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NOTES

SOME MORE ABOUT THE LEGAL STATUS OF THE NEAREST PACIFIC ISLANDS

By

HOWARD NEWCOMB MORSE*

In my article in the last issue of the Dickinson Law Review I concluded by reciting the fact that Article XXI of the present Constitution of California in describing the geographical boundaries of the State provides as follows: ". . . thence running west and along said boundary line, to the Pacific Ocean, and extending therein three English miles." And all of the eight islands off the coast of southern California are more than three miles distant from the California coastline. A California statute states that: "The sovereignty and jurisdiction of this State extends to all places within its boundaries as established by the constitution."¹ Article XXI of the present California Constitution is the same as Article XII of the California Constitution of 1849. And the California Constitution of 1849 was approved by the United States Government when California was admitted to statehood on September 9, 1850.²

Article XLVIII of the Political Constitution of the Mexican United States of 1917 provides that: "The islands in both oceans embraced within the national territory shall depend directly on the Government of the Federation, excepting those over which the States have up to the present time exercised jurisdiction." Therefore, of the Mexican Republic's twenty-eight States, one Federal District and three Territories, the political and geographical unit of Mexico which has jurisdiction over the eight islands—Santa Barbara, San Miguel, Santa Rosa, Santa Cruz, Anacapa, San Nicolas, Santa Catalina and San Clemente—is the Federal District.

It is stated in Rider's book entitled *California* that San Miguel Island is . . . about 7 miles long and 2 miles wide, with two peaks rising near the center: W. peak 850 feet, E. peak 861 feet. The shores are bold and rugged with few beaches; and the W. end is a barren waste of sand dunes."³ Legend has it that Cabrillo died and was buried on San Miguel Island. Santa Cruz Island is twenty-one miles long and five miles wide. It is five miles east of Santa Rosa Island, separated by Santa Cruz Channel. On the northern ridge of Santa Cruz Island there are three peaks 1800, 2144 and 2407 ft. high respectively and at the extreme western end is another peak over 2400 ft. high. There is a cave which extends 1400 ft. into the island.

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¹ Deering's Cal. Govt. Code, Tit. I, div. 1, ch. 1, art. 2, sec. 110.

² 9 U. S. Stat. at L., ch. L, pp. 452, 453 (1850).

³ Rider, CALIFORNIA, The Macmillan Co., N. Y., (1925).

Article VIII of the Treaty of Guadalupe Hidalgo stated that: "In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States."⁴ To implement the foregoing treaty provision the Congress of the United States passed a statute on March 3, 1851 entitled "An Act to Ascertain and Settle the Private Land Claims in the State of California."⁵ A number of cases arose under the foregoing statute and come before the Board of Commissioners established by such statute and on appeal of questions of law before the District Courts of the United States for the Northern and Southern Districts of California at San Francisco and Los Angeles respectively. Those of these cases, the so-called California land cases, which reached the Supreme Court of the United States are included in twenty-three consecutive volumes of the United States Reports (fifty-seven to eighty) over a period of eighteen years (1853 to 1871).

Cases involved the Island of Yerba Buena (or Goat Island) and Los Angeles Island⁶ (one league or 2.63 miles in circumference), both of which are situated in San Francisco Bay. Other cases involved an island⁷ of five square leagues and an island three and one-half leagues long and one league wide, both of which are located in the Sacramento River. Still other cases involved an island of two square leagues in San Diego County and Isla de la Yegua (or Mare Island) in Sonoma County.

The case of *United States v. Castellero*⁸ pertained to the Island of Santa Cruz. No grants to any of the lands of the eight islands were issued prior to July 20, 1838.⁹ On May 22, 1839 Governor Juan B. Alvarado of the Department of California issued a conveyance to Santa Cruz Island to Captain Andres Castellero. On April 13, 1852 Castellero filed his claim under the Act of March 3, 1851. This grant was upheld by a decree of the Commissioners on July 3, 1855, by the District Court of the United States for the Southern District of California on January 14, 1857, and by the Supreme Court of the United States. Ironically, Castellero previously had changed his choice of islands for a requested grant from Santa Catalina Island to Santa Cruz Island, representing the former as "... wholly unfit either for agricultural improvement or the raising of stock . . ."¹⁰ Nevertheless, Santa Catalina Island was destined to be developed and built up the most of any of the islands in the group. On March 3, 1853 one Jose Antonio Aguirre filed a claim under the Act of March 3, 1851 for one-half of Santa Cruz

⁴ 9 U. S. Stat. at L. 922, 929, 930 (1848).

⁵ 9 U. S. Stat. at L., ch. LI, pp. 631-635 (1851).

⁶ *United States v. Osio*, 1 Hoffman's Reports (Land Cases) 100 (1855), 64 U. S. 273 (1859).

⁷ *United States v. Noe*, 1 Hoffman's Reports (Land Cases) 162 (1856), 64 U. S. 312 (1859).

⁸ 64 U. S. 464 (1859).

⁹ 64 U. S. 464, 465 (1859).

¹⁰ 64 U. S. 464, 467 (1859).

Island under an alleged sale from Castellero. The claim was rejected by the Commissioners on June 5, 1855. Aguirre dismissed his claim on March 4, 1858.

One Jose Maria Covarrubias filed a claim on February 3, 1853 under the Act of March 3, 1851 for Isla de Santa Catalina, which had been granted on July 4, 1846 by Governor Pio Pico of the Department of California to one Tomas M. Robbins. The claim was confirmed by the Commissioners on September 25, 1855 and by the District Court of the United States for the Southern District of California on March 1, 1858.

One Manuela Carillo de Jones filed a claim on March 23, 1852 under the Act of March 3, 1851 for Santa Rosa Island, which had been granted on October 4, 1843 by Governor Manuel Micheltorena of the Department of California to Jose Antonio and Carlos Carillo. The claim was rejected by the Commissioners on November 15, 1853. The decision of the Commissioners was confirmed by the District Court of the United States for the Southern District of California on January 18, 1856 and an appeal was dismissed on February 5, 1857.

The decrees in the Castellero and Covarrubias cases were void *ab initio* since sovereign jurisdiction over the islands of Santa Cruz and Santa Catalina respectively was not ceded by Mexico to the United States and since, therefore, there was want of territorial jurisdiction on the part of the Commissioners and the District and Supreme Courts. However, such void decrees serve the single purpose of eternally estopping the United States and the State of California from disputing the titles confirmed therein.