

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between	)	
	)	
The Ecuadorian Association, Ltd.	)	On Appeal
	)	from Order
Complainant,	)	Denying Pe-
	)	tition of Re-
and	)	ceiver for
	)	Call on
The Ecuador Company, et al.,	)	Robert
	)	C. Pruyn.
Defendants.)	)	
	)	
	o	

BRIEF FOR RECEIVER—APPELLANT.

The Court of Chancery denied the petition of Charles C. Black, receiver of the Ecuador Company, an insolvent corporation, for authority to sue Robert C. Pruyn on a contract for an unpaid subscription to its capital stock. Our brief for the receiver in the Court below was printed, and we beg leave to submit copies thereof to this Court, supplemented by the following comments on the opinion of the learned Vice-Chancellor:

COMMENTS ON THE OPINION.

We think that the Vice-Chancellor has not given us the decree required by his own finding of fact. The learned Vice-Chancellor seems to think that in order to hold a subscriber for shares, certificates must have been actually issued to him, and accepted by him. But certificate acceptance is only one of many ways to establish a contract to take shares.

In this case Pruyn agreed for an adequate consideration to form this company, and to capitalize it. He did put up on its account over \$50,000, and after part of it was put up got a resolution of directors that all his advances, made or to be made, should, at his option, be a debt. That included the very qualification payment for the shares of his agents, the directors. He received a transfer to himself personally of a large number of shares of Ecuadorian Association stock on an agreement, a part of which was that he should provide capital for the Ecuador Company, and the Ecuador Company assumed by contract an immense liability, with his approval.

Mr. Pruyn undertook to take the shares in question, and to pay for them in shares of the Duran Terminal Company and of the Ecuadorian Association, and the Vice-Chancellor so finds. In the opinion he analyzes the facts with great acumen, and concludes: "There was, therefore, a binding contract to take stock and to pay for it in a particular way; but I do not find in the evidence that this contract was executed." (Case on Appeal, p. 13 to 15.) And the Vice-Chancellor goes on to say that the certificate for the shares in question was not accepted by Pruyn.

We contend that it was. But suppose it was not, what difference does that make? The acceptance of a certificate is of no significance, except as evidence of a contract to take stock and pay for it. Such a contract may be proved by other evidence, and the Vice-Chancellor has shown and has found that such a binding contract was in fact made. It is on that very contract that we ask leave to make a call, and on default, to sue. Such a contract to take stock is for convenience called a subscription for stock, though neither a formal subscription paper, nor the issue of a stock certificate is necessary. To say that we make a call on a stockholder is but another way of saying that we demand that he shall

carry out his contract to take shares, or be held for damages for its breach. To sue at law on a call, is to sue for damages for breach of a contract of subscription. We ask the Chancellor to authorize us to make a demand to fulfill, and to follow it up by a suit at law, for breach, and we further ask, in this particular case that the Court shall, by its decree, establish the fact directly in issue that there is an unpaid subscription to capital stock by Mr. Pruyn. This issue has been clearly made and most expensively litigated, and was decided in our favor by the Vice Chancellor, when he found that "there was a binding contract to take stock and pay for it in a particular way," and the decree should show this adjudication so that the Receiver may not be compelled to go out of the state and litigate it in another state all over again.

The fact that Mr. Pruyn agreed to pay for the shares in stock of another company does not make it any the less a stock subscription contract, not does it enable him to repudiate the contract and refuse to pay at all.

Such payment is a mere substituted payment for cash. It is a contract by the Company to issue stock for property purchased and by the subscriber to pay for stock in property which is presumed to be of value equal to the par value of the shares. Whether the call is to pay in cash or in shares of another Company, in either case on default the remedy is to sue at law on the subscription contract. There can be no measure of damages in an action on a contract of subscription payable in property, other than the par value of the shares subscribed for; but whatever the measure of damages, the existence of a valid contract and the right to call for its fulfillment and to sue on it if not fulfilled should all be established by decree on this application.

The Vice-Chancellor seems to think that we are asking Mr. Pruyn to do something different from

that which he has agreed to do. He asks, "Can Pruyn be compelled to become a stockholder on any other terms than had been agreed upon?"

(Case on Appeal, p. 15, l. 22.)

The answer is that we are seeking to hold him on the very contract he has made, either to fulfill it, or to stand a suit for damages for breach of it. This is the situation which exists in every case of a call on those liable to pay for stock. While in many cases the contract is evidenced by acceptance of a certificate, yet such an acceptance is not essential, and does not constitute the contract of subscription on which such call and action is founded. A subscription for stock payable in property is just as actionable as a subscription payable in cash.

A further ground of liability may be stated. Mr. Pruyn is liable as promoter of the Ecuador Company. As such he undertook to contribute to the capital of this company the funds necessary to enable it to carry out certain obligations into which the company entered on that understanding.

On this ground also the Vice-Chancellor should have held him liable, and should have ordered suit brought against him by the Receiver.

Hollis v. Am. Union Electric Co., 21
Dick. 457.

IN CHANCERY OF NEW JERSEY.

Between	)	
	)	
THE ECUADORIAN AS-	)	
SOCIATION, LIMITED,	)	
	)	On Petition of the ¹⁰
Complainant,	)	Receiver against
	)	Robert C. Pruyn.
and	)	
	)	
THE ECUADOR COMPANY,	)	
AND OTHERS,	)	
	)	
Defendants.	)	

BRIEF FOR THE RECEIVER.

The petition of Charles C. Black, Receiver of the Ecuador Company, shows that the debts of the Company amount to \$651,109.43; that the Receiver has no assets in hand, and that there is an unpaid subscription for capital stock—the certificate for which is outstanding—issued to Robert C. Pruyn for \$325,000, and that Pruyn paid to the Company \$64,703.74, but afterwards claimed this to be a loan (Case, ³⁰ p. 2). The answer of Robert C. Pruyn denies the subscription, or any liability to the Company (Case, p. 5).

The issue is, therefore, distinctly framed, whether Robert C. Pruyn is liable to the Company on the theory of a subscriber to its stock to the extent of \$325,000. If he is so liable, the Court should so adjudge, and should order suit therefor brought against him. If he is not so liable, the Court should refuse to authorize the receiver to bring suit against him. ⁴⁰

The property interests to which the dealings involved in this matter relate, are all connected with the Guayaquil & Quito Railway Company. This Company is a New Jersey corporation, which was formed in 1897, to build and operate a railroad in the Republic of Ecuador, with a length of 286 miles. It is authorized to issue bonds, guaranteed by the Republic of Ecuador, to the extent of \$12,282,000, and 10 7 per cent. preferred stock, \$5,250,000, and common stock \$7,032,000. The Ecuadorian Association is a Scotch Company, which, in the year 1900, took a contract to build the railroad, and to receive as the work went on all the stock and all the bonds, except that 49 per cent. of the common stock goes to the Republic of Ecuador. In January, 1902, the Association being in debt, a trust agreement was made with Messrs. Gardyne, DeFrieze and Lockwood, as Trustees, for the benefit of bondholders, putting into the 20 control of these Trustees certain of the railroad stocks and bonds. In the summer of 1902—there being a further need of money—a loan was procured by the Association on bonds of the Railroad Company, pledged under a contract with Dick, Lisman and others, which was of such a character that in time they might obtain a controlling interest in the Railroad Company, if the debt should not be paid. In December, 1902, nearly 100 miles of the railroad was in operation, and 25 more were nearly completed. 30 Archer Harman, President, and Major Harman, Chief Engineer, were anxious to raise money and get a release from the Dick-Lisman syndicate, and thereby retain control of the railroad. At this stage, about December, 1902, Archer Harman met Robert C. Pruyn in New York City, and discussed the railroad and certain collateral enterprises, namely:

1st. The Duran Terminal of 10,000 acres on the Harbor of Guayaquil, for which there was an option 40 to be obtained to purchase at \$90,000.

2nd. The Columbe Coal Mines—within reach of the railroad by a branch—purchasable for \$30,000.

3rd. The Canar lands, suitable for railroad shops, purchasable for \$30,000.

There was also under discussion a proposal to buy one of the Galapagos Islands, for sulphur mines.

Harman gave to Pruyn, on December 10th, 1902, ¹⁰ a full statement of the affairs of the railway company and of the Ecuadorian Association (see Ex. C. 8 & C. 9, Case pp. 130 and 138), and he made at the same time a verbal proposition that Pruyn should organize three companies for the three enterprises above specified, and should purchase the lands and convey them to these three companies, in exchange for their stock, and should form a fourth company, with a capital of \$5,000,000, which company should purchase the stock of the Ecuadorian Association with its own ²⁰ stock, and should also purchase the stock of the three collateral companies with its own stock. As afterwards formulated, this involved the delivery of about \$2,250,000 of stock of the new Ecuador Company for the stock of the English Association, and the exchange of \$2,500,000 of the stock of the new company for that of the three land companies, thus giving Pruyn a controlling interest in the new company, which, in turn, would control the other companies.

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The terms of this arrangement are proven, as above, by the testimony of Mr. Harmon, and appear stated in letters of Mr. Harmon to Pruyn, at his request. The first, on February 12th, 1903 (Case, p. 167), and again on February 18th, 1903 (Case, p. 203). Mr. Pruyn writes, on February 21st, to Mr. Harman, requesting him to give to his agent, Mr. Green, in London, for his agent, Mr. Adams, in New York, a copy of this letter of the 18th (Case, p. 210, line 25).

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In December, 1902, when this plan was first presented to Mr. Pruyn, he did not definitely agree to adopt it, but was ready to take part in the enterprise to some extent, but, being about to go to London, desired to investigate the subject there—among other things, to confer with the bankers, Glyn, Currie & Co. (Case, p. 140, line 1). He left this matter in charge of his Secretary, F. B. Adams, to whom he gave a
 10 Power of Attorney, dated December 13th, 1902, (Case, p. 271). He was ready to pay for an option to buy the Duran Terminal, and the terms of the agreement are stated in a letter to him from Archer Harman, dated December 30th, 1902 (Case, p. 140). By this arrangement, Pruyn was to take an option to buy the Duran Terminal property, was to form the Duran Terminal Company, and convey the property to that Company, and place in its treasury \$36,000 in cash, and was to deposit the stock of the
 20 Duran Terminal Company in escrow with the Union Trust Company of Albany, or with Glyn, Mills, Currie & Co., and, when the Duran Company was vested with good title to the Terminal land, was to exchange the Duran Terminal stock for ~~865,000~~^{600,000 pounds} of capital stock of the Ecuadorian Association. This was a vital feature of the whole plan, because it maintained control of the Ecuadorian Association, and thereby of the Railway Company, which control was hazarded by the Dick-Lisman contract.

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Under this arrangement, before leaving New York, Mr. Pruyn paid \$5,000 to secure an option (Case, p. 22), and, on or about December 31st, 1902, sailed for England on the same vessel with Archer Harman. In London, Mr. Pruyn met the English stockholders and bankers, and discussed the matter for some ten days, and reached an understanding that Mr. Pruyn would go on with the enterprise on the basis of the plan proposed in New York; but, a difference arose
 40 on the afternoon when Mr. Pruyn left London for

Paris (Case, p. 24). On January 18th, 1903, he wrote a letter, objecting to certain terms relating not to the railroad, but to some of the collateral investments, and suggested that Mr. Harman should meet him in Paris (Ex. C. 12, p. 147). Thereupon, Mr. Harman went to Paris and settled matters with Mr. Pruyn, and, from that time, Mr. Pruyn and Mr. Harman went on treating the transaction as settled upon (Case, pp. 26 and 27). Mr. Harman went back to 10
England to carry out the transaction, which involved an enormous amount of detail and negotiation with various interests, which lasted for weeks, communications being kept up by letter and telegraph almost daily with Mr. Pruyn, who was traveling in Italy.

Prior to this Paris interview, Mr. Adams—on behalf of Mr. Pruyn—had advanced the \$5,000 for the option (Case, p. 143), and, on January 13th, 1903, 20
formed the Duran Terminal Company, naming himself and Mr. Pruyn, and one Swan—a clerk of Mr. Pruyn, in Albany—three of the five directors, Mr. Lockwood—who represented the Association interest—being another, Mr. Bingham being apparently put in as a New Jersey resident (Case, p. 144). The first issue of shares was fifty, of which forty-six were to Mr. Pruyn, and one each to the other four, and these four were all endorsed in blank and turned 30
over to Mr. Adams, for Mr. Pruyn, who advanced all the money.

On January 15th, 1903, The Coal Company was organized, pursuant to a cable from Mr. Harman (Case, pp. 146 and 147). After the interview at Paris on January 23rd, 1903, Harman cabled to organize the company relating to the Galapagos Islands, (Case, p. 148, Ex. C. 46), and, on January 26th, Harman cabled to Lockwood to organize the Ecuador Company, with a capital of Five Million Dollars, 40

Adams naming the Board (Case, p. 149, Ex. C. 48). While this was going on in New York, Pruyn was arranging matters in London, with the aid of Mr. Green, who was the agent of Mr. Pruyn, and who had returned from Paris with Mr. Harman for the purpose of carrying out the arrangements. Mr. Green was provided with a Power of Attorney from The Ecuador Company in New Jersey.

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Mr. Pruyn wrote his letters sometimes to Green, and sometimes to Harman, and Harman usually answered the letters, whether addressed to Green or to himself.

On February 7th, Pruyn's letter shows that he still had in mind the escrow agreement as to the Duran Terminal; he says that he wishes to avoid committing himself, and Mr. Winsor to an incomplete
20 situation (Case, p. 156, line 30). In the same letter, he says: "Please submit to H. this thought: Is it "not better to keep Duran stock for E. Co., and not "sell it to E. Association; provided, however, that "H. can vote enough Association stock without it; "but, in this latter case, should it not be an actual "sale and not an escrow? I depend upon H. instruct-
"ing Lockwood correctly."

It will be remembered that it was an important
30 matter to get the Association's treasury stock, amounting to £65,000, out into the hands of someone who could vote it, and so keep control against the Dick-Lisman party.

In reply to this letter of February 7th, Harman writes to Pruyn, February 12th, 1903, and states in detail the plan whereby the Ecuadorian Association was to transfer its contracts, stock, materials and bills receivable to the Ecuador Company, in exchange for
40 its stock, and states the whole arrangement as to the

interest to be acquired by Pruyn in the stock of the Ecuador Company, and says: "I have noted carefully your suggestion that the £65,000 of Ecuadorian Association stock should not be given in exchange for the Duran Terminal stock, and that it would be preferable to exchange the Duran Terminal stock for stock in the Ecuador Company. I fully concur with this idea, but I am afraid that without these 65,000 shares of stock being issued, that Dick and Lisman might acquire sufficient shares of the Ecuadorian Association to make the pool agreement binding, in which case they could give us untold trouble."

Pending this correspondence Harman and Green, and their associates in London, were working up the plan, as stated in the letter of February 12th, resulting in the assignment, dated February 17th, 1903, by the Ecuadorian Association to the Ecuador Company, of its assets, and agreements, by the many shareholders and others interested, acquiescing in the proposed exchange of shares. (Case, p. 173-196). Copies of these papers were forwarded to Mr. Pruyn. (Case, p. 34, line 18).

On February 18th Mr. Harman wrote to Mr. Pruyn, stating the cash necessary to be advanced for improvements. On the same date another letter was written (Ex. C. 22, Case, p. 199), evidently commenced in reply to a letter of Mr. Pruyn by Mr. Green, for, at the end of the second sentence, appears this statement: "Mr. H. will dictate from now on in regard to the various sections of your letter." In the course of this letter Mr. H. again states the understanding with Pruyn and Winsor about the exchange of shares with The Ecuador Company (Case, p. 203). On the day following Green cabled to Pruyn that The Ecuador Company must make a proposal to the Ecuadorian shareholders (Case, p. 204, 40

Ex. C. 35), and, on the same day, Harman wrote to Pruyn, enclosing copy of the escrow agreement executed in New York by Mr. Adams, as attorney for Pruyn, with reference to the Duran Terminal stock, and the £65,000 Association shares, and says: "For reasons which I deem it unnecessary to go over again with you, it is not advisable to make an escrow agreement. I have had Mr. De Fries draft a
 10 "substitute, which I enclose you. The De Fries
 "agreement will allow The Ecuadorian Association
 "to issue to you direct, and immediately, 65,000
 "shares of this stock. In the event that you approve
 "the De Fries agreement, I will have the Ecuador-
 "ian Association instruct you by letter to deliver the
 "Duran Terminal stock to the Ecuador Company di-
 "rect, as their assignees. I wish to close this trans-
 "action before I leave London on the 25th inst. If
 "you do not receive these contracts in time for them
 20 "to reach London on Tuesday morning, I would sug-
 "gest that you telegraph Mr. Green to sign them as
 "your attorney." (Case, p. 205).

In the same letter he says: "It now only remains
 "to complete the exchange of Association shares for
 "The Ecuador Company's stock." (Case, p. 206).

On the same date, February 19th, 1903, Mr. De Fries sent to Mr. Pruyn the contract proposed by
 30 him as a substitute for that which Mr. Adams had
 signed in New York, giving the reason why it was
 necessary to carry out the plan, that an absolute
 transfer should be made in place of the escrow. (Case,
 p. 208).

On February 27th Mr. De Fries acknowledges
 the receipt of these contracts executed. (Case, p.
 209). On February 21st Mr. Pruyn writes to Mr.
 Harman to get for The Ecuador Company as many
 40 franchises as possible. On February 23d Mr. Pruyn

executed and acknowledged the Duran Terminal agreement, whereby he agreed with the Association to deliver to them the capital stock of the Duran Terminal Company, receiving in exchange 65,000 shares of the stock of the Association, and further agreed to deliver to the Association, or to The Ecuador Company, the Duran Terminal stock, and undertook that before July 1st, 1903, the Duran Terminal Company should own the 10,000 acres, constituting the Duran Terminal. 10

This was acknowledged in Rome, February 23d, 1903, (Case, p. 211, Ex. C. 25), but, as urgency was necessary, in response to a cable authority from Mr. Pruyn, Francis C. Green executed a duplicate in London, on February 24th, 1903, in the name of Mr. Pruyn. (Case, p. 214). This duplicate was filed at the Somerset House, in London, pursuant to the letter of Mr. De Friese (Case, p. 208) as authority for the issue to Mr. Pruyn of the shares of the Association amounting to £65,000. 20

The letter of Mr. De Friese, accompanying the agreement which Mr. Pruyn executed, makes it clear that Mr. Pruyn knew of the action to be taken on the faith of this signature, and the contracts which Mr. Pruyn's agents entered into required that Mr. Pruyn should be the owner of shares of The Ecuador Company amounting to \$325,000, to be exchanged for £65,000 of Association stock. 30

I.

MR. PRUYN IS LIABLE AS A SUBSCRIBER
FOR SHARES OF STOCK OF THE ECUA-
DOR COMPANY TO THE EXTENT OF
\$325,000.00.

No particular form is necessary for a subscription.
It may be implied from conduct, or established by 40

estoppel. (2 Clark & Marshall on Corporations, p. 1,389; Id. 1570).

The contracts made by Pruyn and his agents must all be considered together. The Duran Terminal contract was one of several, which were concurrent and mutually dependent. These are concisely stated in Paragraph 12 of Harman's letter of February 18th
 10 (Case, p. 203). The Ecuador Company paid the Association for £65,000 of stock by assuming its contracts, but did not get the stock; that, by the terms of the arrangement, was to be issued to Mr. Pruyn, under his agreement to do several things:—First, to transfer all Duran Terminal shares to The Ecuador Company. Second, to transfer the £65,000 of shares of The Ecuadorian Association—which he had obtained—to The Ecuador Company. Third, to take
 20 \$325,000 in stock of The Ecuador Company, for which the Duran stock and the £65,000 of Association stock were the equivalent. Pruyn's agreement to pay for the shares of The Ecuador Company, to be issued to him, in stock of the Association, was an agreement to take those shares. The undertaking to take Ecuador Company shares was an obligation as well as a privilege. It was a part of the engagement into which he had entered with others, and was, in effect, a subscription.

30 The form of the contract may be restated from the standpoint of The Ecuador Company. Pruyn formed The Ecuador Company, and undertook to pay for \$325,000 of its stock by assigning to The Ecuador Company the stock of the Duran Terminal Company, and also agreed to turn over to The Ecuador Company the £65,000 of stock which The Ecuador Company had paid for to The Ecuadorian Association, by assuming its obligations.

The right of the Association to the Duran stock
 40 is created by the Duran Terminal agreement with

Pruyn (Case, p. 211, Ex. C. 25), and the right to that stock, which the Association thus acquired, was turned over by the Association to The Ecuador Company by the agreement of February 17th (Case, p. 186, line 8).

The transfer by Pruyn to The Ecuador Company of the £65,000 shares would be only turning over to The Ecuador Company its own property, already ¹⁰ paid for; the undertaking to take Ecuador Company stock in exchange for it was made by the joint agreement of February 17th, and by the deposit of shares by Mr. Pruyn, in trust, for that purpose. (Case, p. 227, line 14). The deposit of these shares by Mr. Pruyn was a further act of acceptance of the whole plan. Such deposit by him was not a payment for the \$325,000 in Ecuador Company shares, for The Ecuador Company had already paid for them by its contract of February 17th. The obligation to pay for the ²⁰ shares of the Ecuador Company, amounting to \$325,000, was made by the Duran Terminal agreement of February 24th, where, although the promise was to make the payment to the Association or to the Company, yet, it was, in effect, to be paid solely to the Company, because the Association had assigned the Duran obligation to the Company by the concurrent instrument of February 17th.

In addition to these considerations, the engage-³⁰ ments into which Pruyn entered, with many others interested in the Ecuador enterprise, were all based on his undertaking to finance The Ecuador Company, at least to the extent of the \$325,000, which represents the Duran Terminal.

He ratified the agreement of February 17th, not only by the signature of his agent, Mr. Green, but also by the deposit of £65,000 of shares along with the other shareholders of the Association (Case, p. ⁴⁰

227, line 14). Having failed to pay \$325,000 in Duran Terminal stock, he is chargeable to creditors of The Ecuador Company to pay it in cash.

II.

MR. PRUYN ACTUALLY ACCEPTED 3,250 SHARES OF STOCK OF THE ECUADOR 10 COMPANY.

In the foregoing discussion we have undertaken to show the liability of Mr. Pruyn as a subscriber to stock, assuming that his contention is correct that the stock was never formally issued to him in fact. The contract on which a subscriber is held is not based on the certificate, or its issue, but on his contract of subscription. A certificate is not necessary to constitute a stockholder, but is only evidence of what the
20 books of the corporation show.

We contend, therefore, that, in fact, the certificate in this case was executed by the officers, and that its delivery to Swan—taking in connection with Mr. Pruyn's relations to the Company and to Swan, and to his dealings—amounts to an acceptance. Mr. Swan was not merely the Treasurer of the Company, but was also the agent of Mr. Pruyn. Mr. Pruyn avowedly controlled the Company, and cannot repu-
30 diate the acts of his agents in taking steps strictly in accordance with his engagements.

In the recent case of Hollins v. American Union Electric Company, ~~X~~on appeal, Pitney, J., remarked that Mr. Hollins was the actual organizer and chief promoter of certain companies, and was at all times in practical control of the officers and directors, and rejected his claim to enforce a debt against the Company on the ground that he was bound to supply the
40 Company with cash for its needs.

* 21 Dick 457

60 Atl., 359.

In this case it appears that Mr. Swan produced the certificate, duly executed, and had it countersigned by the Registrar and Transfer Company. (Case, p. 107 to 109). It was, perhaps, sent to London for exchange for the Ecuadorian Association shares, but possibly not, because Mr. Pruyn was soon to return, and it might be more convenient to retain his certificate in this country. At a later date, on April 30th, 1903, Mr. Pruyn signed an agreement, providing that he would forthwith deposit this stock in escrow with the Union Trust Company of Albany, and that company executed the agreement. (Case, p. 257, Ex. C. 36). This document was to be executed by the Ecuadorian Association, who never did execute it; but was not to be executed by The Ecuador Company, and it is a distinct recognition of the fact that Mr. Pruyn on that day had full power to deposit 20 3,250 shares of the stock of The Ecuador Company. (Case, p. 258). There can be no doubt that he had such power, and he offered to bind himself to do it, and made that offer without obtaining any further right to the shares from The Ecuador Company; and it cannot be permitted, as against creditors, that he should say that he was or was not a stockholder at his free will and pleasure. He could not put the shares in escrow under his own contract, unless he owned them, and he could not call them his and not 30 his from time to time as he might find convenient.

Mr. Swan testifies that he cannot say whether or not he forwarded Mr. Pruyn's shares to London. He says that the shares issued to qualify directors were endorsed and placed in Mr. Pruyn's safe deposit. He also says that he was director in The Ecuador Company in the interest of Mr. Pruyn. (Case, p. 101).

Mr. Pruyn's participation in the agreement of February 17th, and his Duran Terminal agreement, 40

amounted not only to an undertaking to take shares in The Ecuador Company to the extent of \$325,000, but was also an avowal that he had the shares to exchange. The other holders of shares in the Ecuadorian Association also, by force of the arrangement of February 17th, 1903, subscribed for shares in the Ecuador Company, but they all tendered performance in the manner agreed upon, and are not liable for, or to be blamed for, the default of The Ecuador Company to make the exchange. For this default Mr. Pruyn is directly responsible.

It is further to be observed that the books show that not only was there issued \$325,000 in shares of The Ecuador Company to Mr. Pruyn, but that a further certificate was sent out to Pruyn & Winsor for \$2,350,000. This was divided into two certificates, Nos. 7 and 8, one for 11,500, and the other for 12,000, both of which were marked: "Cancelled, June 29th, 1903." Certificate No. 291, for 3,250 shares, to Robert Clarence Pruyn, is dated April 2d, 1903; but, it is highly significant that it was not returned and cancelled on June 29th, or at any other time. Mr. Pruyn returned to Albany in April, and was here in May and June, and his failure to return the stock during that interval, and his negotiations with the Association, on the basis that he was the owner of the stock, are highly significant. If he did not intend to retain this stock, it was his duty to cause the certificate to be returned to the Company and cancelled at an early date, just as he did with the Pruyn & Winsor certificate. No explanation is given of his retention of this certificate, and it was a representation to everyone dealing with The Ecuador Company that he was a stockholder. It was also—as we have shown—consistent with his dealings with others and with the Company in February and afterwards. It is too late, after the Company has gone into the hands of a Receiver, for him to repudiate his liability as a shareholder.

In the case, *In Re, Reciprocity Bank*, 22 N. Y., 9, 18, Comstock, C. J., said: "The person who has caused or allowed his title to be registered on the books cannot deny the truth of that representation and disavow the ownership, when it ceases to be a benefit and comes to be a burden."

See this subject discussed, 10 Ency. Law and Procedure, p. 532 to p. 536. 10
 2 Thompson on Corp., Sec. 1,939.

III.

THE COURT SHOULD ADJUDGE THAT MR. PRUYN IS LIABLE AS A SUBSCRIBER FOR \$325,000 ON HIS SHARES.

It was formerly considered to be proper practice for the Receiver to make a call, or for the Court to order a call, without notice to stockholders; and, they were bound by the call, on the theory that for the purpose of ascertaining the liabilities of the Company and the need of the call, the corporation and the Receiver represented the stockholders. 20

See *Hawkins v. Glenn*, 131 U. S. 319.
Great Western Tel. Co. v. Purdy, 162 U. S. 329, 336.
Hancock National Bank v. Farnum, 167 U. S. 640, 644. 30

But, a change in the practice of New Jersey, of very great importance, was brought about by our Court of Errors and Appeals in *Cumberland Lumber Company v. Clinton Hill Lumber Manfg. Co.*, 12 Dick., 627. In this case the Court held that, while it had been stated that lack of notice to the stockholder would not deprive the assessment of its conclusive character, yet, the Court of Equity should see 40

that the individual stockholders have an opportunity to be heard. "Our conclusion is that it was the duty "of the Court below to determine judicially, before "ordering an assessment, what proportion of the unpaid subscriptions would probably be needed to "meet the liabilities, and to confine the levy accordingly." This converts the proceeding from a purely administrative one into a judicial proceeding, with the necessary result that notice must be given and a trial be had.

It inevitably follows that all issues properly decided on such trial must be conclusively decided, so that issues thus decided cannot be again litigated between the parties.

I am aware that in the same case, when it was sent back to the Court of Chancery, Emery, V. C., said: 20 "This is purely a judicial proceeding of an administrative character, intended to give the Receiver the "same status which the company itself had, or might "reasonably be claimed to have, to make a call for the "payment of its debts against its stockholders, or persons claimed to be such" (19 Dick. 519), and, in that case, the Vice Chancellor said that his order would be without prejudice to the rights of any of the respondents to any defense they might have to any action, legal or equitable, which might be brought 30 against them for such alleged stock subscription. The statement was merely dictum.

It is, of course, always within the discretion of the Court of Chancery to make a decree or order without prejudice; but, I submit that, in every judicial proceeding, where an issue has been fairly presented and is determined by the Court, the Court can and ought to determine it finally, with a view to put an end to further litigation of a question once tried. Of course, 40 it is not necessary, nor competent, in this case, for this

Court to determine what effect its decision will have in any future litigation. What we contend for, is that this Court shall, so far as its power extends, definitely decide the issue raised on the pleadings, and adjudge that Robert C. Pruyn is the subscriber for stock of the Ecuador Company to the extent of \$325,000. It would be a most lame and impotent conclusion to this expensive litigation to have nothing determined, except that the Receiver may sue, ¹⁰ subject to every defence that would be open to Pruyn, if this judicial proceeding had not taken place. If the Court should now decide that Pruyn was not liable as a subscriber, then such decision would be conclusive on the Receiver. To make an order to call without prejudice would give Mr. Pruyn a chance to try the same defense twice over.

The case cited is a striking illustration of the evils resulting from such double trial. Here was a com- ²⁰pany which went into the hands of a Receiver in May, 1895. (12 Dick. 628). At the November Term, 1898, it was determined by the Court of Errors and Appeals that the question of the right to a call must be determined judicially, and thereupon a most laborious and protracted investigation became necessary, involving the inquiry into all the defenses which could be made after the call. Nearly five years later—at the February Term, 1903—the Court of Chancery reaches the feeble conclusion that nothing has ³⁰ been settled by all this expense and labor, except that the Receiver has a right to try these various questions over again. (19 Dick. 518).

In this case we have one subscriber who has raised a plain and distinct issue. If the Court does not settle it now, the Receiver must go out of the State and litigate it in a foreign forum.

We submit that it is only a proper administration of justice, according to settled principles of equity, ⁴⁰

that the Court should, as far as it can, conclusively adjudge the issues raised, so that the expensive trial already had, with witnesses from London, need not be repeated.

In *Southern Pacific R. Co. v. United States*, 168 U. S., pp. 1, 48, the Court said: "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as
 10 "a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies, and even if the second suit is for a different cause of action, the right, question or fact once so determined, must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which
 20 "is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essentially to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them."

30 Dated April 22d, 1905.

REPLY TO BRIEF FOR DEFENDANT.

ROBERT C. PRUYN.

To our brief dated and served April 22d, 1905, we have received, June 9th, 1905, the printed reply on
 40 behalf of Robert C. Pruyn.

The counsel for Mr. Pruyn, in the first five sections of their Brief, asked the Court to accept as facts certain allegations in his answer filed to the petition of the Receiver. Notwithstanding the admitted fact that important contracts with The Ecuador Company, and transfers of property and contracts to The Ecuador Company, were made, with Mr. Pruyn's knowledge, by many people in England and America on the faith and in the belief that Mr. Pruyn had undertaken to vest in The Ecuador Company certain valuable property and substantial sums of money, yet they insist that all the while Mr. Pruyn reserved the liberty to release himself from all obligations, leaving The Ecuador Company helpless and insolvent. 10

They contend that Mr. Pruyn, who promoted, organized and controlled The Ecuador Company, and who caused it to assume heavy liabilities on his undertaking to so finance it that it should be competent to meet them, still incurred no obligation whatever to that company or to its creditors. Claims so extravagant call for some evidence, and none whatever has been furnished. Mr. Pruyn did not come forward as a witness to prove his defenses, but solicitously kept away from the jurisdiction of the Court. Not only did he fail to furnish evidence, but it is not too much to say that he suppressed it. The Receiver called upon him, in writing, to produce the many letters and documents received and written by him in this matter, and he failed to produce a single writing. 20 30

It is apparent from the many references in the letters which were produced on our part, that Mr. Pruyn received many letters with information from his own agents, Green in London and Adams in New York, and others.

It has been proven and is admitted that he received letters from Harman (copies of which are in 40

evidence), and that he received copies of the printed assignments and contracts, whereby his Ecuador Company was definitely burdened with obligations, and that he knew that these documents had been executed on the part of The Ecuador Company on the faith of his engagements.

Mr. Pruyn does not say that he did not fully comprehend what he was doing in person and by his agents, nor do his agents say so on his behalf.

We are asked to accept a state of ignorance on the bare assertion of his counsel, without a shred of evidence, and in the face of the strongest presumptions of law and of fact.

All of the first five paragraphs of the brief for Mr. Pruyn are based on this idea that the Court will take facts from Mr. Pruyn's answer instead of from the testimony.

In Section VI. of the Brief there is an argument that Mr. Pruyn has paid The Ecuador Company for his stock amounting to \$325,000. It is shown that by Pruyn's authority Mr. Harman deposited in Pruyn's behalf with Glyn, Mills, Currie & Company the certificate for 65,000 shares of stock of the Ecuadorian Association; and it is argued that this, in some manner, paid The Ecuador Company for its stock issued to Mr. Pruyn. But Mr. Pruyn's obligation, found in the several contracts forming the whole scheme, was to pay The Ecuador Company for entering into the heavy liabilities incurred under the assignment to it from the Association, and was to make such payment, not merely by depositing the Association's shares, but by transferring to The Ecuador Company both those shares and all the shares of the Duran Terminal Company, which Duran Terminal Company shares were to represent the owner-

ship of the Duran Terminal property at Guayaquil. The only way in which the Ecuadorian Association was paid for issuing its 65,000 shares was by the assumption of its contract liabilities by the Ecuador Company. The Ecuador Company was entitled to those shares, because it had paid the price for them, and it entered into that obligation on the undertaking on the part of Mr. Pruyn that he would vest in the Ecuador Company the full-paid Duran Terminal shares, representing the Duran Terminal ownership, whereupon it would issue to him its stock, amounting to \$325,000, and at the same time receive 65,000 shares of the Association. 10

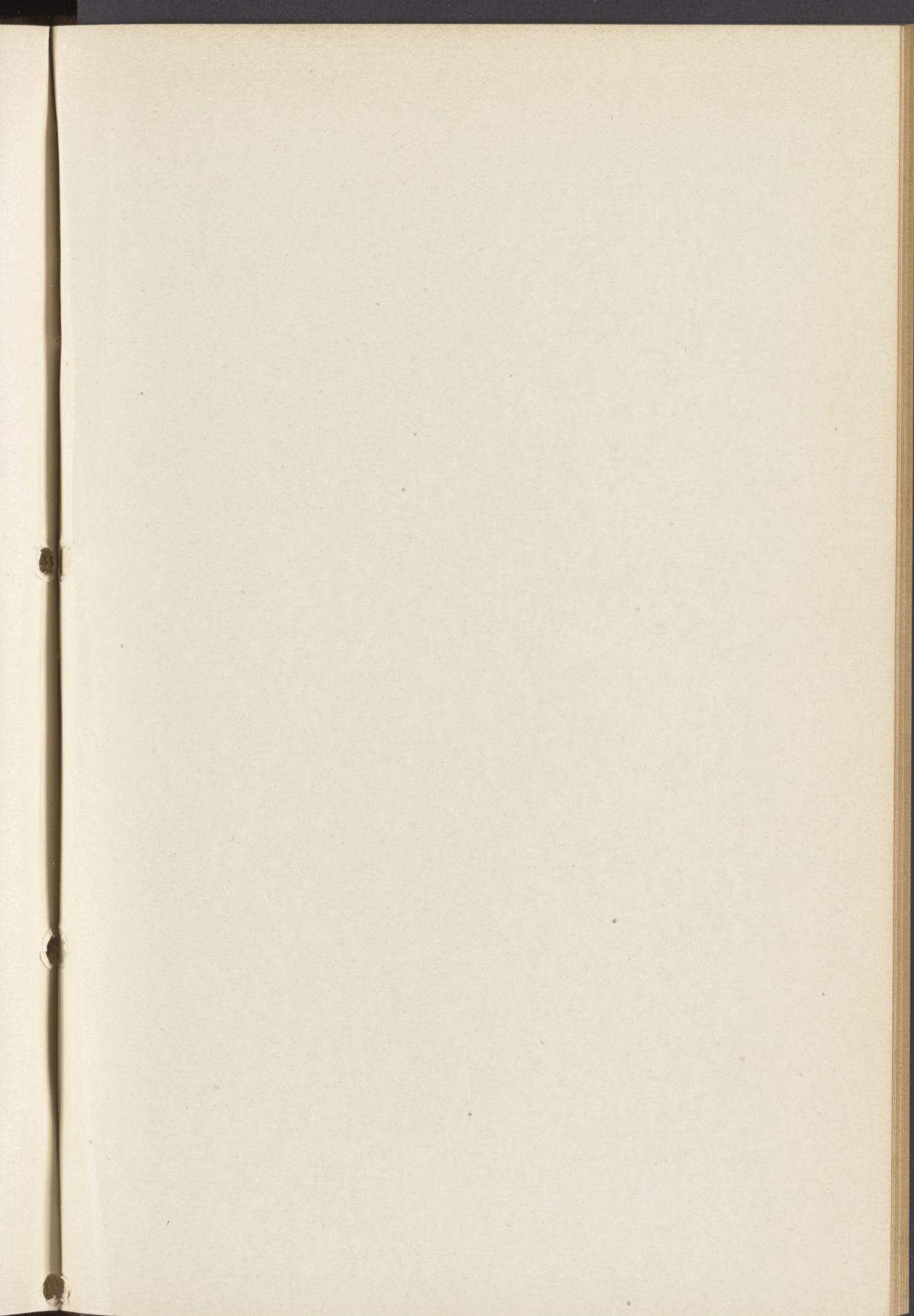
The statement of the transaction appears in Section I. of the foregoing Brief and is not, in any manner, met by the Brief on behalf of Mr. Pruyn.

The matters referred to in Sections VII, VIII and IX of the Brief for Mr. Pruyn, we think, are sufficiently covered in the Brief served by us. 20

June 14, 1905.

CHARLES L. CORBIN,

Counsel for Charles C. Black, Receiver.



New Jersey Court of Errors and Appeals.

Between

THE ECUADORIAN ASSOCIATION,
Complainant,

AND

THE ECUADOR COMPANY,
Defendant.

On Bill, &c. On
Appeal of Charles
C. Black, Receiver.

BRIEF OF ROBERT C. PRUYN.

This is an appeal brought by Charles C. Black, Receiver of The Ecuador Company, from an order denying his petition for leave to levy an assessment of \$325,000 upon Robert C. Pruyn, for an alleged unpaid subscription for 3,250 shares (\$325,000 par value) of the capital stock of The Ecuador Company.

The petition of the Receiver alleges that there is an unpaid subscription for capital stock issued to Robert C. Pruyn who accepted and exercised control over such stock, the par value of the stock subscribed for being alleged at \$325,000 and the amount unpaid on the subscription being alleged at either the full par value thereof or the par value less \$64,703.74, the amount of payments made by Mr. Pruyn to the Company, if such payments are to be credited on his alleged subscription to said stock (p. 2, lines 19-35).

Mr. Pruyn filed his answer to the Receiver's petition, denying that there is an unpaid subscription for capital stock issued to him, or that he ever accepted or exercised control over such stock, or that any payments

were made by him on account of the said stock or that he is in any manner indebted to said The Ecuador Company or to the said Receiver in any sum whatever.

The matter was heard by Vice Chancellor STEVENS on the petition, answer and oral testimony ; and an order was advised by the Vice Chancellor denying the Receiver's petition.

From that order this appeal is taken by the Receiver.

The Receiver's petition for leave to make an assessment on Mr. Pruyn for the payment of his alleged subscription to stock of The Ecuador Company, is based, primarily, on the allegation that there was a subscription for the stock by Mr. Pruyn, constituting a contract between Mr. Pruyn and The Ecuador Company, whereby Mr. Pruyn agreed to take and pay for the stock, and whereby The Ecuador Company agreed to issue and deliver the stock to Mr. Pruyn ; and secondarily, the petition of the Receiver is based on the allegation that by the contract of subscription, if such contract existed, Mr. Pruyn agreed to pay for the stock in money equal in amount to the par value of the stock. Mr. Pruyn denies that any such contract of subscription was ever made, and claims that the record on this appeal does not justify the finding that any such contract ever existed.

The Vice Chancellor, however, held that there was an implied contract of subscription by Mr. Pruyn for 3,250 shares (\$350,000 par value) of the stock of The Ecuador Company, but that by the terms of such implied contract of subscription, stock of another corporation (The Ecuadorian Association, Limited) was to be deposited in exchange for the said stock of The Ecuador Company, and that Mr. Pruyn did deposit his Ecuadorian Association stock accordingly, and therefore is not now liable for the payment of his subscription in money.

While Mr. Pruyn does not accept the finding of the Vice Chancellor that there was an implied contract of subscription by Mr. Pruyn for the stock of the Ecuador

Company, yet Mr. Pruyn accepts the reasoning by which the Vice Chancellor reaches the conclusion that the contract of subscription as found by the Vice Chancellor did not call for the payment of money by Mr. Pruyn, and can be enforced by the Receiver only in accordance with its terms, which simply call for an exchange of stock for stock, and not for the payment of money by Mr. Pruyn for the stock of The Ecuador Company.

The question first naturally arising on this appeal is, therefore, a question of law, as to whether, under the contract of subscription as found by the Vice Chancellor, the Receiver of The Ecuador Company can compel Mr. Pruyn to pay his subscription in money equal in amount to the par value of the stock subscribed for. If this question of law be decided in favor of Mr. Pruyn, in accordance with the reasoning of the Vice Chancellor, then the questions of fact need not be considered on this appeal, to-wit, as to whether any contract of subscription was made between Mr. Pruyn and The Ecuador Company, and, if so, whether such contract was for an exchange of stock as found by the Vice Chancellor or for the payment of money, as it is supposed the Receiver must claim on this appeal.

I.

The Vice Chancellor reasoned correctly from the facts found by him to the legal conclusion reached by him, to the effect, that inasmuch as the contract found by him to have been made between Mr. Pruyn and The Ecuador Company did not call for the payment of money but only for an exchange of stock for stock, therefore, neither The Ecuador Company nor its Receiver could require Mr. Pruyn to pay his subscription in money.

There is no evidence whatever of an express contract of subscription by Mr. Pruyn for the stock of The Ecuador Company; and there is no basis for a claim that there is any evidence of any express contract.

There is no claim and no possible basis for a claim that Mr. Pruyn ever subscribed for stock of The Ecuador Company otherwise than by deposit of the stock of The Ecuadorian Association in accordance with the circular letter of The Ecuador Company.

The following is the Vice Chancellor's statement as to the manner of making the contract, found by him to have been made, and as to the terms and conditions thereof:

"The Ecuador Company in the circular letter, to which I have already alluded, offered to give its stock in exchange for such Ecuadorian stock as should have been deposited with those bankers by a certain time. Pruyn's Ecuadorian stock, by his authority, was so deposited, and hence, as it seems to me, there are present in the transaction all the elements of a contract between the Ecuador Company and Pruyn; an offer and an acceptance of that offer by an unequivocal act. There was,

therefore, a binding contract to take stock and to pay for it in a particular way" (p. 15, lines 4-17).

The following is the Vice Chancellor's statement of the question of law arising on such facts:

"The question then comes to this. Can Pruyn be compelled to become a stockholder on any other terms than had been agreed upon? The agreement was that he should receive a certificate of full paid and consequently non-assessable stock, in exchange for his Ecuadorian stock. If this stock is now assessable, it must be so because of some legal rule that overrides and contravenes the agreement. I know of no such rule" (p. 15, lines 21-30).

In support of his conclusions, the Vice Chancellor cites, as "decisive of the matter" (pp. 15-6):

Bickley vs. Schlag, 46 N. J. Eq. (1 Dick.) 534; 20 at 250;

Donald vs. Am. Smelting Co., 62 N. J. Eq. (17 Dick.) 730; 48 at 786;

and quotes from the latter case its quotation from,

Coit vs. Gold Amalgamating Co., 119 U. S., 345.

We add the following additional citations to the same effect:

Easton Nat. Bank vs. Am. Brick & Tile Co., N. J. Eq. ; 60 At. Rep., 54;

Bank of Ft. Madison vs. Alden, 129 U. S., 372; 32 L. Ed., 725;

Holly Mfg. Co. vs. N. Chester Water Co., 48 Fed., 879;

Riverton Water Co. vs. Hummel, 175 Pa. St., 575; 34 At. Rep., 851.

In *Bickley vs. Schlag*, 46 N. J. Eq., 534, the first case above cited, this Court said:

"The charter of this company authorizes the corporation to exchange its capital stock for prop-

erty, and, under that condition of things, a court of equity cannot set aside a transaction of that kind simply on the ground that the bargain on the side of the corporation is a disadvantageous one. In such affairs the company and the purchaser stand on the common footing of buyer and seller. The valuation of property in making the exchange, either on the one side or the other, cannot be supervised or controlled by the court of chancery; for, in the absence of deceit, or some other corrupt constituent, the bargain between the parties cannot be disturbed. In the present instance fraud was not found, and the vice-chancellor ordered these stockholders to pay more than they had agreed to pay for the stock, on the ground that, in his opinion, the steamboats and other things they had exchanged were not worth as much as the stock was worth. Conspicuously, the substance of the true issue has been overlooked. The real inquiry in this class of cases is not in doubt or obscurity, for it has been elucidated in many decisions. One example will suffice."

Then follows the quotation from *Coit vs. Amalgamating Co.*, 119 U. S., 345, as quoted by Vice Chancellor STEVENS in his opinion (p. 16, lines 10-25).

In *Easton Nat. Bank vs. Am. Brick & Tile Co.*,
N. J. Eq. ; 60 At. Rep., 54, Vice Chancellor
BERGEN says :

"The evidence on the hearing disclosed the fact that all the stock was issued by the company as full paid, and had stamped upon it the statement that it was issued for property purchased. I am satisfied that the stock, in the form in which it was issued, constituted a contract between the company and its stockholders, which would prevent an assessment until that contract was set aside as an agreement in fraud of creditors; also that no such order can be properly made under these proceedings, and that the proper course is by bill to have the contract set aside, and the delinquent stockholders decreed to pay a sufficient proportion of all unpaid subscriptions to satisfy the liabilities of the company * * *."

The decision of Vice-Chancellor STEVENS was, therefore, sound, and the order appealed from should be affirmed if the evidence supports his findings of fact as to the making of a contract for a subscription to stock between Mr. Pruyn and The Ecuador Company, and as to the terms of such contract. If, however, no contract whatever, either expressed or implied, was made between Mr. Pruyn and The Ecuador Company for a subscription by Mr. Pruyn to the stock of that Company then a still more fundamental basis is established for the affirmance of the order appealed from.

II.

The evidence does not admit of the possibility of any other or different contract from that found by the Vice-Chancellor; and, in fact, the evidence shows that not even that contract, nor any other contract of subscription for stock, either expressed or implied, was entered into between Mr. Pruyn and The Ecuador Company.

No attempt is made by the Receiver to show an express contract between Mr. Pruyn and The Ecuador Company. No evidence of a writing of any kind, in the nature of a subscription by Mr. Pruyn to the stock of The Ecuador Company, was offered in evidence. No evidence was offered of an express oral contract between Mr. Pruyn and the Ecuador Company. Counsel for the Receiver merely claim circumstantial evidence of an implied contract.

Counsel for Mr. Pruyn respectfully submit that there is no evidence from which such an implied contract can be inferred, and that the evidence conclusively dis-

proves the existence of any such contract, either express or implied.

It is true that on April 2, 1903, while Mr. Pruyn was in Europe, a certificate to Mr. Pruyn for 3,250 shares of stock of The Ecuador Company, of the par value of \$100 each, making a total par value of \$325,000, was executed by the officers of The Ecuador Company at Albany, N. Y., in anticipation of the return of Mr. Pruyn to this country, and with the expectation that, on the return of Mr. Pruyn, such certificate would be delivered to and accepted by Mr. Pruyn in exchange for 65,000 shares, of the par value of £1 each, of the capital stock of The Ecuadorian Association, Limited, a British construction company, organized for the purpose of constructing the railroad, in Ecuador, of The Guayaquil and Quito Railway Company, such 65,000 shares of Association stock having been issued in the name of Mr. Pruyn and deposited on March 10, 1903, with Glyn Mills Currie & Co., bankers, in London.

It is also true that prior to April 2, 1903, a tentative plan had been projected by Mr. Pruyn and others, whereby it was contemplated that Mr. Pruyn might, at his option, acquire 65,000 shares of the capital stock of The Ecuadorian Association, Limited, and that, in case he should acquire such stock, he should exchange such 65,000 shares of Association stock for 3,250 shares of the stock of The Ecuador Company. But no contract for such exchange of stock was ever entered into between Mr. Pruyn and the Ecuador Company. The said certificate to Mr. Pruyn, for 3,250 shares of stock of The Ecuador Company, was never tendered or delivered to Mr. Pruyn, and he never accepted it or exercised control over it. Mr. Pruyn never subscribed for, and never in any way agreed to take, the 3,250 shares of stock of The Ecuador Company, and never agreed with The Ecuador Company to deliver to it the 65,000 shares of the Association stock, or any other consideration whatsoever, for the 3,250 shares of the Ecuador Company stock.

The following analysis of the evidence clearly establishes the truth of the foregoing statement.

To unravel the somewhat tangled evidence, it is necessary to go back to the first proposal made to Mr. Pruyn that he should acquire the 65,000 shares of stock of the Ecuadorian Association, Limited.

Mr. Archer Harman, the promoter of The Guayaquil and Quito Railway Company (p. 10, lines 1-30 ; p. 47, lines 8-15), first met Mr. Pruyn in New York City early in December, 1902 (p. 15, line 3).

The total authorized capital stock of The Ecuadorian Association, Limited, was 500,000 shares of the par value of £1 each, of which there was then unissued, in the treasury of the Association, 65,000 shares (p. 138, lines 1-10). Mr. Harman and his associates then controlled only a minority of the 435,000 shares of stock then issued and outstanding, the majority thereof being controlled by the "Dick-Lisman Syndicate," "and the management of The Ecuadorian Association was practically turned over to Messrs. Dick, Lisman and associates" (p. 13, lines 30-38 ; p. 16, lines 37, 38 ; p. 17, lines 17-37 ; p. 136, line 29 to page 137, line 11).

Prior to the first interview between Mr. Harman and Mr. Pruyn in the early part of December, 1902, friction had developed between the minority stockholders, represented by Mr. Harman and his associates, and the majority stockholders, represented by the "Dick-Lisman Syndicate" (p. 14, lines 11-25 ; p. 23, lines 11-16). The one definite purpose uppermost in the mind of Mr. Harman during his negotiations with Mr. Pruyn in December, 1902, was to procure the 65,000 shares of unissued treasury stock of the Association to be issued to one or more persons who would pool their holdings with him and his associates, whereby they would become the owners of a majority of the stock of the Association and the "Dick-Lisman Syndicate" would be left in the minority (p. 17, from line

17 to end of page ; p. 20, lines 1-16 ; p. 15, lines 17-25).

The immediate purpose of Mr. Harman, to get the control of the Association away from the "Dick-Lisman Syndicate," was, however, incidental and subordinate to the larger plan of reorganizing the Association.

In the summer of 1902, the Association had exhausted its funds, and the "Dick-Lisman Syndicate" did not satisfactorily supply the additional moneys found necessary (p. 14, line 22 to p. 15, line 20). Moreover, Mr. Harman had large views of the possibilities of the Railway Company and various other South American projects, some of which were incidental to and connected with the Guayaquil and Quito Railway Company, and others of which were wholly independent of the railroad project.

Mr. Harman and Mr. Pruyn met at various times during the month of December, 1902, in New York City, and discussed the South American projects of Mr. Harman.

Mr. Harman delivered to Mr. Pruyn two letters of date December 10, 1902 (pp. 130-9, Exhibits C 8 and C 9), giving a general financial statement of The Ecuadorian Association, Limited, and of its predecessor construction company, explaining the projects connected with the Railway Company, including the proposed acquisition of the Duran Terminal Property and of the Columbe coal mines, and the independent project of acquiring from a Mr. Villamil certain of the Galapagos Islands.

On one of these letters Mr. Pruyn made a lead pencil memorandum on or about December 10, 1902, afterwards known as the "Midday Club Memorandum" (p. 13, Exhibit C 7). This memorandum, taken in connection with the oral evidence of Mr. Harman and with subsequent developments, shows that the general plan discussed included the formation of a new holding company with a total authorized capital stock of \$5,000,000; the formation of three new subsidiary

companies to acquire the Duran Terminal Property the Columbe coal mines and the Galapagos Islands respectively ; that the stock of each of the subsidiary companies, as well as a majority of the stock of The Ecuadorian Association, Limited, should ultimately be acquired by the new holding company in exchange for its own stock ; and thus the new holding company would be in control of all the property of all the companies, including the property of the Railway Company. Such plan also contemplated that a majority of the stock of such new holding company should be held or controlled by Mr. Harman and Mr. Pruyn and their associates, with the hope of effecting a harmonious arrangement with the " Dick-Lisman Syndicate," so that there should be no contest between minority and majority stockholders, but that all interested in the various projects should work in harmony (p. 138, lines 25-36 ; p. 15, lines 28-38 ; p. 17 ; p. 18, lines 1-10).

Mr. Pruyn, however, was to sail for Europe on December 31, to be absent from this country until the following May (1903), and it is perfectly evident that the entire negotiations between Mr. Harman and Mr. Pruyn, prior to their sailing for Europe on December 31, 1902, constituted merely tentative discussions, with the distinct understanding that Mr. Pruyn was to be left entirely free to determine whether or not he would enter into any binding obligations in relation thereto, until after he should return, in May, and consult Mr. Winsor, of Kidder, Peabody & Co., whom he had, only in a very general way, consulted during the pendency of the December negotiations (p. 17, lines 1-20).

Mr. Harman equally avoided entering into any binding obligation, for he testifies that he told Mr. Pruyn that the only possible way of carrying the scheme through was to proceed at once to England and take it up with the leading shareholders of The Ecuadorian Association themselves (p. 21, lines 7-10) ; that as to absorbing the whole of The Ecuadorian Association,

he could not commit himself to that until after a conference with his associates in London (p. 22, lines 23-7); that before making any commitment he would have to confer with some of his associates in England, and several other interests (p. 21, lines 14-22); that Mr. Pruyn said he wanted Mr. Adams, his secretary, to have an opportunity of examining the books and accounts of The Ecuadorian Association, and of verifying the statements made to him; and that, on December 30, Mr. Harman gave to Mr. Adams an order for all the books of The Ecuadorian Association (p. 20, lines 19-34).

The tentative character of the discussions in December is further shown by the letter of Mr. Pruyn after he reached Europe, dated February 7, 1903, saying, in reference to further discussions had after reaching London, that he was satisfied with the plan proposed, provided his action could be postponed until after his return, and that he wished to avoid committing himself and Mr. Winsor to an incomplete situation until they could review it together (p. 156, lines 20-33).

The general plans discussed during the December (1902) negotiations between Mr. Pruyn and Mr. Harman were not only tentative, but were also very indefinite.

The one immediate purpose of Mr. Harman, to get the 65,000 shares of Association stock issued, was equally tentative when Mr. Pruyn and Mr. Harman sailed for London on December 31, but was more definite.

As summed up by Mr. Harman in his letter to Mr. Pruyn, of December 30, 1902 (Ex. C 10, pp. 140-1; pp. 18, 19), it was definitely, *but still tentatively*, arranged that an option agreement should be entered into between The Ecuadorian Association and Mr. Pruyn, whereby The Ecuadorian Association should agree to deposit 65,000 shares of its capital stock, in escrow, with Glynn, Mills, Currie & Co., and Mr. Pruyn should agree to procure the incorporation of

the Duran Terminal Company and to cause all of its capital stock to be likewise deposited,

“and if within six months from this date the purchase and transfer of the Luque Estate to the Duran Terminal Company is effected, and title made satisfactory to the attorneys of The Ecuadorian Association, and you shall have deposited in the Treasury of the Duran Terminal Co. the sum of \$36,000, and said Duran Terminal Company shall be free from all debt, the Union Trust Company, of Albany, or Glynn, Mills, Currie & Co., shall deliver to you the £65,000 of the fully paid capital stock of the Ecuadorian Association, Limited, and deliver to us the entire capital stock of the Duran Terminal Company, otherwise you shall at once restore the John Haviland option, upon the Ecuadorian Association reimbursing you for your actual outlay on the Duran Terminal Company.”

Before sailing for Europe, on December 31, 1902, Mr. Pruyn instructed Mr. Adams to pay \$5,000 to secure an assignment of the Haviland option for the purchase of the Duran Terminal Property (p. 21, line 35, to p. 22, line 16).

After Messrs. Pruyn and Harman had sailed, and between January 1 and January 8, 1903, Mr. Adams obtained the assignment from Mr. Haviland of the option for the purchase of the Duran Terminal Property, and paid \$5,000 therefor (p. 21, lines 31-8 ; p. 22, lines 1-20 ; pp. 142-3, Exs. C-37, C-38 and C-39).

But the proposed escrow agreement between The Ecuadorian Association, Limited, and Mr. Pruyn was not executed until more than a month afterward.

Messrs. Harman and Pruyn sailed December 31, by the same steamer, from New York to London, where they were engaged “almost constantly for about ten days” in continuing the discussion of their plans with the London people interested in The Ecuadorian

Association, and Mr. Pruyn left London for Paris on January 18th (p. 22, lines 28-37 ; pp. 23-4).

During the discussions in London, Mr. Harman attempted to have his own indebtedness of \$1,100,000 (p. 24, lines 34-8), included in the general plan of reorganizing the Ecuadorian situation. When that proposition was rejected (p. 25, lines 1-30), Mr. Harman, in a letter to Mr. Pruyn of January 17, proposed that the interests to be acquired in the Galapagos Islands should be transferred to some of his friends as collateral for his personal indebtedness. But Mr. Harman says : " that letter irritated Mr. Pruyn very much " (p. 25, lines 30-5). Mr. Pruyn, in a letter written the next day (January 18th), just as he was leaving for Paris (pp. 147-8 ; Ex. C, 12, p. 26, lines 10-14) suggests that the whole situation should be reconsidered, and that Mr. Harman should meet him in Paris for that purpose, which Mr. Harman did a day or two afterwards (p. 26, lines 15-20).

The Paris interview seems to have cleared up the situation to such an extent that a definite determination was made to incorporate a new holding company to be known as The Ecuador Company, with a total authorized capital stock of \$5,000,000, which should exchange its stock for the stock of the subordinate companies (p. 27, lines 1-7) ; for stock of The Ecuadorian Association, Limited, " par for par," on the basis that £1 equals \$5 (p. 27, lines 7-20) ; and for contingent right certificates of the Association (p. 27, lines 34-7 ; p. 28, lines 1-11, lines 30-7) ; but otherwise the issuance of the stock of the Ecuador Company was left indefinite (pp. 27-9).

~~The Ecuadorian Association was insolvent, and the general plan involved a transfer of all the assets of the Association to the new Ecuador Company, which was to be financed to continue the construction of the railroad. In consideration of such transfer, the new Ecuador Company was to assume certain of the liabilities of the Association, necessarily leaving the Association stranded with its remaining liabilities and no~~

assets (p. 20, lines 1-10; p. 170, Exhibit C 16, lines 16-36; p. 171, lines 1-9). The general plan also involved a proposal, by the Ecuador Company, to all the stockholders of the Association to exchange their stock in the Association for stock of the new Ecuador Company (p. 29, lines 1-3; p. 165, lines 26-37; p. 166, lines 1-4).

This general plan was actually carried out by the two instruments each dated February 17th (Ex. C 17, pp. 173-193 and Ex. C 20, pp. 196-7). By these two instruments, the new Ecuador Company acquired all the property of The Ecuadorian Association, Limited, and in addition thereto The Ecuador Company offered to accept from the stockholders of The Ecuadorian Association, Limited, all their stock in the Association. In consideration for such two classes of property (the assets of the Association, and the shares of stock of its stockholders), the Ecuador Company assumed certain of the liabilities of the Association and offered to issue its own stock to the stockholders of the Association, in exchange for their stock in the Association, "par for par," on the basis that £1 equals \$5. The two considerations were not separable. The consideration for the offer of the Ecuador Company to issue its stock was quite as much the acquisition from the Association of the property of the Association, as the acquisition from the stockholders of the Association of their stock therein, and, *vice versa*. The acquisition of all the property of the Association would alone have been substantially equivalent to the acquisition from the shareholders of all their shares of stock, and, *vice versa*, the acquisition from the shareholders of all their shares of stock in the Association would have been substantially equivalent to the acquisition from the Association of all its property.

The agreement between the Association and the Company was executed and delivered on or about February 17th.

Agreements were not entered into between The Ecuador Company and the stockholders of the Asso-

ciation for the exchange of stock, except as such stockholders accepted the offer of The Ecuador Company (Ex. C 20, pp. 196-7), to issue its stock to stockholders of the Association in exchange for their stock in the Association.

The two other contemporaneous circulars, also of date February 17th (Ex. C 18 and Ex. C 19, pp. 194-5) signed by counsel for the Association and by certain stockholders of the Association were addressed to the shareholders of the Association, and amounted only to an announcement or declaration, on the part of the signers, of their intention to exchange their stock in the Association for stock of the Ecuador Company, and recommending like action to the other shareholders; or, at most, such circulars constituted an agreement, only between the signers of the circular and the other shareholders of the Association; and even if the circular (Ex. C 19, pp. 194-5) constituted an agreement between the signers thereof and the other shareholders of the Association, yet neither this circular alone nor this circular in connection with the circular constituting the offer by the Ecuador Company (Ex. C 20, p. 196) constituted an agreement between the shareholders of the Association and the Ecuador Company, nor an agreement which the Ecuador Company could enforce; nor was it even a standing offer to the Ecuador Company which the Ecuador Company could accept, so as to effect the completion of a contract, by such acceptance.

After his return to London, Mr. Harman sent two cablegrams to Mr. Lockwood at New York, one on January 26, directing him to organize The Ecuador Company (p. 142, Ex. C-48); one on January 27, directing him to "forward agreement between Duran Terminal and Ecuadorian Association to enable us to transfer Ecuadorian Association stock to Duran" (p. 76, lines 10-20; p. 152, Ex. C-50); and on January 30, Mr. Harman at London enclosed to Mr. Green, who was at Paris with Mr. Prun, two drafts of the

proposed assignment by The Ecuadorian Association, Limited, to The Ecuador Company (p. 30, lines 1-37; p. 153, Ex. C-13).

During January, Mr. Lockwood had procured the incorporation of the Duran Terminal Company and had forwarded the certificates for the Duran Terminal Company stock to Mr. Adams at Albany; had procured the incorporation of the Columbe Coal Company; and had procured the incorporation of the Villamil Company for the acquisition of the Galapagos Islands, Mr. Adams paying the expenses of incorporating the three companies (pp. 142-153; p. 27, lines 1-7).

Mr. Lockwood procured the incorporation of the Ecuador Company on February 2, 1903 (p. 116, lines 10-20).

On February 4, 1903, Mr. Lockwood, in accordance with the cablegram of January 27 from Mr. Harman (p. 152, Ex. C-50), wrote Mr. Adams at Albany (p. 155, Ex. C-54, lines 22-5) :

"I wish you would cable Mr. Pruyn at once and assure yourself in regard to signing a contract for Mr. Pruyn with the Association in regard to 65,000 shares of stock as was contemplated when Mr. Pruyn was here."

Mr. Adams replied February 5, 1903 (p. 156, Ex. C-55, lines 10-13) :

"I shall cable Mr. Pruyn at once regarding the signing of contract covering 65,000 shares of stock of the present association."

Mr. Pruyn, in a letter from Rome dated February 7, 1903 (p. 156, Ex. C-14; p. 31, lines 1-33), for the first time, takes up the situation definitely. Evidently referring to Mr. Harman's letter of January 30 (p. 153, Ex. C-13), enclosing the drafts of proposed assignment by The Ecuadorian Association to the Ecuador

Company, Mr. Pruyn, writing to Mr. Green, at London, says (p. 156, lines 20-37) :

" Harman's letter received. Reply that I am satisfied with plan proposed, providing my action can be postponed until after return. * * *

" I wish to avoid committing myself and Mr. Winsor to an incomplete situation until we can review it together."

Same letter (p. 158, lines 15, 16) :

" I should wish, however, to clear these things up."

This shows that the general plan adopted at the Paris interview was still merely tentative ; and a limitation to that effect must be made to the statement in the brief of counsel for the Receiver (p. 5), that from the time of the Paris interview " Mr. Pruyn and Mr. Harman went on treating the transaction as settled."

Mr. Pruyn also, in his letter of February 7, suggests many details, particularly in reference to putting the new Ecuador Company in funds, asks a number of questions, and refers to the cablegram of Mr. Adams as follows (p. 157, lines 31-5) :

" Adams cables to ask whether he shall carry out and sign escrow depositing Duran stock against £50,000 [error for £65,000 ?] Ecuadorian Association stock. I cabled him to do as Lockwood advised. Please submit to H. this thought : is it not better to keep Duran Stock for E. Co. and not sell it to E. Association—provided, however, that H. can vote enough Association stock without it—but in this latter case should it not be an actual sale and not an escrow ? I depend upon H. instructing Lockwood correctly."

Mr. Harman replies as to this last suggestion in his letter of February 12th from London to Mr. Pruyn at Rome (p. 168, lines 23-33), as follows :

"I have noted carefully your suggestion that the £65,000 of Ecuadorian Association stock should not be given in exchange for the Duran Terminal stock, and that it would be preferable to exchange the Duran Terminal stock for stock in the Ecuador Co. I fully concur with this idea, but I am afraid that without these 65,000 shares of stock being issued, that Dick and Lisman might acquire sufficient shares of the Ecuadorian Association to make the pool agreement binding, in which case they could give us untold trouble."

Mr. Lockwood writes from New York to Mr. De Friese at London, February 10, 1903 (p. 160, Ex. C-57, lines 18-20) :

"I hand you herewith agreement between the Ecuadorian Association, Limited, and Robert C. Pruyn, executed on Mr. Pruyn's behalf by Mr. Adams."

Mr. Adams, in letter to Mr. Lockwood of February 13, 1903 (p. 169, Ex. C59, lines 23-26), says :

"Will you kindly forward me a copy of the escrow agreement which I signed on Tuesday and any letter or portion of letter referring thereto which you may have written to Mr. DeFriese."

This contract, between Mr. Pruyn and the Ecuadorian Association, Limited, which was executed about February 10, 1903, was not put in evidence, but it is perfectly evident that the contract conformed substantially to the plan set forth in Mr. Harman's letter of December 30, 1902 (pp. 140, 141, Ex. C10 ; pp. 18, 19) ; and that the contract, as executed, was optional on the part of Mr. Pruyn, imposing upon him no absolute or binding obligation to do anything whatsoever except to procure the incorporation of the Duran Terminal Company and to cause certificates for its entire capital stock to be deposited ; and, then, in case he should not procure the Duran Terminal Company to be vested with the Terminal Property and \$36,000 in cash within

six months from December 30, 1902, the stock of the Association, deposited by it, and the stock of the Duran Terminal Company, deposited by Mr. Pruyn, were to be returned to the depositors, respectively, and the assignment of the option for the Duran Terminal Property was to be assigned to The Ecuadorian Association, Limited, upon the Ecuadorian Association reimbursing him for his actual outlay on the Duran Terminal Company (p. 141, lines 10-18; pp. 252-3, Ex. C-69; pp. 254-5, Ex. C-71).

Mr. Lockwood in a letter from New York, dated February 11, 1903, to Major J. A. Harman in Ecuador, gives a statement of the capitalization, officers and directors of each of the four companies—The Ecuador Company, the Duran Terminal Company, the Columbe Coal Company and the Villamil Company—from which it will be noticed that Mr. Archer Harman was not an officer or director of any of them (pp. 161, 162, Ex. C-58; p. 78, lines 10-20); nor was he, at any time, an officer or director of the Ecuador Company (p. 83, lines 1-6).

In reply to Mr. Pruyn's letter of February 7, from Rome, to Mr. Green at London (pp. 156-9, Ex. C-14), and in reply to a telegram of February 11 from Mr. Pruyn at Rome to Mr. Harman at London (p. 162, Ex. C-23; p. 36, lines 20-30), Mr. Harman, on February 12, writes a long letter from London to Mr. Pruyn at Rome, containing a mass of details (pp. 163-9, Ex. C-15; pp. 31, 32); another on February 17 (pp. 170-2, Ex. C-16; p. 32, lines 10-20); two more long letters, each dated February 18 (pp. 197-204, Ex. C-21; Ex. C-22, p. 36, lines 1-11); another on February 19 (pp. 205-7, Ex. C-24; p. 36, lines 30-37); also on the same day, February 19, Mr. DeFriesse writes from London to Mr. Pruyn at Rome (pp. 207, 208, Ex. C-60; p. 78, lines 30-7; p. 79, lines 1-10).

With these letters were enclosed the long assignment of February 17 by The Ecuadorian Association, Limited, to The Ecuador Company (pp. 173-193, Ex. C 17,

p. 33, lines 20-37); also the three circulars addressed to shareholders of The Ecuadorian Association, Limited (pp. 194-6, Ex. C 18, Ex. C 19 and Ex. C 20; p. 35, lines 1-20); also the contract between The Ecuadorian Association, Limited, and Mr. Pruyn in relation to the Duran Terminal Company and the acquisition by Mr. Pruyn of 65,000 shares of Association stock, which had been executed on or about February 10 by Mr. Adams in behalf of Mr. Pruyn, and which evidently was first forwarded to Mr. Pruyn by the letter of February 19 (p. 205, Ex. C 24, lines 18-22); also the proposed substitute therefor prepared by Mr. DeFrieze at London, and forwarded by Mr. Harman to Mr. Pruyn at Rome with the letter of date February 19, 1903 (p. 205, Ex. C 24, lines 18-22).

The major part of these letters and documents, constituting over forty printed pages in the record, were forwarded February 16-19, from London, to Mr. Pruyn, who was on a pleasure trip, with his family, busily engaged in sightseeing at Rome (p. 209, lines 20-30), and must have been received by him almost simultaneously.

The two letters of Messrs. Harman and DeFrieze of February 19 to Mr. Pruyn (pp. 205-9, Ex. C 24 and C 60), with which were enclosed the Duran Terminal contract of February 10, executed by Mr. Adams for Mr. Pruyn, and triplicate draft of the proposed substitute therefor, constituted the only information given to Mr. Pruyn of the proposed change in the Duran Terminal contract and of the reasons therefor.

Mr. Harman in his letter of February 19 (p. 205, lines 21-27), says :

“For reasons which I deem it unnecessary to go over again with you, it is not advisable to make an escrow agreement. I have had Mr. DeFrieze draft a substitute, which I enclose to you. The DeFrieze agreement will allow the Ecuadorian Association to issue to you direct and immediately 65,000 shares of this stock.”

Mr. DeFrieze in his letter of February 19 (p. 208, lines 1-13), says :

“ I thought it wiser, if possible, to do away with the escrow provided for and issue the 65,000 Ecuadorian Shares to you in exchange for the Duran Terminal Shares, the latter to be handed over to the Ecuador Company in New Jersey for account of the Association. However, I did not wish in the contract a recital of the purchase price of the Terminal properties and Mr. Harman thought it advisable, inasmuch as we have to file one of the duplicate contracts at Somerset House, that the matter of \$36,000 working capital for the Terminal Company should be omitted and that we should simply trust to you to provide it.”

It would have been just as easy for Messrs. Harman and DeFrieze to have stated that the reason for the proposed change in the Duran Terminal Contract was the opinion of counsel that the Association could not issue the 65,000 shares of its stock in exchange for stock of the Duran Terminal Company under the contract as it then stood between the Association and Mr. Pruyn, whereby the Duran Terminal Company might never have any assets whatever and never would have any assets unless Mr. Pruyn at his option should choose to acquire and transfer to it the Duran Terminal Property and \$36,000 cash ; and therefore that it was desirable that the agreement to transfer the Duran Terminal Property and \$36,000 cash to the Duran Terminal Company, should be made absolute instead of optional on Mr. Pruyn's part (p. 69, lines 10-20) ; but not a hint of any such change was suggested in either the letter of Mr. Harman or in the letter of Mr. DeFrieze (pp. 205-8 ; Exhibits C 24 and C 60).

Of course, a certificate for the 65,000 shares of Association stock might have been executed and deposited as provided in the contract, as it then stood, between the Association and Mr. Pruyn, but the stock represented by such certificate would not be actually issued until the certificate would be deliverable to Mr. Pruyn.

and in the meantime the 65,000 shares of stock could not be voted, and the "Dick-Lisman Syndicate" would still hold the majority of voting shares until the 65,000 shares should be actually issued and the certificate therefor absolutely delivered.

The escrow character of the agreement which was so carefully explained by Messrs. Harman and DeFries in their two letters of February 19th, related only to the deposit of the certificates of stock until the actual delivery thereof. The change proposed, from a deposit of the certificates of stock in escrow, to the immediate delivery thereof, was immaterial to Mr. Pruyn from his personal point of view; while the proposed change in the contract, from an optional to an absolute agreement to transfer the Terminal Property to the Duran Terminal Company, was the real and substantial change proposed, so far as Mr. Pruyn's personal interests were affected.

As to this principal and substantial change in the contract, the letters of Messrs. Harman and DeFries are both so studiously silent and are both so similar in their language explanatory of the change from deposit of the stock in escrow to immediate delivery thereof that the inference is irresistible that the two letters were prepared by Messrs. Harman and DeFries in consultation, with the deliberate intent of diverting Mr. Pruyn's attention from the principal and substantial change proposed to be made in the contract, and with the deliberate intent to mislead Mr. Pruyn into the belief that it would still remain optional with him to cause the Duran Terminal Property and the \$36,000 cash to be transferred to the Duran Terminal Company.

The additional explanation, in the letter of Mr. DeFries, of the reason for the omission from the new contract of the \$36,000 item with the implication of a tacit understanding that it should still remain in force "and which we should simply trust to you to provide," as well as the phrase "if you approve of the new *form* of contract," also tended to give Mr. Pruyn the impression that the changes proposed were merely formal and

that the whole contract was to remain in force substantially unchanged. Mr. Pruyn must have been impressed with the need of hasty action on his part by the clause of Mr. Harman's letter of February 19 (pp. 205-6) :

"If you do not receive these contracts in time for them to reach London on Tuesday morning, I would suggest that you telegraph Mr. Green to sign them as your attorney."

Is it strange that Mr. Pruyn who had trusted the drafting of the first Duran Terminal contract wholly to Mr. Lockwood, counsel for Mr. Harman and his associates, including Mr. Pruyn, in New York (p. 167, lines 34-5; p. 223, line 28 to p. 224, line 3, Ex. C 64), should have followed the later instructions of Mr. DeFries, who was then acting as counsel for the same parties in London, without examining the papers submitted to him, assuming that the changes in his contract with the Association were mere matters of form, all in harmony with the fundamental understanding, underlying all the negotiations, that he was not to enter into any absolute obligation until he should return to this country and consult with Mr. Winsor, and that he could trust the people with whom he was dealing to respect and observe such fundamental understanding?

Accordingly, Mr. Pruyn, on February 23, signed the substitute form of contract forwarded to him by Mr. DeFries on February 19, immediately on its receipt (pp. 211-214, Ex. C 25), and returned it to London without retaining either a duplicate original or a copy, all under the *bona fide* supposition that the new agreement executed by him still left it optional with him to cause the Duran Terminal Company to be vested with the Duran Terminal property and the \$36,000 cash; and that unless he did so, he would not be entitled to the 65,000 shares of Association stock (pp. 254-5, Ex. C-71; pp. 265-7, Ex. C-78; pp. 91-4, pp. 95-8).

So great seemed to be the need of haste to get the

65,000 shares of Association stock issued that Mr. Green, who was in London, was induced to execute in Mr. Pruyn's name, on February 24, a duplicate of the new contract between the Association and Mr. Pruyn, which Mr. Pruyn cabled he had executed in Rome on February 23 (pp. 37-8 ; p. 214, Ex. C 26).

The contract so executed by Mr. Green was at once filed at Somerset House "to justify the directors in the Ecuadorian Association in issuing that sixty-five thousand pounds of stock" (p. 38, lines 20-3 ; p. 55, line 36, to p. 56, line 30).

After the transfer of the assets of the Ecuadorian Association to the Ecuador Company, by the assignment executed, acknowledged and delivered on February 17 (pp. 173-193, Ex. C. 17 ; p. 30, lines 20-30 ; p. 32, line 17 ; p. 33, lines 1-37 ; p. 53, lines 29-37 ; p. 54 ; p. 55, lines 1-20), the Ecuador Company, having assumed the obligations of the Association, to proceed with the construction of the Guayaquil and Quito Railroad, was in need of funds for that purpose, and the keeping of the Ecuador Company in sufficient funds for its immediate needs was a matter of frequent consultation between Mr. Harman and Mr. Pruyn.

Mr. Harman met Mr. Pruyn in Naples on or about February 27 and there they made a memorandum of various moneys which would be immediately needed by the Ecuador Company, and the methods of raising such necessary funds (p. 39, lines 28-37 ; p. 40 ; p. 41, lines 1-7 ; pp. 216-17, Ex. C 30, duplicated as Exhibit C 85, pp. 218-19, see p. 94, pp. 14-26).

Thereafter, and before sailing from Europe to this country, on or about April 10, Mr. Pruyn advanced upwards of \$60,000 to the Ecuador Company, for which the Company gave its note to Mr. Pruyn (pp. 127-8 ; p. 122, lines 39-9 ; p. 123, lines 1-10).

In fact, all of the cash ever received by the Ecuador Company and its subordinate companies appears to have been advanced by Mr. Pruyn, amounting to over \$64,000, for which he, at first, received only the notes

of the Company (p. 17, p. 99, lines 24-6 ; p. 7, lines 18-37 ; pp. 127-8, Ex. C2 ; p. 99, line 20, to p. 100, line 10). The Ecuador Company assigned to Mr. Pruyn certain preferred stock of the Railway Company as collateral security for the notes, but the certificates for such preferred stock, being then in the possession of Glyn, Mills, Currie & Co., were withheld from Mr. Pruyn, and his right thereto is now in litigation (pp. 111-114). So that Mr. Pruyn originally, and now his successor in interest, only has the notes of the insolvent Ecuador Company, and, as collateral thereto, a litigated claim for preferred stock, of the Railway Company, to show for Mr. Pruyn's advances of over \$64,000, in cash, for the benefit of Mr. Harman's South American projects ; and still, this additional claim is made for \$325,000 more, in cash, from Mr. Pruyn, besides the claim made against him for the Duran Terminal Property, all for the benefit of Mr. Harman's projects, with no benefit whatever to Mr. Pruyn or his successor in interest.

But, notwithstanding all these advances by Mr. Pruyn, while he was in Europe, the general plan of financing the Ecuador Company was understood by all parties in interest to be tentative merely until Mr. Pruyn should return to this country and personally consult Mr. Winsor (p. 221, lines 1-10 ; p. 231, lines 35-6, p. 321, lines 55-6 ; p. 32, lines 1-20 ; pp. 251-2, Ex. C 34, p. 42, lines 9-15).

Thus, particularly in the letter of April 2 from Mr. Pruyn at Paris, to Mr. Harman (pp. 251-2, Ex. C 34), occur the following passages :

" Perhaps more information may be on the way ; but I am quite unable to give Mr. Winsor a complete statement until I reach home, and his understanding everything clearly and approving are so absolutely necessary. * * *

" I am most troubled by the apparent lack of collateral in the E. Co. for securing the first payment, but am too ignorant of exact facts and

figures to discuss the question. Perhaps Mr. Winsor, coming to the consideration with a fresh mind, may see the way more clearly. * * *

"I have written asking Mr. Winsor to meet me during the week after my arrival, and hope to bring about something definite within a short time."

On March 10 Mr. Harman was back in London (p. 41, lines 8-16 ; p. 224, Ex. C., 31). On March 17th, Mr. Harman returned to New York (p. 86, lines 30-3), and on March 25th was still in New York but on that day sailed for South America (p. 41, lines 28-37).

Until Mr. Pruyn's return to this country on April 18 or 19, it is evident that he did not suppose that he had signed any new contract between himself and the Association on February 23, which purported to change the previous arrangement for the proposed transfer, to the Duran Terminal Company, of the Duran Terminal Property and \$36,000 cash, from an optional right to an absolute agreement on his part.

It is evident, also, that, during that entire period, Messrs. Harman and DeFriesse understood that Mr. Pruyn was laboring under such erroneous supposition, and that they, also, well understood that Mr. Pruyn was mistaken as to the nature of the document when he signed it.

In all the letters to Mr. Pruyn during this period there is a studious avoidance of any suggestion to Mr. Pruyn that he had assumed an absolute obligation to acquire and transfer the Duran Terminal Property.

All that was done with regard to the 65,000 shares of Association stock was entirely consistent with the original agreement between Mr. Pruyn and the Association, executed on or about February 10. By that agreement, the 65,000 shares of Association stock were to be issued in the name of Mr. Pruyn, and the certificate therefor was to be deposited, in escrow, with Glyn, Mills, Currie & Co. (Ex. C 10, at pp. 140-1, du-

plicated at pp. 18, 19). It was also the understanding that, in case Mr. Pruyn should be entitled to have such certificate delivered to him, he should arrange to have it transferred and delivered instead to the Ecuador Company, in exchange for the issue by the Ecuador Company to him of 3,250 shares of the stock of the Ecuador Company.

The certificate of the Association, for the 65,000 shares of its stock in the name of Mr. Pruyn, was not executed until after March 4, as Mr. DeFriese, with his letter of March 4, from London, to Mr. Pruyn at Naples (pp. 219-20, Ex. C 63; p. 79, lines 29-36; p. 56, line 31, to p. 57, line 10), merely encloses a proposed agreement for the transfer of such a certificate, when issued to the Ecuador Company, together with a letter to the Ecuador Company, both of which he asks Mr. Pruyn to sign "and return them all to me and I will have the certificate issued and file them all with Glyn, Mills, Currie & Co." (p. 220, lines 10-13).

Mr. Harman, in his letter of March 10, the last day for deposit under the offer of the Ecuador Company, from London, to Mr. Pruyn, in Venice (p. 227, lines 12-17), referring to the same certificate, says: "I have had deposited to-day £65,000 of the shares issued to you, making a total of £238,000" of Association stock deposited with Glyn, Mills, Currie & Co.

All of this was precisely in accordance with the original agreement, executed on or about February 10, between Mr. Pruyn and the Association, for the deposit of the stock, in escrow, with Glyn, Mills, Currie & Co., with the optional right of Mr. Pruyn to become entitled to it, and was well calculated to confirm Mr. Pruyn's supposition that such original agreement remained unchanged and was being carried out.

In the same letter of March 10th to Mr. Pruyn, Mr. Harman said (p. 227, lines 23-5):

"I feel, Mr. Pruyn, that I have left unsaid and undone a great many things that you should have been advised of."

But there was not a word in Mr. Harman's long letter of March 10 in any way suggesting that any change had been made in the Duran Terminal contract of February 10, or in any way suggesting that Mr. Pruyn was absolutely bound to transfer the Terminal property or to acquire the 65,000 shares of Association stock. Neither was there any such suggestion in the still longer and more elaborate letter which Mr. Harman wrote in New York to Mr. Adams on March 25 (Ex. C33, at pp. 234-251), and which Mr. Harman says (p. 41, line 28, to p. 42, line 8), he intended should be "as complete a statement of the entire transaction as I could put into a brief statement, * * * and I think dealing with the whole subject rather comprehensively."

Mr. Pruyn, in his letter of March 19th from Paris, to Mr. Harman in Ecuador, in reply to Mr. Harman's letter of March 10 (p. 232, last three lines ; p. 233, first eight lines), said :

"I was glad you spoke in your letter of your failing to advise me of many things and appreciate the difficult position you were in. I find it most difficult to grasp the situation and it has been no easy task for me to decide so many things while on a pleasure trip, & at such a distance from the three bases—London, N. York & Ecuador, having so small a stock of information."

While Mr. Harman was in New York (March 18-25) Mr. Lockwood was shocked to learn of the new agreement signed by Mr. Green in the name of Mr. Pruyn, on February 24, and filed at Somerset House, but he had not then learned that Mr. Pruyn had signed any such new agreement at Rome on February 23 (p. 83, lines 14-21).

Mr. Lockwood had written to Mr. Adams on March 7th (pp. 223-4, Ex. C., 64), as follows :

"I have felt that I represent Mr. Pruyn in this matter quite as much as Mr. Harman and will do

everything in my power to protect him. There is nothing in Mr. Harman's relations to myself that under the present circumstances prevents this, and if I feel that at any time their relations are such that their interests cannot properly be represented by the same person or firm, I will at once notify Mr. Pruyn to that effect in order that I may withdraw as counsel for one or the other interest."

But Mr. Lockwood did not attempt to inform Mr. Pruyn directly of the mistake made by Mr. Green in signing the agreement of February 24, and he waited, before informing Mr. Adams, until it would be too late for Mr. Adams to get word to Mr. Pruyn before sailing for this country.

On April 9, 1903, just as Mr. Pruyn was about sailing for this country, Mr. Lockwood wrote to Mr. Adams (pp. 252-3, Ex. C 69) as follows :

"There is one matter that I want to warn you about, and that is Mr. Pruyn's position in regard to the Luque purchase for the Duran Terminal Company. You remember that on your instruction I drew up an optional purchase agreement for Mr. Pruyn in respect to 65,000 shares of Association stock, and forwarded it to England, executed by you on behalf of Mr. Pruyn. It seems that the exigencies of the case demanded a change and we find that your contract was not used but another contract drawn in London was signed in Mr. Pruyn's name by Mr. Green, as attorney. This latter agreement is in form a binding one on Mr. Pruyn to purchase the Luque property and turn it over to the Duran Company, etc., and is very dangerous in view of the little we know of the validity of the title. The six months granted by the vendors to complete the optional purchase was given so that the Duran Company could let the whole matter drop in case of a serious defect

of title or other obstruction to a complete purchase, but now all that protection has been swept away and the South Americans would take full advantage of that situation if they found it out. For that reason we must keep the new form of contract to ourselves."

On Mr. Pruyn's return to this country, April 18th or 19th, he was at once informed by Mr. Adams (p. 106, lines 1-18) of the absolute, dangerous and unreasonable character of the contract which Mr. Green had executed in his name on February 24th, but neither Mr. Pruyn nor Mr. Lockwood were yet aware that the contract which Mr. Pruyn had signed at Rome on February 23d was to the same effect (p. 82, lines 14-21).

Mr. Harman was then in Ecuador, but Mr. Lockwood, apparently in good faith, and still acting as Mr. Pruyn's counsel, joined with Mr. Pruyn in cabling to Mr. Harman for his consent to a reformation of the contract of February 24th (p. 82, lines 34-7). Mr. Lockwood also drew up a new agreement (p. 88, lines 8-16; p. 82, lines 8-30) in accordance with Mr. Pruyn's understanding, and such proposed new agreement was signed by Mr. Pruyn and by the Union Trust Company of Albany, and forwarded to The Ecuadorian Association for signature on its part (pp. 257-60, Exhibit C 36, p. 63, lines 13-28; p. 82, lines 8-30).

Mr. Pruyn also promptly, on April 21st (April 19th being Sunday), sent a letter, which was prepared in consultation with Mr. Lockwood, to Mr. Powers-Farr, Deputy Chairman of the Ecuadorian Association insisting that the agreement signed by Mr. Green on February 24th was due to misunderstanding, and requesting that necessary action be taken at once for the execution of a new contract in accordance with the terms actually agreed on (pp. 254-5, Exhibit C 71; p. 81, lines 35-8; p. 82, lines 1-10).

Mr. Farr presented this letter at a meeting of the directors at which Mr. Pruyn was present. The directors indicated a willingness to have the contract of

February 24th reformed (p. 90, lines 25-38; pp. 91-94, line 11; p. 95, lines 23-38; pp. 96-98, lines 1-5), but Mr. Harman cabled his insistence that the contract of February 24th should be preserved and enforced, and the result was that the Association refused to execute the proposed new contract which Mr. Lockwood had drafted. (Exhibit C 36, pp. 257-60; p. 83, lines 1-10; p. 105, lines 1-10.)

In June, Mr. Lockwood refused to act further as counsel for Mr. Pruyn (p. 88, lines 28-37); later, Mr. Harman refused to meet Mr. Pruyn's representative (pp. 46, 47, 58, 59); and the letter of Mr. Pruyn to Mr. Lockwood of July 30 (Ex. C 79, pp. 268, 269), was substantially the end of Mr. Pruyn's connection with the financiering of The Ecuador Company. It was inevitable that it should be so. Even if Mr. Pruyn had knowingly and deliberately signed the dangerous and unreasonable contract of February 23-24, and had asked to be relieved therefrom, it would have been wise and tactful on the part of Mr. Harman to have concurred with the directors in consenting to Mr. Pruyn's release from such an agreement, in which case Mr. Pruyn would undoubtedly have secured the co-operation of Mr. Winsor in financing the Ecuador Company. The action of Mr. Harman was not only narrow-minded and unwise, but was essentially fraudulent and necessarily prevented Mr. Pruyn from joining in an enterprise with associates between whom mutual confidence was essential to success. The acquisition of the Duran Terminal Property was but a trifle in comparison with the large enterprises which Mr. Pruyn had shown a desire to join in placing on a prosperous basis. Mr. Harman, by insisting on the trifling advantage which he had apparently gained by his deception of Mr. Pruyn, ruined all possibility of gaining the co-operation of Messrs. Pruyn and Winsor in his larger projects.

Mr. Pruyn was clearly justified in refusing to be bound by the language of the agreement of February 23-4, which he signed under misapprehension, mis-

representation and mistake of fact, known to the parties inducing him to sign it, and such agreement never was binding upon or enforceable against Mr. Pruyn.

On Mr. Pruyn's theory, the agreements signed by him and Mr. Green on February 23 and 24 (Ex. C 25 and Ex. C 26, pp. 211-14), are void, and as if they had never existed; the agreement executed on or about February 10, by Mr. Adams in the name of Mr. Pruyn remained in force unchanged; and as Mr. Pruyn did not exercise his option thereunder to transfer the Duran Terminal Property, he never became entitled to the 65,000 shares of Association stock, the certificate for which was deposited with Glyn, Mills, Currie & Co. on March 10, 1903, and such certificate was after July 30, 1903, properly delivered back to the Association, where it has since remained (p. 57, lines 8-20) in accordance with said original agreement of February 10.

On his theory, Mr. Pruyn never acquired, and never absolutely agreed to acquire, the stock of the Association, and never agreed with The Ecuador Company or with any one else to exchange stock of the Association for stock of The Ecuador Company. The circular letter of February 17 signed in behalf of Mr. Pruyn by Mr. Adams (Ex. C 19, pp. 194-2), and addressed to the shareholders of the Association, was not an agreement, by the signers thereof, to acquire any stock of the Association. It was nothing more than an announcement or declaration by the signers thereof, of their intention to exchange such stock of the Association as they then had, or might at any time have, for stock of The Ecuador Company. Mr. Pruyn did not in fact have any stock or any right to stock of the Association at the time such circular letter was issued, as the certificate for the 65,000 shares was not issued until after March 4th, as shown by the letter of Mr. DeFriesse of that date (Ex. C 63, pp. 2, 9-20). The recital in the circular that the undersigned were holders

of shares of the stock of the Association was not wholly true at the time the circular letter was dated, February 17, or when it was issued, February 20 (p. 208, lines 7-10), but was merely anticipatory of a situation which was expected to result, just as the recital in the agreement of the same date between The Ecuadorian Association and The Ecuador Company (Ex. C17, p. 183, lines 5-20) was also untrue and anticipatory, to the effect that the Duran Terminal Company had acquired the Duran Terminal Property containing about 5,000 acres.

Even if the circular letter of February 17, signed in behalf of Mr. Pruyn originally was, or ever afterward became, a contract it was, at most, a contract only between the signers thereof and the other shareholders of the Association, to which the Ecuador Company was in no way a party, and which the Ecuador Company could in no way enforce.

Thus, on Mr. Pruyn's theory, he never was bound by a contract with any one to acquire the 65,000 shares of Association stock; he never acquired such stock; and he never agreed with any one to exchange any stock of the Association, which he should not acquire, for stock of The Ecuador Company; and he never in any way subscribed for, agreed to accept or take, or accepted or took or exercised control over, or became entitled to, the 3,250 shares of stock of the Ecuador Company, in question, or any part thereof.

Assuming, however, in accordance with the Receiver's theory, that the agreements signed on February 23-4 by Mr. Pruyn and Mr. Green (Exs. C 25 and C 26, pp. 211-14) were valid and binding on Mr. Pruyn, then Mr. Pruyn absolutely agreed to acquire, and did acquire, the 65,000 shares of Association stock; the instrument for the transfer thereof, and the letter in relation thereto, enclosed to Mr. Pruyn with the letter of Mr. DeFriesse of March 4 (Ex. C 63, pp. 219-20; p. 79, lines 29-36); and the deposit of such transfer and letter and of the certificate for such 65,000

shares by Mr. Harman for Mr. Pruyn on March 10 with Glyn, Mills, Currie & Co. (p. 227, lines 12-17) was not made in escrow, but was a final absolute deposit for the Ecuador Company, in accordance with the offer of the Ecuador Company made by its circular letter of February 17 (Ex. C 20, p. 196) ; such deposit constituted the acceptance by Mr. Pruyn of such offer of the Ecuador Company and effected the completion of a contract between Mr. Pruyn and the Ecuador Company for the exchange of said 65,000 shares of Association stock for 3,250 shares of the stock of the Ecuador Company ; such deposit, by Mr. Harman for Mr. Pruyn, of such certificate for 65,000 shares of Association stock, constituted the complete performance by Mr. Pruyn of said contract on his part ; he became, thereupon, entitled to the certificate for the 3,250 shares of stock of the Ecuador Company, as full paid and without any further liability to the Ecuador Company therefor ; and Mr. Pruyn is, on the theory of the Receiver as to the effect of the instrument of February 23-24, now entitled to receive the certificate for 3,250 shares of the stock of the Ecuador Company and to accept the same as full paid and without further liability on account thereof.

So that, either on the theory of Mr. Pruyn or of the Receiver, as to the effect of the instrument of February 23-24, Mr. Pruyn is clearly shown to be absolutely free from any liability to the Ecuador Company on account of any subscription for stock of the Ecuador Company to be issued in exchange for the 65,000 shares of the stock of the Association.

Either on the theory of Mr. Pruyn or on the theory of the Receiver as to the effect of the instrument of February 23-24, the certificate to Mr. Pruyn for 65,000 shares of Association stock was properly deposited with Glyn, Mills, Currie and Company, on March 10, with the expectation of all parties interested therein that such certificate would ultimately be delivered, by Glyn, Mills, Currie and Company to the Ecuador

Company, in exchange for 3,250 shares of the stock of the Ecuador Company.

Such certificate for 65,000 shares of Association stock together with other certificates representing a total of 238,000 shares of Association stock had been so deposited with Glyn, Mills, Currie and Company, by March 10 (p. 227, lines 12-17), which was the last day for such deposit, as fixed by the circular letter of the Ecuador Company (Ex. C 20, p. 196).

Mr. Adams says that, on consultation with Mr. Lockwood, it was deemed advisable to take time by the forelock and prepare the certificates for the shares of stock that were to be issued by the Ecuador Company in exchange for the shares of Association stock that had been deposited with Glyn, Mills, Currie and Company (p. 104, lines 13-30).

Mr. Lockwood explains the circumstances attending the making out of certificates of the stock of the Ecuador Company on the 2d day of April, 1903 (p. 106, lines 20-37) as follows :

" We had understood, Mr. Adams, Mr. Swan, and myself, that there was to be an exchange into shares of the Association with shares of the Ecuador Company, and we had cabled to England asking Messrs. Glyn, Mills & Currie Company, the depositary, to send us a list of all the depositors of Ecuadorian Association stock, together with the amounts of stock deposited by each of them, so that we could make out the certificates of the Ecuador Company, and forward them for exchange. These lists were received sometime prior to April 2d, 1903, and they contained the name, as I remember, of Mr. Prunyn, for sixty-five thousand pounds of stock, and all the certificates were then made out for the exchange. Mr. Swan went over them in my office in New York with me, and checked the list off. * * * We thought that he was going to send them by express to England immediately. * * * I think some question was raised whether it wouldn't be more convenient for Mr. Prunyn, if he was coming right back to retain his certificate in this country, and I do not know what became of that. * * * " (And p.

109, lines 20-30). "As I understand it the certificate for three thousand two hundred and fifty shares of stock to Mr. Pruyn, was made out in order that it might be exchanged for sixty-five thousand pounds of Ecuadorian Association stock."

Mr. Adams testifies (p. 104, lines 20-30) as follows :

"Mr. Pruyn was in Europe at the time. His arrival here seemed to come so close to the time when the Company needed that sixty-five thousand pounds of stock, that it was deemed advisable to take time by the forelock and prepare the certificate so that in case the exchange were made with Mr. Pruyn, we would have the certificate ready to deliver."

Mr. Adams and Mr. Swan testified expressly, and are corroborated by the evidence of Mr. Lockwood, that no instructions were received from Mr. Pruyn or from anybody representing him, to issue the certificate for the 3,250 shares of Ecuador Company stock to Mr. Pruyn ; that the certificate was never tendered or delivered to Mr. Pruyn ; that he never accepted the same or exercised control over it, and that it has always remained in the custody of the officers of the Company, in the safe deposit box of the Ecuador Company, in the possession of Mr. Swan, the Treasurer of the Ecuador Company, "and has never been out of his possession" (pp. 98-110).

It will be remembered that it was not until afterward, by the letter of April 9th (Ex. C 69, pp. 252-3), that Mr. Adams was informed by Mr. Lockwood of the signing of the agreement of February 23-4.

The whole scheme for the exchange of Ecuadorian Association stock into Ecuador Company stock fell through (p. 110, lines 20-30).

Mr. Pruyn refused to accept the certificate for 3,250 shares of stock of The Ecuador Company, because, on his theory, he had not exercised his optional right to equip the Duran Terminal Company with the Duran Terminal Property and \$36,000 cash, and, therefore,

he was not entitled to the 65,000 shares of Association stock from the Association, and the certificate for such 65,000 shares of Association stock had been returned to the Ecuadorian Association by Glyn, Mills, Currie & Company (p. 57, lines 8-21), in accordance with the original agreement of February 10, and by assignment of February 17 had been assigned by the Ecuadorian Association to the Ecuador Company, which on his theory was the end of that transaction so far as he was concerned, with no right on his part to demand and with no obligation on the part of the Ecuador Company to deliver to him the 3,250 shares of stock of the Ecuador Company.

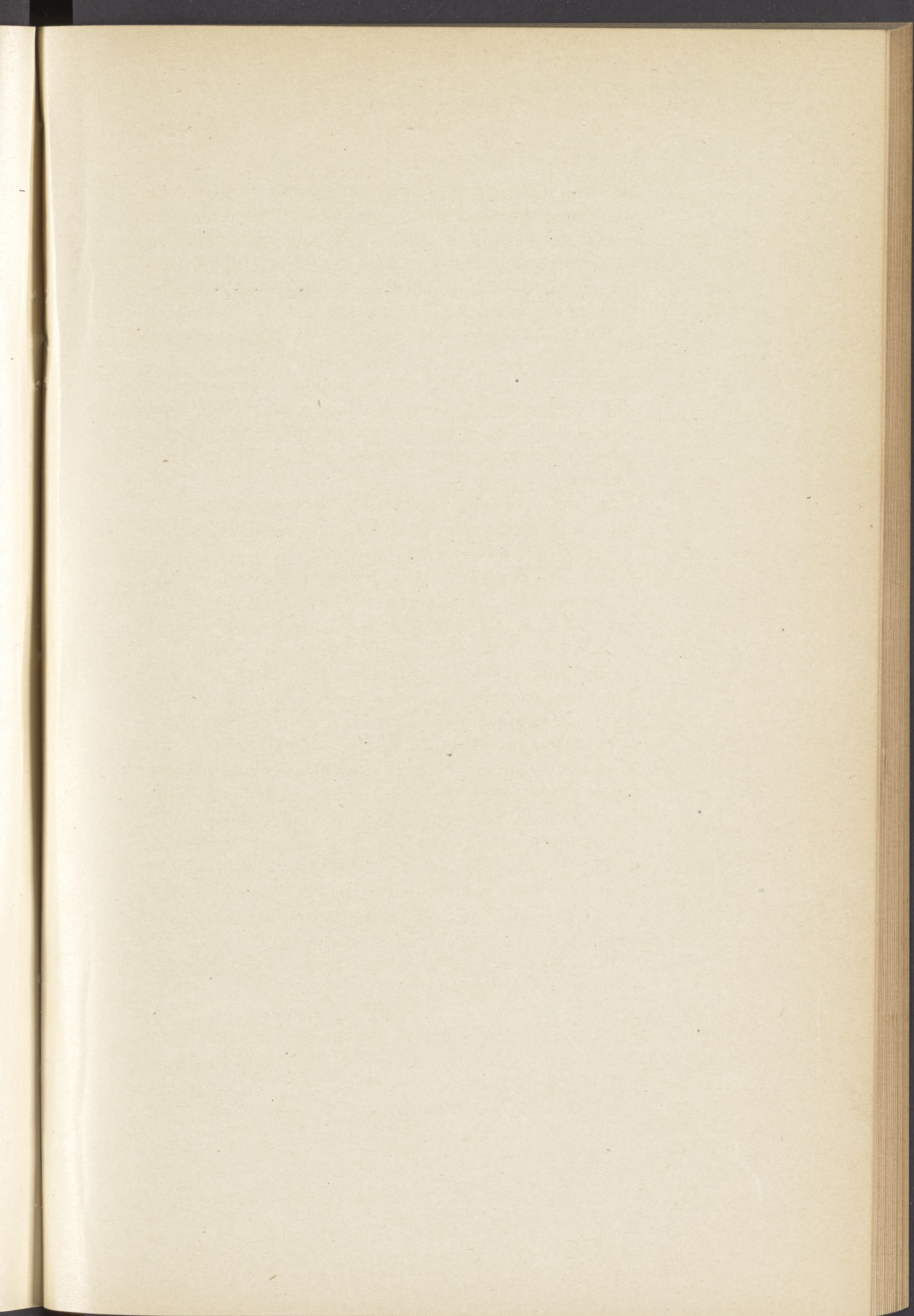
It was sufficient reason for the omission of the officers of the Ecuador Company to cancel the certificate for 3,250 shares of its stock, which had been executed by them in anticipation of the return of Mr. Pruyn, that the cancellation of such certificate by the Ecuador Company might be construed as an acceptance by the Company of Mr. Pruyn's theory of the contract of February 23-4, and as a waiver of any claim which the Ecuador Company, as assignee of the Association, might have against Mr. Pruyn thereunder.

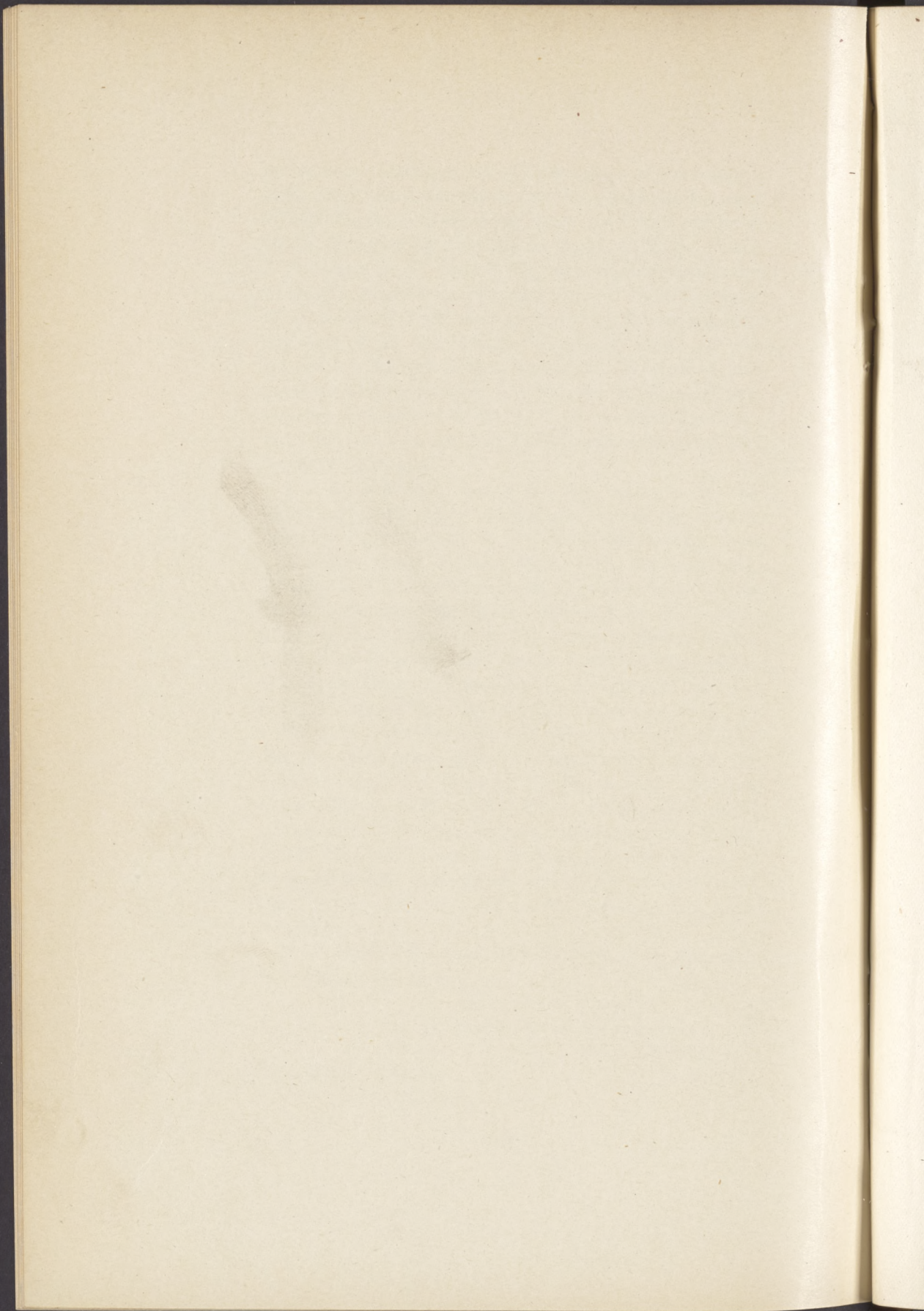
Thus, the circumstance that the stock books of The Ecuador Company show a certificate executed for 3,250 shares of its stock to Mr. Pruyn, and remaining uncanceled, is fully explained by indisputable facts, which absolutely disprove any liability of Mr. Pruyn to The Ecuador Company on account, or by reason, of such certificate, and which conclusively demonstrate the impossibility of ever hereafter proving any such liability.

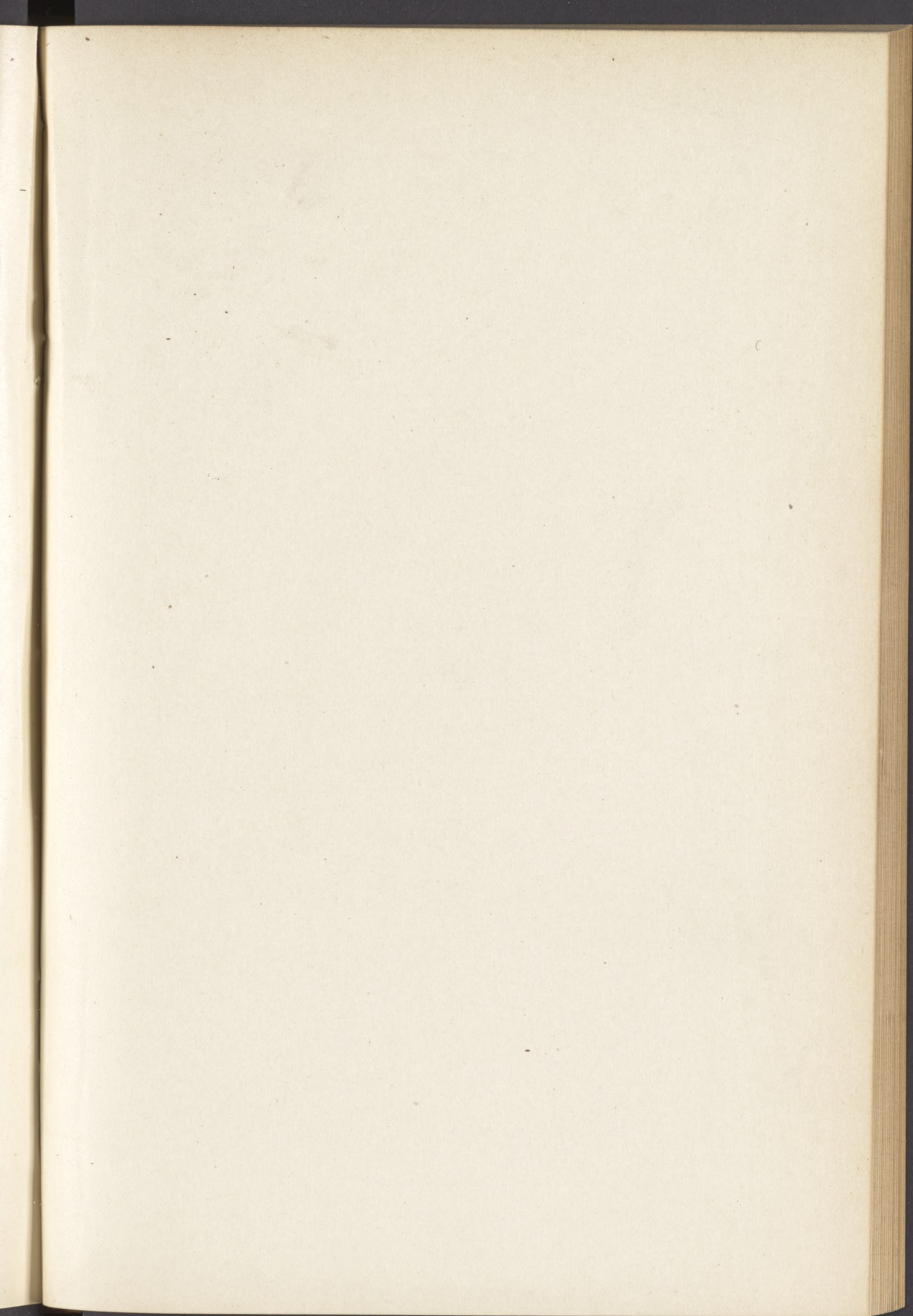
It is respectfully submitted that the order appealed from should be affirmed.

McCARTER & ENGLISH,
Solicitors for the Respondent
Robert C. Pruyn.

CHARLES A. COLLIN,
Of Counsel.







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General
Order regarding prayer of petition
Notice of appeal
Petition of appeal
Formal paper filed to petition of appeal

IN CHANCERY OF NEW JERSEY.

Between	)	
THE ECUADORIAN AS-	)	10
SOCIATION,	)	
Complainant,	)	Opinion.
and	)	Filed July 25,
THE ECUADOR COM-	)	1905.
PANY,	)	
Defendant.	)	20

Mr. Charles L. Corbin, Mr. Van Buskirk and Mr. Steele (of New York) for petitioner.

Mr. Williamson and Mr. Andrews (of New York), for Robert C. Pruyn.

STEVENS V .C.

30

This is an application for leave to levy an assessment upon Robert C. Pruyn for the full amount of the stock of the Ecuador Company an insolvent corporation, alleged to have been subscribed by him (\$325,000), and on which, it is said he has paid \$64,703.74.

The petition alleges that there is no other unpaid subscription for shares. The answer denies that Pruyn ever became a stockholder, or that he ever 40

paid anything on account of stock, or that he is in any manner indebted to the Company or to its receiver.

The transactions disclosed by the testimony are considerably complicated. For the purposes of this decision I shall only refer to those which appear to bear upon the point at issue.

On June 14, 1897, the Government of the Republic
 10 of Ecuador entered into a contract with Archer Harman and his associates for the construction and equipment of a railway extending from the port of Guayaquil to Quito, a distance of 290 miles. Many engineering difficulties stood in the way for the road had to climb the Andes, and the cost of construction was, therefore, great. To build and equip the road the Ecuador Government authorized an issue of bonds by the railway company to the amount of \$12,282,000. These bonds were to be guaranteed by
 20 the Government. It also authorized an issue of preferred stock to the amount of \$5,250,000 and an issue of common stock to the amount of \$7,032,000.

The associates organized, under the laws of New Jersey, the Guayaquil & Quito Railway Company, and in connection therewith the South American Railway Construction Company. The latter Company contracted for the bonds and stocks above mentioned, or some of them, to build and equip the road.
 30 The Construction Company soon assigned its contract to the Ecuador Development Company, another New Jersey Company, and this in turn assigned to the Ecuadorian Association, a Scotch Company. By December, 1902, the most difficult part of the work had been done, and the road had been nearly completed to the top of the plateau. Before this there had been considerable difficulty in procuring money, the bonds selling at times below one-half of their face value. As the work had progressed portions of the bonds had been handed over by the Ec-
 40 uador Government and these were either sold or

pledged to raise funds. The Ecuadorian Association itself issued debentures, secured by an assignment of its property and rights to Trustees. Money being still needed, the gentlemen connected with the Ecuadorian Association sought assistance from the United States and obtained it from a firm of bankers, Messrs. Dick & Lisman, who agreed to give it, however, only on the terms that the books of the Construction Company should be sent to New York and its affairs conducted in that city. For their further protection they insisted that a voting trust should be formed, by means of which they might control the Construction Company's policy.

Such was, in brief, the situation in December, 1902, when Mr. Pruyn, an Albany capitalist, was induced to connect himself with the enterprise. The evidence shows very clearly that at that time it had become evident that the success of the road was assured. It had been built completely and was in operation, almost to the summit of the mountain plateau. The rest of the construction was easy. Archer Harmon, the president of the railway, and his brother, Major Harmon, seem to have been, because of their great pecuniary interests, more interested or bound up in the enterprise than the other gentlemen connected with it. Archer Harmon says that he approached Mr. Pruyn for two reasons, first, that he might obtain from him the funds with which to go on; and, second, and principally, that he might eliminate Messrs. Dick & Lisman. It is evident, however, that he was greatly in need of money for construction.

On December 10, 1902, Mr. Harmon submitted to Mr. Pruyn a detailed statement of the situation. The letter (Ex. C, 8), is found on page 130 of the printed case. It gives a history of the construction and a statement of the assets and liabilities of the Ecuadorian Association. It tells to what extent and how the securities were pledged, and then refers to certain

collateral undertakings to be prosecuted in connection with the principal one. Of these, the more important were the development of the Colombe coal mines and of the Duran property,—the latter a tract of 10,000 acres on the river front, opposite the City of Guayaquil, which, it was thought, could be utilized for terminal purposes and would soon become very valuable. This latter property the Ecuadorian Association had an option to purchase. The proposition first made to Mr. Pruyn is contained in another letter also dated December 10th (pg. 13 of printed case). The proposition, in brief, was that Mr. Pruyn should purchase the capital stock remaining in the treasury of the Ecuadorian Association to the amount of 65,000 pounds; its total capital stock being five hundred thousand pounds. This would enable the Association to acquire the Duran property at a cost of \$90,000, to construct coal docks thereon at a cost of \$30,000, and to proceed with the development of the coal mines at a cost of \$30,000, and it would enable Harmon (Mr. Pruyn co-operating) to outvote the voting trust. If Mr. Pruyn would do this Mr. Harmon engaged to secure for him an option on a further 40,000 pounds of Ecuadorian stock at fifty cents on the dollar and make the management of the railway and construction companies entirely satisfactory to him. Pruyn and Harmon met at lunch about five days later. A counter proposition was then made by Pruyn. It contemplated the organization of a new American Company with a capital stock of \$5,000,000;: Just double that of the Ecuadorian Association. Of this stock the Ecuadorian shareholders were to have one-half and Pruyn and his associates the other half. The Ecuadorian Association was, speaking generally, to assign its assets and contract rights to the new Company, and Pruyn and his associates were to provide cash to the amount of \$435,000, of which \$90,000 was to go to the purchase of the Duran terminal property; \$30,000 to docks; \$30,000 to coal mines; \$35,000 to lands at the base

of the mountains and the balance, \$250,000, to a working capital. No final agreement was reached at that time. On Decemebr 31, both Pruyn and Harmon sailed for England; Pruyn was accompanied by his wife and appears to have gone abroad mainly for pleasure and only incidentally on this business. In London he met several of the Ecuadorian directors, and others connected with the enterprise. It seems to have impressed him very favorably. But no definite agreement covering the entire matter was made until he reached Paris, late in January, 1903. Prior to that date, however, Mr. Pruyn had directed that the Duran Terminal Company should be organized and this had been done by his agents in New York. The Paris interview appears to have resulted in a definite arrangement. Mr. Harmon says (pg 27 of printed case), and his evidence is uncontradicted, that they agreed to organize the Ecuador Company and certain other companies, in addition to the Duran Company; that the Ecuador Company, when organized with a capital of \$5,000, was to issue to the shareholders of the Ecuadorian Association stock to the amount of \$2,500,000 on the basis of five dollars of stock for each one pound share. The other half of the stock to be exchanged for the stock of the various land companies, formed or to be formed. As I understand Mr. Harmon's testimony, the money to be contributed was specified in the so-called midday memorandum (p. 130) made by Mr. Pruyn prior to his leaving New York, and such is the statement contained in Harmon's letter to Mr. Pruyn under date of February 12, (page 167 of the case). Various to which I need not refer.

Immediately upon Mr. Harmon's return from Paris to London, arrangements were made in London to carry this undertaking into effect. The Ecuador Company was organized in New Jersey by Pruyn's New York agents, and a very elaborate assignment from the Ecuadorian Association to that

company was drafted and submitted, through the mail to Mr. Pruyn for his approval. A meeting of the shareholders of the Ecuadorian Association was called and their assent procured and on February 17 apparently with the consent of everybody interested—certainly without any active opposition—the assignment (p. 173 of case) was executed by the Ecuadorian Association on the one hand and by Mr. Green,
 10 Pruyn's London representative, and the agent of the Ecuador Company, authorized for that purpose, on the other. All the companies to be organized under the agreement (The Ecuador Company, the Duran Company, the Villamil Company, the Colombe Coal Company) had been organized prior to February 11, as appears from Mr. Lockwood's letter of that date (p. 161). Upwards of \$60,000 were advanced by Pruyn to the Ecuador Company between February and June for the purpose of carrying the agreement
 20 into effect.

I do not understand that there is any dispute whatever in reference to any of the foregoing matters, but a recital of them is essential to an understanding of the question in controversy. That question is whether as a result of the whole arrangement, Pruyn became a subscriber either expressly, or as a necessary consequence of what was done, for 3,250 shares of the Ecuador Company.

30 I have stated that Harmon's first proposition to Pruyn was that he, Pruyn, should subscribe for 65,000 pounds of the shares of the Ecuadorian Company lying in the treasury unissued. The case shows that from beginning to end Harmon was extremely anxious to have this stock held by one of his friends, so that he could, with their assistance, outvote the voting trust controlled by Messrs. Dick & Lisman, the New York bankers. As Pruyn was unwilling to buy in this way, Harmon sought to secure the end in view by other means. If Mr. Pruyn was
 40 unwilling to pay so much money for the shares

he was not unwilling, as a part of the whole scheme, to take them in exchange for the stock of the Duran Terminal Company. The first proposition, having this object in view, is thus stated in the brief of Pruyn's counsel: "As summed up by Mr. Harmon in his letter to Mr. Pruyn of December 20, 1902, it was definitely but still tentatively arranged that an optional agreement should be entered into between the Ecuadorian Association and Mr. Pruyn, whereby the Ecuadorian Association should agree to deposit 65,000 shares (of one pound each) of its capital stock in escrow with Glyn, Mills, Currie & Company (London Bankers) and Mr. Pruyn should agree to procure the incorporation of the Duran Terminal Company, and to cause all of its capital stock to be likewise deposited, and if within six months from this date the purchase and transfer of the Luque Estate (i. e. the terminal lands) to the Duran Terminal Company is effected and title made satisfactory to the attorneys of the Ecuadorian Association, and you (Pruyn) shall have deposited in the treasury of the Duran Terminal Company the sum of \$36,000 and said Duran Terminal Company shall be free from debt, the Union Trust Company of Albany, or Glyn, Mills, Currie & Company shall deliver to you the 65,000 pounds of the fully paid capital stock of the Ecuadorian Association, Limited, and deliver to us the entire capital stock of the Duran Terminal Company; otherwise you shall at once restore the John Haviland option, upon the Ecuadorian Association reimbursing you for your actual outlay on the Duran Terminal Company."

Before sailing for Europe, Adams, Pruyn's representative in New York, had been instructed to pay \$5,000 to secure the extension of the option and the money had been actually paid. On February 13th, Mr. Adams writes Mr. Lockwood, the counsel of the parties in New York, asking that he forward a copy of the escrow agreement relating to the Duran Ter-

minal, which he, Adams, had signed on Tuesday (p. 169). What the terms of the agreement were we can only conjecture from what appears in the passage I have quoted. Mr. Pruyn has not seen fit to put the paper in evidence, although, as it seems to me, on the theory of subsequent misrepresentation, now advanced by his counsel, it was quite important for him to have done so. This escrow agreement was, on
 10 February 24th, superseded by an agreement signed in Rome, where Pruyn then was, which provides as follows:

"1. The (Ecuadorian) Association agrees to acquire and does hereby acquire from said Pruyn the entire capital stock, (\$500,000), less five shares, to qualify directors of the Duran Terminal Company, and hereby agrees to issue 65,000 of its shares, to be issued as fully paid in consideration therefor, and the Association undertakes to file at the Somerset House
 20 the necessary contract covering the issue of its shares fully paid.

"2. Said Pruyn undertakes and agrees to deliver to the Association or to Ecuador Company of New Jersey for its account the entire capital stock less five shares to qualify directors of the Duran Terminal Company, and undertakes that on or before July 1, 1903, the Duran Terminal Company shall own the said properties known as the Luque estate, opposite the City of Guyaquil, embracing about ten thousand
 30 acres more or less, free and clear of all encumbrance."

It is contended by counsel that this second agreement was obtained from Pruyn by misrepresentation. Mr. Pruyn was not sworn and I do not find in the case any evidence whatever to support this charge. Mr. Pruyn appears to have been from the beginning most careful. The agreement was accompanied by a letter from Mr. DeFriesse, a London Barrister, representing Harmon and the Association.
 40 In his letter of February 19, Mr. DeFriesse says, "I

thought it wiser, if possible, to do away with the Escrow provided for an issue the 65,000 Ecuadorian shares to you in exchange for the Duran Terminal shares, the latter to be handed over to the Ecuador Company in New Jersey for account of the Association." In view of this explicit language and of the clear language of the agreement, it is idle to argue that Mr. Pruyn—a very intelligent business man—did not know that the optional feature of the 10 agreement had undergone a change. And it was a change too that appears to have been almost necessitated by the provisions of the deed of transfer of the Ecuadorian Association to the Ecuador Company; a draft of which had been submitted to, and, without doubt, approved by Mr. Pruyn before its execution. In this deed there is the following recital: "And whereas, the Duran Terminal Company, a corporation duly organized" * * * "has acquired a certain freehold estate known as the Luque prop- 20 erty situate in the Republic of Ecuador and containing about 5,000 acres, including the site of the town of Duran and the river front of the Guyas River" * * * "And whereas, Robert C. Pruyn, as the beneficial owner of all the stock of the Duran Company has sold the same to the Association in consideration of the allotment or transfer to him of 65,000 full paid shares of one pound each in the capital of the Association." In view of this provision which would have amounted to a fraudulent repre- 30 sentation of a material fact, if the Duran property had not been transferred to the Duran Company incorporated for the very purpose of taking it, I am not surprised that Mr. DeFrieze in his letter of February 19, should have said to Mr. Pruyn that he, "thought it wiser, if possible, to do away with the escrow."

Now it may be asked, what necessary connection is there between Pruyn's agreement of February 24th, which did away with the escrow, and his subscription to the capital stock of the Ecuador Com- 40

pany? It appears to have been this: In order to interest Mr. Pruyn and his American associates in an enterprise that had been attended with many financial embarrassments, it was necessary to offer inducements. These inducements could not very well be expressed or embodied in the signed documents. The scheme finally agreed upon at the Paris conference was, in substance, this: The Ecuadorian Association needed money, and Mr. Harmon and his Scotch and English associates had become tired of their connection with the Dick-Lisman Syndicate. To procure funds and to outvote the syndicate were matters of prime importance. Both of these objects would be attained by the incorporation of the Ecuador Company with its capital of \$5,000,000, one half of which would represent the property and rights of the Ecuadorian Association to be transferred, and the other half of which would go to Pruyn and his associates upon their contributing 435,000 in cash (p. 167). Of course, it would not do to put the matter in this way on the face of the papers, because, then Pruyn would be liable to assessment for the difference between \$2,500,000 and \$435,000. And so the scheme of incorporating the various subordinate companies was agreed upon for this, and doubtless for other reasons, and it was arranged that the stock of these companies should be exchanged for the stock of the Ecuador Company to the extent mentioned. To get rid of the inconvenience of the voting trust it was necessary to issue the 65,000 pounds of shares in the treasury of the Ecuadorian Company. Mr. Pruyn had from the outset declined to pay cash for these shares and English law, like New Jersey law, required that for their issue there must be an equivalent in cash or property, and so this scheme was devised. The shares of the Ecuadorian Association were to be issued in exchange for the Duran shares, without, of course, stating that the Duran shares represented or would represent a total cash outlay of \$126,000, while the Ecuadorian shares

should have represented cash or property to the amount of 65,000 pounds or \$325,000. Mr. DeFriesse, in his letter of February 19, writes to Mr. Pruyn, "I did not wish in the contract a recital of the purchase price of the terminal properties," the reason intimated being the contract would have to be filed at Somerset House. This contract, standing alone, gave the Ecuadorian shares to Mr. Pruyn and the Duran shares to the Ecuadorian Association. But ¹⁰ that was not the ultimate intention. The transfer of February 17th, provided that the Duran Company's stock should go to the Ecuador Company and the effect of the two documents was to give to Pruyn the Ecuadorian stock, and to give to the Ecuador Company the Duran stock. But the scheme was to vest at least a majority of the shares of the Ecuadorian Association, held by persons favorable to the Harmon interest, in the Ecuador Company, a large majority of whose stock would thus be controlled by ²⁰ that interest, and so the final step was to provide that Pruyn should transfer the 65,000 pounds of Ecuadorian stock to the Ecuador Company and that the Ecuador Company should issue to Pruyn in exchange \$325,000 of its stock as fully paid.

There is another matter which I must now refer to, because it bears directly upon the question in this case. If the deed of transfer from the Ecuadorian to the Ecuador Company had been made and the transaction had rested there, the stockholders of the ³⁰ Ecuadorian Company would have been stripped of their property without having acquired any interest in the new company. But the plan was to substitute the stock of the Ecuador Company for the shares of the Ecuadorian Association. Three circulars were accordingly prepared and sent out, which bear date on the date of the execution of the deed. One of these circulars, addressed to the shareholders of the association, informs them that "in order to avoid the abandonment by the association of the construction contract," the directors had concluded to accept the ⁴⁰

offer of the Ecuador Company to take over its obligations and liabilities "with certain other assets," and to undertake to complete the line. Another circular, signed by several of the larger shareholders of the Ecuadorian Association including Mr. Adams as attorney for Mr. Pruyn, advises the shareholders to exchange their shares for shares or stock in the Ecuadorian Company. As Mr. Pruyn did not
 10 then own any other shares in the association, Mr. Adams's signature is necessarily attributable to the 65,000 pounds of shares which Pruyn had agreed to acquire. The circular was a representation that he was a holder of shares. A third circular was signed by Mr. Green for the Ecuador Company of New Jersey. It states that at the request of certain shareholders of the Ecuadorian Association, "we have agreed to issue to them a fully paid share of \$100 each of \$100 stock in our company in exchange for
 20 every 20 shares of one pound each held by them in the Ecuadorian Association." This circular notifies the Ecuadorian shareholders of the willingness of the Ecuador Company to issue the stock "provided you agree to accept this offer on or before the 2nd day of March, 1903; sign and forward to Messrs. Glyn, Mills, Currie and Company * * * bankers
 * * * the enclosed form of acceptance and that you subsequently, but not later than the 10th of March, 1903; lodge with the said bankers the certificate for your shares, together with a blank transfer
 30 executed by you in exchange for a receipt by the bankers."

On March 4, (p. 79-219), Mr. DeFriesse wrote to Mr. Pruyn at Naples, suggesting that the 65,000 pounds be issued to him in one certificate and that he transfer the certificate and attach it to the letter of the Ecuador Company agreeing to exchange for the shares in that company. He encloses a transfer which he asks him to sign and concludes by requesting that "he return them all to me and I will have
 40 the certificate issued and file them all with Messrs.

Glyn, Mills, Currie & Company." The reply to this letter is not in evidence, but that Pruyn did as requested there can be no doubt. He was at that time as his letters show, in hearty accord with what was being done and on March 10th, Harmon writes Pruyn as follows: "I find that there has been deposited with Messrs. Glyn, Mills, Currie & Co. 173,000 pounds shares of the Ecuador Association and I have had deposited to-day 65,000 pounds of the 10 shares issued to you, making a total of 238,000 pounds. And there has been deposited with the United States Trust Company about 38,000 pounds. This gives us a clear majority of the shares of the Ecuadorian Association, and I feel perfectly safe, as there are only outstanding, excluding the stock deposited under the polling agreement with Dick, Lisman and Harmon, about 45,000 shares."

In the certificate book of the Ecuador Company appears the following entry: "No. 291, 3250 shares 20 issued to Robert Clarence Pruyn, April second, 1903." Like certificates were issued to Ecuadorian shareholders and were sent to London, but they do not appear to have been actually exchanged. The reason so far as the case shows, seems to have been this. When Mr. Pruyn returned to this country he was informed by his secretary, Mr. Adams, that he, Adams, had received a letter from Mr. Lockwood, the New York counsel, strongly condemning the change from the optional Duran agreement 30 to the obligatory one. It appears that duplicates of this latter agreement had been signed, one by Green in London for Pruyn on February, 23rd, and the other by Pruyn himself, in Rome, on February 24th. When Pruyn heard that Lockwood had condemned it, forgetting that he had himself signed a duplicate, he repudiated Green's act and sought to have a new agreement made which would, as at first, leave it optional with him whether he would or would not purchase the terminal property. The New York Ecuadorian directors were, on his representation 40

that Green's act was unauthorized, at first inclined to accede to his request, but when they heard from Harmon that he, Pruyn, had himself signed a duplicate they refused to release him. From this time on Pruyn assumed a hostile attitude and the Ecuador Company, so far as the evidence shows, ceased to concern itself with the construction of the railway. Pruyn did not take the certificate of Ecuador stock
 10 prepared for him.

On this state of facts the question is whether Pruyn is now assessable as a stockholder of the Ecuador Co. holding 3,250 of its shares.

He never made a formal subscription to its stock. He never, in person, agreed with the company to take its stock. He did agree with Harmon that he would exchange stock of the Ecuador Association for stock of the Ecuador Company on the basis of
 20 one-pound shares of the Association for each \$100 share of Ecuador stock. If this were all, I think it would be quite impossible to assert that his agreement with Harmon made him an assessable stockholder. If A agrees with B that he (A) will subscribe for shares in a company and fails to do so, he may be liable to B for breach of his contract, but the agreement does not make him a subscriber. "The doctrine of the Court of Chancery," said Depue, J. in *Crowell v. Hospital of St. Barnabas*, 12 C. E. Gr. 654 (and a fortiori of the courts of law, where a suit
 30 to recover the amount of the assessment would be brought), "is that as a general rule as to strangers to the contract, who are also strangers to the consideration, the parties may at their pleasure, abandon it, and mutually release each other from its performance; and upon such rescission and abandonment, the contract is completely at an end and thereafter cannot be enforced."

But the case goes a little further, Pruyn under the evidence, became bound to perform the agreement respecting the Duran Terminal property. This
 40 agreement gave him the right to the 65,000 pounds

of Ecuadorian stock, which was in fact issued to him. And he authorized its deposit with the bankers, Glyn, Mills, Currie & Co., for the purpose of having it exchanged for stock of the Ecuador Co. The Ecuador Company in the circular letter, to which I have already alluded, offered to give its stock in exchange for such Ecuadorian stock as should have been deposited with those bankers by a certain time. Pruy'n's Ecuadorian stock, by his authority, was so ¹⁰ deposited and hence, as it seems to me, there are present in the transaction all the elements of a contract between the Ecuador Company and Pruy'n: an offer and an acceptance of that offer by an unequivocal act. There was, therefore, a binding contract to take stock and to pay for it in a particular way; but I do not find in the evidence that this contract was executed. The Ecuadorian certificate was not delivered to any officer of the Ecuador Company, and the Ecuador certificate, though made out, was ²⁰ not received and accepted by Pruy'n. The question then comes to this. Can Pruy'n be compelled to become a stockholder on any other terms than had been agreed upon? The agreement was that he should receive a certificate of full paid, and consequently of non-assessable stock, in exchange for his Ecuadorian stock. If his stock is now assessable it must be so because of some legal rule that overrides and contravenes the agreement. I know of no such rule. The Ecuador Company might, while the ³⁰ matter was in fieri, have refused to deliver its stock certificate if the Ecuadorian stock were not, in fact, a fair equivalent. Such was the ruling of the Court of Appeals in *Donald v. American Smelting Co.*, 17 Dick. 730. But it was said in that case that after stock had been actually issued as full paid stock, and the consideration received for it in property, the judgment of the directors as to the value of the property was, in the absence of actual fraud, conclusive and that such stock was not liable to any ⁴⁰ further call.

In *Bickley v. Schlag*, 1 Dick. 534, certain steamboats and other property had been conveyed to a steamboat company for stock issued as full paid. The Vice Chancellor who heard the case below had found as a fact that the amount of the stock, at its face value, exceeded the value of the property and gave judgment for the difference. On appeal, Beasley, C. J., quoting from an opinion of Judge Field in the
 10 Supreme Court of the United States, said "Where the charter authorizes capital stock to be paid in property and the shareholders honestly and in good faith put in property instead of money in payment of their subscriptions third parties have no ground of complaint. The case is very different from that in which subscriptions to stock are payable in cash and where only a part of the installment has been paid. In that case, there is still a debt due to the corporation, which, if it becomes insolvent,
 20 may be sequestered in equity by the creditors as a trust fund liable to the payment of their debts. But where full paid stock is issued for property received, there must be actual fraud in the transaction, to enable creditors of the corporation to call the stockholders to account."

These citations are decisive of the matter. There was an agreement between Pruyn and the Ecuador Company, but it had not been consummated by the delivery of the stock on either side. It was an agree-
 30 ment that remained to be performed. Had Pruyn sought to enforce it, the receiver would have considered, 1st, whether it was a fraud upon the Company. If it was, he would have repudiated it on that ground. 2d. If not fraudulent in fact, whether he was getting a fair equivalent for the Ecuador stock at its face value. If he was not, he would have refused to perform it on the principle laid down in the *Smelting* case. 3d. If he was getting a fair equivalent, he must have performed it according to its terms. If thus performed, he could not have re-
 40 valued the property taken and then sought to assess

the stock as partly unpaid.

It would seem to be clear, therefore, that if the agreement is binding or if the receiver elects so to treat it, he must accept and enforce it as made. If he disaffirms or repudiates it, Pruyn's relation to the Company as a stockholder, actual or potential. ipso facto, ceases.

I think the receiver's application to assess should be denied.

10

IN CHANCERY OF NEW JERSEY.

_____	o	
	)	
BETWEEN	)	On Application
	)	
THE ECUADORIAN ASSO-	)	of Receiver of Ec-
	)	
CIATION,	)	uador Company to
	)	20
Complainant.	)	assess Robert C.
	)	
and	)	Pruyn. On Peti-
	)	
ECUADOR COMPANY,	)	tion. ORDER.
	)	
Defendant.	)	Filed August 25,
	)	
_____	)	1905.
	o	

30

This matter coming on to be heard on the petition of Charles C. Black, Receiver of the Ecuador Company, and the answer of Robert C. Pruyn, and the Court having heard, read and filed the pleadings, and heard the depositions of witnesses, and considered the arguments of counsel

It is now, on this First day of August, Nineteen Hundred and Five, on motion of McCarter, Williamson & McCarter, Solicitors and of Counsel with Robert C. Pruyn, ORDERED, that the prayer of the said petition be, and the same is hereby denied, with 40

costs, payable out of the assets of the receivership.
By the Statute,

J. J. BERGEN,
Master.

Respectfully advised,
FREDERICK W. STEVENS,
V. C.

10

IN CHANCERY OF NEW JERSEY.

_____o	
BETWEEN	)
THE ECUADORIAN ASSO-	)
CIATION,	)
	)
Complainant,	) Notice of Appeal.
and	) Filed September
THE ECUADOR COMPANY,	) 26, 1905.
Defendant.	)
_____o	

30 Charles C. Black, Receiver of The Ecuador Com-
pany, hereby appeals from the order dated on the
First day of August, Nineteen Hundred and Five,
and filed on the Twenty-fifth day of August, Nine-
teen Hundred and Five, denying the prayer of the
petition of the said Receiver, with costs,—and from
the whole and every part thereof, to the Court of Er-
rors and Appeals in the last resort in all causes.

Dated, September 23d, 1905.

40

COLLINS & CORBIN,
Solicitors and Counsel with
Charles C. Black Receiver.

I conceive there is good cause for appeal in the above stated cause.

CHARLES L. CORBIN,
Of Counsel with the Receiver.

NEW JERSEY COURT OF ERRORS AND APPEALS. 10

_____	0	
BETWEEN	)	
	)	
THE ECUADORIAN AS-	)	
SOCIATION,	)	20
	)	
Complainant,	)	
	)	On the Appeal
	)	of Charles C.
and	)	Black, Receiver.
	)	Petition of Ap-
THE ECUADOR COM-	)	peal.
PANY,	)	
	)	
Defendant.	)	30
_____	0	

TO THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

The petition of CHARLES C. BLACK, Receiver of The Ecuador Company, the appellant in the above stated cause, respectfully SHOWS:

That your petitioner finds himself aggrieved by the final order made in the Court of Chancery, by the Chancellor, bearing date the first day of August, nineteen hundred and five, and filed on the twenty-fifth day of August, nineteen hundred and five, in the matter of the petition wherein your petitioner applied for leave to prosecute Robert C. Pruyn, as subscriber to the stock of The Ecuador Company, in this
 10 respect, that the said order denies the prayer of the petition, with costs, on the ground that the same is erroneous and that the prayer of the said petition should be granted.

Your petitioner therefore PRAYS that the said order of the Chancellor may be reversed, set aside, and for nothing holden, and that the prayer of the petition may be granted, and that your petitioner may have such relief in the premises as to this court shall seem meet.

20

COLLINS & CORBIN,
 Solicitors of Appellant.

CHARLES L. CORBIN,
 Of Counsel with Appellant.

(Formal answer filed.)

30

40

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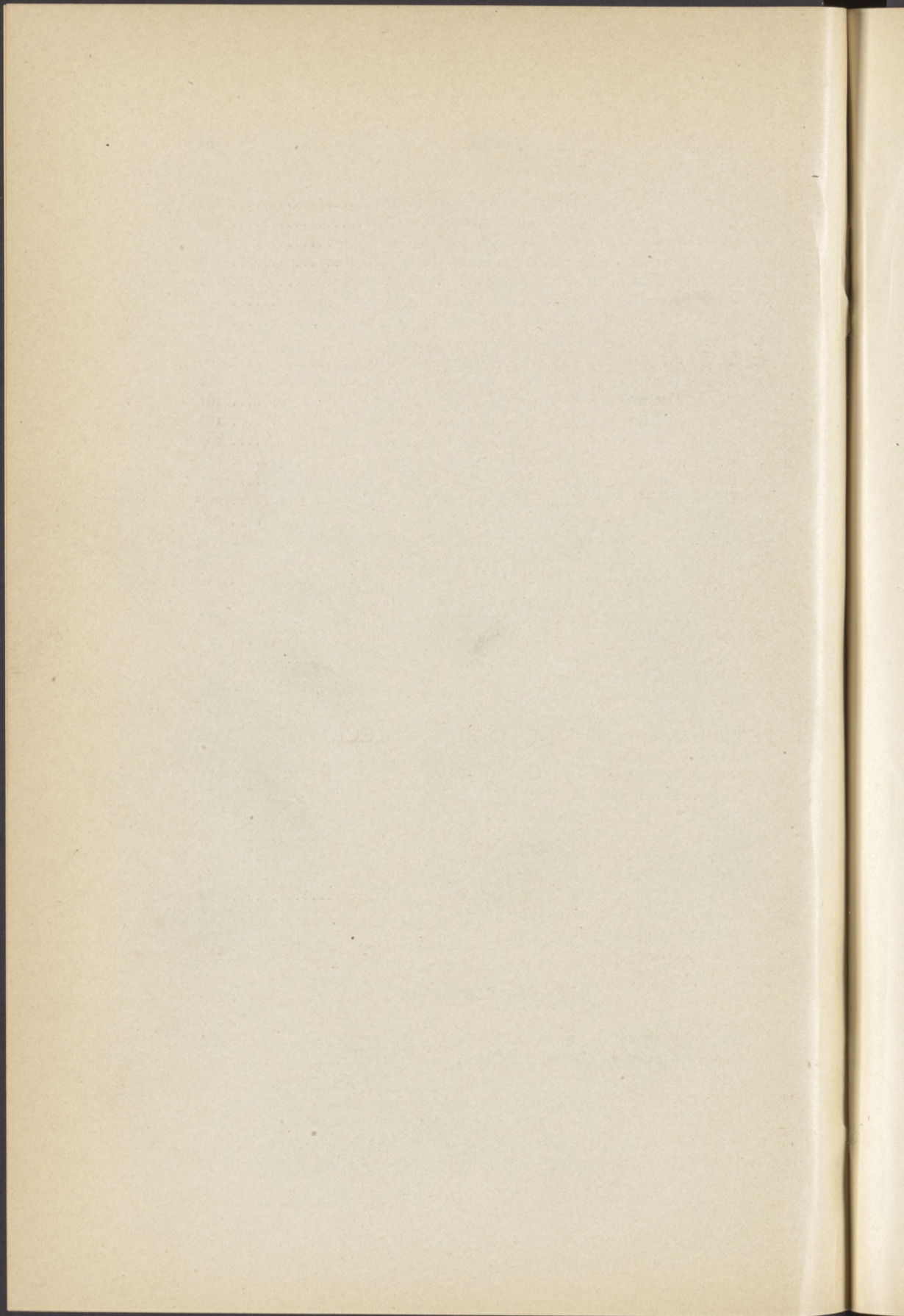
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MACCRELLISH & QUIGLEY, Printers, Trenton, N. J.

In Chancery of New Jersey.

BETWEEN		
THE ECUADORIAN ASSOCIATION,		
LIMITED,		
	Complainant,	} On Bill, &c.
and		
THE ECUADOR COMPANY,		
	Defendant.	

PETITION OF CHARLES C. BLACK, RECEIVER.

(Filed January 9th, 1905.)

*To the Honorable William J. Magie, Chancellor of the
State of New Jersey:*

The petition of Charles C. Black, receiver, appointed in the above entitled cause of the defendant company as an insolvent corporation, shows:

1. That on the twenty-eighth day of September, 1903, he was appointed receiver of the said corporation in this Court, and on the sixteenth day of November, 1903, ¹⁰ he duly advertised for the presentation of claims against the said defendants; that pursuant to said notice, of which a copy is hereto annexed and marked Schedule A, the following claims have been presented and filed with your petitioner as such receiver:

<i>Name.</i>	<i>Amount.</i>
1. Registrar & Transfer Company, 15 Exchange Place, Jersey City,	\$200.00
2. The Ecuadorian Association, Limited, Edinburgh, Scotland,	202,858.54
3. Arthure L. Andrews, Albany, N. Y.	63,830.23
4. Dick Bros. & Company, 30 Broad Street, New York City,	384,220.66
Total amount of claims filed,	\$651,109.43

- 10 2. That your petitioner has no funds or property in his possession with which to pay said claims, that he has been advised that he should make claim under a contract, made between Robert C. Pruyn and said complainant, The Ecuadorian Association, dated February seventeenth, 1903, in the matter of the Duran Terminal Company, which claim is disputed and of uncertain value, and on which if enforced for the full amount thereof, the recovery would not exceed \$325,000.00.

- 20 There is an unpaid subscription for capital stock issued to Robert C. Pruyn, who accepted and exercised control over such stock as follows, to wit: Robert C. Pruyn, 3,250 shares, each of said shares being of the par value of \$100.00, and the only moneys which have been paid into said company, and which could be credited to the account of said shares are several payments made to said company by Robert C. Pruyn, amounting in all to the sum of \$64,703.74; that the payments so made by said Pruyn are claimed by him to be made for the account of said company as a loan, and not on account of said stock. If the amount so paid is not to be
- 30 credited to said Pruyn as a stock payment, then the amount due from said Pruyn on the stock held by him is the full par value thereof. There is no other unpaid subscription for shares appearing by the stock ledger to be outstanding.

Your petitioner therefore prays that he may be al-

lowed to levy an assessment upon the said stockholder for the full amount of the par value of said stock, or for such proportion thereof as to this Court may seem sufficient to pay the debts of the said corporation and the expenses of the receiver.

And your petitioner will ever pray.

COLLINS & CORBIN,

Solicitors and Counsel

for Charles C. Black, Receiver.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.

10

Charles C. Black, the above named petitioner, being duly sworn according to law on his oath saith, that he is the receiver of the Ecuador Company, the above named defendant; that he has read the above petition and knows the contents thereof, and that the same is true of his own knowledge, except as to matters that are therein stated to be on his information or belief, and as to those matters he believes it to be true.

CHAS. C. BLACK.

Sworn to and subscribed before me this fourth day of 20
January, A. D. 1905.

HENRY V. CONDUCT,

Master in Chancery of New Jersey.

SCHEDULE A.

IN CHANCERY OF NEW JERSEY.

To the Creditors of The Ecuador Company:

By virtue of an order of the Court of Chancery, dated the sixteenth day of November, A. D. 1903, in a cause wherein the Ecuadorian Association, Limited, is complainant, and the Ecuador Company is defendant, you 30
are required to exhibit under oath or affirmation to the undersigned, receiver of the defendant company, your

several claims and demands against the said corporation within four months from the date of said order, or you will be excluded from the benefits of the dividends as may hereafter be made and declared by the Court upon the proceeds of said corporation.

Dated November 16th, 1903.

CHARLES C. BLACK, *Receiver*,
15 Exchange Place, Jersey City, N. J.
DEWITT VAN BUSKIRK, *Solicitor*.

10 ANSWER TO PETITION OF CHARLES C.
BLACK, RECEIVER.

(Filed February 6th, 1905.)

The answer of Robert C. Pruyn to the petition of Charles C. Black, receiver, appointed in the above entitled cause for the defendant company as an insolvent corporation, shows:

First: The said Robert C. Pruyn admits the appointment of the said Charles C. Black as receiver of said corporation, at the date stated in said petition, but
20 he has no knowledge of whether on the sixteenth day of November, nineteen hundred and three, or at any other time, such receiver advertised for the presentation of claims against said defendant, nor as to what claims, if any, have been presented, and leaves the said receiver to make such proof thereof as may be in his power.

Second. The said Robert C. Pruyn, further answering, says he has no knowledge of what funds or property the said receiver has in his possession, or whether
30 he has been advised that he should make claim, under a contract made between the said Robert C. Pruyn and the said Ecuadorian Association, dated February sey-

enteenth, nineteen hundred and three, but the said Robert C. Pruyn denies that the said contract is enforceable against him for any sum whatever.

He also denies that there is an unpaid subscription for capital stock issued to him, or that he ever accepted or exercised control over such stock, as stated in said petition, and he denies that any payments were made by him to said Ecuador Company on account of the said stock, or any other stock, and he denies that he is in any manner indebted to the said Ecuador Company, or to the said receiver, in any sum whatever, and he therefore prays that the said petition of the said receiver may be dismissed, with costs. 10

McCARTER, WILLIAMSON & McCARTER,
Solicitors of Robert C. Pruyn.

IN CHANCERY OF NEW JERSEY.

BETWEEN	}		
THE ECUADORIAN ASSOCIATION,			
LIMITED,			
		<i>Complainant,</i>	20
<i>and</i>			
THE ECUADOR COMPANY,	}		
<i>Defendant.</i>			

*On Petition of Charles C. Black, Receiver, against
Robert C. Pruyn.*

TESTIMONY.

Before his Honor Vice Chancellor Stevens.

Charles L. Corbin, Esq., DeWitt Van Buskirk, Esq.,
and Judge Steele, of the New York Bar, for the complainants.

Messrs. McCarter, Williamson & McCarter and Mr. Andrews, for the defendants.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Thursday, the 30th day of March, A. D. 1905, at the Chancery Chambers, Newark, New Jersey.

Charles C. Black, sworn.

Direct examination, by Mr. Corbin:

Q. You are the Receiver of the Ecuador Company,
10 of New Jersey?

A. Yes, sir.

Q. Do you recall the date of your appointment?

A. Yes, sir; I was appointed on September 28, 1903,
and confirmed as permanent Receiver on October 12,
1903.

Q. Can you state what assets came to your hands?

A. None.

Q. Can you state what debts have been proven?

A. Yes, sir; the aggregate is \$651,109.43, on their
20 face.

Q. You had better give the items.

A. The first one is the Registrar and Transfer Company, \$200; No. 2 is the Ecuadorian Association, \$202,-
858.54; No. 3, Arthur L. Andrews, \$63,830.23; No.
4, Dick, Listman & Co., \$384,220.66.

Q. Did you make any efforts to obtain the books of
the company?

A. Yes, sir.

Q. What did you do?

30 A. I found out where the officers of the company
were and where the books were; I don't remember just
how I obtained that information, but I wrote to—I ob-
tained from inquiry that they were in Albany in the
hands of Mr. F. B. Adams, who was president of the
company, and I wrote to him stating that I had been
appointed Receiver and sent him the certified papers to
that effect, asking him for such papers and books as he

had in his possession belonging to the Ecuador Company.

Q. Now, have you the books that were presented to you?

A. Yes, sir.

Q. Do you identify those as the books you obtained?

A. I identify this book marked "Record" on the back, as one of them.

Q. That is the minutes?

A. That contained the minutes.

10

Mr. Corbin—I offer in evidence the book of the record of the minutes of the company, containing also a copy of the certificate of incorporation, which it is ^{sent}contended may be used.

Witness—It is marked Minute Book of the Ecuador Company on the inside first page.

Marked *Exhibit C 1*.

Q. The next one?

A. The next is marked "L. 150" on the back; on the first page is the Ecuador Company, and contains in point 20 of fact the cash items.

Q. Cash account?

A. Cash account.

Q. That is the only account book that you know of of the company?

A. Yes, sir.

Q. That is all found on what page of that book?

A. That is found on pages two and three.

Q. It shows cash received from Robert C. Pruyn?

A. "R. C. P.," and I understand those are the initials. 30

Q. All the cash in it is marked received from that source?

A. Yes, sir.

Q. And paid out from time to time, almost as fast as it was received?

A. Yes, sir.

Mr. Corbin—I also offer that book in evidence.

Marked *Exhibit C 2*.

Q. Now, what other book have you—stock certificate book?

A. The other book is not identified—yes, the other book is the certificates of stock, one to five hundred, The Ecuador Company on the back of it, and it shows a number of blank certificates not issued, stubs for certificates which have been issued, and certificates returned and marked cancelled.

10 Mr. Corbin—I offer that book in evidence.

Marked *Exhibit C 3*.

Witness—And from the Registrar and Transfer Company we received the following: On the back of the book is marked "Stock ledger, Ecuador Company." On the cover is marked "Ecuador Company," and it purports to be a stock book, indexed.

Mr. Corbin—Offered in evidence.

Marked *Exhibit C 4*.

20 Witness—And the other one is marked on the back, "Transfer book, Ecuador Company," and on the outside of the book, "Transfer book, Ecuador Company, and on the inside purports to be a summary of the shares of stock.

Mr. Corbin—I offer that in evidence.

Marked *Exhibit C 5*.

30 The Court—It is admitted that the copy of the certificate of incorporation contained in the record book is a correct copy, and also that this certificate was received in the Hudson County Clerk's office on February 2d, 1903, and filed with the Secretary of State on February 3d, 1903.

Defendant's Counsel—That is admitted.

Witness—Certified copy of the certificate of incorporation, received Hudson County Clerk's office, February 2d, 1903, filed with the Secretary of State February 3d, 1903.

Mr. Corbin—I offer that in evidence.

Marked *Exhibit C 6*.

Q. Will you turn, in the certificate book, to certificate 291?

A. Yes, sir.

Q. Read it, please?

A. "No. 291 (in figures), 3250 shares (printed), issued to (in writing) Robert Clarence Pruyn, April second, 1903. (Then underneath that, in printing) Received the above described certificate (blank)."

10

Q. April what?

A. April 2d, 1903.

Q. The certificate is outstanding?

A. Yes, sir.

Q. Please turn to page 300 of the stock ledger?

A. Yes, sir, I have the page.

Q. What do you find there relating to Mr. Pruyn?

A. It is divided into sections; do you only wish what is in reference to Mr. Pruyn?

Q. Yes.

20

A. "Robert Clarence Pruyn (underneath in lead pencil) 36 (figures), Wall street (written out), N. Y. (Under the head of date) 1903, April 2d. (Under the head of certificate No.) 291. (Under the head of shares) 3,250 (in figures).

Q. That is all.

Cross-examination by Mr. Andrews:

Q. Have the claims which you have testified to as proven before you, been admitted by you?

A. They are regular on their face, I haven't more 30 than formally passed upon them.

Q. There has been no dispute as to any of them?

A. No, sir, they were filed within the time and they are regular on their face, and there has been no question.

Q. That is all.

Archer Harman, sworn.

Direct examination by Mr. Corbin:

Q. Where do you reside?

A. In the city of New York, sir.

Q. What is your occupation?

A. I would say a railway contractor and promoter.

Q. Are you president of the Guayaquil and Quito Railway Company?

A. Yes, sir.

10 Q. When was that formed?

A. In the fall of 1897.

Q. What was the railroad for which it was formed?

A. Well, I obtained a concession from the government of Ecuador in June, 1897, to build a railway from Guayaquil to Quito, and under this concession the Railway Company was to be organized under the laws of some State in the United States, and the concession clearly provided the conditions and the terms upon which this company was to be organized.

20 Q. You will have to talk louder, I don't hear you.

A. I say, under the terms of this concession a railway Company was to be organized, under the laws of some State in the United States, and the terms of the concession distinctly stated the terms upon which this company was to be organized and capitalized, and the Guayaquil and Quito Railroad was all organized under the laws of the State of New Jersey, to comply with the terms of the concession granted to myself and associates by the government of Ecuador, on the 14th of June,

30 1897.

Q. How long is the railroad?

A. The first concession provided for a complete railway between the port of Guayaquil and Quito, a distance of about 290 miles.

Q. What is the amount of the capital?

A. The capital was to be \$12,282,000 six per cent. bonds, which were to be secured by a lien upon all the revenues of the government; \$5,250,000 of seven per

cent. preferred stock, and \$7,032,000 of common stock; of the common stock the government was to receive forty-nine per cent., the remaining securities were to be used for the purpose of providing the capital to construct this road and equip it.

Q. Was the work entered upon?

A. The work was entered upon in—well, the question of determining whether the railway could be built or not was quite a serious problem, and during 1897 and 1898 the efforts of the company were directed entirely 10 to determining the possibility of constructing this road.

By the Court:

Q. On account of the physical difficulties?

A. Yes, sir, we were up against nature in the Andes Mountains, possibly on the grandest scale in the world except perhaps the Alps of Switzerland. Several companies had been formed at various times to build this road, English, French and German, and they had expended large sums of money in attempting to build across the Andes Mountains, and one after the other 20 had failed, and our idea was that before placing any of our securities on the market we should make exhaustive surveys and determine whether the scheme was practicable or not; that took about two years, and with competent engineers in the field we began work actively in the beginning of 1899, and the work has progressed—well, I might say with one or two short interruptions, steadily since, resulting in the completion of the railway across the mountains and into the interior of Ecuador, and we are now within eighty and a hundred miles of 30 the city of Quito. The country we have to build through now is ordinary country, and we are building that portion of it very rapidly; it is only a question of a few months.

Q. When did the Ecuadorian Association become connected with the enterprise?

A. In a tentative way in 1899, and then in 1900 it en-

tered into a contract with the Railway Company, under which it took over the entire responsibility of constructing this railway—constructing and equipping this railway, and was to receive the securities provided in the contract between the Government and the Railway Company, which the railway was allowed to issue as their work progressed monthly.

Q. It was to have all the stock and bonds?

A. It was to have all the stock and all the bonds except the forty-nine per cent. of common stock which was the property of the Government of Ecuador.

Q. What was the condition in January, 1902?

A. Well, in January, 1902—

Q. Financially I mean, of the Ecuadorian Association?

A. Well, it was good, except to this extent—the Ecuadorian Association had issued a million pounds of debentures, and had secured those debentures by a trust deed, under which they deposited ten millions of the bonds as they were earned, five millions of preferred stock and fifty-one per cent. of the common stock. In January, 1902, they found that the million pounds of debentures that had been issued, secured by these bonds and stock were inadequate to complete the railway, and they made an arrangement with the debenture holders—

Mr. Williamson—I don't want to break the thread of his story, doubtless we will arrive at the facts just as well in this way, but he is reciting the contents of various agreements, and I don't want to be considered as waiving the production of those should it become necessary.

Mr. Corbin—I just want a general statement.

Witness—I really think, if you will permit me to state it, in the questions that have to come up, and that you will ask me, if you will allow me just to run through this briefly that it would save a great deal of talk hereafter, I mean a great many questions,

Mr. Corbin—I think you will find Mr. Harman is very concise in his answers.

A. (Continuing)—in which they agreed to release the deed of trust and accept railway bonds—release all the securities that were securing the debentures upon two conditions, first that they would receive railway bonds, one hundred and twenty-five per cent. in railway bonds for each one hundred per cent. of debentures, and second that the securities that were released and had been held under this debenture deed were to be transferred to trustees, and could only be used for the purpose of construction and completion of this railway. There were then certificates issued to each debenture holder stating that he would in the event of the Ecuadorian Association failing to perform its contract that those debenture holders would participate pro rata in the securities that might be in the hands of the trustees at that time. 10

Q. Now, then, in the summer of 1902, was there occasion to raise money, and if so, give us generally what was done? 20

A. Well, in the summer of 1902 the Ecuadorian Association had exhausted their funds that they had in hand at that time, and we were in the position of having an uncompleted railway across the Andes Mountains, and a great many doubts had arisen in the minds of our people as to the possibility of completing that railway, and it was found desirable to attempt to broaden out our financial circle by interesting parties in New York to provide additional money. Messrs. Dick, Lisman and associates formed a syndicate and purchased fifty thousand pounds of the Ecuadorian Association shares from the various shareholders, and agreed to loan the Ecuadorian Association \$500,000 in cash, provided they should have a voice in the expenditure of this money. That arrangement was agreed to. Dick and Lisman bought from various shareholders their fifty thousand pounds of shares and provided the \$500,000, and the 30

management of the Ecuadorian Association was practically turned over to Messrs. Dick, Lisman and associates.

Q. How much of the road was completed in December, 1902?

A. The railway was then completed about eighty-six miles, and the remaining twenty-five miles of the mountain division was, say, three-quarters completed.

Q. What were the relations of the officers to the Dick, 10 Lisman syndicate at that time?

A. Well, the relations between the Ecuadorian Association shareholders, and the trustees and Messrs. Dick and Lisman became very strained, owing to a contract that Messrs. Dick and Lisman had required the directors of the Ecuadorian Association to make with a Trust Company in Philadelphia, which they controlled; I think it was the Commercial—

Q. It doesn't matter.

A. Well, I cannot recall it, under which they turned 20 over the entire assets of the Ecuadorian Association to this company, and this company was to distribute such—well they practically turned over the entire assets, and this company was to dispose of the moneys of the Ecuadorian Association, and to receive ten per cent., or something of that kind, for doing it.

Q. Never mind the detail of that. Now, did you meet Mr. Pruyn at that time?

A. Yes, sir.

Q. Please state your negotiations with Mr. Pruyn in 30 December, 1902?

A. Well, some time in the latter part of November, 1902, Mr. E. H. Norton called upon me and said that Pruyn was interested in the Dick-Lisman syndicate; he didn't approve the plans which they had attempted to carry out and would be very glad to meet me. He spoke very highly of Mr. Pruyn, and I expressed a willingness to meet him at any time that would suit his convenience, and I would say that there was some delay in my meet-

ing Mr. Pruyn, I have forgotten whether it was due to my being called off, or his absence from New York, but it resulted in our meeting early in December—the latter part of November—

Q. What, without taking up all the details, definite project, if any, was proposed?

A. Well, the entire scheme was discussed, and Mr. Pruyn was very much interested. It was then proposed by either myself or Mr. Pruyn that he acquire a large interest in the Ecuadorian Association—in its shares—10 and become identified with the entire project; he and myself both believing that with a large banking interest in New York, the State of New York, and in the United States, identified with the interest that Messrs. Glyn, Mills, Currie & Co., of London, had taken in the securities of the Ecuadorian Association, that the enterprise could be financed and made a success, but Mr. Pruyn, in thinking that over, came to the conclusion that that wasn't quite satisfactory to him, that in becoming inter-20ested in the Ecuadorian Association that he would become involved in various complications with Messrs. Dick, Lisman and associates, and he wished to in some way adjust matters so that they could be eliminated from the business of the Ecuadorian Association or from the construction of this railway.

Q. Well, what plan, if any, was proposed, general plan?

A. Well, the first definite plan that was proposed was the suggestion made by myself in lunching with Mr. Pruyn at the Mid-Day Club in New York. Mr. Pruyn 30 said that he had an associate who represented one of the largest banking interests in the United States, and that if I could submit a proposal to him, in which the whole scheme could be reorganized to this extent, that the Ecuadorian Association, which was a foreign corporation, be eliminated, and the entire business handled from New York, that he thought his associate would unite with him. He didn't give me the name, but said that

he was going to Boston that afternoon, and I then made a proposition which has been dealt with in all of our correspondence—was dealt with in all of our correspondence thereafter as the mid-day lunch memorandum.

Q. Do you remember when that was?

A. Well, it was in about, I would say, the middle of December. I haven't the date just before me—I mean I cannot recall the exact date; it was in the month of December, 1902.

10 *Q.* Now I show you—

Mr. Corbin—We call upon the other side to produce two letters from Mr. Harman to Mr. Pruyn, dated December 10, 1902.

Not produced.

Q. I show you two press copies, are those press copies of letters delivered by you to Mr. Pruyn,

A. Yes.

Q. Both dated December 10th, 1902?

A. Yes, sir, both of those were delivered to Mr.
20 Pruyn. Now it was subsequent to this, I would say about the 15th of December, that the mid-day lunch memorandum was made.

Q. That was after this?

A. I should say so, just afterwards, because in this letter of December 10th, I am dealing entirely with Ecuadorian Association shares.

Q. I show you a pencil memorandum dated December blank, 1902.

A. Yes, the date was taken out by the file.

30 *Q.* It has been cut out?

A. Yes, sir. This is the memorandum that I refer to as the mid-day lunch memorandum.

Q. Just look at the figures there?

A. Yes, sir.

Q. \$2,750,000 is wrong?

A. \$2,750,000 is wrong, that should have been \$2,250,000 approximately. There was issued at that time four hundred and thirty-five thousand pounds of Ecuadorian Association shares.

Q. Well now, what was the final memorandum?

A. This was the final memorandum. Mr. Pruyn took this memorandum with him to Boston; he conferred with his associate there, and on his return to New York he told me that his associate was Mr. Robert Winsor of Messrs. Kidder, Peabody & Co., and that Mr. Winsor had gone over the entire proposal with him, and that he thought it was too liberal, and it would be absolutely impossible for Harman to obtain the consent of the share-holders of the Ecuadorian Association to 10
turn over their shares of this property to a new company upon the terms that were outlined in this memorandum. I told Mr. Pruyn that there would be no difficulty in obtaining the consent of the English shareholders, provided we could satisfy them that their associates here would handle the business on legitimate lines, and not attempt to defraud them; the only difficulty that I saw in the way of carrying out this memorandum was that a large block of stock held by what was called the Dick pool, of which I owned some eighty or ninety thou- 20
sand pounds, and my friend Sir James Seabright owned about fifty, and Dick and Lisman owned about fifty, which gave control of the outstanding stock of the Ecuadorian Association, and the only difficulty that I feared was that Dick and Lisman would not allow either Seabright or the Hewits or myself to withdraw this stock from this pool and vote it, and that it might become absolutely necessary to in some way purchase from the Ecuadorian Association the sixty-five thousand pounds of 30
Association shares; that if Dick and Lisman would consent to the distribution of the stock that was in what was called the Dick pool, that it would be unnecessary to subscribe for that sixty-five thousand pounds. Well, after several interviews with Dick and Lisman they declined to allow that stock, which was then just the majority, I think, for four hundred and sixty-five thousand issued, to either be voted by the holders or to be redistributed,

and the next step in my negotiation with Mr. Pruyn was to take the matter up with the directors of the Ecuadorian Association and induce them to consent to issue to Mr. Pruyn sixty-five thousand pounds of the treasury stock of the Ecuadorian Association which was—the proposal was embodied in a letter from me to Mr. Pruyn, I would say dated about December 30th, which you must have a copy of.

10 Mr. Corbin—We ask for the letter of Mr. Harman to Mr. Pruyn, dated December 30th, 1902.

Not produced.

Mr. Corbin—We offer the memorandum to which the witness has referred.

Marked *Exhibit C 7*.

Said two letters dated December 10th, 1902, offered in evidence and marked *Exhibits C 8 and C 9*.

Q. In whose handwriting is that pencil memorandum?

20 A. That is in Mr. Pruyn's handwriting.

Q. I show you the press copy of a letter by you to Robert C. Pruyn, dated December 30th, 1902, is that the letter to which you refer?

A. Yes, sir.

30 Offered in evidence and marked *Exhibit C. 10*, reading as follows: "December 30, 1902. Robert C. Pruyn, Esq., 36 Wall street, New York. Dear Sir: We beg herewith to confirm the arrangement made with you in reference to the purchase from you of the stock of the company you are to organize under the laws of the State of New Jersey which shall be called the "Duran Terminal Company." We agree to have transferred to you a certain option held by John Haviland for the purchase of the Luque estate, controlling the Guayas river front at Duran; you are to acquire and pay for this property and transfer the same to the Duran Terminal Com-

pany, and in addition place in the Treasury of the Duran Terminal Company \$36,000 in cash. The Ecuadorian Association agree to deposit in escrow immediately with the Union Trust Company of Albany or with Glyn, Mills, Currie & Co., of London, 65,000 pounds par value of its capital stock, you to deposit with the Union Trust Company of Albany or with Glyn, Mills, Currie & Co., the entire capital stock of the Duran Terminal Company and if within six months from this 10 date the purchase and transfer of the Luque Estate to the Duran Terminal Company is effected, and title made satisfactory to the Attorneys of The Ecuadorian Association and you shall have deposited in the Treasury of the Duran Terminal Company the sum of \$36,000, and said Duran Terminal Company shall be free from all debt, the Union Trust Company of Albany or Glyn, Mills, Currie & Co., shall deliver to you the 65,000 pounds of the fully paid Capital stock of 20 the Ecuadorian Association, Limited, and deliver to us the entire capital stock of the Duran Terminal Company, otherwise you shall at once restore the John Haviland option upon the Ecuadorian Association reimbursing you for your actual outlay on the Duran Terminal Company. We will at once enter into an escrow agreement with you covering this understanding, and refer you to Mr. Benoni Lockwood, Jr., of Messrs. Rollins & Rollins our Attorneys. Yours very 30 truly, Archer Harman."

Mr. Corbin—Now I call for another letter, dated December 12th, 1902, from Harman to Mr. Pruyn.

(Not produced.)

Q. Please refer to the press copy shown you; is that a press copy of the letter delivered by you to Mr. Pruyn?

A. Yes, sir.

Offered in evidence and marked *Exhibit C 11*.

Q. Now you say the letter of December 30th was the result of an interview with Mr. Pruyn?

A. That letter was the result of an interview with Mr. Pruyn; after explaining to Mr. Pruyn that Messrs. Dick and Lisman would control the Dick pool and would not allow or permit a re-distribution to the owners of the stocks that had been transferred to the Dick pool, or
10 neither would they allow the owners of those stocks to be transferred to the name of the owners and the owners to vote them, and therefore it was necessary, in some way, to acquire those sixty-five thousand pounds of treasury stock, because of the fact that Mr. Evan R. Dick had the voting power of the two hundred and fifteen thousand or two hundred and eighteen thousand pounds of shares held by the pool.

Q. Well, what did he say to this proposition?

A. That was accepted. Mr. Pruyn accepted that in an interview with me, and said that what he wanted,
20 however, was Mr. Adams, his secretary, to have an opportunity of examining the books and accounts of the Ecuadorian Association. I previously handed Mr. Pruyn a statement of the accounts of the Ecuadorian Association, prepared by Barrowade and Guthrie, of New York, auditors of the company, and he wished Mr. Adams to have an opportunity of verifying this statement. On the afternoon of the 30th of December I gave Mr. Adams an order on Albert C. Watson, directing Watson to hand
30 over all the books of the Ecuadorian Association to Mr. Adams, for his inspection and examination, and Mr. Adams went from Mr. Pruyn's office to the Ecuadorian Association office and received those books—didn't take actual delivery but had the order accepted, so that he had access to them at any time he wanted.

Q. Did Mr. Pruyn have a New York office?

A. Yes.

Q. Where?

A. Well, it was on Wall street, just almost opposite

33 Wall street, I don't know the numbers there. He and Mr. Peabody had an office there together; I think it was 34 Wall street.

Q. What further was done before Mr. Pruyn left the country?

A. Nothing, because we were to sail, he and myself—I told him that the only possible way of carrying this scheme through was to proceed at once to England, and take it up with the leading shareholders of the Ecuadorian Association themselves, those that were not only largely interested in the shares of the Ecuadorian Association, but who owned large blocks of bonds in the railway company and who had subscribed for the Ecuadorian Association debentures, and before absolutely making any commitment told Mr. Pruyn that I would have to confer with several of my associates, Sir Robert Moncreiffe, Jr., Sir James Sieveright, Messrs. Glyn & Co., and Mr. Ramsey, who was a very prominent holder of our securities, and various other interests. You see a large amount of money had become involved in this, at this time, and the shareholders of the Ecuadorian Association had put in 435,000 pounds in cash.

Q. What was done with reference to Mr. Adams attending to the matter, to your knowledge?

A. I have no distinct recollection of what Mr. Adams was to do, except to examine the books of the Ecuadorian Association. Mr. Pruyn told me that Mr. Adams was his secretary and his confidential agent here, and Mr. Lockwood was there representing Mr. Lockwood and Mr. Levy, who were both remaining in New York.

Q. What was arranged, if anything, about the payment on the option?

A. On the Luque property?

Q. Yes.

A. Mr. Pruyn was to pay and did pay, or instructed someone else to pay \$5,000 to secure this option until the first of July, 1903.

Q. Was that before you left for Europe?

A. Yes, sir; I had received a cable, some time early in December, from my brother, stating that the option on the Luque property could be secured upon certain terms; I would have to refer you, Judge, to that cable, it must be there, as to the terms, and that cable was submitted to Mr. Pruyn.

Q. It was copied in one of your letters?

A. I didn't see it, sir; I only looked at the signatures of those letters when you handed them to me. That cable
10 was handed to Mr. Pruyn and he remitted the money, to comply with the conditions that were made.

Q. He supplied the money for that purpose?

A. Yes, sir, that was his first step.

Q. And that was before you left for London?

A. Yes, sir, and that was all that could be done before we left for London.

Q. Was there any arrangement about incorporating?

A. The Duran Terminal Company was to be incorporated, because that was a transaction the board ap-
20 proved, issuing those sixty-five thousand pounds of stock.

Q. That was to incorporate the company?

A. Yes, but as to absorbing the whole of the Ecuadorian Association, which was mentioned in that memorandum or discussed with Mr. Pruyn and approved by Mr. Winsor, I could not committ myself to that until after conference with my associates in London.

Q. Now, then, you went to England on the same vessel with Mr. Pruyn?

30 *A.* Yes.

Q. Did you see him on the way over?

A. Yes, we were together daily, almost constantly.

Q. And discussed this matter?

A. Yes, sir, fully, went into every detail in connection with it.

Q. Now, when you reached London, what did you do then—

The Court:

Q. As I understand at that time you had nearly completed the road through the mountains?

A. Yes, sir. I won't be just exactly certain to a mile, about eighty-six miles, the most difficult work. There were twenty-five miles to be completed, for which we had the grading about three-quarters completed and most of the material paid for and on the ground. We had three or four very large viaducts to erect, and they had all been shipped and all paid for, and it was really— 10 the arrangement with Mr. Pruyn was not so much a financial necessity as far as the Ecuadorian Association was concerned, but it was more to get out of the hands of Messrs. Dick, Lisman & Co., who, from one cause or another, had antagonized various interests, and we did not feel safe in their hands.

Further direct.

Q. When you got to England what did Mr. Pruyn do, to your knowledge, there?

A. Well, I had daily interviews with Mr. Pruyn. I 20 presented to him my intimate associates such as Sir James Sienright, Mr. Ramsey, Sir Robert Moncrieffe, Messrs. Glyn, Mills, Currie & Co., and Mr. Bruce Garydine, who represented the trustees, and Mr. DeFreise, and various other people who were interested; it wasn't only the people who held Ecuadorian Association shares that had to be considered, but you also had to consider the people who held the bonds of this railway. You see at that time we had invested there something like eight or nine million and some four hundred and thirty-five 30 thousand pounds, which was represented by the shares of the Ecuadorian Association—some five or six millions was represented by bonds of the railway company in one way or another.

Q. Did you introduce him to Mr. Dawes, your London solicitor?

A. Yes, sir.

Q. And did he converse with these various people?

A. Yes, sir.

Q. Was the matter discussed?

A. Almost constantly for about ten days, I should say.

Q. Now, then, did you cable with regard to the forming of the coal company?

A. Yes, sir.

Q. How did you come to do that?

A. Well, we had taken this whole enterprise up, and
10 we worked on the Mid-day Club memorandum directly; we didn't vary from it, but after my English associates and Messrs. Glyn, and my French associate Mr. Strawsberger, they decided that while the terms that I had made to Mr. Pruyn and Mr. Winsor were unnecessarily liberal, that under the circumstances, and in view of the large amount of railway bonds which we held, and at that time had no free market for, that it was to our interest to carry out that scheme as outlined in New York, and then the details of doing that and meeting
20 Mr. Pruyn were very considerable.

Q. When did Mr. Pruyn leave?

A. London?

Q. Yes.

A. Oh, it was in January, I should say, about the 18th. You have a letter there from Mr. Pruyn to me that would refresh my memory, written from the Carlton Hotel, as to the date.

Q. At that time had you reached definite terms with him?

30 A. Well, we had reached a definite understanding up to the afternoon before Mr. Pruyn left London; then I had an interview with Mr. Pruyn in which our treasurer Mr. Levy was present, at the Carlton Hotel, and there Mr. Pruyn raised the question as to my personal position—my personal financial position. In taking over large blocks of bonds I had placed loans—had loans outstanding aggregating something like, I should say, eleven hundred thousand dollars.

Q. On your personal credit?

A. Yes, sir, and those loans were secured by bonds that I had taken from the Ecuadorean Association at about seventy. The bonds were selling, or at least was at a nominal quotation of about forty, and Mr. Pruyn had said that when it came to the knowledge of Messrs. Dick & Lisman that I had cast my lot, we will put it, with him and Mr. Winsor, that the first thing they would do and various other people, Messrs. Grace & Co., and various other places where I had large loans, that the first thing that would happen would be that they would call those loans. That they would all call the loans with one or two exceptions, and I then said, well, I have friends here and I believe if I care to form something like a syndicate to take up these loans and agree to transfer to them certain interests which I have outside of this business, why I think it can be adjusted. I urged that he and Winsor should take up part of those loans and they declined to do it, and said that in going through that I had no right to bring my personal matters before him in that way to conflict with the enterprise. 10 20

Q. Wasn't the matter left open then, when he left for Paris?

A. No. I want to come to just the break between Mr. Pruyn and myself; that it was my duty to handle my private affairs without involving either the Company or the new interests who were acquiring large interests in this property. On returning to my hotel I wrote Mr. Pruyn a letter in which I said that I saw my way to handle my loans, that I had a conference with some of my friends, and that I could have them all taken up, but I would have to transfer to them a certain interest in options that we held at that time upon the Galapagos Islands, and that letter irritated Mr. Pruyn very much, I had no idea that he had attached so much importance to that proposition, and he wrote me a letter in which he said that— I think he said— 30

Q. Well, never mind that. Nothing was determined then when he left for Paris?

A. Well, his suggestion in that letter, if I recall right, was that he would go to Paris, and that he would leave his representative in London, Mr. Green, but that he would advise me to—

Q. Is that the letter of January 18th, 1903?

A. Yes, sir, this is the letter.

Offered in evidence.

10 Marked *Exhibit C 12*.

Witness—This is the letter in which he says you had better come to Paris or else, if my understanding is right, let us separate right here.

Q. Then did you visit him in Paris?

A. I did not go to Paris for a day or two, because I remained in London to see if I could adjust my affairs, so that my own financial position would not in any way conflict with the carrying through of this enterprise, and then I made an arrangement with Mr. F. G. Home
20 and associates, in which I agreed to turn over to them all of the collateral as against my loan; these railway bonds that I paid seventy for I agreed to turn over to the Home syndicate, all of those bonds held as collateral, at forty. They were to liquidate all my loans as they saw fit, and we were to divide anything that was received in excess of the forty and the profit to be divided as between the Home syndicate and myself; and as soon as I completed that arrangement, relieving Mr. Pruyn of
30 my personal matters, I went over to Paris and told him that it was no longer necessary to use the Galapagos assignment to adjust my own affairs, and we came very promptly to an understanding which was to carry out the arrangement that had been agreed upon between Pruyn, myself and our various associates in London, during his stay there.

Q. Now, what was the understanding with regard to the Ecuador stock?

A. Well, we were to do this: we were to organize—we had organized the Duran Terminal Company, and we were to organize the Canar Land Company, and we were to organize the Colomb Coal Company, and we were to exchange the stock of the Duran Terminal Company, Canar Land Company and the Colomb Coal Company for stock in the Ecuador Company; we were to give the various share-holders of the Ecuadorian Association five dollars on the pounds in shares in the Ecuador Company for their stock. I was also to call **10** a meeting of the certificate holders, which I mentioned heretofore.

By the Court:

Q. What were the shares, the par value of the shares?

A. The par value of the Ecuador Company shares were to be \$100, and the other shares \$5.

Q. The association?

A. One pound, and we were to exchange on the basis of five dollars to the pound.

20

Further direct.

Q. How much of the five million capital stock of the Ecuador Company was to be issued for the stock of these Land Companies?

A. About \$2,500,000—a little less than that, because as I say we had to take up the million pounds of contingent right certificates which had the right to all the stocks and bonds held by the trustees, in the event of the Ecuadorian Association not being able to fulfill its contract as to the completion of this railway, and I had **30** agreed to call a meeting of those certificate holders and have those certificates turned in for five cents on the dollar—five dollars on the hundred to be paid in Ecuador shares. Messrs. Glyn, Mills, Currie & Co., Sir James Sieveright and myself, who held some \$500,000 of these certificates, were to turn ours into the Ecuador Company without any compensation; so you must deduct from the

\$2,500,000 of Ecuador Company stock that he was to get in exchange for these land companies' stock, the amount of stock that had to go to the certificates, and when once the Ecuador Company came into possession of the certificates it was immaterial then how the trustees would be disposed of.

Q. And the amount of the Ecuadorian certificates was five hundred thousand pounds?

A. No; one million pounds, sir.

10 *Q.* No; the Association?

A. Shares you mean; you said certificates.

Q. Yes, shares.

A. That was after issuing to Mr. Pruyn the sixty-five thousand pounds, then the capital of the Ecuadorian Association outstanding was five hundred thousand pounds, then any other capital that had to be used must come from the remaining two million and a half stock.

Q. That wouldn't amount to very much?

A. I think it was figured at about a hundred and fifty
20 or two hundred thousand.

Q. Then the residue would go for these land companies?

A. Yes, sir; you see there were one million pounds of these certificates outstanding.

Q. Well, who was to undertake the formation of the land companies in the acquirement of the property?

A. Mr. Pruyn.

Q. Now, after having reached that understanding, you went back to London?

30 *A.* I did.

Q. What did you undertake to do then?

A. I undertook to do two things specifically, first to call a meeting of the contingent right certificates, which Mr. Pruyn and myself both agreed was vital, that we should have the Ecuador Company—should have every certificate outstanding, and to have those people assent to exchanging their certificates for five cents on the dollar, payable in Ecuador Company stock; that was No.

1. No. 2 was to have the Ecuador Association shareholders agree to exchange their shares for Ecuador Company stock, and to have the directors of the Ecuador Association make an assignment of all of its construction contracts, and all of its assets of every kind, which consisted principally in bonds that were hypothecated and secured loans and interest in the securities held by the trustees and various other things to which I would have to refer you to the deed of assignment.

Q. You called in the aid of counsel in that matter? 10

A. Well, in the first instance, when I returned from Paris, Mr. Pruyn sent with me Mr. Green, Mr. Francis Green, who was to be Mr. Pruyn's representative.

Q. Mr. Green was in Paris?

A. Yes, when I went to Paris he had gone to Paris, while I was forming the Home syndicate to take over my personal matters, and I met him there, and he returned from Paris with me.

Q. At whose request?

A. At my request, because I told Mr. Pruyn either he had to be there or he ought to be represented, and he then reluctantly sent Mr. Green; at that time Mr. Green was president of some company of his over here, and he was anxious for him to return to New York; anyway he sent him there. 20

Q. Then Mr. Green went back to London as the representative of Mr. Pruyn?

A. Yes, sir, and I was instructed to introduce him to Messrs. Glyn, Mills, Currie & Company, Mr. Gardine and our counsel and so on, as Mr. Pruyn's representative, and I did so. 30

Q. Did he act there for some time?

A. Yes, sir; some time—until March.

Q. Now, then, you spoke of an assignment?

A. Well, you asked me if this whole matter was presented to our counsel. It was, of course.

Mr. Corbin—I call for a letter by Mr. Harman to Francis S. Green, in Paris, dated January 30, 1903.

Not produced.

Q. I show you a copy of a letter written by you January 30, in this matter.

A. Yes, I remember this distinctly.

Q. Well, what does that assignment refer to?

A. Assignment from the Ecuadorian Association to the Ecuador Company.

Q. Then Green was still in Paris?

A. No, Green was making frequent trips to Paris.

10 Q. Is not that addressed to him in Paris?

A. Yes, but I mean he would be in London for three or four days, and then would run over to Paris for a day or two, and then when I required his presence—

Q. Mr. Pruyn was still there in Paris?

A. I think Mr. Pruyn was still there; I don't think Mr. Pruyn left Paris until some time about the first of February.

Q. That letter of January 30th, does that fix the date that the assignment was prepared?

20 A. This says, "I enclose you to-night two drafted assignments prepared by Mr. Bircham," and those were the only assignments, the assignments from the Ecuadorian Association to the Ecuador Company.

Q. So that was under negotiation for some time before February 17th, when it bears date?

A. Yes, it was a document that could not be prepared hurriedly.

Letters of January 30th, offered in evidence.
Marked *Exhibit C 13*.

30

Witness—Mr. Corbin, I stated that those copies are copies of my letters; I am prepared to swear that that is a carbon copy of the letter that was written, you understand, but you frequently take a pen and scratch out a word in correction which doesn't get on your carbon copy, but is in your original, that does not occur when you take a press copy.

Q. Do you recall a letter from Mr. Harman to Mr. Green, February 7th?

A. I don't think I wrote Green many letters, sir.

Q. No, no, a letter from Mr. Pruyn to Mr. Green, which was delivered to you, I mean?

A. Well, I know that Mr. Pruyn had a habit of writing Green letters, and saying, now give Harman a copy of that.

Q. I show you a letter dated February 7th, by Pruyn to Green?

A. Yes, sir, I recall this letter.

Q. Was that letter given to you to answer? 10

A. Yes, sir.

Q. And you were furnished with a copy and answered it?

A. I was furnished with the original of the letter, all of these letters were copied by my stenographer and the originals returned to Mr. Green after I had replied to them. Now the method was this—we wished Mr. Pruyn to have every detail, and all the information that was possible to convey. I would answer this letter from my own standpoint, and Mr. Green would answer it 20 from his, and it was an exception where we would show either one or the other the letter we had written Mr. Pruyn.

Q. Is that which you have there a copy of the letter which Mr. Green had from Mr. Pruyn?

A. Yes, sir, it is.

Mr. Corbin—We ask for the original letter, if you have it, from Mr. Pruyn to Mr. Green.

Not produced.

Mr. Corbin—We offer in evidence the letter 30 dated February 7th, 1903, a copy which Mr. Harman made.

Marked *Exhibit C 14*.

Q. Did you write to Mr. Pruyn on February 12th, in reply to that letter of February 7th?

A. Yes, sir.

Q. And have you a copy of the letter you sent him?

A. I have a copy of it, yes, sir.

Mr. Corbin—I would like to ask counsel generally whether they produce any letters on our call.

Defendant's Counsel—No.

Mr. Corbin—So I suppose it is unnecessary for us to keep repeating the demand.

I offer in evidence the letter of Mr. Harman to Mr. Pruyn, dated February 12th, which refers to the letter of February 7th.

10 Marked *Exhibit C 15*.

Q. I show you a carbon copy of a letter addressed by you to Mr. Pruyn, dated February 17th; was that a copy retained by you of a letter mailed by you to Mr. Pruyn?

A. Yes, sir, I remember this very well.

Mr. Corbin—I offer that in evidence.

Marked *Exhibit C 16*.

Q. Now, in what form was the assignment to which you have referred, and which I have described as dated February 17th, 1903, was it printed?

20 A. Yes, sir, first engrossed and then printed.

Q. At the time?

A. Yes, sir.

Q. And copies sent to Mr. Pruyn?

A. Yes, sir.

Q. And Mr. Green had them all?

A. Yes, sir.

Q. Mr. Green executed the assignment.

A. Yes, sir, on behalf of the Ecuador Company.

Q. Now, the original is not in your control?

30 A. No, sir.

Q. It is in London, is it not?

A. I suppose so; a copy of it was handed to the Ecuador Company, and a copy to the Ecuadorian Association.

Q. And that is in the hands of liquidators?

A. Yes, sir.

Q. Do you know whether that printed document shown you is a correct copy of that contract as completely executed, and if so, how do you know it?

A. Yes, sir, I know this is a copy.

Q. How do you know, did you compare it?

A. Yes, sir.

Q. Was it printed under your direction?

A. Under the direction of Messrs. Bircham & Co., and as this assignment had to be sent out to a large number of shareholders of the Ecuadorean Association, I personally compared with Mr. Hurd and Messrs. Bircham the engrossed original and the printed copy, and corrected the proofs on one or two occasions, and know that this copy that went out, that was distributed, is an absolute copy of that assignment in every particular. 10

Q. It purports to be signed by the Ecuador Company, Francis C. Green, attorney?

A. Yes, sir.

Q. Do you know it was signed by Mr. Green?

A. Yes, sir, I was present when he signed it.

Q. Do you know he had that power of attorney?

A. I do.

Q. You saw it?

20

A. I saw it.

Q. Who was the president of that company, Mr. Adams?

A. Of the Ecuador Company?

Q. Yes.

A. Mr. Adams.

Mr. Corbin—I offer in evidence that printed copy of the Ecuador assignment. The assignment by the Ecuadorian Association to the Ecuador Company, executed by both concerns and dated February 17th, 1903. 30

Marked *Exhibit C 17*.

Q. And that contains, "Thirdly, all that said five thousand stock of the Duran Company and full benefit thereof, subject to the conditions on which the same are now held by the Association, and also all other interests, if any, of the associates of the Duran Company. Now, at the time that that printed contract was given—was ex-

ecuted and given out, were any other printed documents given out?

A. Yes, sir.

Q. Have you the three documents that were given out along with the contract—printed documents?

A. Yes, these are the three documents, yes, sir.

The Court:

Q. You now hold in your hand two documents, I
10 suppose you are referring to that?

A. No, sir, I have three, there are two pinned together; they just happen to be attached there.

Further direct:

Q. When these documents were sent out was Mr. Green consulted in regard to their contents?

A. Not only Mr. Green, but Mr. Pruyn; all those documents were sent to Mr. Pruyn and his approval was received before they were sent up—before they
20 were published.

Q. First is a document dated February 17th, 1903, addressed to Dear Sir, or Madam, as holders of stocks, recommending the exchange, signed by James Sieve-right and Archer Harman and others, and Frederick B. Adams, attorney. What shares did Frederick B. Adams, attorney, represent?

A. Sixty-five thousand pounds of shares that were issued to Mr. Pruyn under the Duran contract.

Q. And he was the attorney for Mr. Pruyn?

30 *A.* Yes, sir.

Q. He is the gentleman you spoke of as his secretary?

A. I either wrote or telegraphed Mr. Pruyn that I wanted him to sign that circular, and he replied, stating that he would prefer that it be signed by his attorney, by Adams, as he did not want his own name used.

Q. That is how it came to be put out in that way?

A. Yes, sir. The authority for all those signatures

attached to that letter was lodged with the solicitors of the company, Messrs. Bircham.

Q. And did these signatures, about eight or ten in number, represent a large number of stockholders?

A. Including that sixty-five thousand pounds, they represented a number of shares, as stated in that circular.

Q. This document is signed Francis C. Green, for Ecuador Company of New Jersey. How did that come to be signed?

10

A. Under power of attorney from the Ecuador Company. You are short two documents, there should be two further documents to the certificate holders. You see there are A, B, C and D, you have C and D; I think there were four circulars sent out. I want to correct my statement when I say there were three, there were four of those letters sent out, two to the certificate holders and two to the shareholders, and Green's letter, making five in all.

Q. These are the ones sent to the shareholders?

20

A. Yes, sir.

Mr. Corbin—I offer in evidence the communication dated February 17th, 1903, by Ernest N. Dawes, London solicitor, to shareholders of the Ecuadorian Association, advising the exchange.

Marked *Exhibit C 18*.

Also the other document, dated February 17th, 1903, signed by James Sieveright, Archer Harman, Frederick B. Adams and others, consent-
ing to the transfer.

30

Marked *Exhibit C 19*.

Also another document, addressed Francis C. Green, for the Ecuador Company of New Jersey, tendering an exchange.

Marked *Exhibit C 20*.

Q. Now, I show you two letters, two carbon copies of letters addressed by you to Robert C. Pruyn, both

dated February 18th, 1903, will you please state whether those are copies of letters which you sent to Mr. Pruyn?

A. February 18th, to Mr. Pruyn, is a correct copy. And this letter of February 18th, marked "K," is practically a correct copy. I see the name Harman here is used where I should think it ought to be Green, but it is a copy of the letter forwarded to Mr. Pruyn by me.

Mr. Corbin—Last two letters offered in evidence.

10 Marked *Exhibits C 21 and C 22*.

Q. Now, going back a little, before we get further away from it. I show you a telegram from Pruyn to Harman, stamped as received February 11th, 1903, authorizing Mr. Green to remain; do you recall the occasion of that?

A. Yes, sir, Mr. Pruyn sent Mr. Green over to London with me in January. He told me at that time that Mr. Green must leave for New York early in February,
20 and we thought that we could conclude all these matters in time to allow him to leave about the tenth or twelfth or about that date. I found that it had taken more time to get these papers in order and to get the consents of these various people, and the business could not be concluded. I advised Mr. Pruyn to that effect, and he telegraphed me back that he had wired Green to remain.

Mr. Corbin—I offer the telegram in evidence.

Marked *Exhibit C 23*.

Q. Now, I show you a letter from Harman to Pruyn,
30 dated February 19, 1903, will you please state whether that is a copy retained by you of the letter sent by you to him, of that date?

A. Yes, sir; I remember this.

Mr. Corbin—I offer that in evidence.

Marked *Exhibit C 24*.

Q. You refer there to two agreements, do you not, one executed by Mr. Adams in New York, and the other of which was proposed should be executed?

A. Yes, sir.

Q. Will you please look at the first agreement and see whether the signature to that is the signature of Mr. Pruyn?

A. Yes, sir; that is Mr. Pruyn's signature.

Q. It bears acknowledgment on what date?

A. The 23d day of February.

Q. Before whom?

A. Before the Consul General, United States of America, Rome, Italy.

10

Mr. Corbin—I offer that in evidence.

Marked *Exhibit C 25*.

Q. Was there any signing by Mr. Green to the same effect?

A. Yes, sir.

Q. Will you explain how Mr. Green came to execute that the day following?

A. I called a meeting of the directors of the Ecuadorian Association to conclude this entire transaction. Some of those gentlemen resided in Scotland, and they were to meet in London on a certain day. In forwarding this agreement to Mr. Pruyn I think I stated in my letter that I feared that he would not have time to sign it and return it to me by the time this directors' meeting was to be held, and if not would he cable Mr. Green authority to sign his name to a duplicate copy, and on the morning of the directors' meeting the agreement from Mr. Pruyn had not been received, and he either cabled Green or myself, authorizing Green to sign his duplicate as his attorney, and the directors of the Ecuadorian Association again protested, but our solcitors finally agreed to accept this and issued the sixty-five thousand pounds of stock on Green's signature as attorney, and not wait for the contract that Mr. Pruyn had cabled me that he had signed and was coming on by mail.

30

Q. That is dated February 24th?

A. Yes, sir; the day after this was signed.

Q. Did the other come?

A. The next day.

Q. Come by mail?

A. Yes, sir. I would like you to file that, I have a personal reason for it, because Mr. Pruyn has stated that Mr. Green was given a copy which purported to be a copy of the contract signed by him, which was an entirely different document.

Q. You have there a copy of the document which Green signed?

10 A. Yes, sir.

By Mr. Williamson:

Q. Is it the document which Mr. Green signed?

A. It is a copy of the document Mr. Green signed.

Further direct.

Q. The original would be in London?

A. No, the original is here.

Q. Not of that?

A. Oh, no, I beg your pardon, I was thinking of the Adams—the original of this that Green signed had to
20 be filed at Somerset House to justify the directors in the Ecuadorian Association in issuing that sixty-five thousand pounds of stock.

Mr. Corbin—We have called on the defendants for the original of this.

Q. It was executed in duplicate?

A. Yes, sir; Green Kept one copy and our copy, the association's copy, had to be filed at Somerset House.

Q. Do you know that that is a copy of the document?

A. I do.

30 Mr. Corbin—I offer that in evidence.

Marked *Exhibit C 26*.

Recess.

Q. I show you a letter addressed by you to Robert C. Pruyn, at Rome, dated February 23d, 1903, is that a carbon copy of a letter which you mailed?

A. Yes, sir.

Mr. Corbin—I offer that in evidence.

Marked *Exhibit C 27*.

Q. Here is a telegram, February 21st, 1903, Pruyn to Harman, did you receive that Mr. Harman?

A. Yes, sir.

Q. Do you know what that relates to?

A. Yes, sir.

Q. Business of the company?

A. No, this relates to private business.

10

Q. It is outside of the company?

A. Yes.

Q. Oh, then, it is not worth while putting it in. I show you a letter by Robert C. Pruyn to Mr. Harman, dated February 21st, 1903, is that Mr. Pruyn's handwriting?

A. Yes, sir.

Q. Did you receive that from him?

A. Yes, sir, I received this.

Q. Look at the last clause of the letter in which it 20 states: "Kindly give Green for Adams a copy of your letter of the 18th."

A. Yes.

Q. Did you comply with that request?

A. Yes, sir.

Mr. Corbin—I offer in evidence this letter.

Marked *Exhibit C 28*.

Q. Now, did you see Mr. Pruyn in Naples after that?

A. Yes.

Q. Can you recall the date; you may refer to a letter 30 of Mr. Pruyn's to you, dated March 5th, 1903?

A. I met Mr. Pruyn in Naples about the 27th of February—27th or 28th.

Q. Well, you went to Naples. You say he cabled to you?

A. I went to Naples and met Mr. Pruyn. The appointment was fixed by cable; I left London and went direct to Naples, arriving in Naples about the 27th.

Q. You stayed there several days?

A. Several—three or four days.

Q. Then what was the business you had?

A. To review the arrangement that had been completed in London for the transfer of the Eucadorian Association to the Ecuador Company, and the transfer of the certificates contingent right certificates from the certificate holders to the Ecuador Company, and to discuss the future of the Ecuador Company as to what should
10 be done towards carrying on construction, to arrange the funds and a general discussion of the entire business, of the entire scheme as most of it—everything in fact had been carried out and completed.

Q. Was there any memorandum made up of the money end?

A. Yes.

Q. Have you got that?

A. Yes, on March 3d, Mr. Pruyn and myself reviewed the obligations that the Ecuador Company had
20 accepted of the Ecuadorian Association, and the amount of money that would be required in Ecuador pending his arrival in New York, and how this money was to be provided, and this memorandum dated March 3d, 1903, covers the scheme, as we finally decided to put it into effect and provides for the money that was necessary up to the first of June.

Q. And who was to provide that?

A. Mr. Pruyn was to provide a certain portion of it, and I was to provide the remainder. The memorandum states here just what each of us was to provide
30 during this period, for instance, in May, I was to provide \$22,500, and in June \$57,580. Mr. Pruyn in May was to provide \$22,500, subject to a credit of \$15,000 that he had previously provided, and in June he was to provide \$57,000 subject to a credit of \$15,000, which he had previously provided.

Q. I show you a letter of Mr. Pruyn to Mr. Harman, dated at Florence, March 5, 1903; is that in Mr. Pruyn's handwriting?

A. Yes, sir.

Q. Did you receive that letter from him?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 29*.

Also two pages of a statement.

Marked *Exhibit C 30*.

Q. I show you a carbon copy of a letter from Harman, in London, to Pruyn, at Venice, dated March 10, 1903; was that letter sent by you to Pruyn? 10

A. Yes; this is an answer to his letter of the 5th instant.

Q. And refers to that letter?

A. Refers to that letter and other matters.

Mr. Corbin—I offer that in evidence.

Marked *Exhibit C 31*.

Q. What is that letter which you now have in your hand?

A. It bears upon the Orient Company fully and also deals with the debt of the Government of Ecuador, and there is a contract there, sir, in which the Ecuador Company agrees to purchase certain bonds. 20

Q. Well, you may look at this original letter and see if it is in the handwriting of Mr. Pruyn?

A. Yes, this is in the handwriting of Mr. Pruyn.

Mr. Corbin—I offer this in evidence.

Marked *Exhibit C 32*.

Q. I show you a carbon copy of a letter by Pruyn to Adams, dated New York, March 25th, a very long letter; see if that is a letter written by you? 30

A. This letter is written by me to Adams.

Q. Well, I mean Harman to Adams.

A. I remember the letter very well. I was then just leaving for South America, and at Mr. Pruyn's request I wanted to leave with Mr. Adams as complete a statement of the entire transaction as I could put into a brief statement, or that I thought he would require pending Mr. Pruyn's arrival in New York, and this letter was

written to Mr. Adams and delivered to him, dealing with all of the various contracts which the Ecuador Company had assumed for shipping material, purchase of rail, cars, cement, counsel of the foreign bondholders, and I think dealing with the whole subject rather comprehensively.

Offered in evidence.

Marked *Exhibit C 33*.

Q. I show you a letter written by Mr. Pruyn to Mr.
10 Harman, from Paris, dated April 2d, 1903; is that in the handwriting of Mr. Pruyn, and did you receive it from him?

A. Yes, sir; I received this letter.

Offered in evidence.

Marked *Exhibit C 34*.

Q. Now, you went to South America and you wrote from there a number of letters to Mr. Pruyn reporting on the situation there?

A. I did.

20 Q. Now, then, when did you get back?

A. I returned to New York about the 25th of June.

Q. And did you meet Mr. Pruyn?

A. No.

Q. What did you ascertain about the action of the Ecuador Company in continuing the construction?

A. Well, in Ecuador I received cables from Mr. Lockwood, and from the directors of the Ecuadorian Association as constituted in New York, stating that Mr. Pruyn had declined to carry out any of the agreements
30 or understandings that had been entered into between himself and the Ecuadorian Association, or to permit the Ecuador Company to carry out any of its arrangements or agreements, because of gross misrepresentations that had been made; that the contract which Mr. Green had signed in London in reference to the Duran property was a fraud perpetrated upon Mr. Green, not being a copy of the agreement that had been submitted to him, and that unless I would permit that those agreements should

be canceled that the Ecuador Company would repudiate all of its transactions and that we could look elsewhere for protection. I replied to these cables and stated that I was prepared to do anything in reason, but I could not consent to change any agreement upon which we had obtained the consent of the Ecuadorian Association shareholders to exchange their shares for Ecuador Company stock, but any agreement that did not affect the statements that had been made to the Ecuadorian Association shareholders by myself or by the solicitor of the 10 company I would consent to any alteration that the board was prepared to make.

Q. Well, they had thrown up the agreement for the advancing of money?

A. They advanced no money after the 15th of April; in fact, they obstructed the business of the railway company in every possible and conceivable way. I returned to New York and telegraphed Mr. Pruyn that—or before leaving South America I cabled Mr. Pruyn that I had received all these cables; I hadn't received the re- 20 mittances that had been promised, and that I thought there must be some gross misconception on his part. To that I received no answer, and on arriving in New York I received a telegram from Mr. Pruyn—I telegraphed him, in fact, and in reply received a telegram that he would be pleased to see me at Albany. I felt that there was nothing due from myself to Pruyn; on the contrary that there was an explanation due from him to me, and I declined to go to Albany. I then received a telegram from Mr. Pruyn asking if I would 30 meet his Mr. Andrews, who was his confidential representative, if he would come down from Albany to New York, and I replied to that that I would not meet him; that I felt that it was due to myself that Mr. Pruyn himself should come here and explain why he had acted as he had, and that on the following day I would leave for London. On arriving in London I received a letter from Mr. Pruyn, but I have not seen Mr. Pruyn since

—I left Naples in March I would say; the latter part of March.

Q. Then there was no further action taken to carry out these agreements?

A. No, the Ecuador Company did nothing. Mr. Pruyn repudiated all of his agreements. They circulated vicious reports about the status of the Railway Company, and about the gross misrepresentations that I made to them. They depreciated the market value of
10 our bonds—the market quotation of our bonds in the London market from about fifty-nine to thirty-five or thirty; in fact, everything was done that could be done to embarrass both myself and to bankrupt the Railway Company, and I felt that Mr. Pruyn was very largely responsible for that, and I saw no reason why I should meet him or see him or have anything further to do with him.

Q. The Ecuadorian Association went into the hands of liquidators?

20 *A.* No. I didn't consider it advisable under the existing conditions that the Ecuadorian Association, although it had made absolute assignment to the Ecuador Company, I didn't think at that time it was advisable for the Ecuadorian Association to go into liquidation, because the Ecuador Company—a receiver had been appointed for that, and reports had been published emanating from Albany all over South America and Great Britain that the Railway Company was going into liquidation, and that the Ecuadorian Association
30 was, and that all the people interested had lost their money, that the bonds were of no value. There were no publications that could be made injurious that were not ingeniously made, and my bankers in London and myself decided that for the time being we would put up the necessary money to keep the Ecuadorian Association out of liquidation, and we did not permit the Association to go into liquidation until some time either in February, 1904—if I am wrong I would like to be corrected in that—yes, in March, 1904.

Q. The construction of the road was taken up by the Railway Company itself?

A. The Railway Company, in order to protect itself, notified the Ecuador Company and the Ecuadorian Association in August or September, 1903, that if they did not proceed with their construction contracts, as provided in the construction contracts, that we would declare those contracts null and void.

Q. Was this the way you went on?

A. Yes, we gave them the time required, you understand, in the contracts, the legal notice required, and then immediately took up the construction by the Railway Company itself, and from, say April, 1903, neither the Ecuadorian Association—I better perhaps say May—neither the Ecuadorian Association nor the Ecuador Company had anything to do with the construction of this railway, neither did they provide any money for that purpose.

Q. Now, what is the market value of the bonds now?

A. Oh, about ninety, sir.

20

Q. And it was about forty when these negotiations took place in April?

A. They were about fifty-six or fifty-nine—from fifty-six to fifty-nine in February and March and April of 1903; then in the summer of 1903 and fall of 1903, owing to these publications and statements that had been made by these honorable bankers, they had depreciated to about thirty.

Q. And are now about ninety. Now, what is the preferred stock of the railway worth?

30

A. The preferred stock of the railway to-day is not officially listed, neither on the London or New York market. It is quoted on the London outside market, what you would call the curb here, at from thirty-five to forty-five; it has a fairly good demand at about forty.

By the Court:

Q. Is the country through which this road passes subject to earthquakes?

A. There have been earthquakes there.

Q. That is one element of risk about the investment, I suppose?

A. I don't think so, sir.

Q. Not subject to internal disorders of any sort, such as would result in a destruction of the property?

A. No, there has been earthquakes in the lower country, but there has never been any damage, your Honor, in say two hundred years. We have not a record of anything beyond that. The whole country is of a volcanic formation and no doubt there has been some serious natural disturbances there in the past. Take the city of Quito—

Q. I don't understand, if the engineering difficulties had been successfully overcome, as they had been at that time, why there should be any difficulty in getting money?

A. Well, confidence, sir, is a very delicate matter in finances to trifle with, and when a man that occupied the position that Mr. Pruyn occupied then and now, began to say that this property was of absolutely no value, and that the government had not met its obligations, and making various statements emanating all the way from Albany—I don't say that Mr. Pruyn was the father of them all—and the fact that these companies were going into liquidation almost as fast as you could put them, it is not surprising to me that the securities did depreciate. We had no great difficulty in getting money after.

30 Further direct:

Q. You refer to Mr. Andrews, who was he?

A. I never met Mr. Andrews.

Q. What did you understand his relation to be to Mr. Pruyn?

A. Mr. Pruyn telegraphed me that Mr. Andrews was his confidential attorney or adviser, and that in seeing Mr. Andrews it was just equivalent to meeting him, and

then when I refused to meet Mr. Andrews, Mr. Pruyn wrote me a letter which I received after my arrival in London, in which he thought I had treated him very badly in refusing to meet this confidential man, Mr. Andrews, but I never met him.

Q. That is all.

Cross-examination, by Mr. Andrews.

Q. You were the active man in the Guayaquil and Quito Railway Company?

A. Yes, sir.

10

Q. And also one of the managing directors of the Ecuadorian Association?

A. Yes, sir.

Q. Were you in the summer of 1902, familiar with the financial condition of the Ecuadorian Association?

A. Absolutely.

Q. Did you know what assets it then had?

A. I did.

Q. And what liabilities and obligations it was under?

A. Yes.

20

Q. What assets did the Ecuadorian Association have in November, 1902?

A. It is rather a hard question to answer correctly about the assets of a corporation say three years after a certain period. I could state briefly that the Ecuadorian Association had first its contract for the construction of this railway, and second a large number of bonds that were hypothecated with bankers at a very low rate, bonds that were bearing six per cent. interest and had a very large sinking fund back of them were hypothecated at about forty or forty-two per cent. of their face value. They had in the hands of the trustees which could be used by them and would revert to them on the completion of this railway, several million dollars of preferred stock, three and a half million dollars of common stock, which constituted its entire stock assets—the stock of the road, other than the forty-nine per cent. of common

30

stock given to the Government. They would also become entitled to quite an amount of securities due from the Government to the railway company and assigned to the Ecuadorian Association by the railway company, upon the association carrying out certain arrangements with counsel of foreign bond-holders, which did not require a great amount of money to complete, most of it having been paid, but if you would want a complete statement of the assets of the Ecuadorian Association
10 at that time I would respectfully refer you to a letter written Mr. Pruyn—various letters written to Mr. Pruyn, statements of accounts, etc., which gives the whole thing certainly more accurately than I could from memory.

Q. As a matter of fact the assets of the Ecuadorian Association in November, 1902, consisted virtually and substantially of its equity in certain stock securities and other matters, all of which were hypothecated or in some way tied up?

20 *A.* No, I didn't say that.

Q. Well, is it not a fact?

A. No, sir.

Q. Well, what did it have which was not either hypothecated as security for some loan or was in the nature of a contract, or was in some way unavailable for procuring additional funds?

A. Well, for that I would prefer referring to the statement of accounts.

Q. Then I understand you to say you don't remem-
30 ber?

A. I do remember, I have already stated that we had certain earning bonds all the time, by construction.

The Court—Wouldn't it be better to take that statement?

Mr. Andrews—I would prefer not to take the statement. This gentleman's memory is, at least in some respects, subject to criticism, as to some matters, and may be as to others.

Q. What was your object in approaching Mr. Pruyn in respect to these negotiations about which you testified in your examination in chief?

A. To relieve myself of the business connections and relations with Dick, Lisman and their associates.

Q. Wasn't it to get money?

A. No, sir.

Q. You didn't need any money then for the purposes of the Ecuadorian Association or the railway?

A. We needed money all the time, sir, but there was 10
an arrangement, an understanding between Dick, Lisman and myself and various others that we would take the bonds as earned, which we received monthly as the work progressed, and loan the Ecuadorian Association fifty per cent. of their face value. Well, that provided ample money to carry on the construction, because we had gotten over the heavy expenses in our construction, and fifty per cent. of what we would receive from the government was ample to cover all our construction expenses, in fact, more than ample. So you see we had 20
some three and a half millions of bonds not hypothecated in any way—I will say from three to three and a half millions not hypothecated in any way, which was delivered to us by Messrs. Glyn, Mills, Currie & Co., monthly, as our work progressed; while under the contract between the government and the Railway Company we received at that time bonds—say one hundred per cent. bonds for every fifty cents that we paid, and the arrangement was—the market value of the bonds at that time, on the London market, was about fifty or 30
fifty-two, and Messrs. Dick, Lisman and associates were amply able to provide any money on these bonds to have continued the construction of that railway, without drawing in any way upon the securities—upon the stocks held by the trustees, which we had a right to use, and which were not hypothecated or not tied up, so far as the requirements of the Ecuadorian Association might call for them in carrying on a legitimate business, in other words, they were free to be dealt with.

Q. Were you a member of the Dick, Lisman syndicate?

A. Yes, sir.

Q. And therefore had a voice in their matters?

A. No, sir.

Q. Had no voice in it?

A. None.

Q. Did you know what was going on in the syndicate?

10 *A.* Not always.

Q. Were you entitled to know?

A. Oh, possibly.

Q. Now, I understand your object in approaching Mr. Pruyn was because you wanted to get rid of Dick, Lisman & Co?

A. Yes, that was my object.

Q. You considered that the terms under which they were dealing with your various corporations were onerous?

20 *A.* It was a mere personal matter, sir.

By the Court:

Q. Are they a firm of bankers in New York?

A. Yes, sir.

Q. Let me ask you, at this point, because I don't quite understand why it was that the books of the Ecuadorian Association, a Scotch corporation, should have been in New York, as I understand it, the managers and stockholders of the Ecuadorian Association being principally Scotch and English?

30 *A.* Permit me to call your attention to the fact that in the spring or early summer of 1902, Messrs. Dick, Lisman & Company took over a lot of bonds then owned by the Ecuadorian Association and advanced \$500,000, upon the condition that the management of the Ecuadorian Association, and its books, should be transferred from London, and that this money should be expended under their supervision.

Q. So the books were brought over here for that purpose?

A. Yes, sir, everything was brought over here, and then the board was constituted, so many New York directors, which were a quorum, and so many London directors, but the New York directors having the entire management and disbursement of this \$500,000.

Further cross:

Q. Did you understand, when you were negotiating 10 with Mr. Pruyn, that he was also representing Mr. Winsor, of Boston?

A. Shortly after the mid-day lunch, I understood from Mr. Pruyn, without any qualification whatever, that Robert Winsor, of Boston, had definitely agreed with Mr. Pruyn to join Mr. Pruyn in financing this business, and Mr. Pruyn, when I asked him who Robert Winsor was, referred me to J. P. Morgan & Co., and insisted that I should go to J. P. Morgan & Co., and ask some member of the firm who Mr. Winsor was. I went 20 into J. P. Morgan & Co.'s office and made the inquiry—

Q. Well, there is no use of going into that. I want to get through, if I can. I am only going to ask a very few questions, if you will confine yourself to the questions I ask.

A. I will do my best to oblige you.

Q. You say when Mr. Pruyn left for Europe that certain things had been decided upon, and no arrangement had been entered into between yourself and himself?

A. This definite arrangement had been entered into 30 in reference to the formation of the Duran Terminal Company, and the acquisition of the sixty-five thousand pounds of treasury stock of the Ecuadorian Association.

Q. And was that arrangement embodied in any writing?

A. Only in the letter that I wrote Mr. Pruyn, simply saying that I understood so and so.

Q. Never mind, those letters speak for themselves.

So all the arrangement you had with Mr. Pruyn was embraced in your letters and his letters?

A. No, by no means, because Mr. Pruyn and myself had many interviews, and we did not reduce the understanding that we came to, to writing.

Q. Well, the general scheme which you had in mind for the financing of the Ecuadorian Association and its conversion into the Ecuador Company wasn't completed when Mr. Pruyn went to Europe, was it?

10 *A.* No, it couldn't be.

Q. And when was that scheme completed?

A. Definitely completed in Paris about the 18th, I think, of January, about that time.

Q. At that time, on the 18th of January, in Paris, the entire scheme and plan of the reorganization, or rather the substance of the Ecuador Company for the Ecuadorian Association was completed, was it?

A. Yes, sir.

Q. Therefore there was nothing left then for negotia-
20 tion?

A. Yes, the detail of carrying through the plan that Mr. Pruyn and myself had agreed upon had to be carefully worked out, the understanding between Mr. Pruyn and myself, so that he was to have his representative in London, and that very paper and very understanding and agreement should be submitted to him prior to its being put into effect.

By the Court:

Q. Let me ask you whether Mr. Green was a lawyer,
30 or what was he?

A. Well, really sir, I cannot tell you, he is a bright young man, I never asked whether he was a lawyer; I assumed that.

Q. He was a resident of New York City?

A. No, I think of Albany.

Further cross :

Q. Don't you know Mr. Green was in the employ of the Consolidated Company in Albany?

A. I know he was in the employ of some company that Mr. Pruyn had a controlling interest in, or a controlling voice.

Q. In the employ of a manufacturing company?

A. No, I don't know; he may have told me about it, but I had no interest in it at all.

Q. As a matter of fact he was. So, then, as I understand, when you say that the plan was completed, you mean that the general scheme was completed, but that the details were left to be worked out? 10

A. The plan was completed, but the carrying out of the plan was not completed; that is, the whole arrangement was definitely and positively agreed upon, but to carry out what we wished to do and what Mr. Pruyn agreed to do on behalf of himself and Mr. Winsor, the Ecuadorian Association shareholders had to be consulted, the certificate holders had to be consulted, meetings had to be called, and the assignments made. The Ecuador Company organized, and the whole of the transaction as you have heard it. 20

Q. A great many other things which you haven't time to mention now were left to be worked out?

A. Simply the details of how these properties and this interest was to be conveyed to the Ecuador Company.

Q. Now, you have been shown and it has been introduced in evidence here, an agreement, dated February 17, 1903, between the Ecuador Association, Limited, on the one part, and the Ecuador Company on the other; was that agreement made and entered into on the day on which it bore date? 30

A. That agreement was made and sent to Mr. Pruyn, or was drafted and sent to Mr. Pruyn for his approval.

Q. I would like to have the gentleman answer my question. I think he can answer that question.

A. I think it was signed, sir, a few days after its date.

Q. Was it or wasn't it signed a few days after its date; do you know whether it was or not?

A. I am reasonably certain of it. I don't know, no.

Q. And these circulars which have been introduced in evidence here, as bearing date on the 17th of February, were they issued on that date?

A. I think they were all signed and the agreements and assignments and everything was gotten up, but I
10 think the board meeting that was to approve all of these documents was held a day or two later.

Q. Well, how much later would you say, within a week?

A. I would say within a week; yes.

Q. How long prior to the time when Mr. Green executed the agreement of February 24th?

A. I would say the same day.

Q. So that these circulars and this agreement of February 17th, you think were executed on the same day
20 that Mr. Green executed his agreement as attorney for Mr. Pruyn?

A. That is my recollection.

Q. Any doubt about it?

A. Well, yes, because as to the date of signing the agreement, whether it was signed on one day or another is something that one cannot recall distinctly, and I have an indistinct recollection that all of these papers were prepared and these circulars were printed and prepared to be issued, and that the parties signing those circulars
30 wrote Messrs. Bircham & Co., authorizing them to place their name upon a printed circular. All of that took time, and I don't think that I could recall just the day that these matters were consummated. I would rather they would speak for themselves.

Q. Then you don't question the date of these instruments.

A. I don't question anything about them.

Q. You said you wanted the instruments to speak for

themselves. This agreement was executed on the 17th of February?

A. That is the date that is on it. Agreements are frequently dated and executed at another date, unless they are acknowledged before a notary, and then that shows the date at which they are acknowledged; whether that was acknowledged or not—I think it was, though. Let me see it for a moment. What is the acknowledgment on it, that will settle the whole question. (Same handed to witness.) No, this says that **10** it was signed on the 17th day of February.

Q. Is it acknowledged on the 17th day of February?

A. Yes. "Be it known that on the 17th day of February, 1903, before me, the undersigned, etc., etc., personally appeared," etc. That is all I know about it.

Q. Now, after having refreshed your recollection by looking at the acknowledgment, when would you say those circulars that were sent out with that were prepared?

A. About the same time; they had been in process **20** of preparation for weeks. Copies of them had been sent to Mr. Pruyn, and we waited several days for him to return them to us.

Q. Had the instructions been given to sign those circulars prior to the 17th day of February?

A. I cannot say.

Q. You don't know?

A. I cannot say.

Q. Do you know whether any instructions were ever given to anybody to sign the circulars? Which were **30** sent out?

A. To sign the circulars?

Q. Yes.

A. Why of course, they would not have been signed otherwise.

Q. Now, this agreement which was executed February 24th, I understood you to say on your examination in chief, was filed at the Somerset House, London?

A. Yes, you understood me to say that.

Q. Why?

A. Well, English corporation—I would rather someone else would answer that, because I know very little of it. Every paper referring to corporation organized under the laws of Great Britain, under which stock is issued, must be filed at Somerset House. If it is Scotch it must be filed some place in Edinburgh. I think in stating that this paper was filed at Somerset, I should
10 have said filed at the proper Government House in Edinburgh.

Q. As a matter of fact, this paper was filed—this contract was filed as a preliminary step of the issue of sixty-five thousand pounds of Ecuadorian Association stock?

A. Without that paper having been approved by the proper government officials the directors of the association would have been liable for the par value of every pound of that stock, so it had to be filed either at Somerset House or in Scotland.

20 *Q.* Did you understand that the law provided that the stock of associations of this kind should only be issued either for money or property of its value?

A. Yes.

Q. And then the reason for filing this particular paper there was to form the basis for the issue of this sixty-five thousand pounds of stock, wasn't it?

A. Yes.

Q. Without the filing of that paper it wouldn't have been legal?

30 *A.* That is right.

Q. As a matter of fact, do you know when the sixty-five thousand pounds of stock was issued?

A. If you will allow me to refer to papers that are there I could tell you. It is almost immediately after the 24th of February, I should say.

Q. That is after the filing of this paper that stock was issued?

A. Yes; but just when the seal of the company was

affixed or the signatures of the proper officials made, I am unable to say.

Q. But you know it was after this paper was filed which bears date the 24th day of February?

A. After the paper was delivered to our solicitor, and we were instructed that we were in a position to issue the stock.

Q. Did you see the script of those sixty-five thousand pounds of stock after it was issued?

A. I cannot say, I may have seen it.

10

Q. Do you remember whether you did or not?

A. No.

Q. Have you ever seen that script since?

A. Yes.

Q. Where?

A. In stock books of the Ecuadorian Association.

Q. The original certificate of stock is in the stock book of the association?

A. The original certificate of sixty-five thousand pounds issued to Mr. Pruyn is in the stock books of the Ecuadorian Association, and deposited there to be exchanged for sixty thousand pounds of stock issued to Mr. Pruyn, transferred by instructions, to Dick Brothers, and five thousand issued to the Ecuador Company.

20

Q. Where did you see it?

A. Saw it in the stock books of the Ecuadorian Association.

Q. Where?

A. My recollection is that I saw the certificate before the books were turned over to the liquidators, while they were in London. I afterwards saw the books in Edinburgh.

30

Q. It was in England somewhere, or in Scotland?

A. Either in London or in Edinburgh, yes.

Q. To your knowledge, did Mr. Pruyn ever sign any agreement or contract between the Ecuadorian Association or the Ecuador Company and himself, other than

the instrument which you have offered here to-day, signed by him?

A. Not that I know of, I see no reason why he should, other than the transfers that I speak of.

Q. But you know of no other contract other than this contract dated, I think, February 24th, which is similar in import to the contract executed by Mr. Green, his attorney?

A. No, I don't know of any.

10 Q. Do you know when Mr. Pruyn returned to this country?

A. No, I know it was some time in April; I was in South America at that time.

Q. You received a letter from him, dated in Paris, on the second day of April?

A. Yes, but it doesn't take thirty days to get over here, you know.

Q. So that he was presumably in Paris on that date?

A. No, because I also received a communication
20 from Mr. Pruyn, or his representatives, while Mr. Pruyn was in London; he left Paris and spent some ten or twelve days in London during April, and from there came over to New York.

Q. And arrived in this country some time—

A. About the latter part of April, I would say.

Q. The 20th of April?

A. I don't know when, but I would say the latter part of April.

Q. And you haven't seen him since?

30 A. No.

Q. You were notified by telegraph by Mr. Andrews, that he would be at your office at half past twelve, on a certain day, to see you, were you not?

A. Yes.

Q. And you didn't meet him?

A. No.

Q. But you sailed the next day for Europe?

A. Yes, sir.

Q. And dropped a line overboard, on the pilot boat, in which you regretted very much that you were unable to meet Mr. Andrews?

A. What?

Q. Didn't you write a letter like that to Mr. Pruyn?

A. I may have written him a note saying that I had not met Andrews, or something.

Q. That is all?

A. I have no recollection of it, sir.

Re-direct:

10

Q. I show you a copy of a telegram to Robert Pruyn, do you recall anything about that?

A. Yes, sir, I remember this cable.

Q. By whom was it sent?

A. This was sent by Mr. Green.

Q. How did it come into your possession?

A. Well, I kept a stenographer at my hotel, and Mr. Green would frequently come into the hotel, and we would get up a telegram together. You will probably find a copy of this in pencil memorandum, so that we 20 would have it typed off.

Q. This relates to this assignment business?

A. Well, it states the whole question that it was necessary—

Q. About when was that sent?

A. What was that?

Q. About when was it sent; you will find the date on the outside of the paper; I don't know whether that is correct or not, on the outside of the envelope?

A. I would say between the 28th of January and the 30 fifth of February, I don't see any date here. I see on the back he has here about February 19th, but I should think it would be before that date, because on February 19th these documents were all signed and in process of being issued. I see here it says here, that Harman cabled New York, January 28th, to send power of attorney for me, that is Green, for the Ecuador Company

and the Colomb Coal Company. Now it was necessary that Mr. Green or someone had a power of attorney there before we could make the assignment from the Ecuadorian Association to the Ecuador Company.

Q. And then a power of attorney did come?

A. Both powers of attorneys came, one from the Ecuador Company and one from the Colomb Coal Company.

10 Q. And that was application to have the power of attorney sent him?

A. Yes, sir.

Q. You applied to Mr. Pruyn for it?

A. And then I think Green thought he better submit that to Mr. Pruyn, and this cable was sent to him. I would say, sir, about between the 28th of January and the 5th of February. There is nothing here that I can get a date from, except the fact that Green says that I have cabled New York on January 28th. I presume
20 this would be sent the same day or the day after.

Offered in evidence.

Marked *Exhibit C 35*.

Re-cross-examination:

Q. Was there any trouble about the foreign debt of Ecuador during the latter part of 1902 and 1903?

A. The only trouble about the foreign debt of Ecuador was due to a contract made between the Ecuador Company and Mr. F. G. Hall, and the assignment from the Ecuadorian Association to the Ecuador Com-
30 pany of its right and obligations to take over the foreign debt as provided in the contracts between the railway company and the government, but when the Ecuador Company failed to carry out its agreement with the Ecuadorean Association, to assume all responsibilities, and when Mr. Pruyn repudiated his part of the contract with Mr. Home, under which he and myself were to deposit some \$15,000 each, my part of it was

deposited, and Mr. Pruyn deposited his, I think, and I returned from South America in June, and found that the commissioner appointed by the government to settle the foreign debt had been here.

Q. Mr. Garcia?

A. Yes; had called upon Mr. Pruyn, and Mr. Pruyn had stated to him that it was useless to discuss the Railway Company carrying out this agreement with the government in reference to the foreign debt; that the Railway Company was bankrupt; that I was bankrupt, and 10 that the only thing to do was to throw the whole business into one melting pot and reorganize the railway and anything else incidental that might turn up. I went on to London, arriving there on the 4th of July, and it required some \$125,000 I think, sir, to comply with the agreement, that the foreign debt holders required a deposit of some \$250,000 of railway bonds, and immediately upon finding that neither the Ecuador Company or the Ecuadorian Association or Mr. Pruyn would live up to their agreement, why, as president of the Railway 20 Company, I provided the \$125,000, and the \$250,000 of bonds, and some time in—oh, just as soon as it could be done, delivered the foreign bonds over to Messrs. Glyn, Mills, Currie & Company, and I think they delivered them all to the government in the course of the month, and canceled them, say by the first of October, and there was no trouble about it, after we found these construction companies and Mr. Pruyn would not carry out these agreements.

Q. This agreement between the foreign—

30

A. As soon as they were assumed by the Ecuadorian Association and then assumed by Pruyn incidentally and under the agreements authorized to be made with Home, and then assumed by the Ecuador Company, then defaulted on by the Ecuador Company, defaulted on by the Home Company, and defaulted on by the Ecuadorian Company, and although the railway had given the Ecuadorian Association some several hundred thousand

dollars to carry out this arrangement we found that that money was lost and that we had to provide the money ourselves to carry out our arrangement with the government, as we could not be released from the government, simply because other people didn't carry out their contracts with us. So I arrived in London, I think about the 4th of July, and within ten days or two weeks the Railway Company had complied with its contract with the government, and the whole matter was
10 adjusted, and that was the end of it.

Q. This is very interesting, but is not an answer to my question. Did Mr. Garcia go over to London in regard to this matter?

A. Yes, sir.

Q. And afterwards it was fixed up?

A. There was no fixing up; as soon as the Railway Company found that these contractors who were paid to do a certain thing had failed to perform their contract, the Railway Company, through myself as its presi-
20 dent, performed the contract and handed over the foreign debt to the government representing the foreign debt of the bonds of the Ecuador Company.

Q. It is a fact that some time prior to July, 1903, the Ecuador Government had taken steps to enforce the obligation or payment of foreign debts, and had sent a commission up to New York, is not that a fact?

A. I don't know of it, never heard of it before.

Q. You don't know that Mr. Garcia came up to New York and afterwards went to London?

30 *A.* I knew he came to New York, sir.

Q. On this business?

A. I knew he came to New York, and was to go to London from New York.

Q. On this business?

A. On this business—not to enforce a contract, but to receive, as the government was entitled to, during the month of July and September, 1903, the bonds representing the foreign debt. Now, on the 4th of July I

became convinced, as well as Mr. Garcia, that these contractors would not carry out their contract, and the Railway Company performed it.

Q. You said that before.

A. Yes; and there was no trouble about it; there has never been any issue between the government and the railway.

Q. How long does it take to come from Ecuador to the city of New York in the usual course of travel?

A. Nine or ten days.

10

Q. You have been over the route a great many times?

A. Yes, sir.

Mr. Corbin—I will call on counsel for Mr. Pruyn to produce the agreement signed by Mr. Pruyn and by the Union Trust Company of Albany, dated April 30, 1903, alleged to be between those two parties and the Ecuadorian Association, Limited.

Not produced.

Mr. Corbin—Then I will offer in evidence the proceedings in the case of Andrews against the Guayaquil and Quito Railway Company, which I asked the clerk to have here this morning, and offer in lieu of the production of the original the copy of the agreement, dated April 30, 1903, annexed to the affidavit of Robert C. Pruyn, which was filed in that case.

Marked *Exhibit C 36*.

Q. That is all.

Frank Dawes, sworn.

30

Direct examination, by Mr. Corbin:

Q. Where do you reside?

A. Private address or business address?

Q. Private address?

A. 21 Park Crescent, Portland Place.

Q. London?

A. Yes, sir.

Q. What is your occupation?

A. Solicitor and member of the firm of Bircham & Company, 50 Old Broad street, and other partner practices at the other offices.

Q. Have you had occasion to become acquainted with the law relating to corporations in Great Britain?

A. That is my specialty.

Q. You have been engaged in practice how long, about?

10 *A.* I was articulated in 1877 and admitted in 1882.

Q. Were you familiar with the proceedings taken in the transfer of the property of the Ecuadorian Association to the Ecuador Company?

A. Yes; it was all done by me or under my immediate instructions.

Q. And with the proceedings for the issue of sixty-five thousand pounds shares to Robert C. Pruyn?

A. Yes.

20 *Q.* Now, can you tell us what is the proceeding under the law, governing the Ecuadorian Association for the issue of shares?

A. The company is a Scotch Company; that is immaterial, because those acts apply to Scotland as well as to England. A fresh act was brought in in 1900 called the company's act of 1900, by which, if you wish to issue fully paid shares, the contract must be entered into signed by those parties and setting forth clearly what is the consideration for the payment of the shares; may be cash, may be in kind. That contract has to be registered, either before the issue or within the prescribed time. If the prescribed time is past—is allowed to run out—you can by application to the court, get it extended, and the court generally will allow this.

30 *Q.* Then the assumption of a liability is a legitimate ground for the issuing of shares?

A. Certainly.

Q. That was the consideration in this case?

A. Certainly, and those shares do become fully paid

immediately when the contract is completed; I mean by that that if the consideration is transferred to the company, those shares immediately become fully paid, but as long as they remain in the name of the person to whom they are allotted, they remain as not fully paid, unless the contract is completed—unless the consideration is given.

Q. Suppose the contract is to be carried out thereafter, which forms the consideration for the shares, and is not carried out, what is the consequence? 10

A. Well, if a man is sufficiently unwise to have the shares allotted to him, he remains liable to pay in full in the case of liquidation. If Mr. Pruyn, when he alleged that he had either been deceived, or whatever excuse he might allege, wanted to be relieved of those shares, the proper course was to move the court for the rectification of the register, but if he allowed the company to go into liquidation, that opportunity would be past.

The Court:

20

Q. Are you referring to the Companies Act of 1900, or to the previous acts?

A. The last act referred to (1900), the only question that relates to the companies act, sir, is that the act prescribes that to make shares fully paid (other than by payment of cash), a contract must be registered within the prescribed time or extended time, and then under the cases it has been held a number of times, if the consideration is not given, the contract is not fulfilled, and those shares are not fully paid. 30

Q. Well, suppose a consideration has been given or it is an inadequate consideration—suppose, in other words, that for one hundred shares issued, worth at par one hundred pounds, only fifty pounds of actual value have been received?

A. There are two distinct questions there. The first question—if it is actual cash fifty pounds the man would

remain liable for the remaining fifty pounds. If it was—a value had been put upon the property—supposing I was to give you my watch for one hundred pounds, it may be worth only seventy-five, the court will not then look into whether it is sufficient or whether it is not, unless the difference is so great as to amount to fraud.

Further direct.

Q. You state that as the remedy if a party desired to
10 be relieved?

A. As our case law now stands.

The Court:

Q. I don't know that the question is before the court as to whether or not the consideration must be adequate, whether it is or is not fraudulent if it be inadequate?

A. Well, fraudulent, or grossly inadequate.

Q. Well, gross inadequacy always gives rise to a presumption of fraud; at all events it is one of the circumstances from which you would infer fraud?

20 A. Certainly.

Further direct.

Q. What I understood you to say was that if the consideration is to be paid in the future, or if there is something to be done in the future and there is default on it, then the shareholder becomes liable for the shares?

A. Yes.

Q. Well, what do you say about his having a remedy in case he claims to have been imposed upon?

A. If he had been imposed upon, he could have gone
30 to the Court.

Q. What Court?

A. The Chancery Court, the Chancery Courts, and obtained what we call the rectification of the register.

Q. You mean summary proceedings?

A. Yes, sir.

Q. Statutory proceedings?

A. Yes, sir, we have a rectification of the register.

Q. That means striking him off as a shareholder?

A. The company cannot strike him off, but the Court can.

Q. What do you say about the time in which that must be done?

A. The rectification of the register? Well, that is again a question for the Court; the Court will not allow you to come unless you come within all due rapidity, and the question of due rapidity is a matter of consideration by the judge who sits. 10

Q. If there had been a change in the appointment of liquidators?

A. The Court would not allow it, because of the alteration in the status of the shareholders and creditors, if he wants to come, he must come before the guillotine has fallen on the company.

Q. Did you have a conversation with Mr. Pruyn about this Ecuador business?

A. Several. He was brought to my office in January, 1903, by Mr. Harman, and I saw Mr. Pruyn on numerous occasions at Messrs. Glyn, Mills, Currie & Company's, for whom I acted and also in my own office, both alone and together with Mr. Harmon. 20

Q. Glyn, Mills Currie & Company are bankers?

A. Yes, sir.

Q. And you are counsel for them?

A. Yes.

Q. Now, in this conversation with Mr. Pruyn, did he have anything to say about his going into the business, and if so, what? 30

A. Yes, Mr. Pruyn was introduced to me and stated that he was to finance the construction of the Guayaquil and Quito Railway, and he told me he had associates connected with him, one of which was Mr. Wirtsor, a partner in Messrs. Kidder & Peabody, and he impressed me with that, because it had been told to him that I had a large amount of business with J. S. Mor-

gan, of London, who are, as you know, partners, or practically the same as Kidder, Peabody & Company, of Boston, their correspondents in England.

Q. Was there any discussion about the form in which his connection with it should take with the enterprise?

A. Yes, I was present when it was in an inchoate state. I did not go to Paris, but the general idea was that a fresh company should be created with five million dollars of capital, and that half of it, dollars for
10 dollars, should go to the associates, and the rest of it used for working capital, paying for the properties, and which were to be turned in by Mr. Pruyn and his associates, and then it was after that that the question of getting rid of the certificate holders and paying them a certain amount of the shares in order to get the certificates in, which was a very important thing, was adopted. I think I can give you the date, if you wish that, the 17th of February, I believe, was the exact date. On the 19th there was a meeting, I believe, of
20 the directors, and my best recollection is that it was executed on that date.

Q. Did you prepare the assignment and these circulars?

A. Yes, sir.

Q. In connection with Mr. Harman?

A. Yes, sir, and the circulars, I believe, as a matter of fact, I signed one of the circulars for Sir Robert Moncrieffe; he was in Scotland, and I signed it for him, but I have seen the original signed in due order.

30 *Q.* By all the parties appearing on the printed list?

A. Yes, sir.

Cross-examination:

Q. Were those circulars sent out about the time the circular bears date?

A. I believe so, yes, sir.

Q. They were all authorized at the time?

A. They were all authorized.

Q. Prior to the time they bear date?

A. I should not like to say that, because very often, as you know, a document gets dated, say the 17th of February, and you would very likely get three signatures in and you would very likely get the remaining four or five some days afterwards, but it wasn't issued, sir, until all the people whose names appear there had signed or authorized them to be signed.

Q. Now, to go back to this issue of stock?

A. Yes, sir.

10

Q. Would it have been legal to have issued the association stock for a contract which was in the nature of an option simply?

A. I doubt if it would, sir.

Q. In other words, it was necessary, in order to make a legal issue of the stock, based upon a contract, that it should be a contract which was absolute in terms?

A. Certainly, otherwise I don't think the Courts would for an instant—I should not like to issue it.

Q. Unless there is some positive engagement on the part of the person for whom the stock was to be issued, to do some particular thing, it would not have been a valid issue of stock? 20

A. The stock would be validly issued, but it would not have the advantage of being fully paid up. Do I make myself clear, sir. The issue would be clear, but it would remain with a liability and not excluded from that liability, which is the very object you want to obtain.

Q. But supposing the agreement was that a person should have sixty-five thousand pounds of stock on condition that he did certain things, would that stock, under your law, be fully paid stock until those things had been done, and the stock certificates delivered? 30

A. Assuming those certain things were good consideration, it certainly would be.

By the Court:

Q. The question was whether, if it were issued on condition, that somebody would do a certain thing.

Further cross:

Q. Under those circumstances, would the stock be fully paid?

A. Not if it is a mere condition, but if the man says, I will deliver you a certain article on a certain date,
10 whether he has it or not, that would be perfectly right.

Q. If he makes an absolute engagement to do it?

A. Yes, sir.

Q. But if he says that he reserves to himself the option to do it or not, it would not be good?

A. No.

Q. That is all.

Robert Moncrieffe sworn.

Direct examination by Mr. Corbin:

Q. You are a subject of Great Britain?

20 A. I am—of Scotland.

Q. And were you one of the executive committee of the Ecuadorian Association?

A. I was.

Q. These matters of the assignment of the Ecuadorian Association to the Ecuador Company came under your observation?

A. I was present at the board meeting when they were signed.

Q. Did you know of the transactions with Mr.
30 Pruyn?

A. I had several meetings, at least four or five meetings with Mr. Pruyn and Mr. Harman previous to the date of the 17th of February, when those documents were signed, and was fully conversant with all the details.

Q. That was while Mr. Pruyn was in London?

A. Yes, sir. I then saw him afterwards in April,

when he returned from abroad; he had got blood poisoning in his foot and was laid up at the Carlton Hotel, and he was then in the same way—he fully intended to carry out the contracts and everything else; he was just as keen on the business as ever he was.

Q. Did he say anything to you about reserving the option—to get out of it at all?

A. Never mentioned the word option at all.

Q. Did you have any knowledge from him or anybody else that any such right was— 10

A. I never heard the word option mentioned.
Not cross-examined.

Benoni Lockwood, sworn.

Direct examination by Mr. Corbin:

Q. You are a counsellor at law of the New York courts?

A. I am, sir.

Q. And you were counsel for the Ecuadorian Association?

A. I was until some time in, I believe, February, 20 1903, and have been counsel for the Guayaquil and Quito Railway Company for the last three years.

Q. Were you one of the three trustees, Jardine, De Friese and Lockwood, who had certain securities?

A. Yes, sir; the trust deed dated the 31st day of January, 1902.

Q. Now, in the latter part of December, 1902, did you see Mr. Pruyn?

A. I saw Mr. Pruyn for about half an hour at the Waldorf Hotel in New York City, on the evening of 30 the 30th of December, 1903, and the conversation at that time was rather general, and I had very little conversation with him about the Ecuador business, except that he told me he left matters in the hands of his secretary, Mr. Adams.

Q. Were you to communicate with Mr. Adams?

A. I was.

Q. Did you have any instructions to take any steps?

A. Nothing directly from Mr. Pruyn.

Q. Or from any anyone else?

A. I had from Mr. Adams, commencing the day following, and up until Mr. Pruyn returned to New York about the 19th day of April, 1903; I saw him on the 21st day of April.

Q. Mr. Frederick B. Adams?

A. Yes, sir.

10 Q. Who was the secretary of Mr. Pruyn?

A. Secretary of Mr. Pruyn, and I believe also secretary of the Union Trust Company of Albany.

Q. Now I show you a letter from yourself, a press copy of a letter from yourself to Frederick B. Adams, Albany, dated January 2d, 1903, and I understand no originals are produced. Is that a letter written by you?

A. Yes, sir; this is a press copy of my letter and my signature.

Q. Now, did you receive any funds on that request?

20 A. Yes, this letter refers—recites a telegram that I received from Major Harman in Ecuador, in relation to the terms upon which an option could be acquired on the Luque estate, which is generally referred to as the Duran Terminal property.

Q. And that telegram is quoted in the letter?

A. Well, yes; I repeated it to Mr. Adams.

Offered in evidence.

Marked *Exhibit C 38*.

30 Q. I show you a letter from Adams to Lockwood, January 8, 1903; is that signed by Mr. Adams, and did you receive it from him at that time?

A. Yes, I received that letter and that is Mr. Adams' signature. I am well acquainted with his handwriting.

Offered in evidence.

Marked *Exhibit C 39*.

Q. I now show you a press copy of a letter from Lockwood to Adams, dated January 9, 1903, relating to Duran Terminal Company?

A. Yes, this is a press copy of a letter I sent to Mr. Adams.

Q. That letter states who the directors are; now can you tell me who are those directors and what is their relation to Mr. Pruyn?

A. Frederick B. Adams, I have already stated. Joseph R. Swan was employed in the bank that Mr. Pruyn was the president of in Albany, I don't know in what capacity, and he was made the secretary and treasurer of the Duran Terminal Company. 10

Q. Under Mr. Adams' direction?

A. Mr. Adams was made president.

Q. And suggested him for the treasurer?

A. Mr. Swan suggested by Mr. Adams?

Q. Yes.

A. Mr. Bingham is an employe of the Registrar & Transfer Company, who had the local office of the corporation in New Jersey, and Mr. Pruyn is the other director, and myself.

Offered in evidence. 20

Marked *Exhibit C 40*.

Q. I show you a letter from Lockwood to Adams, dated January 13, 1903; is that a press copy of a letter written by you to Mr. Adams?

A. It is; this letter was sent to me by Mr. Adams, under the date given, January 13th.

Offered in evidence.

Marked *Exhibit C 41*.

Q. I show you a letter from Adams to Lockwood, dated January 15, 1903, relating to Duran Terminal Company; was that letter received by you, and is it signed by Mr. Adams? 30

A. Yes, sir; it was received by me; that is Mr. Adams' signature.

Q. I notice there a reference to Andrews, and there is a little explanation.

A. Well, Mr. Adams asked that every share that was issued and paid for in the commencement of the com-

pany when one thousand dollars was subscribed for should be endorsed and held by him so as to assure his—endorsed on the back by the person who it was drawn to and held by him.

Q. Endorsed in blank?

A. Yes, sir.

Q. Was that done?

A. Yes, sir.

Q. Then the qualification shares that were issued up
10 to one thousand dollars were all endorsed over in that way?

A. They were, and held with the rest of the books and he papers of the Terminal Company by Mr. Swan or Mr. Adams in Albany.

Q. Was that so with all these companies?

A. That was so with the Ecuador Company, the Colombo Coal Company, the Canar Company and the Villa-Mill Company.

Offered in evidence.

20 Marked *Exhibit C 42*.

Q. Who advanced the cash in these various companies?

A. Mr. Adams.

Q. On Mr. Pruyn's account?

A. So he stated.

Q. I show you a press copy of a letter from Lockwood to Adams, dated January 15, relating to the Colombo Coal Company; was that written by you to Mr. Adams?

A. Yes, I sent that letter to Mr. Adams.

30 Offered in evidence.

Marked *Exhibit C 43*.

Q. I show you a letter Adams to Lockwood, dated January 16th, relating to the Coal Company; is that signed by Mr. Adams, and did you receive it?

A. Yes.

Offered in evidence.

Marked *Exhibit C 44*.

Adjourned until Monday, April 3, 1905, at 10 o'clock in the forenoon, at the Chancery Chambers, Newark, N. J.

Benoni Lockwood, Jr., recalled.

Further direct examination, by Mr. Corbin:

Q. I show you a press copy of a letter from you to F. B. Adams, dated January 17, 1903; was that letter sent by you?

A. That was written by me and dictated by me and signed for me by my clerk, Mr. Woodhull.

10

Q. And sent to Mr. Adams?

A. Sent to Mr. Adams.

Offered in evidence.

Marked *Exhibit C 45*.

Q. I show you a cable dated January 23, 1903, from Harman to Lockwood; just give us the translation of it?

A. (Reading) "Organize New Jersey Vilavil Company, \$500,000 capital, fully paid, issued against \$5,000 cash, options on Gallapogos Islands, reconvert \$200,000 for treasury purposes, Adams naming Board. Harman."

20

Q. Was the company formed under those instructions?

A. It was, sir.

Offered in evidence.

Marked *Exhibit C 46*.

Q. I show you a letter by F. B. Adams to you, dated January 24th; was that received by you, and has it the signature of Mr. Adams?

30

A. Yes.

Offered in evidence.

Marked *Exhibit C 47*.

Q. I show you a carbon copy of a letter purporting to be written by you to Adams, dated January 26, 1903, quoting the cable just offered in evidence; is that a copy of a letter sent by you to Mr. Adams?

A. Yes.

Offered in evidence.

Marked *Exhibit C 48*.

Q. I show you a letter from Mr. Adams to you, dated January 26, referring to a letter from Mr. Pruyn concerning the Colomb Company; is that signed by Mr. Adams, and was it received by you?

A. It was.

Offered in evidence.

10 Marked *Exhibit C 49*.

Q. I show you a cable from Harman to Lockwood, January 27, referring to Duran Terminal agreement; will you see if that is the cable received by you and give us the translation of it?

A. That was received by me and the translation is as follows: "Forward agreement between Duran Terminal and Ecuadorian Association, to enable us to transfer Ecuadorian Association stock to Duran. Very important. Harman."

20 Offered in evidence.

Marked *Exhibit C 50*.

Q. I show you a press copy of a letter from you to F. B. Adams, dated January 26, 1903, referring to certificates of stock, of Duran Terminal; please say whether that is a copy of a letter sent by you to Mr. Adams?

A. Yes, signed by Rollins & Rollins, my firm.

Q. Well now, what certificates were those referred to in that letter?

A. These were the organization shares of the Duran
30 Terminal Company.

Q. What was done with them?

A. They were endorsed in blank and forwarded to Mr. Adams for the purpose of having them held in Albany with the other papers of the company.

Q. I think you have already stated that all the shares of these companies that were issued to the incorporators were issued in blank and delivered to Mr. Adams; I think you testified to that?

A. I believe so, sir, in every instance that I remember.

Q. That is the fact, is it?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 51*.

Q. Here is a letter from Adams to Lockwood, dated January 27, 1903; say whether that was received by you and is that the signature of Mr. Adams?

A. Yes, that was received by me, and it is Mr. Adams' signature; it acknowledges the receipt of the certificate 10 of the Duran Terminal Company.

Offered in evidence.

Marked *Exhibit C 52*.

Q. I show you a letter from Adams to Lockwood, dated February 4, 1903, relating to Duran Terminal advances; was that letter received by you and is it signed by Mr. Adams?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 53*.

20

Q. I show you a press copy of a letter from Lockwood to Adams, dated February 4, 1903, relative to Duran Terminal contract; please say whether that is a copy of your letter?

A. It is.

Offered in evidence.

Marked *Exhibit C 54*.

Q. I show you a letter, Adams to Lockwood, February 5, 1903; was that received by you, and is it signed by Mr. Adams?

30

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 55*.

Q. I show you a telegram from Adams to Lockwood, February 7, 1903; was that received by you?

A. This was received by me; yes, sir.

Offered in evidence.

Marked *Exhibit C 56*.

Q. I show you a letter of Lockwood to De Friese, a carbon copy, dated February 10, 1903, which states that it encloses agreement between Pruyn and the Ecuadorian Association; was that sent by you, and was such an agreement as is therein described sent with it?

A. Yes, sir; this is a press copy, not a carbon copy of the letter that accompanied the contract that I forwarded to Mr. De Friese.

Offered in evidence.

10

Marked *Exhibit C 57*.

Q. I show you a carbon copy of a letter from Lockwood to Major J. A. Harmon, dated February 11, 1903, naming the different companies formed; is that a copy of the letter which you sent to him?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 58*.

Q. I show you a letter from Adams to Lockwood, February 13, referring to enclosed check and to Duran
20 matter; was that received by you, and is the signature that of Mr. Adams?

A. Yes, sir; and I also received the check it refers to.

Offered in evidence.

Marked *Exhibit C 59*.

Q. What are the expenses referred to?

A. They were the expenses, for legal fees, of my firm, in the incorporation of the Duran Terminal Company, the Colomb Coal Company, the Vilavil Company, the Ecuador Company, the Canar Company, less certain
30 credit for money already advanced for disbursements in connection with the organization of these companies.

Q. Were those expenses all paid by Mr. Pruyn or on his account?

A. They were paid by Mr. Adams, who was acting for Mr. Pruyn.

Q. I show you a type-written copy of a letter by De Friese in London, to Pruyn at Rome, dated February 19, 1903, said to enclose two forms of contract of the

Duran Terminal Company; will you look at that and see whether you can identify that with any of the correspondence?

A. These copies of letters were given me by Mr. De Friese, who stated to me that they were direct copies of the letters sent by him to Mr. Pruyn, under dates of February 19th and February 27th, 1903, in connection with the Duran Terminal contract.

Offered in evidence.

Marked *Exhibit C 60*.

10

Q. I show you a letter of Lockwood to Adams, February 26, 1903, referring to enclosures; was that sent by you with enclosures?

A. Yes, sir.

Q. Now, what is the document called proposed assignment from the Ecuadorian Association; can you identify that; is that the printed assignment?

A. That is the draft of the printed assignment that has been offered in evidence here.

Offered in evidence.

20

Marked *Exhibit C 61*.

Q. I now show you a letter of Adams to Lockwood, March 2d, 1903, among other things, acknowledging receipt of that said assignment; is that the signature of Mr. Adams?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 62*.

Q. I show you a copy of a letter, DeFriese in London, to Pruyn at Naples, dated March 4, 1903; is that a copy 30 of a letter received by you in these transactions?

A. Mr. DeFriese gave me this copy and stated that it was a correct copy of the letter sent by him to Mr. Pruyn on March 4, 1903.

Offered in evidence.

Marked *Exhibit C 63*.

Q. I show you a press copy of a letter, Lockwood to

Adams, March 7, 1903; is that a copy of a letter sent by you to Mr. Adams?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 64*.

Q. I show you a copy of a cable purporting to have been sent by you and others to Pruyn, March 11, 1903; can you identify that as a copy of a cable sent by you and Green?

10 A. That was a press copy of the cable sent by Mr. Francis C. Green, Mr. Adams and myself, to Mr. Pruyn in Florence, Italy, on March 11, 1903.

Offered in evidence.

Marked *Exhibit C 65*.

Q. I show you a copy of a telegram purporting to be from Pruyn to Adams, March 13, 1903; from whom did you receive that?

A. These are copies that were made, I believe in my office, of two cablegrams that Mr. Adams allowed me to
20 copy.

Q. Then you got them through Mr. Adams?

A. Yes, sir.

Q. As cablegrams received by him from Mr. Pruyn?

A. Yes, sir.

Q. Will you read that cablegram?

A. First cablegram: "10 A. M. Milan, Italy, March 13, 1903, Frederick B. Adams, Albany, authorize Lockwood to conclude contract Listman-Dick, furnishing the \$28,000 provided securities and release deposit in escrow
30 U. S. Mortgage & Trust Company settlement absolute and conclusive. Robert C. Pruyn." "11.30 A. M. Milan, Italy, March 13, 1903, Frederick B. Adams, Albany, lend Harman \$28,000, taking assignment of papers and securities. Received no cable at Florence."

Offered in evidence.

Marked *Exhibit C 66*.

Q. I show you a letter of Adams to Lockwood, March

13, 1903, relating to Listman business; was that signed by Mr. Adams?

A. That was received by me and signed by Mr. Adams, and the enclosures came with it.

Offered in evidence.

Marked *Exhibit C 67*.

Q. I find here what purports to be a copy of a cable from Pruyn to Harman, March 19, 1903; at that time Mr. Harman was in New York, March 19th?

A. Yes, sir.

10

Q. Do you know where you got that?

A. Mr. Adams wrote this copy out from Mr. Harman's cable, from the cable that Mr. Pruyn sent to Mr. Harman, and handed it to me. I asked him to get a copy of the cable for me.

Q. Please read it.

A. "Archer Harman, 33 Wall street, New York. Lisdick agreement unauthorized, humiliating but acquiescence unavoidable. Approve Gallapogos, watch McDonald condition. Pruyn."

20

Offered in evidence.

Marked *Exhibit C 68*.

Q. I show you a letter, Lockwood to Adams, April 9th, a press copy, is that a press copy of a letter sent by you to Mr. Adams?

A. Yes, sir, I sent this letter to Mr. Adams.

Offered in evidence.

Marked *Exhibit C 69*.

Q. I show you a letter from Swan to Lockwood, April 20th, 1903, acknowledging receipt of transfers, is that signed by Mr. Swan, and was it received by you?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 70*.

Q. I show you a letter from Pruyn to Powers Farr, dated April 21st, 1903, purporting to be signed by Robert C. Pruyn, please look at that and see whether you can identify that as the signature of Mr. Pruyn?

A. That is the signature of Mr. Pruyn. That was shown to me before it was sent, in Albany, at Mr. Pruyn's office; I believe, on the date, April 21st, 1903, I afterwards saw it in Mr. Farr's office in New York City.

Offered in evidence.

Marked *Exhibit C 71*.

Q. What action was taken by you with reference to the proposed change of contract by Mr. Pruyn, as suggested in that letter?

A. I assisted in drawing up a new agreement to take the place of the Duran Terminal agreement, signed by Mr. Green.

Q. Were you aware at that time that Mr. Pruyn had himself signed a duplicate of the Duran Terminal agreement signed by Mr. Green?

A. No, sir, I was not. I at one time asked Mr. Pruyn if he ever had signed an agreement similar to Mr. Green's agreement, and he stated that he never had seen Mr. Green's agreement or a copy of it, and that it was unauthorized.

Q. Was this document prepared by you to take the place of the Duran contract in form satisfactory to Mr. Pruyn?

A. Yes, sir, and my recollection is that Mr. Pruyn executed it; it was in the form of an escrow agreement with the stock to be deposited with the Union Trust Company of Albany.

Q. That is already in evidence under date of April 30 30th?

A. I believe so, yes.

Q. Now, did Mr. Harman consent to that?

A. Mr. Harman was in Ecuador when Mr. Pruyn returned to this country, on the 18th or 19th of April, and we communicated with him by cable as fully as we could. He objected very strongly by cable, to having any change made in the Duran Terminal agreement, stating that Mr. Pruyn was well aware of its contents, and should be held to it.

Q. Well, Harman refused to consent to any change?

A. Yes, sir.

Q. And he was president of all the companies?

A. He was the chairman of the Association, Ecuadorian Association Limited; he held no position in the Ecuador Company.

Q. Then this agreement of April 30th was never executed by the Ecuadorian Association?

A. No, sir.

Q. I will show you a letter relating to this matter, 10
Adams to Lockwood, dated April 30th, 1903, was that signed by Mr. Adams?

A. Yes, sir, and it was accompanied by the three originals referred to in the letter.

Offered in evidence.

Marked *Exhibit C 72*.

Q. I show you a letter from Pruyn to Lockwood, June 19th, was that signed by Mr. Pruyn and was it received by you?

A. Yes, sir; it is in Mr. Pruyn's handwriting.

Offered in evidence.

20

Marked *Exhibit C 73*.

Q. I show you a letter from Adams to Lockwood, June 26th, is that signed by Mr. Adams and was it received by you?

A. Yes, sir, signed by Mr. Adams for the Vilavil Company, and received by me.

Offered in evidence.

Marked *Exhibit C 74*.

Q. I show you a copy of a letter from Lever to Pruyn, dated July 17th, 1903, see whether that ever came 30
under your observation or knowledge at the time?

A. That is a copy of a letter sent by Mr. Lever, secretary of the Ecuadorian Association, Limited, to Mr. Pruyn, on July seventh.

Offered in evidence.

Marked *Exhibit C 75*.

Q. I show you a letter of Pruyn to Lockwood, July

17th, 1903, was that signed by Mr. Pruyn and was it received by you?

A. Signed by Mr. Pruyn and received by me.

Offered in evidence.

Marked *Exhibit C 76*.

Q. I show you a letter of Spence, secretary to Pruyn, July 23d, 1903, do you know anything about the sending of that letter?

A. Yes, sir, that is a copy of a letter sent by Mr.

10 Spence, who is the assistant secretary of the Ecuadorian Association, Limited, to Mr. Pruyn, under date of July 23d, 1903. I compared that letter with the original press copy.

Offered in evidence.

Marked *Exhibit C 77*.

Q. I show you a letter of four pages, written by Pruyn to Lockwood, July 28th, 1903, was that received by you and is it signed by Mr. Pruyn?

A. It was received by me and is signed by Mr. Pruyn.

Offered in evidence.

20 Marked *Exhibit C 78*.

Q. I show you a letter, Pruyn to Lockwood, July 30th, 1903, was that received by you and is the signature that of Mr. Pruyn?

A. Yes, sir, it was received by me and that is Mr. Pryun's signature.

Offered in evidence.

Marked *Exhibit C 79*.

Q. I show you a letter by Pruyn to Spence, secretary of the Ecuadorian Association, Limited, July 28th, 1903,
30 will you please see whether that letter bears the signature of Mr. Pruyn?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 80*.

Q. I show you a letter signed by Mr. Adams, to Mr. Lever, March 10th, 1903; who was Mr. Lever?

A. Mr. Lever was the secretary and treasurer of the

Guayaquil and Quito Railway, and acting secretary of the association at that time, in New York.

Q. March 10th, 1903, Adams for the Ecuadorian Association, to Lever, secretary, see if that bears the signature of Mr. Adams?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 81*.

Q. I show you a letter of the Ecuador Company, F. B. Adams, president, to Lever, secretary, dated April 10 29th, 1903, will you please see whether that bears the signature of Mr. Adams?

A. Yes, sir.

Offered in evidence.

Marked *Exhibit C 82*.

Q. In the letter referred to as *Exhibit C 81*, letter of Adams, president, to Lever, secretary, March 10th, 1903, reference is made to a note; do you know what note that was?

A. It referred to a note that was to be given by the Ecuador Company to Mr. Pruyn to cover advances 20 pending the assignment and regular organization.

Q. Is that note referred to in the minutes of the company that has been offered?

A. I believe it is, sir.

Q. You were one of the directors?

A. Yes, sir.

Q. I call your attention to a letter, Pruyn to Lever, July 10th, 1903, does that bear the signature of Mr. Pruyn?

A. Yes, it does, sir.

30

Offered in evidence.

Marked *Exhibit C 83*.

Q. I show you a letter of Pruyn to Lever, May 21st, 1903, will you please look at that and see whose signature that is?

A. That is Mr. Adams's handwriting, it is signed Robert C. Pruyn, and then the letter "A" underneath it.

Offered in evidence.

Marked *Exhibit C 84*.

Cross-examination, by Mr. Andrews.

Q. Mr. Lockwood, in March, April and May just whom did you represent as counsel?

A. I was the counsel for the Ecuador Company, and I had been requested by Mr. Pruyn to represent his interests as well, and I was counsel for the Guayaquil and Quito Railway Company; I had resigned as counsel for the Ecuadorian Association early in the year.

Q. And you were looking after Mr. Pruyn's personal
10 interest?

A. To the same extent as I looked after Mr. Harman's interest and other interests.

Q. And in the letter of March which you put in evidence here, you say that you have felt that you represented Mr. Pruyn?

A. I would like to have the letter, I would like to read it, that is not what it states exactly.

Q. Do you remember the exact date of that letter; it is in March?

20 *A.* It is earlier than that, I can get it there very easily. Here it is (handing same to counsel.)

Q. You say, I have felt that I represented Mr. Pruyn in this matter quite as much as Mr. Harman and will do everything in my power to protect him?

A. Yes, sir.

Q. And you did consider that you were representing Mr. Pruyn in that matter?

A. To the same extent as I represented Mr. Harman and the other stockholders.

30 *Q.* When did Mr. Harman return from Europe, after the 24th of February, 1903?

A. I think he got there the seventeenth day of March, 1903.

Q. And were you in conference with him from that time until he went to Ecuador?

A. I only saw him specially on two occasions that I had any conversation with him, one was in reference to

the Dick-Lisman agreement, and the other one was in reference to an escrow agreement with the Union Trust Company, under which the balance of the stock of the Ecuador Company was to be deposited on option for Messrs. Pruyn and Winsor.

Q. And did you prepare both of those agreements?

A. I, after conference with Mr. Green and Harman did, on the lines laid down by them. I refer now to the escrow agreement.

Q. Well, I mean did you also prepare the Dick-Lisman agreement? 10

A. The Dick-Lisman agreement I prepared in conjunction with George S. Graham, who represented the Dick-Lisman syndicate.

Q. That was known to Mr. Harman?

A. That wasn't known to Mr. Harman, Mr. Harman was on the water when that agreement was reached, and he objected very strenuously to the agreement when he arrived at this side.

Q. Had it been executed and delivered on his return? 20

A. It had already been signed by all the parties except himself, and I think possibly the association, who was an important party to it.

Q. Did Mr. Harman afterwards sign that agreement?

A. He did, after considerable pressure.

Q. And was he consulted with respect to the escrow agreement between the Union Trust Company and the Ecuador Company?

A. He was, sir.

Q. And was that drawn up in connection with his suggestion and his ideas? 30

A. Well, he assented to the form.

By Mr. Corbin:

Q. Which escrow agreement do you mean now?

A. The one under which the balance of the stock—

Q. What date?

A. It was April, early in April or late in March, I

have forgotten which; we have a copy of it here, sir, or the other side have a copy of it attached to their papers somewhere. I think that the deposit of stock under it was made after April 2d, because we didn't until after that time have the actual certificates to deposit.

Further cross.

Q. The agreement of April 30th, which is in evidence, was drawn up by you?

10 *A.* Is that the agreement between the Union Trust Company and Mr. Pruyn and the association?

Q. Yes.

A. I think it was.

Q. With respect to the deposit of the sixty-five thousand pounds of shares?

A. Yes, sir; that was drawn up by me.

Q. Were there other letters between yourself and Mr. Adams, and Mr. Adams and yourself, than those which have been introduced in evidence here?

20 *A.* Well, I believe there were, but I don't think there were any letters of any importance bearing on the situation; I have given all my letters here and submitted them to counsel.

Q. Well, I am only asking you whether there were?

A. Well, I believe there were, yes.

Q. Of course, we think a great deal of this correspondence doesn't bear on this situation, but it may be; I only want to show that there were other?

30 *A.* There is one other matter I would like to testify to in regard to representing Mr. Pruyn personally, and that was some time, I think it was in June, when the parties in interest had begun to disagree very seriously, Mr. Pruyn stated to me that he thought he should pay me something for my personal services for him, and I told him that I didn't feel that I could take anything, and I didn't take any fee because I was acting in a general way, and their relations were such that I didn't think that I should take anything.

Re-direct.

Q. You have referred here to an escrow agreement; you don't mean the Duran Terminal escrow agreement?

A. There have been two escrow agreements referred to. The agreement that I drew up on April 30th, at the request of Mr. Pruyn, and that was signed by Mr. Pruyn and the Union Trust Company and forwarded to New York, was in the form of an escrow, and then previous to that there was an escrow agreement which provided for the deposit—optional deposit in the Union Trust Company, at Albany, of about twenty-three thousand shares of Ecuador Company stock. That was entirely separate and apart from the Duran agreement.

Q. That is the Pruyn and Winsor stock?

A. Yes, sir.

Q. And the certificate book shows twenty-three thousand five hundred shares issued to Pruyn and Winsor and returned again?

A. Yes, sir.

Q. That is a different escrow agreement from the one Harman refused to sign?

A. Entirely separate. The one that Harman refused to sign related to the Duran property.

Q. Did I understand you to say that you remember the submission of the escrow agreement of Pruyn and Winsor to Mr. Harman personally?

A. No, sir; Mr. Harman had left at the time that agreement was in form, but he was aware of the general terms.

Q. Of the Pruyn and Winsor?

30

A. Yes; the general terms and form which I was going to draw it up.

Q. He left for South America on the 25th of March?

A. He left almost immediately after getting here; he was only here a short time.

Q. He came from London, was only a short time in New York and left for South America?

A. Yes, sir.

Re-cross.

Q. But that agreement was drawn up in accordance with the understanding you had with Mr. Harman?

A. I had a talk with Mr. Green and Mr. Harman, and after conversation drew up that agreement.

Q. In accordance with instructions you received at that time?

A. Well, it was from what they told me; my recollection is no further than that.

10 *Q.* You didn't put anything into the agreement?

A. I didn't originate the agreement; no, sir.

Further re-direct.

Q. That related to the twenty-three thousand five hundred shares?

A. That related to the twenty-three thousand five hundred shares. I remember Mr. Harman saying one night that there might be some matters that could not be provided for in the agreement, but that those would
20 be left to Mr. Pruyn to carry out, but I don't remember in detail what they were.

Q. Then this agreement had no relation to the thirty-two hundred and fifty shares?

A. None whatever.

Further cross.

Q. Now the agreement of April 30th, was never carried out in any respect?

A. No, sir, it was never signed or assented to by the association who was the other party.

30 *Q.* And the whole thing fell through?

A. I returned the agreements because they belonged to Mr. Pruyn, I returned them to him.

Further re-direct.

Q. Well, what was done with that agreement, that agreement of April 30th, you say it was executed by the Union Trust Company and by Mr. Pruyn, then what was done by him?

A. I received it in New York, three copies, it was executed in triplicate, and it was then referred to the Ecuadorian Association directors either in a meeting or separately, and they refused to sign it.

Q. And was it brought to the attention of Mr. Harman?

A. It was cabled—the substance of the chance that was asked.

Q. He wasn't there?

A. He was informed that Mr. Pruyn insisted on having the Duran Terminal agreement changed to an optional form.

Q. But it didn't require to be sent to London?

A. No, sir.

Q. It was dealt with in New York?

A. Yes, sir.

Q. Then it was submitted, for execution, to the association, and they refused to sign it?

A. Yes, sir, to the directors.

Q. That is all.

20

T. H. Powers Farr sworn.

Direct examination, by Mr. Corbin.

Q. You reside in New York?

A. No, sir, I live in New Jersey.

Q. Well, you are connected with the Ecuadorian Association—you were connected with the Ecuadorian Association in the spring of 1903?

A. No, sir, I was connected with the Guayaquil and Quito Railway Company.

Q. In what capacity?

30

A. Vice-President.

Q. There is a letter addressed to you as deputy chairman of the Ecuadorian Association?

A. Well, it may be that that was delegated to me, if it was I have forgotten.

Q. I show you a letter, C 71, dated April 21st, 1903, by Mr. Pruyn to you, will you please see if you recall that letter?

A. Yes, sir, I remember that letter.

Q. Now then did you have any communication personally with Mr. Pruyn in regard to the subject matter of the letter?

A. We called a meeting of the directors of the railway company and this was brought before them, and Mr. Pruyn represented that—

Q. Was Mr. Pruyn present?

A. He wasn't present at that meeting, but the representations which he made were brought before the meeting; his proposition—

Q. Well, did you have a meeting yourself with Mr. Pruyn?

A. Yes, we had a subsequent meeting with Mr. Pruyn.

Q. Will you please state what took place at the personal interview you had with Mr. Pruyn?

A. Mr. Pruyn stated that the contract that he had entered into was in the form of an option, and that the contract which his representative had signed was unauthorized.

Q. Mr. Green his representative?

A. Mr. Green; and that while he was anxious to assist the railway company in every way that he could he would refuse to go ahead with any assistance, provided we insisted upon the terms of the contract signed by Mr. Green being carried out. We cabled to Mr. Harman advising that he release Mr. Pruyn, as the railway company needed assistance, and we felt that it was bad policy to antagonize him, and Mr. Pruyn having repudiated Mr. Green's contract, Mr. Harman cabled in return that Mr. Pruyn had himself signed the contract, and not to release him. Mr. Pruyn continued to deny that he had signed it until it was formally presented to him on its receipt from London.

Q. What did he say with regard to going on with the business?

A. Well, he said that he would use his best efforts with Mr. Winsor to arrange some method of financing

the company, provided this contract was not insisted upon, which he claimed was purely optional.

Q. That is all.

No cross-examination.

Arthur Turnbull, sworn.

Direct examination, by Mr. Corbin.

Q. Were you, in the spring of 1903, directors of the Ecuadorian Association?

A. I was an alternate director, yes, sir.

10

Q. Were you present at a conversation with Mr. Pruyn relating to the Duran Terminal contract?

A. Early in May of 1903?

Q. About that time?

A. Yes, sir, I was.

Q. Can you state what the conversation was?

A. Mr. Pruyn appeared for some of the directors of the association in reference to a contract which had been signed by Mr. Green, according to his statement, and he desired that the directors of the association should rescind that contract on the ground that it had been signed by Mr. Green without due authority, and did not express the negotiations—the substance of the negotiations which he had had with Mr. Harman. The directors considered the matter and were inclined to meet Mr. Pruyn's views in consideration of his positive statement that he had not signed the contract himself, nor had he ever seen it.

20

Q. What did he say in regard to his future connection with the Ecuador enterprise?

A. He stated that his inclination towards the business was favorable, but that he did not propose to be bound by any contract which had been obtained from his representative under conditions which he did not authorize, and that precedent to any further action on his part he required that the board of directors should rescind that contract.

30

Q. You say you were inclined to accede—did you do so?

A. No, we did not, for the reason that before taking any action in the matter we considered it proper to communicate with Mr. Harman who had been in Ecuador. We cabled him the situation and received a reply from him that the contract had been properly executed, and not under any circumstances to rescind it. We therefore notified Mr. Pruyn that under the circumstances we did not deem it desirable to take any action whatsoever in the premises.

10 Q. That is all.
No cross-examination.

Archer Harman, recalled.

Further direct examination, by Mr. Corbin:

Q. Mr. Harman, I think you referred, when last on the stand, to a memorandum made in Naples, in March, 1903, relating to the advances to be made by yourself and by Mr. Pruyn from month to month until his return from Europe, or I think until July; until June or July; have you found the original memorandum?

20 A. Yes, sir.

Q. In whose handwriting?

A. Mr. Pruyn's. I have it in my hand now, sir.

Mr. Corbin—I offer in evidence the original memorandum referred to by the witness.

Marked *Exhibit C 85*.

Q. Was the arrangement there indicated carried out?

A. No; I carried out my part of it; I don't think Mr. Pruyn paid anything under his part of that arrangement, or if anything, a very small amount.

30 Q. That is all.

Further cross-examination.

Q. On this memorandum, *Exhibit C 85*, I find the following: "R. C. P. has pd through H to Hill \$15,000"; what does that mean?

A. The Ecuador Company made a contract—

Q. No, wait a minute; what does that mean?

A. Well, I must explain it to you.

Q. Doesn't it mean that Robert C. Pruyn has paid through you to Hill, \$15,000?

A. Yes, for a purpose, and I think when you ask the question that you should have an explanation of it.

Q. I don't care about any explanation; you stated that none of this money that has been mentioned on here has been paid by Mr. Pruyn?

A. Prior to the—that \$15,000 prior to the drawing up of that memorandum.

Q. You did state, on your direct examination, that none of the moneys mentioned in here had been paid by Mr. Pruyn? 10

A. Mentioned in that memorandum?

Q. Yes.

A. No, I didn't, except the payment stated in that memorandum—that I had no knowledge of his having paid anything except the amounts as stated in the memorandum, a copy of which I filed here on Thursday. If I made any other statement it was not intended to convey that impression, sir. 20

Q. That is all.

Charles H. Lee, sworn.

Direct examination, by Mr. Van Buskirk:

Q. Where do you reside?

A. My legal residence is South Hampton, Long Island.

Q. And your business place?

A. United States Leather Company, 26 Ferry street, New York. 30

Q. Were you connected with the Ecuadorian Association, Limited, in the spring of 1903?

A. I was a director of the association.

Q. Did you, in your capacity, have a conference with Mr. Robert C. Pruyn in the early part of May of 1903?

A. I did about that time; I don't remember the exact date, but in company with other directors, Mr. Farr and

Mr. Turnbull, we met Mr. Pruyn at the office of Mr. Norton.

Q. In New York City?

A. In New York City, at Mr. Pruyn's request.

Q. Please give the substance of that interview, as nearly as you can?

A. He stated that his representative, Mr. Green, who was in London during Mr. Pruyn's absence in Italy, had signed a contract in Mr. Pruyn's name, and in so
10 doing had exceeded his authority; he had a limited power of attorney to act for Mr. Pruyn, and he had no authority to sign this contract, which was one to which Mr. Pruyn strongly objected.

Q. With whom was that contract said to have been made?

A. It was made by Mr. Green representing Mr. Pruyn with Mr. Harman, who was at that time in London.

Q. Who was the other party to the contract?

20 *A.* The Ecuadorian Association, Limited. Mr. Pruyn said that he had no knowledge of that contract whatever, that he had never seen it, and of course had not personally ever signed it. He intimated that he had been trapped into it, rather, or that Mr. Green had, and that, while he had an interest in this Ecuador venture, he would not think of going on with until he had been relieved from this obligation, which he had been practically
30 shadow of obligation in the matter, particularly as regards the obligatory character, if we were willing to make the contract optional, which of course would have been equivalent to entirely repudiating it, he would, as I remember, have been willing to accept it. In other words, if we would have made all the undertakings that he made in that contract optional with him to either execute or not, as he chose, as he saw fit, why he was willing to make the contract and then continue, perhaps, his financial relations with the company.

Q. Can you make it a little more clear what contract you are speaking of?

A. I am speaking of a contract wherein Mr. Pruyn undertook to supply the necessary money to purchase certain properties in Ecuador. The Duran Terminal properties, they were known as, and this money was in connection with the formation of the Duran Terminal Company, which was to purchase this land. I think the amount Mr. Pruyn was to put up was \$90,000, if I remember correctly.

10

Q. And what was he to receive in consideration of acquiring these lands and turning them over?

A. He was to take sixty-five thousand pounds, I think, of the stock of the Ecuadorian Association.

Q. What action did you and your associates take upon this proposition of Mr. Pruyn's?

A. Why, Mr. Pruyn presented this in such a plausible way that we were quite convinced—I had no personal doubt whatever that Mr. Pruyn had never seen this contract, I never doubted anything Mr. Pruyn said on that occasion. We held a meeting of the association's directors immediately afterwards and we felt that we had no contract with Mr. Pruyn and that in order to retain his good will, which we considered important, we should take this action which we asked for, but as we had nothing to do with negotiating this contract, and had never, in fact, seen Mr. Pruyn before, at least I never had, we concluded first to cable to Mr. Harman, who had conducted the whole negotiation, and ask him about it, more as a formal matter than anything else, and to our astonishment we received a cable—

20

30

Q. Did you recommend from Mr. Harman any action?

A. Yes, it was my own strong opinion that this should be granted, in view of Mr. Pruyn's representations.

Q. What did Mr. Harman reply?

A. He said, by no means release Mr. Pruyn from the contract, inasmuch as he has absolutely signed the con-

tract himself and is entirely familiar with all its terms, which we found to be the case when the contract was sent to us from London.

Q. That is all.

No cross-examination.

Mr. Corbin—We rest.

Joseph R. Swan sworn.

Direct examination by Mr. Andrews:

Q. Mr. Swan, where do you reside?

10 *A.* Albany.

Q. What is your occupation?

A. Clerk in the Union Trust Company.

Q. Were you the treasurer of the Ecuador Company in the month of April, 1903?

A. I was.

Q. I show you *Exhibit C 3*, stub marked No. 291, do you know what became of the certificate which was attached to that stub?

A. It was sent to me as treasurer of the Ecuador Com-
20 pany, in Albany.

Q. Do you know where it is now?

A. I have the certificate here.

Offered in evidence.

Marked *Exhibit D 1*.

Q. Is the signature, J. R. Swan, your signature?

A. It is.

Q. Was that certificate ever delivered to Robert C. Pruyn?

A. It wasn't.

30 *Q.* Or has it, so far as you know, ever been in his possession?

A. It has not.

Q. Has it been in your possession ever since you received it, about the 2d day of April, 1903?

A. There was a safe deposit box taken in the name of the Ecuador Company, and that certificate was in the box and has never been out of my possession.

Cross-examination by Mr. Corbin:

Q. You are a clerk in the Union Trust Company, you say?

A. Yes, sir.

Q. Who is the president of the company?

A. Mr. Grange Sarge.

Q. Is Mr. Pruyn interested in the company?

A. He is a trustee of the company.

Q. And a large stockholder?

A. I believe he holds stock.

10

Q. Were you employed in the Trust Company at the time this certificate was given?

A. I wasn't.

Q. Where were you employed then?

A. In the National Commercial Bank.

Q. Was Mr. Pruyn president of the bank?

A. He was.

Q. You were a director of the Ecuador Company?

A. I was.

Q. Who paid for the share you had in that company? 20

A. That I cannot say.

Q. Didn't the money come from Mr. Pruyn?

A. I think possibly that the money came from Mr. Pruyn.

Q. Did you know of any money ever being paid into that except by Mr. Pruyn?

A. I did not.

Q. A note was given to Mr. Pruyn for all the money that was ever paid into the company?

A. There was.

30

Q. Including the amount paid for the shares of stock?

A. I cannot say as to that.

Q. Well, all the money that was paid in there was a note given for?

A. Well, the shares of stock may have represented some of the money paid in.

Q. Well, they represented all the money paid in. The cash book shows what was paid in, doesn't it?

A. It does.

Q. Who kept that account?

A. I did.

Q. And there was no money paid in except what appears there?

A. There wasn't that I know of.

Q. And the first payment was a payment of \$1,000?

A. Well, I don't remember, I have no date of it.

Q. Well, the book shows for itself. Now did you
10 have in your possession other certificates made out for stock?

A. I did.

Q. Quite a number of them, did you not?

A. Quite a number.

Q. Certificates made out to Pruyn and Winsor?

A. I believe I signed them, I don't remember whether they were in my possession or not.

Q. Well, then the plan was to exchange these shares for Ecuadorian Association shares, was it not?

20 *A.* Not the Pruyn and Winsor shares.

Q. Did you ever produce these shares in an interview with Mr. Lockwood?

A. The Pruyn and Winsor shares?

Q. The certificates?

A. I cannot say, I don't remember.

Q. This share made out to Mr. Pruyn, did you not produce that in an interview with Mr. Lockwood?

A. I don't remember that I did, I cannot say.

Q. Don't you remember meeting Mr. Lockwood on
30 that business?

A. I remember meeting Mr. Lockwood.

Q. In New York?

A. I think not in New York, I think in Albany.

Q. Mr. Lockwood was there in Albany?

A. Yes, sir.

Q. And you produced these shares to exchange for the association shares, did you not?

A. I may have done so, I don't know.

Q. You had that in contemplation, to exchange these shares for Ecuadorean Association shares?

A. That was the plan.

Q. Did you forward any certificates to London?

A. I could not say whether those were ever forwarded to London or not.

Q. You cannot say they were not?

A. I could not say they were not.

Q. What became of the shares issued to qualify directors?

10

A. I believe they are in Albany.

Q. They were endorsed in blank and returned to you?

A. I believe so.

Q. Are they in your possession?

A. I think they are not in my possession.

Q. Do you know in whose possession they are?

A. I do not.

Q. Do you know whether they are in Mr. Pruyn's possession?

A. I cannot say they are, I think they probably are. 20

Q. You say they probably are?

A. I cannot say that they are, but I cannot say they are not.

Q. You never saw them?

A. I have seen them, yes, sir.

Q. When did you see them last?

A. I don't think I have seen them in the last—well, since the summer of 1903.

Q. Well, after they were endorsed and returned, were they in your custody?

30

A. Yes, they were.

Q. What did you do with them?

A. I think they were placed in Mr. Pruyn's safe deposit box.

Q. You held them for him under his order. You understood you represented Mr. Pruyn in this corporation, did you not?

A. I understood that I was there in his interest, yes.

Q. Mr. Adams is Mr. Pruyn's secretary, I think?

A. Mr. Adams was Mr. Pruyn's secretary.

Redirect.

Q. Did you have any direction from Mr. Pruyn to make out this certificate of stock?

A. I did not.

Q. Or from anybody who assumed to represent him?

A. The certificate was made out, I believe, by Mr. 10 Adams and Lockwood, who represented the Ecuador Company. In fact I don't believe I made out that certificate, and I don't know whether I wrote down to have it made out. I signed it when it came up; that is not my handwriting that it is made out in.

Q. Well, as a matter of fact on the second day of April, 1903, Mr. Pruyn wasn't in this country, was he?

A. He wasn't.

Q. And do you remember when he did arrive in this country?

20 A. I don't know the exact date that he arrived, it was some time after April second.

Q. About the nineteenth or twentieth of April?

A. Somewhere along that time.

Q. That is all.

Frederick B. Adams, sworn.

Direct-examination, by Mr. Andrews.

Q. Where do you reside?

A. I reside at Albany, New York.

30 Q. What is your occupation?

A. Secretary of the Union Trust Company, Albany.

Q. In March and April, 1903, were you the president of the Ecuador Company?

A. I was.

Q. I show you *Exhibit D 1*, is that your signature, F. B. Adams?

A. Yes, sir.

Q. Do you know under what circumstances that certificate was prepared?

A. In a general way, it was prepared as many other certificates were, for the purpose of exchange for the stock of Ecuadorian Association more particularly; the Ecuador Company and the association were parties to an agreement with Messrs. Dick, Lisman and others, and the United States Mortgage & Transfer Company; according to the terms of that agreement, under certain contingencies—

Mr. Corbin—I object to his stating the terms of an agreement not produced. 10

Q. You need not state the terms of it except in a general way.

Mr. Corbin—I think if we are going to have the contents of a paper we ought to have the paper.

Q. Go on.

A. At any rate, under the terms of this agreement, under a certain contingency—

Mr. Corbin—I object.

The Court—The witness is now attempting to 20 state the terms of an agreement; the agreement has been offered in evidence and will speak for itself.

Mr. Andrews—He is not attempting to prove the contents of that agreement, he is attempting to prove the circumstances under which this particular certificate was prepared, and he is stating some portion of the agreement as a reason for the preparation of this certificate. If your Honor will take the testimony I think you will see its 30 competency, and if not you can strike it out later.

The Court—It seems to me the question can be answered without an attempt on the part of the witness to state the contents of the paper. The witness can state what instructions he received and what he did in consequence of those instructions.

A. The certificate was prepared—you see, your

Honor, the certificate would never have been prepared if it hadn't been for that Dick-Listman agreement.

The Court:

Q. Well, you have a right to say from what source you derived your instructions to prepare the certificate; if you derived your instructions from the agreement itself, you may say that; if you derived your instructions from Mr. Pruyn or from anybody representing Mr. Pruyn, you may say that. The objection that is
10 made, and which is a valid one, is to your attempting now to state from memory the contents of the agreement, when the agreement itself is in evidence.

A. Well, I received no instructions from anybody to issue that certificate, from Mr. Pruyn or from anybody else. Mr. Lockwood and I, after consultation, deemed it advisable to issue or to prepare, rather, that certificate to make an exchange for an equal number of Ecuadorian Association shares, which we understood had been issued on account of some technicality in the Eng-
20 lish law, and Mr. Pruyn, the association and the company deeming it necessary to obtain that sixty-five thousand pounds Ecuador stock to fulfill that Listman-Dick agreement. Mr. Pruyn was in Europe at the time. His arrival here seemed to come so close to the time when the company needed that sixty-five thousand pounds stock that it was deemed advisable to take time by the forelock and prepare this certificate, so that in case the exchange were made with Mr. Pruyn we would have the certificate ready to deliver.

30 Further direct.

Q. Now, as president of the Ecuador Company, you had that certificate prepared?

A. I did.

Q. Without any direction, oral or otherwise, from Mr. Pruyn?

A. Without absolutely any direction from Mr. Pruyn whatever.

Q. Now, Mr. Pruyn returned about the 19th or 20th of April?

A. Yes; he did.

Q. And are you familiar with an agreement here of April 30th, in evidence?

A. I am.

Q. That agreement was never executed by the Ecuadorian Association?

A. No.

Q. And therefore nothing was ever done under it? 10

A. No.

Q. So far as you know was this stock ever delivered to Mr. Pruyn?

A. It wasn't.

Q. Or accepted by him?

A. No.

Q. And it has always been in the possession of the officers of the company?

A. Always has been.

Q. Did you have a power of attorney to act for Mr. 20 Pruyn?

A. I did.

Q. I show you this paper; is that the power of attorney?

A. That is it; yes, sir.

Offered in evidence.

Marked *Exhibit D 2*.

Q. Now, was that executed in several duplicates?

A. It was.

Q. And did you ever have any other power of attor- 30 ney?

A. No; I never did.

Q. From Mr. Pruyn, I mean?

A. No.

Q. That is all.

Cross-examination, by Mr. Corbin:

Q. I show you a press copy of a letter written to you

by Mr. Lockwood, dated April 9th; will you please look at that; it is *Exhibit C 69*; do you remember receiving that?

A. Yes.

Q. You knew, then, from Mr. Lockwood, that there was a contract by which Mr. Pruyn was absolutely bound in the Duran Terminal purchase, did you not?

A. You mean the so-called Green contract?

Q. Yes.

10 A. Yes, sir.

Q. Did you communicate by letter with Mr. Pruyn immediately on his return?

A. I did.

Q. That was about the 19th of April?

A. Yes, sir.

Q. That is all.

Defendant rests.

Benoni Lockwood, Jr., recalled.

20 Further direct examination, by Mr. Corbin:

Q. Were you familiar with the circumstances attending the making out of certificates about the 2d day of April, 1903, of the Ecuador Company?

A. I was, sir.

Q. For what purpose?

30 A. We had understood, Mr. Adams, Mr. Swan and myself, that there was to be an exchange into shares of the association with shares of the Ecuador Company, and we had cabled to England asking Messrs. Glyn, Mills & Currie Company, the depository, to send us a list of all the depositors of Ecuadorian Association stock, together with the amounts of stock deposited by each of them, so that we could make out the certificates of the Ecuador Company, and forward them for exchange. These lists were received some time prior to April 2d, 1903, and they contained the name, as I remember, of Mr. Pruyn, for sixty-five thousand pounds of stock, and all the certificates were then made out for

the exchange. Mr. Swan went over them in my office in New York with me, and checked the list off.

Q. Then Mr. Swan did see you with these in New York, did he?

A. I believe he did, yes.

Q. He had the certificates?

A. He brought the certificates up from the Registrar and Transfer Company, where they had been written out and countersigned, and I understood when he went away—we thought that he was going to send them by 10 express to England immediately.

Q. All of them?

A. All of them.

Q. Including sixty-five thousand pounds?

A. So I understood at that time, although that didn't come up as any particular point.

Q. Apart from the rest?

A. No, sir, except that I think some question was raised whether it wouldn't be more convenient for Mr. Pruyn, if he was coming right back, to retain his certificate in this country, and I don't know what became of that. As to the Dick-Lisman agreement, that had been entered into some time prior to the making out of these certificates, and the making out of the certificates to Mr. Pruyn, of Ecuador stock, had nothing to do with it, because under the terms of that agreement. 20

Mr. Andrews—I object to the terms of that agreement.

Q. You say it had nothing to do with that?

A. No, sir. 30

Q. It was for the purpose of this exchange?

A. Yes, sir, it called for association stock in Ecuador Company stock.

Q. Then among these certificates which were in Mr. Swan's possession in your office, prepared by the Registrar and Transfer Company, was this certificate of Mr. Pruyn's?

A. Well, all of them that were on the list were there, as I remember it; that was there.

Cross-examination by Mr. Andrews:

Q. Now, whatever certificates he had were not then fully prepared, were they?

A. I beg your pardon?

Q. Whatever certificates he had were not fully prepared?

A. I think that they were all signed—yes, they were signed before the Transfer Company would register them, they had to be signed.

10 *Q.* Had the seal on and everything?

A. I am not sure about that; they were brought down then for the purpose of sealing, I don't know whether the seal was in Mr. Swan's possession or not, but the custom in that particular company is not to sign any stock transfer until it is in form, that is, signed by the officers and sealed.

Q. I understood you to say that under the Dick-Listman contract there were shares of the Ecuadorian Association to be deposited?

20 *A.* I think there were sixty thousand pounds.

Q. Never mind, just answer just exactly whether there were any shares at all of the Ecuadorian Association to be deposited?

A. I think there were.

Q. And then if this—

A. Under certain contingencies.

Q. If this sixty-five thousand pounds of stock Ecuadorian Association had been exchanged for the 3,250, it would have belonged to the Ecuador Company, 30 wouldn't it?

A. If it had been exchanged, yes.

Q. And could have been deposited under the Dick-Listman agreement?

A. Yes, it could, because I had an outside agreement in writing that they would accept Ecuador Company stock in lieu of the Ecuadorian Association.

Q. You stated in this examination that the agreement provided for the deposit of Ecuadorian Association stock

and therefore, as I say, under this agreement, as you understood it, if the Ecuador Company had become possessed of the sixty-five thousand pounds of Ecuadorian Association stock they could have deposited it under the Dick-Listman agreement?

A. They could have deposited it.

Q. One of the purposes which the Ecuador Company sought to attain, was a transfer of sixty-five thousand pounds of Ecuadorian Association stock, to the Ecuador Company, in order that it might be deposited under the Dick-Listman agreement? 10

A. Well, I don't quite understand.

Q. (Question read.)

A. That wasn't the original reason for issuing the stock.

Q. I ask you if that wasn't the purpose for which the Ecuador Company wished to get possession of the sixty-five thousand pounds of Association stock?

A. Not one of the original purposes, they took it on the regular exchange. 20

Q. Wasn't it originated subsequent—

A. They may have wanted to get it in that way, but it was originally to be exchanged as everybody else's stock was to be exchanged.

Q. So, as I understand it, your certificate, 3,250 shares of stock to Mr. Pruyn, was made out in order that it might be exchanged for sixty-five thousand pounds of Ecuadorian Association stock?

A. As far as I know, yes, sir.

Q. Is that the way you understand it? 30

A. Yes, sir.

Q. Did that exchange ever take place?

A. I don't know, I understand it didn't.

Q. Don't you know as a matter of fact that no exchange was ever made of Ecuadorian Association stock for Ecuador Company stock?

A. I know that the reorganization didn't go through on account of the position that Mr. Pruyn took after he got back to New York.

Q. You will oblige me if you will confine your answers to my questions, and not interject anything that doesn't relate to the subject we are talking about. I ask you if you didn't understand that all the certificates of stock that were made out for the purpose of exchange of Ecuadorian Association stock were returned?

A. I suppose they were.

Q. Did you have any Ecuadorian Association stock?

A. I had some Ecuadorian Association stock, yes.

10 *Q.* Did you deposit your stock for exchange of Ecuador Company stock?

A. I think I did.

Q. Did you get back your certificate of Ecuador Company stock?

A. I think I did.

Q. You were a director of the Ecuador Company at this time?

A. I was a director of the Ecuador Company, yes.

Q. And familiar with the Ecuador Company affairs
20 to a certain extent?

A. Largely.

Q. Don't you know as a matter of fact that the whole scheme for the exchange of Ecuadorian Association stock into Ecuador Company stock fell through?

A. I know it fell through for the reason I have stated.

Q. No matter what the reason was, it fell through?

A. Exactly, that is so.

By Mr. Van Buskirk:

30 *Q.* I think there is a mistake in your testimony there; it reads, you got back your Ecuadorian Association stock?

A. No, Ecuador Company stock, I never had but one share. One other thing I would like to state. Mr. Adams has stated that he and myself understood that the Green contract signed for Mr. Pruyn in the matter of the Duran Company was a merely technical matter as far as I was concerned, before Mr. Pruyn returned.

I did not so understand it, we were both surprised, or certainly I was, at the fact that Mr. Pruyn had signed that—

Mr. Andrews—I object to that on the ground that it is incompetent.

Further direct.

Q. You wrote that letter of April 9th?

A. I wrote that letter of April 9th, almost—very soon after Mr. Green had returned and reported the situation; it seemed to me to be very different from what it had been originally.

10

Q. There is another subject that I meant to have gone into on the direct examination that I would like to take up now. Mr. Lockwood, had the Ecuador Company acquired any sort of right to any assets apart from this cash that was paid in from time to time by Mr. Pruyn—any of the stock or bonds of the railroad company?

A. Well, I believe, although I didn't have charge of the administration of the company, that it had taken over, through its assignment, all the business of the Ecuadorian Association Limited, and the right to any bonds and stock that were to be earned.

Q. Well, was there a claim there for preferred stock of the railroad company?

A. There was.

Q. And what amount of preferred stock?

A. I have forgotten the exact figures. Are you referring to the claim of the Ecuador Company?

Q. The Ecuador Company to preferred stock of the railroad company; the minutes show certain action taken by the Ecuador Company directors relating to a transfer to Mr. Pruyn as security of certain assets of that kind?

30

Mr. Andrews—How is this material on this question, whether Mr. Pruyn is a stockholder or not?

Mr. Corbin—It is material to show what assets the company had.

The Court—I will allow the question.

A. There was a matter of six thousand, I think it was, four hundred shares of preferred stock that Mr. Pruyn issued to have as security for advances made the company, and the Duran Terminal Company and the other subsidiary companies.

Q. That is, he asked your company to secure him for advances made for the benefit not only of the Ecuador Company, but of the other companies?

A. Of all the companies that were connected with this
10 reorganization plan.

Q. Now, this item of sixty-four thousand that are on the books here, cover advances made not only for the Ecuador Company, but for these subordinate companies?

A. Yes, sir; and one large item advanced under the Dick-Listman of \$228,000.

Q. Now, then, what action was taken to carry out the resolution with regard to the preferred stock; the minutes show that notes were given for the amount on
20 the cash book here to Mr. Pruyn; now, what action was taken with reference to giving him the advantage of the preferred stock for that debt?

A. Well, I believe that—

The Court—I don't think this is competent.

A. Mr. Adams telephoned me, as president of the company, I think it was in June, that they were bringing some action to foreclose on Mr. Pruyn's notes, but that it was only for the purpose of generally protecting the notes, and I didn't get any other notice, I don't think,
30 but I am not perfectly certain.

Q. But you were a trustee, weren't you?

A. Yes, sir; but I wasn't present at any of those subsequent meetings.

Q. What action did you take with a view to turning over that preferred stock?

A. I signed as trustee under the agreement of the 31st of January, 1902; I made an agreement with Mr. Pruyn to turn over sixty-four thousand shares as collateral.

Q. Now, then, how did you come to make that agreement?

Mr. Andrews—How is that material to this issue?

The Court—I am hardly able now to pass upon the relevancy of this proof; I will let it go in subject to objection.

A. Mr. Pruyn stated when he got back, about the 21st of April, or a little later than that, that he wouldn't continue and wouldn't make any more advances unless 10 he got security for the advances that he had made, and this was at the same time that the question of the validity of the Duran Terminal contract was being raised, and he was to have advanced certain other moneys, and notwithstanding such arrangement I assented to securing him the preferred stock of the Guayaquil and Quito Railway Company, which was held by the trustees, but under the general understanding of Mr. Pruyn's position at that time, as he had stated it to me, and the substance of the negotiations abroad which he also had 20 stated to me.

Q. Well, you refer there to the statement with regard to the Duran Terminal contract?

A. More particularly that he told me, as I have testified, that he had never seen that contract and certainly had never authorized it in any way, and that he had very few talks with Mr. Harman on business after he had left Paris; that he had not been, except in a general way, informed on matters, etc.

Q. Well, was it on that representation that you as- 30 sented to the turning over of the Ecuador interest in that preferred stock?

A. Yes, sir.

Q. Did he ever get possession of the stock?

A. I don't think so; no, sir.

Q. Is that the same matter which is a subject of litigation in a suit brought by Mr. Arthur L. Andrews,

who appears here as counsel for Mr. Pruyn against you and others?

A. It is.

Q. Pending in court now?

A. In a court in Albany, I believe.

Q. Pending in this court?

A. Oh, yes, the other suit; there are two of them.

Q. Who had the custody of those preferred shares?

A. The trustees in London.

10 *Q.* What particular bankers?

A. Messrs. Glyn, Mills, Currie & Co.

Q. Then they weren't given up?

A. No, sir.

Q. That is all.

EXHIBIT C 1.

Minute Book of the Ecuador Company.

(ABBREVIATED STATEMENT.)

CERTIFICATE OF INCORPORATION OF THE ECUADOR
COMPANY.

Incorporators { *Benoni Lockwood, Jr.,*
Henry A. Bingham, and
William S. Woodhull.

Office—No. 15 Exchange Place, Jersey City.

Agent in Charge—The Registrar & Transfer Company. 10

Objects stated are—under fifteen supervisions, including purchase and sale of stocks and bonds, agricultural products, manufactures, construction, purchase and sale of railroads, vessels, and public improvements in and out of New Jersey; mining in the Republic of Ecuador and elsewhere, guaranteeing dividends, etc.; and this business, or any of it, may be conducted in the United States and in the Republic of Ecuador and in any other foreign countries; and the books may be kept outside 20 of New Jersey, except as otherwise provided by law.

Authorized Capital { \$5,000,000.
Stock { In shares of \$100 each.

Amount with which {
the Company will { \$1,000.
commence business }

Incorporators and number of shares as follows:
Benoni Lockwood, Jr., 32 Nassau Street, New York,
8 shares;
Henry A. Bingham, Oradell, New Jersey, 1 share;
William S. Woodhull, 32 Nassau Street, New York,
1 share.

Period of Existence—(Unlimited.)

10 The Board of Directors may, from time to time,
vary the amount of working capital, and deter-
mine the surplus. The Board of Directors may
make by-laws, subject to repeal by stockholders.

Acknowledged February 2, 1903.

Recorded in Hudson County Clerk's Office February 2,
1903, and

Filed in the Office of the Secretary of State February
3, 1903.

FIRST MEETING OF INCORPORATORS OF THE ECUADOR
COMPANY.

20 The first meeting of the incorporators of the Ecuador
Company was held on the third day of February, 1903,
at 10:30 o'clock in the forenoon on that day, at the
registered office of the Company, No. 15 Exchange
Place, Jersey City, New Jersey.

Messrs. Frederick B. Adams, Benoni Lockwood, Jr.,
Henry A. Bingham, Francis C. Green and J. R. Swan,
were nominated for Directors of the Company, and bal-
lot being duly had, and all the stockholders having voted,
the inspectors presented their certificate showing that
the aforesaid gentlemen had been duly elected Directors
30 of the Company by the unanimous vote of all the stock-
holders.

The Secretary presented and read a waiver of notice
of assessment and of the time and place of payment
thereof, signed by all the incorporators. The Board

of Directors were authorized to assess the stock subscribed by the said incorporators one hundred per cent., payable as and when called for by the Directors.

On motion duly made and seconded, and by the affirmative vote of all present, it was resolved that the Board of Directors be and they hereby are authorized to issue capital stock of this Company to the aggregate amount of Five million Dollars (\$5,000,000), in such amounts and proportions as from time to time shall be determined by the Board and as may be permitted by law, and to 10 accept in full or part payment thereof, such property as the Board may determine shall be necessary for the business of the Company.

*Minutes of the First Meeting of Directors of the
Ecuador Company.*

The first meeting of the Board of Directors of the Ecuador Company, held at the office of the Registrar & Transfer Company, No. 32 Street, Borough of Manhattan, City and State of New York, on the 3d day of February, 1903, at 11:15 o'clock in the forenoon 20 on that day.

Present: Messrs. Frederick B. Adams, Benoni Lockwood, Jr., and Henry A. Bingham.

Upon motion duly made and seconded, it was,

Resolved: That the Company by its President, and the Treasurer, issue in the name of the Company certificates of stock in the form or substantially the form submitted to this meeting, which form shall be inserted in these minutes, and is hereby adopted as the form of stock 30 certificate of the Company.

Upon motion duly adopted by the affirmative vote of all present, it was,

Resolved: That the Registrar & Transfer Company, a corporation having an office at No. 32 Liberty Street, and the United States Mortgage & Trust Company, a corporation having its principal office at No. 55 Cedar

Street in the City of New York, be and they hereby are appointed by this Court its transfer agent and registrar of transfers respectively, and that all stock certificates shall bear the Countersignature of the transfer Agent, and be registered by the Registrar of transfers and shall not be valid until they shall have been so countersigned and registered.

And it is further,

Resolved: That the Registrar and Transfer Company
10 be and it hereby is authorized to countersign, when signed by the President and by the Treasurer, an issue of certificates of the stock of this Company for fifty thousand (\$50,000) shares, and in exchange from time to time, for cancelled certificates to register new certificates when countersigned as hereinbefore provided.

There was presented and read to the members of the Board a proposed power of attorney between this Company and Francis C. Green, constituting and appointing him the lawful attorney and full, free and unrestricted
20 representative of this Company in the Kingdom of Great Britain, and upon motion duly made and seconded, the following resolution was adopted.

WHEREAS, it is in the judgment of this Board of Directors advisable that this Company for the purpose of its business, appoint its full and unrestricted representative and lawful attorney to act as such in the Kingdom of Great Britain; and

WHEREAS, Francis C. Green of No. 3 State Street, Albany, New York, is desirous and willing to act as such
30 representative and attorney;

Resolved, that the proper officers of this Company be and they are hereby authorized, empowered and directed to make, execute and deliver, to cause to be made, executed and delivered a power of attorney in the form submitted to this meeting, to Francis C. Green, appointing him the full, free and unrestricted representative of this Company in the Kingdom of Great Britain. * * *

Minutes of a meeting of the Directors of the Ecuador Company held at the office of Rollins & Rollins, 32 Nassau Street, New York City, on the 11th day of March, 1903, at 3:30 P. M.

There were present, the following directors:—

Frederick B. Adams

Francis C. Green

Benoni Lockwood, Jr.

Mr. Adams took the chair and Mr. Lockwood acted as Secretary of the meeting.

10

Upon motion duly made, seconded and carried, it was

Resolved: That the officers of the Company be and hereby are instructed to execute and deliver to Mr. Robert C. Pruyn, or his attorney, the note of this Company for \$ being the amount advanced by him through Mr. Adams to the Company for the purposes of its business; this being upon the understanding that the money so advanced may in future be considered as a proportionate part of the whole sum to be eventually provided for Company purposes by Messrs. Pruyn and 20 Windsor under the general scheme of reorganization.

Mr. Lockwood, as counsel to the Company, then read a draft of the proposed agreement between the Ecuador Company and Robert C. Pruyn and Robert Windsor relating to the purchase of certain shares of the Colombe Coal Company and the The Land and Immigration Company of Ecuador, and upon motion duly made, seconded and carried, it was

Resolved: That the officers of the Company be and hereby are empowered and directed on behalf of the 30 Ecuador Company to enter into said proposed contract and make a deposit with the Union Trust Company of Albany of the stock mentioned therein.

Mr. Francis C. Green then made a general report of what had been done by him in London on behalf of the Company and submitted certain circulars marked "A," "B," "C," "D" and "E," setting forth the steps taken by the Ecuadorian Association, The Ecuador Company, and certain of their stockholders, as well as by the debenture certificate holders in furtherance of the general

plan of reorganization which the Ecuador Company has in hand, and upon motion duly seconded and carried it was

Resolved: That the action of Mr. Green, as representative of the Company and acting under its power of attorney, in making an offer to the debenture certificate holders of stock of this Company at the rate of five dollars of the Ecuador stock for every one hundred dollars of certificates, is hereby ratified and approved, and it is
10 further

Resolved: That the action of Mr. Green as representative of the Company and acting under its power of attorney, in making an offer to the holders of stock in the Ecuadorian Association, Limited, in the proportion of one hundred dollars of Ecuador Company stock for every twenty certificates of one pound each, of the Association, be and hereby is ratified and confirmed.

Mr. Green's letters of authorization to Glyn, Mills and those covering the terms of their remuneration were
20 then approved.

The proposed form of stock certificates was submitted to the meeting and was approved with the following changes: "Under the Laws of New Jersey" instead of "New York" as printed on the certificate; shares of the denomination of \$100 each instead of \$5 each.

After discussion and upon the authority of Mr. Green and in view of instructions received from Mr. Harman by cable on the 11th inst., it was

Resolved: That the officers of the Company be and
30 hereby are instructed not to carry out the former orders of the Directors in reference to amending the certificate of incorporation so as to provide for shares of the denomination of \$5 instead of \$100:

Mr. Lockwood submitted to the meeting two cables received from Mr. Harman in London asking the Ecuador Company to instruct Glyn, Mills, Currie & Company to remit three thousand pounds to Guayquil at once from moneys in the sinking fund, and stated that after con-

ferring with Mr. Green he had cabled Glyn, Mills, Currie and Company in London and asked them to forward three thousand pounds to Ecuador at once from funds of the Ecuador Company in their hands, and report to the Company in New York any balance that they had on hand to its credit.

On motion, duly seconded and carried, it was,

Resolved: That the action of Mr. Lockwood in directing Glyn, Mills, Currie and Company to forward three thousand pounds to Ecuador be and the same hereby 10 is approved.

A long discussion then ensued in regard to the advisability of the Company's purchasing the Dick-Lisman, Graham, Hoffman syndicate on the basis of the money invested plus 6 per cent., with a bonus of \$18,000 allowed to cover certain claims of Graham and Hoffman, together with all other claims, and Mr. Lockwood submitted to the meeting the entire correspondence, cables, telegrams, etc., between George S. Graham, acting for the syndicate and himself, as well as the cables between 20 Mr. Harman and Mr. Lockwood.

Upon motion duly made, seconded and carried, it was,

Resolved: That Mr. Lockwood be and hereby is instructed to send the following cablegram to Mr. Pruyn in Florence, Italy:

"Most strongly advocate that Ecuador Company purchase Dicklaw interests upon terms as arranged by us and cabled you by Harman today, \$28,000, payable immediately, balance half, July 1st, half September 1st. We consider terms obtained by us best under the circum- 30 stances, and believe immediate future new Company will be jeopardized unless matters straightened out immediately. If you approve, cable Adams at once. Norton takes similar view. Must know by Friday noon.

Lockwood, Green, Adams.

No further business was presented, and on motion the meeting adjourned.

Meeting of the Directors of the Ecuador Company held at the Office of Rollins & Rollins, No. 32 Nassau Street, New York City, on the 16th day of March, 1903, at 2:30 P. M.

Present, Directors Adams, Swan and Lockwood.

On motion duly made, seconded and carried it was

Resolved: That the Registrar and Transfer Company be and hereby is authorized to issue and countersign when signed by the President or Vice-President
10 and the Treasurer or Assistant Treasurer of this Company, an original issue of certificates of shares of this Company to the number of 50,000 shares of common stock to such persons and in such amounts as directed in writing by the President or Vice-President and Treasurer or Assistant Treasurer of this Company, and to enter the particulars of the holdings of said shares from time to time as required.

Mr. Lockwood then submitted to the Directors the proposed contract between the Ecuador Company and
20 Graham, Lisman, Dick and others, and the United States Mortgage and Trust Company under date of the 16th of March, and upon the contract having been read by each of the directors in turn it was

Resolved that the action of Mr. Lockwood as counsel for the Company, in conducting the negotiations resulting in the preparation of the submitted contract, be and hereby is fully approved and confirmed, and the officers of the Company and Mr. Lockwood be and hereby are empowered and directed to execute and deliver said contract on behalf of the Ecuador Company, make what-
30 ever payments of money, and do whatever else may be necessary in the premises to fully carry out the terms and intention of the contract.

Mr. Lockwood then stated that an advance of twenty-eight thousand dollars had been made to the Company by Mr. Robert C. Pruyn, of Albany, and upon motion duly seconded it was

Resolved that the officers be and hereby are directed and empowered to execute and deliver to Mr. Pruyn a

demand note of the company for that amount, paying interest at six per cent., with a further stipulation that Mr. Pruyn should have the right at any time during the next six months to tender said note the Company in lieu of a cash payment for stock, and the officers of the Company are hereby directed and empowered to issue and deliver said stock in case Mr. Pruyn so elects.

J. R. SWAN,

Sec'y.

A meeting of the Directors of the Ecuador Company **10**
held at the office of Messrs. Rollins and Rollins, No. 32
Nassau St., New York City, on the 30th day of March,
1903.

Present: Directors Adams, Bingham and Lockwood.

Mr. Lockwood acted as secretary of the meeting.

Mr. Lockwood read an agreement under date of
March 9th, 1903, entered into by Mr. Archer Harman
in London on behalf of the Ecuador Company with F.
G. Horn, of London, covering the terms and arrange- **20**
ment to acquire certain bonds of the Company in con-
nection with carrying out an agreement with the coun-
cil of foreign bondholders in London relating to the
Old External Debt bonds of Ecuador. This contract
was discussed and upon motion duly made, seconded and
carried, it was

Resolved: That the action of Mr. Harman in nego-
tiating the contract with Horn and the arrangement en-
tered into with the Council of Foreign Bondholders be
and hereby is in all respects approved and confirmed.

Further Resolved: That the contract between F. G. **30**
Horn and the Ecuador Company, acting through Mr.
Archer Harman its duly authorized agent, under date
of March 9, 1903, is hereby ratified and confirmed in all
respects, and the officers of the Company are authorized
on behalf of the Company to attach a certificate certify-
ing to Mr. Harman's authority or otherwise endorsing
said contract as may be deemed necessary or expedient.

The contract was then ordered on file.

Upon motion duly made, seconded and carried,

Resolved: That the action of the Executive Committee of the Guayaquil and Quito Railway Company under date of February 26, 1903, in instructing the United States Mortgage and Trust Company to invest £13,000 from the sinking fund of said Railway in bonds of the said Railway at 80 be and hereby is ratified and confirmed.

Upon motion duly made and seconded and carried

10 *Resolved:* That the officers of the Company be and hereby are empowered and directed forthwith to deliver to Robert C. Pruyn and to Archer Harman respectively the notes of this Company in sufficient amount to cover the cash advances made to date by said Pruyn and said Harman respectively and to also deposit as collateral to said notes given to said Pruyn certain 32 first mortgage bonds of the Guayaquil & Quito Railway Company that are now on deposit with Glyn, Mills, Currie & Co.

20 The officers are further directed and empowered to communicate with the debenture certificate holders trustees in London and take whatever steps are necessary to empower and direct the said trustees to deliver to Robert C. Pruyn as collateral in lieu of the 32 Railway bonds aforesaid, Guayaquil & Quito preferred stock to an amount equal to ten times the amounts so advanced in cash by said Pruyn as evidenced by said notes, and to Archer Harman likewise preferred stock of said Railway to an amount equal to ten times the amounts so advanced in cash by said Harman as evidenced by his
30 notes.

Sec'y.

Minutes of a meeting of the Directors of the Ecuador Company held at 38 State St. on Thursday, May 28th, 1903, at 12 o'clock noon.

Present Messrs. Adams, Green & Swan.

The action of the President and Treasurer in giving notes of the Company to Mr. Robert C. Pruyn, of

Albany, to cover the full amount of his advances to the Company with interest to May 1, not already so secured was discussed and upon motion duly seconded it was

Resolved that such action of the President and the Treasurer in giving notes to Mr. Robert C. Pruyn to secure his advances to the Company to May 1, 1903, be and hereby is ratified and approved.

There being no further business the meeting adjourned.

J. R. SWAN, 10
Sec'y.

Minutes of a meeting of the Directors of the Ecuador Company, held on June 16th, at 38 State Street, at 12:15 P. M.

Present: Messrs. Adams, Green, Swan.

An agreement under date of May 6th, 1903, between this Company, Mr. Robert C. Pruyn and Benoni Lockwood, Jr., on behalf of the Trustees for the Debenture Rights certificate holders was read, and upon motion duly seconded and carried it was 20

Resolved that the agreement between the above named parties and the action of the President in signing such agreement on behalf of the Company are ratified and approved.

There being no further business the meeting adjourned.

Minutes of a meeting of the Directors of the Ecuador Company held at 38 State Street, on the eleventh day of July, 1903, at 12:00 o'clock noon.

Present: Messrs. Adams, Green & Swan. 30

A waiver of notice of the meeting from Messrs. Lockwood and Bingham is hereto attached.

President Adams reported that certain notes with the collateral behind them given by this Company to Robert C. Pruyn to secure various advances of money to the Company, had been assigned by the said Robert C. Pruyn to Arthur L. Andrews. And further that Arthur L. Andrews had demanded payment of the notes, and upon

payment being refused had begun suit against the Company and had attached all the property of the Company. He then suggested that in order to liquidate a portion of this indebtedness that the Company assign at an agreed price to Arthur L. Andrews, or sell at public auction and give the proceeds to said Andrews, all the bonds represented by orders assigned to the Company under an agreement with Messrs. Hoffman, Graham, Dick et al.

The following resolution was thereupon duly adopted
10 by the unanimous vote of those present:

Resolved: That the orders for bonds of the Guayaquil & Quito Railroad Company assigned to this Company by George S. Graham and J. Ogden Hoffman, be sold, assigned and transferred to Arthur L. Andrews, the President is authorized hereby to execute the necessary transfers on behalf of the Company.

It was further resolved that the bonds when obtained shall be purchased by him at a price to be agreed upon, and the proceeds shall be applied upon the indebtedness
20 of the Company to him, or if a price cannot be agreed upon the same shall be sold at public auction, and the proceeds of such sale shall be applied in reduction of such indebtedness.

President Adams further reported that Messrs. Dick Bros. & Co., on behalf of themselves and other parties, had asked permission to withdraw the orders for bonds of the Guayaquil & Quito Railroad Co., deposited with the United States Mortgage & Trust Co., under an agreement with this Company.

30 Upon motion duly seconded and carried it was

Resolved that permission of this Company to the withdrawal by Dick Bros. & Co., on behalf of themselves and other parties interested, of orders for bonds of the Guayaquil & Quito Railroad Company, deposited with the United States Mortgage & Trust Company, of New York, under contract with this Company and others, be and hereby is granted.

There being no further business the meeting adjourned.

EXHIBIT C 2.

CASH BOOK OF THE ECUADOR COMPANY.

						<i>Cr.</i>	
Feb.	1	To cash advances by R. C. P.				1000.	
	13	" " " " "				50.	
						434.29	
Mar.	4	" " " " "				10000.	
	10	" " " " "				1500.	
		" " " " "				14650.	
	11	" " " " "				2500.	10
	13	" " " " "				2800.	
	19	" " " " "				1000.	
	23	" " " " "				34.50	
	24	" " " " "				1500.	
	28	" " " " "				1200.	
	30	" " " " "				1000.	
Apr.	15	" " " " "				1051.	
Apr.	23	" " " " "				100.	
	28	" " " " "				1585.90	
	29	" proceeds purchase bonds by					20
		Glyn for sinking fund £. 4104,					
		6s. 4d.					
June	13	" advance by R. C. P.				145.	
						<i>Dr.</i>	
Feb.	1	By cash, ck. R. C. P. a/c Incorp.					
		Expen.				1000.	
	13	By cash, ck R. C. P. a/c rent office				50.	
		By cash, ck. R. C. P. addit. Incorp.					
		Exp.				434.29	
Mar.	6	By cash, Ec. Co. sent Lever cabled					30
		Ec.				7500.	
		By cash, Ec. Co. sent Lever Sundry					
		bills				200.	
	9	By cash, Ec. Co. sent Lever sundry					
		bills				1000.	

		By cash, Ec. Co. sent Lever sundry bills	1000.
Mar.	10	By cash, ck. R. C. P. cabled Herman & pd. to Horne	14650.
	13	By cash, ck. R. C. P. sent Lockwood a/c Lesdick agree.	28000.
	18	By cash, Ec. Co. sent Lever sundry bills	2000.
10		By cash, Ec. Co. sent Lever sundry bills	1000.
	23	By cash, ck. R. C. P. sent R. & T. Co. a/c ledgers &c	34.50
	24	By cash, Ecuador Co. sent Lever-sundry bills	1500.
	27	By cash, Ecuador Co. sent Lever sundry bills	1650.
	30	By cash, ck R. C. P. sent Lever for Baldwin Loco.	1000.
Apr.	15	By cash, ck. R. C. P. Defriese a/c Insurance	1051.
20			
Apr.	23	By cash, ck. Ecu. Co. Defries a/c wire Duran	138.95
	29	By cash, ck. Ecu. Co. Defriese sundry bills	1550.
		By cash, ck. thro' Barrow, Wade to Ecu. £. 3000.	
		By cash, ck. to Lever sundry bills £. 1104, 6s. 4d.	
June	13	By cash, ck. R. C. P. to R. & R. certificate books	145.
30			

EXHIBIT C 3.

STOCK CERTIFICATE BOOK.

Stub No. 1	6 shares F. B. Adams, 1 to 6 inclusive, Mch. 3, '03
" No. 2	1 share Francis C. Green

Stub	No. 3	1 share	Joseph R. Swan
"	No. 4	1	Benoni Lockwood, Jr.
"	No. 5	1	Henry A. Bingham

Certificate No. 6 for 23,500 shares to Robert C. Pruyn and Robert Winsor, dated Mch. 23, 1903, sealed by Company and signed F. B. Adams, Pres. J. R. Swan, Treas.

Countersigned Mch. 20, 1903, by Registrar and Transfer Co.

Marked canceled by Transfer Co. Apl. 3, 1903 and affixed to stubs.

Certificate No. 7 for 11,500 shares to Robert C. Pruyn and Robert Winsor, dated Apl. 2, 1903, executed as above, and marked canceled June 29, 1903. In stub receipted for as shares, 7 to 440 inclusive, by J. R. Swan.

Certificate No. 8 for 12,000 shares to Robert C. Pruyn and Robert Winsor, dated Apl. 2, 1903, executed as above and marked canceled June 29, 1903.

20

" No. 291 for 3250 shares to Robert Clarence Pruyn, April 2, 1903.

EXHIBIT C 4.

STOCK LEDGER.

(See testimony of Charles C. Black.)

EXHIBIT C 5.

TRANSFER BOOK.

EXHIBIT C 6.

CERTIFICATE OF INCORPORATION OF ECUADOR CO.

(See *Exhibit C 1.*)

EXHIBIT C 7.

MEMO. N. Y. DEC. 10/02.

\$2,750,000 Ecuadorian Assn. (New Co. \$5,000,000	
for	
	Duran property, 90,
	Lands at base of mts., 35,
10	Coal mines, rwy., 30,
	For docks at Duran, 30,
	185,000
	Working capital, 250,000
	435,000

EXHIBIT C 8.

Dec. 10, 1902.

*Robert C. Pruyn, Esq.**New York City.*

DEAR SIR:

- 20 Replying to your inquiries, I beg to say that The Guayaquil & Quito Railway Co. was organized under the laws of the State of New Jersey. The authorized capital as provided in the contract between the Government of Ecuador and myself and associates, is
- \$12,262,000 of 6 per cent. First Mortgage bonds.
 - 5,250,000 of 7 per cent. Cumulative Preferred Stock.
 - 7,032,000 of Common Stock.

The Government of Ecuador was to receive \$750,000 of the First Mortgage Bonds, and 49 per cent. or \$3,445,680 of the Common Stock in payment of the railway constructed between Duran and Chimbo.

The Guayaquil and Quito Railway Co. entered into a contract with the South American Railway Construction Co., a Company organized under the laws of the State of New Jersey with a capital of \$50,000, and agreed to give \$11,532,000 of Bonds, being all of the bonds issued except the \$750,000 due the Government, the entire \$5,250,000 of Preferred Stock being the entire issue, and \$3,568,320 of Common Stock, being 51 per cent. of the total issue, for the construction and equipment of the railway to Quito. The South American Railway Construction Co. transferred this contract to the Ecuador Development Co., a Company organized under the laws of the State of New Jersey, with a capital of \$200,000, which was subscribed to and paid for at par, the stockholders of the South American Railway Construction Co. agreeing to accept the Railway bonds at 70 per cent. for their stock.

The Ecuador Development Company assigned this contract to the Ecuador Association, Limited, a corporation organized under the laws of Great Britain, with an authorized capital of £500,000. This capital can be increased by a vote of the majority of stockholders. The Ecuadorian Association acquired \$90,000 of The Ecuador Development Co. stock at par, \$94,000 at three for one, which was paid for in Ecuadorian Association shares at par, and \$10,000 was purchased at 375, and paid for in railway bonds at 50. \$6,000 of the stock is to-day held by Lord Stanmore. The Ecuadorian Association are to give the Ecuador Development Co. 10 per cent of the net profits realized on construction, but as they own \$194,000 of the \$200,000 capital, this 10 per cent. of profit would practically come to the Association.

In June, 1901, the Ecuadorian Association issued £1,000,000 of 6 per cent. Debentures, which were secured by \$3,586,320 of Common Stock, \$5,000,000 of Preferred Stock, and \$10,000,000 of Bonds. These debentures were issued at 90 and a cash underwriting commission of 5 per cent. given the underwriters. In addition to this commission a bonus of \$225,500 Preferred and \$225,500 of bonds were to be given. The Preferred stock and bonds have not been delivered. The Association is now prepared to deliver the preferred stock, and have agreed to deliver the bonds after completion of the railway to Guamote.

Foreign Debt of Ecuador.

In 1897 the Council of Foreign Bondholders in London held certificates of the Government of Ecuador to the amount of £700,000. The Government had paid no interest on these certificates and practically repudiated the indebtedness. It was considered advisable by both the Government and myself to purchase this debt. I made a contract with the Council of Foreign Bondholders, in which I agreed to pay them 5 per cent. of the face value of their certificates in cash and 35 per cent. in railway bonds at par. We were to repurchase these bonds at par from the Council of Foreign Bondholders semi-annually at the rate of \$91,000 per annum. The Council of Foreign Bondholders were to deposit £300,000 of the old Government certificates with Robarts, Lubbock & Co., of London, to cover our guarantee of \$500,000 provided in the contract between the Government and the Railway Company, which \$500,000 was to be forfeited if the Railway was not completed to Quito by November 26th, 1908. The Council were to retain the remaining £400,000 of certificates until we had repurchased all the Railway bonds as per contract. The Government of Ecuador repaid us 5 per cent. in cash, delivered us \$750,000 of Railway bonds, which they had received for the

Railway between Duran and Chimbo, and issued £80,000 of bonds payable in gold Condor Bonds bearing 4 per cent. interest. These £80,000 of Condor Bonds are now ready for delivery, and are to be substituted with Robarts, Lubbock & Co. for the Government certificates to cover the \$500,000 guarantee. Under the arrangement with the Council of Foreign Bondholders the Ecuadorian Association, have repurchased \$400,000 of the \$1,014,000 of bonds given the Council. The Council has \$37,000 in cash on hand, and are due an additional \$37,000 on the 1st of January.

Assets of the Ecuadorian Association.

Common Stock,	\$3,586,320	
Preferred Stock,	3,932,346	
Bonds,	2,250,000	
Condor Bonds,	£80,000	
Due from New York Syndicate,	£70,000	
Due from surplus interest, Jan. 2, after deducting interest on loans,	\$47,500	
Cash in the Sinking Fund, Jan. 2, which is made available by selling the sinking fund bonds repurchased from the Council of Foreign Bondholders at 80.,	79,580	20
Interest on Condor Bonds,	47,300	
Amount due by J. P. McDonald and J. P. McDonald Co., \$300,000, of which \$120,000 is secured,	120,000	
Coal Mines at Columbe.		
Various other mineral properties.		
About 3,000,000 acres of land on the line of Railway between Barraganetal and Naranjito for which must be paid some time during next year, 7 centavos per quarter, a quarter being equal to 2½ acres. This land is extremely valuable, the Railway running through it for a distance of about 25 miles.		30

Liabilities of the Ecuadorian Association.

Glyn, Mills, Currie & Co. secured by	
1,000,000 G & Q Ry. Bonds,	\$500,000
New York Syndicate, secured by 1,250,000	
of G & Q Bonds,	500,000
Open accounts of New York, London &	
Ecuador, including Council of For-	
ign Bondholders \$37,000,	119,000
Preferred Stock due New York Syndicate	
10 for bonus on its loan of \$500,000, ..	100,000
Preferred Stock due New York Syndicate	
for bonus on its loan of \$500,000, ..	100,000
Preferred Stock due for commissions on	
underwriting debentures,	225,000
G & Q. Railway Bonds due as commission	
on underwriting of debentures,	225,000

Securities to be Earned.

Securities to be received from the depository
Bank, Glyn Mills Currie for construc-
20 tion between Alausi and Quito as work
progresses.

Preferred Stock,	1,317,654
6 per cent. Railway	
Bonds,	3,174,283

Estimated cost of completing Railway to	
Guamote,	\$50,000
From Guamote to Columbe, 4 miles,	40,000
From Columbe to the Coal Mines, 6 miles,	35,000
From Columbe to Quito,	1,540,000
30 Additional Equipment,	300,000
	\$1,965,000

The Ecuadorian Association have now under discussion with the Govt. of Ecuador an arrangement in reference to releasing the Government from their agreement provided under Art. 21 of the contract, allowing the Railway Co. to use the main road of the country from Cajabamba to Quito. The Government have proposed, if the Railway Company will release its right to use this road and will construct the railway alongside of the road, the Government will agree to reinstate the 7 per cent. Preferred Stock to all the privileges provided for under Art. 12 of the contract of June 14, 1897, which provides that the Preferred Stock shall receive the net earnings of the railway to an amount equivalent to 7 per cent. dividend on the \$5,250,000 of Preferred Stock. This arrangement was abrogated in the Supplementary Contract of November 26th, 1898. They further propose to allow the Company to issue \$2,000,000 of additional 6 per cent. bonds, which are to be subject to the same benefits as the \$12,282,000. 10

This arrangement would give the Ecuadorian Association the net earnings of the Railway to the extent of \$343,000 per annum, being the 7 per cent. on the \$4,900,000 of Preferred Stock, and, in my opinion, when the Railway is completed to Guamote the net earnings will be sufficient to meet this charge. 20

Duran Property for Town and Terminals, etc.

This property comprises about 5,000 acres and owns the river front opposite the City of Guayaquil for 5 miles. The Ecuadorian Association have made a contract to purchase this estate for 180,000 Sucres (\$90,000 gold). There are over 1,700 cattle, 200 horses and various other live stock on this estate, which is worth about 60,000 or 70,000 Sucres. As soon as a portion of this property is laid out in Lots, property to a very large value can be sold to people who are now awaiting to locate there, and within a short time a large and prosperous town can be built at this point. 30

Coal Mines.

These mines are situated six miles from Columbe. The coal is of an excellent quality, in veins of over 6 feet, and can be mined very economically. The price of coal on the West Coast of South America is from 9 to 10 dollars a ton. If the Company would offer to sell this coal at Guayaquil at say \$6 a ton, making it an object to the steamers passing up and down the West Coast to come into the Port for coaling, at least a thousand tons a day could be sold at Guayaquil, and from the best information that I can obtain, this coal could be laid down at Guayaquil at not exceeding \$2.50 per ton, which would allow the Railway Co. \$1.25 per ton for freight for hauling the coal a distance of 116 miles, all of which is down grade, with the exception of 6 miles which has a 3 per cent. up grade.

The Association only owns the mineral right and not the surface of the land in which the coal is found. The coal is on a Hacienda owned by
20 and contains 100 square miles. The owner is asking between 30 to 40,000 Sucres for this estate. The land is wonderfully rich, producing the finest wheat, corn and grass imaginable. If the mines are developed to an output of 1,000 tons a day a large mining town would necessarily spring up at this point and property to many times the present value of the whole estate would be readily disposed of.

Voting Trust.

Under an arrangement between Messrs Dick, Lis-
30 man, myself, Abram S. Hewitt, Mr. Farr and Mr. Lee, a majority of stock of the Ecuadorian Association was to be deposited with the Continental Trust Co. and to be voted by five trustees to secure the management of the

Association in New York. It was agreed that the following parties were to deposit their stock with the Continental Trust Co.:

Archer Harman,	140,000
Dick, Lisiman and Associates,	44,000
Abram S. Hewitt & Erskine Hewitt,	25,000
T. H. Powers Farr,	7,000
Chas. H. Lee,	3,000

Messrs. Dick and Harman deposited their stock, but Messrs. Hewitt, Farr and Lee have not deposited their stock because the agreement under which it is to be deposited is not satisfactory to them in its present form. 10

I made, on behalf of the Association, an agreement with the Govt. of Ecuador covering the extension of the Railway to Ibarra and Cuenca. This agreement was extended for another year as the Association had not been able to complete their surveys and furnish the Government with an estimate of what they were prepared to undertake the construction of these two branches. I hand you herewith copy of the contract for this extension.

I also made, on behalf of the Association, a contract 20 with a Mr. Villamil, covering the purchase of the Island of Florian and the right to all of the cattle and mineral deposits upon the other Islands of the Galapagos group. Under this agreement the Association has paid out about 40,000 Sucres, there being still due about 200,000 Sucres.

I also enclose you copy of the report upon this property.

I further hand you a statement of the accounts of the Association as of this date. 30

Yours very truly,
(sgd.) ARCHER HARMAN.

P. S. The Balance Sheet prepared by Mr. Stephen Little, bringing the accounts of this Company up to November 30th will be ready in the course of a week when I shall be pleased to send you a copy of same.

EXHIBIT C 9.

Dec. 10, 1902.

*Robert M. Pruyn, Esq.,
New York City.*

DEAR SIR:

The authorized Capital of the Ecuadorian Association is £500,000, of which £435,000 has been issued, and there remains in the Treasury of the Company £65,000. I am anxious to dispose of this Treasury stock for the
10 purpose of acquiring the Luque property at Duran at a cost of \$90,000, for providing coal docks at Duran at a cost of about \$30,000, and developing the coal mines at Columbe up to an output of 1,000 tons a day, at about a cost of about \$30,000. If you can see your way to purchase this stock and become identified with the management of the Company, I will arrange to secure you an option on a further £40,000 of Ecuadorian Association stock at 50c. on the dollar. I would prefer increasing the capital of the Ecuadorian Association to provide the
20 stock to cover this option, but in the event you do not approve of this, I will give an option of £40,000 of my own stock, although I frankly admit I prefer retaining all the stock I have in this Company. However, to obtain your valuable cooperation, I will arrange this matter as it may best suit you. In the event you decide to purchase the £65,000 of Treasury stock, I would recommend that an arrangement be made to pool, for the purpose of controlling the management of the Ecuadorian Association in New York, the stock purchased by you,
30 £65,000, my stock £140,000, Messrs. Dick & Lisman stock £44,000, Messrs. Hewitt, Lee and Farr £35,000, a total of £284,000. I have discussed this with Mr. Lisman, and he fully appreciates the enormous advantage your association with the Company would be, and expressed his willingness to join a pooling arrangement that we may mutually agree upon. The Board of Directors of the Railway Company and the Ecuadorian

Association, as well as the management of both Companies, will be made entirely satisfactory to you.

I hand you herewith a statement of the various loans which I have personally outstanding, together with the the collateral securing the same, and a list of the gentlemen interested with Messrs. Lisman and Dick.

Yours very truly,

ARCHER HARMAN.

EXHIBIT C 11.

Dec. 12th, 1902. 10

*Robert C. Pruyn, Esq.,
Waldorf Astoria, New York City.*

DEAR SIR:

I received the following cablegram from our General Manager in Ecuador on Wednesday afternoon:

"Guayaquil, Ecuador, Dec. 10th.

Archer Harman, New York.

Luque demand payment immediately 5,000 sucres as guarantee sale offer 180,000 sucres offer good two 20 months 5,000 sucres to be deducted from purchase price we recommend it should be done otherwise it may be impossible to buy any price. Answer. John A. Harman."

I have replied:

"We recommend paying Luque 5,000 Sucres extension four months you are authorized to pay up to 7,000 Sucres for 4 months extension. Ecuadorian Association."

I think this will be accepted and in that event there will be no necessity for hurrying you in the present 30 transaction.

The more I consider your suggestion to confer with Messrs Glyns before concluding the purchase of the treasury shares, the more it appeals to me, as I am confident Messrs Glyns will appreciate the importance, both to the general buisness, which they are largely interested in, and to myself in whom they take a friendly interest, in securing your coöperation in the management of the affairs of the Company in New York, and it is more than probable that they will give you assurances that
10 will make it quite simple for you to handle such financial matters as may be necessary on this side.

Mr. Lisman agreed today to extend the payment of my obligation of \$10,000 due today until Monday, but requested me to arrange payment on that day. If you could see your way to assist me in this I will greatly appreciate it.

Yours very truly,
(sgd.) ARCHER HARMAN.

EXHIBIT C 10.

20

Dec. 30, 1902.

*Robert C. Pruyn, Esq.,
36 Wall Street, New York.*

DEAR SIR:

We beg herewith to confirm the arrangement made with you in reference to the purchase from you of the stock of the Company you are to organize under the laws of the State of New Jersey, which shall be called the "Duran Terminal Company." We agree to have transferred to you a certain option held by John Haviland for
30 the purchase of the Luque estate, controlling the Guayas River front at Duran; you are to acquire and pay for this property and transfer the same to the Duran Terminal Company, and in addition place in the Treasury of the Duran Terminal Co. \$36,000 in cash. The Ecua-

dorian Association agree to deposit an escrow immediately with the Union Trust Co., of Albany, or with Glyn Mills Currie & Co., the entire capital stock of the Duran Terminal Company, and if within six months from this date the purchase and transfer of the Luque Estate to the Duran Terminal Company is effected, and title made satisfactory to the attorneys of The Ecuadorian Association, and you shall have deposited in the Treasury of the Duran Terminal Co. the sum of \$36,000, and said Duran Terminal Company shall be free from all debt, 10 the Union Trust Company, of Albany, or Glynn, Mills Currie & Co., shall deliver to you the £65,000 of the fully paid capital stock of the Ecuadorian Association, Limited, and deliver to us the entire capital stock of the Duran Terminal Company, otherwise you shall at once restore the John Haviland option upon the Ecuadorian Association reimbursing you for your actual outlay on the Duran Terminal Company. We will at once enter into an escrow agreement with you covering this understanding, and refer you to Mr. Benoni Lockwood, Jr., 20 of Messrs. Rollins & Rollins, our attorneys.

Yours very truly,
(sgd.) ARCHER HARMAN.

EXHIBIT C 12.

Letter of Pruyn to Harman, January 18. *(printed in full page 147)*

EXHIBIT C 13.

Letter of Harman to Pruyn, January 30. *(printed in full page 143)*

EXHIBIT C 37.

January 2, 1903.

*Frederick B. Adams, Esq.,
38 State Street,
Albany, New York.*

MY DEAR MR. ADAMS:—

I have just received the following cablegram from Major Harman in Guayaquil:—

10 “Luque will accept an offer of settlement
 six months, only immediate payment of
 \$5,000. Awaiting answer. Telegraph at
 once.”

And in return I have cabled Major Harman that money will be available next Wednesday.

Will you see that your arrangements are made so that we can have the amount available then? I understand you will be here on Monday at about three p. m. without fail.

Yours very truly,
20 BENONI LOCKWOOD, JR.

EXHIBIT C 38.

January 6, 1903.

*Frederick B. Adams, Esq.,
Care of Mr. R. C. Pruyn,
36 Wall Street,
New York City.*

MY DEAR MR. ADAMS:—

I wish to acknowledge receipt of your check for \$130.00, drawn to the order of my firm, to cover dis-
30 bursements in the matter of incorporating the Duran Terminal Company. We will send you an itemized account of the expenditures in a day or so.

Thanking you, I beg to remain,

Yours very truly,
BENONI LOCKWOOD, JR.

EXHIBIT C 39.

38 State Street.

ALBANY, NEW YORK, January 8, 1903.

Mr. Benoni Lockwood, Jr.,

New York City.

DEAR MR. LOCKWOOD:—

I hold the receipt of the Morton Trust Co. for \$5,000, dated January 7th, which sum they agree to transfer by cable to the Banco Comercial Y Agricola for the credit of John A. Harman; the costs of cable and commissions 10 to be paid when same are computed. I have arranged with Mr. Spence to forward to me a memorandum of such costs which will be paid upon the receipt of the memorandum.

Yours very truly,

F. B. ADAMS.

EXHIBIT C 40.

January 9, 1903.

F. B. Adams, Esq.,

38 State Street,

Albany, New York.

20

DEAR SIR:—

I received your letter of January 8th. The arrangement you have made in regard to transmitting money to Ecuador is entirely satisfactory.

I have not heard from Major Harman as yet, but expect to in the course of the next two or three days. You will be notified at once.

I understand that you will attend at this office on Tuesday, January 13th, at eleven a. m. for the purpose 30 of organizing the directorate of the Duran Terminal Company. The incorporators meeting has been held and the following directors were elected for this year:

Frederick B. Adams, Joseph R. Swan, Henry A. Bingham, Robert C. Pruyn and Benoni Lockwood, Jr.

Yours very truly,

BENONI LOCKWOOD, JR.

EXHIBIT C 41.

January 13, 1903.

*Frederick B. Adams, Esq.,
38 State Street,
Albany, New York.*

10 MY DEAR MR. ADAMS:

I hand you herewith a draft of the minutes of the meeting of the Directors of the Duran Terminal Company held to-day. Be kind enough to hand these to the Secretary, Mr. Swan. Also copies of the different papers, which it was decided should be entered in the minute book as matters of information. I also enclose for Mr. Swan a statement of the disbursements made by Rollins & Rollins on behalf of the Duran Terminal Company against a check for \$130, which was deposited here
20 with us, which shows a balance in our hands to the credit of the Duran Terminal Company of \$21.58.

Referring to your request of the other day, we will render you our bill for services in this matter as soon as the escrow agreement is completed in form satisfactory to yourself, which will be, of course, the coming week.

We also send you stock certificate book. Will you be kind enough to have the shares already subscribed for made out in favor of the following parties:

30	Robert C. Pruyn,	46 shares.
	Benoni Lockwood, Jr.,	1 share.
	Joseph R. Swan,	1 share.
	Henry A. Bingham,	1 share.
	Frederick B. Adams,	1 share.

The stock transfer books will be kept in the New Jersey office, and will be posted by the Registrar and Transfer Company.

Yours very truly,
(Enc.) BENONI LOCKWOOD, JR.

EXHIBIT C 42.

38 State Street,
Albany, N. Y. January 15, 1903.
Mr. Benoni Lockwood, Jr.,
New York City.

10

MY DEAR MR. LOCKWOOD:

I have your letter of the 13th and have noted its contents. I have turned the papers over to Mr. Swan, the secretary. The Stock certificate book has not yet arrived, but upon its receipt by us, I shall have the certificates drawn as you suggest, and either forward them to you for endorsement, or bring them down some time next week.

Yours very truly,
F. B. ADAMS. 20

EXHIBIT C 43.

January 15, 1903.
Frederick B. Adams, Esq.,
38 State Street,
Albany, New York.

MY DEAR MR. ADAMS:

I have just received the following cable from Mr. Harman:

"Lockwood organize Columbe Coal Company with Adams." I will at once proceed to organize the Company under the laws of New Jersey with the same capital

30

as the Duran Terminal Company, with both yourself and Mr. Swan on the Board, the other members being Mr. Woodhull, myself and the New Jersey representative.

I do not wish to pass the control of this Company, carrying with it the title to the coal mines, until we have some further information, and the Association is provided with some written testimony showing how this matter stands.

10 If you will let me know what day the latter part of next week you will come on, I will have matters all ready for you. I can send the preliminary papers to Albany for you to sign.

Yours very truly,
BENONI LOCKWOOD, JR.

EXHIBIT C 44.

38 State Street.

ALBANY, NEW YORK, January 16, 1903.

Mr. Benoni Lockwood, Jr.,

New York City.

20

DEAR SIR:—

I am in receipt of your letter of the 15th containing Mr. Harman's cable. I assume that the amount of paid-in Capital of the new company will be the minimum amount required by the laws of New Jersey, and I shall hold myself in readiness to pay such funds as will be necessary at the proper time. I understand your reluctance to pass the control of this company as you would do, were its Board composed of the same men as that of the Duran Company, and I hope that before long we shall have more definite and satisfactory information both from Mr. Pruyn and Mr. Harman.

30

I shall be in New York on Thursday and Friday of next week, and shall bring with me the Stock Certificate

book of the Duran Company which was received this morning.

Yours very truly,
F. B. ADAMS,
Secretary.

EXHIBIT C 45.

January 17, 1903.

*Frederick B. Adams, Esq.,
38 State Street,
Albany, New York.*

10

MY DEAR MR. ADAMS:—

I have your letter of January 16th and will continue the organization of the Columbe Coal Company as stated. The necessary outlay on your part at this time will only be \$160 plus our charges for organization, etc.

It is necessary that at least \$1,000 of stock shall be subscribed by the incorporators, this constituting the amount of capital stock with which the Company will commence business. It seems clear, however, that the law does not require that this \$1,000 shall be paid in cash; it may be paid in property if the directors so decide.

20

Your Mr. Swan can be appointed Treasurer of the Company in order to protect you until further orders from headquarters.

Yours very truly,
BENONI LOCKWOOD, JR.

EXHIBIT C 12.

CARLTON HOTEL,
PALL MALL,
LONDON. 30
January 18/03.

DEAR MR. HARMAN,

I am sorry that I receive your note, written last night, just as I am leaving.

If I understand its meaning correctly, I fear that no amount of telegraphing will arrange matters between us.

It would seem to admit of no other construction than that you assume to be free to negotiate the sale of the Galapagos property which I have already definitely arranged to buy with you. How am I to know but that any other matters agreed upon may be changed by your necessities?

10 Your note would surely be read by anyone as a strong demand upon me to take up the Dick loan.

I speak plainly and think that it would be unwise to let such a situation continue or to attempt to treat it by telegraph.

You had better come to Paris or else, if my understanding is right, let us separate right here.

Mr. Green will hand you this and take any messages from you.

Yours very truly,

ROBERT C. PRUYN.

20

Mr. Archer Harman,
Berkeley Hotel.

EXHIBIT C 46.

CABLEGRAM.

From London
To Carillo, N. Y.

Jan. 23, 1903.

30 Organize New Jersey the villamil company with pacifying capital full paid issued against othematome cash and options on galapagos islands reconvert oxydoide for treasury purposes adams naming board.

HARMARCH.

(ANNEXED TRANSLATION.)

January 23, 1903.

Organize New Jersey the Villamil Company with \$50,000 capital full paid, issued against \$5,000 cash and

options on Galapagos Islands. Reconvert \$200,000 for treasury purposes, Adams naming Board.

EXHIBIT C 47.

38 State Street,

Albany, N. Y.

January 24, 1903.

Mr. Benoni Lockwood, Jr.,

New York City.

DEAR MR. LOCKWOOD:

I have your letter of Jan. 17th and beg to enclose, herewith, check for \$160 for necessary disbursements in forming the Colombe Coal Co. I expect to be in New York on Wednesday of Next week.

As you probably know by this time, I executed the power with Mr. Allen in Spanish on Friday and Mr. Allen promised to send it to Ecuador.

Yours very truly,

F. B. ADAMS.

EXHIBIT C 48.

(Carbon copy letter Benoni Lockwood, Jr., to Frederick B. Adams.)

20

Jan. 26, 1903.

Frederick B. Adams,

38 State St.,

Albany, N. Y.

MY DEAR MR. ADAMS:

I received the following by cable from Mr. Harman on Saturday.

"Organize under the laws of New Jersey the Ecuador Company with \$1000 capital paid and power to increase

to \$5000,000, Adams naming board. You must avoid publicity. Meeting of the Debenture certificate holders is being called. We must have all New York proxies. Request Adams to have Green given power of attorney to represent the ecuador company, the Duran Company and the Colombe Coal Company in Great Britain. Forward this organization immediately. Organize under the laws of New Jersey the Villamil Co. with \$500,000 capital full paid issued against \$5,000 cash and options
10 on Galapagos Islands. Reconvert \$200,000 to be held by the treasury, Adams naming board."

You will see by this that Mr. Pruyn and Mr. Harman have evidently gotten together in London. I presume that the whole deal will now go through. I will go right ahead and complete the organizations and wish you would come down on Friday if convenient and we can go into particulars.

This cable comprises all the information I have received, though there may be a mail waiting for me at the
20 office in New York. I expect to return home tomorrow night and be in the office Wednesday morning.

Vallimil is the man who owns the principal island of the Galapagos group. I suppose you will receive confirmation from either Mr. Windsor or Mr. Pruyn as to the new money to be paid in as this calls all together including fees and disbursements for an expenditure of about \$7,000.

Yours very truly,

EXHIBIT C 49.

30 38 State street,
Albany, N. Y.

January 26, 1903.

*Mr. Benoni Lockwood, Jr.,
New York City.*

DEAR MR. LOCKWOOD:

I am in receipt of a letter from Mr. Pruyn giving certain particulars of the formation of the Columbe Com-

pany, and I should like very much to see you some time on Wednesday that may be convenient to you. I shall arrive some time Tuesday evening at the Yale Club, 30 W. 44th St., and shall be glad if you can send me word there what time will be most convenient to meet you.

Yours very truly,
F. B. ADAMS.

EXHIBIT C 51.

January 26, 1903.

Frederick B. Adams, Esq.,
38 State Street,
Albany, N. Y.

10

DEAR SIR:

We beg to hand you enclosed the following certificates of stock of the Duran Terminal Company:

Certificate No. 1 for 46 shares, issued to Robert C. Pruyn;

Certificate No. 2 for 1 share, issued to Benoni Lockwood Jr.;

20

Certificate No. 3 for 1 share, issued to Joseph R. Swan;

Certificate No. 4 for 1 share, issued to Frederick B. Adams;

All these certificates have been duly countersigned by the Registrar and Transfer Company.

Will you kindly acknowledge the receipt of same, and oblige,

Yours very truly,
BENONI LOCKWOOD, JR.

(Enc.)

30

EXHIBIT C 50.

CABLEGRAM FROM LONDON.

To Carilloc, N. Y.

Forward agreement between Duran Terminal Abe-
teamas to Auigoraba transfer attimo pruyñ pofiant
birlonga harmarch.

(ANNEXED TRANSLATION.)

Forward agreement between Duran Terminal and
Ecuadorian Association to enable us to transfer E. Ass
to Stock to Pruyñ.

Very important. HARMARCH.

EXHIBIT C 52.

38 State Street,
Albany, N. Y.
Rollins & Rollins,
New York City.

January 27, 1903.

GENTLEMEN:

I beg to acknowledge receipt of yours of the 26th with
Duran Terminal certificates enclosed. You have in your
20 office the certificate book of the Duran Company. In
that book is certificate No. 5 for one share to Mr. Bing-
ham. May I trouble you to get Mr. Bingham's endorse-
ment on this certificate and send it to me with the cer-
tificate book at your earliest convenience?

Please accept our thanks for the trouble you have al-
ready taken in this matter.

Yours very truly,

F. B. ADAMS.

EXHIBIT C 13.

THE BERKELEY HOTEL,
PICADILLY, W.
30th January, 1903.

*Francis S. Green, Esqre.,
Paris.*

MY DEAR MR. GREEN:

I am enclosing you to-night two draft assignments prepared by Messrs. Birchams. Please forward these on to Mr. Pruyn. I have not read them myself, and have no doubt a great many changes will have to be made, but these two documents will give Mr. Pruyn some idea of what I am doing.

I am also enclosing you a note just received from Messrs. Birchams, in which they state that they are only drafts, and have not been settled by Counsel and are subject to change.

Yours truly,

EXHIBIT C 53.

38 State Street.

20

ALBANY, NEW YORK, FEBRUARY 4, 1903.

*Mr. Benoni Lockwood, Jr.,
New York City.*

MY DEAR MR. LOCKWOOD:

I have your letter of February 2d and note your correction of my letter of the 31st regarding the \$30,000 advance, and understand that the advance was made to the Trustees and not to the Association. I had no definite instructions from Mr. Pruyn regarding this point. My only understanding being that the money was to be used for construction expenses in completing the road to Columbe. I find that on January 24th I sent a check for \$160 to be credited to the account of the Columbe Coal Company against disbursements incident to the incorporation, so that the check for \$125 which I gave

30

you yesterday should be credited to the Villamil Company. This, I think, straightens out the matter of expenses incident to the incorporation of all the four companies.

I would acknowledge the receipt of a copy of letter from Major Harman, and note what he says regarding the Duran Company. I would also advise you that I have this day authorized the United States Mortgage & Trust Co., through their Mr. Brewer, to deliver to
10 you \$25,000 of the 6 per cent. Bonds of the Guayaquil & Quito Railway Co., and to accept receipt therefor from you acting as agent for Archer Harman.

With regard to the amount, approximating \$4,000, which will be due to Mr. Harman in case I can dispose of the Grace Bonds, I expect to be able to let you know definitely by Friday what I shall be able to do. You may rely on me to do whatever I can to help you and Mr. Harman in the matter, and at the same time I must protect Mr. Pruyn.

20 Regarding the matter of the Jap. The Prince, that I was talking with you about over the telephone this morning, has not been heard of in the last day or so and his address is at present unknown. I happen to know of another, however, Edward E. Nakanishi by name, who can be found at the Japanese Mission at 105 East 54th St., New York City. This man's cooking is excellent I know from experience, but he is engaged to come to Albany on the 1st of May and if you succeeded in getting him he would only be available until that
30 time. The Mission whose address I have given you is recommended very highly by one of my friends here and you may be able to pick up a good one there. I understand that if the head of the Mission says that the man he recommends is honest, there will be no question about the man's honesty. I am sorry you could not get the Prince, but you may be able to get a commoner who will do just as well.

Yours very truly,

F. B. ADAMS.

EXHIBIT C 54.

February 4, 1903.

My DEAR Mr. ADAMS:

I enclose copy of the letter I sent yesterday to Mr. Harman, as it is all in relation to matters in which Mr. Pruyn and yourself are interested. I received this morning from Mr. Harman the following cable:

"Feby. 4.

Lockwood:

Pruyn purchased from me 121 bonds, the proceeds **10** to be applied to paying Grace and Pruyn loans balance to my credit 25 bonds as Collateral \$8125 Pruyn loan are free. We require bonds to arrange personal business of considerable importance to Harman act as promptly as possible."

I also enclose you a letter from Mr. Justo de Susini. He seems to be a man of considerable importance to judge by his letter. My only fear would be that \$20 a week would not hold him for more than twenty years.

Don't forget to let me know about that Japanese and **20** find out if he can cook without killing.

I wish you would cable Mr. Pruyn at once and assure yourself in regard to signing a contract for Mr. Pruyn with the Association in regard to 65,000 shares of stock as was contemplated when Mr. Pruyn was here.

I have a cable from Mr. Harman which indicates that the old arrangement is still on.

I heard from Mr. Harman in response to my request asking him what the acreage of the Duran Terminal property was. His cablegram is as follows: **30**

"5200 (acres) under fence, balance unsurveyed. Probably 5000 (acres)."

This is almost double what I thought it was.

Yours very truly,

BENONI LOCKWOOD, JR.

Frederick B. Adams, Esq.,

38 State Street,

Albany, N. Y.

EXHIBIT C 55.

38 State Street,
Albany, N. Y.

February 5, 1903.

*Mr. Benoni Lockwood, Jr.,
New York City.*

My DEAR MR. LOCKWOOD:

I have yours of the 4th with enclosures. I shall endeavor to strangle Mr. Justo de Susini's hopes in as quiet
10 and peaceful a manner as possible.

I shall cable Mr. Pruyn at once regarding the signing of contract covering 65,000 shares of stock of the present association. Do you wish me to communicate with Mr. Harman and furnish him the information regarding officers, etc of the Duran Co. or am I to understand that you have furnished him with this information.

Yours very truly,

F. B. ADAMS.

EXHIBIT C 14.

20 ROME, Grand Hotel, Feb. 7, 1903.

My DEAR GREEN:

Received Harman's letter this a. m. Have wired you "Harman's letter received. Reply that I am satisfied with plan proposed providing my action can be postponed until after return."

You may read all this letter to H. as I write you, please explain, to avoid confusion.

I must assume that they know what they are doing and I only wish to avoid creating objection.

30 I must assume that they know what they are doing and I only wish to avoid creating objectionable situations, or committing myself and Mr. Winsor to an incomplete situation until we can review it together and then make our payments. It is easy to see complications

if we mix in the E. Co. affairs until we have definitely taken charge.

I particularly desire to avoid being obstructive and difficult to please. Plainly: my fear has been that all the Association property could not be transferred to E. Co. without the full consideration, hence my proposal of the escrow. If as they seem to say, it can be, why, I am satisfied. Adams and Lockwood can run the N. Y. end.

I wired you about loans. If Harman does not avail 10 himself of my offer for a personal loan, I can arrange as follows, in order to give the new E. Co. funds to carry on work:

The Coml. Bank & Union Trust Co. will lend 40,000 or say \$45,000 on the \$112,000 free bonds providing they have option on them for 6 months at say 55. The E. Co. to deposit proceeds with them and draw as needed. 6% 6 months. This can only be done after the E. Co. becomes active, but can be arranged beforehand. If the Sinking Fund money can be used, that, with this 20 loan, would carry them through until my return. After my return I anticipate no long delay in completing matters if Harman is back from Ecuador.

1. Can he arrange with Glyns to extend loan to E. Co. for one year at 1% above bank rate for 1 year—without giving option on bonds?

2. I want him to know how vastly it would help me in founding the E. C. solidly if he can arrange with Govt. of Ecuador to place divd. on preferred before bond interest was proposed and to have it agreed to at least while 30 he is in Ecuador.

3. Adams cables to ask whether he shall carry out and sign escrow depositing Duran stock against £50,000 Ecuadorian Association stock. I cabled him to do as Lockwood advised. Please submit to H. this thought: is it not better to keep Duran stock for E. Co. and not sell it to E. Association—provided, however, that H. can vote enough Association stock without it—but in this

latter case, should it not be an actual sale and not an escrow? I depend upon H. instructing Lockwood correctly.

4. As to assumption of liabilities of E. Association by E. Co. I am content to have E. Co. assume all definite acknowledged and just liabilities. Those unjust or doubtful should be left to adjustment in the future. Harman's list is satisfactory as he understands these things and I do not. Let me appreciate that those
 10 not guaranteed need not be abandoned, but in this condition could be better compromised.

This guaranty should be that payment should be made on (or in the option of the Co.) before say Aug. 1st or Sept. and not immediately, so as to defer them slightly. I should wish, however, to clear these things up just as soon as we started after my return. An assumption to pay at a certain time is the best substitute for the objectionable suggestion to give notes of the Columbe Coal Co. That is *bad*.

20 5. Has it been decided as to title of deposit with Roberts L. & Co.?

6. I presume that the *quid pro quo* referred to at the top of p. 2, would be arranged by the withholding of the ctfs. by Glyn until we paid in.

If the E. Co. is to assume charge, it is obviously necessary to transfer the assets of the Association to it. To safeguard the transaction, I am willing that the stock of the E. Co. should be held by Ctf. Trustees until agreement is completed. This only if necessary, of
 30 course. You see, I cannot see clearly how else the E. Co. can take everything over until we (Winsor and I) perform our part. I need to know their plan more definitely. Cannot Harman describe it, numbering the sections of his letter and keeping a copy so as to use that as a basis for telegraphic reference.

7.

8. Referring to copy Lisman letter sent me by H. Suggest that H. try to get L. to give him an option of

this to June 1st., viz. his offer to sell out everything at cost plus 6%, I feel quite sure we would take this up in assuming charge of E. Co.

9. H. should take great care that Lisman does not mischief during transfer of E. Association assets to E. Co.

10. An urgent cable from Adams some days ago in relation to renting offices at 36 Wall Street—my old offices—induced me to cable him to rent them for one year in my name. I can arrange transfer of lease after 10 we assume control of E. Co. Let H. note that I think it safer not to assume too great completeness in view of Dick and L's. attitude—the less information they have the better. The old offices can be occupied until my return and nothing said about the new.

I should like a copy of the colored railway map, and you need one.

Please read all my letters, etc., to Adams in Albany, so as to inform him.

In general; tell H. I want to do everything I can to 20 aid and ease him and only ask that he continues to do the same with me. I like the tone of his letter and its reasoning. I do want a clear statement of the plan proposed. It might be possible to wire in relation to the position of E. Co. stock during my absence.

I am sorry to think you are obliged to stay over and hope you can arrange to leave soon.

With kindest regards to yourself and Harman,

Faithfully yours,

(Sgd.) ROBERT C. PRUYN. 30

Mr. Francis C. Green,

Carlton Hotel, London.

EXHIBIT C 56.

TELEGRAM.

Dated Albany N Y 7
Feb 7, 1903.

To Benoni Lockwood, Jr.
32 Nassau

Cable authorizes me to increase advance to Trustees
to thirty seven five hundred and to act duran as you
think advisable

10

ADAMS

EXHIBIT C 57.

February 10, 1903.

*L. H. DeFriesse, Esq.,
Broad Street House,
Old Broad Street,
London, England.*

My DEAR Mr. De FRIESE:

I hand you herewith agreement between the Ecu-
dorian Association, Limited, and Robert C. Pruyn, exe-
20 cuted on Mr. Pruyn's behalf by Mr. Adams.

I am sending this to you at Mr. Adams' request, but
ask you not to deliver it to the Association except upon
their delivering to you in return on Mr. Pruyn's behalf
a duplicate original duly executed by two of the directors
with the seal of the Association attached. I am using
this method as there are not enough directors over here
to sign the document.

Yours very truly,

(Enc.)

BENONI LOCKWOOD, JR.

EXHIBIT C 58.

February 11, 1903.

My DEAR MAJOR:

I hand you herewith a copy of a preliminary draft of the plan of re-organization as it was recently submitted and passed by Glyns, Mr. Pruyn and your brother in London. This was given me by Mr. Lever who has just returned here from London. All the matters in it are in the course of being carried out as outlined; at least, that is the present programme. No doubt your brother has 10 written you fully in regard to this, but in case he has not had time, I know you wish to be kept informed.

Will you please see that Morley makes a deed direct to the Columbe Coal Company? Let me know what papers you need in this matter in order to satisfy the Ecuadorian law. You will note that the title of the Company is as given in this letter, the word "Company" being written out in full and the word "the" not being included in the title.

In order that there may be no mistake let me give you 20 now the title of the various companies, together with their officers:

The Ecuador Company, \$5,000,000 capital.

President, Frederick B. Adams.

Vice-President, Benoni Lockwood, Jr.

Secretary and Treasurer, Joseph R. Swan.

Directors, Robert C. Pruyn, Henry A. Bingham.

Duran Terminal Company, \$500,000 capital.

President, Frederick B. Adams.

Vice-President, Benoni Lockwood, Jr.

Secretary and Treasurer, Joseph R. Swan.

Directors, Robert C. Pruyn, Henry A. Bingham.

Villamil Company, \$500,000 capital.
President, Frederick B. Adams.
Vice-President, Benoni Lockwood, Jr.
Secretary and Treasurer, Walter W. Batchelder.
Directors, Robert C. Pruyn, Henry A. Bingham.

Columbe Coal Company, \$500,000 capital.
President, Frederick B. Adams.
Vice-President, Benoni Lockwood, Jr.
Secretary and Treasurer, Joseph R. Swan.
10 Directors, William S. Woodhull, Henry A. Bingham.

I wish you would have all business transacted directly with Mr. Adams. I believe we have completed arrangements to transfer the office to No. 34 Wall Street in connection with Mr. Pruyn's office.

I wish when you get this you would send me a photograph of Bridge 49 because there are a number of people up here who won't believe it unless they see it.

I am going to try and arrange matters so that I will
20 go to Ecuador next summer with your brother. Perhaps that will give you another chance to get away.

I think you can feel that matters are moving along in the right direction.

Yours very sincerely,

BENONI LOCKWOOD, JR.

EXHIBIT C 23.

TELEGRAM.

Feb 11 1903

Harman Sybarite London

Have wired Green to remain please write details now
30 subject to amendment

PRUYN.

EXHIBIT C 15.

*Robert C. Pruyn, Esq.,
Grand Hotel, Rome.*

Feb. 12, 1903.

DEAR SIR:

Mr. Green handed me your letter of the 7th inst. I delayed sending you a general plan, as it was impossible for me to determine how far the solicitors and their counsel would allow me to go. I received this morning counsel's opinion, approving my scheme, with some slight modifications, and I enclose you a copy of his **10** opinion. I would suggest the following:

1. Have the Ecuadorian Association transfer to the Ecuador Co., under a general deed of assignment, the following: (A) The Construction contract which, in my opinion, carries the \$500,000 deposit with Robarts Lubbock & Co. (b) Specifically a sign of the \$500,000 deposit with Robarts Lubbock & Co. (c) All stock in the Duran Terminal Company. (d) Contract between the Carnegie Steel Co. and the Ecuadorian Association, for rails, bolts, spikes and fastenings. (e) All construction **20** material, which may be in Ecuador or under contract for deliver. (f) All bills receivable, claims and money due to the Association.

2. The Ecuador Company to assume the following obligations: (a) Liabilities under construction contract. (b) To hold the Railway Co. harmless under the contracts between the Council of Foreign Bondholders and the Guayaquil and Quito Railway Co., which were assumed by the Ecuadorian Association. (c) To hold the Railway Co. harmless in reference to the \$700,000 of **30** Railway bonds advanced the Ecuadorian Association to deliver 10,000 tons of rails and 165,000 railway ties. (d) Assume and agree to pay outstanding accounts of the Ecuadorian Association to various parties in New York for construction material, aggregating about \$13,000. (e) Assume contract between Ecuadorian Association

and the American and Foundry Co. under which 4 passenger coaches have been built and stored at Wilmington, Delaware, at a cost of about \$10,000. (f) To assume and repay to Archer Harman, U. S. Mortgage Trust Co., Harvey Fisk & Sons, William C. Sheldon & Co., T. H. Powers Farr, Charles H. Lee, Dutilh Smith, McMillan & Co., and E. H. Norton, about 181 bonds with the interest on same, aggregating about \$13,000. (g) Assume and agree to repay Archer Harman the sum of about \$44,000 advanced by him at various times to the Ecuador Association. (h) To assume and agree to pay Messrs. Glyn Mills Currie & Co. the sum of £100,000 secured by 1,100,000 Guayaquil and Quito Railway Company, which is now passed due and payment having been demanded.

3. Upon the execution of the Deed of Assignment, as mentioned in No. 1, the Ecuador Company is to assume charge of construction in Ecuador, and take over all the business of the Ecuadorian Association in relation to construction in Ecuador, the trustees for the debenture certificate holders, current accounts with the Government, Council of Foreign Bondholders, and in fact, everything embraced in the Deed of Assignment.

4. There will be left in the treasury of the Ecuadorian Association, (a) Stock of the Ecuador Development Co., which is entitled to 10% of the profits realized on the Construction contract. (b) Equity in the bonds securing the loans of Messrs. Dick Lisman & Co.

5. The Ecuadorian Association to assign to the Columbe Coal Co. all its right, title and interest in the coal mines, known as the Columbe Coal Mines; the Columbe Coal Co. agreeing in construction thereof (a) To assume obligations and liabilities to the Ecuadorian Association in London and in Scotland £6,000. (An itemized statement of these claims will be enclosed.) (b) Certain debts due by the Ecuadorian Association to The Guayaquil and Quito Railway Company, amounting to about \$80,000,

Note.—An itemized statement of this account has been cabled for. It is made up of freights on construction material due by the Ecuadorian Association to the Railway Co., and the lease of certain engines and cars by the Railway Co. to the Ecuadorian Ass'n for construction purposes.

6. A meeting of the debenture certificate holders will be held on the 19th Feby., at which meeting it is proposed that the certificate holders shall sell their certificates to the Ecuador Co. for £5 of the Ecuador Com- 10
pany's stock for £100 of certificates. It is understood that Archer Harman, Glyn Mills Currie & Co. and Sir James Sivewright holding certificates aggregating £49,000 out of a total issue of £929,000 shall surrender their certificates to the Ecuador Co. without compensation.

Note.—We feel reasonably certain that something over £800,000 of certificates will be acquired by the Ecuador Company. Certain shareholders who refuse to exchange will be given 60 days in which to make this exchange or retain their certificates, it being Messrs. 20
Bircham's opinion that if the Ecuador Co. owns £65,000 of certificates, being $\frac{3}{4}$ th of the acquired issue, that they can call a meeting of the certificate holders at any time and declare the terms of the trust deed fulfilled and authorize its cancellation.

7. To issue a circular letter addressed to each shareholder individually of the Ecuadorian Association, offering them \$500 of stock in the Ecuador Co. for each £100 of shares held in the Ecuadorian Association. (a) 30
Accompanying the proposal of the Ecuador Co. to the individual shareholders of the Ecuador Association, will be a letter signed by many of the largest shareholders of the Ecuadorian Association, stating that they have examined the proposals of the Ecuador Co. and recommend the shareholders to exchange. (b) It is Messrs. Bircham's opinion that if $\frac{3}{4}$ ths of the shareholders of the Ecuadorian Association sell their shares to the Ecuador Co., it is immaterial to the Ecuador Co. whether

they secure the remaining 4th. An offer will be made to secure every share of the Ecuadorian Association, and it is thought that this can be done within the next 90 days.

8. The proposals made to the Council of Foreign Bondholders by Mr. Harman have been declined, but Mr. Horne, who controls the Ecuador business with the Council of Foreign Bondholders, has proposed to sell to Mr. Harman 200 of the special series of The
10 Guayaquil and Quito Railway bonds, held by the Council, at 80% of their face value, and also to deliver to Mr. Harman 21 bonds of the special series held by the Council, making a total of 221 bonds for the cash payment of \$160,000 to be paid on the 30th June—the Council to waive payment of the January sinking fund of \$35,000 and to deliver on the 30th June, all of the external bonds to the Government of Ecuador to be cancelled. The 200 bonds purchased from Mr. Horne
20 to be deposited with Glyn Mills Currie & Co., to rank equally with the 300 bonds held by the Council of Foreign Bondholders, and to participate in all drawings of the Sinking Fund by the Council of Foreign Bondholders. The interest and proceeds of these drawings to go to the Ecuador Co. The 200 bonds, less those drawn by the Sinking Fund to be held by Messrs. Glyn Mills Currie & Co. until the 300 bonds held by the Council of Foreign Bondholders are redeemed.

Note.—Enclosed is a statement of the source from which the sums are to come for the payment of \$160,000
30 for the 200 bonds, as well as a memorandum of agreement between Mr. Horne and Mr. Harman. If this agreement is entered into and carried out, it will release the £80,000 of Condores bonds, which will be deposited with Messrs. Glyn Mills Currie & Co. to cover the guarantee of the Guayaquil and Quito Railway Co. to the Government for the completion of the railway to Quito by November 1908.

The deposit with Messrs. Robarts Lubbock & Co. will be cancelled by the delivery to the Government of

the old certificates of the Government of Ecuador held by Messrs. Roberts Lubbock & Co. to cover the 5,000,000 guarantee.

9. £13,000 of Sinking Fund to be remitted this week by the Government is to be made available by selling to the Sinking Fund Guayaquil and Quito Railway bonds at 80. The proceeds of this sale to be paid over to the Ecuador Co. It is thought that this will give the Ecuador Co. sufficient funds to carry on its construction until the 20th day of April.

10

10. Mr. Green, Mr. Adams and Mr. Lockwood to be placed in the management of the Ecuador Co. in New York.

11. Mr. Harman to proceed to Ecuador at the earliest possible moment, to make an ad-referendum contract with the Government of Ecuador giving the 7% preferred stock the first earnings of the railway. This contract to be thoroughly binding, will have to be ratified by the Congress, which meets on the 10th day of Aug. but there will be no difficulty in obtaining the ratification.

20

12. The understanding between Mr. Harman and Mr. Pruyn is that Mr. Pruyn, Mr. Winsor and associates are to receive \$2,500,000 of the stock of the Ecuador Company for the consideration in the Memo. made at the Mid-Day Club, which is as follows:

Organize N. Y. Co. with 5 mill. capl.

Buy English Co. for \$2,250,000.

Turn in properties

Duran	90,000
Lands	35,000
Coal	30,000
Cash	30,000

30

185,000

Add working capital, say 250,000

435,000

13. The arrangement with Mr. Pruyn, Mr. Winsor and associates to take over the \$2,500,000 of stock of the Ecuador Co., for the amount as stated in No. 12, must be an agreement between Mr. Pruyn and the Ecuador Company, and not with Mr. Horne or the Ecuadorian Association. As the present Board of the Ecuador Co. understand the transaction, there will be no difficulty in having them enter into a contract between the above parties.

- 10 From my general knowledge of the business of the Ecuadorian Association in London, New York and Ecuador, I can see no serious difficulties for the Ecuador Co. to encounter between now and the middle of June. The essential point in reference to the Ecuador Co., in my opinion, is for you to nominate a Board of Directors, in whom you have confidence and on whom you can rely, and these Directors should be carefully considered and elected before the present shareholders of the Ecuadorian Association exchange their shares for
20 the Ecuador Company's stock. This is important, as, you, Mr. Winsor and associates may not take over your two and a half million of stock for some months. I have noted carefully your suggestion that the £65,000 of Ecuadorian Association stock should not be given in exchange for the Duran Terminal stock, and that it would be preferable to exchange the Duran Terminal stock for stock in the Ecuador Co. I fully concur with this idea, but I am afraid that without these 65,000 shares of stock being issued, that Dick and Lisman
30 might acquire sufficient shares of the Ecuadorian Association to make the pool agreement binding, in which case they could give us untold trouble. I also appreciate your advice in reference to Dick and Lisman—not to look with too much complacency upon the quiet attitude they have assumed.

The assignment contracts were passed by the Board today, and with some slight modifications to make them more perfect, will be executed on Saturday. After that

no one can prevent the consummation of this transaction. I regret to say that I cannot forward you by this mail statements of accounts, copy of agreement with Horne and Counsel's opinion, but I will get them all off by tomorrow's mail. I have been kept down in the City all day, and before leaving this morning was unable to check over the documents referred to.

Regretting that I have not had time to condense my letter and to make my statements clearer,

I am,

Sincerely yours,

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EXHIBIT C 59.

38 State Street.

ALBANY, NEW YORK, February 13, 1903.

*Mr. Benoni Lockwood, Jr.,
New York City.*

My DEAR Mr. LOCKWOOD:

I enclose, herewith, check for \$958.24 in payment of the enclosed bills. I have not yet received the documents for protocolization in the Duran matter, but expect that 20 they have been delayed somewhere and will reach me by to-morrow.

Will you kindly forward me a copy of the Eskrow Agreement which I signed on Tuesday and any letter, or portion of letter referring thereto which you may have written to Mr. De Friese. I shall have the final \$7500 of the advance provided for by the sale of Bonds to Mr. Pruyn sent you on Monday or Tuesday next if it is convenient for you to wait that length of time.

Yours very truly,

F. B. ADAMS.

30

EXHIBIT C 16.

THE BERKLEY HOTEL,
PICADILLY, W.,
Feb. 17th, 1903.

*Robert C. Pruyn, Esq.,
Grand Hotel, Rome.*

My DEAR Mr. PRUYN:

Mr. Green handed me your telegram in reference to the Ecuador Development Company's stock. We conferred with Messrs. Birchams yesterday and they advised very strongly against transferring this stock to the Ecuador Company. On receiving your cable last night, I conferred with two of my Directors, and we decided to assume whatever liability might be incurred, and have this stock included in the transfer to the Ecuador Company. Messrs. Birchams and Mr. Armistead, their Counsel, advised me that if we will prevent the Ecuadorian Association from going into liquidation for 90 days after this assignment is made, that under English law it will hold good, regardless of any judgments that may be obtained against the Company thereafter—in other words—if any suits are brought against the Ecuadorian Association, they must be defended and no judgments allowed to be entered until 90 days after the execution of this assignment.

Enclosed you will find a statement of all the open accounts of the Ecuadorian Association. If suits should be brought upon any of these accounts, judgment could be obtained in two or three weeks, as they have all been recognized and audited, and some of them represented by notes of the Company, and in the event that any of these parties should press for payment, they would have to be met at once. I am endeavoring to arrange with all these parties to defer payments until August or September. The Ecuadorian Association are assigning the note for £14,000 received from the Columbe Coal Com-

pany to the Ecuador Company, and the Ecuador Company agrees to pay these claims by the 1st of September. I have not succeeded in getting some of these people to agree to defer their payments, and it will become necessary in order to protest the assignment by the Ecuadorian Association to the Ecuador Company to pay such of these claims as cannot be deferred for 90 days. Lewis and Marks have insisted upon immediate payment and I am sending them cheque today.

I have checked off the items in the New York and London accounts that, in my opinion, will have to be met within the next 30 days. 10

I entirely approve the stand you have taken in reference to the Ecuador Development Company's stock, and fully appreciate the trouble that could be caused here by this stock remaining in the hands of the Ecuadorian Association, and it is much safer to meet these small amounts and have this stock transferred to the Ecuador Company than it would be to take the risk of future trouble. I have urged this upon Messrs Birchams repeatedly, but could not obtain their consent if it had not been for the firm cables you sent in reference to the matter. Major Harman has been cabling me urging that he be allowed to expend \$30,000 a month for the months of March, April and May, and while I fully agree with what he says and the importance of pushing the railway up to the coal mines, I do not see my way to provide this money. The utmost I can hope to receive from the Sinking Fund is \$40,000 and I may not receive that in time to meet the \$25,000 required in Ecuador by the 1st of March. In Major Harman's cables he states that it would cost us a large sum of money to get together our present organization once we allowed it to become unemployed—that his engineers would return to America, and that his principal construction men would go to Peru, where a great deal of railway construction is going on, and that he cannot hold his 20 30

organization together without expending about \$30,000 a month.

I am expecting to Leave London on the 25th February and shall remain in New York only 5 or 6 days and proceed at once to Ecuador. If you have any instructions or advice to give me, on receipt of this and other letters, I think it would be well for you to telegraph as letters sometimes take several days from Rome to London.

10 Trusting that the above may meet with your approval,
I am,

Sincerely yours,

EXHIBIT C 17.

STAMP IOS.

This Indenture made the 17th day of February 1903 BETWEEN THE ECUADORIAN ASSOCIATION LIMITED a Company incorporated under the Companies Acts 1862 to 1898 of the United Kingdom of Great Britain and Ireland (hereinafter called "the Association") having its Registered Office at 15 Hill Street Edinburgh in Scotland and its Head Office at 33 Wall Street in the City of New York party of the one 10 part and THE ECUADOR COMPANY a Corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and having its principal Office at 38 State Street Albany in the State of New York (hereinafter called "the Ecuador Company") party of the other part WHEREAS the Government of the Republic of Ecuador (hereinafter called "the Government") on the 14th day of June 1897 entered into a contract with Archer Harman and his associates for the construction completion and equipment of 20 a railroad and works connected therewith in the Republic of Ecuador (hereinafter called "the Railway") AND WHEREAS by an agreement dated the 10th day of February 1898 and made between the Guayaquil and Quito Railway Company (a Company organized in pursuance of Article 1 of the said contract of the 14th day of June 1897 and hereinafter called "the Railway Company") of the first part and the South American Railway Construction Company (hereinafter called "the Construction Company") of the second part it was 30 agreed that the Construction Company should at and within the times and subject to the conditions prescribed in the said contract of the 14th day of June 1897

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construct complete and equip the Railway for the consideration and in the manner in the agreement now in recital mentioned AND WHEREAS by an agreement dated the 11th day of March 1898 and made between the Railway Company of the first part and the Construction Company of the second part the terms of the said agreement of the 10th day of February 1898 were varied in the manner therein mentioned AND WHEREAS by a Deed Poll dated the 23d day of September 1898 the
10 Construction Company granted assigned and conveyed to the Ecuador Development Company (a Company organized and existing under the laws of the State of New Jersey and hereinafter referred to as "the Development Company") its successors or assigns all the rights which the Construction Company then had or might thereafter acquire under the said contracts of the 10th day of February 1898 and the 11th day of March 1898 AND WHEREAS by an agreement dated the 4th day of September 1900 and made between the Development Company of
20 the first part and the Construction Company of the second part the consideration for the assignment made by the said Deed Poll of the 23rd day of September 1898 was set forth and the Development Company agreed to deliver to the Construction Company the bonds and stock therein specified AND WHEREAS by an agreement dated the 6th day of September 1900 and made between the Development Company of the first part and the Association of the second part After reciting (*inter alia*) the hereinbefore recited agreements and Deed Poll the
30 Development Company thereby granted conveyed assigned transferred and set over unto the Association its

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successors and assigns (amongst other things) First all and singular the covenants agreements contracts and obligations thereinbefore specified including the said Agreements of the 10th day of February 1898 and 11th day of March 1898 Secondly all and singular the plants properties facilities equipments tools machinery instruments materials and other things necessary or proper and useful for the construction and equipment of the said road and the carrying out the said construction contracts Thirdly all and singular the bonds stocks moneys 10 credits deposits pledges evidences of debt account bills receivable claims and demands set forth or referred to in said covenants agreements contracts and obligations or arising therefrom and Fourthly all the rights titles and interests of the Development Company in and to the same Subject however to the debts covenants agreements contracts liabilities and obligations of the Development Company specified in the said covenants agreements contracts liabilities and obligations and which were then unpaid and unperformed And the 20 Association thereby covenanted (*inter alia*) that it would pay to the Development Company on or before the completion of the railway and of the said contracts relating to the construction thereof and upon the closing and liquidating of all accounts from which a determination of profits might be made and as soon as reasonably might be thereafter a sum or sums equal to 10 per cent. of the net profits which should be derived by the Association from the construction equipment and completion of said railway under the provisions thereof and from all rights 30 and interests acquired by the Association under the

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provisions thereof AND WHEREAS by an agreement dated the 26th day of September 1900 and made between the Railway Company of the one part and the Association of the other part the said agreement of the 10th day of February 1898 as amended by the said agreement of the 11th day of March 1898 was varied as in the agreement now in recital is specified and the Association was substituted for the Construction Company in the said agreements of the 10th day of February 1898 and the
10 11th day of March 1898 as so amended and varied as aforesaid AND WHEREAS by an agreement dated the 28th day of February 1901 and made between the Association of the one part and the Railway Company of the other part the said recited agreement of the 26th day of September 1900 was amended in manner in the now reciting agreement mentioned AND WHEREAS by an Indenture dated the 31st day of January 1902 and made between the Association of the one part and Lafayette Hoyt Defriese David Greenhill
20 Bruce Gardyne and Benoni Lockwood junior thereafter and hereinafter referred to as "the present trustees") after reciting (*inter alia*) that the Association in the month of July 1901 offered to the public for subscription a series of 6 per cent. Debentures of an aggregate nominal amount of £1,000,000 and Provisional Certificates for £934,000 or thereabouts of the said Debentures had been issued by the Association either upon applications made in pursuance of the said offer or otherwise and that the due payment of the said Debentures was
30 secured by a charge created upon the greater part of the bonds and stock representing the consideration under

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the said contract of the 26th day of September 1900 by a Trust Deed dated the 9th day of July 1901 and made between the Association of the one part and the Hon. Sidney Carr Glyn Alfred Spalding Harvey and Frank Dawes as trustees of the other part and that the Association had agreed with the holders of the said Provisional Certificates that each such holder should surrender the same upon the terms that he should receive in exchange therefor the said bonds of the Railway Company at the rate of \$609.15 for each £100 represented by the said Provisional Certificates held by him and that such provisions as were thereafter contained should be made with respect to so many of the said bonds as were subject to the said charge for securing the said Debentures and were not required for the purposes of the said exchange and also with respect to all the common stock and so much of the preferred stock as represented the stock subject to the same charge. And that in pursuance of the said agreement the Association (1) had delivered to the present trustees the said bonds of the Railway Company to the nominal amount of \$203,502.45 being all the said bonds which had up to that time been earned by the Association and were subject to the said charge for securing the said Debentures and were not required for the purpose of the said exchange and (2) had transferred to the trustees the said preferred stock of the Railway Company to the nominal amount of \$2,502,425.15 (being all the said preferred stock which had up to that time been earned by the Association and was subject to the said charge and (3) had transferred to the present trustees the said common stock of the Railway Company of the total

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amount of \$3,584,000 to the intent that the said bonds and stock should be held by the trustees or trustee for the time being of the deed now in recital (thereinafter and hereinafter called the "trustees") upon the trusts thereafter declared concerning the same. It was by the same deed agreed and declared (*inter alia*) that as and when any holder of the said Provisional Certificates should in pursuance of the said agreement in that behalf with the Association become entitled to receive bonds
10 of the Railway Company in exchange for such Provisional Certificates the Association should issue and deliver to such holder a certificate signed on behalf of the Association for the nominal amount of the said Debentures represented by such Provisional Certificates and also that every certificate issued under the now reciting deed should contain a statement to the effect that the registered holder for the time being thereof was entitled to such rights and interests as were given to him by the said deed and that every such certificate should in all other respects be in
20 such form as should have been approved by the trustees and that as and when any further bonds and preferred stock forming part of the said consideration under the said contract of the 26th day of September 1900 should be earned by the Association or otherwise come under its control then subject to the proviso next thereafter contained the Association would deliver or transfer the same or cause the same to be delivered or transferred to the trustees to the intent and so that the same should be held by them upon the trusts thereafter declared concerning
30 the bonds and stock transferred or to be transferred to the trustees under the same deed thereafter and hereinafter

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called "the mortgaged premises") Provided that there should be excepted from the operation of the clause now in recital—(a) 125 bonds numbered 1,015 to 1,139 (both inclusive) of the Railway Company and (b) a further 2,157 of the said bonds for \$1,000 each and (c) \$250,000 of the said preferred stock And by the 7th clause of the deed now in recital it was provided that the trustees should hold the mortgaged premises upon (*inter alia*) the following trusts namely that the trustees should in the first place from time to time and at any time or times dispose of or otherwise deal with the mortgaged premises or any part or parts thereof either (a) in any way or ways which might be required by the Association for the purpose of raising money and applying the same in fully indemnifying the said trustees of the said trust deed of the 9th day of July 1901 against all loss costs charges damages and expenses whatsoever incurred or sustained or to be incurred or sustained by them or any of them in connection with such deed or the trusteeship thereof and also (b) in any way or ways which might be required by the Association and approved by the trustees for the purpose of raising money in order to enable the Association to perform its obligations under the said contract of the 26th day of September 1900 and that without prejudice to the generality of the preceding provisions of the sub-clause now in recital the trustees might for such purpose as last aforesaid approve of any pledges mortgages sales or public or private issues of the mortgaged premises or any of them upon and subject to any terms and conditions whatever and that the trustees should have

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power in their absolute and uncontrollable discretion to settle and finally decide with the consent of the Association what operations were authorized by the same sub-clause and which of the mortgaged premises should from time to time be applied for the purposes of any such operation and also with the like consent to raise and pay out of the mortgaged premises all costs charges and expenses which in the opinion of the trustees might be necessary or expedient for or in connection with any such
10 operation as aforesaid and that all moneys raised under paragraph (b) of the sub-clause now in recital and all income received by the trustees in respect of the mortgaged premises should from time to time be applied in such manner as may be required by the Association with the approval of the trustees for the purpose of enabling the Association to perform its obligations under the said contract of the 26th day of September 1900 And also that when and so soon as (a) the Association should in the opinion of the trustees have finally and definitely failed to
20 perform its obligations under the last mentioned contract or a substantial part thereof or (b) the railway should in the like opinion have been opened for traffic as far as Guamote (and so that the trustees should for the purposes of the deed now in recital be the sole judges whether any of these events had or had not happened) then subject to preceding provisions of the clause now in recital and to the payment or retention by the trustees of their remuneration thereunder and of all costs charges and expenses incurred by them in or about the execution of the trusts of that
30 deed the trustees should (if and so far as the same might be required for the payments next hereinafter mentioned) apply

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\$350,000 of the said bonds and \$350,000 of the said preferred stock or such less amount (if any) of the same as should not have been applied under the preceding provisions of the clause now in recital in or towards paying or satisfying in such proportions and manner in all respects as should be specified by the Association and approved by the trustees such underwriting commissions payable by the Association as should be specified and approved in like manner provided that the trustees should not be liable for giving or refusing any such approval and that nothing contained 10 in the clause now in recital should create a trust in favour of any person or persons or corporation entitled or claiming to be entitled to any such commission and that any application of the said bonds and preferred stock under the sub-clause now in recital might be made either by distributing the same in specie or by selling or otherwise disposing of the same and by distributing the proceeds thereof or by both those methods And further that if and when the Association should in the opinion of the trustees have substantially performed 20 all its obligations under the said contract of the 26th day of September 1900 then subject to the preceding provisions of the clause now in recital the trustees should hold such of the mortgaged premises as should not have been applied in accordance with such provisions and the income thereof In trust for the Association And further that if and when the Association should in the opinion of the trustees have finally and definitely failed to perform its obligations under the said contract of the 26th day of September 1900 or a substantial part of such obligations 30 then subject to the preceding provisions of the clause now

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in recital the trustees should dispose of and deal with such of the mortgaged premises as should not have been applied in accordance with such provisions and the income thereof in such manner for the benefit of the certificate holders rateably in proportion to the nominal amounts of their certificates as might be directed by a resolution duly passed at a general meeting of the certificate holders duly conveyed and held in accordance with the provisions contained in the schedule thereto

10 AND WHEREAS the whole of the Provisional Certificates for Debentures referred to in the said recited Indenture of the 31st day of January 1902 (except Provisional Certificates representing Debentures of the Association for £5,300) have been exchanged for the bonds of the Railway Company therein mentioned and certificates for an amount of £929,000 have been issued pursuant to the said Indenture AND WHEREAS the Association is indebted to certain parties in London in the sum of £106,000 for moneys advanced to the Association on the security of

20 a deposit of \$1,117,000 of the said railway bonds and such sum is now due and owing AND WHEREAS the Association has entered into a contract with the Carnegie Steel Company of New York dated the 14th day of February 1901 for the sale and delivery by the Carnegie Steel Company to the Association of certain rails and other construction materials AND WHEREAS certain contracts more particularly described in the First Schedule hereto have been entered into between the Railway Company and the Council of Foreign Bondholders acting in conjunction with the Committee of Bondholders of the New

30 External Consolidated Debt of Ecuador and such contracts

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relate to the external debt of Ecuador and contain provisions for the payment of interest and for a sinking fund in respect of the bonds of the Railway Company and the Association is or may be under a liability in respect to such contracts or some of them AND WHEREAS the Duran Terminal Company a Corporation duly organised and existing under and by virtue of the Laws of the State of New Jersey (hereinafter called "the Duran Company") and having a share or stock capital of \$500,000 has acquired a certain freehold estate known as 10 "the Luque property" situate in the Republic of Ecuador and containing about 5,000 acres including the site of the Town of Duran and the river front of the Guayas River aforesaid for a distance of five miles opposite the City of Guayaquil AND WHEREAS Robert C. Pruyn as the beneficial owner of all of the said stock of the Duran Company has sold the same to the Association in consideration of the allotment or transfer to him of 65,000 fully paid shares of £1 each in the capital of the Association AND WHEREAS the Railway Company some 20 time since issued to the Association \$750,000 Railway Bonds upon the terms (a) that the Association should deliver these bonds to the said Council of Foreign Bondholders in place of the External Bonds of the Government for £678,000 of which sum £295,000 represents the deposit payable under the said contract of the 14th day of June 1897 and (b) that such External Bonds should be delivered to the Railway Company and cancelled for the purpose of carrying out an agreement by the Railway Company with 30 the Government to redeliver to the Government all the foreign bonds of the Government and (c) that the

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Association should apply the interest on the last mentioned railway bonds in payment to the said Council of the Sinking Fund No. 2 referred to in some or one of the contracts mentioned in the First Schedule hereto AND WHEREAS the Association has sold the last mentioned railway bonds and received the proceeds thereof but has failed to deliver the last mentioned External Bonds to the Railway Company and accordingly the Railway Company has by reason of such failure made
10 default in the performance of the last mentioned agreement with the Government and the Association has also failed to pay to the said Council the sum of £7,000 due on the said Sinking Fund No. 2 in respect of the year 1903 and accordingly the Railway Company has by reason of such failure made default in the performance of its agreement with the said Council with respect to such Sinking Fund and the said Council has demanded payment of the said sum of £7,000 AND WHEREAS the Railway Company has also advanced to the
20 Association \$700,000 of the said railway bonds in payment for 10,000 tons of rails and 265,000 railway ties which the Association has failed to deliver AND WHEREAS the Association is indebted to the said Archer Harman in the sum of \$44,000 being the aggregate amount of advances from time to time made by him to or on account of the Association for the payment of certain expenses of or incidental to the construction and equipment of the Railway and otherwise AND WHEREAS Sir James Sivewright and certain other parties have
30 respectively advanced and lent 75 of the said railway bonds (amounting in the aggregate to 150 of such bonds) which

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they have at the request and on behalf of the Association delivered or agreed to deliver to the trustees to the intent that the same or the proceeds thereof should be available for and should be employed in the construction of the Railway and the Association is now liable to re-transfer the said bonds to the said parties and to account to them for all interest received in respect thereof since the said advance thereof AND WHEREAS 10 the Ecuador Company has offered and agreed to carry out fulfill and perform and satisfy the said covenants agreements contracts obligations and debts of the Association upon the terms and conditions hereinafter expressed Now in consideration of the premises and of the mutual covenants hereinafter contained and of the sum of \$1 good and lawful money of the United States of America to the Association by the Ecuador Company in hand paid at or before the ensealing and delivery hereof and the receipt whereof is hereby acknowledged and of other good and valuable considerations receipt whereof is hereby acknowledged IT IS MUTUALLY AGREED as follows:—

The Association has granted bargained sold aliened remised released conveyed assigned transferred and set 20 over and by these presents doth hereby grant bargain sell alien remise release convey assign transfer and set over unto the Ecuador Company its successors and assigns:—

FIRST—All the interest of the Association of and in the said agreements of the 10th day of February 1898

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the 11th day of March 1898 the 26th day of September 1900 and the 28th day of February 1901 and the full benefit thereof respectively.

SECONDLY.—All the interest of the Association of and in all other the agreements contracts and obligations hereinbefore specified recited or identified and the full benefit thereof respectively.

THIRDLY.—All that the said \$500,000 Stock of the Duran Company and the full benefit thereof subject
10 to the conditions on which the same are now held by the Association. And also all other the interest (if any) of the Association in the Duran Company.

FOURTHLY.—All and singular the plant properties facilities equipment tools machinery rolling stock instruments materials and other things necessary or proper and useful for the construction and equipment of the railway or the carrying out of such construction contracts and now belonging at law or in equity to the Association (including all materials plant machinery rolling stock tools
20 chattels and effects of every description now on or about or near the railway or any part thereof.

FIFTHLY.—All the interest of the Association of and in all and singular the bonds stocks moneys credits deposits accounts bills receivable claims and demands described set forth or referred to in said covenants agreements and contracts or any of them or in the said Trust Deed of the 31st day of January 1902 or which are particularly recited herein or which have arisen or accrued therefrom or from any of the same and to which the

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A. WILSON.

ARCHER HARMAN.

ERNEST N. DAWE.

FRANCIS C. GREEN.

Association is now or may become entitled including (a) the interest of the Association in the said \$1,117,000 bonds deposited with certain parties in London as aforesaid and (b) all the stock of the Development Company but not including the interest of the Association in any bonds or stock of the Railway Company deposited by or on behalf of the Association with any other parties as security for advances made to it by them.

SIXTHLY.—Together with all the rights titles interests 10 easements and estates of the Association of in and to the same and each of them hereby assigned subject nevertheless as to any bonds or stocks to the provisions of the said Trust Deed of the 31st day of January 1902 (except the covenants contained in clauses 12 13 16 and 26 of such Deed and except any liability or obligations on the part of the Association to any parties other than to certain parties in London as aforesaid with whom any of the said bonds or stock may have been deposited by way of security for advances made to the 20 Association And also (except as aforesaid) subject to the payment and satisfactory performance by the Ecuador Company of the debts covenants agreements contracts liabilities and obligations which the Association is now liable to pay satisfy or perform under or by virtue of the said covenants agreements contracts loans advances liabilities and obligations hereinbefore recited or specified in the First Schedule hereto or any of them and which are still unpaid unsatisfied unperformed and unfulfilled and also subject to the said recited 30 claims of the Railway Company and also subject to the

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payment or satisfaction by bonds of the Railway Company of such of the underwriting commissions referred to in paragraph 7 (sub-clause 3) of the said Trust Deed of the 31st day of January 1902 as shall not be satisfied by the Trustees in pursuance of the provisions in such deed contained (particulars of such of the said underwriting commissions as are still unsatisfied being set forth in the Second Schedule hereto) all which said debts covenants agreements contracts loans advances liabilities and obligations
10 of the Association (except as aforesaid and except any claim which may be made against the Association or otherwise by James Polk MacDonald in respect of the construction of the Railway or otherwise) the Ecuador Company has assumed and agreed to pay satisfy discharge perform and fulfil and by the acceptance hereof doth hereby assume and agree to pay satisfy discharge perform and fulfil or to cause to be paid satisfied discharged performed and fulfilled To HAVE AND TO HOLD the same unto the Ecuador Company its successors and assigns for ever AND the
20 Association hereby covenants to and with the Ecuador Company that the Association shall and will at any and all times hereafter upon the reasonable request and at the proper cost and charges in the law of the Ecuador Company its successors or assigns make do and execute or cause to be made done and executed all and every such further and lawful and reasonable acts grants conveyances and assurances in the law for the better and more effectual passing and confirming the premises hereby granted bargained sold aliened remised released conveyed assigned
30 transferred and set over or so intended to be in and to the Ecuador Company its succes-

A. WILSON.

ARCHER HARMAN.

ERNEST N. DAWE.

FRANCIS C. GREEN.

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sors and assigns for ever as by the Ecuador Company its successors or assigns or its or their counsel learned in the law shall be reasonably advised devised or required And the Ecuador Company hereby covenants with the Association that the Ecuador Company will (except as aforesaid) carry out perform fulfil pay or satisfy or cause to be carried out performed fulfilled paid or satisfied all and singular the covenants agreements contracts and obligations made entered into or assumed by the Association which are contained in the agreements contracts and obligations hereinbefore specified or to which the Association appears by any of the recitals hereinbefore contained to be now subject And it is hereby declared that this deed shall bind and enure to the benefit of the parties hereto their successors and assigns. IN WITNESS whereof these presents are signed by two of the Directors and by the Secretary of the Association and the Common Seal of the Association is hereto affixed and the Ecuador Company has caused these presents to be duly executed the day and year first above written.

THE FIRST SCHEDULE ABOVE REFERRED TO.

DATE.	PARTIES.	SUBJECT MATTER.
27th October 1897..	Guayaquil and Quito Railway Company and Council of Foreign Bondholders	External debt agreement
30th April 1898....	The same parties	Supplemental external debt agreement.
15th November 1898	Republic of Ecuador and Guayaquil and Quito Railway Company	Ad referendum contract a to external debt etc.
6th March 1899....	Guayaquil and Quito Railway Company and Council of Foreign Bondholders	Supplemental external debt agreement.

A. WILSON.
 ARCHER HARMAN
 ERNEST N. DAWES.
 FRANCIS C. GREEN

THE FIRST SCHEDULE—*Continued.*

DATE.	PARTIES.	SUBJECT MATTER.
3th March 1899...	The same parties	Further supplemental external debt agreement.
7th October 1899..	Republic of Ecuador and Guayaquil and Quito Railway Company	Release of £114,000 deposited with bankers
2th January 1900..	Guayaquil and Quito Railway Company and Council of Foreign Bondholders	Agreement
2th April 1901....	The like	Ditto

THE SECOND SCHEDULE ABOVE REFERRED TO.

NAME OF UNDERWRITERS.	ADDRESS.	Amount due in Railway Bonds.
Harvey Fisk & Sons	31 Nassau Street New York ..	\$15,000
The United States Mortgage and Trust Company	59 Cedar Street New York ...	\$19,000
W. C. Sheldon & Co.	2 Wall Street New York	\$7,000
Dulith-Smith McMillan	25 Broad Street New York ..	\$11,000
E. H. Norton	33 Wall Street New York	\$6,500
Kibreth & Farr	29 Wall Street New York	\$22,500
Archer Harman	165 West Fifty-Eighth Street New York	\$108,000

A. WILSON.
 ARCHER HARMAN.
 ERNEST N. DÄWE.
 FRANCIS C. GREEN.

19

The Common Seal of The Ecuadorian Association Limited is hereto affixed and these presents are signed by Alexander Wilson and Archer Harman two of the Directors and by Ernest Nanscawen Dawe the London Secretary of said Association before and in the presence of

A. WILSON
ARCHER HARMAN } *Directors.*

ERNEST N. DAWE *Secretary.*

{ Seal of The Ecuadorian Association Limited. }

E. F. EAMES Clerk

5 Great Winchester Street London E.C.

D. GOW Stenographer

5 Great Winchester Street London E.C.

Signed Sealed and Delivered by Francis Cushing Green of No. 38 State Street Albany New York as Attorney for the Ecuador Company acting under Power of Attorney dated the 3rd day of February 1903 in the presence of

FRANCIS C. GREEN

Attorney for and on behalf of the Ecuador Company.

[L.S.]

E. F. EAMES Clerk

5 Great Winchester Street London E.C.

D. GOW Stenographer

5 Great Winchester Street London E.C.

CITY OF LONDON
ENGLAND

[Stamp 1s.]

BE IT KNOWN that on this seventeenth day of February One thousand nine hundred and three Before me the undersigned JOHN DALTON VENN a Notary Public duly admitted and sworn practising in the said City personally appeared Sir Alexander Wilson, Archer Harman and Ernest Nanscawen Dawe to me known who
10 acknowledged to me that they are two of the Directors and the London Secretary respectively of the Ecuadorian Association Limited the Company which executed the hereunto annexed Instrument that they know the Seal of the said Company that the Seal affixed to said Instrument is such Common Seal that it was so affixed by order of the Board of Directors of said Company and that they subscribed their names thereto by like order.

AND that at the same time personally appeared
20 Francis Cushing Green of No. 38 State Street Albany New York who acknowledged to me that he executed the said Instrument as Attorney of and for and on behalf of the Ecuador Company acting under Power of Attorney dated the 3d day of February 1903.

IN WITNESS whereof I have hereunto set my hand and affixed my Seal of Office in London the day and year first above written.

30 { John Dalton Venn }
Notary Public
London.

JOHN D. VENN,
Not. Pub.

CONSULATE - GENERAL OF THE UNITED
STATES OF AMERICA FOR GREAT BRITAIN &
IRELAND AT LONDON.

I HENRY CLAY EVANS Consul-General of the
United States of America at London England do hereby
make known and certify to all whom it may concern that
John Dalton Venn who hath signed the annexed Certifi-
cate is a Notary Public duly admitted and sworn and
practising in the City of London aforesaid and that to all
acts by him so done full faith and credit are and ought to 10
be given in Judicature and thereout.

IN TESTIMONY whereof I have hereunto set my
hand and affixed my Seal of Office at London aforesaid
this 19th day of February in the year of our Lord One
thousand nine hundred and three.

{ United States
Consulate General }
London.

H. CLAY EVANS,
Consul-General.

EXHIBIT C 18.

*To the Shareholders of The Ecuadorian Association,
Limited.*

DEAR SIR (OR MADAM),

I am instructed by my Directors to inform you that they have carefully considered the present position of the ECUADORIAN ASSOCIATION, Limited, and its obligations and liabilities in connection with the construction of the Guayaquil and Quito Railway in Ecuador, and
10 that they have come to the conclusion that, in order to avoid the abandonment by the Association of the Construction Contract, it was absolutely necessary to accept an offer which had been made by the ECUADOR COMPANY (a Company incorporated in New Jersey with a nominal capital of \$5,000,000), to take over these obligations and liabilities with certain other assets and liabilities of the Association and to undertake to complete the Line. This transaction has accordingly been carried
20 out, with the result that the Association has been relieved from these obligations and liabilities.

ERNEST N. DAWE,

London Secretary.

5 and 6, Great Winchester Street,
London, E. C.,

17th February, 1903.

EXHIBIT C 19.

C

17th February, 1903.

DEAR SIR (OR MADAM);

30 THE ECUADORIAN ASSOCIATION, LIMITED.

We, the undersigned, being Holders or representing Holders of Shares of the above-named Association of the nominal value of £308,000, have agreed to exchange our Shares for fully-paid Shares of \$100 each or \$100

Stock in the ECUADOR COMPANY (a Company formed in New Jersey with a nominal Capital of \$5,000,000

Practical Certificates, therefor, in the proportion of one Share of \$100 or \$100 Stock in the Ecuador Company for each 20 shares of £1 each in the Association held by us.

The Ecuador Company has acquired and taken over from the Ecuadorian Association, Limited, amongst other things the benefit of and also the liabilities of the Ecuadorian Association under the Contracts 10 relating to the construction of the Guayaquil and Quito Railway in Ecuador, and has also acquired, or proposes to acquire, from the Ecuadorian Association, or otherwise, certain Lands and Mines, adjoining the Line of Railway, with the object of developing the same, and thereby benefitting the Railway, the holders of Railway Bonds and the Stockholders of the Ecuador Company.

The Ecuador Company is an American Company dealing with an American Railway, and certain influential parties in New York are interested in the success 20 of the enterprise.

Under all the circumstances, we came to the conclusion that we would be acting wisely if we exchanged our Shares in the Ecuadorian Association for Shares or Stock in the Ecuador Company, ^{and}_{or} Fractional Certificates therefor.

Yours truly,

JAMES SIVEWRIGHT.

ROBERT B. MONCRIEFFE.

ARCHER HARMAN.

30

ALEXANDER WILSON.

LUCIEN STRASBURGER.

CHARLES G. RAMSAY.

GILBERT W. FOX.

L. H. DEFRIESE.

VICTOR BRANFORD.

HENRY COATES.

FREDK. B. ADAMS, (*Attorney*).

DAVID JOBSON WILSON.

EXHIBIT C 20.

D

*To Shareholders of the Ecuadorian Association,
Limited.*

DEAR SIR (OR MADAM),

At the request of certain Shareholders of The ECUADORIAN ASSOCIATION, LIMITED, we have agreed to issue to them a fully paid Share of \$100 each of \$100 Stock in our Company in exchange for every 20 Shares of £1 each held by them in The Ecuadorian Association,
10 Fractional Certificates being issued by us in respect of any fraction of 20 Shares in the Association.

We beg to give you notice that we are willing to issue to you in exchange for the Shares held by you in the Ecuadorian Association fully paid Shares or Stock in our Company ^{and} _{or} Fractional Certificates therefor at the above mentioned rate, provided you agree to accept this offer on or before the 2nd day of March, 1903, sign and forward to Messrs. Glyn, Mills, Currie and Company of 67, Lombard Street, London, E.C.,
20 Bankers to the Ecuador Company, the enclosed form of acceptance, and that you subsequently, but not later than the 10th of March, 1903, lodge with the said Bankers the Certificate for your shares together with a blank transfer executed by you, in exchange for a receipt by the Bankers.

The Shares or Stock of this Company, ^{and} _{or} the Fractional Certificates therefor to which you are entitled will then be issued to you as soon as possible.

Yours truly,

30

FRANCIS C. GREEN,

For the ECUADOR COMPANY OF NEW JERSEY.

38, State Street,

Albany, State of New York,

17th February, 1903.

P.T.O.

To The Ecuador Company of New Jersey.

We [I] the undersigned being the holder of fully paid-up Shares of THE ECUADORIAN ASSOCIA-

TION, LIMITED, agree to exchange the same for fully paid Shares or Stock in your Company, ^{and} _{or} Fractional Certificates therefor in the proportion and manner mentioned in your Circular of the 17th February, 1903.

Name.....
[Sign over a 6d. Postage Stamp.]
Address.....
Date.....1903.

EXHIBIT C₂₁.

10

Feb. 18th, 1903.

Robert C. Pruyn, Esq.,
Rome.

DEAR SIR:

In your letter of the 15th inst. to Mr. Green, under Section 2: Clause (f) you suggest that I make you a full statement in reference to the assets and liabilities of the Ecuadorian Association, and in this I suppose you particularly refer to the amount of bonds transferred by the Ecuadorian Association to the Ecuador Com-
pany. In New York I wrote you a letter which covered the bond interest of the Ecuadorian Association at that time. This statement was most carefully prepared by Mr. Lever, the Auditor of the Company. I have not a copy of that letter before me. The only alterations in the statement given you at that time would be as follows:

31 Bonds Which were hypothecated to Lord Hilling-
don as against loan of £1,500 were sold at
50: Lord Hillingdon's loan repaid: the bal- 30
ance remitted to Ecuador.

7 “ of the Council of Foreign Bondholders
Special Series, which were sold at 73. Pro-
ceeds remitted to Ecuador.

250 Bonds Hypothecated to Pruyn, Norton, Peabody, and Taylor, upon which they exercised their option at 50. The surplus received from this account was used for making certain payments on bridges and other material in New York and portion remitted to Ecuador.

93 “ which had been loaned against by Archer Harman on which he exercised his option, paying the difference into the treasury of the Ecuadorian Association in New York, which I think was used for construction purposes in Ecuador.

10

Making a total of 381 Bonds to be deducted from the statement given you in New York.

381

Major Harman continues to cable me that if we stop construction at Guamote that it will cost us many thousand dollars to reestablish our present organization and that it will make an unfortunate impression upon the country and make it more difficult for me to carry out my plan to have the 7 per cent. preferred stock made a first charge upon the net earnings of the railway. I therefore submit the following memorandum for your consideration.

That Pruyn, Harman, Winsor pay into the treasury of the Ecuador Company in New York,	\$60,000
On account of the Ecuador Company's stock	
30 During the month of March	
Pruyn to pay,	12,500
Harman to pay,	12,500
Winsor to pay,	12,500
During April	
Pruyn to pay,	7,500
Harman to pay,	7,500
Winsor to pay,	7,500

The 112 bonds now in hand to be disposed of as follows:

81 Bonds to be sold to the Guyaquil & Quito Railway Sinking Fund as 80 per cent. on their face value equal to	\$65,000
The remaining 31 bonds to be loaned against 150 without option at 55,	15,500
Proceeds of stock,	60,000
Making a total of,	140,500

These \$140,500 to be disposed of as follows: 10

Ecuador during the month of March,	35,000
" " " " "	30,000
" " " " "	30,000
To be paid under the proposed agreement with Mr. Horne,	25,000
Making a total of,	120,000

Balance of \$20,500 to be at the discretion of the Board of the Ecuador Company in taking up such obligations as have been assumed by the Ecuador Company and the Ecuadorian Association that in their judgment cannot be deferred. 20

Sincerely yours,

EXHIBIT C 22.

Feby. 18, 1903.

THE BERKELEY HOTEL
PICCADILLY W.

Robert C. Pruyn. Esq., Rome.

DEAR MR. PRUYN—Your letter of the 15th was received late last night, and I am now taking up the various matters therein discussed with Mr. Harman. 30
You will find enclosed herewith a copy of your letter

and I am retaining one for Mr. Adams in accordance with your request. Mr. Harman will dictate from now on, in regard to the various sections of your letter.

Liabilities. With the exception of Directors' fees, the liabilities are very close to the amounts I gave you in Paris. I mailed you yesterday a list covering the liabilities, as far as could be made up here, and I think the statement sent you practically covers everything. It is misleading, however, in reference to the Blow, 10 Kitchener and Patent Shaft & Axletree Company's actions. We thought the Blow suit could be compromised for £500, and while the Kitchener is for £4,500, Messrs. Glyn Mills Currie & Co. hold as an offset to this suit about \$24,000 of Guayaquil and Quito Railway bonds. If these bonds are sold at the market price today, the balance claimed by Kitchener would amount to about £900. The Patent Shaft & Axletree Company's claim can be settled, as advised, for £1000.

In the agreement between the Ecuadorian Association 20 assigning the Columbe Coal Company's note for £15,000 to the Ecuador Company, there will be a very strong stipulation that no accounts are to be paid until the Ecuador Co. are satisfied of their validity. Any part of these 15,000 not used for the purpose of paying debts as scheduled, will be paid over to the Guayaquil & Quito Railway Co. to satisfy their claim of \$60,000. You will note that there is only a difference of about £3000 between the claim and the Guayaquil Railway Co. and the gross amount of the Columbe Coal note of £15,000, and 30 that any balance in this note not absolutely required to meet the liabilities of the Ecuadorian Association will go to the Guayaquil and Quito Railway Co.

Carnegie Contract. Messrs Borchams advise me that the transfer of this contract is valid. As a precautionary measure, however, we will send no notice to the Carnegie Co. of this transfer until I reach New York, when I will discuss the matter with them, and if there is any question in reference to it I will have the Direc-

tors of the Ecuadorian Association reassume this agreement. In my opinion, the Carnegie Co. will prefer to deal with the Ecuador Co. rather than the Ecuadorian Assn.

Section 4. Your wishes have been met in this instance, and the Ecuador Development stock has been included in the assignment.

Section 2. The liabilities under section 2: (a) the construction contract called for the completion of the railway to Quito; nothing else. (b) To assume the liabilities of the Ecuadorian Assn. to the Council of Foreign Bondholders, which consist of the redemption of about 500,000 of the Guayaquil & Quito Railway bonds held by the Council of Foreign Bondholders at par. This is being modified by a proposed agreement with Mr. Horne to sell to the Ecuador Company 200 of these bonds at 80, to be paid for June 30, waiving the January sinking fund of \$35,000, and turning over to the Ecuador Co. the accumulated interest and sinking fund on the \$400,000 of Condores Bonds amounting to about \$85,000, and delivering to the Ecuador Co. about bonds due by the Council to the Ecuadorian Association. (c) Under this clause there are no liabilities. (d) This obligation has been provided for out of the £15,000 note transferred to the Ecuador Company by the Association. (e) 4 passenger coaches upon which there is still due about \$10,000. (f) About \$13,000 of past due interest and about 189 bonds. These bonds were deducted from the statement given you in New York, showing the amount of free bonds which were to be earned under the Construction contract, and these hypothecated to Glyns and the New York Syndicate, and in no way changes that statement. (g) \$44,000. (h) Assume and agree to pay Messrs. Glyn Mills Currie & Co. the sum of £106,000 secured by 1117 bonds. Referring to your clause (f) I would say that it is impossible for me to render you a more complete statement of the assets and liabilities of the Ecuadorian Assn.

transfer under the assignment, until my arrival in New York, as Mr. Lever is there and all the books of the Company are kept there.

Section 8. The deposit with Robarts, Lubbock & Co. consists of £295,000 of the old bonds or certificates of the Government of Ecuador, which are referred to in the Council of Foreign Bondholders contracts, as the new external debt bonds of the Government of Ecuador. This deposit is to be canceled when we purchase the 10
10 bonds under the proposed agreement with Mr. Horne and this £295,000 of new external bonds together with about £382,000 of new external bonds or certificates held by the Council of Foreign Bondholders under their agreement are to be returned as canceled to the Government of Ecuador. The \$200,000 of bonds purchased under the proposed agreement with Mr. Horne, are to be deposited with Messrs. Glyn Mills Currie & Co. and remain on deposit with them less such of the bonds as may be drawn on account of the Sinking Fund under
20 the Council of Foreign Bondholders' contract, until all the railway bonds held by the Council of Foreign Bondholders are purchased back by the Ecuador Company. The sinking fund of the Council of Foreign Bondholders calls for \$35,000 semi-annually from the Ecuador Co. until all the Railway bonds held by the Council are repurchased by the Ecuador Co. The old certificates of the Govt. of Ecuador—as explained above—are the same securities as referred to in the contracts of the Foreign Bondholders as the new external bonds of the
30 Govt. of Ecuador.

Note.—\$400,000 or £80,000 of Condore bonds will be deposited with Messrs Glyn Mills Currie & Co. to cover the \$500,000 guarantee called for under the contract with the Government. The interest on these Condore bonds will be paid semi-annually to the Ecuador Company. The bonds themselves will not be available until the railway is completed.

Section 10. No answer necessary.

Section 12. My understanding is that Messrs Pruyn and Winsor are to receive \$2,500,000 of the stock of the Ecuador Company, and in return, turn into the Ecuador Co. the following properties:

Duran	90,000	
Lands	35,000	
Coal	30,000	
Cash	30,000	
	185,000	
Add working capital, say,	250,000	10
	435,000	

The Duran property will be turned in for \$126,000 cash, represented by £65,000 of Ecuadorian Association shares, for which you will receive \$325,000 of Ecuador Company's stock. The other properties are to be turned in at a net cost of Messrs Pruyn and Winsor of \$309,000 for which they are to receive \$2,175,000 of Ecuador Co's stock, and after delivering \$2,175,000 of Ecuador Company's stock to the present shareholders of the Ecuadorian Association, there will remain in the treasury of the Ecuador Company \$325,000 of stock. A portion of these \$325,000 of stock will be used in paying the 5 per cent. of the face value of the debenture certificates. The surplus remaining from these \$325,000 of stock will be dealt with by the Directors of the Ecuador Company, as they may see fit.

In the event that Dick and Lisman interest is purchased, the Ecuador Company's stock and bonds received from them will be apportioned equally to the 2,500,000 Ecuador stock received as above. 30

My understanding of the arrangement with you in Paris was that my brother and myself should have the right to subscribe for up to \$700,000 of the stock of the Ecuador Company, or any lesser amount at our discre-

tion, upon the same terms upon which Messrs Pruyn and Winsor paid for the Ecuador stock. The stock taken by my brother and myself to be placed in Messrs Pruyn and Winsor's hands to be voted at their discretion. My recollection in this matter is very distinct, although Mr. Green states that he agrees with you that the amount my brother and I could subscribe for was limited to \$300,000. I am not prepared at this time to say how much stock my brother and myself will be able
10 to take up. I shall not insist upon the right to take \$700,000 stock if you object to it. I should like at least 500,000 if I can make arrangements to pay for them, but I do not intend to have any issue with you in connection with this matter.

Section 13—I think this can be safely left to Lockwood.

Board of Directors.—Perfectly satisfactory that this Board should be constituted as you indicate, agreeing Adams and Lockwood until such time as you may be
20 able to form a permanent Board. I will speak to Lord Hillingdon in reference to Kessler and will also speak to Sivewright and Moncrieffe. I should prefer, however, that you should request Lord Hillingdon to come on the Board.

Sincerely yours,

(sgd.) ARCHER HARMAN.

EXHIBIT C 35.

CABLEGRAM.

To Robert Pruyn,
30 *Hotel Savoy, Genoa.*

Harman says necessary that proposal be submitted to certificate holders from Ecuador Company otherwise they have nothing to base action on, and notice of meet-

ing will have to be withdrawn, also necessary to have Ecuador Company make proposal to Ecuadorian shareholders. Lawyers here state sufficient authority can be given by Board of Directors authorising me to sign for Company. Harman cabled Jan. 28th Lockwood to send such power to me for Ecuador Company and Columbe Coal Co. No reply received. If this meets your approval I have time to submit proposals to you before signing.

GREEN.

10

EXHIBIT C 24.

THE BERKELEY HOTEL,
PICCADILLY W.,
Feb. 19th, 1903.

*Robert C. Pruyn, Esq.,
Rome.*

DEAR SIR:

I am enclosing you a copy of a contract executed between Mr. Adam, as your attorney, and the Ecuadorian Association in New York, in reference to the Duran Terminal Company and the £65,000 of Association shares. For reasons which I deem it unnecessary to go over again with you, it is not advisable to make an escrow agreement. I have had Mr. DeFrieze draft a substitute, which I enclose you. The DeFrieze agreement will allow the Ecuadorian Association to issue to you direct and immediately 65,000 shares of this stock. In the event that you approve the DeFrieze agreement, I will have the Ecuadorian Association instruct you by letter, to deliver the Duran Terminal stock to the Ecuador Co. direct, as their assignees. I wish to close this transaction before I leave London on the 25th inst. If you do not receive these contracts in time for them to reach London on Tuesday morning, I would suggest that you

30

telegraph Mr. Green to sign them as your attorney. Please initial the interlineation that I have made in the three agreements.

The Debenture Certificate Meeting went off successfully to-day and the proposition was carried. It now only remains to complete the exchange of Association shares for the Ecuador Company's stock. I am sending out a circular tomorrow covering this, and hope it will be as successful as we have been with the Debenture Certificate holders.

I can very well understand how Article 2, in my letter of Feb. 12th has misled you, and particularly clause (c). I think Mr. Green's telegram this morning will fully explain the matter to you. The 700 bonds were advanced to the Ecuadorian Association by the Railway Company, and reduced the number of bonds due from the Government for construction between Guamote and Quito that amount. This does not alter the statement given you in New York in any particular, and the agreement upon the part of the Ecuadorian Association to deliver 10,000 tons of rails and 165,000 railway ties in Ecuador by the 1st January was made at my suggestion, as a precautionary measure, in anticipation of what we are now doing. There are no liabilities under this clause. Instead of having about 5,700,000 bonds as we would have had if this \$700,000 had been used, we have about 5,000,000. (I wish I had the exact figures here to give you, but from recollection I would say that we have, including the bonds hypothecated to Glyns and the New York Syndicate, including those we have earned for construction, about 5,000,000 bonds available.) The only question that is annoying is the Council of Foreign Bondholders settlement. I received a cable from Major Harman a few days ago stating that the Government had appointed a Mr. Garcia, who was on his way to Europe, as commissioner, to enquire into the relations between the Railway Company and the Council of Foreign Bondholders, and why the Railway

Company had not delivered the external bonds of the Government as per agreement. I am attempting to meet this question with the contract between Horne and the Ecuador Co. I had hoped to send you a copy of this agreement by this afternoon's mail, but I have been unable to agree upon its terms with Mr. Horn. The agreement with Mr. Horn will call for deposit of £5,000 with Messrs. Glyn, Mills, Currie & Co. as a guarantee that we will purchase and pay for on the 30th June 200 Guayaquil and Quito Special Series Bonds held by the Council at 80, Horne claiming that he cannot afford to risk that purchase of 200 of these bonds without some guarantee. I had proposed to deposit this £5,000 out of the £13,000 of sinking fund to be remitted by the Government, but I am now advised that instead of this remittance being made by cable, that the Government propose to forward it by mail the latter part of this month, and it will not be received here until the latter part of March. Horne's position is that he can secure these 200 bonds now, providing the deposit is made, but that he will not enter into an agreement to secure them on the last of March or the 1st of April.

As I have repeatedly stated to you, the only serious question between the Government and the Railway Company is the external debt, and I have really reached my limit in trying to adjust it.

Sincerely yours,

Enc.

EXHIBIT C 60.

(Copy.)

Feb. 19th, 1903. 30

Robert C. Pruyn, Esq.,

Grand Hotel, Rome.

DEAR MR. PRUYN:

Mr. Lockwood sent over in duplicate a contract which has been entered into by Mr. Adams, acting for you, with the Ecuadorian Association, Limited, relating to

the Duran Terminal matter. I thought it wiser, if possible, to do away with the escrow provided for and issue the 65,000 Ecuadorian Shares to you in exchange for the Duran Terminal Shares, the latter to be handed over to the Ecuador Company in New Jersey for account of the Association. However, I did not wish in the contract a recital of the purchase price of the Terminal properties and Mr. Harman thought it advisable, inasmuch as we have to file one of the duplicate contracts at Somerset House, that the matter of
10 \$36,000 working capital for the Terminal Company should be omitted and that we should simply trust to you to provide it. I have therefore re-drawn the contracts and delivered them in triplicate to Mr. Harman to be sent on to you, and also a copy of the contract executed by Mr. Adams as your attorney, so that you can compare the two and see exactly in what respects the contract I have drafted differs from the one which Mr. Adams signed for you. If you approve of the new
20 form of contract please sign it before the American Consul in Rome as a witness (it is not necessary that he should add an acknowledgment) and return all three copies to me and I will have them executed by the Association and one copy filed at Somerset House and the 65,000 Shares issued fully paid and forwarded to you or as you may direct, together with one of the other two originals of the agreement.

Mr. Greer is with us still and was present at the meeting of certificate holders to-day, at which Mr. Gardyne and I as Trustees, presided, and I was with Mr.
30 Green when he sent you the telegram after the meeting. I am afraid the Ecuadorian affairs have caused a good deal of interruption to your holidays, but this is the fate of all those who become connected with Ecuador. I hope that in spite of it all you and your family are having an enjoyable time. My friend Goodrich sailed yesterday.

Yours sincerely,
(Sgd.) L. H. DE FRIESE.

Feb. 27, 1903.

*Robert C. Pruyn, Esq.,
Bertolini's Palace Hotel,
Naples.*

DEAR MR. PRUYN:

Thank you for your note of 22d Feb. with contracts enclosed. I believe everything is now in order and Mr. Harman is leaving to-day and will more fully explain the situation to you. I am in some doubt about seeing you as you pass through London. We generally try to spend Easter at Monte Carlo and your sailing date is Good Friday. Ordinarily we leave here about the end of the third week in March and get back here about the end of April, but I should almost rather give up my holiday than miss you. We can see about it a little later on.

Yours sincerely,
(Sgd.) L. H. DE FRIESE.

EXHIBIT C 28.

20

GRAND HOTEL,
ROME, Feb. 21, 1903.

MY DEAR MR. HARMAN:

Writing with a stenographer while trying to see Rome, is a sufficient excuse for my brief methods in corresponding with you through Green.

I merely wish to say in regard to Green that he had important work at home, and we must leave to a future time the consideration of his connection with Ecuador.

I am sorry you did not enclose copy of Major Harman's letter, but the news is bad. The only thing to do is the best you possibly can. Buy as cheaply as you may while there.

If the cost is greater I shall have to ask you to lessen the amount of stock given you and your brother in proportion or to contribute a share, but in these and all

matters I know you will trust me to deal with you rightly and liberally, just as I trust you to do the fair thing and am sure you will always do it.

If Vallamille heirs insist on whole sum or more it should try to count those cattle beforehand.

I hope you will remember to get, if possible an option from Dick & Lisman on their holdings at cost plus 6 per cent., also to get from the Ecuador Co. as many franchises as possible such as Street railway in Quito (in
10 this a long time to build and exclusive rights without taxes are important), also the electric light and gas, also if possible on the land beyond the city you spoke of, also telegraph and telephone rights and wireless telegraph.

I approve your brother's coal suggestion.

I must congratulate you upon the great improvement in the condition of affairs and hope to see before long a settled and healthy condition. I have wired Green that the Ecuador Co. must have some money to keep things going until May 1st. Is there collateral so
20 that I can arrange a loan? With kindest regards to Mrs. Harman and yourself, and wishes for a prosperous voyage to New York and Ecuador,

Faithfully yours,

(sgd.) ROBERT C. PRUYN.

Archer Harman, etc.

Will you kindly give Green for Adams a copy of your letter of the 18th inst.

EXHIBIT C 27.

Feb. 23d, 1903.

30 *Robert C. Pruyn, Esq.,*
Bertolini's Palace Hotel, Naples.

DEAR SIR:

Your telegram to Mr. Green in reference to the two and half million dollars received, and meets with my approval. The stock cannot be deposited as against pay-

ment of 400,000 odd dollars; it can only be exchanged for stock of the Coal Company and the Land Company, which has yet to be organized. I started to draw this agreement here, and cabled Lockwood to send the stock to the Union Trust Co. in Albany, but on consideration decided it was best for Lockwood to draw this contract after Green arrives in New York, and Green can then execute the contract in your name with the Ecuador Company and the stock in the contract can be deposited with the Union Trust Co. in Albany as you suggest. I 10 will explain to Mr. Green that this agreement should be very carefully drawn, and that it must commit you to as little as possible—in fact—nothing except in the organization of the Companies, and the depositing of \$200,000 in their treasury. The carrying out of the details of this transaction must rest upon the understanding between you and myself, which understanding I do not care to have embraced in the agreement issuing the 2,500,000 of stock. All through this transaction I have endeavored to arrange everything so that it could not 20 possibly be attacked, and I am very pleased with what has been done up to the present.

Respectfully yours,

EXHIBIT C 25.

MEMORANDUM OF AGREEMENT entered into this day of February, 1903, by and between the Ecuadorian Association, Limited, a Corporation organized and existing under and by virtue of the Laws of Scotland and hereinafter called "The Association" party of the first part and Robert C. Pruyn of Albany, New York, United States of America hereinafter called said Pruyn party of the second part. 30

WHEREAS The Association has an authorized capital of five hundred thousand pounds (£500,000) of

which four hundred and thirty-five thousand pounds (£435,000) are issued and outstanding and a balance of sixty-five thousand pounds (£65,000) is available for issue and delivery, and

WHEREAS said Pruyn has caused to be formed under the Laws of the State of New Jersey, United States of America, a Corporation with an authorized share capital of five hundred thousand dollars (\$500,000) which said Corporation has acquired an option upon and has
10 paid a deposit on account of the purchase of certain properties situate on the Guayas River opposite the City of Guayaquil in the Republic of Ecuador which properties embrace about ten thousand acres (10,000) more or less, and

WHEREAS the acquirement of the said properties so secured by the Duran Terminal Co., is considered to be of the utmost importance to the Association as terminal facilities for the Guayaquil and Quito Railway, which is in process of construction by the Association, and,

20 WHEREAS said Pruyn has offered to transfer and deliver to the Association the entire Capital Stock less five shares to qualify Directors of the Duran Terminal Company in consideration of the issue to him of the said unissued sixty-five thousand (65,000) shares of the Association and further has undertaken that at the time of such transfer and delivery the said properties so acquired by the said Duran Terminal Company shall be free and clear of all indebtedness.

Now therefore in consideration of the premises and
30 of one (1) pound sterling each to the other in hand paid receipt of which is hereby acknowledged The Association and said Pruyn hereby agree as follows:

1. The Association agrees to acquire and does hereby acquire from said Pruyn the entire capital stock less five shares to qualify Directors of the Duran Terminal Company and hereby agree to issue sixty-five thousand (65,000) of its shares to be issued as fully paid in consideration therefor and the Association undertakes to

file at Somerset House the necessary contract covering the issue of its shares fully paid.

2. Said Pruyn undertakes and agrees to deliver to the Association or to Ecuador Company of New Jersey for its account the entire capital stock less five shares to qualify directors of the Duran Terminal Company and undertakes that on or before July 1st, 1903 that the Duran Terminal Company shall own the said properties known as the Luque Estate opposite the City of Guayaquil, embracing about ten thousand (10,000) acres 10 more or less free and clear of all incumbrance.

3. Said Pruyn further undertakes and agrees to cause the resignation of a majority of the Directors of the said Duran Terminal Company and the appointment or election in their place of nominees of the Association or of the Ecuador Company of New Jersey.

4. The Association and said Pruyn further undertake and agree to do all acts and things and to make, execute and deliver all other and further documents or instruments in writing necessary or advisable in order to 20 carry into effect the terms and conditions hereof.

In witness whereof The Association has caused this Agreement to be executed in its name and its Seal to be hereto affixed in the presence of two of its Directors, attested by its Secretary and the said Pruyn has hereto subscribed his name and affixed his Seal the day and year first above written.

ROBERT C. PRUYN. (L. S.)

Witness to the Signature of

Hector de Castro

A. RAZZI.

30

Consulate General of the United States of America
at Rome, Italy.

On this 23d day of February in the year of our Lord one thousand nine hundred and three before me, Hector de Castro, Consul General of the United States of America at Rome, Italy, personally came Robert C.

EXHIBIT C 61.

February 28, 1903.

*Frederick B. Adams, Esq.,
38 State Street,
Albany, New York.*

MY DEAR MR. ADAMS:

I enclose copy of the proposed transfer of the Columbe Coal mine from Morley to the Columbe Coal Company, which was forwarded me by Mr. Harman in London; also proposed transfer from the Ecuadorian Association to the Ecuador Company received from the same source.

I think it would be well to have you meet Mr. Greene as soon after his arrival here as possible, in order that we may have a conference.

Yours very sincerely,

BENONI LOCKWOOD, JR.

(Enc.)

EXHIBIT C 62.

38 State Street.

ALBANY, NEW YORK, March 2, 1903.

20

*Mr. Benoni Yockwood, Jr.,
New York City.*

DEAR MR. LOCKWOOD:

I beg to acknowledge receipt of yours of the 28th of February with proposed transfers of Columbe Coal property and Ecuadorian Association. They are very interesting documents, and I shall get hold of Mr. Green immediately on his arrival in this country and have a conference at your office.

30

I have a letter from Mr. Pruyn to-day in which he says that he asked Mr. Harman some time ago to cable you stating that Mr. Goodrich, one of Mr. Pruyn's

friends, would call on you in relation to the Galapagos Islands proposition. It is my understanding of the matter that Mr. Goodrich is going to send two or three men down to the Islands to make an inspection and to report upon the amount of livestock there, and Mr. Pruyn will consider it a favor if you can render Mr. Goodrich any assistance in the matter.

Yours very truly,

F. B. ADAMS.

10

EXHIBIT C 30.

March 3, 1903.

Funds needed, Ecuador Co.

		May 1st.	June 1st.
New York & London,	25,000	25,000	
Ecuador Construction,	60,000	90,000	
Rails, 1,500 tons etc. including freight (to 20 m. beyond Co- lumbé),			40,000
Counsel Bonds (Horne),	25,000	25,000	
20		110,000	180,000
Cr. from Sinking fund,	65,000	65,000	
		45,000	115,000
Robt. C. Pruyn has paid thro' Harman to Horne	15,000		
H. has paid to Ecuador,...	7,500		
Hunter,*	2,500		
Dawes,	750	3,250	25,750
30		25,750	29,250
			89,250

Personal Account.

	<i>May 1st.</i>	<i>June 1st.</i>
H. to furnish,	22,500	57,500
Cr. paid,	10,750	10,750
	11,750	46,750
 P. to furnish,	 22,500	 57,500
Cr.,	15,000	15,000
	7,500	42,500

Agreed to pay to May 1st now P. has wired to loan E. Co. \$10,000 sending 7,500 to Ecuador. H. will pay 10 Hunter (?) Horne \$10,000 in London.

Memo.

32 bonds free to borrow on and will receive on April 1-20 abt. 230,000 more and June 1, 130,000.

May payments to be made by borrowing on bonds if not from capital subscribed.

Orient Co. of Ecuador.

Incorporate London
with Capital of £100,000.

Directors: DeFriesse

Wilson

Gardyne

Mariani

Sir Robt. Moncrieffe

Pt. Mariani. Treas. Gardyne.

Stock to be divided 4/4ths; Harman 1/4, Pruyn 1/4, Mariani 1/4, Winsor 1/4. Pay in £250 each open account at Glyns.

20

March 4, 1903.

Galapagos. Agreed to divide 4/4th; Pruyn, Winsor, 30 Harman and Maj. H. each to pay 1/4 but P. & W. to loan Hs 1/2 of their advances.

28 ECU

EXHIBIT C 85.

Mar. 3, 1903.

Funds needed E. Co.

		May 1.	June 1.
N. Y. & London,		25,000	25,000
Ecuador Construct'n,		60,000	90,000
Rails 1500 tons &c. including frt. 1 to 20 miles beyond Columbe, ..			
Consols bonds (Horne),		25,000	25,000
		110,000	180,000
10 Cr. from sinking fund,		65,000	65,000
		45,000	115,000
R. C. P. has pd. thro' H. to Horne,	15,		
H. has pd. to Ecuador, ..	7,500		
Hunter,	2,500		
Dawes,	750	3,250	25,750
		25,750	24,250
20			87,250

Personal a/c

		May 1.	June 1.
H. to furnish,		22,500	57,500
Cr. pd,		10,750	10,750
		11,750	46,750
P. to furnish,		22,500	57,500
Cr.,		15,000	15,000
		7,500	42,500

Agreed to pay to May 1
 P. has wired Adams to loan E. Co. \$10,000
 sending 7,500 to Ecuador. H. will pay
 Hunter \$10,000 in London.

Memo.

32 bonds free to borrow on and will receive on Apl.
 1-20 abt. 230,000 more and June 1, 130,000.

May payments to be made by borrowing on bonds if
 not from capital subscribed.

Orient Co. of Ecuador.

10

Incorporate London
 with Capital of £100,000.

Directors: DeFries

Wilson

Gardyne

Mariani

Sir Robt. Moncrieffe

Pr. Mariani. Treas. Gardyne.

Stock to be divided $\frac{4}{4}$ th; Harman $\frac{1}{4}$, Pruyn $\frac{1}{4}$,
 Mariani $\frac{1}{4}$, Winsor $\frac{1}{4}$. Pay in £250 each open a/c 20
 at Glyns.

March 4, 1903.

Galapagos. Agreed to divide $\frac{4}{4}$ th; Pruyn, Winsor,
 Harman and Maj. H. each to pay $\frac{1}{4}$ but P. & W. to
 loan H's $\frac{1}{2}$ of their advances.

EXHIBIT C 63.

(Copy.)

R. C. Pruyn, Esq.,
 Bartolini's Palace Hotel,
 Naples.

30

DEAR MR. PRUYN,

The agreement as to the issue of 65,000 Ecuadorian
 Shares provides that they shall be issued to you or as

you direct. I suggest that they be issued to you in one certificate and that you transfer this certificate and attach it to the letter to the Ecuador Company in New Jersey agreeing to exchange for the shares in that Company. With this object I enclose a transfer, which please sign against the first seal and have some one witness your signature in the margin, and fill in your middle name at the top, and sign the statement on the back which prevents the payment of full stamp duty, and
 10 sign across the stamp and date the letter to the Ecuador Company, and return them all to me, and I will have the certificate issued and file them all with Messrs. Glyn, Mills, Currie & Co.,

Yours sincerely,

(sgd) L. H. DE FRIESE.

Enclosures 2.

EXHIBIT C 29.

SAVOY HOTEL,

FLORENCE, 5 Mar. 1903.

20 DEAR MR. HARMAN:

There was one thing we did not complete, viz.: Scheme for organization of Land Coy. to take over lands on the West slope. I would suggest a capitalization of \$250,000 to \$500,000 on the principle that so large a tract will justify it.

Perhaps you have a name. If not any of these might answer: "Pacific Land Co." (Land Co's however have not had a very good name.) "The Andes Company" might be better. As we have arranged for an Orient
 30 Co. we might make this the Occident (although it might be dreadful to have an "A" accidentally substituted!)

The English use the plural "lands" so that if "Pacific Lands" or "Andes Lands" or "Occidental Lands" were used it would not have quite the objection to the American Land Co.

6th Mai.

I received this a. m. your telegram repeating Lockwood's and replied: "Don't clearly understand preferred stock distribution nor did you Naples. Advise refusing to act saying must consult Pruyn-Winsor and retorting that Lisdick should think before assuming antagonism to Pruyn-Winsor, who have expected cooperation." This evening I received copy of your reply.

As you know the men, I submit to your method; but still think they should be delayed if possible.

10

I fear that giving them the preferred stock might prejudice the case of the option by a quasi-recognition of a contract. I should prefer to settle everything at once.

Adams wires that they need \$8,000 immediately in N. Y. I replied to cable \$7,500 to Ecuador—that the \$65,000 would soon be available and to advance if necessary against the receipt of this. Please arrange to send them so much of the sinking fund as is not needed in London.

Mr. Mariani sends me a copy of his proposed concession which I criticize for the purpose of aiding the Orient Co.'s application.

02

1. The use of the word "option" is not so happy as a "deed."

2. The application can be made more favorable to the Govt. by omitting clause providing for their paying for road. Let Co. pay for road and agree to build a second road within say ten years and a third within the twenty.

3. Offering 25 per cent. of stock for public subscription is objectionable.

30

4. Definite statement that Govt. relinquishes to Co. mineral rights.

I enclose copy Mr. M. sent me for your inspection asking you to return it (or copy) to me. The maps have not yet arrived.

Please give me the address of beef and sulphur people and arrange to have them expect to meet me.

I enclose a bill picked up by car-porter.

Pray keep in mind the examination of Galapagos cattle and arrange in New York with Adams to communicate with Roodrich while South. He returns to N. Y. early April. He should arrange with his man verbally. With kindest regards to yourself and Mrs. Harman,

Faithfully,

(sgd.) ROBERT C. PRUYN.

Would it not be well to leave off Sir R. Moncrieffe from Orient board and get a new name so as not to have
10 too many names as E cudn. Assn.?

P. S. May 7.

Have received and replied to your telegram quoting Lockwood.

I think my basis of negotiating good, and that they are likely to accept. I expect of course to lend you the money for the \$5,000 deposit; but am anxious to keep clear of any connection with Association.

I much prefer cash for the bonus to any securities and want to keep for the Ecuador Co. the preferred stock.
20 I hope the "distribution" can be avoided by this offer.

The thing of most importance is an absolute release of all claims on the part of each one represented by Dick & Lisman.

The standing of the McDonald claim is a little hazy in my mind; but I am hoping that the suits would be discontinued. If you understand why Lockwood says the Assn. claim cannot be offset against McD.'s please let me know.

My idea for the releases is to have them for the Assn.,
30 and you individually to have the deposit made by you and no action whatever taken by the Assn.

Martini maps received and will be sent to him. Ho. Cecil to-night. Try to get copies for yourself and me. There is a good map place on Pall Mall near the Carlton.

Our application should include all to Columbia border, and as much of mountain region west as possible with all mineral rights.

The Ecuador Govt. will have left a great tract east for their development in the future as an offset to alternate sections. The roads might be made over to them or a "right of way" over them would be better.

EXHIBIT C 64.

March 7, 1903.

MY DEAR MR. ADAMS:

I have to-day received the following cable.

"Can you obtain offer from Lisman, Dick and all other associates at cost and six per cent. for 10 stock and loans, they returning all collateral with cash bonus twenty or twenty-five thousand dollars, settling everything payable one-half July 1st, the balance on or before September 1st at my option. Deposit immediately \$5,000 Trustgage against their securities and loans.

Harman."

In return I have cabled that I will answer Monday, and understand that the \$25,000 bonus is to be given by us. I feel sure that this matter can be closed on these 20 lines.

I have just finished a very unpleasant interview with Mr. Graham but he has left. I managed to get the matter held open until Monday evening.

I have your letter of March 6th and note with interest the extracts from Mr. Pruyn's letter. We will push the escrow agreement referred to and wish to express my appreciation of his confidence in me. I have felt that I represent Mr. Pruyn in this matter quite as much as Mr. Harman, and will do everything in my 30 power to protect him. There is nothing in Mr. Harman's relations to myself that under the present circumstances prevents this, and if I feel that at any time their relations are such that their interests cannot properly

be represented by the same person or firm, I will at once notify Mr. Pruyn to that effect in order that I may withdraw as counsel for one or the other interest.

I note that you have not received the papers for filing of the Ecuador Company matter, and will have them forwarded to you on Monday.

Yours very truly,

Frederick B. Adams, Esq.,
 10 38 State Street,
 Albany, N. Y.

EXHIBIT C 31.

THE BERKELEY HOTEL,
 PICCADILLY W.,
 March 10th, 1903.

Robert C. Pruyn, Esq.,
 20 *Hotel Danielli, Venice.*

MY DEAR MR. PRUYN:

I beg to acknowledge your letter of the 5th inst., which has had my most careful consideration.

While in Naples I spoke to you of the organization of the Land Company, and remarked that I had written to Lockwood to organize this Company, and that I would hand you a copy of my letter to him. But, if you remember, I found that I had not brought a copy with me, and I now enclose you one. If you remember we
 30 discussed the organization of these companies and decided that no cash should be put in the treasury of either Company, and we sent a cable to Mr. Lockwood to change the amount of stock to be deposited in escrow with the Union Trust Company of Albany for yourself and Mr. Winsor. Immediately on my arrival in New York I will see that this business is put in proper shape.

I can give you no conception of the trouble that I have

had with Mr. Mariani. He has felt that it was incumbent upon him to advise his friends in New York, Mr. Patrick Calhoun and others of the proposed transactions with us. They have cabled him back insisting that they should have an interest in the proposed concessions from the Government of Ecuador. I have been compelled to spend hours with him insisting that I would not change one word of the agreement made with you, and the only alteration that I have made has been to consent that the Orient Co. would reimburse Mr. Mar- 10
iani to the extent of £5,000 given to his agent, and that we would assume a further £5,000 due his agent on the 1st of June. I hope you may see your way to approve of this. I recognize that it is a change from the understanding arrived at in Naples, but considering everything I assume the responsibility of agreeing to pay these amounts. I enclose you herewith two copies of the agreement entered into between Mr. Mariani and ourselves. You should sign one and forward one for Mr. Winsor's signature. 20

I have just received the following cable from Lockwood:

"Graham's negotiations will be concluded Saturday. You must not leave until then."

I replied stating that it is impossible for me to remain here until Saturday, and that I am sailing on the Kronprinz on Wednesday.

I enclose you copies of the agreements between F. G. Horne, the Ecuador Co. and myself, together with a copy of a cable sent to Major Harman, to be trans- 30
mitted to the Minister of Finance of the Government of Ecuador in reference to the bonds of the external debt. I also enclose a copy of a letter to Mr. Harvey, Secretary of Glyn, Mills, Currie & Co. in reference to remittances to Ecuador. Messrs. Glyns have only received up to date £3,000 of the £13,000 due on account of sinking fund. They are advised that a further £5,000 is in the mail and will reach them within the next ten days,

and that the balance £5,000 will be received within the next 30 days. I do not think it advisable to ask Messrs. Glyns to make advances against these remittances, and as you will note, have requested them to forward 32 bonds to New York as against a loan to the Union Trust Co. of Albany of \$16,000. In my opinion this \$16,000 should be remitted to Glyns and placed to the credit of the Ecuador Co. You will please note that I have cabled Lockwood to have the Ecuador Co. cable Messrs. Glyn
10 to remit £3,000 to Ecuador on March 15th, and £3,000 on April 1st for account of construction, and that you will give them instructions as to further remittances thereafter.

Lord Hillingdon has been quite ill, since my return to London, and I have been unable to see him. Mr. Mills and Mr. Harvey have seemed quite anxious in reference to two points:

1st. As to the balance the Ecuador Co. would carry with Messrs. Glyns. 2d. As to when the Ecuador Co.
20 would repay £17,000 secured by about \$1,150,000 of Guayaquil and Quito Railway bonds. I stated to Mr. Harvey to-day that Lord Hillingdon had advised me that Glyns would carry this loan until Dec. 31, 1903, on Bank of England rates and 1 per cent., and that he would then expect the Company to make some definite arrangements with Messrs. Glyns. Mr. Harvey and Mr. Algie Mills both deprecated this arrangement and stated that Lord Hillingdon had not mentioned the above arrangement to them.

30 I enclose you copy of letter from Mr. Lisman to Mr. Gardyne, only for the purpose of giving you their point of view. In my opinion we have made a mistake. No proposition whatever should have been made through Lockwood to Messrs. Dick and Lisman. The entire matter should have been held in abeyance until my arrival in New York. I cannot help but feel that if this had been done a more satisfactory arrangement would have been arrived at. Lockwood cabled me on Satur-

day that Lisman had sold 100 G & Q bonds. Today there was offered \$150,000 of G & Q bonds on this market and they were readily taken up at 56. I cannot imagine where these bonds came from.

It is now 2 o'clock in the morning and unfortunately my man has packed up all my papers, together with your letter to me and I am tired beyond expression and I feel that there are numerous matters that I ought to advise you of, but there is a limit to human endurance and since 10 o'clock on Sunday night I have been worked up to 10 the limit.

I find that there has been deposited with Messrs. Glyn, Mills, Currie & Co. £173,000 shares of the Ecuadorian Association, and I have had deposited today £65,000 of the shares issued to you, making a total of £238,000. And there has been deposited with the United States Mortgage & Trust Co. about £38,000. This gives us a clear majority of the shares of the Ecuadorian Association, and I feel perfectly safe as there are only outstanding undeposited, excluding the stock deposited under the pooling agreement with Dick, Lisman and Harman about £45,000 shares. 20

I feel, Mr. Pruyn, that I have left unsaid and undone a great many things that you should have been advised of, and I can only plead as an excuse for not giving you clear and more detailed information, that every moment of my time has been taken up by numerous persons calling upon me, and that the last two days work has really been trying to me and I have hardly had a moment in which I could dictate a letter to you or anyone else. 30 It is now 2:30 a. m. and my entire evening has been taken up with discussion of various kinds pertaining to the business of the Ecuador Company, and try as hard as I could, it was impossible to get rid of these people and put my mind upon the various matters that I wish to communicate to you, and I am so tired and worn out with the various matters that have been under discussion for the last 48 hours, that I cannot

help but feel that I have failed to give you a clear idea of this business.

You will no doubt note that instead of paying Mr. Horne the £5,000 which he demanded that I have only paid him £3,000, and have authorized him to draw on me in New York, at his discretion for £1500; but the demands upon me have been so great that I have been unable to meet them all and have been compelled to demand time for payment.

10 Hoping that you will pardon my inability tonight to give you further information, I am,

Sincerely yours,

EXHIBIT C 81.

38 State Street.

ALBANY, NEW YORK, March 10, 1903.

*Mr. Samuel H. Lever,
New York City.*

MY DEAR MR. LEVER:

20 I have your letter of the 7th regarding remittances of \$75000 and \$2000 made by me on account of the Ecuador Company on the 6th inst.

With regard to the promissory note, I understood from Mr. Lockwood that it was simply to be of a temporary nature and was to be destroyed upon confirmation of the understanding that the Company was to assume all the current liabilities and expenses of the Association.

30 I expect to be in New York on Thursday and shall speak to Mr. Lockwood again about the matter; meanwhile your letter will certainly serve to be a sufficient acknowledgment for our purpose.

Yours very truly,

F. B. ADAMS

For the Ecuador Co.

EXHIBIT C 65.

(CARBON COPY CABLEGRAM.)

Pruyn, Bertolinis, Florence.

Most strongly advocate that Ecuador Company purchase Dicklaw interests upon terms as arranged by us and cabled you by Harman today \$28,000 payable immediately balance half July first half September first we consider terms obtained by us best under circumstances and believe immediate future new company will be jeopardized unless matters straightened out immediately if you approve cable adams at once Norton takes similar view must know by friday noon Lockwood Green Adams.

EXHIBIT C 66.

(CABLEGRAM.)

10 a. m.

MILAN, ITALY,

March 13, 1903.

Frederick B. Adams, Albany.

Authorize Lockwood to conclude contract Lisman 20
Dick furnishing him \$28,000 provided securities and releases deposited in escrow U. S. Mortgage & Trust Company, settlement absolute and conclusive.

ROBERT C. PRUYN.

(CABLEGRAM.)

11:30 a. m.

MILAN, ITALY,

March 13, 1903.

Frederick B. Adams, Albany.

Lend Harman \$28,000 taking assignment of papers 30
and securities. Received no cable at Florence.

ROBERT C. PRUYN.

EXHIBIT C 67.

The
Union Trust Company
of Albany, N. Y.

March 13, 1903.

MY DEAR MR. LOCKWOOD:

New York, N. Y.

MY DEAR MR. LOCKWOOD:

I am enclosing with this letter certified copy of that
10 portion of the minutes of Wednesday's meeting which
you requested. Also copy of the letter which I have
written to The U. S. Mortgage & Trust Company, en-
closing check for \$28,000.00 to be placed to your credit
and disposal as agent.

As among other things which you may know about,
I happen to be secretary of this Trust Co., and it will
be necessary for me to be here to-morrow morning dur-
ing banking hours in the absence of the treasurer. For
that reason I shall not come down to New York unless
20 you need me for some special purpose, in which case,
if you will let me know, I shall be ready to take the
11.25 train.

Yours truly,

F. B. ADAMS.

38 State Street,
Albany, N. Y.

March 13, 1903.

*Mr. Clark Williams, Treas.,
New York City.*

30 DEAR SIR:

I beg to enclose, herewith, check for \$28,000 to your
order, which you will kindly place to the credit of Ben-
oni Lockwood, Jr., Agent, for such withdrawal and
disposition by him as he may deem advisable to make.

Yours very truly,

Copy for
Mr. Lockwood.

EXHIBIT C 32.

HOTEL RITZ,
PLACE VENDOME,
PARIS.

March 19, 1903.

My DEAR Mr. HARMAN:

Mr. Mariani came to see me on Sunday, and gave me a copy of the Articles of Assn. Orient Co. of Ecuador Ltd. He told me that you had provided for your portion of the £2000 Capital to be paid in and that he would pay the balance of his share. He has sent £125 through the Brichams to Mr. Gardyne. I had £500 cabled to meet Mr. Winsor's and my share. I then wrote Mr. Gardyne asking him to start the Co'y. He replies politely declining to do anything more "until further consideration is given to the matter."

Mr. deFrieze is to see me here on Sunday and I shall hope to progress the matter through him.

Mr. Mariani had such imperfect ideas about an application for a concession that I drew up a memorandum for him to send to his agent and enclose a copy of it herewith.

I did it hastily, designing to get his mind (and that of his agent) away from this old application and to show him that there were many ways of doing it. Mr. M's usefulness will consist in sending over immigrants. You will have to guide his agent and if we cannot get a formal authority from our slow London friends let him assume the authority and make his application in the name of the Co'y as given above.

External debt: I hope to hear that the Govt. is satisfied. Reference to your memo, as to means of paying for the \$200,000 bonds shows me that you depend upon receipts of money which will not be available June 15.

As the amounts to be provided immediately will be very large I wish to urge you not to make any commit-

ments in Ecuador that will embarras us while getting our chaos into shape.

It would be my ambition to get the finances of the E. Co. in perfect condition and establish its credit on the basis of always having money before spending it. A stern chase after dollars has ruined many a good enterprise, and came very near swamping the Ecuadn. Assn.

You have made a fine fight since Jany. 1st in getting things in order and I beg you not to let up in this good
10 work until we are in clear water.

I shall take up the work actively as soon as I reach home, and am having schedules prepared to assist in a clear understanding of the Company's needs. As the bonds must be the means for furnishing money I hope you will cable to N. Y. any information showing the earning power of the road. I also want further reports on the Coal property, and the machinery needed for its development.

Mariani spoke unfavorably of the lands west of the
20 mountains, quoting reports he heard in Guayaquil, which were to the effect that if they had been desirable they would have been taken up. He said they were principally back of the good lands occupied by settlers. This was apropos of my suggestion that he send over some Italians to settle there. He was afraid to disappoint them.

We should have some report on these lands without delay.

Lisman. I cannot agree with you as to the settle-
30 ment which I think was wise and favorable under the circumstances. We had to be rid of them and we are not in position now to be attacked.

I am sorry to hear of Lord Hillington's illness and fear I may miss seeing him. I did not learn to know his partners.

I was glad you spoke in your letter of your failing to advise me of many things and appreciate the difficult position you were in. I find it most difficult to

grasp the situation and it has been no easy task for me to decide so many things while on a pleasure trip, & at such a distance from the three bases—London, N. York, & Ecuador, having so small a stock of information. In New York it will be better; but any information you can send will be of great aid in instructing me. Especially advise me as to the sinking fund monies and how they may be used.

In Gardyne's letter, he questions whether Glyn will accept so small an account, & appears to be generally dissatisfied. 10

It occurs to me that we must close up all our London relations except with the Glyns and the bond market as soon as we can. It is costly, difficult and slow business and they apparently respect those only who want nothing. One day in N. Y. is worth a week in London.

I have learned to heartily respect the direct methods of Americans.

I beg you to present my regards to Major Harman and to assure him of my friendship. With kindest regards to yourself and the hope that you may have a very successful trip, 20

Sincerely yours,

ROBERT C. PRUYN.

Mr. Archer Harman,

Guayaquil & Quito Rway,
Duran, Ecuador.

P. S.—Did you ever do anything in relation to the purchase of property at the Guamote terminal? 30

EXHIBIT C 68.

TELEGRAM.

To ARCHER HARMAN

33 Wall St N. Y.

Lisdict Agreement unauthorized humiliating but acquiescence unavoidable. Approve Galapagos Whats McDonald condition

PRUYN

EXHIBIT C 33.

10

33 WALL STREET,
NEW YORK, March 25th, 1903.

F. B. Adams, Esq.,
Albany, N. Y.

My DEAR SIR:

I desire for your information, to make a brief statement of the various matters which the Ecuador Company have taken over from The Ecuadorian Association.

1. *Grace Bros. & Co.* The Ecuadorian Association
20 has two contracts with Grace Bros. & Co. Ltd.; one provides for the transportation of all material from New York to Guayaquil, and a copy is attached hereto. The shipments under this contract have been handled satisfactorily by Messrs. Grace, with the exception of cars and locomotives. Grace Bros. & Co. have insisted that all cars and locomotives shipped by them shall be charged by measurement and not by weight, consequently their charges for freight on passenger coaches and locomotives have been enormous, and have been
30 a constant source of irritation as between Messrs. Grace and ourselves. Their freight rate for rails is low as

it provides for so much per ton of 2240 lbs., and the service has been satisfactory.

Contract No. 2 is for 500,000 Ties at 65c. gold each delivered at Guayaquil. The Ecuadorian Association have taken under this contract something over 300,000 Ties. 250,000 of these Ties have been delivered at Guayaquil and are paid for. At the request of the Ecuadorian Association, one cargo of about 56,000 Ties was stopped at San Francisco, the Association paying Messrs. Grace Bros. & Co., some £2,015.0.0 and 10 \$4000 for the insurance charges on the same for one year. These ties are now held at San Francisco by Messrs. Grace Bros. & Co. subject to our order and subject to a credit of £2915-0-0. I wrote them on the 23rd inst. requesting them to ship this cargo of Ties to Guayaquil, and that we would pay them the balance due after deducting the amount already paid, and that on or about May 1st. we would indicate to them when we shall require further shipments to be made.

We had a further contract with Grace Bros. & Co. 20 for 20,000 barrels of cement. All the cement called for under this contract has been delivered, Messrs. Grace Bros. claiming a balance due them of from \$7,000 to \$9,000, but they are due to the Ecuadorian Association the interest collected on about 321 bonds last July, amounting to about \$10,000. On settlement of accounts today Messrs. Grace would probably owe us from \$500 to \$2,000.

With the above exceptions we have no arrangements, contracts or understandings with Messrs. Grace Bros. 30 & Co. In the event, however, that the Ecuador Company should assume the Ecuadorian Association contracts with Grace Bros. & Co., I would suggest that the commission of 5% provided to be paid to Messrs. Russell Huskie & Co., should be rebated to the Ecuador Company.

2. *American Car & Foundry Co.* The Ecuadorian Association has a contract with the American Car &

Foundry Company. This contract has been completed with the exception of the delivery of six passenger coaches. Four of these coaches are finished and are stored at Wilmington, Del. The contract price under which they were built is materially less than they could be constructed for today. These passenger coaches will be needed as soon as the railway is opened up to Guamote. I have advised the American Car & Foundry Co., through Messrs. Dutilh Smith, McMillan & Co. their
10 Agents, that we will probably arrange to pay for and ship the four passenger coaches some time during the month of May. Messrs. Dutilh Smith, McMillan & Co. advise me that the American Car & Foundry Co. would accept our note, payable at any reasonable time, in lieu of cash in the event we desired them to do so.

3. *G. & Q. Co. Bonds.* The Guayaquil & Quito Railway Co. have received from the Government of Ecuador \$9,070,000 of Railway Bonds. The total amount of bonds authorized under the contract with the Govern-
20 ment of Ecuador for the construction of the railway is \$12,282,000 leaving a balance due to the Ecuador Company for completing the railway to Quito of \$3,212,000 in bonds. Of the \$9,070,000 bonds received \$7,280,000 have been disposed of; \$1,117,000 are held as collateral by Glyn, Mills Currie & Co. of London; \$495,000 are held by Dick, Lisman and associates and \$188,000 bonds are held by Messrs. Calhoun, Peabody, Taylor and Lee. When the railway is completed to
30 Guamote we are entitled to about \$460,000 bonds, and on the construction work between Guamote and Columbe we are entitled to about \$100,000 bonds. The \$460,000 should be available between the 15th April and May 1st. The \$100,000 bonds should be available now. The Ecuador Company have borrowed from Messrs. Glyn, Mills Currie & Co. and Sir James Sivewright 150 bonds which will have to be paid out of the first bonds received on account of construction.

4. *F. G. Horne & Council of Foreign Bondholders.*

Attached is a copy of a contract between F. G. Horne and the Ecuador Company together with two memorandums between F. G. Horne and myself. The contracts and memorandums explain themselves. I paid Mr. Horne £3,500 under the contract between The Ecuador Company and himself. I have authorized Mr. Horne to draw upon me personally for £1,500, making a total payment to Mr. Horne on this account of £5,000. Under this agreement, we have purchased from Mr. Horne 200 bonds at 160 pounds per bond, or a total of 10 £32,000. Of the 200 bonds Mr. Horne purchased from the Ecuador Company 21 bonds at £160 per bond, amounting to £3,360. These 21 bonds have been held by the Council of Foreign Bondholders under the various agreements entered into with them, and are entitled to interest at the rate of 6% since the 31st December, 1897, amounting to \$360 on each bond or a total of \$7,560, which should be handed to Mr. Horne by the Council of Foreign Bondholders, making a total due the Ecuador Company by Mr. Horne on account of these 21 bonds, 20 £4,860. At the present moment, Mr. Horne should credit us with:

Paid by Harman,	3,500
Draft authorized by Harman,	1,500
Value 21 bonds,	3,360
Accumulated interest on 21 bonds,	1,500
Interest on 200 bonds purchased,	1,200

£10,060

leaving a balance of £21,950-0-0.

Under the agreement between the Government of Ecuador and the Guayaquil & Quito Railway Co. the Government agreed to deliver to G. & Q. Railway Co. \$750,000 of railway bonds and £80,000 of Condor bonds. The condor bonds were to draw 4% and 1% sinking fund from about December 31st 1898. The \$750,000 of railway bonds were delivered to the Railway Co. upon the understanding that the Railway Co.

30

should return cancelled to the Government of Ecuador upon the Government's delivering the £80,000 of Condor bonds, the total foreign debt of the Government amounting to about £680,000 sterling. The Railway Company were unable to deliver the Foreign Debt bonds and the Government deposited the £80,000 of Condor bonds with El Banco del Ecuador in Guayaquil, together with all coupons attached and deposited with El Banco del Ecuador the 4% and 1% sinking fund amounting as I am
10 advised to about \$80,000 gold. Major Harman has cabled me that the Government have appointed Mr. Lizardo Garcia to make the exchange. Mr. Garcia left Guayaquil on the 17th March taking with him the Condor bonds and a draft for the accumulated interest and sinking fund. Upon Mr. Horne's depositing the 200 bonds contracted for under the agreement between Horne and The Ecuador Company with Glyn Mills Currie & Co. and the delivery to Garcia the Agent of the Government of the Foreign Debt bonds, of which
20 the Council of Foreign bondholders hold about £380,000, and Messrs. Robarts, Lubbock & Co. £300,000, Mr. Garcia will turn over to the representative of the Ecuador Company the £80,000 of Condor bonds, together with the accumulated interest and sinking fund. The Ecuador Company, of course, to cut off the past due coupons and deliver them to Glyn Mills Currie to be cancelled.

(Note) The present arrangement with the Government is that £80,000 of Condor bonds shall be deposited
30 with Robarts Lubbock & Co. to cover the guarantee of \$500,000 provided in the construction contract between the Government and the Railway Co. but it is Harman's intention on reaching Quito to have the Government waive the deposit of \$500,000 and deliver the Condor bonds to the Ecuador Company direct.

In my opinion you and Mr. Green should meet Mr. Garcia, show him every courtesy and discuss with him all matters fully before his departure for London. It

would also be advisable to have some one in London on June 15th to see that the transaction between Garcia and the Council of Foreign Bondholders, Robarts, Lubbock & Co., F. G. Horne and Glyn Mills Currie is satisfactorily carried out, as I regard it as one of the most vital questions that we have today in relation to our Ecuador business.

5. *Carnegie Co. Contract.* The Ecuadorian Association entered into a contract with the Carnegie Company to supply 40,000 of rails, bolts, spikes and fastenings. This contract was assigned to the Ecuador Co. 10 and since my return to New York I have placed an order with the Carnegie Co. for 500 kegs of spikes and 1500 tons of rails, and the necessary bolts, spikes and fastenings. The 500 kegs of spikes will be delivered at once. They are required to complete to Guamote. The Carnegie Co. have been requested to deliver the 1500 tons of rails by the 1st of May. If you receive them by the 1st of June you will be fortunate. I have placed the order now because I know that it is most 20 essential that these rails should be gotten to Ecuador and laid before the Congress meets. They are to be used between Guamote and Cajabamba. The railway between Guamote and Cajabamba follows the Columbe River up a narrow gorge where there is just room for the river and the railway. At present the Government road occupies the only space in this gorge that is practicable for railway purposes, and if the Government road is not used it will cost at least \$30,000 or \$40,000 per mile to grade a roadbed for the railway. If the Government road is used the grading from Columbe to 30 Cajabamba will not cost \$500 per mile. I want this portion of the Government road taken up before a definite arrangement is made with the Congress not to use the Government road between the end of the track and Quito.

I have had a talk with Mr. Baker, who is at the head of the Carnegie Co. in New York, and I do not think

there will be the least objection on his part to the Ecuadorian Association assigning the Carnegie Co. contract to the Ecuador Co. I am to meet him on Friday and will advise you further. Heretofore the Carnegie contract orders for rails have been placed through J. Ogden Hoffman of Philadelphia, who is associated with Dick, Lisman, etc., and I did not want this business to go through Hoffman as I fear he might do something to complicate it.

- 10 6. *American Bridge Co.* The contract with the American Bridge Co. has not been assigned to the Ecuador Company. It is a valuable contract and should be transferred, as the prices for bridges under this contract are about $1\frac{1}{2}c.$ a pound less than could be contracted for today.

- 20 7. *Lima Locomotive Works.* Copy of contract with the Lima Locomotive Works is hereto attached. It provides for the construction of two locomotives. These locomotives were to be delivered in November and December of last year. The Lima Locomotive Works have failed to make deliveries of the two engines heretofore purchased. I wish to confer with our management in Ecuador and will cable you in reference to the two locomotives that are now being built. The Ecuadorian Association are not bound to take these. The order was placed with the understanding that they were to be delivered to us in time to use for construction purposes during the present rainy season. As this is now impracticable, it is possible that we can get along without them.

- 30 8. *Law Suits.* There are two suits in the Scotch Courts against the Ecuadorian Association and one in the English Court. The Scotch suits are:

a.—Suit brought by A. A. Blow for services which he never rendered and for £2,700 with an admitted credit of about £600.

b.—Kitchen suit.—Kitchen subscribed for £5,000 of Association debentures, refused to exchange his debentures.

tures for railway bonds. The 31,000 of railway bonds that were to have been given Kitchen in exchange for his debentures are on deposit with Glyn Mills Currie with the coupons since December 31st, 1899, attached. Kitchen is suing to recover 85% of the face value of his £5,000 of debentures. The bonds with accumulated interest could be sold upon the market today and practically pay all that Mr. Kitchen is claiming. I would suggest that Kitchen's claim be purchased by some friendly interest together with an assignment from him 10 of the bonds at Glyns, allow judgment to be obtained against the Ecuadorian Association for £5,000, have a friendly receiver appointed and under that Receivership have the Ecuadorian Association wound up.

c. *Patent Shaft & Axle Tree Co.*—The Ecuadorian Association contracted with the Patent Shaft & Axle Tree Co. to build viaducts 54 and 59. These viaducts were constructed and shipped to Ecuador at a cost to the Association of £35,000. The Patent Shaft & Axle Tree Co. were paid the whole of this amount except 20 £800. When the viaducts were received in Ecuador they were found to be so faulty in their construction that it was impossible to erect them. The Patent Shaft & Axle Tree Co. are suing the Association for £800 and the Association are suing them to recover £35,000. The viaducts constructed by the Patent Shaft & Axle Tree Co. were condemned by Theodore Cooper of New York, Mr. W. A. Pratt who is the Chief Engineer of the Pennsylvania Railroad and Sir Benjamin Baker who is regarded as the greatest authority on bridges in London, 30 together with our engineering corps in Ecuador.

9. *English Association of American Shareholders.* These people have been acting as the transfer agents of the Ecuadorian Association in London for the past year. I arranged with them that from the 1st January we should pay them at the rate of £500 per annum for their services, the arrangement to be terminated at any time upon one day's notice by the Association.

10. The accounts of the Ecuadorian Association should be audited up to date. I have no suggestions in this matter except that as Stephen W. Little was employed at a salary of \$500 per year to audit the Ecuadorian Association accounts, I should think we ought to let him complete his job and cut his salary off from that date. I instructed Major Harman by cable on the 18th February 1903 to open accounts in Ecuador in the name of the Ecuador Company and that all transactions
10 in reference to the construction should be dealt with in the name of the Ecuador Company. All accounts here should be kept in the name of the Ecuador Company or the Guayaquil & Quito Railway Company. No further transactions should be handled in the name of the Ecuadorian Association.

11. *Contingent Rights Certificates.* Lockwood should be requested to interview all the parties in New York holding contingent rights certificates, give them 5% of Ecuador Co. shares for their certificates and obtain their
20 certificates. Lockwood should also be instructed to have Harman's £100,000 of certificates forwarded to Glyns.

12. *Ecuador. Reinberg Dock Concession, Guayaquil.* I enclose you translations and statements in reference to this concession. I am informed that it has been taken up by a German Syndicate. I only mention it as something may come up in this connection in reference to having the Government make Duran a Port of Entry and establishing a Custom House there and the construc-
30 tion of a dock system at Duran.

13. *Canar Land Company.* The lands that we propose to include in the Canar Land Co. extend North of the Railway line from Barraganetal to the Rio Chiquito following the Rio Chiquito to the River Chimbo, then extending across the Chanchan valley on almost a direct line to the Canar River, down the Canar River to a point opposite Barraganetal. It is estimated there are embraced in this track from two to four million acres of

land. There are several large plantations of Rubber and Sugar, not exceeding 25,000 acres, within this boundary which would be excluded from our grant. In my opinion we will find that it will be necessary to pay the Government from 60,000 to 100,000 Sucres for this property, and to protect the title the entire boundary would have to be fenced in. It would require a fence of at least 180 to 200 miles. Messrs. Cooper, Hewitt & Co. manufacture a very cheap grade of wire fencing. They gave me an estimate some time ago of about \$100 10 a mile, including posts, for fencing. I am not just clear, but my recollection is \$100 a mile. If the Government transfers this land to us I would advise that the whole boundary be fenced at the earliest possible moment.

CODE FOR CABLES.

Raconteur—The Government title to the Canar Lands can be secured for \$ 20

Raconto—It is estimated that there are miles to be fenced in on the entire grant

Rancontons—..... of land owned by other parties included in this boundary.

Racopiles—There are acres estimated to be included in the Canar land grant.

14. *Columbe*. Quite a trade center and a town of considerable proportions will spring up at Columbe where the branch railway leaves the main line for the coal mines. There is a farm at this point owned by 30 Senor. This farm consists of about 5,000 acres. I have an indistinct recollection that the asking price is 30,000 Sucres. We are having some difficulty in obtaining the right of way for the railway running to the coal mines through this property, and I understand they are asking 20,000 for the right of way. It is a valuable piece of property and will be extremely valuable as a town site. If it can be purchased upon

satisfactory terms I strongly advise obtaining the title, having the property surveyed and mapped out. The branch railway to the coal mine should be put under construction immediately. The tunnel recommended in Major Harman's sketch and letter, both of which Mr. Pruyn has in his possession, to open up the coal mines should be commenced at once and completed at the earliest possible moment.

CODE FOR CABLES.

- 10 *Racopilo*—Asking price for farm at Columbe \$
Racoplaca—Amount demanded by the owners of the farm for right of way for the railway to the coal mines \$
Racoplaque—..... acres of land contained in farm.
Raquetare—Cattle, sheep and other animals on the farm included in purchase price, valued at \$.....
 20 *Racquitter*—Estimated cost of driving tunnel into coal mine \$.....
Radariste—Estimated cost to complete branch line of railway to coal mine \$
Radarm—..... tons of coal can be mined per day at cost of \$ per ton when tunnel completed.

When in Ecuador last August I rode over the country surrounding the coal mine. Mr. Enderton told me
 30 that the entire country for 30 square miles surrounding these mines was owned by one individual, that his asking price for the surface of all this property was between 30,000 to 40,000 Sucres. It is one of the greatest wheat producing and cattle grazing farms in Ecuador. The soil is the richest I ever saw. I have seen wheat and barley growing that would certainly yield 20 bushels to the acre.

Radarmen—Area of farm on which the coal mines are situated is acres.

Radazza—This property can be purchased for \$.....

Radazzammo—The cattle, sheep and other animals upon the farm are valued at \$.....

16. *City of Riobamba*. The City of Riobamba is situated on the Chambo and the Chibunga Rivers. It is a City of from 40,000 to 60,000, well built, large Government buildings, and at present handles enormous trade. It draws the entire trade from the Chambo and Penipe Valleys as well as all the country open so far towards the Orient. The present railway line comes down from the Choquipoquio Pass to a point 2 miles North of the present City of Riobamba, then swings around return back crossing the Chimborazo Pass South of Mocha. A trade centre of enormous proportions will be developed at Riobamba immediately upon the Railway reaching that point. The climate is perfect. There are 3,000 to 5,000 acres of land laying between Lican and Guano which can be purchased for 200,000 Sucres. At present Mr. Juan Cordovez has constructed Water Works in the City of Riobamba to bring the water down from the base of the Chimborazo mountain in an aqueduct, miles of this aqueduct being through tunnels, and other portions of it built upon stone masonry. The entire scheme has been well thought out. The aqueduct is built of good masonry and carries a stream of water 6 ft by 7 ft. capable of furnishing water for a great population. The construction of this aqueduct has cost Mr. Cordovez about \$125,000. It sounds like a very small price, the Governor of the province having furnished him labor at 10 centavos of 5c a day for its construction. Mr. Cordovez also owns the water power on the Chambo and Chibungo River which is practically inexhaustible. I would suggest that some arrangement should be made with Mr. Cordovez to turn over to a Company to be organized the water works and the water power on the Chambo and Chibunga Rivers, and that he be given

stock in that Company for this property, and that this Company when organized should purchase the 3,000 to 5,000 acres of land between Lican and Riobamba and Guano, and that a town site on a comprehensive plan should be laid out.

The privilege for Electric Light and telephones for the City of Riobamba should be obtained.

Radazzando—Cordovez will transfer Riobamba Water Works and his water power on the Chambo and Chibunga Rivers for \$. in shares of a Company to be organized with Capital.

Radazzassi—Electric Light franchise can be obtained in the City of Riobamba upon the following terms:

Radazzato—Work to be commenced upon the erection of the plant by

Radazzava—Plant to be completed and in operation by

20 *Radbod*—Cost of obtaining franchise \$.

Radbraken—3,000 to 5,000 acres of land North of Riobamba can be obtained for \$.

Raddensano—First payment of \$. to be made on

Raddia—Final payment of to be made on

17. *Quito*. Quito is a City of from 140,000 to 200,000 people. It covers a considerable area; from the Southern portion of the City to the Northern portion of the City, about 6 miles. Five miles South of Quito is the town of Magdalena and other villages containing a population of 20,000 people. On the North of Quito it is one continuous town to Cotocollao. This latter town has a population of 20,000 people, and it is about 7 miles North of Quito.

In Quito there is an electric plant and the electric light Company own the water from the Machangara river. The Machangara is a river of very considerable size. Water power to the extent of 10,000 horse power could be very cheaply developed. Seven miles from Quito is

the San Pedro River which has practically unlimited water power, and which can be obtained for a mere nominal sum.

The telephone system in the City of Quito is owned by the Government. The Railway will enter Quito South and its principal station will be upon the Convent grounds which has been confiscated by the Government and donated to the Railway by the Government. The Railway then swings round to the East of the City of Quito, and its Northern Station will be 10

At this point the principal station of the Railway will be built, and the principal business of the Railway will be handled. The property surrounding this point at present is worth from 400 to 1,000 Sucres per acre. The new City of Quito can unquestionably be built upon the plains North of Quito, and while the land would cost a great deal of money it would unquestionably prove to be a most profitable investment.

There are no Water Works in Quito. The only water fit to drink is supplied from Guapalo, which is situate 20 about 6 miles from Quito and is carried in on the backs of Indians and costs about 5c a gallon. The water used by the common people comes from the great Springs on the side of the Pinchincha. The water from the Pinchincha Springs runs through the City in open drains. All the sewerage of the city is thrown into these drains and the drinking and washing water is taken out of them. At the upper part of the City at the base of the mountain the water is comparatively pure. At the lower part of the City, where it comes into the River, it is 30 thick with filth. Water Works could be constructed in Quito most economically, and once constructed, it is my opinion that every house in Quito would have water pipes put in. The City of Quito would, no doubt, be willing to pay a very liberal subsidy per annum to any one undertaking to put a satisfactory water supply into the City, as the cost of bringing water from Guapalo is now enormous. I can give you no idea of the number of Indians employed carrying that water.

I shall attempt to obtain a franchise from the City of Quito for Water Works and Tramways. Tramways to connect the Town of Magdalena with the Town of Cotacollao, a direct line of about 18 miles. The traffic on this line should be quite large.

The present Electric Light Co. have expended about 300,000 Sucres. Their plant, aside from their water power, is absolutely worthless, excepting the installation of wires from house to house. Their net earnings for 10 the year 1902 were about 75,000 Sucres. As before stated, the present telephone system belongs to the Government. It is primitive and the Government might be induced to turn it over to a Company that would establish a satisfactory telephone system for the town.

Raddobbi—The City of Quito will grant a franchise for Waterworks, and agree to pay the Waterworks Co. a subsidy of \$ per annum.

Raddologia—Charter to extend over and cover a period of years.

Raddossare—Estimated cost of building Waterworks \$.....

Raddosso—Work must be commenced on and Waterworks completed on

Raddrizza—City of Quito will grant a franchise for Tramways from Magdalena the City of Quito and Cotacollao for years.

Radeaux—Number of miles of railway track necessary to be constructed to comply with franchise 30

Raderbalk—The Electric Light Co. at Quito will agree to sell their plant for shares of an Electric Co. to be formed with \$ of Capital.

Raderkast—The Electric Light Co. of Quito will not agree to accept shares in a Company to be formed for their present plant but demand \$ cash for their plant and the water power on the Chibunga River.

- Raderloop*—The Electric Light Co. of Quito will accept
 shares of a Company to be
 organized with \$. capital together
 with \$ cash.
- Raderworm*—The franchise of the Electric Light of
 Quito covers the exclusive privilege of
 Electric Light in Quito and extends for
 a period of years.
- Radevicus*—The Franchise of the Electric Light in
 Quito is not exclusive and covers a period **10**
 of years.
- Radevore*—I advise accepting the offer of the Electric
 Light Company of Quito.
- Radfelge*—I advise declining the offer of the Electric
 Light Co. of Quito.
- Radgarn*—The Govt. of Ecuador will grant telephone
 privileges to the City of Quito and trans-
 fer their telephone plant to a Telephone
 Co. for \$.
- Radhaspel*—The Govt. of Ecuador will grant a franchise **20**
 for telephone service in Quito and accept
 stock in a Company to be organized for
 their present plant.
- Radial*—The Govt. of Ecuador will grant a franchise
 for telephones in Quito, transferring their
 plant provided new telephone service is
 installed in Quito by.....
- Radiancy*—The Govt. of Ecuador will grant franchise
 for telephone service in Quito together
 with franchise for long distance telephone **30**
 connecting with Guayaquil and all inter-
 mediate cities.
- Radiately*—To obtain franchise for telephone system for
 Quito Guayaquil and intermediate Cities
 will cost \$.
- Radiator*—Term of franchise to cover period of.....
 years.

Radicabar—New Telephone Co. exempted from all taxation.

Radicabunt—New Telephone Co. will be required to pay Government tax of \$. per annum.

18. *Orient Concession*. Since returning to New York I have received a cable from the Minister of Public Works asking me to make a proposition to build a railway from a point on our main line South to Azogues, and from Azogues down the River Paute into the
- 10 Orient. I replied to this cable that I would be in Quito about April 15th and would then discuss the matter with him. From my advices I am satisfied that the present Government have determined to construct a railway from Alausi South to Azogues down the Paute River 10 or 20 miles into the Orient, and I do not believe any other scheme will meet with favor, though it may be possible to direct their attention from Riobamba across the Pass into the Orient by a wagon road, but a large portion of the population of Ecuador is in the
- 20 provinces of Canar, Azuay and Laja. These people are determined to have some railway communication. The three provinces are very rich in agriculture and minerals and have a very large population. It might be advisable to agree to construct this road, provided we can get 200,000 square miles of the Orient territory, the contract being taken in the name of the Orient Co., bonds similar to the guarantee bonds of the G & Q Railway being accepted for the cost of construction. Fifteen miles of this railway from Alausi to the top of
- 30 the Canar Pass will cost about \$40,000 a mile. The remaining 30 miles will cost about 10,000 to \$12,000 a mile. The price in bonds for construction of this road will cut no figure whatever, as the people are so very anxious for railway communication that they will pay anything that is demanded of them, and it will be one of the most popular contracts that the present Government could make. If it is found impossible to obtain the Mariani concession on the lines discussed with Mr.

Pruyn, it might be advisable to make an ad-referendum contract with the Government covering construction of a railway to Azogues and a grant of the Orient, which contract would be submitted to the next Congress.

EXHIBIT C 34.

HOTEL RITZ
PLACE VENDOME
PARIS.

April 2/03

DEAR Mr HARMAN,

I received yesterday yours of the 23d ult. 10

I think the Ecuador Co. is much better off for the Dick-Lisman agreement, although the deposit of stock is unfortunate, as you say.

I am much troubled however by my lack of detailed information as to finances. Mr De Friese has been here and alarmed me by stating some facts which I was fortunately able to disprove in greater part; but I do wish you would try to give me complete Statements. Perhaps more information may be on the way; but I am quite unable to give Mr Winsor a complete statement 20 until I reach home, and his understanding everything clearly and approving are so absolutely necessary.

Mr De Friese is to meet me in London on Monday next, and I hope then to see Lord Hillington. Mr. Mariani is also to be in London.

I am most troubled by the apparent lack of collateral in the E. Co. for securing the first payment; but am too ignorant of exact facts and figures to discuss this question. Perhaps Mr Winsor coming to the consideration with a fresh mind may see the way more clearly. 30

I received no cable reply to my request for information about prices of beef and sulphur and advice as to seeing the London people and shall therefore not attempt to do much for fear of complicating matters.

The Galapagos situation seems to be good, and we shall now watch for Ballards report. Mariani, by the way, writes that he will talk with me about immigrants for the land West of the Andes—although he declined to do so when he met me here.

I should think that the mortgage proposed to be bought (by Mr Carbó) was on general principles a good thing.

I have written asking Mr. Winsor to meet me during
10 the week after my arrival and hope to bring about something definite within a short time.

My kindest regards to your brother & yourself,

Faithfully yours,

ROBERT C. PRUYN.

Mr Archer Harman.

EXHIBIT C 69.

April 9, 1903.

Frederick B. Adams, Esq.,
38 State Street,
20 *Albany, New York.*

My DEAR ADAMS:

I had a talk with Allen yesterday and referred him to you, and he said he would write. It is about the balance of \$1500 due him by the Association.

There is one matter that I want to warn you about, and that is Mr. Pruyne's position in regard to the Luque purchase for the Duran Terminal Company. You remember that on your instruction I drew up an optional purchase agreement for Mr. Pruyne in respect to 65,000
30 shares of Association stock, and forwarded it to England, executed by you on behalf of Mr. Pruyne. It seems that the exigencies of the case demanded a change and we find that your contract was not used but another contract drawn in London was signed in Mr. Pruyne's

name by Mr. Green, as attorney. This latter agreement is in form a binding one on Mr. Pruyn to purchase the Luque property and turn it over to the Duran Company, etc., and is very dangerous in view of the little we know as to the validity of the title. The six months granted by the vendors to complete the optional purchase was given so that the Duran Company could let the whole matter drop in case of a serious defect of title or other obstruction to a completion of purchase, but now all that protection has been swept away, and the South Americans would take full advantage of that situation if they found it out. For that reason we must keep the new form of contract to ourselves. Under the present condition of affairs and the laws of Ecuador, the vendors can offer double (\$10,000) the instalment paid (\$5,000) and take the property back. It is necessary therefore to have that matter attended to in the near future. The Duran property should double in value in the next twelve months, and it is a temptation to the vendors to trade on the situation. 10 20

I am not an alarmist, but I want to have our necessary work placed as clearly as is possible before Mr. Pruyn so that he can the more easily dispose of it.

Yours very truly,

BENONI LOCKWOOD, JR.

EXHIBIT C 70.

38 State Street.

ALBANY, NEW YORK, April 20, 1903.

*Mr. Benoni Lockwood, Jr.,
New York City.*

30

DEAR SIR:

I beg to acknowledge receipt of your letter of April 18th with the blank forms of transfers, to be used in the transfer of Association stock, enclosed.

Also beg to acknowledge receipt, in behalf of Mr. Adams, of your letters of April 18th with enclosures of papers relating to the incorporation of the Villamil and the Columbe Coal Company. We shall be glad to let you refer at any time in the future to these papers.

Yours very truly,

J. R. SWAN.

EXHIBIT C 71.

10

38 State Street.

ALBANY; NEW YORK, April 21, 1903.

T. H. Powers Farr, Esq., Deputy Chairman, Ecuadorian Association, Ltd., New York City.

DEAR SIR—I have just returned to this country from London, and find on my arrival here that Mr. Francis C. Green has signed a contract in my name with your Association, under date of February 24, 1903, by the terms of which sixty-five thousand (65,000) shares of
20 your Association have been issued to me upon certain conditions therein set forth.

This contract, doubtless through some misunderstanding, is not drawn upon the terms agreed upon between myself and the Board of the Association in London, acting through Mr. Archer Harman, some time prior to its execution, and, therefore not representing the agreement between us, is not binding upon myself.

It was my very distinct understanding with your Association that the issue and delivery of sixty-five thousand (65,000) of its shares was to be made under the
30 terms of an option, the substance of which was that I was to only come into complete ownership of said shares upon my completing the purchase of the Luque property at Duran, and turning it over to your Association through the Duran Company prior to July 1st, 1903. It was agreed, however, that in case I was not able to com-

plete the purchase of the Luque estate, or did not deem it wise to do so, either in my interests or in yours, then in that event, upon the return by me of the said sixty-five thousand (65,000) shares of stock to your Association, the contemplated purchase and all agreements connected therewith were void and of no effect.

The present proposed contract, however, varies from this understanding in a very material particular, inasmuch as it clearly indicates on its face that I am undertaking, in all events, to purchase and transfer to your Association the Luque property, and in this connection the paper presumes that I consider the sixty-five thousand (65,000) shares, which I now hold only under an option, as belonging to me outright, which is not the case.

I wish you would have necessary action taken at once looking to the re-drawing of this contract in accordance with the terms agreed on by me and as set forth in this letter. All this was thoroughly understood between Mr. Archer Harman and myself prior to the signing by Mr. Green.

In this connection I wish to draw your attention to a request that has been made upon me to exchange the sixty-five thousand (65,000) shares of your stock for sixty-five thousand pounds' worth (reckoning each pound at \$5.00) par value of stock of the Ecuador Company. This exchange I will make only upon your explicit direction and your agreement to receive said shares of the Ecuador Company in lieu of the Association shares that I now hold on option in case that I should see fit to return these to you under our option agreement.

Yours very truly,

ROBERT C. PRUYN.

EXHIBIT C 84.

38 State Street.

ALBANY, NEW YORK, May 21, 1903.

Mr. Sam. H. Lever, New York City.

DEAR SIR—Referring to your letter of May 13th in relation to the earnings of the Guayaquil & Quito Railway Company, I would say that the statement that I wish to obtain was one showing the total earnings of the road for say a year past, or since it began to operate, and
10 the proportion of these earnings that had been received from the construction of freight material and things incident to the construction of the road. In other words, so that I may know what have been the legitimate freight receipts of the Guayaquil & Quito Railway.

Yours very truly,

ROBERT C. PRUYN.

EXHIBIT C 82.

38 State Street.

ALBANY, NEW YORK, April 29, 1903.

20 *Mr. S. H. Lever, Sec.,*
New York City.

DEAR SIR:

I have just directed the United States Mortgage & Trust Co. to place to the credit of Barrow, Wade, Guthrie & Co. at that institution the sum of £4104, s6, d4, which I understand has been cabled by Glyn to the Trust Company for the credit of the Ecuador Company.

You will kindly cable £3000 of this amount to Ecuador through the Morton Trust Company. The remain-
30 der, together with the check sent you this morning, is to go toward meeting the necessary disbursements of the Association and Company.

I enclose, herewith, list furnished me by Mr. Lockwood on his last visit to Albany. Will you kindly make disbursements after consulting with him in such order as he may direct. I would also request that Mr. Perry Allen's salary, amounting to \$1500, be paid without delay.

Yours very truly,

THE ECUADOR CO.,

F. B. ADAMS,

Pres. 10

EXHIBIT C 72.

199

38 State Street,

Albany, N. Y.

April 30, 1903.

Mr. Benoni Lockwood, Jr.,

New York City.

DEAR MR. LOCKWOOD:

I enclose, herewith, according to my letter of last night, the three (3) original Agreements relative to the Duran understanding, executed by Mr. Pruyn and by the Union Trust Co. of Albany. As soon as these are executed by the Association, will you kindly return two of them to me for Mr. Pruyn and the Trust Company? 20

Yours very truly,

F. B. ADAMS.

EXHIBIT C 36.

MEMORANDUM OF AGREEMENT entered into this 30th day of April, 1903, by and between the ECUADORIAN ASSOCIATION, LIMITED, a corporation organized and existing under and by virtue of the laws of Scotland and hereinafter called the "Association," party of the first part, ROBERT C. PRUYN, of Albany, New York, United States of America, hereinafter called said "Pruyn," 30

party of the second part, and the UNION TRUST COMPANY of Albany, New York, hereinafter called "Said Trust Co.", party of the third part.

WHEREAS, said Association is desirous for its own benefit of obtaining said Pruyn's consent to exchange 65,000 shares of the stock of the Association which he holds for 3250 shares of the capital stock of The Ecuador Company; and

WHEREAS, said Pruyn is willing to make said exchange and to deposit said stock so received in exchange with the Union Trust Company of Albany, but only upon the conditions herein after contained;

Now therefore, in consideration of the premises, of the mutual promises herein contained, and of one pound sterling each to the other in hand paid, the receipt of which is hereby acknowledged, the Association and said Pruyn hereby covenant and agree as follows:

First. The said Pruyn will forthwith exchange 65,000 shares of Association stock, of the par value of One Pound each, for 3250 shares of stock of The Ecuador Company, of the par value of \$100 each, and will forthwith deposit said 3250 shares of The Ecuador Company stock with the Union Trust Company of Albany to be held by said Trust Company until July 1st, 1903, under the terms hereinafter set forth. In the event that on or before July 1st, said Pruyn shall make delivery of Duran Terminal Stock to the Association as provided for in the previous contract between said Pruyn and the Association, dated 24th day of February, 1903, then said Trust Company is empowered and directed to deliver to said Pruyn the 3250 shares of the Ecuador Company, before mentioned. Otherwise, that is to say, in case said Pruyn does not make delivery of Duran Terminal Stock for the reasons hereinafter stated, the said Trust Company is authorized and directed to deliver said 3250 shares of Ecuador Company stock to the Ecuadorian Association.

Second. Referring to a certain contract under date of February 24, 1903, between the parties hereto, in any of the following events, to wit:

1. If the present vendors of said Luque estate on or before July 1st, 1903, do not tender to the Duran Terminal Company a marketable title to said property under the terms of a purchase-option now held by the said Duran Terminal Company; or

2. If the said vendors vary or seek to vary the terms of the said purchase-option granted the Duran Terminal 10 Company; or

3. If said Pruyn on or before July 1st, 1903, in his sole and absolute discretion decides that the Duran Terminal Company cannot profitably or properly continue with the completion of the purchase of said property under its said option; then, upon the delivery by said Trust Co. as hereinbefore provided to the said Association at its office in New York City, or in London, England, of the 3250 shares of stock of The Ecuador Company deposited by him with the Union Trust Company of Albany, said 20 Pruyn shall by said delivery be fully released by the Association from any obligation under said contract of February 24, 1903, either in respect to the purchase of said Luque property or to the delivery of it to the Duran Terminal Company, or to the Association.

Third. The said Trust Company will hold said stock of the Ecuador Company subject to the terms mentioned in this contract and will make deliveries thereof as provided for therein.

Fourth. The Association and said Pruyn will do all 30 acts and things and will make, execute and deliver all other and further documents or instruments in writing necessary or advisable in the opinion of counsel, to carry into effect the terms and conditions hereof.

Fifth. This option agreement shall in all respects inure to the benefit of and be binding upon the parties hereto, their legal representatives, successors and assigns.

In Witness Whereof, the Association has caused this agreement to be executed in its name and its seal to be hereto affixed in the presence of two of its officers, attested by its secretary, and the said Pruyn has hereto subscribed his name and affixed his seal and said Trust Co. has caused the execution of this agreement by its Treasurer the day and year first above written.

The common seal of the Ecuadorian Association, Limited, is
 10 hereto affixed and these presents are signed by

Director.

Director.

and
 , two
 of the Directors, and by

the Secretary
 of the said Association before and
 in the presence of:

Secretary.

Witness as to signature ROBERT C. PRUYN (L. S.)
 of Robert C. Pruyn

20 F. B. ADAMS
 Albany, N. Y.

THE UNION TRUST COMPANY
 of Albany, N. Y.

(Corporate Seal) By

T. B. VAN ANTWERP,
Treasurer.

EXHIBIT C 73.

38 STATE STREET,
 ALBANY, N. Y.

June 19/03

30 *My dear Lockwood,*

Thanks for the copy of Mr. de Friese's letter.

In regard to Duran payment: I do not like to pay just \$1500. which is an even sum, and therefore either too

much or too little. Has not Maj. H. sent an account of items? If not I think I should know just what I am paying in detail.

Yours very truly,

ROBERT C. PRUYN.

Benoni Lockwood, Esq.,

32 Nassau St.,

New York.

EXHIBIT C 74.

38 State St.

VILLAMIL COMPANY.

10

ALBANY, NEW YORK, June 26, 1903.

Mr. Benoni Lockwood, Jr.,

New York.

MY DEAR LOCKWOOD:

In looking over the Certificates of the Villamil Co. and the minutes of its first meeting, I find some discrepancies in the issues of stock Certificates and the papers sent us by Mr. Woodhull, which I have taken the liberty to correct as follows: In the first meeting of the incorporators, the name of Francis C. Green appears as a Director. It was never intended that he should be a Director of this Company, Mr. Batchelder, as you will doubtless recall, having been chosen as the other Director and having signed the waiver of notice of the first meeting as such. Mr. Green's name appears instead of Mr. Batchelder's again in the Inspectors Certificate, and I have made the necessary changes in both cases.

In issuing the stock, Certificate No. 5 was issued in the name of Robert C. Pruyn. This was also a mistake as it was not intended that he should be a Director of this Company. This Certificate I have cancelled and issued a new one in the name of Joseph R. Swan.

The remaining 5 shares to be issued in order to bring the total up to the 10 shares required by law, I have had issued in my name, as evidenced by Certificate No. 7.

I enclose this Certificate with the letter which I have written to the Registrar & Transfer Co., which, if it meets your approval, may I trouble you to see delivered to them.

May I also ask you to indorse the enclosed Certificate No. 2, which was issued for your one qualifying Director's share and return the same to us.

Very truly yours,

F. B. ADAMS

for Villamil Co.

10

EXHIBIT C 75.

THE GUAYAQUIL and QUITO RAILWAY COMPANY,

33 WALL STREET,

NEW YORK, July 7th, 1903.

*Robert C. Pruyn, Esq.,
38 State Street,
Albany, N. Y.*

DEAR SIR:

I am instructed by the Directors of the Ecuadorian
20 Association to advise you that the option on the Duran
property expires, as they are informed, on or about the
10th inst., and although the contract with you for the
purchase of this property calls for delivery on or before
July 1st, they are prepared to recommend extension of
your contract so that the same could be carried out, in
case you so decide, at any time before the expiration of
this option.

Yours faithfully,

(Signed) SAM. H. LEVER,

Secretary.

30

EXHIBIT C 83.

38 State Street.

Albany, N. Y.

July 10, 1903.

*Mr. H. S. Lever, Sec.,
New York.*

DEAR SIR:

I am in receipt of your favor of the 7th inst. and in reply would say that I do not understand that the Ecuadorian Association has any interest in the Duran Company, having assigned all of its interest to the Ecuador Company on the 17th of Feb. last. 10

Very truly yours,

ROBERT C. PRUYN.

EXHIBIT C 76.

38 State Street.

ALBANY, NEW YORK, July 17, 1903.

*Mr. Benoni Lockwood, Jr.,
New York.*

DEAR SIR:

I have received yours of the 15th, with enclosure of Major Harman's letter in relation to the expenditures he has made for the Villamil and Duran Companies. 20

In relation to the Villamil Co., let me say that Mr. Adams sent Mr. Archer Harman, at his request, \$3,500, with the distinct understanding that Mr. Harman should use this money to secure the option of the Villamil holdings. Mr. Harman accepted the money but disregarded the restriction and tells me by letter and cable that he turned the money over to Mr. Ballard for his expenses.

Considering the fact that both Mr. Archer Harman and Major Harman were to become personally interested 30

in the Villamil Co. and had contributed nothing, I cannot but feel that I have done rather more than my part.

In relation to the Duran Terminal Co., I do not remember that I ever had anything to do with this costly expenditure, but should be glad to have you explain to me why you think I should consider myself as in any way legally or honorably liable for this expenditure.

Very truly yours,

ROBERT C. PRUYN.

10

EXHIBIT C 77.

THE GUAYAQUIL AND QUITO RAILWAY COMPANY,
33 WALL STREET,
NEW YORK, July 23, 1903.

*R. C. Pruyn, Esq.,
38 State Street,
Albany, N. Y.*

DEAR SIR:—I beg to advise you that at a Board Meeting of the Ecuadorian Association, held yesterday, there was submitted the original agreement between yourself
20 and the Ecuadorian Association and signed before the United States Consul in Rome in connection with the issuing to you of £65,000 of shares in this Company. I was requested by the Board to forward you a copy of this agreement, the original of which is in the possession of the Company, and to notify you officially that the Board expects you to comply with the terms thereof. In compliance with these instructions you will find enclosed the copy referred to.

Yours very truly,
(Signed) A. PYOTT SPENCE.
Secy.

30

EXHIBIT C 78.

38 State Street

ALBANY, NEW YORK, July 28, 1903.

Personal.

*Mr. Benoni Lockwood, Jr.,
New York.*

MY DEAR LOCKWOOD:

I find yours of the 22nd, on my return to the city. You could not make a stronger appeal than on the grounds you do; but I am so firmly convinced of the 10 rightness of the position I take that I have no fears of the final judgment of all fair-minded people, and I certainly would not make the mistake of being influenced in my action by any unfounded opinions. Nor can I assent to your placing the Duran matter in the foreground.

I have no fear of results because I know I have acted and am acting in good faith, and that if the case must be contested, I shall prove that I am the victim. I am 20 the one to complain and not the Association. I have been led into a large investment which I should never have made if I had known the true conditions of the business, which should have been known by those who managed it.

I shall regret the necessity of the action which they are apparently about to force me to take, both because of the dislike I have of such litigation and the injury to a business in which I am unfortunately largely interested.

As to this Duran contract: I have no recollection of signing the paper, and am not as surprised as you to be 30 told that my signature is on it, because of the belief that this method was not a change of my option understanding, and my confidence in those who were carrying out its details.

To amplify this, so that I may not seem to treat it too lightly: There was one agreement between Mr. Har-

man, representing the Association, and Mr. Winsor and me. That agreement was definitely understood to be an option to be acted upon when I returned and reviewed the facts with Mr. Winsor. All other things were being done for the purpose of making possible the taking up of this inclusive option. The details were in the hands of those I trusted and if a change in the essence were to be made, it would certainly have been mentioned. But when this change was proposed, only a "new form" is mentioned.

It may seem singular to you that I should have forgotten this last document with my signature. I can only say in explanation that it passed from my mind amid a multitude of other things. I might say in passing that so great was my confidence in Mr. De Friese and in Mr. Harman's solemn assurances that I would have signed almost anything which he assured me was simply carrying out my actual agreement.

The option on the Ecuador Co. Stock which was to be inclusive of everything was arranged by Mr. Harman after his return.

Does it not seem absurd that I should be supposed to have decided to become largely interested in the Association before knowing its true condition and even if we decided not to take up the Ecuador Co. option? Your understanding of the option agreement was clearly shown in the Duran contract you drew and the "form" of which Mr. De Friese altered.

You and Adams proved by the agreement you sent to London that you understood the option as I did. Harman showed it by his arrangement of the Ecuador Company option after his return. The only question is whether it can be shown that the De Friese agreement was clearly demonstrated to be a complete change in the basic agreement, definitely assented to, or merely a "change of form," as Mr. De Friese calls it.

Of course, my answer to the formal notice of the Association must be in view of a legal contest.

We have found a letter from Mr. De Friese saying he enclosed a contract made by you and signed by Adams, and also one he had "redrawn" in a "new form." Neither he nor any one ever proposed a departure from the original option basis, in which Mr. Winsor was as much interested as I. The original draft of agreement, which embodied the understanding, provided that my action should be conditioned upon my decision after my return home. It was represented in writing that the form of the contract was likely to conflict with some law relating to corporations, and accordingly another contract was drawn up which it was represented was a change in form only, and not a change in substance. Now it turns out that certain persons (I am loath to believe all) are insisting upon a literal compliance with this contract. I am simply insisting that the agreement, as drawn by you, which we made, be adhered to. 10

If this matter be pursued much further, I shall be driven to the conclusion that it was intended by some one as a trap, and from that standpoint shall defend myself against the attack. 20

I have been strongly advised and even urged to begin my action, so that the whole thing might be shown up; but cui bono, unless for defense?

It seems to me that those interested in the Ecuador project should be very thankful that my money kept the whole thing from an explosion in January and enabled the completion of the road to Guamote in June. And it also seems to me that it is the duty of everybody concerned, regardless of past history, to try to make the property good in the eyes of investors. You know the strength of my case, for you have told me so; but I shall benefit more by helping than attacking and does this argument apply to everybody concerned? 30

Very truly yours,

ROBERT C. PRUYN.

EXHIBIT C 80.

38 State Street.

ALBANY, NEW YORK, July 28, 1903.

*Mr. A. Pyott Spence, Sec.,**The Ecuadorian Assn. Limited,**33 Wall St.,**New York.*

DEAR SIR:

I am in receipt of yours of the 23rd inst. with enclosure.

I am advised that the Ecuadorian Association transferred its interest in the subject matter of the contract referred to, to the Ecuador Company.

Yours very truly,

ROBERT C. PRUYN.

EXHIBIT C 79.

38 State Street.

ALBANY, NEW YORK, July 30, 1903.

*Mr. Benoni Lockwood, Jr.,**New York.*

20

DEAR SIR:

I am in receipt of your letter of the 28th. Let me ask you first to read again my letter of April 21st. You will then see that "repudiated" is a word you get from Mr. Harman and not from that letter.

You must remember also that the incentive for writing the letter of April 21st was that the stock of the Association was asked for to use in the Dick-Lisman matter, and I asked that the contract be changed because I was unwilling to use the stock under the terms of the first agreement. This is demonstrated in the last clause of the letter.

30

From my standpoint, it matters now whether Mr. Green or I signed the contract, as both Sir Alexander Wilson and Mr. Green testify that the option basis of the whole transaction was understood at the time of signature.

But the discussion of all these technical points and hints of reflections upon my fair dealing, I beg you to discontinue as likely to put us in a position different from that I wish to occupy towards you.

The main question is, as I have said to you, this: 10
There can be no denial that the original basis was an option. There can be no denial that the change in the Duran contract was stated to be in form only. There certainly was no doubt as to the signature of Mr. Green being given with the option basis unchanged. Do the Trustees therefore say, "you are caught in a trap and you must submit"?

To make Mr. Harman's claim hold water, it must be assumed that I (without Mr. Winsor) had finally determined to take up the options while in Rome. He did, 20
in fact, say so in a letter I saw in London.

Ever since Mr. Winsor and I declined the options, I have been placed in a position of antagonism, although offering friendly aid. This Duran matter is merely the excuse for attack. This is clearly shown in my letters from England expressing disappointment and showing that Mr. Harman is accusing me not of violating the Duran contract, but of general perfidy.

There is a limit beyond which one may not endure.

I should say to you that I am purposing to go to New 30
York for Monday and Tuesday and shall endeavor to see individually the Association Directors, so as to answer their questions. I am always glad to see you if you wish it.

Very truly yours,

ROBERT C. PRUYN.

Defendant's Exhibits.

EXHIBIT D 1.

Capital \$5,000,000.

THE ECUADOR COMPANY.

Incorporated under the Laws of the State of New Jersey

Number

Shares

291

—3250—

02 This is to Certify Robert Clarence Pruyn is entitled to
Thirty-two hundred & fifty Shares of the Capital Stock
10 of The Ecuador Company transferable only on the books
of the Company, in person or by Attorney, or surrender
of this Certificate.

Witness the Seal of the Company and the signatures
of the President or Vice President and Treasurer this
second day of April 1903.

J. R. SWAN,

F. B. ADAMS,

Treasurer.

President.

02 (SEAL)

Shares \$100 each.

20

Full Paid and Non Assessable.

Registered & Transferred, Apr-2 1903

REGISTRAR AND TRANSFER COMPANY,

Registrar and Transfer Agents.

By C. C. YOUNG,

Secretary.

For value Received hereby sell, assign and trans-
fer unto
30 Shares of the Capital
Stock represented by the within Certificate, and do here-
by irrevocably constitute and appoint
Attorney to transfer the said stock on the Books of the
within named Company with full power of substitution
in the premises.

Dated 19.

In Presence of

.

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

EXHIBIT D 2.

Know All Men by These Presents:

That I, ROBERT C. PRUYN of Albany, N. Y. have appointed, and by these presents do hereby appoint FREDERICK B. ADAMS of the same place, my true and lawful attorney, for me, and in my name, place and stead, to 10 deposit to my credit in my personal account either with the National Commercial Bank of Albany, N. Y. or The Union Trust Company of Albany, N. Y. or The Security Trust Company of Troy, N. Y. or The Guaranty Trust Company of New York City or The Windsor Trust Company of New York City, any and all moneys or instruments for the payment of money, belonging to me which may from time to time be paid to me or come into his hands on my behalf, whether interest, dividends or other payments of any sort or kind, principal or in- 20 come, hereby giving him power to indorse for deposit as aforesaid or for collection any cheques, drafts, notes, or other instruments for the payment of money requiring indorsement, and to give in my name receipts for the same or for any moneys paid to him for me; and also to draw upon any of my said accounts in my name, and pay therefrom any and all sums of money from time to time and for any purpose as he may in his opinion, deem necessary or advisable, without limiting him to any sum, whether for any one such payment or for the aggregate of all such payments, and in his discretion to draw moneys from any one of such accounts, and deposit the 30 same in any other of such accounts, hereby authorizing him to sign my name to any cheques, drafts or orders

drawn by him against any of my said accounts, with the same effect as if signed by me personally.

In witness whereof, I have hereunto set my hand and seal this 13th day of December, One Thousand Nine Hundred and Two.

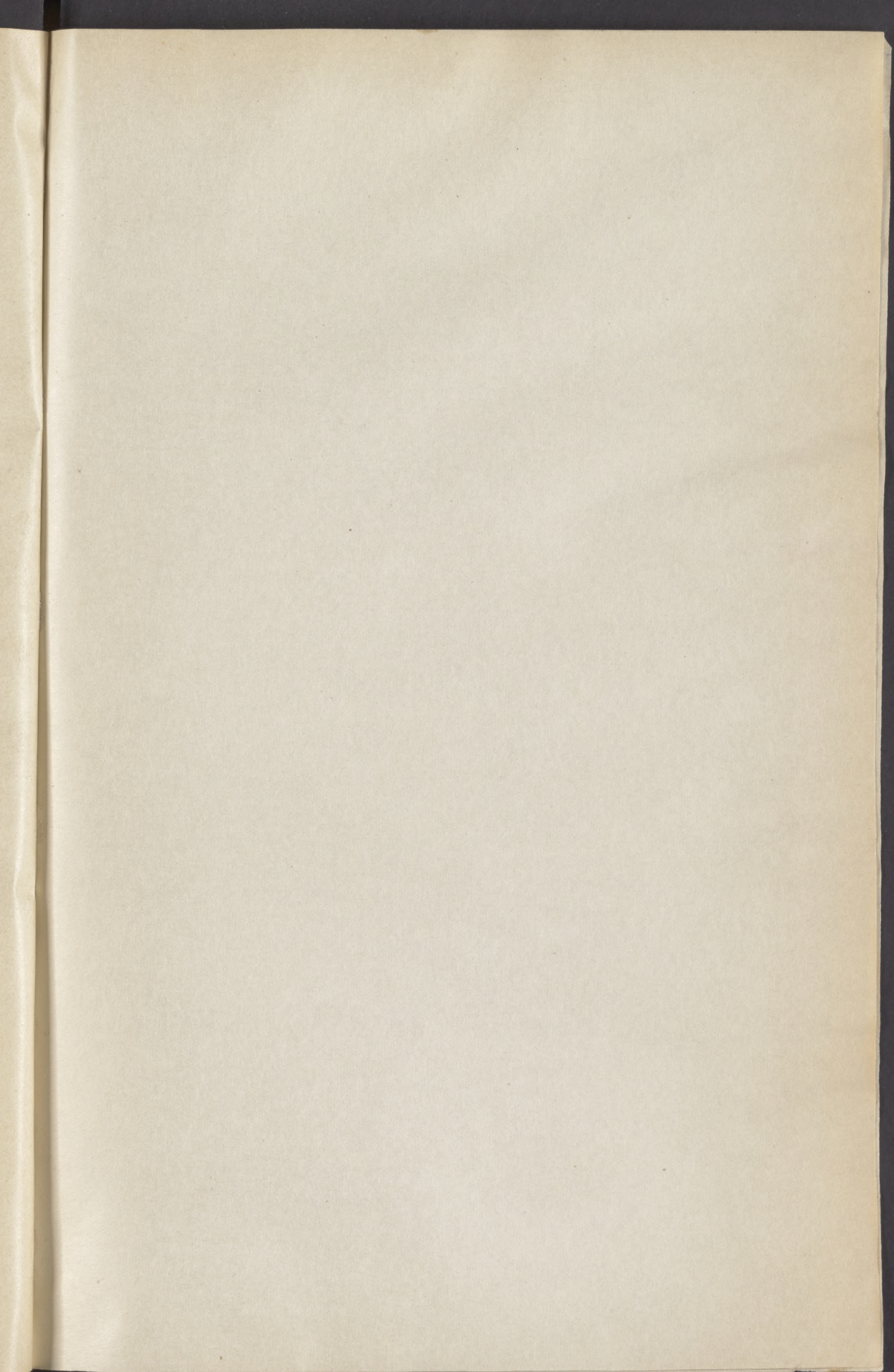
ROBERT C. PRUYN. (Seal)

STATE OF NEW YORK, }
CITY AND COUNTY OF ALBANY, } ss:

On this 13th. day of December, 1902, before me personally came Robert C. Pruyn, to me known and known to me to be the same person described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same.

JOHN WHITNEY THOMSON,
Notary Public.

[SEAL]



TESTIMONY

before me and against any of the said articles, with the same effect as if signed by me personally.

In witness whereof, I have hereunto set my hand and seal this 15th day of December, A.D. 1888, at the City of New York.

Robert C. Pugh

Notary at New York, }
City and County of Albany, }

On the 15th day of December, 1888, before me personally came Robert C. Pugh, to me known and known to me to be the person described in and who executed the foregoing instrument, and he did declare to me that he executed the same.

John Whitner Thomas

(Seal)

Notary Public