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THE LEGAL STATUS OF THE NEAREST PACIFIC ISLANDS

By

HOWARD NEWCOMB MORSE*

The Treaty of Guadalupe Hidalgo of 1848, officially known as the Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Republic of Mexico, provided in its fifth article for the cession by Mexico to the United States of territory approximating the present States of California and New Mexico.

There are eight islands off the coast of southern California—San Miguel, Santa Rosa, Santa Cruz, San Nicolas, Santa Catalina, San Clemente and the Channel Islands of Anacapa and Santa Barbara—which extend approximately from the city of Santa Barbara in the north to the city of San Diego in the south. San Miguel Island, formerly known as Juan Rodriguez Island, has the communities of Harris Point and Point Bennett. Santa Barbara Island was formerly known as San Fernando Island. Santa Rosa Island has the community of South Point. Santa Cruz Island has the community of West Point. San Clemente Island has the community of China Point. Santa Catalina Island, the most important island of the group, has the communities of Lone Point and Avalon, the latter being the most important populated place on any of the islands in the group. The city of Avalon, considered part of Los Angeles County, has a population, according to the 1950 U. S. census, of 1,498. The city of Avalon, which is incorporated, has, among other things, a bank, an airport, a U. S. Post Office, and is serviced by United Air Lines. Following the Treaty of Guadalupe Hidalgo, the United States assumed jurisdiction over these eight islands. Later, upon California's becoming a State on September 9, 1850, California assumed jurisdiction over this island group and has continued to do so to the present day. Yet the Treaty of Guadalupe Hidalgo makes no mention whatsoever, either expressly or impliedly, of this group of islands. The fifth article of the Treaty of Guadalupe Hidalgo, in defining the boundary line between the two republics, states that the boundary line shall follow "...the division line between Upper and Lower California, to the Pacific Ocean".1 The fifth article further provided as follows: "And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the southernmost point of the port of San Diego." The fifth article further provides that: "The boundary line estab-

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lished by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution.”

It cannot be argued that title to these eight islands passes to the United States under the Treaty of Guadalupe Hidalgo upon any theory that this group of islands is incidental, essential, appendant or appurtenant to the mainland of California. American Jurisprudence declares that “. . . the title to land additional to that described cannot pass as an appurtenance.” Corpus Juris Secundum states that: “Land does not . . . pass under a conveyance as an appurtenance to land.” This rule of law goes all the way back to Littleton. Coke on Littleton holds that: “. . . a thing corporeal cannot properly be appurtenant to a thing corporeal, nor a thing incorporeal to a thing incorporeal.” The Supreme Court of the United States expressly adopted the Littleton rule in 1836 in the case of Harris v. Elliott and observed that: “According to this rule, land cannot be appurtenant to land.” This ruling was reiterated by the United States Circuit Court for the Southern District of Ohio fifty-three years later in the case of Investment Company of Philadelphia v. Ohio and Northwestern Railway Co., the court citing and commenting upon with approval both the Harris decision and the Littleton rule. The Supreme Court of Georgia set forth with approval the Littleton rule in 1906 in the case of Moss v. Chappell.

The Harris decision was reaffirmed by the Supreme Court of the United States in 1855 in the case of Jones v. Johnston, in 1890 in the case of Humphreys v. McKissock, and the following year in the case of New Orleans Pacific Railway Co. v. Parker. The Court stated in the Humphreys case that: “Of two parcels of land one can never be appurtenant to the other, for though the possession of the one may add greatly to the benefit of the other or essential to the possession of its title or use; one can be enjoyed independently of the other.”

The Littleton rule probably was first expressly adopted in the United States in 1810 by the Supreme Judicial Court of Massachusetts in the case of Leonard v. White, the court asserting that: “Land cannot be appurtenant to land.” In 1818 the Supreme Court of Judicature of New York declared in the case of Jackson v. Hathaway that: “It is impossible to protect the defendant, on the ground that the adjoining road passed by the deeds, as an incident to the lands professedly granted.

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3 26 C. J. S. Deeds, sec. 106.
4 Coke on Littleton, 121. b.
6 51 F. 378, 380, 381 (1889).
7 126 Ga. 196, 202, 54 S. E. 968, 971 (1906).
8 59 U. S. 150, 155, 15 L. Ed. 320, 323 (1855).
11 7 Mass. 5, 8 (1810).
A mere easement may, without express words, pass as an incident to the principal object of the grant; but it would be absurd to allow the fee of one piece of land, not mentioned in the deed, to pass as appurtenant to another distinct parcel, which is expressly granted, by precise and definite boundaries."\(^{12}\) This rule of law, which is one of the best established and most entrenched legal doctrines in Anglo-American jurisprudence, was reaffirmed in 1838 by the Supreme Judicial Court of Massachusetts in the case of *O’Linda v. Lothrop*,\(^ {13} \) in 1875 by the Commission of Appeals of New York in the case of *Woodhull v. Rosenthal*,\(^ {14} \) and in 1892 by the Supreme Court of Pennsylvania in the case of *Siegel v. Lauer*.\(^ {15} \)

The Littleton rule has been set forth as recently as 1942. In that year the Supreme Court of Alabama declared in the case of *Alford v. Rodgers* that: "It follows that a conveyance of land described as in section 14 does not on its face include land in Section 11. But can it be treated as an appurtenance to the land in section 14, so as to pass with a conveyance of it?"

"This question has been treated by the authorities which declare that as a rule a grantee can acquire by his deed only the land described in it, and does not acquire by way of appurtenance land outside such description."\(^ {16} \)

Nor can it be argued that the state of California acquired jurisdiction over the eight islands upon any theory of adverse possession. Corpus Juris Secundum states that: "The law of the situs of the land in question controls the acquisition of title thereto by adverse possession. Whether title to certain land has been acquired by adverse possession depends on the law of the state in which the land is situated."\(^ {17} \) Therefore, it must first be judicially determined whether the State of California or the Republic of Mexico has jurisdiction over the group of eight islands before any issue whatsoever involving adverse possession can even be raised.

Article XXI of the present Constitution of the State of California of 1879 which is the same as Article XII of the Constitution of California of 1849, expressly recognizes the validity and binding effect of the *Treaty of Guadalupe Hidalgo* by providing as follows: "... to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight."

The same Article XXI of the present California Constitution of 1879 also provides as follows: "... thence running west and along said boundary line, to the Pacific Ocean, and extending therein three English miles." However, all of the eight islands in question are more than three miles distant from the California coastline.

\(^{12} \) 15 Johns. (N. Y.) 447, 454 (1818)

\(^{13} \) 38 Mass. 292, 296 (1838).

\(^{14} \) 61 N. Y. 382, 390 (1875).

\(^{15} \) 148 Pa. 236, 245, 246, 23A. 996, 999 (1892).

\(^{16} \) 242 Ala. 370, 373, 6 So.2d 409, 410 (1942).

\(^{17} \) 2 C. J. S. ADVERSE POSSESSION sec. 4.