. La Paz, October 18, 1906.”

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC :—

The statement of explanations and modifications which have been agreed upon with the Supreme Government, is presented, so that the proper supplemental Deed may be executed.

For the purpose of having a written record of the modifications and explanations agreed upon between the Supreme Government of

*(Translator's Note).

Bolivia and Messrs. Speyer & Co. and The National City Bank, represented by David Stewart Iglehart, with respect to some points of the railway contract made on May 22nd of the present year, it has been agreed to sign a supplemental Deed, which being considered as an integral part of the contract of May 22nd, shall specify the said modifications and explanations which are to the following effect :

In order to fix the meaning of the word "betterment" in the tenth clause, it is agreed that by "betterment charges" shall be understood such expenses as may be required by the traffic and the best public service.

In the twenty-second clause, letter j, in order that same may be more clearly understood, it is the understanding that the freedom from duties therein mentioned, has reference to articles which are strictly necessary for the construction, equipment, maintenance and operation of the railways, and in the proportion required for such purposes, the Company being liable for any other use to which the Company or its agents (officers) may devote said articles imported for the construction, equipment, maintenance and operation of the railway lines. Furthermore, it is also understood that the exemption from all national, departmental and municipal taxes or imposts, accorded to the Company as an industrial railway enterprise, does not include customs duties upon articles that it may export from the country.

In the said twenty-second clause, letter n., it is agreed to add at the end thereof :

" nor the building of a direct line of railway from Oruro to the Pacific coast."

It is agreed to expunge from the twenty-seventh clause the words :

" up to the sum of £200,000 Sterling,"

the clause as so modified reading as follows :

" Thirty years from the date of this concession, the concessionaires shall indemnify the Government the amount expended by it in the service of the guarantee of the first mortgage bonds, by means

of yearly payments, which indemnification shall be taken from the third part of the net earnings of the railways, after all obligations of the railways shall have been paid."

It is agreed that there shall be inserted in the twenty-eighth clause after the words "on the first mortgage bonds," the following:

"and until the cancellation of the second mortgage (Income Bonds)."

Thus changed, the first part of the said twenty-eighth clause shall read as follows:

"The concessionaires bind themselves to constitute in the city of La Paz a general representative fully authorized to deal with everything in regard to this contract, maintaining an office in which shall be kept in Spanish the books and accounts of the issues of bonds, payments of interest, expenses of construction and operation of the railways, with respective vouchers; and the Government, during the period in which it is obliged to make good the guarantee on the First Mortgage Bonds, and until the cancellation of the second mortgage (Income Bonds), shall have a Fiscal Inspector who shall examine and check the books and accounts. Likewise, and during such time as the Government shall possess in whole or in part the second mortgage (Income Bonds), it shall be represented on the Board of Directors of the company by a Director appointed by the Government, who shall enjoy the same benefits, rights and privileges as the other Directors."

In order to render the thirty-third clause more clear, it is agreed to add at the end thereof, the following:

"and that the funds obtained by means of mortgage of the railways must be used to satisfy obligations or carry out works that have reference to or are connected with the said railways; it being clearly understood that the mortgage which guarantees the First Mortgage Bonds mentioned in the sixth clause (paragraph *a*) and in the 13th clause, and such bonds as may be issued in renewal or extension of same, shall have a preferential right over the mortgage guaranteeing the second mortgage bonds referred to in the sixth clause (paragraph *b*), and both

of these mortgages shall have a preferential right over any other mortgages that may be made in the future upon the railways mentioned in the third clause of the contract."

It is agreed that the following addition be made to the thirty-sixth clause :

"In case the Permanent Court of Arbitration of the Hague should decline to perform the functions herein assigned to said court, the controversy shall be submitted to the Federal Court of Switzerland (Supreme Court), which shall have the same powers and shall act to the same effect as have been agreed upon with respect to the Permanent Court of Arbitration of the Hague."

La Paz, October 16, 1906.

DAVID STEWART IGLEHART.

DEPARTMENT OF GOVERNMENT & DEVELOPMENT.

LA PAZ, October 18, 1906.

The matter being before the Cabinet Council :

The contents of the foregoing memorial being in conformity with the explanations and modifications which have been agreed upon with respect to clauses 10, 22, letters j and n, 27, 28, 33 and 36 of the contract made with Messrs. Speyer & Co. and National City Bank for the construction of railways; let the proper additional Deed be prepared by the Notary of Government, Finance and War, incorporating in the deed of May 22nd of the present year, of which latter deed the additional instrument shall be considered an integral part, the seven explanations and modifications specified in the Memorial signed by Senor David Stewart Iglehart, whose power of attorney must also be protocolized as soon as same shall have been sent by the Bolivian Legation at Washington to which it has been presented by The National City Bank and Speyer & Co., of which fact telegraphic advice has been

sent to the Supreme Government by the Chief of the aforesaid Legation.

Let it be recorded and made known.

MONTES.

CLAUDIO PINILLA.

ANIBAL CAPRILES.

D. DEL CASTILLO.

J. M. SARACHO.

JOSÉ S. QUINTEROS.

M. V. BALLIVIAN.

On October 27th, at 2 o'clock in the afternoon, I notified Senor David Steward Iglehart, of the foregoing resolution, and understanding the tenor thereof he signed, to which fact I certify.

D. S. IGLEHART.

ARAMAYO.

In conformity with the Memorial hereinbefore set forth the original whereof having been numbered and rubricated by me, the undersigned notary, has been added to the file of memoranda of its class in fulfilment of Articles 31 of the Notarial Law and 34 of the Civil Code, the parties hereto in accordance with the tenor of said Memorial and in the manner most efficacious in law, hereby solemnly declare :

That they approve and ratify in each and every part thereof, the present deed which is supplemental to the Deed of May twenty-second, of the present year.

IN TESTIMONY WHEREOF and binding themselves to its faithful and exact fulfilment, they so declared, executed and signed together with the witnesses to the instrument who are the citizens Don Abel Estrella and Don Jose J. Zapata, both of whom are residents of this city and persons of lawful age, the former married and the latter single, both merchants and competent by law to act as witnesses, in whose presence and in the presence of the parties hereto this pub-

lic instrument was read from beginning to end, to all of which I certify in authorizing the deed.

The word "Directors" written over an erasure is valid.

ISMAEL MONTES.
 CLAUDIO PINILLA.
 ANIBAL CAPRILES.
 D. DEL CASTILLO.
 J. M. SARACHO.
 JOSÉ S. QUINTEROS.
 M. V. BALLIVIAN.
 D. S. IGLEHART.

ABEL ESTRELLA
 JOSE J. ZAPATA.

(Here is a rubric)

Before me :

JOAQUIN ARAMAYO
 Notary of Treasury, Government,
 War & Colonies.

The Deed was executed before me and appears at folios 45 *et seq.*, of my first Register of Public Contracts, to which if necessary I refer. The present copy is issued at the verbal request of the party interested after being carefully and legally compared and corrected.

In Testimony Whereof, I authorize, sign and rubricate the same in the city of La Paz on November 7th, 1906.

It bears stamps of the value of forty cents.

JOAQUIN ARAMAYO
 Notary of Treasury, Government,
 War and Colonies.

(Notarial Seal.)

(Cancelled stamp)

We, the undersigned Notaries of the first class of this Department, certify: to the authenticity of the signature and rubric of Señor Joaquin Aramayo, Notary of Treasury, Government, War and Colonies, who is in active practice of his profession.

La Paz, November 7th, 1906.

(Notarial Seal.)

(Notarial Seal.)

JOSÉ URQUIZO P
Notary of 1st class.
HONORIO ARCE Y S.
Notary of 1st class.

FERMIN PRUDENCIO, Prefect and General Commandant of the Department, certifies:

That the signatures and rubrics of the Notaries, Jose Urquizo P. and Honorio Arce y S., are authentic.

La Paz, November 7th, 1906.

(Seal of the Prefecture)

FERMIN PRUDENCIO,

LA PAZ, November 9th, 1906.

The signature and rubric of Senor Fermin Prudencio Prefect and General Commandant of the Department of La Paz, are legalized.

CLAUDIO PINILLA.
(Seal of the Department of Foreign Relations, Bolivia).

AMERICAN LEGATION,
LA PAZ, BOLIVIA,
November 9th, 1906.

I hereby certify that the foregoing signature and seal of office of Doctor Claudio Pinilla, Bolivian Minister for Foreign Affairs, are true and genuine and as such are entitled to full faith and credit.

WILLIAM B. SORSBY,
Envoy Extraordinary and Min. Plenipotentiary.
(Seal of the American Legation.)

(B.)

LEGALIZED COPY.

ISMAEL MONTES.

Constitutional President of the Republic.

WHEREAS the National Congress has sanctioned the following law :

THE NATIONAL CONGRESS DECREES :

SOLE ARTICLE. The contract entered into on May 22nd last by the Executive Power with The National City Bank and Messrs. Speyer & Co. of New York, for the construction and operation of railways in the Republic, is approved, considering as incorporated therein the following explanations and modifications which have been agreed upon by both of the contracting parties :

A. In order to fix the meaning of the word "betterment" in the 10th clause, it is agreed that by betterment charges shall be understood such expenses as may be required by the traffic and the best public service.

B. In the 22nd clause, letter j, in order that same may be more clearly understood, it is the understanding that the freedom from duties therein mentioned, has reference to articles which are strictly necessary for the construction, equipment, maintenance and operation of the railways, and in the proportion required for such purposes, the Company being liable for any other use to which the Company or its agents (officers) may devote said articles imported for the construction, equipment, maintenance and operation of the railway lines. Furthermore, it is also understood that the exemption from all national, departmental and municipal taxes or imposts, accorded to the Company as an industrial railway enterprise, does not include custom duties upon articles that it may export from the country.

C. In the said 22nd clause, letter n, it is agreed to add at the end thereof :

“ nor the building of a direct line of railway from Oruro to the Pacific coast.”

D. It is agreed to expunge from the 27th clause the words :

“ up to the sum of £200,000 Sterling,” the clause as so modified reading as follows :

“ Thirty years from the date of this concession, the concessionaires shall indemnify the Government the amount expended by it in the service of the guarantee of the first mortgage bonds, by means of yearly payments, which indemnification shall be taken from the third part of the net earnings of the railways, after all obligations of the railways shall have been paid.”

E. It is agreed that there shall be inserted in the 28th clause after the words “ on the first mortgage bonds,” the following :

“ and until the cancellation of the second mortgage (income bonds).”

Thus changed, the first part of the said 28th clause shall read as follows :

“ The concessionaires bind themselves to constitute in the City of La Paz a general representative fully authorized to deal with everything in regard to this contract, maintaining an office in which shall be kept in Spanish the books and accounts of the issues of bonds, payments of interest, expenses of construction and operation of the railways, with respective vouchers ; and the Government during the period in which it is obliged to make good the guarantee on the First Mortgage Bonds, and until the cancellation of the second mortgage (Income Bonds) shall have a Fiscal Inspector who shall examine and check the books and accounts. Likewise, and during such time as the Government shall possess in whole or in part the second mortgage (Income Bonds), it shall be represented on the Board of Directors of the company by a Director appointed by the Government, who shall enjoy the same benefits, rights and privileges as the other Directors.”

F. In order to render the thirty-third clause more clear, it is agreed to add at the end thereof the following :

“and that the funds obtained by means of mortgage of the railways must be used to satisfy obligations or carry out works that have reference to or are connected with the said railways ; it being clearly understood that the mortgage which guarantees the First Mortgage Bonds mentioned in the sixth clause (paragraph *a*) and in the 13th clause, and such bonds as may be issued in renewal or extension of same, shall have a preferential right over the mortgage guaranteeing the second mortgage bonds referred to in the sixth clause (paragraph *b*), and both of these mortgages shall always have a preferential right over any other mortgages that may be made in the future upon the railways mentioned in the third clause of the contract.”

G. It is agreed that the following addition be made to the thirty-sixth clause :

“In case the Permanent Court of Arbitration of the Hague should decline to perform the functions herein assigned to said court, the controversy shall be submitted to the Federal Court of Switzerland (Supreme Court), which shall have the same powers and shall act to the same effect as have been agreed upon with respect to the Permanent Court of Arbitration of the Hague.”

Let this be communicated to the Executive Power for constitutional purposes.

Meeting Room of the National Congress.

La Paz, November 26, 1906.

(Signed)	VALENTIN ABECIA.
(Signed)	R. VILLALOBOS.
(Signed)	JOSÉ CARRASCO.
(Signed)	ENRIQUE GONZALES DUARTE, Deputy Secretary.
(Signed)	ERNESTO CAREAGA LANZA, Deputy Secretary.

Therefore I promulgate it in order that it may become and be observed as a law of the Republic.

Government Palace.—La Paz, November 27, 1906.

(Signed) ISMAEL MONTES.

(Signed) ANIBAL CAPRILES.

The foregoing is correct.

J. AGUIRRE ACHÁ,

Chief Official of Government and Development.

(Stamp and Seal).

I CERTIFY that the signature and seal whereby the foregoing legalized copy is authenticated are those of Sr. Jose Aguirre Acha, Chief Official of Government and Development, who is at present in the exercise of his functions.

La Paz, November 30, 1906.

JOAQUIN ARAMAYO,

Notary of Treasury, Government,

War and Colonies.

(Notarial Seal).

I CERTIFY that the signature and seal whereby the foregoing legalized copy is authenticated are those of Sr. José Aguirre Acha, Chief Official of Government and Development, who is at present in the exercise of his functions.

La Paz, November 30, 1906.

CLODOMIRO ALCOREZA. B.

Notary and Mining Actuary.

(Notarial Seal).

FERMIN PRUDENCIO, Prefect and General Commandant of the Department, certifies that the signatures and rubrics of the Notaries Joaquin Aramayo, and Clodomiro Alcoreza B. are authentic.

La Paz, December 1st, 1906.

FERMIN PRUDENCIO.

(Seal of the Prefecture).

LA PAZ, December 1st, 1906.

The signature and rubric of Senor Fermin Prudencio, Prefect and General Commandant of the Department of La Paz are legalized.

J. M. SARACHO.

(Seal of the Department of Foreign Relations
and Religion, Bolivia).

AMERICAN LEGATION

LA PAZ, BOLIVIA,

December 1, 1906.

I hereby certify that the foregoing signature and seal of Office of Doctor Juan M. Saracho, Acting Bolivian Minister for Foreign Affairs, are true and genuine, and as such are entitled to full faith and credit.

WILLIAM B. SORSBY.

Envoy Extraordinary and Min. Plenipotentiary.

(Seal of the American Legation,
La Paz, Bolivia).

(C.)

LEGALIZED COPY.

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC.

Request is made that the declaration indicated may be made in conformity with the pertinent clause of the contract referred to.

I, David Stewart Iglehart, in the name and in representation of The National City Bank and of Speyer & Co. of New York, through the worthy and legal medium of the Minister of Government and Development, respectfully lay before you :

That according to the first clause of the railway contract entered into on May 22nd, of the current year, which contract has just been approved by the Honorable National Congress, it is the duty of my principals to cause the formation of a company to construct, own, operate and exploit a system of railways within the territory of the Republic ; the Concession which The National City Bank and Speyer & Co. obtained from the Public Authorities of Bolivia for the said purposes having to be transferred to the said Company under the explicit terms of the aforesaid clause of the contract referred to.

The time having now arrived for the formation of the Company, the contract of May 22nd having received legislative approval, and it being desirable for all parties that the stipulations of the railway contract may be fulfilled with the utmost precision, not only in accordance with the reciprocal rights and obligations that flow from said contract, but also in accordance with the laws and customs of Bolivia and of the United States, it being desirable on account of the domicile of my principals, that the juridical effects springing from the railway contract referred to in this Memorial may be entirely legal in both countries.

I ask your Excellency that you may be pleased to declare in a Special Resolution, confirming the intent of the first clause of the

said contract of May 22d of the current year, that it is the duty of The National City Bank and Messrs. Speyer & Co. to transfer to the Company whose formation is contemplated under said clause, the concession granted to the said bankers, said transfer being subject, as is natural and proper in law, to such conditions as may be agreed upon between the said bankers and the Company.

This is what I request from your Excellency's worthy Government, as the same is deemed to be necessary. It will be justice, etc.

La Paz, November 24th, 1906.

(Signed) D. S. IGLEHART.

DEPARTMENT OF GOVERNMENT AND DEVELOPMENT,
LA PAZ, November 26, 1906.

Referred to the Official Counsel of the Government.

(Signed) CAPRILES.

TO THE MINISTER OF GOVERNMENT AND DEVELOPMENT.

Response.

As the railway contract entered into by the Supreme Government with Messrs. Speyer & Co. and the National City Bank of New York, on May 22nd of the present year, has been approved by the Legislature, and it being agreed by the first clause of said contract that the said bankers shall cause the formation of a company which shall assume the obligation of building and operating the railways contracted for, the declaration requested by the above memorial presented by the representative of said The National City Bank and Messrs. Speyer & Co., with reference to their authority to transfer the concession agreed upon in said contract to the Construction Company to be formed by them, is included in the explicit terms of the said first clause, and there is no obstacle in the way to prevent the Government, for greater abundance, from declaring that in compliance with said first clause of the contract, Speyer & Co.

jointly with The National City Bank of New York, are authorized to subrogate or assign the rights and obligations which they obtained under said contract to the Construction Company contemplated thereby, in all that concerns the industrial features of its stipulations, that is to say, as far as concerns construction, possession, ownership and operation of the railway lines which are the subject of said contract and of the changes and classifications which have been sanctioned by the National Congress.

You will be pleased to so decide.

La Paz, November 28, 1906.

(A seal)

(Signed) J. PÓRCEL.

DEPARTMENT OF GOVERNMENT AND DEVELOPMENT.

LA PAZ, November 30, 1906.

Before us: the petition of David Stewart Iglehart praying for a special declaration with respect to the power to transfer to the Company that may be organized, the concession granted to the bankers by the railway contract of May 22 of the present year;

Before us: the first clause of said contract and the opinion rendered thereon by the official counsel for the Government.

Considering that by the agreement expressly contained in the said first clause of the contract referred to, the Supreme Government of Bolivia granted to the bankers a legal concession to construct, own, operate and exploit a system of railways within the territory of the Republic, while the bankers undertook the formation of a company to which the aforesaid concession should pass; and that said fact of *passing* the concession to the Company organized, implies the right of the bankers to transfer said concession to the Company through the operation of a deed or legal instrument which shall determine the conditions of the transfer, without, however, relieving the said bankers from the obligations incumbent upon them under said contract.

IT IS RESOLVED, that in accordance with the provisions established in very clear terms by the first clause of the contract of May 22nd of the present year, which contract has been ratified by the law of the 27th of November instant, the National City Bank and Speyer & Co. have the right to transfer the railway concession which they have obtained from the Public Powers of the Nation, to the company which in accordance with said clause shall be designated the concessionaires, it being understood that the transfer shall be subject to the conditions which may be privately agreed upon between the company and the bankers, but without altering the essential bases of the contract of concession.

Let these proceedings be recorded, made known and filed in the Notarial office of Government, Treasury and War, a certified copy of the present resolution being first issued by the Chief Official of Development.

(Signed) MONTES.
 " ANIBAL CAPRILES.

The foregoing is correct.

J. AGUIRRE ACHA,
 Chief Official of Government and Development.

(Stamp and seal.)

I CERTIFY that the signature and seals authenticating the foregoing legalized copy are those of Senor José Aguirre Acha, Chief Official of Government and Development who is at present in the exercise of his functions.

La Paz, November 30, 1906.

JOAQUIN ARAMAYO,
 Notary of Treasury, Government, War &
 Colonies.

(Notarial Seal.)

I CERTIFY that the signature and seals authenticating the foregoing legalized copy are those of Senor Jose Aguirre Acha, Chief

Official of Government and Development, who is at present in the exercise of his functions.

La Paz, November 30, 1906.

CLODOMIRO ALCOREZA B

Notary and Mining Actuary.

(Notarial Seal.)

FERMIN PRUDENCIO, Prefect and General Commandant of the Department Certifies: That the signatures and rubrics of the Notaries Joaquin Aramayo and Clodomiro Alcoreza B., Notaries of Treasury and Government and Mines, respectively, are authentic.

La Paz, December 1st, 1906.

FERMIN PRUDENCIO.

(Seal of the Prefecture)

LA PAZ, December 1st, 1906.

The signature and rubric of Senor Fermin Prudencio, Prefect and General Commandant of the Department of La Paz are legalized.

J. M. SARACHO.

(Seal of the Department of Foreign Relations
and Religion, Bolivia.)

AMERICAN LEGATION,

LA PAZ, BOLIVIA,

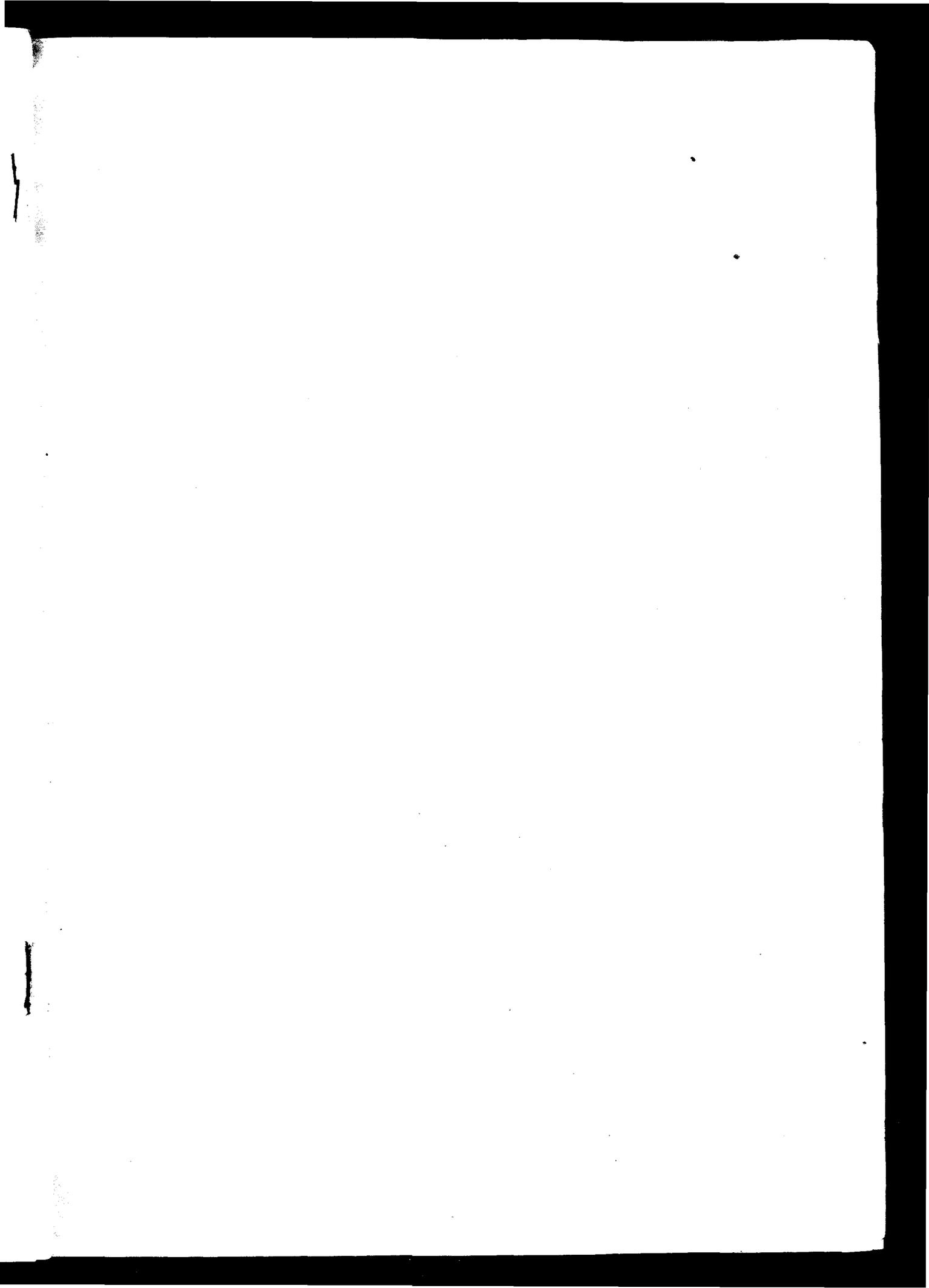
December 1, 1906.

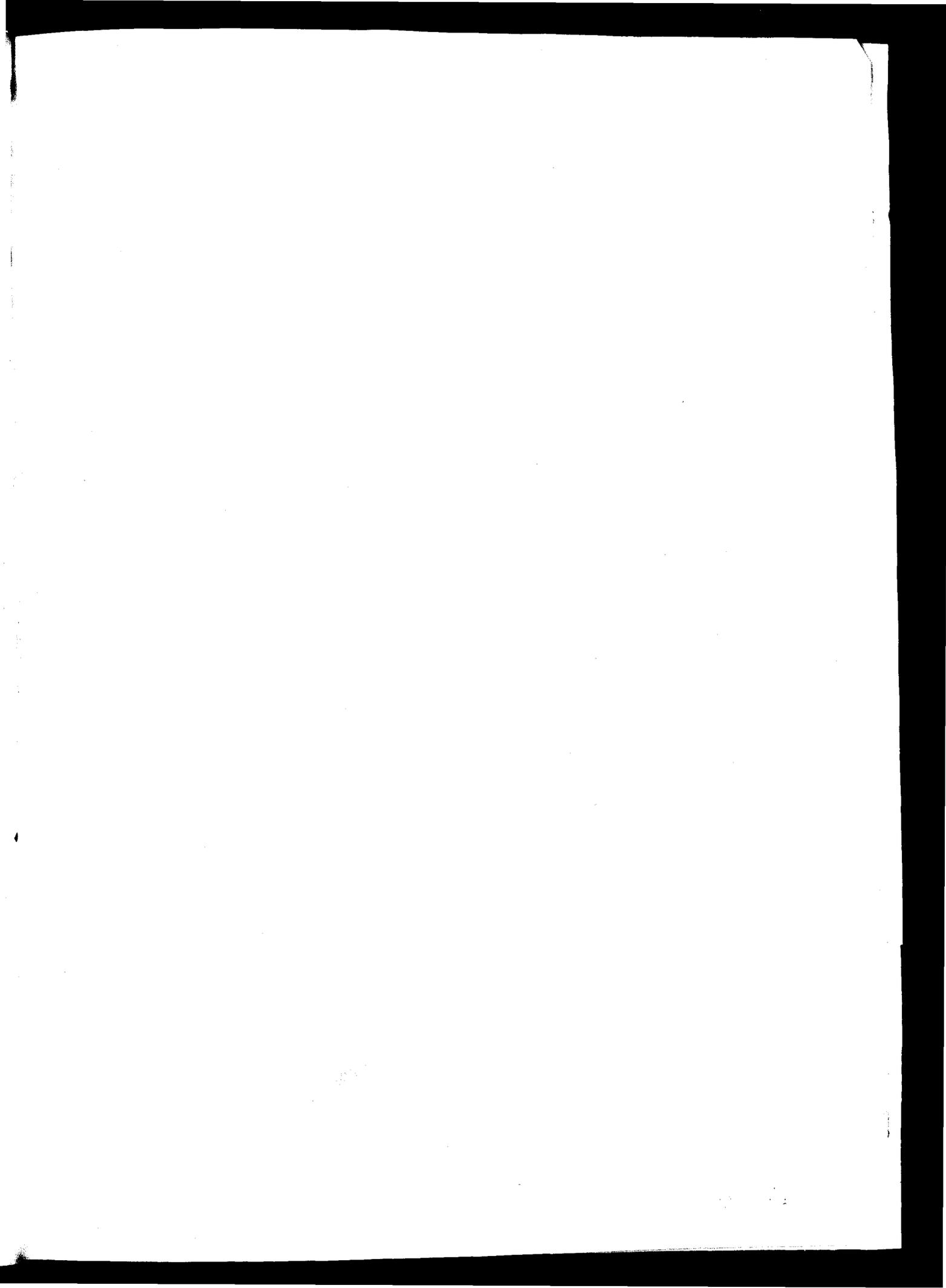
I hereby certify that the foregoing signature and seal of office of Doctor Juan M. Saracho, Acting Bolivian Minister for Foreign Affairs, are true and genuine and as such are entitled to full faith and credit.

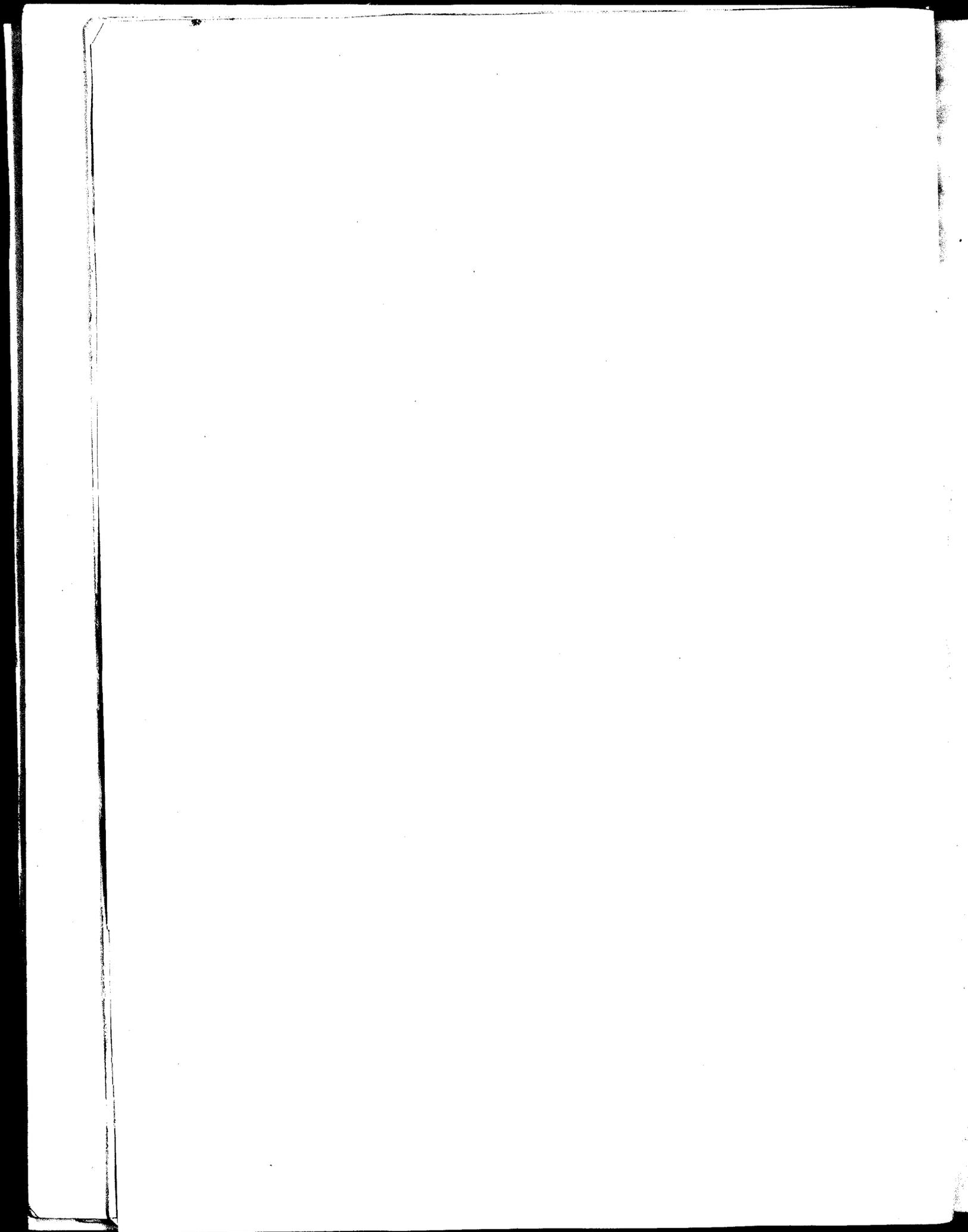
WILLIAM B. SORSBY,

Envoy Extraordinary and Min. Plenipotentiary.

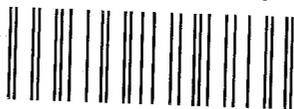
(Seal of the American Legation,
La Paz, Bolivia.)







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