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 Party(ies): France and Brazil
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¹ date when the request for an advisory opinion or application was filed with the court Registry

[93] Permanent Court of International Justice.

[*Translation.*]

<i>Before:</i>	MM. Anzilotti,	<i>President,</i>
	Huber,	<i>Vice-President,</i>
	Loder, de Bustamante, Altamira, Oda, Pessoa, Hughes,	<i>Judges,</i>
	MM. Beichmann, Negulesco,	<i>Deputy-Judges</i>
	M. Fromageot,	<i>Judge ad hoc.</i>

The Government of the French Republic, represented by Professor Basdevant, Assistant Legal Adviser to the Ministry for Foreign Affairs,

versus

The Government of the Republic of the United States of Brazil, represented by Professor Eduardo Espinola.

The Court,

composed as above,

having heard the observations and conclusions of the Parties,

delivers the following judgment: [94]

The Governments of the French Republic and of the Republic of the United States of Brazil have submitted to the Permanent Court of International Justice by means of a Special Agreement concluded at Rio de Janeiro, on August 27th, 1927, between the aforesaid Governments, duly ratified by both Parties on February 23rd, 1928, and filed with the Registry of the Court in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, by

letters dated respectively April 26th and 27th, 1928, signed by the French and Brazilian Ministers at The Hague, the dispute which has arisen between the Brazilian Federal Government and the French holders of various Brazilian Federal loans with regard to the question whether the service of these loans should be effected on the basis of the gold franc or of the paper franc.

The letter of the French Minister reached the Registry on April 27th and that of the Brazilian Minister on April 30th, 1928; as, however, Article II of the Special Agreement provides that, as soon as that instrument has come into effect, the question defined in Article I thereof shall be referred to the Court by notice of the Special Agreement addressed to the Registry by either Party, the Court was duly made cognizant of the case on April 27th, 1928.

According to the terms of the Special Agreement, the Court is asked to give judgment on the following question:

“With regard to the Brazilian Federal Government's 5% loan of 1909 (Port of Pernambuco), 4% loan of 1910, and 4 % loan of 1911, is payment of coupons which have matured and are not barred by prescription at this date, and coupons which shall mature, as also repayment of bonds drawn for redemption but not actually paid which are not barred by prescription on the date of the Court's decision, or of bonds subsequently to be redeemed, to be effected by delivery to the French holders, in respect of each franc, of the value corresponding, in the currency of the place of payment at the rate of exchange on the day, to one-twentieth of a gold piece weighing 6.45161 grammes of 900/1000 fineness, or is such payment or repayment to be effected as hitherto in paper francs, that is to say, in the French currency which is compulsory legal tender?”

Conforming to the proposals jointly made by the Parties in Article III of the Special Agreement, in accordance with [95] Article 32 of the Rules of Court, the President, having regard to that article, as also to Article 48 of the Statute and Article 33 of the Rules, made an Order of May 1st, 1928, fixing as follows the times for the written procedure:

For the presentation of Cases, setting out their submissions:

by the French Government, June 30th, 1928;

by the Brazilian Government, July 31st, 1928.

For the presentation of Counter-Cases:

by the French Government, October 1st, 1928;

by the Brazilian Government, October 31st, 1928.

The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute; in accordance

with Article III, last paragraph, of the Special Agreement, the case thus became ready for hearing as from December 1st, 1928.

In the course of public sittings held on May 25th, 27th, 28th and 29th, 1929, the Court has heard the oral pleadings, reply and rejoinder, presented by M. de Pimentel Brandao, Principal Adviser to the Brazilian Agent on behalf of the Government of the United States of Brazil, and by the Agent above mentioned and Me Albert Montel, Counsel before the Court of Appeal of Paris, on behalf of the French Government.

In support of their respective statements, the Parties have submitted to the Court, either as annexes to the documents of the written proceedings, or during the hearing, the documents a list of which is given in the annex to this judgment¹.

Under Article III of the Special Agreement, the Parties were to formulate their submissions in their respective Cases.

The Case of the Brazilian Government, however, contains no submissions. On the other hand, the Case of the French Government formulates the following submissions:

“It is submitted as regards the following loans of the Brazilian Federal Government: the 5% 1909 (Port of Pernambuco), the 4% 1910 and the 4% 1911, that the payment of coupons which have matured and are not barred by prescription at this date and coupons which [96] shall mature, as also redemption of bonds drawn but not actually redeemed which are not barred by prescription on the date of the Court's decision, or of bonds subsequently to be drawn, must be effected by payment to the French holders, in respect of each franc, of the value corresponding, in the currency at the place of payment, at the rate of exchange of the day, to one-twentieth of a gold piece weighing 6.45161 grammes, 900/1000 fine.”

The Counter-Case of the Brazilian Government contains the following final paragraph which should be reproduced:

" the Brazilian Government is confident that the Court will be pleased to give judgment to the effect that as regards the Brazilian Government's 5% 1909 loan (Port of Pernambuco), 4% 1910 loan and 4% 1911 loan, payment of coupons which have matured and are not barred by prescription at this date and coupons which shall mature, as also redemption of bonds drawn but not actually redeemed which are not barred by prescription on the date of the Court's decision, or of bonds subsequently to be drawn, *is to be effected by payment to the French holders, as hitherto, in paper francs, that is to say in the French currency which is compulsory legal tender.*"

¹ See p. 154.

The French Government, for its part, in its Counter-Case repeats textually the submissions formulated in its Case, but precedes them by an enumeration of the grounds on which it is based, thus summarizing the French contention in regard to the various points which are at issue.

Finally, it should be noted that the representative of the Brazilian Government before the Court concluded his first argument by declaring that his Government maintained "with regard to the 5 % 1909 (Port of Pernambuco) loan, the 4 % 1910 loan and the 4 % 1911 loanthat payment of coupons which have matured and are not barred by prescription at this date and coupons which shall mature, as also redemption of bonds drawn but not actually redeemed which are not barred by prescription at the date of the Court's decision, or of bonds subsequently to be drawn, should be effected, as hitherto, in paper francs". And in his oral reply he made a summary of the contentions of the Brazilian Government.

It should also be noted that the French Government's Agent concluded his first argument by asking for judgment in [97] accordance with the submissions as formulated in his Case.

Finally, the Special Agreement stipulates in Article VII that "in so far as concerns any matter not provided for" by the Special Agreement, "the provisions of the Statute of the Permanent Court of International Justice shall be applied".

THE FACTS.

I.

According to the documents and information laid before the Court by the Parties, the origin of the controversy submitted to the Court is as follows:

I.—By a decree dated June 8th, 1903, the Government of the Republic of the United States of Brazil established a "special regime for the carrying out of works for the improvement of ports". This regime was subsequently modified by a presidential decree dated February 14th, 1907, to the effect that "the works were to be carried out under government's control and by contract", the Government being empowered "for the expenditure necessary in connection with the carrying out of the improvements in the ports and on the navigable rivers", "to undertake the requisite operations for obtaining credit" and "to issue gold or paper bonds". Further, the law of December 31st, 1907, determining the general expenditure of the Republic for the financial year

1908, authorized the President of the Republic, amongst other things, "to proceed with the improvement works in the ports in accordance with the decree of February 14th, 1907, as also with the requisite credit operations".

In virtue of this authority, the President appears to have called for tenders for the carrying out of the improvement works at the port of Recife (Pernambuco) and, by a decree of July 2nd, 1908, he approved the conditions of a contract to be concluded between the Government and the contractors whose tenders had been selected. The contract was actually concluded on August 4th, 1908; according to its provisions' [98] the works contracted for were to be paid for in bonds to bearer of the Brazilian Public Debt issued to a maximum nominal value "equivalent to 84,528,300 francs". The issue by the Minister of Finance of a first section of a nominal value of 40,000,000 francs was authorized by a presidential decree of December 3rd, 1908. The prospectus of this section, dated December 30th, 1908, states that "the loan constitutes a direct debt of the Government of the United States of Brazil"; it indicates that subscriptions would take place on January 30th, 1909, at Paris and provincial French exchanges. The bonds were actually signed on July 24th, 1909, by the delegate of the Brazilian Treasury in London; they will be analysed hereinafter.

II.—Under a Brazilian decree of March 27th, 1907, the Goyaz Railway obtained a concession for the construction of certain railway lines. Another decree of September 30th, 1909, revised the plan of these lines as well as the other clauses of the concession contract. Under this latter decree, a new contract was concluded, on October 25th, 1909, between the Federal Government of the United States of Brazil and the Goyaz Railway Company, according to which the Government was to pay the Company "in bonds bearing interest at 4% per annum the sum which will be determined by the final plans approved by the Government"; as soon as authorized to do so by the Government, the Company might "sell the whole or a part of the bonds corresponding to the railways....".

In virtue of the foregoing arrangements, the Goyaz Railway Company, on February 10th, 1910, concluded at Paris with a French bank a contract for the sale, by the bank, of 100,000,000 francs worth of Brazilian funds, represented by 200,000 bonds, which were to be made over to the bank by the Company; "for this purpose the same conditions as those governing the Federal loan of the Port of Pernambuco of 1909" were "to be applied". And, on February 28th, 1910, a

presidential decree authorized the Minister of Finance "to issue bonds to an amount of 100 millions of francs in payment for the works which formed the subject of a contract [99] with the Goyaz Railway Company". Another decree of the same date provides that the payments referred to by the decree of September 30th, 1909, were to be effected by means of bonds the issue of which was also authorized.

The prospectus, which is dated March 2nd, 1910, states that subscription would take place at Paris and provincial French exchanges on March 17th, 1910.

The bonds were actually signed in London on March 5th, 1910, by the duly authorized representative of the Brazilian Government; they will be analysed hereinafter.

III.—By a contract duly approved by a Brazilian presidential decree dated March 31st, 1911, the Viacao Geral da Bahia Company obtained a concession for the construction of a system of railways in the State of Bahia; the works were to be paid for in "4 % bonds of the Federal Debt", which the Company was to sell for its own account "immediately after the conclusion of the negotiations". Another decree dated June 21st, 1911, authorized the Minister of Finance to issue bonds for 60,000,000 francs, "in payment for the works provided for in the contract concluded with the Viacao Geral da Bahia Company"; the bonds were to be "of the nominal value of 500 francs".

The prospectus is dated May 12th, 1911; according to its terms, subscription was to take place on July 12th, 1911. The place of issue is not indicated, but it is said that "allotment will take place on Tuesday, July 25th, 1911: at Paris in the provinces and in Brazil" (Rio de Janeiro). The bonds were signed in London on September 21st, 1911, by the duly authorized representative of the Federal Government of the United States of Brazil; they will be analysed hereinafter.

2.

It appears from the terms of Article I of the Special Agreement that the Parties agree on the fact that "hitherto" the payment of matured coupons and the redemption of drawn bonds of the three loans at issue have been effected "in paper francs, that is to say, in the French currency which is compulsory tender". And the documents and information [100/13] laid before the Court confirm that this has indeed been the case, except for the period from August 1st, 1914, to July 31st, 1917, inclusive, during which the interest on the loans was in effect paid by means of "funding bonds" (*bons de consolidation*) issued, with the authorization of the Brazilian Govern-

ment, by a banking house of London; these funding bonds were bearer bonds redeemable in ten years, the interest on which was payable in pounds sterling at London and certain continental exchanges at the exchange rate of the day on London. This incident does not seem however to have any bearing on the present case.

It is also common ground that the yield of the loans has always been credited to the borrower, or to the companies to which it had ceded its right, in French francs at their current value.

Finally, it is admitted by both sides that the fact that after the increasing depreciation of the French franc, the service of the loan was effected in that currency on the basis of its current value, ultimately led to protests and the taking of steps by the bondholders with a view to inducing the French Government to intervene; according to the Brazilian Government, however, this attitude on the part of the bondholders dates only from 1924 and is explained by speculative aims, while, according to the French Government, the discontent of the bondholders and its earliest manifestations date from an earlier period.

However that may be, on September 1st, 1924, the French Ambassador at Rio de Janeiro intervened, in the name of his Government, with the Federal Government "on behalf of the bondholders of the three Brazilian loans at issue, who claimed that payment of the interest upon and the redemption of the capital of these loans should be effected on a gold basis"; the French Government seems thus to have identified itself with this claim, with which the Government of the United States of Brazil did not however feel called upon to comply. Diplomatic conversations seem to have then taken place, which, however, did not succeed in disposing of the controversy.

In these conditions, the Special Agreement of August 27th, 1927, was concluded, which, after stating in its preamble "that [101] a dispute has arisen between the Brazilian Federal Government and French holders of various Brazilian federal loans concerning the question whether the service of these loans should be on a gold or paper franc basis"—a statement to which the Court will revert hereinafter—requests the Court to give judgment on the question formulated in the first article, which has been quoted above, of this instrument. .

The Court's jurisdiction.

The terms in which the Franco-Brazilian Special Agreement formulates the question

submitted to the Court, call for observations similar to those made under the heading "The jurisdiction of the Court" in Judgment No. 14 relating to the case concerning certain Serbian loans and given this day: the Court therefore refers to those observations.

THE LAW.

The bonds.—The terms of the bonds of the various issues are as follows :

Loan of 1909.

Government of the United States of Brazil.

5% Loan, 1909; authorized amount 40,000,000 francs.

Port of Pernambuco.

Frs. 500.—

Obligation.

Attendu qu'en vertu des dispositions de l'article 22, n° XII, de la loi n° 1841 du 31 décembre 1907, et en exécution des clauses 55 et 59 du contrat du 4 août 1908, faisant suite au décret n° 7003 du 2 juillet 1908, le Gouvernement des États-Unis du Brésil est autorisé à émettre des obligations pour un montant nominal maximum de 84.528.300 francs, dont le produit est destiné au paiement des travaux du port de Recife, je soussigné, José Antonio de Azevedo Castro, délégué du Trésor du Brésil à Londres, dûment autorisé, déclare par les présentes au nom et pour le compte dudit Gouvernement que le porteur de cette obligation a droit à la somme de 500 francs faisant partie dudit emprunt soumis aux stipulations ci-dessous:

1. Le Gouvernement émet, dès à présent, des obligations pour une valeur nominale de 40.000.000 de francs.

2. L'emprunt est désigné sous le nom «Emprunt du Gouvernement des États-Unis du Brésil 1909 — Port de Pernambuco — Intérêt annuel 5%», et jouit, tant à l'égard du paiement des

Frs. 500.—

Bond.

Whereas by virtue of the provisions of Article 22, No. XII, of the law No. 1841 of the 31st December 1907, and in execution of Clauses 55 and 59 of the contract of the 4th August 1908, following on Decree No. 7003 of the 2nd July 1908, the Government of the United States of Brazil is authorized to issue bonds to a maximum nominal amount of frs. 84.528.300, the proceeds whereof are intended for the payment of the works of the port of Recife, I the undersigned, Jose Antonio de Azevedo Castro, delegate of [102] the Brazilian Treasury in London, duly authorized, do declare by these presents in the name and for account of the said Government that the bearer of this bond is entitled to the sum of frs. 500 forming part of the said loan subject to the provisions hereinafter following:

1. The Government issues immediately bonds to the nominal value of frs. 40.000.000.

2. The loan is described under the name of "Government of the United States of Brazil Loan 1909 — Port of Pernambuco—Annual Interest 5 per cent", and enjoys both as regards the payment of interest and redemption

intérêts que de l'amortissement, de la garantie générale du Gouvernement et notamment de celle du produit de l'impôt de 2% or, sur la valeur officielle des importations étrangères dans l'État de Pernambuco et de tous les revenus nets du port et des docks après leur construction.

3. Les titres sont payables au porteur et sont de la valeur de 500 francs chacun portant intérêt à 5 % l'an à partir du 1^{er} février 1909 à l'échéance des 1^{er} février et 1^{er} août de chaque année, le premier paiement de 12 fr. 50 devant avoir lieu le 1^{er} août 1909. Les intérêts sont représentés par des coupons attachés aux titres et sont payables à Paris en or à la Banque française pour le Commerce et l'Industrie et au Crédit mobilier français et sur les places de Rio-de-Janeiro, Londres, Bruxelles, Amsterdam et Hambourg au cours du change à vue sur Paris.

4. Le remboursement des obligations s'effectuera au moyen d'un [103] fonds cumulatif de ½ % sur le montant de la valeur des titres, et commencera en 1915.

5. Le remboursement s'effectuera quand les titres seront au pair ou au-dessus du pair, par tirages au sort qui auront lieu en présence d'un notaire public pendant les mois de janvier et juillet de chaque année, et dans le cas contraire par rachats en bourse. Tout titre sorti au remboursement sera remboursé avec les intérêts échus le 1^{er} février ou le 1^{er} août qui suivra immédiatement la date du tirage. Les titres remboursés seront immédiatement annulés.

6. Le Gouvernement pourra, dans le but de rembourser les titres en circulation, augmenter à toute époque

the general guarantee of the Government, and particular that of the proceeds of the 2 per cent Gold Tax upon the official value of the foreign imports into the State of Pernambuco and of all the net revenue from the port and the docks after the construction thereof.

3. The bonds are payable to bearer and of the value of frs. 500, each bearing interest at 5 per cent per annum as from the 1st February 1909, payable on the 1st February and 1st August in each year, the first payment of frs. 12.50 to take place on the 1st August 1909. The interest is represented by coupons attached to the bonds and is payable in Paris in gold by the *Banque française pour le Commerce et l'Industrie* and the *Credit mobilier français*, and on the markets of Rio de Janeiro, London, Brussels, Amsterdam and Hamburg at the sight exchange of the day on Paris.

4. The redemption of the bonds shall take place by means of an [103] Accumulative Fund of ½ percent, upon the amount of the nominal value of the bonds, and shall commence in 1915.

5. The redemption shall be effected, when the bonds are at par or above par, by drawings by lot, which shall take place in the presence of a notary public during the months of January and July in each year, and in the contrary event by purchases in the Market. Any bond drawn for payment shall be paid off with the accrued interest on the 1st February or 1st August immediately following the date of the drawing. Bonds paid off shall be immediately cancelled.

6. The Government may for the purpose of paying off bonds in circulation increase the Sinking Fund

le fonds d'amortissement, ou rembourser des titres par d'autres moyens, mais, dans ce dernier cas, en donnant un préavis de six mois.

7. Les obligations, en ce qui concerne le capital et les intérêts, sont exemptes de tous impôts brésiliens présents et futurs. Elles porteront la signature du délégué du Trésor à Londres.

Daté le 24 juillet 1909.

(*Signé*) José Antonio de Azevedo Castro.

Nous déclarons que la signature ci-dessus est celle du représentant du Gouvernement des Etats-Unis du Brésil.

at any time or pay off bonds by other means, but in such latter case giving six months' previous notice thereof.

7. The bonds are as regards principal and interest free from any Brazilian taxes present or future. They shall bear the signature of the delegate of the Treasury in London.

Dated this 24th day of July 1909

(*Signed*) Jose Antonio de Azevedo Castro.

We declare that the above signature is that of the representative of the Government of the United States of Brazil.

The coupons of this issue are in the following form:

"Government of the United States of Brazil
5% Loan 1909 Due on....
Port of Pernambuco
No.
For frs. 12.50 six months' interest
on frs. 500.—" [104]

Loan of 1910.

Francs			Francs
500.—	N ^o	N ^o	500.—

Government of the United States of Brazil.
4% Loan 1910 for an authorized amount of frs. 100,000,000.

Obligation.

Le Gouvernement de la République des États-Unis du Brésil ayant, en vertu de l'autorisation qui lui a été accordée par la loi n^o 2221 du 30 décembre 1909, ainsi que par les décrets présidentiels n^{os} 7877 et 7878 du 28 février 1910, les pouvoirs

Bond.

The Government of the Republic of the United States of Brazil, having by virtue of the authority given by Law No. 2221 of the 30th of December 1909, and by the Presidential Decrees Nos. 7877 and 7878 of the 28th of February

nécessaires pour contracter un emprunt qui sera appelé «Emprunt du Gouvernement des États-Unis du Brésil 4 %» pour la construction de chemins de fer fédéraux, pour un capital nominal de 100.000.000 de francs, le soussigné José Antonio de Azevedo Castro, en qualité de représentant dudit Gouvernement et dûment autorisé, déclare solennellement par ces présentes, au nom et pour le compte dudit Gouvernement, que le porteur de la présente obligation a droit à la somme de 500 francs-or faisant partie dudit emprunt, soumis aux stipulations ci-dessous, savoir:

Premièrement. — L'emprunt sera représenté par des obligations payables au porteur, portant intérêts au taux de 4% l'an, émises pour un montant de 100.000.000 de francs de capital nominal.

Deuxièmement. — Les intérêts sur les obligations de la présente émission, représentés par des coupons y attachés, seront payés par semestre aux porteurs de ces obligations le 1^{er} mars et le 1^{er} sep[105]tembre de chaque année jusqu'au complet remboursement de la totalité des obligations par le Gouvernement. Le paiement des intérêts aura lieu à Rio-de-Janeiro; à Paris dans les bureaux de la Société générale pour favoriser le développement du commerce et de l'industrie en France, de la Banque de Paris et des Pays-Bas, et au Crédit mobilier français, à raison de 10 francs-or par coupon; à Londres, à l'agence de ladite Société générale, au change du jour sur Paris. Le premier paiement de 10 francs aura lieu le 1^{er} septembre 1910.

Troisièmement. — Le remboursement des obligations se fera

1910, the necessary powers to effect a loan to be called "United States of Brazil Government 4 per cent Loan" for the construction of federal railways for the nominal capital of frs. 100.000.000, the undersigned Jose Antonio de Azevedo Castro, as representative of the Government and duly authorized, solemnly declares by these presents, in the name and on behalf of the said Government, that the bearer of the present has the right to the sum of frs. 500 gold, part of the said loan, subject to the following clauses, namely:

First.—The loan shall be represented by bonds payable to bearer bearing interest at 4 per cent per annum issued for the sum of frs. 100.000.000 nominal capital.

Second.—The interest on the bonds of this issue, represented by coupons attached to the same, shall be paid half-yearly to the bearers of the same on the 1st day of March and the 1st day of Sep[105]tember in every year, until the whole of the bonds shall have been paid off by the Government. The payment of interest shall take place in Rio de Janeiro, in Paris at the offices of the *Societe generale pour favoriser le developpement du commerce et de l'industrie en France*, at the *Banque de Paris et des Pays-Bas*, and at the *Credit mobilier francais*, at the rate of 10 frs. gold each coupon; in London at the Agency of the said *Societe generale* and at the exchange of the day on Paris, the first payment of 10 francs to take place on the 1st day of September, 1910.

Third.—The redemption of bonds shall be made by means of an

au moyen d'un fonds d'amortissement cumulatif de ½ % par an; le premier remboursement aura lieu le 1^{er} septembre 1912; il s'effectuera par voie d'achat sur le marché quand les obligations seront au-dessous du pair, et, quand elles seront au pair ou au-dessus du pair, au moyen de tirages au sort qui auront lieu pendant les mois de janvier et de juin de chaque année. Le tirage au sort des obligations aura lieu en présence d'un notaire public, et les résultats seront immédiatement publiés par voie d'annonce. Toutes les obligations sorties seront remboursées à 500 francs-or avec les intérêts dus le 1^{er} mars ou le 1^{er} septembre qui suivra le tirage.

Quatrièmement. — La somme principale représentée par les obligations sorties sera payée contre présentation de ces obligations munies de tous les coupons non échus à Rio-de-Janeiro, à Paris et à Londres.

Cinquièmement. — Les intérêts sur les obligations cesseront de [106] courir à partir de la date fixée pour leur remboursement, et les obligations remboursées seront immédiatement annulées.

Sixièmement. — Les obligations émises conformément aux lois et décrets susmentionnés auront la garantie absolue du Gouvernement à l'égard du remboursement du capital et au paiement des intérêts respectifs et à l'égard du service des fonds nécessaires pour l'amortissement de l'emprunt.

Septièmement. — Les obligations, tant en ce qui concerne le capital que les intérêts, seront affranchies de tous impôts brésiliens présents ou futurs, soit ordinaires ou extraordinaires.

Huitièmement. — Le

Accumulative Redemption Fund of ½ per cent per annum, the first redemption to take place on the 1st day of September, 1912; it shall be effected by purchases on the market when the bonds are below par, and when at or above par by means of drawings which take shall place in the months of January and June in every year. The bonds shall be drawn in the presence of a notary public, and the result shall be immediately published by advertisement. All bonds drawn shall be paid at 500 francs gold, with the interest due on the 1st day of March or the 1st day of September following the drawing.

Fourth.—The capital of the bonds drawn shall be paid in exchange for the bonds with all coupons not due in Rio de Janeiro, in Paris and in London.

Fifth.—The bonds shall cease to bear interest from the date on [106] which they are redeemable, and the bonds redeemed shall be immediately cancelled.

Sixth.—The bonds issued in conformity with the laws and decrees above mentioned shall have the absolute guarantee of the Government as regards the payment of the capital and of the respective interest and as regards the service of the necessary funds for the redemption of the loan.

Seventh.—The bonds, as regards the capital and interest, shall be exempt from all present or future Brazilian taxes, whether ordinary or extraordinary.

Eighth.—The Government may for the purpose of paying off bonds in circulation increase the Sinking Fund at any time or pay off

Gouvernement pourra, dans le but de rembourser les titres en circulation, augmenter à toute époque le fonds d'amortissement, ou rembourser des titres par d'autres moyens, mais, dans ce dernier cas, en donnant un préavis de six mois.

Londres, le 5 mars 1910.

(*Signe*) José Antonio de Azevedo Castro.

Nous déclarons que la signature apposée ci-dessus est celle du représentant du Gouvernement des États-Unis du Brésil.

bonds by other means, but in such latter case giving six months' previous notice thereof.

London, the 5th of March, 1910.

(*Signed*) Jose Antonio
de Azevedo Castro.

We declare the above to be the signature of the representative of the Government of the United States of Brazil.

The following is the form of the coupon :

"Government of the United States of Brazil.
4% Loan for construction of federal railways.
No. Due on ...
For frs. 10.00,
being six months' interest on frs. 500.—" [107]

Loan of 1911.
Federal Government of the United States of Brazil.
4% Gold Loan 1911.
Authorized amount frs. 60,000,000.

No.

Obligation de 500 francs.

Bond of 500 francs.

Le Gouvernement fédéral de la République des États-Unis du Brésil ayant, en vertu de l'autorisation qui lui a été accordée par la loi n° 2221 du 30 décembre 1909, ainsi que par les décrets présidentiels n° 8648 du 31 mars 1911 (autorisant la revision du contrat du 31 octobre 1910 passé avec la Compagnie Viação Geral da Bahia aux termes du décret n° 8321 du 23 octobre 1910) et n° 8794 du 21 juin 1911, les pouvoirs nécessaires pour

The United States of Brazil Federal Government, having by virtue of the authority given by Law No. 2221 of the 30th of December 1909, and by the Presidential Decrees No. 8648 of the 31st March 1911 (authorizing the revision of the contract of 31st October 1910 last with the Company Viação Geral da Bahia according to the Decree No. 8321 of 23rd October 1910) and No. 8794 of the 21st of June 1911, the necessary powers to effect a loan to be

contracter un emprunt qui sera appelé «Emprunt du Gouvernement fédéral du Brésil 4 % or 1911», pour la construction de chemins de fer fédéraux (dans l'État de Bahia) pour un capital nominal de soixante millions de francs (frs. 60.000.000), le soussigné J. Ignacio Tosta, en qualité de représentant dudit Gouvernement fédéral et dûment autorisé, déclare solennellement par ces présentes, au nom et pour le compte de son Gouvernement, que le porteur de la présente obligation a droit à la somme de 500 francs-or, faisant partie dudit emprunt, soumis aux stipulations ci-dessous, savoir :

1° L'emprunt est représenté par des obligations payables au porteur, portant intérêts au taux de 4 % l'an, émises pour un montant de 60.000.000 de francs de capital nominal.

[108/14] 2° Les intérêts sur les obligations de la présente émission, représentés par des coupons y attachés, seront payés par semestre aux porteurs de ces obligations le 1^{er} janvier et le 1^{er} juillet de chaque année jusqu'au complet remboursement de la totalité des obligations par le Gouvernement. Le paiement aura lieu à Rio-de-Janeiro; à Paris, dans les bureaux de la Caisse commerciale et industrielle de Paris, à raison de dix francs (frs. 10) or par coupon; à Londres, au change du jour sur Paris.

Le premier coupon sera payable le 1^{er} janvier 1912.

3° Le remboursement des obligations se fera au moyen d'un fonds d'amortissement cumulatif de ½ % par an pour être terminé en 1972; le premier remboursement devra être fait le 1^{er} juillet 1916; il s'effectuera par voie d'achats sur le marché quand les obligations seront au-dessous du pair, et

called "United States of Brazil Federal Government 4% Gold Loan 1911" for the construction of federal railways (in the State of Bahia) for the nominal capital of frs. 60.000.000, the undersigned J. Ignacio Tosta as representative of the Federal Government and duly authorized, solemnly declares by these presents, in the name and on behalf of the said Government, that the bearer of the present bond has the right to the sum of frs. 500, gold, part of the said loan, subject to the following clauses, namely:

1. The loan shall be represented by bonds payable to bearer, bearing interest at 4% per annum, issued for the sum of frs. 60.000.000 nominal capital.

[108/4] 2. The interest on the bonds of this issue, represented by coupons attached to the same, shall be paid half-yearly to the bearers of the same on the first day of January and the first day of July in every year, until the whole of the bonds shall have been paid off by the Government. The payment of interest shall take place in Rio de Janeiro; in Paris at the offices of the *Caisse commerciale et industrielle de Paris* at the rate of 10 francs gold each coupon; in London at the exchange of the day on Paris.

The first payment of 10 francs to take place on the first day of January 1912.

3. The redemption of the bonds shall be made by means of an Accumulative Redemption Fund of ½ % per annum, the first redemption to take place on the first day of July 1916 and to terminate in 1972. It shall be effected by purchases on the market when the bonds are below par, and

au moyen de tirages au sort qui auront lieu aux mois de décembre et juin de chaque année, quand elles seront au pair ou au-dessus du pair.

Le tirage au sort des obligations aura lieu en présence d'un notaire public, et les résultats immédiatement publiés par voie d'annonce.

Toutes les obligations sorties au tirage seront remboursées à 500 francs- or avec les intérêts dus le 1^{er} janvier ou le 1^{er} juillet qui suivra le tirage.

4° La somme principale représentée par les obligations sorties sera payée contre présentation de ces obligations munies de tous les coupons non échus à Rio-de-Janeiro, à Paris et à Londres.

[109] 5° Les intérêts sur les obligations cesseront de courir à partir de la date fixée pour leur remboursement, et les obligations remboursées seront immédiatement annulées.

6° Les obligations émises conformément aux lois et décrets susmentionnés auront la garantie absolue du Gouvernement à l'égard du remboursement du capital et au paiement des intérêts respectifs, et à l'égard du service des fonds nécessaires pour l'amortissement de l'emprunt.

7° Les obligations, tant en ce qui concerne le capital que les intérêts, seront affranchies de tous impôts brésiliens présents ou futurs, soit ordinaires ou extraordinaires.

8° Le Gouvernement pourra, dans le but de rembourser les titres en circulation, augmenter à toute époque les fonds d'amortissement, ou rembourser des titres par d'autres moyens, mais, dans ce dernier cas, en donnant un préavis de six mois.

Londres, le 21 septembre 1911.

when at or above par by means of drawings which shall take place in the months of December and June in every year.

The bonds shall be drawn in the presence of a notary public, and the result shall be immediately published by advertisement.

All bonds drawn shall be paid at 500 francs gold, with the interest due on the first day of January or the first day of July following the drawing.

4. The capital of the bonds drawn shall be paid in exchange for the bonds with all coupons not due in Rio de Janeiro, in Paris and in London.

[109] 5. The drawn bonds shall cease to bear interest from the date on which they are redeemable, and the bonds redeemed shall be immediately cancelled.

6. The bonds issued in conformity with the laws and decrees above mentioned shall have the absolute guarantee of the Government as regards the payment of the capital and of the respective interest, and as regards the service of the necessary funds for the redemption of the loan.

7. The bonds, as regards the capital and interest, shall be exempt from all present or future Brazilian taxes, whether ordinary or extraordinary.

8. The Government may for the purpose of paying off bonds in circulation increase the Sinking Fund at any time or pay off the bonds by other means, but in such latter case giving six months' previous notice thereof.

(*Signé*) J. Ignacio Tosta. | London, the 21st September 1911.
(*Signed*) J. Ignacio Tosta.

The following is the form of the coupon :

"Federal Government
of the United States of Brazil.
4 % Gold Loan 1911.
Bond No.
Coupon for 10 francs payable

Interpretation of the provisions relating to payment. — The bonds of the issue of 1909 contain an explicit promise for the payment of interest in gold. They provide: "The interest: is represented by coupons attached to the bonds and [110] is payable in Paris in gold by the *Banque française pour le Commerce et l'Industrie* and the *Credit mobilier français*, and on the markets of Rio de Janeiro, London, Brussels, Amsterdam and Hamburg at the sight exchange of the day on Paris."

The coupons do not set forth this provision for payment in gold, but this silence of the coupon cannot be deemed to detract from the express promise of the bond. As regards bearer bonds, sometimes the coupons contain all that is necessary to make a complete engagement of independent negotiability; sometimes they are mere tokens which do not purport to set forth the entire obligation for the payment of interest. Thus, in the present instance nothing is said in the coupons as to the place of payment, which is an integral part of the promise as contained in the bond.

The provision for payment of interest in gold cannot be construed as relating solely to a method of payment (*modalité de paiement*), that is, as calling simply for a payment in gold specie of the number of francs promised rather than for a payment in gold value. In the loan of 1909, the interest on each bond semi-annually is frs. 12.50, and the right attached to each bond separately. But it was physically impossible to pay frs. 12.50 in gold specie, as there were no gold coins of that denomination. The reference to payment of interest in gold must be taken to be a reference to gold value and not to a payment in gold coin.

The provision for the payment of interest "on the markets of Rio de Janeiro, London, Brussels, Amsterdam and Hamburg at the sight exchange of the day on Paris", does not affect the question, as this merely calls for the payment, at the sight exchange of the day, of the equivalent of the amount payable in gold value according to the terms of the bonds.

The bonds of 1909, however, contain no express provision for the payment of principal in

gold. They provide "that the bearer of this bond is entitled to the sum of 500 francs forming part of the said loan", and the loan is described as one for "*quarante millions de francs capital nominal*". The recitals of the bonds refer to "Article 22, No. XII, of the [111] law No. 1841 of the 31st December, 1907". This article authorizes the President of the Republic to make the appropriate financial arrangements for the necessary works for the improvement of ports in conformity with the decree No. 6368 of February 14th, 1907. The latter decree authorizes the Government to issue "*des titres or ou papier*", that is to say, bonds payable in gold or paper. The recitals of the bonds also refer to the "execution of clauses 55 and 59 of the contract of the 4th August, 1908, following on decree No. 7003 of the 2nd July, 1908". This contract was between the Brazilian Government and certain persons for the construction of works, for the payment of which the bond issue was to provide, and the decree that is mentioned approved the contract. But neither of the articles of the contract which the bonds recite (Nos. 55 and 59) make any mention of gold in describing the bonds to be issued.

On the other hand, Article 56 of the contract which is also approved by the decree No. 7003 of July 2nd, 1908, to which the bonds refer, is as follows:

"*Article 56.*—The bonds referred to in the preceding article are payable to bearer and may be worded in French or English; they shall contain the following declaration:

*Loan of the Government of the United States of Brazil 1908.
Port of Pernambuco, interest 5% per annum.*

They shall have as guarantee for payment in gold both of the principal, as regards the additional sum necessary for redemption, and of the interest, besides the general guarantee, a special guarantee out of the proceeds of the 2% gold tax upon the official value of the foreign imports into the State of Pernambuco and of all the net revenue from the port and the docks after the construction thereof. These bonds shall, as regards principal and interest, be exempt from all Brazilian taxes present or future."

The bonds themselves contain a reference to the gold tax thus described. It is evident that the proceeds of this tax were represented as a guarantee for the redemption of the "bonds, that is, for the payment of the principal, as well as for the payment of interest, but the security for payment could not be regarded as determining the amount agreed to be [112] paid. The provision of Article 56 of the contract, however, refers to the gold tax as one "*for payment in gold, both of the principal, as regards the additional sum necessary for redemption, and of the interest*". While the bonds refer to the decree approving the contract containing this provision, they do not, as has been shown, refer to this provision itself, and it may be said that the contract for the building of

the works is not a part of the contract between the Brazilian Government and the bondholders, and that only those parts of the contract specifically mentioned in the bonds can be taken into consideration in construing the latter.

In this situation, reference is made to the prospectus inviting subscriptions for the bonds of the issue of 1909. This prospectus contains the following:

"Prospectus of the 1909 loan.

Federal Government of the United States of Brazil.

5% gold loan 1908 for the improvement of the Port of Pernambuco.

Issue of 80,000 bonds of 500 gold francs 5%, or 40,000,000 francs, in bonds to bearer redeemable at par in 50 years, beginning in 1914.

Net annual interest: 25 francs per half year on February 1st and August 1st of each year.

This loan is a direct debt of the Government of the United States of Brazil. It is authorized by laws Nos. 1837 and 1841 of December 31st, 1907, and decrees Nos. 6368 of February 14th, 1907, and 7207 of December 3rd, 1908."

The law No. 1837 of December 31st, 1907, sets forth the amount of the general receipts of the Brazilian Government in gold and in paper, and provides for a gold tax of 2%, as above described. In addition to the law No. 1841 of December 31st, 1907, and the decree No. 6368 of February 14th, 1907, already mentioned, the prospectus refers to the decree No. 7207 of December 3rd, 1908, which provides as follows:

"The President of the Republic of Brazil, in virtue of the authorization contained in the law No. 1841 of December 31st, 1907, Article 22, No. XII, decides to authorize the Minister of Finance to issue 80,000 bonds of [113] the Public Debt of a nominal value of 500 francs each, carrying interest at the rate of 5 % gold per annum, redeemable in 50 years, which bonds shall be delivered to the contractors for the improvement works on the Port of Recife, Edmond Bartissol and Demetrio Nunes Ribeiro, in exchange for the deposit with the delegate of the Treasury in London or with a banking house to be appointed by the Government at its own free and unfettered choice, of a sum of francs 38,100,000 destined for the payment of the said works under the terms of the contract entered into on August 4th last."

Thus we have the prospectus of this loan describing it as "*emprunt 5% or*" and the issue as an "*emission de 80.000 obligations de 500 francs 5 % or, soit 40 millions de francs, en titres au porteur remboursables au pair en cinquante annees a partir de 1914*", and referring to the issue as intended to meet the payment for public works as provided in the contract of August 4th,

1908. What weight shall be given to this prospectus?

It is to be remembered that, in the case of government loans, the Government may make a contract with bankers who take the entire issue of bonds and place them on the market, and that in such a case, the bankers may issue the prospectus and the Government may not be a Party to it. On the other hand, the Government may itself issue, or become responsible for, the prospectus and thus invite subscriptions for the bonds it proposes to issue. In the latter case, the prospectus may be regarded as a continuing offer, to the terms of which each bondholder in the future is entitled to refer in case ambiguity is found in the statements of the bonds. For it is not to be supposed[^] that the original subscribers taking the bonds pursuant to the invitation of the prospectus are to be in a more favoured position with respect to their rights under the bonds than those who later obtain the bonds by transfer. Where the Government itself becomes responsible for the prospectus and invites subscriptions for the bonds, it is reasonable to treat the prospectus as a part of the transaction with the bondholders, at least so far as may be necessary to clarify the meaning of the bonds. [114]

In this instance, the prospectus purports to speak for the Federal Brazilian Government. The prospectus is so entitled, but it is not necessary to rely on inferences, for the prospectus bears the signature of approval of the delegate of the Brazilian Treasury, who represented the Brazilian Government in the transaction and in that capacity signed the bonds themselves.

Obviously, it would be an anomaly to have the interest of bonds payable in gold while the principal was not so payable, and, if the prospectus is read in connection with the bonds, it appears that the loan was represented by the Brazilian Government and subscribed for as a gold loan. If it is said that the expressions "*emprunt 5 % or*" and "*emission de 80.000 obligations de 500 francs 5 % or*" are to be taken as meaning that it is only the five per cent that is to be gold, the answer is that "*or*" qualifies not only "5 %" but "*emprunt*", and also "*emission de 80.000 obligations de 500 francs*". That is to say, it is the obligations themselves that are to have gold value.

Moreover, there is a familiar rule for the construction of instruments that, where they are found to be ambiguous, they should be taken *contra proferentem*. In this case, as the Brazilian Government by its representative assumed responsibility for the prospectus, which this representative, who had signed the bonds, had "seen and approved", it would seem to be proper to construe them in case of doubt *contra proferentem* and to ascribe to them the meaning which

they would naturally carry to those taking the bonds under the prospectus. It can hardly be doubted that those taking the bonds on the faith of the prospectus would understand that they were receiving gold bonds, which would mean bonds payable in gold value both as to principal and interest. And while the pledge of the 2 % gold tax would not in itself determine what was to be paid, the fact that this security was provided not only for the payment of interest but for the principal of the bonds redeemed, taken with the description of the loan in the prospectus, confirms the same view. [115]

For these reasons, it is concluded that the bonds of the issue of 1909 are to be construed as providing for the payment of principal and interest in gold.

The bonds of the issue of 1910 recite that "the bearer of the present obligation has the right to the sum of 500 gold francs, part of the said loan". There is also an explicit promise for the payment of the principal of the bonds in gold. In the paragraph relating to their redemption, it is provided: "All bonds drawn shall be paid at 500 francs gold."

There is an express stipulation in the bonds for the payment of interest in gold, and while the coupon, as in the case of that of the loan of 1909, does not mention gold, it also omits the places of payment, and is not to be taken as a complete, independent obligation. It is simply a token and cannot be regarded as derogating from the express engagement of the bond.

In view of the terms of the bonds, it is not deemed to be necessary to refer to the prospectus, or to the decrees for the issue, but it may be observed that these documents do not disclose provisions which could be regarded as contradicting the bonds. The obligation then in this case, according to its terms, is for the payment of principal and interest in gold francs.

The recital of the bonds of the issue of 1911 is similar to that of the bonds of 1910, stating that "the bearer of the present obligation has the right to the sum of 500 gold francs". There are also explicit provisions in the bonds for the payment in gold francs of the principal of the bonds drawn for redemption, and for the payment of the interest in gold.

In view of these stipulations, it is not necessary to recapitulate the documents which preceded the issue of this loan.

Significance of the gold clauses.—One argument against the efficiency of the provision for

gold payments is that it is simply a clause of "style", or a routine form of expression. [116/15]

This, in substance, would eliminate the word "gold" from the bonds. The contract of the Parties cannot be treated in such a manner. When the Brazilian Government promised to pay "gold francs", the reference to a well-known standard of value cannot be considered as inserted merely for literary effect, or as a routine expression without significance. The Court is called upon to construe the promise, not to ignore it.

On similar grounds, the argument cannot be accepted that "according to the legislative financial system of Brazil", a reference to obligations for gold payments simply signifies foreign loans in pounds sterling, French francs, or American dollars. The Brazilian decree of February 14th, 1907, had itself made the distinction, not between the Brazilian currency and the currency of other countries, but between "gold" and "paper" obligations. The Court has not been referred to any adequate authorities in support of the argument of the Brazilian Government, but, apart from this, it cannot be admitted that when a Government places a foreign loan with a promise of payment having reference to a well-known standard of value, that reference is to be disregarded. The Government did not issue bonds simply for "French francs" but for "gold francs", and if the expression "gold francs" did in fact appropriately denote a standard of value, that standard must be deemed to be the subject of the reference. Similarly, as the Court is not at liberty to disregard the promise of "gold", the question whether gold specie, that is, gold coin, or gold value was intended, must be answered in the same manner as in the case concerning certain Serbian loans. It has been noted that in the case of the loan of 1909 the promise was the payment of. frs. 12.50 semi-annually in gold, obviously meaning gold value and not gold coin as there were no gold coins for that amount. This must also be deemed to be the significance of the explicit promise of gold francs in the payment of the principal and interest of the later loans.

As of what time is the standard of value to be taken ? Manifestly as of the time of the bond issues. The engage[117]ment would be meaningless if it referred to an unknown standard of a future day. The Parties, if they referred to a gold standard of value, must be taken to have referred to an existing standard.

The argument that the depreciation in French francs was unforeseeable and that the sole

object was to safeguard against the depreciation of Brazilian currency, likewise appears to be untenable. In this connection, it should be observed that in the present case there was no reason for the borrower not to offer payment in gold; for such payment, while constituting a security for the lender, involved no risk for the borrower. The devalorisation of the French franc could not in fact increase the obligations of the latter: the gold clause merely prevents the borrower from availing itself of a possibility of discharge of the debt in depreciated currency.

The argument of the Brazilian Government assumes that the purpose of the gold clauses was to protect against depreciation of some currency. But, if this be so, the protection was sought not simply by agreeing for payment in French francs, but in gold francs. As this standard of value was stipulated, it should be enforced according to its terms and not be limited as referring only to a single object not specified. It was depreciation in value that was the object of the safeguard, not in this or that particular currency, and it was evidently for this reason that the reference was made to the well-known stability of gold value.

What was the standard of gold value thus envisaged? The promise was for payment of francs in gold, or gold francs, and wherever the payment was actually made, the amount to be paid had to be computed accordingly. In the bonds of 1909, the interest was payable in Paris, or at the sight exchange on Paris. No place was fixed for the payment of principal, but assuming that this was to be paid in gold, the payment was to be of gold francs. The loans of 1910 and 1911 promised payment of principal and interest in gold francs. The interest was to be paid in each case at Rio de Janeiro, or in Paris, or in London, at the exchange of the day on Paris. The bonds drawn for redemption were in each [118] case to be paid in Rio de Janeiro, in Paris, in London.

What then was the "gold franc" as a standard of value at the time of the bond issues? There was no place of payment, other than Paris, which had the franc, and the "gold franc" of the bonds must be the gold franc, as its definition could be ascertained according to French monetary legislation. This could be, at that time, none other than the standard of gold value provided for in the law of the 17th Germinal, Year Eleven, as follows:

"Five grammes of silver, nine-tenths fine, shall constitute the monetary unit which retains the name franc.

Head I.— The minting of money.

.....
Article 6.—Gold pieces of 20 and 40 francs shall be minted.

Article 7.—The standard of these pieces is fixed at nine-tenths fine with one-tenth of alloy.

Article 8.—The standard weight of the pieces of 20 francs shall be 145 to the kilogramme and that of the 40 franc pieces 77½ to the kilogramme."

This was a definite standard. Translated into terms of a single gold franc, it is the twentieth part of a piece of gold weighing "6 gr. 45161, *au titre de 900/1000 d'or fin*", the standard specified in the question submitted by the Special Agreement. It is the same standard of "gold franc" that is described in Article 262 of the Treaty of Versailles as the gold franc in weight and fineness as defined by the law existing on January 1st, 1914.

While this was the standard established by the French legislation in force when the loans were issued, it was a standard which had also been adopted by other countries and by the Convention of the Latin Union, and thus was one well adapted for selection by another Government as a standard of value for its external loans. [119]

It is concluded that the bonds should be construed as providing for payment in gold francs at the value fixed by the law of the 17th Germinal, Year Eleven.

The execution of the contracts. — The argument is stressed, as in the case concerning certain Serbian loans, that from the manner in which the contracts were executed, it should be concluded that they provided for payment in French paper francs. It appears that at all times before the war, during the war, and after the war, payment was made in the ordinary manner, that is, in banknotes. It is sought to apply the familiar principle that where a contract is ambiguous, resort may be had to the manner of performance in order to ascertain the intention of the Parties. But in this case, there is no ambiguity, at least in the loan contracts of 1910 and 1911, as these call in clear and precise terms for payment of principal and interest in gold francs. Nor is there ambiguity in the contract of 1909, so far as payment of interest is concerned, as the contract expressly provides that it shall be paid in gold and the amount of semi-annual interest thus to be paid (frs. 12.50) shows clearly that gold value was intended. As to the payment of principal, it has been pointed out that, according to the prospectus issued by the Brazilian Government and which is to be read in connection with the bonds, it appears that the bonds were offered as gold obligations.

Moreover, where reference is had to the conduct of the Parties as an aid to interpretation, it is necessary to consider whether that conduct itself permits of but one inference.

Before the war, the parity of French currency with gold was maintained and the manner of payment was in no way inconsistent with the right of the bondholders to receive payment on the basis of gold francs as a standard of value. During the war also, the manner of payment had little significance, as during that period, and until 1919—if reference be made to the gold dollar—there appears to have been only a slight difference in the value of French currency as [120] compared with a gold basis. The significant period is the later one—that is, between 1919 and 1924, as by the latter date the French Government had espoused the cause of the French bondholders and made formal complaint. In considering the conduct of the bondholders in this period, it is to be remembered that this was a time of great difficulties; that there were many bondholders; that as individuals they were powerless as against the Brazilian Government, and it was necessary for them to associate themselves together and to interest the French Government in their case; that the French Government had to consider the matter and determine on its course of action. When all these circumstances are considered, there is no adequate basis for an inference from the conduct of the bondholders that they were of opinion that they were not entitled to obtain payment on the basis of a gold standard. From September 1924, at least, the matter was in the course of diplomatic negotiations between the two Governments until the Special Agreement for submission to the Court was signed in 1927. The bonds are bearer bonds which entitle the bearer to claim, simply because he is a bearer, all the rights accruing under the bond. The bondholders cannot be regarded as estopped to seek payment in gold value.

"*Force majeure*."—The economic dislocation caused by the Great War has not, in legal principle, released the Brazilian Government from its obligations. As for gold payments, there is no impossibility because of inability to obtain gold coins, if the promise be regarded as one for the payment of gold value. The equivalent in gold value is obtainable.

The law applicable.—Counsel for the Government of the United States of Brazil has summarized the argument of his Government as follows: [121]

" even were it possible to conclude that the intention of the borrower and lenders was to set aside the French franc and adopt another franc representing a fixed and invariable monetary unit, calculated according to its weight in gold, on that hypothesis

also, as the question concerns a loan governed by Article 1895 of the French Civil Code and seeing that the forced currency law enacted as a result of circumstances, unforeseen and impossible to foresee, such a clause could not be effective in so far as concerned any payment to be made in francs."

Formulated in this way, the argument raises several questions, and in the first place the question whether it is French law which in this case governs the contractual obligations as such.

That is a question of private international law which the Court, as it has explained in its judgment regarding the Serbian loans, must decide by reference to the actual nature of the obligations in question and to the circumstances attendant upon their creation, though it may also take into account the expressed or presumed intention of the Parties.

Having regard to the nature of the bonds and to the circumstances concerning their issue, there seems to be no doubt that it is Brazilian law and not French law which must be held to govern the obligations contracted, at all events as regards the substance of the debt and the validity of the clause defining it.

The loans in question are loans contracted by the Government of the United States of Brazil under laws and decrees having the force of law and laying down the conditions relating to the loans. These decrees are cited in the bonds, and accordingly the validity of the obligations set out therein is indisputable in Brazilian law. The bonds are bearer bonds signed by the delegate of the Brazilian Treasury in London. It follows from the very nature of bearer bonds that the substance of the debt, which in principle must be the same in respect of all holders, cannot be dependent on the identity of the holder or the place where he has acquired his bond. Only the identity of the borrower is fixed; in this case it is a sovereign State, which cannot be presumed to have made the substance of its debt and the validity of the obligations accepted by it in respect thereof, subject to any law other than its own. [122]

It cannot be held that the intention of the borrowing State was to render some law other than its own applicable as regards the substance of its debt and the validity of the conditions laid down in respect thereof, unless there were, if not an express provision to this effect, at all events circumstances which would irrefutably show that such was its intention.

But in the present case there is no express provision. The only circumstance which has been brought to the knowledge of the Court and which might possibly be cited in this connection is that, according to the statement of the Government of the United States of Brazil, which has

not been disputed, the issue of the loans took place in France only. This circumstance, however, cannot suffice to show that the intention was to make the obligations entered into as regards the substance of the debt and the validity of the conditions relating to it, subject to French law, more especially considering that not only did the bonds of all those loans also contain an English text but also that the interest was made payable, in the case of the 1910 and 1911 loans, at Rio de Janeiro and London as well as Paris, and in the case of the 1909 loan, besides Paris, also at Brussels, Amsterdam and Hamburg. As concerns the 1910 and 1911 loans also, the bonds drawn for redemption are payable at Paris, London and Rio de Janeiro. These provisions show that it was not the intention to place the bonds exclusively in France. Moreover, the prospectus which has been produced in respect of the 1911 loan states that subscription was to take place not only at Paris and on French provincial exchanges, but also in Brazil.

But though the Court is unable to admit that the intention was to make the substance of the debt and the validity of the provisions relating to it subject to French law, this does not prevent the currency in which payment must or may be made in France from being governed by French law. For, as the Court has explained in its judgment in the case of the Serbian loans, it is a generally accepted principle that a State is entitled to regulate its own currency. The application of the laws of such State involves no difficulty so long as it does not affect the substance of the debt [123] to be paid and does not conflict with the law governing such debt. And in the present case, this situation need only be envisaged if, as contended by the Government of the United States of Brazil, French law rendered it impossible to claim payment otherwise than in bank-notes which are compulsory tender, and for the same amount of francs as are specified in the contract.

The Court is of opinion that this contention is not made-out. In its judgment in the case of the Serbian loans, the Court considered that it might confine itself to observing that, according to the information furnished by the Parties, the doctrine of French courts, after some oscillation, has now been established in the manner indicated by the French Government, that is to say that, whilst a gold clause in respect of a domestic transaction is null and void, this is not the case as regards international contracts, even when payment is to be effected in France.

Does this observation also cover the present case? The Special Agreement under which this case has been submitted to the Court contains the following in Article VI:

"In estimating the weight to be attached to any municipal law of either country which may be applicable to the dispute, the Permanent Court of International Justice shall not be bound by the decisions of the respective-courts."

There are two possible interpretations. According to one —keeping more strictly to the literal meaning of the words—the Court is not to regard itself as legally bound to follow the doctrine of the courts of the country the law of which it is applying; it remains however free to do so if it considers that its task should be limited to applying the municipal law in accordance with the construction placed thereon by the national courts. According to another interpretation— which might find support more particularly in the fact that questions similar to that submitted to the Court had already formed the subject of decision in French courts — the Court's duty would be to disregard the doctrine of the municipal courts and itself to determine that interpretation of the relevant legislation which seems, in its opinion, to be the most reasonable in the present case. [124/16]

The Court, in choosing between these two interpretations, must adopt that one which is in principle compatible with a proper appreciation of its nature and functions.

Though bound to apply municipal law when circumstances so require, the Court, which is a tribunal of international law, and which, in this capacity, is deemed itself to know what this law is, is not obliged also to know the municipal law of the various countries. All that can be said in this respect is that the Court may possibly be obliged to obtain knowledge regarding the municipal law which has to be applied. And this it must do, either by means of evidence furnished it by the Parties or by means of any researches which the Court may think fit to undertake or to cause to be undertaken.

Once the Court has arrived at the conclusion that it is necessary to apply the municipal law of a particular country, there seems no doubt that it must seek to apply it as it would be applied in that country. It would not be applying the municipal law of a country if it were to apply it in a manner different from that in which that law would be applied in the country in which it is in force.

It follows that the Court must pay the utmost regard to the decisions of the municipal courts of a country, for it is with the aid of their jurisprudence that it will be enabled to decide what are the rules which, in actual fact, are applied in the country the law of which is recognized

as applicable in a given case. If the Court were obliged to disregard the decisions of municipal courts, the result would be that it might in certain circumstances apply rules other than those actually applied; this would seem to be contrary to the whole theory on which the application of municipal law is based.

Of course, the Court will endeavour to make a just appreciation of the jurisprudence of municipal courts. If this is uncertain or divided, it will rest with the Court to select the interpretation which it considers most in conformity with the law. But to compel the Court to disregard that jurisprudence would not be in conformity with its function when applying municipal law. As the Court has already observed in the judgment in the case of the Serbian [125] loans, it would be a most delicate matter to do so, in a case concerning public policy—a conception the definition of which in any particular country is largely dependent on the opinion prevailing at any given time in such country itself—and in a case where no relevant provisions directly relate to the question at issue. Such are the reasons according to which the Court considers that it must construe Article VI of the Special Agreement to mean that, while the Court is authorized to depart from the jurisprudence of the municipal courts, it remains entirely free to decide that there is no ground for attributing to the municipal law a meaning other than that attributed to it by that jurisprudence.

Such being the sense in which the Court understands the task entrusted to it in the present case, the Court holds that the position as regards the jurisprudence of the French courts, as stated in the judgment in the case of the Serbian loans, holds equally good as regards the present case, in the course of which nothing has been adduced to weaken it.

Finally, the Court observes that the forced currency regime has been terminated in France by the law of June 25th, 1928, which abrogates the provision relating thereto in the law of August 5th, 1914. The second article of the law of 1928 contains the following:

"The French monetary unit, the franc, is constituted by 65.5 milligrams of gold, nine hundred thousandths fine.

This definition shall not apply to international payments which, prior to the promulgation of the present law, may have been validly stipulated in gold francs."

This law replaces for the future the former legislation, so that the reduction in the metallic value of the franc, as newly denned, to about one-fifth of its original value will not affect the "international payments" which may previously have been validly stipulated in gold francs.

FOR THESE REASONS,

The Court,

having heard both Parties,

by nine votes to two, [126]

gives judgment to the following effect:

That with regard to the Brazilian Federal Government's 5% loan of 1909 (Port of Pernambuco), 4% loan of 1910 and 4% loan of 1911, payment of coupons which have matured and are not barred by prescription at the date of the Special Agreement and of coupons subsequently maturing, as also repayment of bonds drawn for redemption but not actually repaid which are not barred by prescription on the date of the present judgment, or of bonds subsequently to be redeemed, must be effected by delivery to the French holders in respect of each franc, of the value corresponding in the currency of the place of payment at the rate of exchange of the day, to one-twentieth part of a gold piece weighing 6.45161 grammes, 900/1000 fine.

This judgment having been drawn up in French in accordance with the terms of Article 39, paragraph 1, second sentence, of the Statute of the Court, an English translation is attached thereto.

Done at the Peace Palace, The Hague, this twelfth day of July, nineteen hundred and twenty-nine, in three copies, one of which is to be placed in the archives of the Court and the others to be forwarded to the Agents of the Government of the French Republic and the Government of the Republic of the United States of Brazil respectively.

(Signed) D. Anzilotti,

President.

(Signed) A. Hammarskjold,

Registrar.

MM. de Bustamante and Pessoa, Judges, declaring that they are unable to concur in the judgment given by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

(Initialed) D. A.

(Initialed) A. H.

[127] Dissenting Opinion by M. De Bustamante.

[*Translation.*]

I.

According to the Special Agreement signed at Rio de Janeiro on August 27th, 1927, the Court is called upon to give judgment on the following question:

"With regard to the Brazilian Federal Government's 5 % loan of 1909 (Port of Pernambuco), 4% loan of 1910, and 4 % loan of 1911, is payment of coupons which have matured and are not barred by prescription at this date, and coupons which shall mature, as also repayment of bonds drawn for redemption but not actually paid which are not barred by prescription on the date of the Court's decision, or of bonds subsequently to be redeemed, to be effected by delivery to the French holders, in respect of each franc, of the value corresponding, in the currency of the place of payment at the rate of exchange of the day, to one-twentieth of a gold piece weighing 6.45161 grammes of 900/1000 fineness, or in such payment or repayment to be effected as hitherto in paper francs, that is to say, in the French currency which is compulsory legal tender?"

II.

We must begin by noting certain facts, which have an undeniable influence upon the questions to be considered, and their solution:

(a) The prospectus of the 5 % 1909 loan, under the heading "Payment of coupons", expressly states that the coupons are payable at Paris, in gold, at the rate of frs. 12.50, [128] half-yearly, on February 1st and August 1st of each year, and at places abroad which are to be subsequently named, at the sight rate of exchange on Paris.

(b) No. 3 of the bonds of this loan states, in its turn, that interest is payable at Paris in gold and at Rio de Janeiro, London, Brussels, Amsterdam and Hamburg at the sight rate of exchange on Paris.

(c) The prospectus of the 4 % 1910 loan speaks of the payment of coupons at Paris in gold, at the rate of 10 francs half-yearly, and in London and at Rio de Janeiro at the sight rate of

exchange on Paris.

(d) The same meaning has also been attributed to paragraphs 2 and 4 of the bonds of this loan.

(e) The same applies in the case of the 4 % 1911 loan.

III.

There is therefore only one place where payments are to be made in the local currency, and that is Paris. It seems useless to discuss whether the theoretical or international gold franc, or the French gold franc, is meant. There are no payments in gold currency at Brussels or Geneva, but only at Paris, and when other places are mentioned, payment is to be based on the sight rate of exchange on Paris.

IV.

Now, leaving aside the question of gold value, let us simply observe the fact that at the time when the Brazilian loans were issued, there was no legal difficulty in speaking of the gold franc or in deciding that payments should be made in gold francs. There was no binding rule of French law or of Brazilian law to prevent it.

But while, on the one hand, gold francs might simply be spoken of for the purpose of payment, it would, on the other hand, be possible to take steps and make provision for fixing the meaning and scope of these words and to decide: the course to be adopted, if the gold franc vanished from monetary circulation.

It was possible, for instance, to stipulate, and this is frequently done, that the payments must be effected in gold francs of the same weight and standard as that of the franc in circulation at the time in France or to take other pre-cautions widely known in the business world and very often adopted where the intention of the Parties is to avoid indirectly the consequences of certain rules established by legal enactments of a local character. [129]

V.

Let us now ask ourselves what is the law that governs the contractual stipulations we

have just considered.

The contracts entered into between the Brazilian Government and the persons entrusted with the carrying-out of public works in Brazil (the contracts annexed to the written proceedings) are based on the assumption that the bonds of the loan will be received in payment by those persons for the work in question; but that only serves to emphasize once again that in the case we are now considering we are concerned with private contracts coming under rules of municipal law. Our task consequently consists of endeavouring in the first place to establish in agreement with the rules of private international law, what this municipal law is, and after that to apply to each hypothesis the rule of municipal law by which it is governed.

There is nothing in this task, which does not come within the jurisdiction of the Court. In the case of some problems indubitably coming within the sphere of public international law, it often happens that no universal treaty or customary rule has been accepted or followed, and it becomes necessary to choose an international rule that has been followed and enforced by a single State as one of the principles of its municipal law. In other words, and in agreement with the generally accepted practice of Great Britain and the U.S.A., international law frequently forms a part of municipal law. We have observed these differences between the municipal laws of different countries last year in a case submitted to the Court and relating to a collision between a French ship and a Turkish ship.

When we have to endeavour to ascertain and apply a rule of private international law to a question arising between two States that have submitted the dispute to our decision, it may happen that with regard to the point at issue, the Parties have either accepted the same rule of private international law or, on the contrary, divergent rules. If the former is the case, the task of the Court is still more easy and simple. [130]

Let us now see what is the problem before us in order then to find the rule that applies.

VI.

It is a question of a contract the existence or validity of which has not been disputed. In the first place, the meaning of some of its clauses and the effect of the terms employed were argued. Later, the meaning having been differently interpreted by each of the Parties, the discussion turned on the execution of the contract and particularly on the currency in which the payment had to be made.

The rules of private international law that must, on principle, be looked for are those rules which refer, on the one hand to the law that applies to contracts, and on the other to methods of payment and to the currency employed in making such payment. As regards the former, there is a universal consensus of opinion as to the will of the Parties being paramount, but in this case, as in many others, the Parties were silent as to the law that applied, and it is not even possible to construe their will. Presumptions must consequently be made use of, and much was said about the law of the place where the contract was made and about the law of the place of its execution. In my opinion, since a contract of adhesion is in question, the law which, generally speaking, should be applied is the law of the borrower.

But this law is only applicable to such questions relating to the contract or to its execution as do not come under the local laws on the grounds of international public policy. If, from this point of view, a consideration of this case were to result in our accepting any particular local law, the question of the construction of the contract, as well as of the meaning and the scope of the terms "gold franc" and "payment in gold", would be immediately covered by a specific rule of that local law.

There are always matters which are outside the will of the Parties and which require the application of imperative and territorial legal provisions. Amongst these matters, according to the almost unanimous opinion of authors, are classed the form, the currency and the method of payment. The Code of [131] Private International Law adopted at the Sixth Pan-American Conference at Havana and already ratified by the Congress and Government of Brazil, lays down in Article 166 the following rule :

"Those obligations arising from contracts have force of law as between the contracting Parties and should be discharged in accordance with the terms thereof, with the exception of the limitations established by this Code."

Article 169 says :

"The nature and effect of the various classes of obligations, as well as the extinction thereof, are governed by the law of the obligation in question."

But Article 170 is careful to add :

"Notwithstanding the provisions of the preceding article, the local law regulates the conditions of payment and the money in which payment shall be made."

On the other hand, the opinion of French publicists has almost always been based on the same conceptions, and it would be easy to make for this purpose a large number of quotations. This seems to us to be unnecessary at the moment.

In the case before the Court, we must therefore consider French legislation, France being the only country in which payment had to be made in gold francs, since in other countries payment had to be made at the sight rate of exchange on Paris; and any binding rule laid down on this subject at a time when the contracts of issue began to produce their effects must be conformed to.

VII.

As regards France, the law in force is quite clear and does not require interpretation.

Article 1895 of the French Civil Code runs as follows :

"The obligation resulting from a loan in money is always simply for the amount in figures indicated in the contract, and if there has been an increase or diminution of specie before the time of payment, the debtor must return the amount in figures lent, and must return only this amount in the specie in currency at the time of payment." [132]

At the time when the Brazilian loans were issued, Article 1895 of the French Civil Code was in force, as it is at the present time. This article gave to the borrower the right and imposed on him the duty, as regards payments to be made in France, of assuming, at the moment of each payment, the consequences arising from the increase or diminution of the value of the currency, in the one case to his own advantage, in the other to the advantage of his creditors.

This situation in law is a vested right for the borrower and for the holders of bonds and coupons, and cannot be changed by subsequent legislation, which had no retroactive effect as regards these loans. France retained the sovereign right of changing the weight and standard of her currency and of making notes of the Bank of France legal or compulsory tender, subject, however, to the specific proviso of not depriving the debtors of the benefits arising under Article 1895 of the Civil Code under the effects and security of which they had contracted.

The law of the holders of the bonds and coupons could not change this state of affairs by

specifying at the moment when the currency was modified that this change would not be applicable to the borrower, or, as a general rule, to the cases in which he was concerned.

VIII.

Since a claim by the French Government and the rights of French holders are concerned, we must note that at the time when the loans were issued, from 1909 to 1911, the French franc was absolutely stable and its value in gold could not be questioned. In France there were bank-notes, and they were legal tender; but as these notes must be repaid at par by the Bank of France and as up till then no important differences existed between the gold rate and silver rate, the question of payments in gold or notes that were legal tender had no practical significance.

During the world war a new French law of August 5th, 1914, had freed the Bank of France and the Bank of Algeria from the obligation to return specie for their notes. France certainly had the right, as we have already demonstrated, to [133] take such a step, and no one thought of opposing this change in the legal tender, by which the notes become a forced currency. But this new monetary situation had to be adopted with all its consequences, and contracts in force must always be interpreted in conformity with Article 1895 of the Civil Code, which was in force both then and now. Article 1895 of the Code was framed precisely for these cases. Whether that rule be good or bad in doctrine or in theory, it was the law: *Dura lex, sed lex*. Since ignorance of the law cannot be pleaded, all the holders of bonds or coupons of Brazilian loans must be taken as knowing that, according to the law in France, the obligation resulting from a loan in money is *always* simply for the amount in figures indicated in the contract, and if there has been an increase or diminution of specie before the time of payment, the debtor must return the amount in figures lent, *and must return only this amount in the specie in currency at the time of payment*.

What I have written here is merely a literal copy of Article 1895 of the French Civil Code.

IX.

The opinions of the best known authors have long ago recognized that this rule is one of international public policy. In the first place, a distinction must be drawn between those who

wrote before the: world war and those who studied the question after 1914. Writers of legal treatises just as much as anyone else, without wanting to and without knowing it, come under the irresistible influence of their surroundings, and the requirements of the national situation are reflected in their thoughts and have a great influence on their teachings. This fact explains the existence in public and private international law of systems and opinions completely corresponding to the requirements and interests at a given moment of a State or of a continent.

In order to avoid this stumbling block, we have quoted pre-war authors in preference to others. And in order not to unduly increase the number of quotations, we have chosen two [134] writers of the highest authority and belonging to two different States, France and Switzerland, both of which writers however specifically refer to Article 1895 of the Code Napoléon.

DESPAGNET (Précis de Droit international privé,
5th ed., Paris, 1909, pages 916-917):

[*Translation.*]

"The payment shall consequently be made in money current at the place where the debt must be discharged, and at the nominal value of the currency at that place. If, during the lapse of time between the date of the contract and the date of payment, the nominal value of the currency has increased or diminished, the debtor profits or suffers thereby, since he has to supply a correspondingly greater or lesser number of coins in that currency at their present nominal value, in order to make up the amount fixed in the contract (Article 1895 Civil Code). *It would moreover be impossible to evade this consequence in a private contract since the establishment of the nominal value of currencies is a rule of public policy.*"

And he adds :

"There is another hypothesis to be foreseen: it may so happen that in the country where payment has to be effected a more or less depreciated paper currency which is compulsory tender may have been substituted for the coinage. *The law establishing the forced currency of paper being one of public policy, the creditors may be compelled to accept this paper money at its nominal value.*"

BROCHER (Cours de Droit international privé, Paris, 1882, t. II, p. 242) :

Brocher remarks that this Article 1895 belongs to the category of usual rigorous

legislative measures which, as regards forced currency of money tokens or of fiduciary securities, can be assimilated thereto.

"Those are measures", he states, "which can only be resorted to *by imposing limitations upon the will of the individual.*"

It should be added that the exceptions set out by these authors in the works referred to cannot be applied to the Franco-Brazilian dispute which has been submitted to the Court for decision. [135]

X.

In this question between France and Brazil, it is useless to refer to the practice of the courts in these countries. In fact, all reference to this source of law and any attempt to allow oneself to be guided thereby should be avoided. Indeed, in accordance with Article VI of the Special Agreement:

"In estimating the weight to be attached to any municipal law of either country which may be applicable to the dispute, the Permanent. Court of International Justice shall not be bound by the decisions of the respective courts."

That means that the Court may and must take into account municipal laws in order to decide the questions submitted to it, but at the same time it must weigh the meaning and scope of such municipal laws in the light of its own particular views without allowing itself to be guided or influenced by the decisions of the national courts of the Parties in this respect.

XI

By the French law of June 25th, 1928, it was decided that the franc, the French monetary unit, should be constituted by 65.5 milligrams of gold, 900/1000 fine. And the law goes on to say: "This definition shall not apply to international payments which, prior to the promulgation of the present law, may have been validly stipulated in gold francs."

Why did the law of June 25th, 1928, make this declaration ?

It cannot be understood without admitting that it is French law, which must control the method of payment. If we suppose that the will of the Parties, in speaking simply of *gold francs*,

ensures that payment shall be in gold of the weight and fineness then in force, whatever be the provisions of Article 1895 of the French Civil Code, the rule laid down by the law of June 25th, 1928, which I have just quoted, is useless and incomprehensible.

This new law, then, is undoubtedly a very serious argument from the point of view of the application to these loans of French legislation on methods of payment. [136]

It therefore seems evident that the said law had the purpose of implicitly derogating from Article 1895 of the French Civil Code, to the prejudice of debtors who entered into contracts when that article was in force. It must be emphasized that Article 1895 does not prevent a change of currency. On the contrary, it recognizes this sovereign power of the French Government and it is precisely because the currency may be changed at any time that the article in question was considered necessary and inserted in the Civil Code.

But what cannot be done, to the prejudice of creditors or debtors who have made contracts for payments in France while Article 1895 was in force, is to decree that the currency shall be changed but that the change shall not be enforceable against such creditors or debtors. That is to say, it is impossible for one Party to a convention to change a rule of law to which that convention has been subject from the time of its conclusion.

But there is yet another aspect of the problem which is most important.

The Special Agreement concerning the Brazilian loans *was signed at Rio de Janeiro on August 27th, 1927, and it is inadmissible that one of the Parties, on June 25th, 1928, almost a year later, should be entitled to resolve in its own favour by domestic or national legislation the international question already submitted to the Court, or to invoke this law which it has enacted after the Special Agreement, as an argument for its own case. It seems to me clear that the second paragraph of the French currency law of June 25th, 1928, must be entirely disregarded in this case.*

XII.

The question of gold currency and of its mention in the laws, contracts and bonds referring to these loans loses all its importance once we adopt the legal position that we have developed. If payment is subject to the law of the place where it is made, as concerns the currency in which the debtor must pay, Brazil can only be obliged to deliver gold in the cases where gold currency is legal tender at the date of each payment, at [137] the place where payment is made, that is to say,

at Paris so far as this case is concerned. And Brazil need only repay the amount in figures in the currency in circulation at the time of payment.

And as Paris is the only place where payment in the national currency for the amount of the sum due is to be made, it is useless to raise the question of the French gold franc or theoretical franc. The French franc, and the French franc only, was meant in the documents. Seeing that at the date of the loans the gold franc was legal currency in France, there was nothing to prevent that currency from being expressly mentioned in the bonds. But, as Article 1895 of the Civil Code was in force, all bondholders could and ought to know what was the significance of such a provision, which was necessarily subject, as regards payments to be made in France, to the terms of that article. The opposite view implies that it is sufficient to conclude contracts outside France or to make them under the name of a foreigner to render the "Code Napoléon" inapplicable.

XIII.

On this application of Article 1895 is based the argument concerning the carrying-out of the terms of the loan contracts by means of payments made and accepted in the course of a number of years following the depreciation of French currency. So far as Brazil is concerned, which always used this currency for her payments, this is proof of the meaning attributed by her to the gold clause. The same applies as regards the bondholders. They might from the very first have refused to receive the amount of their bonds and coupons in that depreciated currency as they did subsequently.

XIV.

Regard must also be had to the fact that the bonds and coupons of these loans must be paid to bondholders at other places at the sight rate of exchange on Paris. Exchange rates exist for practical purposes only, and when one buys bills of exchange or, cheques on a particular place, one is paid [138] in the money in circulation at that place. It is for that, and that alone, that exchange rates are quoted. This provision affords yet another argument in favour of the obligatory application of Article 1895 of the French Civil Code.

XV.

When payments are controlled by such a legislation, it is not enough to insert the gold clause to ensure protection against changes of the currency and against the compulsory tender régime. The contracting Parties have the right, and often make use of it, to stipulate that payment shall be made in the currency of some particular country of the same weight and standard as that in circulation at the time of the contract.

They are also entitled to stipulate for indemnities to be paid in the money, which is legal tender, if there are changes. They may adopt other precautions to protect themselves from what is known as "agio". If in the case before us the Parties have done nothing in this respect, it is their own fault, and they must accept the consequences of their lack of foresight.

XVI.

To sum up, in accordance with what I have said, the question in the Special Agreement should, in my opinion, be answered as follows :

With regard to the Brazilian Federal Government's 5 % loan of 1909 (Port of Pernambuco), 4 % loan of 1910 and 4 % loan of 1911, the payment of coupons matured and not barred by prescription on August 27th, 1927, and coupons which have matured or shall mature after that date, as also repayment of bonds drawn for redemption but not actually paid which are not barred by prescription on the date of the Court's decision, or of bonds subsequently to be redeemed, must be effected at Paris by remittance to the French bondholders in the French currency which is legal tender, and at the other places agreed upon, in the local currency at the sight rate of exchange on Paris on the day of payment.

(Signed) A. S. De Bustamante.

[139] Dissenting Opinion by M. Pessoa.

[*Translation.*]

I.

The Lack Of Jurisdiction.

1.—The Court can only have jurisdiction under the terms of Articles 13 and 14 of the Covenant, or under the Statute, which form its constitutional laws.

According to both of these instruments, for the Court to have jurisdiction it is not enough that the Parties should be States or Members of the League of Nations (Articles 34 and 36 of the Statute); it is also essential that the case, in itself, should be of an "international character" and should be governed by international law (Articles 13 and 14 of the Covenant and 38 of the Statute). The latter condition has already been recognized and stated by the Court on more than one occasion: Judgments No. 2, pp. 12 and 16; No. 13, pp. 27 and 28, etc. In all cases between two States in which one has taken up the defence of the interests of its nationals, for instance in the *Wimbledon*, *Mavrommatis*, *Upper Silesian* cases, etc., the Court, in order to establish its jurisdiction, has always shown that the subject-matter of the dispute was governed by international law and that the purpose of the decision was to enforce principles or apply instruments of international law.

Now, the Court itself admits in the judgment delivered in the Franco-Serbian dispute (page 18), to which it refers as regards its jurisdiction in the Franco-Brazilian affair, that this affair *exclusively* concerns "relations between the borrowing State and private persons, that is to say, relations which are, in themselves, within the domain of *municipal law*".

It therefore seems to me clear that the Court is not competent to pass upon this dispute.

Even if an extension of the Court's jurisdiction is desirable, it is necessary to begin by modifying the texts governing that jurisdiction.

2.—In order to establish its jurisdiction in this case, the Court explains (judgment in the Serbian affair, p. 18) that, the [140] Brazilian Government having "contended that the service of the loans was being effected by it in full conformity with the obligations resulting from the

contracts, this view was not shared by the French Government. As from this point, therefore, there existed between the two Governments *a difference of opinion*.... It is this *difference of opinion* between the two Governments and not the dispute between the Brazilian Government and the French holders of the loans which is submitted by the Special Agreement to the Court."

There is however no distinction between this *difference of opinion* and "the dispute between the Brazilian Government and the French bondholders".

Brazil hold that the service of the loans should be effected in paper; the French holders claimed payment in gold.

The French Government decided to take up the case on behalf of the bondholders.

What is the difference of opinion between the two Governments? The same, absolutely the same as that existing between Brazil and the bondholders: the Brazilian Government continues to defend payment in paper and the French Government, representing the claims of the bondholders, continues to maintain that payment should be in gold, as the bondholders contended. There is no difference.

The fact that the two are identical is so evident that the Court is unable to avoid admitting it (Franco-Serbian judgment, p. 18) : "... in substance", it says, the difference of opinion between the two Governments is "*identical* with the controversy already existing between the debtor Government and its creditors".

But, if the difference of opinion between the two Governments is identical with the controversy existing between the debtor Government and its creditors, a dispute which, according to the judgment, "is exclusively concerned with relations at municipal law" and consequently is outside the Court's jurisdiction, it is not easy to see why and how the difference of opinion between the two Governments can be within that jurisdiction.

3.—The Court now contends that it is not only questions of international law which may be submitted to it. And in favour [141] of this new doctrine, it cites paragraph 2 of Article 36 of the Statute, according to which States may recognize as compulsory the Court's jurisdiction in legal disputes concerning "the existence of any fact which, if established, would constitute a breach of an international obligation". In support of this clause the Court observes that Article 13 of the Covenant includes the disputes above mentioned "among those which are generally

suitable for submission to arbitration or judicial settlement".

In the first place, however, the terms of Article 36, paragraph 2, only apply in respect of the *optional clause regime*, a special regime, differing so widely from the normal regime, that the Statute specifies separately the cases in which the Court has jurisdiction under the two regimes (Articles 36 and 38). In the second place, there is in the Franco-Brazilian case no fact which, if established, would constitute a breach of an international obligation; there are contracts concluded between a Government and individuals, contracts which, as is recognized by the Court itself, are governed by the *municipal* law of the debtor or of the creditor, and the breach of which is therefore merely a matter of *private* law.

4.—Another consideration. A State may take up a case on behalf of its nationals. It is by application of this principle that France has assumed the defence of the interests of the French bondholders before the Court.

But who are in this case the French nationals? Who are the French bondholders?

No one knows. No one can know. Having regard to the nature of the bonds, which are freely transferable, the French bondholders at the time of the Special Agreement may even no longer be the holders of the bonds. And in that case, how is the intervention of France to be justified? The French Government itself does not know who the nationals, whose interests it is defending, are. In the *Mavrommatis*, *Wimbledon* and *Upper Silesian* cases, it was well-known who the Greek or German nationals concerned were. The respective proceedings clearly defined them. Here it is not so; here they are not known and there is no means of knowing them. In this suit, we have a State taking up a case on behalf of persons unknown, anonymous, and perhaps already non-existent. [142]

It is true that Brazil, in spite of this, has accepted the Special Agreement; but the Court's jurisdiction cannot be based on the wishes or sufferance of the Parties. The Court either is competent under its Statute or is not competent. If it is not competent, no agreement between the Parties can give it powers which its constitutional texts withhold from it.

5.—For the reasons set out above, in my opinion the Court, instead of disregarding its own jurisprudence and interfering with questions of private law at the risk of providing serious disputes in the future, should have declared that it had no jurisdiction and thus left France and

Brazil free to have recourse to direct agreement or arbitration, which are the only appropriate methods of settling such disputes.

II.

The Interpretation of the Parties.

6.—There is no doubt that the gold clause appears sometimes in the contracts, sometimes in the bonds and sometimes in the prospectuses of the Brazilian loans. But this circumstance in itself does not decide the question submitted to the Court.

What must be ascertained is whether this clause really represents the result of a previous considered and deliberate agreement between the Parties, and whether it represents an intention and definite undertaking on the part of Brazil to bear the depreciation of French money. Now, the contentions made in this connection by the Brazilian Government have given rise to doubts in my mind which the reasons given in the judgment have not succeeded in overcoming.

7.—The depreciation of the franc began in 1915. In 1917, in which year, according to the judgment, Brazil effectively resumed the payment of interest on the loans, the pound sterling rose to frs. 27.83 (instead of frs. 25.22) and the dollar to 5.86 (instead of 5.18).

As from 1919, the fall increased in alarming proportions, as is shown by the following table of averages: [143]

<i>Years.</i>	<i>Pound sterling.</i>	<i>Dollar.</i>
1919	31.844	7.307
1920	52.676	14.476
1921	52.204	13.541
1922	54.633	15.013
1923	75.689	16.572
1924	85.682	19.414

In 1925 the depreciation increased still further (£1 = 102.237 frs.; \$1 = 21.175 frs.). In 1926, in July, a pound equalled 243 francs! Even in the second half of that year a reaction set in: the franc was reascending in value, and since 1927 it represents about one-fifth of its value (£1 =

124.21; 1 dollar = 25.50 frs.).

Now, from 1917 to 1927, or for ten years—twenty completed period of six months—, the holders of the Brazilian loans, in spite of the enormous depreciation of the franc and the loss of millions which this depreciation represented for them, quietly accepted, without protest or representation, payment of the interest on their bonds in *paper francs depreciated to the extent indicated!*

Is it conceivable that they would have acted in this way if they had been convinced that the contracts guaranteed them payment in gold?

This seems to show that, in the eyes of the creditors themselves, the gold clause attached to the payment of interest and redemption of the loans had not the significance now attributed to it.

8.—For the judgment, the "significant period" as regards the inactivity of French holders is "between 1919 and 1924", for "until 1919 there appears to have been only a slight difference in the value of French currency as compared with a gold basis" (page 37).

The "significant period" as regards the inactivity of the French holders begins not in 1919 but in 1917, for at that date the depreciation of the franc was already more than 10%, and this, on a total interest of more than 8,000,000 francs a year, represents a fairly considerable sum. As regards the end of the period, the Special Agreement, which is dated *August 27th*, 1927, states that payment *in paper* took place *up to that date* ("as hitherto", says Article I). [144]

We are therefore justified in placing the period between 1917 and 1927.

But let us leave this point and accept the period fixed by the judgment, that is to say, from 1919 up to the first six months inclusive of 1924 (diplomatic negotiations having begun on September 1st).

We then find ourselves confronted with the following fact:

The total value of the Brazilian loans is 200 million francs. Their annual interest equals 8,400,000 francs. These figures, according to the judgment, represent *gold value*.

In 1919, the depreciation of the French bank-note was 21%. In receiving *in paper* their 8,400,000 francs of interest, the bondholders lost 1,764,000 francs. In 1920, the depreciation was 53 %, and the loss 4,452,000. In 1921, the depreciation was 52 %, and the loss 4,368,000. In 1922, the depreciation was 54 %, and the loss 4,536,000. In 1923, the depreciation was 67 %, and the loss 5,640,000.

and the loss 5,628,000. Finally, in 1924, the depreciation was 71 %, and the loss (six months) 2,982,000.

So that from 1919 to 1924 the holders of the Brazilian loans—including holders who may be described as *permanent* holders, always the same, such as bankers, companies, capitalists, possessing, *from the date of subscription* thousands of shares—received, instead of 46,200,000 francs, less than half, i.e. 22,470,000 francs, thus suffering a loss of 23,730,000 francs!

Notwithstanding this colossal loss, they never addressed a protest or representation either to the Government or to the courts or even to the papers! What explanation can be given of this fact, save that the intention of the Parties was not to contract in gold and that the holders were sure that they had no right to payment in gold?

9.—It will be said that all the bondholders are not French bondholders, and that the whole of this enormous loss cannot be laid upon the latter who are the only ones represented in this case. But the great majority consists in French bondholders; thus the greater part of the losses falls to their share and their inaction clearly shows that they also were certain that the debtor was not obliged to pay in gold. [145]

The silence of the creditors of other nationalities shows that this conviction was unanimous.

10.—The judgment says, to explain the inaction of the creditors, that "there were many [French] bondholders; that as individuals they were powerless as against the Brazilian Government, and it was necessary for them to associate themselves together and to interest the French Government in their case" (page 32).

But the French bondholders had no need to organize themselves and concert measures for the defence of their rights. This defence was organized from the very beginning of the fall of the franc, for the *Association nationale des Porteurs français de Valeurs mobilières*, which asked the French Government to intervene in this case, has existed since 1898, and its object is precisely "the defence of the interests of the French holders of French and foreign securities issued or negotiated in France", as is expressly stated by Article I of its statutes. Furthermore, the bonds of the loans are not only in the hands of individuals who are powerless against Governments but are

chiefly in the hands of Companies, bankers and capitalists who have lawyers at their disposal and very well know how to approach the Government and the courts.

11.—It is also contended that as bonds transferable from hand to hand are concerned, there is no way of indentifying the holders in order to compare the individual interpretation of each one of them with the interpretation which follows from the actual wording of the contracts. The judgment however itself regards the French bondholders as perfectly identified, otherwise it would not have recognized the French Government's capacity to appear before the Court. For the purpose of our argument, however, this identification is not necessary, since what we contend, and what the facts show, is that none of the bondholders, whatever their name, nationality, capacity or profession may be, has ever regarded the contracts as being gold contracts. The transferability of the bond, instead of enfeebling, strengthens our argument. It creates a presumption that the number of holders during the period of five years and a half fixed by the judgment must have been really very high [146] and, in spite of this, there has been no opposition in any country to the payment of the Brazilian loans in paper.

12.—It is therefore an indisputable fact that from 1917, the date of the resumption of the service of the loans, to 1927, the date of the Special Agreement, or, according to the judgment, from 1919, the date when the depreciation became more marked, to 1924, the date on which "it would appear" that the diplomatic negotiations began, Brazil *always* paid *in paper*, and the subscribers and holders, in spite of all mentions of *gold*, in spite of laws of authorization, decrees, contracts, bonds, coupons and prospectuses, *always received paper* in payment, thus maintaining a loss which, merely during the period from 1919 to 1924 alone, amounted to 23,730,000 francs out of 46,200,000!

Such is the interpretation placed upon the contracts by the Parties themselves.

13.—But other facts, equally important, show that this interpretation represented the general opinion. The proceedings in the Franco-Serbian case have indeed enabled it clearly to be seen that not only the bondholders but also the bankers and, which is more serious, the French Government itself, did not construe differently the Serbian contracts, which are from this point of view quite identical with the Brazilian loans.

Thus, whenever Serbia asked for payments *in gold* on account of her loans, the banks made her pay an additional sum described as a special premium.

Thus again, in 1921, Serbia not yet having received a portion (14 million francs) of her 1913 loan, this sum was remitted to her *in paper francs which were already much depreciated* (£1 = frs. 52.204; \$1 = 13.541).

And again, when, in consequence of difficulties arising out of the war, France, in agreement with England, undertook to furnish Serbia with the funds necessary for the payments due to the holders of these same loans, it is also in *depreciated paper francs* that she provided the sums asked for.

14.—It is said that these facts cannot be used in argument against the bondholders who were not responsible for them. But they serve to show how the contracts were [147] interpreted by all those who took part in carrying them out. Moreover, with regard to the last fact mentioned (the furnishing of sums in *paper* money by the French Government), as the Party appearing before the Court is not the bondholders but the French Government itself, the fact can, it seems to me, perfectly well be used against the latter.

15.—It is moreover easy to understand why the loans have always been interpreted in this way.

At the date of the contracts, the French bank-note had for a long time had the same value as gold; its credit was solidly placed on universal confidence and it offered the most complete guarantees of stability. The expressions *paper franc*, *French franc* or *gold franc* were used indifferently; all were *francs*. Each of these expressions conveyed *the same idea*, seeing that the note and gold were exactly equivalent. Whether one paid in *metal currency* or in *paper currency*, it was always payment in *gold*. No one imagined that this parity could disappear. The gold clause was thus merely regarded as a guarantee that the French bondholder would not be exposed to surprises resulting from the variations of foreign exchange and would be paid in his national currency, that is to say, francs.

This has been recognized by the judgment of the Tribunal of the Seine of July 26th, 1926, which, in a case to which the Brazilian Government was a Party, decided that the gold guarantee, undertaken in that case by Brazil, was only intended to "*give to its own currency* a certain

stability which it did not possess at the time of the contract". (Clunet, 1927, P. 95.)

This is admitted by the French Case itself: after recalling that stipulations regarding payment in gold were, before 1914, frequently resorted to by States *whose national currency was subject to variation* and who were endeavouring to obtain capital from abroad, it makes this admission: "*It was in these conditions that Brazil was led to insert them in the greater part of its loans.*"

16.—It is therefore an indisputable fact that the Parties, for many years, and in perfect harmony, interpreted and executed the contracts as *paper* loans, which they were generally understood to be. Now, when the contracting Parties execute [148] the contract *in a certain manner, in part, or for a certain time*, the contract must be executed in the future *in the same manner*. (Giorgi, *Teor. Oblig.*, Sp. transl. *Rev. Leg. Jurispr.*, Vol. IV, p. 185.)

It is of small importance that literally the terms of the contracts are not ambiguous; as we stated at the outset, it is not the *literal* sense which is to be considered in order to arrive at a sound judgment, but the *intention* of the Parties. The terms of contracts, however clear, are overcome by the intention underlying them, if the manner in which they have been executed by the Parties proves that their intention was not precisely that resulting from the literal meaning of the words. There is a rule of law common to most legislations and which is contained in Article 1156 of the French Civil Code, by which, in interpreting contracts, "the common intention of the Parties must be sought for *in preference to abiding by the literal meaning of the words*".

17.—Let us assume however that the foregoing reasons are not juridically sound. In that case it must at all events be recognized that this is a *doubtful* case, which, moreover, appears from the very fact that it has been submitted to the Court; but, under such conditions, the principle of law must be applied to it according to which, "in case of doubt, the contract is to be interpreted *against the person who has stipulated and in favour of the person who has contracted the obligation*" (French Civil Code, Art. 1162).

III.

The French Civil Code and Other Public Policy Legislation.

18.—But let us suppose that the *gold* clause in the Brazilian contracts really constitutes an undertaking to pay in gold or its equivalent, to provide against the risks of depreciation in French currency.

In this case, the gold clause would not be valid and the contracts could not be executed in France.

The law which governs the conditions for and the currency of payments in contracts such as those which form the subject of the present case, concluded between a State and private [149] subscribers or bondholders of another State, is the territorial law of the country where payment is made. This principle is found in almost all legal text-books, it is established by the decisions of French courts, as we shall see later, and is already included in a Code of International Private Law, adopted by several nations, the Bustamante Code, of which Article 170 provides that "the local legislation governs the conditions of payment and the currency in which it is to be made".

Now Article 1895 of the French Civil Code runs as follows:

"The obligation resulting from a loan in money is *always* simply for the amount in figures indicated in the contract, and if there has been an increase or *diminution* of specie before the time of payment, *the debtor must return the amount in figures lent, and must return only this amount in the specie in currency at the time of payment.*"

Nothing could be clearer: the debtor must return the amount *in figures* lent and must return this amount only *in the specie in currency at the time of payment.*

"Any stipulation", says Duvergier, "which would directly or indirectly result in authorizing the lender to *refuse currency at its legal value must be without effect.*" (*Droit civil*, Vol. VI, p. 198.)

And Fiore says: "If, for reasons of public interest, the law provided that bank-notes should be given and received in payments as ready money *at their nominal value*, in spite of any legal provision or *any stipulation to the contrary*, the creditor *could not refuse them or receive them only as a lesser value.*" (*Droit international prive*, Vol. I, No. 195.)

The French Civil Code, Article 1895, was in force at the time when the Brazilian loans were contracted, and the subscribers could not be ignorant of it. They therefore knew that, in

paying in bank-notes, which are one of the currencies *which are legal tender* (law of August 12th, 1870), a debtor would discharge his obligation, and a creditor would not be entitled to refuse the payment: refusal would even constitute an offence which is expressly provided for under Article 475, § 11, of the Penal Code.

19.—In contracts, it may be said, it is the will of the Parties that controls, and the Parties in this case might very [150] well have intended to exclude payment in bank-notes and to provide for payment in gold alone.

No, that would not be possible: the laws governing legal tender are laws appertaining to *public policy*, since they are directly concerned with the administration of the country and with its social structure, and consequently contracts of a private law character have no force as against such laws. This is the principle embodied in Article 6 of the French Civil Code [*Translation.*]: "Contracts of a private law character cannot derogate from laws concerning public policy."

"The rule", Aubry and Rau state, "that payments of sums of money must be made according to the *nominal* value of the currency at the time when these payments were effected, *being a rule founded on interests relating to public policy*, it follows that any contract infringing such rule must be considered as *void*." (*Cours de Droit civil*, 4th ed., Vol. IV, § 318, p. 159.)

"Notes of the Bank of France", Planiol states, "may be used for payments *in place of gold or silver*, and that is so whatever be the sum to be paid. *The creditor is not entitled to refuse payment*, and ALL CONTRACTS TO THE CONTRARY ARE VOID, the law making bank-notes legal tender being one *of public policy*." (*Traite de Droit civil*, Vol. II, 6th ed., p. 144, No. 423.)

But there is no need to have recourse to text-books to prove that Article 1895 of the French Civil Code is a provision of the nature of public policy. This nature is recognized by the Penal Code, which, by Article 475, § 11, as has already been observed, punishes "whosoever refuses coin or money of the realm not being false or defalsed *for their current value*".

20.—Besides the Civil Code, other laws relating to public policy, the law of legal tender (August 12th, 1870) and that of forced currency (August 5th, 1914) render the gold clause illegal in France. [151]

IV.

The Jurisdiction of French Courts.

21.—The judgment in fact agrees with this affirmation as regards forced currency but draws a distinction according to which "any gold clause is void when it relates to a domestic transaction, but it is not so in the case of international contracts even if payment is to be made in France".

And in support of this, the jurisprudence of the French courts is cited (page 35).

According to the Special Agreement, Article VI, "in estimating the weight to be attached to any municipal law of either country which may be applicable to the dispute, the Court shall not be bound by the decisions of the respective courts".

That evidently means that "the Court is bound to set on one side the decisions of international tribunals and itself to give that interpretation of the legal provisions which may seem most just in the particular case".

If the Court believed that it had not this right, nor had it the right to accept as definitive, without any personal examination of the public policy legislation of which we have spoken, the interpretation resulting from the jurisprudence of the French courts, which had been expressly excluded by the common consent of the Parties, and in that case it should have abstained from deciding the question of the applicability of that legislation to the payments to be made in France.

It is notwithstanding what the judgement has done, amidst difficulties arising from the fact that the dispute is to be determined by private law and therefore does not come within the Court's jurisdiction.

But the jurisprudence of the French courts in this matter has not that continuous, uniform and fixed character which is required in order to make it binding. The pleadings before the Court have clearly shown that for the purpose of estimating the validity or nullity of the gold clause, this jurisprudence bases itself at times on the nationality of the Parties, at others on domicile, at others on the locality of payment and at others on the nature of the contract. [152]

Judgments exist in support of varying opinions.

Anyhow, M. Georges Hubrecht, in a book published only about five months ago, in which he considers at length all the phases of the jurisprudence of the French courts and not

merely a few judgments, observes that after all these modifications this jurisprudence appears to have become fixed and to have consecrated the following principle: "*It is the place of payment which is the sole determining factor for deciding whether the gold clause or the foreign currency clause is valid or not on grounds of forced currency.*"

It is therefore not sufficient that there shall be an *international* agreement in order to render the law on forced currency inapplicable; account must be taken of the place of payment under the agreement; if it is in France, the French law on forced currency is applicable.

"In the case of any payments of French francs which are made *in France*", M. Savatier states, "*the French laws on fiduciary circulation are obligatorily applicable; paper francs and gold francs as we have defined them are necessarily considered to be identical....* On the contrary, there is no authority compelling the application to a foreigner of laws of police and public safety such as those with which we are concerned.... It is thus seen how simply and easily the question of the validity of the *gold clause* in *international relations* may be decided; it will be sufficient to look to the *place of payment.*" (Dalloz, 1926, 2nd Part, p. 107.)

And M. Niboyet, also cited by the Brazilian Memorial, says : "Forced currency is obligatory *in international relations* in the same way as in domestic relations, *in all cases when that payment is to be made on French territory.*"

22.—Reference is made to the law of June 25th, 1928, which abolished the forced currency set up by the law of August 5th, 1914, and, after defining the franc, the French monetary unit, declares (Art. 2) that: "*This definition shall not apply to international payments which, prior to the promulgation of the present law, may have been validly stipulated in gold francs.*"

But no argument can be drawn from that provision as regards the Franco-Brazilian affair. The law of June 25th, 1928, is *two months later in date than the Special Agreement*, and a [153] legislative act *later in date than the dispute and emanating exclusively from one of the Parties cannot be invoked against a right previously acquired by the other Party.*

23.—The considerations set forth in this last chapter serve to show that, even admitting the obligation to pay in gold as regards the Brazilian loans, the conclusions of the judgment are too absolute: due account should have been taken of the restrictions by which French public

policy legislation—the Civil Code, the laws on legal tender and on forced currency—limits the Court's latitude of choice in the matter.

(Signed) Epitacio Pessoa.

[154] Annex to Judgment No. 15.

DOCUMENTS SUBMITTED TO THE COURT BY THE PARTIES
IN THE COURSE OF THE PROCEEDINGS.

I.—Documents submitted by the agent to the French government:

A.— *Annexes to the Case:*

Special Agreement (August 27th, 1927).

Note from the French Embassy to the Brazilian Federal Minister for Foreign Affairs (September 1st, 1924).

Decree No. 6368 of February 14th, 1907, modifying the special instructions for carrying out the improvement works on Ports, issued by Decree No. 4859 of June 8th, 1903.

Law No. 1837 of December 31st, 1907.

„ „ 1841 „ „ „ „

Decree No. 7003 of July 2nd, 1908.

Extract from contract made on August 4th, 1908, between the Brazilian Government and MM. Bartissol and Demetrio Nunes Ribeiro for carrying out works of improvement in the Port of Recife (Pernambuco).

Decree No. 7207 of December 3rd, 1908, authorizing an issue of bonds for the payment of works of improvement in the port of Recife.

Prospectus of 1909 loan.

Extract from contract made on October 25th, 1909, between the Federal Government of the United States of Brazil and the Goyaz Railway Company.

Extract from contract entered into by the *Credit mobilier francais* and the Goyaz Railway Company, February 10th, 1910.

Decree No. 7877 of February 28th, 1910.

„ „ 7878 „ „ „ „

Prospectus of 1910 loan.

Bond of 1910 loan.

Extract from Decree No. 8648 of March 31st, 1911.

Decree No. 8794 of June 21st, 1911.

Prospectus of 1911 loan.

Bond of 1911 loan.

Extract from law of 17th Germinal Year XI (March 28th, 1803).

Extract from law of August 5th, 1914.

Law of February 12th, 1916.

Extract from a Judgment of the Court of Cassation, May 17th, 1927.

Extract from a Judgment of the Court of Appeal of Paris, April 16th, 1926.

Extract from a Judgment of the Court of Nimes, January 9th, 1928.

Extract from a Judgment of the Court of Cassation, January 23rd, 1924.

B.— *Annexes to Counter-Case:*

Extract from monetary law of June 25th, 1928.

Judgment of the Court of Appeal of Paris (February 15th, 1924). [155]

C.— *Documents filed during the hearings:*

Prospectus of 1909 loan.

II.—Documents submitted by the agents to the Brazilian and French Governments:

Original certificates of the bonds of the 1909, 1910 and 1911 loans.