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ANNEX 1

Expert Report (June 2018), Dr. Alain Murphy and
Dr. Richard Haworth.

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ANNEX 2

The Navigation of the Gulf of Mexico and the Caribbean Sea
("U.S. Sailing Directions"), Hydrographic Office of the
United States Navy (1902).

No. 64.



HYDROGRAPHIC OFFICE.

THE NAVIGATION
OF THE
GULF OF MEXICO AND CARIBBEAN SEA.

VOL. II.
FOURTH EDITION.

THE COAST OF THE MAINLAND

FROM
KEY WEST, FLORIDA, UNITED STATES, TO THE ORINOCO RIVER,
VENEZUELA, WITH THE ADJACENT ISLANDS,
CAYS, AND BANKS.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1902.
C.

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CHAPTER VI.

MOSQUITO COAST—OUTLYING BANKS, ISLANDS, AND CAYS OFF THE MOSQUITO BANK.

Swan islands.—These two islands are N. 13° E. (N. 9° E. mag.) 97 miles from Patook point, the nearest part of the coast, and lie upon a narrow bank about 10 miles in extent east and west.

The eastern island is 1½ miles long and bounded by a bold rocky shore, very difficult of access. The western island is separated from the others by a shallow coral bar about 400 yards in extent. This islet is 2 miles long. On its north and west sides are several sandy bays. Close off its southwest point there is a small rocky cay and on the north side of the island are several cocoanut trees visible from a distance of about 12 miles. Each island is about ½ mile broad, very flat, thickly wooded, and of a uniform height of about 60 feet.

The bank extends from these islands in an easterly direction about 2 miles, with depths of from 6 to 13 fathoms, but its limits have not been exactly determined. From the north and south sides of the islands it extends about 1 mile and from the west end 4 miles in a westerly direction; here the soundings increase from 7 to 40 fathoms.

Settlement.—There is a settlement on the western island in latitude 17° 25' N., longitude 83° 55' W., occupied by an American company named the Pacific Guano Company. In the dry season 60 men are constantly employed, the export of phosphate averaging 10,000 tons. There is a water distilling apparatus capable of providing for 100 men. From 50 to 100 tons of coal are kept on the island. The islands are said to be covered, in part, with porous phosphates, the soil is excellent and capable of producing all kinds of tropical fruits; the men grow a large supply of vegetables for their own use. There are ten large tanks on the island for collecting rain water. The islands abound with duck, teal, pigeons, and turtles.

Anchorage.—Off the sandy bay, which forms the west end of the western island at ½ mile from the shore, there is anchorage in 7 fathoms. It will be necessary, however, to select a clear spot, which is readily done by the eye, and care must be taken not to

bring the northwest end of the island to bear eastward of N. 56° E. (N. 52° E. mag.) to avoid foul ground on the northern edge of the bank, upon which there are $4\frac{1}{2}$ fathoms.

Misteriosa bank is about 85 miles to the northward of Swan islands, its northeast point being in latitude $18^{\circ} 56'$ N., longitude $83^{\circ} 41'$ W. It is somewhat oval-shaped, 24 miles long in a south-west by west direction from the above point, and nearly 7 miles broad at the middle. It tapers off to a narrow spit at either end, which for more than 5 miles from the southwest extreme is not quite $1\frac{1}{2}$ miles in breadth. The general depths are from 10 to 12 fathoms, over reddish coral, but on the southwest spit there are from 15 to 19 fathoms, and on the middle of the southern edge there is a small ledge of 9 fathoms.

Bank and rock.—Several soundings have been obtained in about latitude $18^{\circ} 35'$ N., with longitudes ranging from $83^{\circ} 23'$ to $84^{\circ} 5'$ W., and a breaker has been given in latitude $18^{\circ} 29'$ N., longitude $83^{\circ} 18'$ W. It is probable that another bank exists southward of the Misteriosa, but the rock is more than doubtful.

Rosalind bank, called also Arrowsmith bank, the name of the discoverer, lies 30 miles from the northeast part of the Mosquito bank. It is somewhat oval or pear-shaped, being 63 miles long from south-southeast to north-northwest, 15 miles broad near its south end, and 35 miles near its north end. The northwest extreme lies in latitude $16^{\circ} 54'$ N., longitude $80^{\circ} 50'$ W., and is consequently about 5 miles to the northward of the north extreme of the Mosquito bank. The only shallow ground of any consequence lies at the southeast end. Here, about 1 mile from the edge, a coral ledge nearly 3 miles broad trends north-northeastward from the southeast point 14 miles, upon which the general depths are from 10 to 6 fathoms, but toward the north part of it there are a few small patches with 4 fathoms water.

At about 13 miles N. 7° W. (N. 11° W. mag.) from this ledge there is another of similar character, close to the edge of soundings, which is 8 miles long in the above direction and 4 broad, but it has not less than 8 fathoms. Elsewhere the depths are from 10 to 20 fathoms, with but little irregularity, over a bottom of coarse coral, sand, and shell, which swarms with fish.

Current.—The current generally sets strong over this bank to the northwestward, sometimes at the rate of $1\frac{1}{2}$ knots, and on striking the southeast end causes so violent a race over the ledge as to give the appearance of breakers.

A bank, 38 miles long and with an average width of 10 miles, lies midway between Rosalind and Mosquito banks, with its northern extremity in latitude $16^{\circ} 32'$ N., longitude $81^{\circ} 6'$ W.; it lies in a north-northwest and south-southeast direction and has depths of from 36 to 13 fathoms, the latter being at the southern extremity.

About 3 miles off the northwest end of this bank is a small bank with soundings of 15 fathoms.

Serranilla bank.—The south extreme of this bank lies N. 15° E. (N. 11° E. mag.) 76 miles from the North cay on the Serrana, in latitude 15° 43' N., longitude 79° 57' W. With the exception of a small bend at its southwest end, it is somewhat circular in shape, being 24 miles long east and west and about 20 miles broad in the widest part, north and south.

The west side of the bank, from the southwest extreme, extends about north by west 9 miles and then about north-northeast 7 miles. This side is everywhere clear, with regular depths of from 15 to 9 fathoms, at the distance of 2 miles to the eastward at the south edge and about 9 miles to the eastward at the north edge of the bank. At the bend the edge is composed of fine white sand and shell; elsewhere the bottom is coral sand.

The north side sweeps from the northwest extreme in an easterly direction, curving outward very slightly and then gradually to the southward, to Northeast breaker, which is 21½ miles from the northwest point of the bank. For about 9 miles from the west end this part is quite safe, but to the eastward of this, at only 1½ miles from the northern edge, is a broad coral ledge with very irregular depths of from 5 to 9 fathoms, extending to the southeastward as far as the reefs; it would be advisable to avoid this part.

The edge of the bank is everywhere steep-to, the depths increasing very abruptly from 20 fathoms to upward of 100 fathoms, and at many parts of it the first soundings will probably be no more than 12 or 13 fathoms. In depths of more than 100 fathoms the bottom is very white sand, quite free from all coralline particles, with sometimes a few small broken shell, while on the banks the sand is coarse and mixed with coral. It has upon it three small cays of the usual character of those described on the adjacent banks and they are confined to the southeast side.

Northeast breaker, at the eastern extremity of Serranilla bank, about ¼ mile from the edge of soundings, is a dangerous detached coral ledge 300 yards in extent with a rock awash at its south end, on which the sea breaks heavily. Around it are 6 fathoms water; 17 fathoms at 600 yards eastward; 12 fathoms at 1 mile southeastward, and 16 fathoms at the same distance northward, over dark bottom.

Off the northern side of the chain of reefs, to the distance of 2½ miles all along them, are numerous coral patches with 1½ to 3 fathoms over them and 5 or 6 fathoms between, on clear sand.

At about 1½ miles westward of Northeast breaker commences a chain of narrow reefs and shallow ledges, which trends to the

southwestward 10 miles. For a space of $1\frac{1}{2}$ to 2 miles outside them, to the edge of soundings, the bank is quite clear, with depths of from 13 to 10 fathoms to within about $\frac{1}{4}$ mile of them.

East cay and reef.—From the northeast extreme of the chain of reefs a solid reef extends about south-southwest, with a slight outward sweep $2\frac{1}{2}$ miles, when it terminates at East cay. About halfway on the reef is a small dry sand bank. East cay is about $\frac{1}{4}$ mile long northeast and southwest, about 100 yards broad, and the dwarf bushes upon it grow to the height of 7 feet. About 400 yards from it there are 7 fathoms water, and to the westward of it there is an intricate cut 700 yards wide.

Middle cay and reef.—At the west side of the above cut there is another small dry sand bank, whence the middle reef trends about west-southwest $1\frac{1}{2}$ miles to Middle cay. This islet is half-moon-shaped, convex to the east; it is $\frac{1}{4}$ mile in diameter, with bushes upon it 7 feet above the sea. A dry ridge of rocks extends from it westward 600 yards, whence a shallow ledge of coral and sand banks trends to the southwest about 1 mile, having 6 fathoms 600 yards south of it. Between this shallow ledge and the western reef there is an intricate opening $1\frac{1}{4}$ miles wide.

Beacon cay and reef.—The north end of the western reef lies west $2\frac{1}{2}$ miles from Middle cay, whence it takes nearly a south-southwest direction 4 miles to Beacon cay, at its southern extremity. The reef, however, is divided into three parts by shallow cuts about 400 yards wide.

Beacon cay is the largest of the 3 cays; **its shape is that of a quarter moon, convex to the south, and from point to point it is about $\frac{1}{4}$ mile in length. The sand and coral, of which it is composed, is covered with samphire grass and stands 8 feet above the sea;** in 1835 a rough beacon of coral stones, 25 feet high, was erected on its west end, in latitude $15^{\circ} 47' 45''$ N., longitude $79^{\circ} 50' 53''$ W. The bank, from abreast Beacon cay, runs out in a spit which terminates at a point with the beacon bearing N. 49° E. (N. 45° E. mag.), distant 8 miles. It is quite free of dangers, with regular depths from the 10-fathom line outward, to 17 fathoms on the end of the tongue. This spit forms the east side of the bend before mentioned. The edge of the bank trends, from the point, about north $4\frac{1}{2}$ miles, then curves to the westward for about 6 miles to the southwest extreme of the bank, west a little south, 12 miles from the beacon. **The fishermen say that indifferent brackish water, strongly impregnated with lime, may be obtained on Beacon cay by digging wells.**

The 10-fathom line of soundings lies within about 600 yards of the southeast side of Beacon cay and its reef; at the same distance

to the south and west there are 6 to 8 fathoms, and in the former direction the edge of soundings lies 2 miles off.

Anchorage.—The bank to the westward of the islet is quite clear for a space of about 2 miles, with regular depths of 6 and 7 fathoms, on a clear sandy bottom. Anchorage will be found here with the usual trade breezes in 6 fathoms with the cay bearing about southeast $\frac{1}{4}$ mile distant.

West breaker, nearly at the bottom of the bend, and less than $\frac{1}{4}$ mile from the edge, is a dangerous ledge of rocks, about $\frac{1}{4}$ mile in extent, just above water with the sea breaking over it; from it the beacon bears East (N. 86° E. mag.), distant 8 miles. Around it, on all sides except to the southward, there are 6 fathoms $\frac{1}{2}$ mile off and the depths gradually increase to 10 fathoms at the distance of about 2 miles to the westward and northward of it. To the eastward, between it and the Beacon shoals, the ground is clear of danger, but the soundings vary from $\frac{1}{2}$, over dark coral patches, to as much as 9 fathoms on clear sand.

Tides.—The time of high water at the Serranilla bank is irregular, being influenced by the strength and direction of the prevailing winds. Springs rise about 2 feet. There is no perceptible tidal stream, but in general a current setting to the west-northwest from $\frac{1}{4}$ to 1 mile an hour.

Bank northeastward of Serranilla.—The bank is circular in shape, included between latitudes 16° N. and $16^{\circ} 10'$ N., and longitudes $79^{\circ} 17'$ W. and $79^{\circ} 29'$ W., with depths less than 20 fathoms over the entire extent, deepening suddenly at its edge to upwards of 100 fathoms.

The least depth obtained, 6 fathoms, is about $\frac{1}{4}$ mile within its extreme eastern edge, soundings less than 10 fathoms being found for $1\frac{1}{2}$ miles northwestward, nearly 2 miles westward, and 2 miles southward of the 6 fathoms. This shallow and eastern part of the bank is composed of coral, while in other parts, where the depth is generally 15 to 16 fathoms, the bottom is fine white sand. The edge of the bank is distinctly marked by rippings.

Approximate position: Latitude $16^{\circ} 5' 20''$ N., longitude $79^{\circ} 47' 50''$ W.

During two nights H. M. surveying vessel *Rambler* was anchored near the eastern edge of the bank; the current sets between northeast and east by north, at a maximum rate of 1 knot per hour, the direction of the wind being east-southeast; force, 2 to 3.

Shoal.—A shoal of 7 feet has been reported in (approximately) latitude $15^{\circ} 50'$ N. and longitude $79^{\circ} 25'$ W., or about 19 miles east of East cay.

Bajo Nuevo, or New Bore, the easternmost of the outlying banks, is oval-shaped, about 14 miles in extent, lying in an east-northeast and west-southwest direction, $4\frac{1}{2}$ miles broad. Its eastern

extremity presents a solid semicircular reef, convex to the eastward, dry in some places and steep-to, the edge of soundings being about $\frac{1}{2}$ mile off. This reef continues along the north and south edges of the bank for about 4 miles, where a break or opening, not thoroughly examined, is formed, about $1\frac{1}{2}$ miles wide, separating it from a similarly formed reef which extends along the southern edge of the bank for 7 miles to a dry sand bank. A shallow ledge, however, with 5 and 10 fathoms close-to, projects about 2 miles westward of the sand bank; beyond this the bank has not been examined. Small ridges of sand are occasionally formed on other parts of the reef, but they disappear in heavy breezes.

At the west side of the above opening, on the north point of the leeward reef, there is a barren cay composed of sand, broken coral, and driftwood, thrown up by the waves to the height of 5 feet above the sea. It is 300 yards long and about 50 yards broad and lies in latitude $15^{\circ} 52' 28''$ N., longitude $78^{\circ} 38' 30''$ W. At the south end there is a small pond, which is resorted to by seals, and in the months of March and April the bank is visited by fishing vessels from St. Andrews and Old Providence.

To the westward of the east reef the bank is clear for about a mile within the edge; about 2 miles westward of the cay there is a clear space about 3 miles wide extending to the southwest end of the bank, as far as examined. The depths vary from 8 to 17 fathoms, over coral sand; great care, however, must be taken when standing toward the broken ground on the north side of the leeward reef, and to avoid a coral head which lies 2 miles westward from the cay; other patches may exist. The northern edge of the bank is so steep that the first cast of the lead may probably be 12 or 15 fathoms, the bottom being visible.

Anchorage may be taken up in moderate weather in 8 fathoms with the cay bearing S. 73° E. (S. 77° E. mag.) about $1\frac{1}{2}$ miles distant, but it is quite exposed to the winter breezes.

Current.—Vessels passing eastward of these dangerous reefs should make due allowance for the general set of the current to the westward at a rate of $1\frac{1}{2}$ to 2 miles an hour.

Doubtful bank.—A bank of danger still holds a place on some charts in latitude $14^{\circ} 53'$ N., longitude $80^{\circ} 21'$ W., N. 11° W. (N. 15° W. mag.) 25 miles from the North cay on the Serrana bank, but nothing has been found of it by surveying vessels which have crossed the spot, nor has anything been seen by the fishing vessels which continually traverse this part.

Serrana bank.—The outline of this most dangerous bank is very irregular. It extends about 20 miles in a general northeast and southwest direction; about 7 miles broad near the center, and its southwest end terminates at almost a point. Its extreme east

end presents a solid crescent-shaped reef, convex to that quarter and 5 miles in diameter, upon which the sea breaks with such violence that from the eastward it is sighted before the cays and may be seen from a distance of 3 or 4 miles. It is so steep-to that at the distance of $\frac{1}{4}$ mile no bottom is found at 120 fathoms. On the west side of both horns there are intricate channels.

The North channel, S. 39° W. (S. 35° W. mag.) $1\frac{1}{4}$ miles from the northeast point of the reef, is only 100 yards wide, but it has a depth of 7 fathoms, with the advantage of being straight. The space within is crowded with detached shoals steep-to, having from 5 to 10 fathoms almost alongside them. They are, however, easily seen and avoided. From the west side of the channel the reef extends in a westerly direction $4\frac{1}{4}$ miles, when it curves outward again to the northeast in a semicircular form for about 5 miles, forming a dangerous bight.

North cay, at the northwest end of this reef, is 300 yards long and 150 yards broad. It is formed by the broken coral, sand, shell, and driftwood heaped upon the reef by the violent action of the waves and current to the height of 3 or 4 feet, upon which there are stunted bushes about 5 feet high. At the north end there is usually a hut; on the west side there is a landing place. There are 12 fathoms about 400 yards from the west side, but there is no safe anchorage on account of the heavy swell that rolls around the cay. From the cay the reef trends nearly southwest 3 miles close upon the edge of soundings. This part is broken, but offers no safe channels, and it only shows itself in northerly winds or heavy trade breezes.

Abreast the end of this reef the edge of the bank is nearly $\frac{1}{4}$ mile off; thence it trends nearly southwest by south about 12 miles to the southwestern extremity.

Northwest rocks, southwestward about 6 miles from North cay, are two small patches of rock and sand $\frac{1}{4}$ mile apart and about 2 feet high over which the sea breaks in stormy weather. The edge of the bank curves outward a little here, and there are 14 fathoms $\frac{1}{4}$ mile outside the rocks.

Southwest cay, close to the southwestern point of the bank, is the largest on the bank, being nearly $\frac{1}{2}$ mile long east and west, 300 yards broad, and 32 feet high. It is **composed entirely of sand covered with grass and stunted brushwood and has upon its summit a single coconut tree which can be seen sometime before the cay. At the southwest end large masses of broken coral have been thrown upon the beach to the height of 3 or 4 feet.**

The cay is entirely surrounded by broken water, and, in rough weather, the only landing is on the north side, through intricate channels near the east end. To the southwestward of this cay, to

the distance of $1\frac{1}{2}$ miles, there are 7 fathoms water, when the depth suddenly and rapidly increases to the tail of the bank, which has not yet been accurately determined; there are 45 fathoms at the distance of about $2\frac{1}{2}$ miles.

Not far from the east end of the cay, in a dry part of the reef, there is a curious blue hole or well, similar to those seen at the Bahamas; it is 20 feet in diameter, with perpendicular sides, and 36 feet deep.

The coral ledge extends to only a very short distance from the west end of the cay, but from the east end a barrier reef, dry in places, trends about northeast by east, with a slight inward curve, 9 miles. It is steep-to, and being somewhat protected by the windward reefs it does not show itself at all parts.

Guano has for several years been shipped from Southwest cay by an American company.

Water may be obtained by digging wells at a short distance from the shore.

Eclipse Rock, an isolated coral patch having $2\frac{1}{2}$ fathoms water, steep-to, with 7 to 9 fathoms all around, lies S. 62° W. (S. 58° W. mag.) $\frac{1}{2}$ mile from the northwest extreme of Southwest cay. The rock is of a dark-green color and not visible until close-to.

The eye is the best guide in navigating on Serrana bank, carefully avoiding all discolorations of water, the deep being found over white sand.

Anchorage.—Temporary anchorage in 7 to 9 fathoms, white sand, will be found with the west extreme of Southwest cay bearing S. 23° E. (S. 27° E. mag.), at about $\frac{3}{4}$ mile offshore.

The bank of soundings between Southwest cay and North cay should be avoided, as it contains numerous heads of living coral, covered only a few feet, and is unfit for navigation by any vessel except the small turtle schooners which visit the cay.

South cays and channel.—At the east end of the coral reef, with North cay bearing N. 14° W. (N. 18° W. mag.), distant $7\frac{1}{2}$ miles, there is an opening 600 yards wide distinctly pointed out by three small cays, one lying on each side of it about $\frac{1}{2}$ mile apart on an east and west line, the other facing the opening about $\frac{3}{4}$ mile to the northward. The westernmost, named Narrow cay, is a narrow strip of broken pieces of coral about $\frac{1}{4}$ mile long east and west; the others are about the same length and formed of sand covered with grass, neither of them being more than 3 feet above the sea. The northernmost, named Little cay, is in latitude $14^\circ 21' 33''$ N., longitude $80^\circ 15' 20''$ W.

On the edge of the reef, S. 73° W. (S. 69° W. mag.) about a mile from Narrow cay, is a dry sand bank, and about $2\frac{1}{2}$ miles from the cay in the same direction there is a ledge of rocks nearly $\frac{1}{2}$ mile

long and 2 feet above water. In South channel, between the cays, the depths are 5 to 7 fathoms close to Narrow cay and to within 300 yards of the South cay, and 4 to 7 fathoms may be carried to the eastward, inside the reef, avoiding the dark coral patches. In the channel to the northwest, between Little and Narrow cays, the depths are only $2\frac{1}{2}$ and 3 fathoms.

Anchorage.—Should a vessel be compelled to enter South channel the best anchorage will be in about $4\frac{1}{2}$ fathoms with Little cay bearing N. 83° W. (N. 87° W. mag.) and South cay S. 20° W. (S. 16° W. mag.), the latter about $\frac{3}{4}$ mile distant. In a case of necessity, however, she may bring up just within the entrance in 7 fathoms about midway between the cays.

East cay and channel.—From the south cay a solid reef extends about east by north for $3\frac{1}{2}$ miles along the edge of soundings, when it is again broken and forms, with the southwest horn of the East reef, East cay channel. Near the extremity of the reef, on the west side of this channel, there is a small cay (East cay) of coral blocks and sand about 3 feet above the surface of the sea and steep-to. At about $\frac{1}{2}$ mile N. 39° E. (N. 35° E. mag.) of it is a small cluster of dry rocks, and $\frac{3}{4}$ mile to the northward of them a dry sand bank. East Cay channel, at the entrance, is about $\frac{1}{2}$ mile wide, and carries from 7 to 10 fathoms, avoiding the coral heads, which are steep-to.

On the eastern part of the bank fish are most abundant and seals visit the cays, but not in great numbers. **In the turtle season the bank is visited by small fishing vessels from Jamaica and neighboring islands, and at this period their masts and temporary huts on the cays may be seen before the reefs.**

Anchorage.—Should a vessel be compelled to run in through East Cay channel for safety, she may anchor just within the hook, in 7 or 9 fathoms, with the East cay bearing about S. 65° W. (S. 61° W. mag.) $\frac{3}{4}$ mile distant, taking care to leave room between the shoals for weighing.

Caution.—These anchorages are intended only for small craft.

Tides.—It is high water, full and change, at 2h. and the rise is about 2 feet. On the western part of the bank there is no perceptible stream, but through the channels in the reefs it runs in and out at the rate of $1\frac{1}{2}$ to 2 knots.

Quita Sueño bank lies northward 30 miles from Low cay, at the north end of Old Providence reef, 27 miles from the nearest part of the Mosquito bank, and is extremely dangerous. It is $3\frac{1}{2}$ miles long north and south, about 8 miles broad near the north end, and 13 near the south end, and is so steep that the first casts of the lead may be 14 to 19 fathoms. About a mile within the eastern edge a coral reef, dry in many places, extends along the

face of that side, curving outward a little near the middle for a distance of 23 miles, leaving a portion of the bank at both ends, about 5 miles in extent, with depths from 10 to 17 fathoms, on coral sand. The only break in the reef lies near the middle, where, by chance, a boat might get through in safety. Several large trunks of trees have been drifted on it in several parts, and a spit at the north end, lying somewhat sheltered by the reef, seems to be accumulating different substances, so as to render it probable that a cay will be formed there at no very remote period. This spot lies in latitude $14^{\circ} 29' N.$, longitude $81^{\circ} 8' W.$

The space to the westward of the reef, for a distance of $2\frac{1}{2}$ miles, is full of dangerous rocky patches, and abreast the middle part a spit of shallow rocky ground extends off nearly 6 miles, to within 3 miles of the western edge of soundings. Within this part it is not safe even for a boat, for the heavy surf so disturbs the sand at the bottom that shoals are not easily seen.

Anchorage.—The bank westward of the shoals is quite clear, with depths of from 10 to 17 fathoms, over clear coral sand, which affords anchorage, the sea being broken by the reef.

Current.—In the month of April the current was observed to run to the northwest at the rate of $\frac{1}{2}$ mile an hour, but the fishermen remarked that it was unusually strong for that period.

Tides.—It is high water full and change about noon, rise $1\frac{1}{2}$ feet.

Roncador bank is pear-shaped, 7 miles in length, in a general northwest and southeast direction, $2\frac{1}{2}$ miles in breadth at its southeast end, and $3\frac{1}{2}$ miles across at the middle part. It terminates almost in a point at its northwestern extremity, on which, about $\frac{1}{2}$ mile from the edge of soundings, there is a cay 600 yards long and 300 yards broad, composed of sand and blocks of broken coral. There are some connected huts at the northwest end, built of coral bowlders and not likely to be destroyed. They bring the cay up to a total height of about 13 feet.

From the Roncador cay a barrier reef extends to the southeastward for about $3\frac{1}{2}$ miles to some dry rocks, whence it curves slightly to the southward to the southeast end of the bank, presenting no opening whatever. At $\frac{1}{2}$ mile from the cay, just within the edge of the reef, there is a small sand bank and about a mile farther to the southeast there is another. There are also two more of these dry ridges, one about $\frac{1}{2}$ mile, the other $\frac{3}{4}$ mile from the southeast end of the bank, which lie northwest and southeast of each other about 800 yards apart.

The northeast side of the reef is skirted by a bank of soundings about $\frac{1}{2}$ mile broad, with depths varying from 20 to 5 fathoms, over sand and dark coral. At the south extreme, however, the edge is only $\frac{1}{4}$ mile distant. The west side of the reef is, as usual, filled with detached shoals to the distance of $1\frac{1}{2}$ miles.

Position.—South point of Roncador cay, latitude $13^{\circ} 34' 30''$ N., longitude $80^{\circ} 4' 5''$ W.

Shoal.—In latitude $13^{\circ} 40'$ N., longitude $80^{\circ} 7' 30''$ W., about 7 miles distant, N. 31° W. (N. 35° W. mag.), discolored water has been reported, having every appearance of a shoal.

Water may be procured by digging wells near the center of the above cay, but it is very brackish and only used by the fishermen for culinary purposes.

Anchorage.—On the western edge of the Roncador bank there is anchorage, with the usual trade winds, the dry rocks on the middle of the reef bearing from N. 49° E. (N. 45° E. mag.) to S 73° E. (S. 77° E. mag.) and Roncador cay (huts) N. 13° W. (N. 17° W. mag.), in 5 or 6 fathoms, avoiding the coral spots, which are easily seen.

Tides.—The time of high water at the anchorage is irregular and greatly depends on the strength of the prevailing wind. It rises about 18 inches, but there is no perceptible stream.

Current.—The general set of the current is westerly, but varies from northwest to about southwest, necessitating great caution when passing Roncador reef.

Old Providence and Santa Catalina islands.—Old Providence, like the neighboring island of St. Andrew, was an early possession of the buccaneers, and a most remarkable black rock, 40 feet high, off the west side of Santa Catalina, resembling a colossal human face, bears the name of Morgan, one of their sanguinary chiefs. None of their works, however, now exist, except a small fort, nearly in ruins, on the south end of Santa Catalina, named Aury, from a leader of note in the war of independence, who used the bay. It is remarkably healthy and extremely fertile in all the tropical productions and rears abundance of stock. It belongs to Colombia.

The island, including Santa Catalina, which is only separated from its north end by a narrow channel, is of volcanic formation, $4\frac{1}{2}$ miles long from north to south and $2\frac{1}{4}$ miles broad about the middle. Its center is mountainous, and, within a short compass, rises into three peaks nearly of the same altitude, the highest being 1,190 feet above the sea, and visible in clear weather from a distance of 40 miles. From these heights large, rugged, irregular spurs branch off to almost all parts of the island, terminating at the shore in peaked hills, from 300 to 700 feet high.

Toward the north, one of these ridges descends somewhat more gradually, on almost a straight line to that extremity of the island. Nearly a mile from Jones point a peak rises from this ridge to the height of 550 feet above the sea, named Split hill, from its having been rent asunder by some violent action of nature, and which,

ANNEX 3

The Colombian Navigator; or, Sailing Directory for the
American Coasts and the West Indies (1839), John Purdy,
Vol. III.

THE
COLOMBIAN NAVIGATOR;
 OR,
 SAILING DIRECTORY
 FOR THE
 AMERICAN COASTS
 AND
The West-Indies.

VOLUME THE THIRD.

COMPREHENDING,

- 1.—DESCRIPTIONS of the WINDS, SEASONS, TIDES, and CURRENTS, and DIRECTIONS for the PASSAGES to and among the Islands, and to the Ports of Guyana, &c.
- 2.—The GENERAL NAVIGATION of the CARIBBEAN or COLOMBIAN SEA, from LEEWARD to WINDWARD, &c.
- 3.—The ISLAND of PORTO-RICO, the VIRGIN ISLANDS, and ST. CROIX.
- 4.—The CARIBBEE or WINDWARD ISLANDS, from SOMBRERO to TRINIDAD.
- 5.—The COAST and RIVERS of GUYANA, from the EQUATOR and the MARANON, Westward, to the GULF of PARIA.
- 6.—The COLOMBIAN or LEEWARD ISLANDS, from MARGARITA Westward.
- 7.—The COAST of VENEZUELA, from the GULF of PARIA to LA GUAYRA.
- 8.—The COASTS from LA GUAYRA to ST. JUAN de NICARAGUA.
- 9.—The ISLANDS and SHOALS between JAMAICA and NICARAGUA.
- 10.—MOSQUITIA or the MOSQUITO SHORE, from NICARAGUA to CAPE HONDURAS.
- 11.—The BAY and GULF of HONDURAS, &c., from CAPE HONDURAS to CAPE CATOCHE and CAPE ANTONIO, including the GOLFO and RIO DULCE.
- 12.—Temperatures of Air and Water in the West-Indies: Preservation of Health: Spanish Names and Pronunciation.

COMPOSED and ARRANGED

From a GREAT VARIETY of DOCUMENTS, as enumerated in the Work, including, most especially, a corrected TRANSLATION of the 'DERROTERO DE LAS ANTILLAS,' by CAPTAIN ANDR. LIVINGSTON, and the Contributions of many other intelligent Navigators,

BY JOHN PURDY, HYDROGRAPHER.

SECOND EDITION; MATERIALLY IMPROVED, REVISED, AND ENLARGED.

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1839.



on the land, and from one to two and a half. It has been known to cease every where, or even run west for a short time. It is commonly supposed to be strongest in the rainy season, and to be thrown most upon the land when northerly breezes prevail in the vicinity; but it is quite as true that fiery trade-winds from the N.E. during the fine season, falling on the Mosquito coast, strengthen the eddy or current along the land to its full force; whilst they diminish the rate, or affect the course, at the outer part of the stream.

SECTION VIII.

The ISLANDS and SHOALS between JAMAICA and NICARAGUA.

PEDRO BANK AND SHOALS.—Of the isles and shoals which are to be described in the present Section, the first, in order from the north, are those of the PEDRO BANK to the south-westward of Jamaica, the eastern end of which bears S. by W. $\frac{1}{2}$ W., 34 miles, from Portland Point, Jamaica; the Bank thence extends more than 30 leagues to the westward, and its western part is 15 leagues broad. The depths upon it vary from 7 and 8 to 16 and 18 fathoms, mostly sandy ground with coral, and on its south side are several rocky shoals, as shown in the chart.

At about five miles from the eastern extremity is the *Portland Rock*, a kay, 15 to 20 feet above the sea, and covered with small bushes. As the current here sets generally westward, with considerable velocity, it must, by night, be cautiously avoided.

The position of this rock, which was long doubtful, appears to have been finally settled by the officers of H.M.S. *Winchester*, Capt. the Hon. Wm. Wellesley, Mr. J. Napier master, in 1834. The latitude gained from 22 solar altitudes; the seconds only varying from 19" to 30," was $17^{\circ} 7' 25''$: the longitude, by five excellent chronometers, $36' 19''$ west from Port Royal. Hence, taking the latter at $76^{\circ} 50' 45''$, the longitude of Portland Rock from Greenwich will be $77^{\circ} 27' 4''$. The greatest extent of the rock is under two cables' length. The bottom is quite clear within 3 cables, the N.W. side excepted, on which is a shoal spit. The best anchorage near it is in 8 or 10 fathoms, with the rock bearing east, three quarters of a mile.

The PEDRO KAYS, four in number, are a groupe of islets upon the S.E. side of the Pedro Bank. The N.E. kay, in latitude $17^{\circ} 6'$, long. $77^{\circ} 46'$, is about half a mile long, from north to south, and a little more than a quarter broad. The highest part is from 12 to 15 feet above the level of the sea. Low bushes on it. A little soil in the centre. Breakers extend to the southward rather more than a quarter of a mile. Several small rocks, above water, on the western side, close to the shore. The best anchorage is on the S.W. side, at about the eighth of a mile from shore, in $2\frac{1}{2}$ fathoms, clean sand. There is a beautiful landing and bathing place on the N.W. shore. Fish very abundant.

The MIDDLE KAY, at 3 miles S.W. $\frac{1}{4}$ W. from the N.E. kay, has a favorable landing place on the north side; but on the south side the reef extends out to nearly a mile. The anchorage is not so good as at the former. The islet is of a diamond form, one-third of a mile long each way, and its surface is 10 or 12 feet above that of the sea. Although almost covered with brush wood, there is scarcely any appearance of soil.

The S.W. KAY, at $2\frac{3}{4}$ miles S.S.W. from the Middle Kay, is the longest of the whole, being about three quarters of a mile long, by rather more than a quarter broad. It has some good soil, and near the centre two small wells of tolerably good fresh water. The northern end is covered with brushwood; the southern is almost entirely rock. Birds innumerable. On the west side is good anchorage in $2\frac{1}{2}$ fathoms, and a landing place. Breakers at the north and south ends.

The SOUTH KAY is about $4\frac{1}{2}$ miles S. by W. from S.W. kay. It is surrounded by a reef, and breakers extend to some distance from each end. This kay, although low, may be approached from the S.E. within two miles. The colour of the water, in fine weather, will point out all the dangers.*

* For the convenience of the reader this description is repeated from our second volume, in which the navigation about Jamaica is fully described.

ARROWSMITH BANK, in about latitude $16^{\circ} 28'$, and longitude $80^{\circ} 28'$, nearly midway between Jamaica and Cape Gracias a Dios.

This is a bank of considerable extent, which was crossed on the 18th of June, 1836, by the bark *Rosalind*, Captain John Arrowsmith, on her passage to the Bay of Honduras. On sounding from 11 a. m. till 1 p. m. the depths varied from 13 to 10 fathoms the least water, and bottom of coarse corally sand. The discoloured water was seen from the mast-head, as far as the eye could discern, to the northward and southward of the ship's track, and the extent of it in an eastern and western direction was about six leagues.

Captain Arrowsmith says, "In giving an opinion to shipmasters taking this unfrequented track, time may be saved and the distance shortened by it otherwise lost in hauling up to sight the east end of Jamaica; but I would recommend it to none but those well practised in night-observations for latitude. In passing to the southward of these shoals the current frequently sets strongly toward them to the northward, and again in proceeding westward at times, in the direction of the rocks off Cape Gracias a Dios, particularly in the season of the norths, between November and March, during which season it is extremely hazardous, from want of clear weather; it ought not, therefore, to be attempted at that period by merchant-ships. These remarks are extracted from Journals kept during twenty-nine successive voyages.—(*Nautical Magazine*, June, 1838.)

BAJO NUEVO, or NEW SHOAL, was examined by the Spanish brigantines *Empresa* and *Alerta*, in 1804, and the position of a sandy kay upon it has, consequently, been given; this is, latitude $15^{\circ} 52' 20''$, longitude $78^{\circ} 37' 58''$. The extent of the shoal, according to the Spanish officers, is about 7 miles from north to south, and 14 miles from east to west. All the eastern part is a reef, very steep-to; but, on the west, the depth diminishes gradually. At a mile and a half from the northern extremity, is the sandy kay above mentioned. You may anchor to the W.N.W. of this kay, at the distance of *three* or *four* miles; but take care not to get into less than 10 fathoms of water; for, at *two miles and a half* W.N.W. from the kay, there is a rock, having only 7 feet over it; and at S. by E. from it, at the distance of a mile, there is another, with only 4 feet of water. Both rocks stand in 5 fathoms of water: they are very steep, and not larger than a boat.

The *Baro Nuevo* was examined by the officers of H.M.S. *Winchester*, in or about 1834, who described it as a belt of breakers, inside of which is smooth water, over a sandy bottom. The ship made the east side of it, the two extremities of which then appeared to bear N. by E. and S. by W. from each other, distant 3 or 4 miles. All this side presented one continual line of breakers, with here and there a small spot of sand. It seemed hardly possible, either on this or the north side, for a boat to get through. As far as could be seen from the mast-head, the part forming the south side was not so closely connected.

The *Winchester* ran down to within three miles of the middle of the east side, then hauled up to the northward, and passed the N.E. point within a mile and a half. This is by far the most dangerous part of it, as a strong current sets over it to the S.W., and from the reefs which run off it. Near it is a sandy spit or kay, the most uncovered spot seen. Off it were found the following soundings:—

The point bearing W.N.W. one mile and a half, 20 fathoms: W.S.W. one mile and a half, 22 fathoms: S.W. $2\frac{1}{2}$ miles, 34 fathoms. All fine sand and coral. When it bore south, 3 miles, no bottom at 45 fathoms; and S.S.E. $3\frac{1}{2}$ miles, none at 80 fathoms. Lat. of the point, $15^{\circ} 53' 26''$.—(*Nautical Magazine*, July 1835, page 393.)

This shoal was again examined by H. M. surveying ship *Thunder*, Capt. Rd. Owen, in March, 1835. The small kay, which is about 4 feet high, and a cable's length east and west, was seen and found to lie in latitude $15^{\circ} 53'$, longitude $78^{\circ} 38'$, at 6 miles N.E. from the southern breakers. This kay has no appearance of vegetation on it, and is composed of coarse coral sand and coral stones.

The whole extent of breakers toward the east trends nearly N.E. by E. and S.W. by W. about five leagues, apparently in the form of two half moons, with the convex sides to the eastward, and very dangerous, as there are no soundings with 120 fathoms at less than a quarter of a mile. The reef on which the kay is situate is detached, there being a channel on its northern side, having apparently 4 or 5 fathoms in it, and being about three-quarters of a mile broad across the bank, with some rocky and brown patches.

The southern detached breakers are seven miles in extent, and have a sand bore, just on the surface, at the southern point, from which a rocky spit of 2 to 5 fathoms extends one mile to the westward. Rounding this, in 10 to 12 fathoms, the anchorage will be found good

good under any part of its western side, with from 11 to 8 fathoms, varying from one to 2½ miles from the reef; but, within the latter depth you may get entangled within shoal rocky heads, with deep water inside of them. In clear weather, however, the eye will be a sufficient guide.

The best anchorage for communicating with the kay is to bring it to bear E. by S. to E.S.E. one mile distant. The general depths on the bank are 11 to 13 fathoms, coral sand, in an extent of 3 to 4 miles. The northern reef is three miles in extent on its eastern face, and, with a long tongue of breakers, of little more than a mile and a half to the westward, forms a snug anchorage for boats or small craft, like a basin, sheltered from the prevalent winds. There are two small dry sand bores on this part as well as two on the southern range; but, after gales they usually disappear, or are thrown up on some other part of the reef.

On the kays, at this season, (March and April,) seals are very numerous.

SERRANILLA.—This shoal, with its kays, appear on the old charts like a picture of fears and apprehensions, being magnified into ten times its real extent. It was, however, examined by the Spanish surveyors, in 1802, who placed the east end in $15^{\circ} 45' N.$ and $79^{\circ} 48' W.$ but the recent survey gives it in $79^{\circ} 41' W.$ The bank lies between the parallels of $15^{\circ} 35'$ and $15^{\circ} 55' N.$ and the meridians of $79^{\circ} 41'$ and $80^{\circ} 51'.$ On its eastern and southern sides are several kays and reefs. On the N.E. side is a detached patch of rocks, on which the sea constantly breaks; it is just awash, but in fine weather a rock will show about 2 feet out of the water: between it and the main bank is a safe passage of not less than 6 fathoms, bordering close to the western side of the reef. In clear weather all rocky patches are easily avoided. It is very dangerous to approach by night.

There are three kays and several small sand-bores, about 2 feet high, on the edge of the bank. The kays are of a uniform height, of 7 to 8 feet, of a cable in length, from N.E. to S.W., and, on an average less than half a cable in length. They are composed mostly of coral rock, stones, and sand: there are a few small bushes on the eastern kay, the situation of which is $15^{\circ} 51' 40'' N.$ and $79^{\circ} 44' 15'' W.$ On the S.W. or Beacon Kay is a small creeping shrub, just covering the sand. Seals frequent this kay, with their young, in March and April, as well as the Baxo Nuevo Bank. The best anchorage is under this kay, in 5 to 7 fathoms, clear white sand, passing over a dark line of soundings of 7 fathoms into the clear bottom, with the S.W. part of the kay bearing from S. $30^{\circ} E.$ to S. $50^{\circ} E.$ one quarter to half a mile. On approaching this anchorage, you may round the S.W. kay at about a cable's length. If you wish to anchor in 3 or 4 fathoms N.N.W. of the kay, you may do it safely in the season of easterly winds, sheltered by the reefs from N.N.E. to S.S.E.

At W. $5^{\circ} S.$ 8 miles from the S.W. kay, and close on the edge of the bank, is a very dangerous ledge of rocks, part of which is about two feet out of water, and here the sea always breaks. S.S.W. of this, scarcely one mile, is the 'ocean water,' whence the depth gradually decreases to 6 and 7 fathoms, where a vessel, in necessity, may anchor at about a quarter of a mile to the northward or northeastward in $2\frac{1}{2}$ or 3 fathoms, corally bottom.

From the N.W. to the northward and eastward of the S.W. kay, one to $3\frac{1}{2}$ miles, are innumerable shoal patches of coral rock, having over them from 12 to 18 feet of water; but in clear weather a passage of 5 or 6 fathoms may be picked out between them, as they are very easily distinguished. The general depths on the bank are from 10 to 16 fathoms, coral and sand. On the N.E. to the N.W. edges are deep and clear soundings. High water, on the full and change, at about 11 a. m. Rise, 2 to 3 feet. Variation, $5^{\circ} 52' E.$

ROCK near the parallel of 15° . To the S.S.W., 17 leagues from the Serranilla Bank, in latitude $14^{\circ} 53'$, and longitude $80^{\circ} 21'$, is a rock, nearly awash and sometimes covered, around which are from 9 to 12 fathoms of water, according to the charts; but of this we have no recent description.

The **SERRANA BANK** and **KAYS.**—The **SERRANA BANK** is an extensive and very dangerous shoal, lying between the parallels of $14^{\circ} 15'$ and $14^{\circ} 30' N.$ and the meridians of $80^{\circ} 8'$ and $80^{\circ} 25'.$ On its edges are six kays and many sunken rocks with intervals between. The S.W. kay bears from the north kay S.S.W. $\frac{1}{4} W.$ 13 miles, and from the eastern kay S.W. by W. 12 miles.

On a N.W., N.E., and south direction it is dangerous to approach, as 120 fathoms are to be found at one quarter of a mile from the kays, and these are very low. Through the numerous openings in the reef the current sets with great rapidity. To take either of them

the eye is the only requisite guide. There is an opening of the reef at the S.E. elbow, which a vessel may run for in case of emergency; it is half a mile wide, with 10 fathoms at its mouth, and 3 to 6 fathoms within, but full of rocky heads, nearly uncovered. On the western part of the bank a vessel may advance $2\frac{1}{2}$ miles; there being 14 fathoms on the edge to 5 and 6 within, with only a few coral heads to be avoided.

The northern kays is nine miles N.N.W. from the east end of the bank; it is 150 fathoms in extent from north to south, and 80 in breadth. This kays is of coral and about 8 feet above the level of the sea; there is no anchorage under it, but good landing on its western side.

There is anchorage between the east and S.E. kays at half a mile within the entrance. In steering in you will carry 3 fathoms. The passage is a quarter of a mile wide; hence you haul to the eastward, avoiding coral heads. At a mile or more is a snug place for small craft, secure from all winds.

The S.W. kays, of sand and coral, is 35 feet high, with low bushes. It is 400 fathoms long, E. by N. to W. by S., and 150 broad. On this islet only can fresh water be procured, by digging a well in the sand, which by filtering is very good.

The latitude of the northernmost of the three southern kays is $14^{\circ} 21' 36''$, longitude $80^{\circ} 12' 37''$. High water at 2 p. m. Rise, 2 feet. Variation, $6^{\circ} 10' E$.

About the kays many seals are killed, for the oil they produce; fish are abundant and of the best kind. Turtle also during the season, which is from March to August. The fishermen come here from St. Andrew's and the Corn Isles, and reside in temporary huts, which, in making the kays from the southward, are the first objects visible, appearing like a sail.

QUITA SUENO, or GUANA REEF.—Quita Sueno, 'Shake off Sleep,' is a name which was imparted by the Spaniards, when the situation and nature of the bank, now bearing the name, was imperfectly known. This bank has lately been found to extend from the latitude of $13^{\circ} 56'$ to $14^{\circ} 33' 15''$, and from longitude $81^{\circ} 6'$ to $81^{\circ} 21'$. The dangerous part or reef is toward the east, between $14^{\circ} 7\frac{1}{2}'$ and $14^{\circ} 30' N$. In $14^{\circ} 15'$ the bank is 14 miles broad.

The broken water over the reef extends nearly north and south, *true*, $22\frac{1}{2}$ miles, and leaves only one opening, at about one-third of the distance from the north point of the breakers. The eastern edge is steep-to, within half a mile, with deep water; therefore there is no warning of approach by the lead. A clear bank of soundings extends five miles northward of the breakers, having from 13 to 19 fathoms, corally sand. The depths gradually decrease as you approach the reef, at about half a mile from which the ground becomes uneven and rocky. There is no kays on the whole extent of the reef, but a very small spot of sand, about 6 miles to the southward of the northern part of the breakers, which lie in lat. $14^{\circ} 30'$ and long. $81^{\circ} 7'$.

Between the parallels of the north and south parts of the reef, on the west, a vessel of any magnitude may beat up even by night, and anchor in 11 fathoms. By day the eye will be the best guide if the object be to take shelter under the western side of the reef.

At about the middle of the reef, shoal rocky ledges, some just awash and not easily discovered, lie more than five miles from the eastern part of the reef to windward, and are very dangerous, shoaling suddenly from 11 to 6 and 4 fathoms. The southern breakers are bold, and may be rounded with safety in 10 fathoms, at the distance of three-quarters of a mile. Here is the broadest part of the bank extending westward 13 miles, with from 10 to 17 fathoms clear coral sand. In the centre it is 10 miles from E. to W., and at the north part 7 miles in the same direction. General depth from 9 fathoms; nearer to the reef it abounds with coral patches, having four and five fathoms to 18 betwixt them. The anchorage under the shelter of the reef is good during the easterly breezes. The water very smooth at the S.W. part of the bank; a tongue of deep soundings from 130 to 150 fathoms, fine yellowish sand, extend to the lat. of $13^{\circ} 56'$ and long. $81^{\circ} 17'$. In very clear weather, from the south part of the breakers, the hills on Old Providence Island are visible, bearing *true S.* $16^{\circ} W$. 50 miles. The current most commonly sets to the W.N.W. about half a mile per hour, sometimes after strong breezes a mile. A strong current generally sets to the north-westward under the lee of the reef. This was remarked whilst at an anchor in the month of April. Winds from the E.N.E. generally, and hazy. At the change of the moon, the weather invariably unsettled.

CURRENT.—Should a vessel in the vicinity of these shoals not be enabled to make easting, as the currents in June and July run generally strong to the westward and W.N.W., keep on the port-tack till you gain the main land, where the currents at this season set strong to the eastward, and when advanced about a degree eastward of your intended spot, stretch across on the starboard tack to the northward.

RONCADOR KAY and REEF.—In latitude $13^{\circ} 34' 30''$, longitude $80^{\circ} 5' 15''$, on the N.W. and narrowest part of a reef, is an islet, called *Roncador Kay*, shaped like a leg of mutton, elevated about 6 feet above the sea, composed of sand and coral, and having on its S.E. end a few small low bushes, on which the 'Man of War birds' build their nests, and deposit in each one egg. The greatest length of the kay is 300 fathoms, in a N.W. by N. and S.E. by S. direction. The northern part of the bank is very narrow, being only about a mile and a half over.

The kay is washed nearly all round by the ocean water, as the bank does not extend more than half a mile from it, the S.E. side excepted, with from 5 to 14 fathoms, on its edge, and then deepening to 100 fathoms. The trend of the breakers from the kay is S.E., and the bank makes in the form of a half-moon, presenting its convex side to the east: this side is steep-to, and the deep soundings are found at one quarter of a mile off. The extent of breakers on the reef, without any interval or opening, is nearly seven miles. There are several small sandy spots, which, with heavy seas, frequently shift their position. The breakers on the northern and southern parts are bold, and by day may be approached close to.

The best anchorage is with the kay bearing about N. 25° W., from 2 to $2\frac{1}{2}$ miles off, in 5 to 7 fathoms, sand and weeds; within that distance rocky heads commence, having deep water between them. If your stay is for a few hours only, you may anchor on the edge of the bank, in 6 to 8 fathoms, with the kay N. 50° E. one-third of a mile. Landing on the eastern side is very difficult; the water being shallow and full of patches of coral rock, even with the water's edge.

The general depths on the Roncador Bank are 8 to 5 fathoms, and a vessel should not advance on any part in less than five, which is about two miles from the S.W. point. The broadest part is nearly $2\frac{1}{2}$ miles wide.

Here the rise and fall of water depend chiefly on the winds, and never exceed 18 inches. The current, in April, was found running westward, half a mile an hour, during fine breezes and very hazy weather.

Fish of all kinds, common to the tropical climates, abound here, near the rocky patches; but there are no seals. The people of Providence come here for turtle, in the season from March to June, which they take by netting and spearing them, for home consumption.—
(*Mr. Dunsterville.*)

PROVIDENCE and CATALINA.—The Island of Providence is situated in latitude $13^{\circ} 22'$, and in or near the longitude of $81^{\circ} 22'$. It is six miles long from north to south, and three miles in breadth. Catalina is an isle at the north end of Providence, and is divided from the larger island by a very narrow channel, over which a bridge formerly existed. These isles were formerly inhabited and fortified by the Buccaneers, and are nearly surrounded by dangerous reefs, of which that to the N.N.E. extends three leagues out, in that direction. These reefs are detached from the shore, so that there is a channel within them, all round, which may be considered as a harbour. A break in the reef, on the S.W. side, admits vessels to an anchorage in 4, 3, and 5, fathoms.

Providence once belonged to the Earls of Warwick, and its possession was assigned to England by treaty in 1670, but it afterward reverted to the Spaniards. It is now a dependency of New Granada. In the *Derrotero*, of 1810, it was stated to be inhabited by three or four families only, who were employed in cultivation, but its present population amounts to about 350 persons.

This island was celebrated in the history of the Buccaneers, who fortified it, and made it for some time their principal retreat. In 1665, *Mansvelt*, the pirate, sensible of the great convenience of these islands, in his descents on the Spanish main, took them and connected them by a bridge, intending to raise provisions on them for his whole fleet, leaving a garrison and French governor: the latter delivered them soon after to the Spaniards, who fortified them, but they were subsequently taken by the Buccaneers.

In proportion to its size, Providence may be considered as one of the best islands in the

the West-Indies, both on account of its fruitfulness, and the salubrity of its air; to which may be added the facility of fortifying its shores: it is watered by four streams, two, if not three, of which are dry in summer: the woods are filled with an incredible number of pigeons, which are very fat and good; guanans, whose flesh, in taste, resembles that of a chicken, are in great abundance; and there is not a serpent, nor any other venomous creature, to be found.

Providence and Catalina may be considered as one island: the last is remarkably rocky; its surface being almost covered with stones. It rises into a mountain, full of inequalities, and is too sterile to be of much value. Providence rises gradually from the sea to an amphitheatre, formed by four hills, crowned by a high mountain. On the cusp or head of the mountain is a spring, which supplies the four rivulets, already noticed, and these, in different directions, run down to the sea. The water is light and excellent. The rivulet which runs down to the western shore is the most abundant, and it falls into a cove called *Ensenada de Agua Dulce*, or *Freshwater Cove*. The island, in clear weather, may be seen at 10 or 12 leagues off; but vessels, in passing, should not approach nearer than a league; and, on the N.E., not nearer than $3\frac{1}{2}$ leagues. The entrance to the port is on the N.W.; and here it is requisite to have a pilot.

The positions of the islands and kays, as determined by the survey of 1835, are as follow:—

	Latitude.	Longitude.
North Kay, at the N.W. extremity of a coral reef ..	13° 31' 36" ..	81° 20' 30"
Basalt Kay (45 feet high)	13 24 0 ..	81 22 10
North end of Catalina	13 23 40 ..	81 22 10
Isabel, village so called	13 22 54 ..	81 32 0
Highest peak, near the centre	13 21 0 ..	81 21 50
South Point	13 19 15 ..	81 23 10

The island is about 125 miles from the nearest part of the Mosquito coast, and 38 miles from the edge of the Mosquito Bank, and is easily distinguished from the isle of St. Andrea by the singular outline of its abrupt and peaked mountains. St. Andrea or St. Andrew's, from which it may be seen in clear weather, bears from it S. by W. $\frac{1}{2}$ W., 47 miles. Both Providence and Catalina, on approaching them, present a delightful variety of beautiful scenery.

These isles are, at present, included in the government of the Isle of S. Andrea, the residence of the governor. This is the 9th canton of the province of Cartagena, republic of New Granada. The cut or channel between Providence and Catalina is from 40 to 60 yards wide, and 1800 long by 1300 in its greatest breadth; the harbour is formed by the coast of the two isles, and affords secure anchorage in from $3\frac{1}{2}$ to 2 fathoms, unless with a prevalence of N.W. winds. A part of the passage is fordable, having only 12 inches of water; the central part is 150 fathoms across, with 3 to 6 feet; the southern entrance is 12 fathoms wide, and 8 feet deep.

The western part of Catalina, rising very abruptly, is rocky and sterile; the highest hill is of 460 feet; the length of the isle N. and S. and greatest breadth is three-quarters of a mile each way. The N.E. point is called *Bucaneer's Point*, and at the S.W. part is a remarkable piece of insulated rock, 40 feet high, called *Morgan's Head*. The south point of the isle is about 70 feet high, with the ruins of a fort and a few cocoa-nut trees on it. No cattle are permitted on this isle, as the villagers of Providence raise provisions thereon; the soil in the lower land being very good. The highest hill on Catalina is in latitude 13° 23' 21", and there are great facilities for fortifying the shores.

Off the north point of Catalina are two small kays; the N.E. 35 feet high, is called *Palm Kay*, and the S.W., or largest one, 45 feet high, is called *Basalt Kay*; the distance between the two is half a cable's length. The latter is two thirds of a mile from shore, and appears of a yellowish tinge when seen from the northward, under and on with Catalina. There are a few trees on Palm Kay, but none on Basalt: at the latter basaltic columns rise to 45 feet above the sea, and incline about 15° from the perpendicular to the southward.

The Island of Providence rises gradually from the sea, to an amphitheatre, as above described. Its hills vary from 200 to 600 feet in height; but its highest summit, in lat. 13° 21' 10", long. 81° 21' 50", is 1190 feet high; the head of the latter, as seen from the N.W. ward, droops toward the east; there is a small peak, close to the westward of it, of 1154 feet.

The

ANNEX 4

The Navigation of the Gulf of Mexico and Caribbean Sea
("U.S. Sailing Directions"), Hydrographic Office of the
United States Navy (1890).

No. 64



CARIBBEAN SEA AND GULF OF MEXICO

VOL. II

SECOND EDITION

COAST FROM THE RIO GRANDE DEL NORTE TO CAPE ORANGE
WITH ADJACENT ISLANDS AND DANGERS

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THE NAVIGATION
OF THE
CARIBBEAN SEA AND GULF OF MEXICO.

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THE COAST OF THE MAINLAND,
FROM THE RIO GRANDE DEL NORTE, MEXICO, TO CAPE ORANGE,
BRAZIL, WITH THE ADJACENT ISLANDS, CAYS, AND BANKS.

REVISED BY

R. C. RAY, U. S. NAVY,

Under the direction of Capt. HENRY F. PICKING, U. S. N.,
HYDROGRAPHER.

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tremity in lat. $16^{\circ} 32'$ N., long. $81^{\circ} 6'$ W.; it lies NNW. and SSE. and has depths of from 33 to 13 fathoms, the latter being at the southern extremity.

Serranilla bank.—The south extreme of this bank lies N. 14° E. 76 miles, from the north cay on the Serrana; its west side is 52 miles from the eastern extreme of the Mosquito bank; and its east side is S. 42° W., 65 miles, from the southwest end of the Pedro bank. With the exception of a small bend at its southwest end, it is somewhat circular in shape, being 24 miles long, east and west, and about 20 miles broad in the widest part, north and south.

The west side of the bank, from the southwest extreme, extends about N. by W., 9 miles, and then NNE., 7 miles. It is everywhere clear, with regular depths from 15 to 9 fathoms, at the distance of 2 miles to the eastward at the south edge, and about 9 miles to the eastward, at the north edge of the bank. At the bend, the edge is composed of fine white sand and shells; elsewhere the bottom is coral sand.

The north side sweeps from the northwest extreme in an easterly direction, curving outwards very slightly, and then gradually to the southward, to the northeast breaker, which lies S. 73° E. $21\frac{1}{2}$ miles, from the northwest point of the bank. For about 9 miles from the west end; this part is quite safe, but to the eastward of this, at only $1\frac{1}{2}$ miles from the northern edge, is a broad coral ledge with very irregular depths from 9 to 5 fathoms, extending to the southeastward as far as the reefs; it would be advisable to avoid this part.

The edge of the bank is everywhere steep to, the depths increasing very abruptly from 20 fathoms to upwards of 100 fathoms; and at many parts of it the first soundings will probably be no more than 12 or 13 fathoms. In depths of more than 100 fathoms the bottom is very white sand, quite free from all coralline particles, with sometimes a few small broken shells, while on the banks the sand is coarse and mixed with coral. It has upon it three small cays, of the usual character of those described on the adjacent banks, and they are similarly situated to those on the Pedro bank, being confined to the southeast side.

Northeast breaker, at the eastern extremity of Serranilla bank, about $\frac{1}{2}$ mile from the edge of soundings, is a dangerous, detached, coral ledge, 300 yards in extent, with a rock awash at its south end, on which the sea breaks heavily. Around it are 8 and 10 fathoms water; 17 fathoms at 600 yards eastward; 12 fathoms at one mile southeastward; and 16 fathoms at the same distance northward, over dark bottom.

At about $1\frac{1}{2}$ miles S. 84° W. of northeast breaker, commences a chain of narrow reefs and shallow ledges, which trends to the southwestward 10 miles. For a space of $1\frac{1}{2}$ to 2 miles outside them, to the edge of soundings, the bank is quite clear, with depths from 13 to 10 fathoms, to within about $\frac{1}{2}$ mile of them.

East cay and reef.—From the northeast extreme of the chain of

reefs, a solid reef extends about SSW., with a slight outward sweep, $2\frac{1}{2}$ miles, when it terminates at East cay. About half way on the reef is a small dry sand bank. East cay is about $\frac{1}{4}$ of a mile long, north-east and southwest, about 100 yards broad, and the dwarf bushes upon it grow to the height of about 7 feet above the sea. About 400 yards from it there are 7 fathoms water, and to the westward of it there is an intricate cut, 700 yards wide.

Middle cay and reef.—At the west side of the above opening there is another small dry sand bank, whence the Middle reef trends about WSW., $1\frac{1}{2}$ miles, to Middle cay. This islet is half-moon shaped, convex to the east; it is $\frac{1}{4}$ of a mile in diameter, with bushes upon it 7 feet above the sea. A dry ridge of rocks extends from it, westward, 600 yards; whence a shallow ledge of coral and sand banks trends to the southwest, about one mile, having 6 fathoms 600 yards south of it. Between this shallow ledge and the western reef there is an intricate opening $1\frac{1}{4}$ miles wide.

Beacon Cay and Reef.—The north end of the western reef lies W., $2\frac{1}{2}$ miles, from Middle cay, whence it takes nearly a SSW. direction, 4 miles, to Beacon cay, at its southern extremity. The reef, however, is divided into three parts, by shallow cuts about 400 yards wide.

Beacon cay is the largest of the three cays; its shape is that of a quarter moon, convex to the south, and from point to point it is about $\frac{1}{2}$ mile in length. The sand and coral of which it is composed, is covered with samphire grass, and stands 8 feet above the sea; in 1835 a rough beacon of coral stones, 25 feet high, was erected on its west end, in lat. $15^{\circ} 47' 45''$ N., long. $79^{\circ} 51' 27''$ W. The bank, from abreast Beacon cay, runs out in a spit which terminates at a point, with the beacon bearing N. 45° E., distant 8 miles. It is quite free of dangers, with regular depths from the 10-fathom line outwards, to 17 fathoms on the end of the tongue. This spit forms the east side of the bend before mentioned. The edge of the bank trends, from the point, about N., $4\frac{1}{2}$ miles, then curves to the westward, for about 6 miles, to the southwest extreme of the bank, S 84° W., 12 miles from the beacon. The fishermen say that indifferent brackish water, strongly impregnated with lime, may be obtained on Beacon cay, by digging wells.

The 10-fathom line of soundings lies within about 600 yards of the SE. side of Beacon cay and its reef; at the same distance to the S. and W., there are 8 to 6 fathoms, and in the former direction the edge of soundings lies 2 miles off.

Anchorage.—The bank to the westward of the islet is quite clear, for a space of about 2 miles, with regular depths of 6 and 7 fathoms, on a clear sandy bottom. Good anchorage will be found here with the usual trade breezes, in 6 fathoms, with the cay bearing about S. 45° E., $\frac{3}{4}$ of a mile distant.

West Breaker, nearly at the bottom of the bend, and less than $\frac{1}{2}$ mile from the edge, is a dangerous ledge of rocks, about $\frac{1}{4}$ of a

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mile in extent, just above water, with the sea breaking over it; from it the beacon bears E., distant 8 miles. Around it, on all sides except to the southward, there are 6 fathoms $\frac{1}{2}$ mile off, and the depths gradually increase to 10 fathoms at the distance of about 2 miles to the westward and northward of it. To the eastward, between it and the Beacon shoals, the ground is clear of danger but the soundings vary from $4\frac{1}{2}$, over dark coral patches, to as much as 9 fathoms, on clear sand.

Northern shoals.—Off the north side of the chain of reefs, from a point lying N. 79° W., $1\frac{1}{4}$ miles, from the northeast breaker, to the distance of $2\frac{1}{2}$ miles all along them, are numerous coral patches, called Northern shoals, with $1\frac{1}{2}$ to 3 fathoms over them, and 5 or 6 fathoms between, on clear sand. The northernmost lies with Middle cay bearing S. 23° E., and East cay, S. 56° E.; the westernmost with the Beacon cay, S. 34° E., distant 4 miles.

Tides.—The time of high water at the Serranilla bank is irregular, being influenced by the strength and direction of the prevailing winds. Springs rise about 2 feet. There is no perceptible tidal stream, but in general a current setting to the WNW., from $\frac{1}{4}$ to one mile an hour.

Bajo Nuevo, or New Bore, the easternmost of the outlying banks, is oval shaped, about 14 miles in extent, ENE. and WSW., and $4\frac{1}{2}$ miles broad. Its eastern extremity presents a solid semicircular reef, convex to the eastward, dry in some places, and steep to, the edge of soundings being about $\frac{1}{4}$ of a mile off. This reef continues along the north and south edges of the bank, for about 4 miles, where a break or opening is formed, about $1\frac{1}{2}$ miles wide, separating it from a similarly formed reef, which extends along the southern edge of the bank, for 7 miles, to a dry sand bank. A shallow ledge, however, with 10 fathoms close to, projects to the westward of the bank, to within about 2 miles of the southwest end of the bank, which makes this termination, if possible, more dangerous than the other. Small ridges of sand are occasionally formed on other parts of the reef, but they disappear in heavy breezes.

At the west side of the above opening, on the north point of the leeward reef, there is a barren cay composed of sand, broken coral, and drift wood, thrown up by the waves to the height of 5 feet above the sea. It is 300 yards long, and about 50 yards broad, and lies in ~~the~~ 28° N., long. $78^{\circ} 39' 4''$ W. At the south end there is a small pond, which is resorted to by seals; and in the months of March and April the bank is visited by fishing vessels, from St. Andrews and Old Providence, for the purpose of taking them.

To the westward of the east reef the bank is clear for about a mile within the edge; about 2 miles westward of the cay, there is a clear space about 3 miles wide, extending to the southwest end of the bank. The depths vary from 8 to 17 fathoms over coral sand; great care, however, must be taken when standing towards the broken ground on

SERRANA BANK—NORTH CAY.

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the north side of the leeward reef, and to avoid a coral head which lies S. 79° W., 2 miles from the cay. The northern edge of the bank is so steep that the first cast of the lead may probably be 12 or 15 fathoms, the bottom being visible.

Anchorage may be taken up, in moderate weather, in 8 fathoms, with the above cay bearing S. 73° E., about 1½ miles distant, but it is quite exposed to the winter breezes.

Current.—Vessels passing eastward of these dangerous reefs should make due allowance for the general set of the current to the westward, at a rate of 1½ to 2 miles an hour.

Doubtful bank.—A bank of danger still holds a place on some charts in lat. 14° 53' N., long. 80° 21' W., N. 11° W., 25 miles, from the North cay on the Serrana bank; but nothing has been found of it by surveying vessels which have crossed the spot, nor has anything been seen by the fishing vessels which continually traverse this part.

Serrana bank.—The outline of this most dangerous bank is very irregular. It extends about 20 miles in a general NE. and SW. direction; about 7 miles broad near the center, and its southwest end terminates at almost a point. Its extreme east end presents a solid crescent-shaped reef, convex to that quarter, and 5 miles in diameter, upon which the sea breaks with such violence that from the eastward it is sighted before the cays, and may be seen from a distance of 3 or 4 miles. It is so steep-to that, at the distance of ¼ of a mile, no bottom is found at 120 fathoms. On the west side of both horns there are intricate channels, which might be the means of saving a vessel in a case of extreme danger.

The north channel, situated S. 39° W., 1¼ miles, from the NE. point of the reef, is only 100 yards wide, but it has a depth of 7 fathoms, with the advantage of being straight. The space within is crowded with detached shoals, steep-to, having from 5 to 10 fathoms almost alongside them. They are, however, easily seen and avoided. From the west side of the channel the reef extends in a westerly direction, 4½ miles, when it curves outwards again to the NE. in a semi-circular form, for about 5 miles, forming a dangerous bight.

North cay, at the northwest end of this reef, N. 73° W., about 8 miles from the north horn of the east reef, is 300 yards long and 150 yards broad. It is formed by the broken coral, sand, shells, and drift-wood heaped upon the reef by the violent action of the waves and current, to the height of 3 or 4 feet, upon which there are stunted bushes about 5 feet high. At the north end there is usually a but; on the west side there is a landing place. There are 12 fathoms about 400 yards from the west side, but there is no safe anchorage, on account of the heavy swell that rolls round the cay. From the cay, the reef trends SW., 3 miles, close upon the edge of soundings. This part is broken, but offers no safe channels, and it only shows itself in northerly winds or heavy trade breezes.

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Abreast the end of this reef the edge of the bank is nearly $\frac{1}{2}$ mile off; thence it trends SW. by S., about 12 miles, to the southwestern extremity.

Northwest rocks, S. 45° W., $3\frac{1}{4}$ miles from the above reef, are two small patches of rock and sand, $\frac{3}{4}$ of a mile apart, and about 2 feet dry, over which the sea breaks in stormy weather. The edge of the bank curves outwards a little here, and there are 14 fathoms $\frac{3}{4}$ of a mile outside the rocks.

Southwest cay, close to the southwestern point of the bank, S. 11° W., 7 miles from the nearest of the northwest rocks, is the largest on the bank, being nearly $\frac{1}{2}$ mile long, east and west, 300 yards broad, and 32 feet high. It is composed entirely of sand, covered with grass and stunted brushwood, and has upon its summit a single cocoanut tree, which may be seen some time before the island. At the southwest end, large masses of broken coral have been thrown upon the beach to the height of 3 or 4 feet.

The cay is entirely surrounded by broken water, and, in rough weather, the only landing is on the north side, through intricate channels near the east end. To the southwestward of this cay, to the distance of $1\frac{1}{2}$ miles, there are 7 fathoms water, when the depth suddenly and rapidly increases to the tail of the bank, which has not yet been accurately determined; there are 45 fathoms at the distance of about $2\frac{1}{4}$ miles.

Not far from the east end of the cay, in a dry part of the reef, there is a curious hole or well, similar to those seen at the Bahamas; it is 20 feet in diameter, with perpendicular sides, and 36 feet deep.

The coral ledge extends to only a very short distance from the west end of the cay; but from the east end a barrier reef, dry in places, trends about NE. by E., with a slight inward curve, 9 miles. It is exceedingly steep-to, and being somewhat protected by the windward reefs, it does not show itself at all parts.

Water may be obtained by digging wells at a short distance from the shore.

Guano has for several years been shipped from Southwest cay, by an American company.

Eclipse rock, an isolated coral patch having $2\frac{1}{2}$ fathoms water, steep-to, with 7 to 9 fathoms all around, lies S. 62° W., $\frac{1}{2}$ mile, from the northwest extreme of Southwest cay. The rock is of a dark green color and not visible until close to.

The eye is the best guide in navigating on Serrana bank, carefully avoiding all discolorations of water, the deep being found over white sand.

Anchorage.—Temporary anchorage in 7 to 9 fathoms, white sand, will be found with the west extreme of Southwest cay bearing S. 23° E., at about $\frac{3}{4}$ of a mile off shore.

The bank of soundings between Southwest cay and North cay should

be avoided, as it contains numerous heads of living coral, covered only a few feet, and is unfit for navigation by any vessel except the small turtle schooners which visit the cay.

South cays and channel.—At the east end of the above reef, with North cay bearing N. 14° W., distant $7\frac{1}{2}$ miles, there is an opening 600 yards wide, distinctly pointed out by three small cays; one lying on each side of it, about $\frac{1}{2}$ mile apart, on an east and west line, the other facing the opening about $\frac{3}{4}$ of a mile to the northward. The westernmost, named Narrow cay, is a narrow strip of broken pieces of coral, about $\frac{1}{4}$ of a mile long, east and west; the others are about the same length, and formed of sand covered with grass, neither of them being more than 3 feet above the sea. The northernmost, named Little cay, is in lat. $14^{\circ} 21' 30''$ N., long. $80^{\circ} 15' 30''$ W.

On the edge of the reef, S. 73° W., about a mile from Narrow cay, is a dry sand bank; and about $2\frac{1}{2}$ miles from the cay, in the same direction, there is a ledge of rocks nearly $\frac{1}{2}$ mile long, and 2 feet above water. In the channel between the cays the depths are 5 to 7 fathoms close to Narrow cay, and to within 300 yards of the South cay; and 4 to 7 fathoms may be carried to the eastward, inside the reef, avoiding the dark coral patches. In the channel to the northwest, between Little and Narrow cays, the depths are only $2\frac{1}{2}$ and 3 fathoms.

Anchorage.—Should a vessel be compelled to enter the above channel, the best anchorage will be in about $4\frac{1}{2}$ fathoms, with Little cay bearing N. 73° W., and South cay, S. 28° W., the latter about $\frac{3}{4}$ of a mile distant. In a case of necessity, however, she may bring up just within the entrance, in 7 fathoms, about midway between the cays.

East cay and channel.—From the South cay a solid reef extends about E. by N., for $3\frac{1}{2}$ miles, along the edge of soundings, when it is again broken and forms, with the southwest horn of the East reef, East cay channel. Near the extremity of the reef, on the west side of this channel, there is a small cay (East cay) of coral blocks and sand, about 3 feet above the surface of the sea, and steep-to. At about $\frac{1}{2}$ mile N. 39° E. of it is a small cluster of dry rocks, and $\frac{3}{4}$ of a mile to the northward of them a dry sand bank. East cay channel, at the entrance, is about $\frac{1}{2}$ mile wide, and carries from 7 to 10 fathoms, avoiding the coral heads, which are steep-to.

On the eastern part of the bank fish are most abundant, and seals visit the cays, but not in great numbers. In the turtle season the bank is visited by small fishing vessels from Jamaica and the neighboring islands; and at this period their masts and temporary huts on the cays may be seen before the reefs.

Anchorage.—Should a vessel be compelled to run in through East cay channel for safety, she may anchor just within the hook, in 8 or 9 fathoms, with the East cay bearing about S. 65° W., $\frac{3}{4}$ of a mile distant, taking care to leave room between the shoals for weighing.

Tides.—It is high water, full and change, at 2h., and the rise about

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2 feet. On the western part of the bank there is no perceptible stream, but through the channels in the reefs it runs in and out at the rate of $1\frac{1}{2}$ to 2 knots.

Quita Sueño bank lies N. 6° E., 30 miles, from Low cay, at the north end of Old Providence reef, 26 miles from the nearest part of the Mosquito bank, and is extremely dangerous. It is 34 miles long, north and south, about 8 miles broad near the north end, and 13 near the south end, and is so steep that the first casts of the lead may be 14 to 19 fathoms. About a mile within the eastern edge a coral reef, dry in many places, extends along the face of that side, curving outwards a little near the middle, for a distance of 23 miles, leaving a portion of the bank at both ends, about 5 miles in extent, with depths from 10 to 17 fathoms, on coral sand. The only break in the reef lies near the middle, where, by chance, a boat might get through in safety. Several large trunks of trees have been drifted on it in several parts, and a spit at the north-west end, lying somewhat sheltered by the reef, seems to be accumulating different substances, so as to render it probable that a cay will be formed there at no very remote period. This spot lies in lat. 14° 29' N., long. 81° 8' W.

The space to the westward of the reef, for a distance of $2\frac{1}{2}$ miles, is full of dangerous rocky patches, and abreast the middle part a spit of shallow rocky ground extends off nearly 6 miles, to within 3 miles of the western edge of soundings. Within this part it is not safe even for a boat, for the heavy surf so disturbs the sand at the bottom that shoals are not easily seen. The bank westward of the shoals is quite clear, with depths from 10 to 17 fathoms, over clear coral sand, which affords good anchorage, the sea being broken by the reef.

Current.—In the month of April the current was observed to run to the NW. at the rate of $\frac{3}{4}$ of a mile an hour, but the fishermen remarked that it was unusually strong for that period.

Roncador bank is pear-shaped, 7 miles in length, NW. and SE., $2\frac{1}{2}$ miles in breadth at its southeast end, and $3\frac{1}{2}$ miles across at the middle part. It terminates almost in a point at its northwestern extremity, on which, about $\frac{1}{2}$ mile from the edge of soundings, in lat. 13° 34' 30" N., long. 80° 5' 39" W., there is a cay, 600 yards long and 300 yards broad, composed of sand and blocks of broken coral, heaped into a wall on the northeast side, about 7 feet above the sea. On the south end there are some bushes, and three or four dwarf palm trees, which afford shelter to large flocks of birds; there is usually a fishermen's hut at this end.

From the Roncador cay a barrier reef extends to the southeastward, for about $3\frac{1}{2}$ miles, to some dry rocks, whence it curves slightly to the southward to the southeast end of the bank, presenting no opening whatever. At $\frac{1}{2}$ mile from the cay, just within the edge of the reef, there is a small sand bank, and about a mile farther to the southeast there is another similarly situated. There are also two more of these dry ridges, one about $\frac{1}{2}$ mile, the other $\frac{3}{4}$ of a mile from the southeast

RONCADOR BANK—OLD PROVIDENCE ISLAND. 121

end of the bank, which lie NW. and SE. of each other, about 800 yards apart.

The northeast side of the reef is skirted by a bank of soundings about one-half mile broad, with depths varying from 20 to 5 fathoms, over sand and dark coral. At southeast extreme, however, the edge is only $\frac{1}{4}$ of a mile distant. The west side of the reef is, as usual, filled with detached shoals to the distance of $1\frac{1}{2}$ miles.

Water may be procured by digging wells near the center of the above cay, but it is very brackish, and only used by the fishermen for culinary purposes.

Anchorage.—On the western edge of the Roncador bank, there is good anchorage, with the usual trade-winds, and the dry rocks on the middle of the reef bearing from N. 39° E. to S. 73° E., and Roncador cay, N. 17° W., in 6 or 7 fathoms, avoiding the coral spots, which are easily seen.

Tides and current.—The time of high water at the anchorage is irregular, and greatly depends on the strength of the prevailing wind. It rises about 18 inches, but there is no perceptible stream. The current in the neighborhood generally runs strong to the NW.

Old Providence and Sta. Catalina islands.—Old Providence, like the neighboring island of St. Andrew, was an early possession of the Buccaneers; and a most remarkable black rock, 40 feet high, off the west side of Sta. Catalina, resembling a colossal human face, bears the name of Morgan, one of their most sanguinary chiefs. None of their works, however, now exist, except a small fort, nearly in ruins, on the south end of Sta. Catalina, named Aury, from a leader of note in the war of independence, who used the bay. It is remarkably healthy, and extremely fertile in all the tropical productions, and rears abundance of stock.

The island, including Sta. Catalina, which is only separated from its north end by a narrow channel, is of volcanic formation, $4\frac{1}{2}$ miles long, from north to south, and $2\frac{1}{4}$ miles broad about the middle. Its center is mountainous, and, within a short compass, rises into three peaks nearly of the same altitude, the highest being 1,190 feet above the sea, and visible in clear weather from a distance of 40 miles. From these heights large, rugged, irregular spurs branch off to almost all parts of the island, terminating at the shore in peaked hills, from 300 to 700 feet high.

Towards the north, one of these ridges descends somewhat more gradually, on almost a straight line, to that extremity of the island. Nearly a mile from Jones point, a peak rises from this ridge to the height of 550 feet above the sea, named Split hill, from its having been rent asunder by some violent action of nature; and which, when seen from the NW. or SE., shows a rocky chasm, 60 feet wide and 80 feet deep, which is a most remarkable and useful object. The only indentation of any importance is at the northwest end of the island. Here, between Morgan head and the northwest point of Old Providence, a bay is formed,

ANNEX 5

The Sovereignty of the Islands of Roncador, Quitasueño, Serrana and Serranilla”, Legal Advisor’s Office, U.S. Dept. of State (9 Aug. 1932) (“1932 State Dept. Study”).

DEPARTMENT OF STATE

THE LEGAL ADVISER

The Sovereignty of the Islands of
Rorocador, Quito Sueno, Serrana,
and Serranilla.

E. S. Rogers
Legal Adviser's Office
Department of State
Washington, D. C.
August 9, 1932

August 9, 1932.

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E.S.A.

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DEPARTMENT OF STATE

THE LEGAL ADVISER

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August 11 1932

INTRODUCTION

Roncador, Quito Sueno, Serrana, and Serranilla are four coral banks in the western part of the Caribbean Sea, between Nicaragua and Jamaica. The banks are for the most part submerged but on each of them is some dry land, most of the islands being only about a quarter of a mile square, and three or four feet high. These islands are claimed by the United States, and some or all of them are or have been at one time claimed by Nicaragua, Honduras and Colombia. Although this controversy over sovereignty of the islands has obtained since the middle of the nineteenth century, no thorough investigation and final settlement of the claims has been made. It is to be hoped that this report will provide a basis for such a settlement.

I. Sources of Information

The information herein set forth has been collected from material in the State Department archives, books, and maps of the Caribbean region. Original letters in the archives are perhaps the best primary sources available, but in this case, as in the case of secondary authorities,

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authorities, due regard must be paid to the interest of the person writing, to his knowledge of the subject, and to the legal as well as historical significance of his statements.

These criteria are particularly important in considering the various interpretations of the Guano Act made by United States officials from time to time. These statements could be regarded as binding admissions of the Government, analogous to statements against interests and admissions in local law. This is not necessarily the proper conclusion, however. In the first place, they have been by no means consistent, and the only conclusion which can fairly be drawn from them is that no one knew what the Guano Act really did mean. In the second place, they were often made by officials who had a particular set of facts in mind, and who should not be regarded as committing the Government to a definite position with respect to circumstances not at the time contemplated. In the opinion of the Presiding Commissioner in the Chamizal Case it was said that:

"While considerable importance appeared to be attached by the parties to various expressions contained in this correspondence, the Commissioners, at an early stage in the argument, expressed their view that neither of the high contracting parties should be bound by the unguarded language contained in many of the

letters.

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letters. The only real importance to be attached to this correspondence is that it shows conclusively that a considerable doubt existed as to the meaning and effect of the boundary treaties of 1848 and 1853." ¹

* * * *

"It would be useless to multiply citations from diplomatic correspondence, which is not always consistent, and which falls under the rule laid down by the Hague Tribunal in the recent award in the North Atlantic Coast Fisheries reference. Speaking of similar unguarded expressions contained in diplomatic correspondence the Presiding Commissioner expressed the following opinion, which seems applicable to a great many of the communications which have been relied upon by one or other of the parties in the present case:

'The Tribunal, unwilling to invest such expressions with an importance entitling them to affect the general question, considers that such conflicting or inconsistent expressions as have been exposed on either side are sufficiently explained by their relations to ephemeral phases of a controversy of almost secular duration, and should be held to be without direct effect on the principal and present issues.' ²

Care must also be taken not to draw too many conclusions from maps, for, although they may be good evidence of certain geographical factors, they are not usually

¹ Award in the Chamizal Case, Arbitration between the United States and Mexico (June 1911) p. 20.

² Ibid, p. 25.

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6a

usually reliable evidence of the sovereignty of land. Cartographers do not as a rule indicate the sources of their information; so, if a map states that a certain territory belongs to a particular country, it is evidence only that someone thought so, and not that he had good reason for his belief. Because of this, the available cartographical material on this subject has not been exhausted, nor relied upon to any great extent in this report. Nevertheless, a few maps have been examined to determine the date of discovery of the islands, for, if an old map describes a region which actually does exist with reasonable geographical accuracy, it is evidence that its existence was known at the date the map was made.

The historical and legal significance of maps in a case involving the determination of sovereignty over territory has been well stated by the court in the Palmas Island Case:

"... only with the greatest caution can account be taken of maps in deciding a question of sovereignty, at any rate in the case of an island such as Palmas... . Any maps which do not precisely indicate the political distribution of territories, and in particular the Island of Palmas...clearly marked as such, must be rejected forthwith, unless they contribute - supposing that they are accurate -

to

to the location of geographical names. Moreover, indications of such a nature are only of value when there is reason to think that the cartographer has not merely referred to already existing maps - as seems very often to be the case - but that he has based his decision on information carefully collected for the purpose. Above all, then, official or semi-official maps seem capable of fulfilling these conditions, and they would be of special interest in cases where they do not assert the sovereignty of the country of which the Government has caused them to be issued.

"If the Arbitrator is satisfied as to the existence of legally relevant facts which contradict the statements of cartographers whose sources of information are not known, he can attach no weight to the maps, however numerous and generally appreciated they may be." ³

In the award of the Queen of Spain in the Aves Island Arbitration, it is said:

"Considering that for the authority of geographers to have any importance in matters of ownership it is necessary that all or a large part of them should be unanimous and agreed on the determination of the nationality of a given territory, and as this circumstance is wanting in the present case, other stronger and more valid titles are demanded than the opinion of the geographers." ⁴

II. Principles

-
- ³ Award in the Palmas Island Case, United States and The Netherlands under Agreement of January 23, 1905, Hague Court of Arbitration (1928) pp.36-37.
- ⁴ Award in the Aves Island Case, The Netherlands and Venezuela, June 30, 1865; Moore's Arb., 5037-5041 (translation).

II. Principles of Law

A. General International Law

The general principles of international law involved in the determination of sovereignty over territory are too well known to warrant a detailed discussion in this report. Only a brief summary will be given, therefore, of the law applicable to the cases under consideration.

As stated by Judge Moore:

"Title by occupation is gained by the discovery, use, and settlement of territory not occupied by a civilized power. Discovery gives only an inchoate title, which must be confirmed by use or settlement." ⁵

While this principle is generally admitted to be a fair statement of international law at the present time, it has been maintained that if the discovery took place during the time when international law recognized a perfect title by discovery alone, without settlement, no later change in law could affect this title, valid at the time acquired.

"How far the mere discovery of a territory which is either unsettled, or settled only by savages, gives a right to it, is a question which neither the law nor the usages of nations has yet definitely settled. The

opinions

⁵ I Moore's Digest 258-269; see also I Wharton's Digest, § 2.

opinions of mankind, upon this point, have undergone very great changes with the progress of knowledge and civilization. Yet it will scarcely be denied that rights acquired by the general consent of civilized nations, even under the erroneous views of an unenlightened age, are protected against the changes of opinion resulting merely from the more liberal, or the more just, views of after times. The right of nations to countries discovered in the sixteenth century is to be determined by the law of nations as understood at that time, and not by the improved and more enlightened opinion of three centuries later." ⁶

This argument was advanced by the United States in the Palmas Island Case but the Court said:

"As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called intertemporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law. International law in the 19th century, having regard to the fact that most parts of the globe were under the sovereignty of States members of the community of nations, and that territories without a master had become relatively few, took account of a tendency already existing and especially developed since the middle of the 18th century, and laid down the principle that occupation, to constitute a claim to territorial sovereignty, must be effective, that is, offer

certain

⁶ Mr. Upshur, Sec. of State, to Mr. Everett, Oct. 9, 1843, MS. Inst. Great Britain, XV. 148, 148; I Moore's Digest 259.

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certain guarantees to other States and their nationals. It seems therefore incompatible with this rule of positive law that there should be regions which are neither under the effective sovereignty of a State, nor without a master, but which are reserved for the exclusive influence of one State, in virtue solely of a title of acquisition which is no longer recognized by existing law, even if such a title ever conferred territorial sovereignty. For these reasons, discovery alone, without any subsequent act, cannot at the present time suffice to prove sovereignty over the Island of Palmas...." ⁷

This position is certainly as logical as the other, and is, moreover, one likely to obtain reasonably fair results. If the contrary were consistently maintained, it would in effect make occupation and settlement of all territory discovered before the nineteenth century unnecessary.

In connection with discovery, occupation and settlement, various problems of law arise, such as the intention to assume sovereignty, the nature and extent of occupation necessary, whether or not the territory has been abandoned so that it has become terra nullius and open to settlement again by some other nation, questions of contiguity and of continuity of territory, and of prescription. To consider these problems in the abstract

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⁷ Op. cit. Supra, Note 3.

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is not very illuminating and they will, therefore, be considered in relation to the particular facts. Certain general principles may, however, be stated at this point.

It is said that there must be an intent to claim sovereignty, expressed by the claimant state. This intent may be either expressed or implied, and may be emphasized in any number of ways.⁸ Consequently, no rule of thumb can be given as to what is or what is not an expression of this intent but it must be determined by reference to the facts of each case. Acts of possession are particularly significant in this connection, especially acts indicating an exclusive exercise of power by the claimant state.

With respect to the amount of occupation necessary, it is reasonable to assume that this must depend to some extent upon the nature of the territory in question, and its suitability to habitation. In the Palmas Island case, the court said:

"...the manifestations of sovereignty over a small and distant island, inhabited only by natives, cannot be expected to be frequent..."⁹

In the Aves Island Case, however, which relates to an uninhabitable

⁸ Oppenheim, International Law, (1920) Vol. I, § 222

⁹ Op. cit. supra. Note 3, p. 58.

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uninhabitable island, it was said:

"...even though the Island is not capable of permanent habitation due to the immersion to which it is exposed, if the Dutch had occupied it with the intention of acquiring it, judging it abandoned, they would have constructed some building and tried to make the Island constantly habitable, neither of which things were effected." 10

It is impossible to state a priori what constitutes abandonment, especially abandonment of a guano island. It is said that "abandonment can only result from the expressed manifestation of the will," and that it will not be presumed:

"When the thing whose abandonment is alleged in order to rationalize occupation belongs to the dominion of a nation, still more rigorous becomes the necessity of causing the act to rest on some positive and express manifestation of the will of the owner, showing that he does not desire to continue in possession, for in questions of territorial dominion abandonment is not to be presumed. The presumption is not that the thing is a res nullius....." 11

Nevertheless, where there has probably been no occupation or use of any kind whatsoever, and certainly none of an exclusive character, of an island in the high seas for about 250 years, it is reasonable to conclude that the territory has been abandoned by the discoverer.

It

¹⁰ Op. cit. supra, note 4.

¹¹ I Moore's Digest 300; See also Charles Cheney Hyde, International Law, (1922) Vol. I, § 119.

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It is then open to acquisition by settlement by some country other than that of the discoverer or his successor in interest. ¹²

Again, when the question of contiguity is discussed, it must be in relation to particular facts, and not in the abstract. To base a claim of sovereignty on discovery and settlement of adjacent territory, the degree of contiguity must be considered, and the purposes for which the territory in question might be used. The theory depends in part upon the idea that unsettled territory must be held by the nation occupying contiguous territory because, if held by a second nation, it would be a menace to the security of the first.

"...on principle, unoccupied islands in the open sea and beyond the territorial waters of a State are not, by reason of their relative proximity to its shores, to be deemed a part of its domain. Such was the contention of the United States in 1852, with respect to the Lobos Islands off the coast of Peru." ¹³

Where the contiguous territory is about 75 miles away, and is moreover but a small island or group of islands over 200 miles from the main land, and different in character from the disputed territory, the principle of contiguity
alone

¹² Hyde, op. cit. supra, note 11, p. 197; Oppenheim, op. cit. supra, note 8, p. 384, 405.

¹³ Hyde, op. cit. supra, note 11, Vol. I, p. 173; See I Moore's Digest, 265-267.

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alone would not seem sufficient to confer territorial sovereignty.

The doctrine of prescription in international law is described by Mr. Hyde as follows:

"By operation of the principle known as that of prescription, the uninterrupted exercise of dominion over territory for a sufficient length of time by one State is deemed to destroy the value of adverse claims of sovereignty preferred by any other, and thus to clothe the occupant with such rights of property and control as may once have been vested in such a claimant... It... implies that when the existing occupant first entered into that possession, the territory was already subjected to a dominion which had been productive of rights of property and control, and was not, therefore, at that time res nullius, or available for acquisition by means of occupation." 14

The possession of the territory in question must be uninterrupted and undisturbed, on the theory that the dispossessed State must acquiesce in the occupation before he can lose his rights. The length of time this possession must be maintained before sovereignty can be acquired by prescription depends on the circumstances of the case. Although the existence of this doctrine in international law has been disputed, it would seem to be generally admitted now as a legal mode of acquiring territorial sovereignty.¹⁵

B. The

¹⁴ Hyde, op. cit. supra, note 11, Vol. I, p. 192.

¹⁵ See I Moore's Digest 293-297; Hyde, op. cit. supra, Note 11, Vol. I, pp. 192-196; Oppenheim, op. cit. supra, Note 8, pp. 400-403.

B. The Guano Act of 1856.

1. The Act, Amendments, Origin, Use.

As the United States claims these islands under the Guano Act of 1856, as well as under general rules of international law, a brief history of the Guano Act, its origin and application is necessary. The Act of August 18, 1856, reads as follows:

§ 5570. "Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States.

§ 5571. ~~1412~~. "The discoverer shall, as soon as practicable, give notice, verified by affidavit, to the Department of State, of such discovery, occupation, and possession, describing the island, rock, or key, and the latitude and longitude thereof, as near as may be, and showing that such possession was taken in the name of the United States; and shall furnish satisfactory evidence to the State Department that such island, rock, or key was not, at the time of the discovery thereof, or of the taking possession and occupation thereof by the claimants, in the possession or occupation of any other government or of the citizens of any other government, before the same shall be considered as appertaining to the United States.

§ 5573. "The discoverer, or his assigns, being citizens of the United States, may be allowed, at the pleasure of Congress, the exclusive right of occupying such island, rocks,

or

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or keys, for the purpose of obtaining guano, and of selling and delivering the same to citizens of the United States, to be used therein, and may be allowed to charge and receive for every ton thereof delivered alongside a vessel, in proper tubs, within reach of ship's tackle, a sum not exceeding \$8 per ton for the best quality, or \$4 for every ton taken while in its native place of deposit.

§ 5574. "No guano shall be taken from any island, rock, or key mentioned in section 1411 of this title, except for the use of the citizens of the United States or of persons resident therein. The discoverer, or his widow, heir, executor, administrator, or assigns, shall enter into bond, in such penalty and with such sureties as may be required by the President, to deliver the guano to citizens of the United States, for the purpose of being used therein, and to none others, and at the price prescribed, and to provide all necessary facilities for that purpose within a time to be fixed in the bond; and any breach of the provisions thereof shall be deemed a forfeiture of all rights accruing under and by virtue of this chapter.

§ 5575. "The introduction of guano from such islands, rocks, or keys shall be regulated as in the coasting trade between different parts of the United States, and the same laws shall govern the vessels concerned therein.

§ 5576. "All acts done, and offenses or crimes committed, on any island, rock, or key mentioned in section 1411 of this title, by persons who may land thereon, or in the waters adjacent thereto, shall be deemed committed on the high seas, on board a merchant ship or vessel belonging to the United States; and shall be punished according to the laws of the United

States

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States relating to such ships or vessels and offenses on the high seas, which laws for the purpose aforesaid are extended over such islands, rocks, and keys.

§ 5577. "The President is authorized, at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer or of his widow, heir, executor, administrator, or assigns.

§ 5578. "Nothing in this chapter contained shall be construed as obliging the United States to retain possession of the islands, rocks, or keys, after the guano shall have been removed from the same." 16

Section 5572 was added to the original act in 1872, and reads as follows:

§ 5572. "If the discoverer dies before perfecting proof of discovery or fully complying with the provisions of section 1412 of this title, his widow, heir, executor, or administrator, shall be entitled to the benefits of such discovery, upon complying with the provisions of this chapter. Nothing herein shall be held to impair any rights of discovery or any assignment by a discoverer recognized prior to April 2, 1872, by the United States." 17

That portion of the statute which forbids the export of guano from the islands to countries other than the United States, and subjects the vessels engaged in the guano trade to the laws regulating the coasting trade

has

¹⁶ Rev. Stat. § 5570-5578; 48 U.S.C.A. § 1411-1419

¹⁷ Rev. Stat. § 5572; 48 U.S.C.A. § 1413.

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has been amended from time to time. By an Act of March 3, 1865, so much of the Act of 1856 "as prohibits the export [of guano] is hereby suspended in relation to all persons who have complied with the provisions of Section 2 of said Act for two years from and after July 14, 1865."¹⁸ This suspension was ^{for five years from July 14, 1867,} reenacted, by the Act of July 28, 1867;¹⁹ by the Act of March 15, 1878, for five years from that date,²⁰ and again by the Act of April 14, 1884,²¹ ^{for five years} from that date.²¹

The Guano Islands trade is also affected by the Act of April 19, 1902, which stated that provisions of Sections 4197-4200 of the Revised Statutes, requiring statements of the quantity and value of goods carried by vessels clearing from the United States to foreign ports, should be extended to and govern, under such regulations as the Secretaries of Commerce and Labor shall prescribe, in the trade between the United States and Hawaii, Porto Rico, Alaska, the Philippines, Guam, "and its other non-contiguous territory," and shall also govern the trade conducted between these islands

and

¹⁸ 13 Stat. 494, § 8.

¹⁹ 14 Stat. 428, § 3.

²⁰ 20 Stat. 30

²¹ 23 Stat. 11

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and territory and other parts of the United States.²²

The origin of this statute may be found in the rather sudden demand for guano as a fertilizer which arose in the nineteenth century. Although guano was used as manure by the Incas of Peru centuries ago,²³ and was described in a work of Garcelasso de la Vega, published in Lisbon in 1609,²⁴ European interest was not aroused until A. von Humboldt took samples of it to Europe in 1804, and called attention to the deposits in the Chincha Islands.²⁵ Even then it was not exported in any quantities until about 1840, when its great value as a fertilizer became to be recognized in Great Britain, and a few years later in the United States.²⁶ There a demand was created among the agricultural groups of Maryland, Virginia, and Delaware, who brought pressure on Congress to take steps to secure an adequate, cheap supply of guano.²⁷ At that time

practically

22. 32 Stat. 172, C 637; 48 U.S.C.A. § 1486.

23. The Encyclopedia Americana (N.Y. 1932) Vol. 13, Guano;

24. C. L. Bartlett, Guano (Boston 1860) pp. 3-4.

25. T. S. Palmer, A Review of Economic Ornithology in the United States (in Yearbook of U. S. Dept. Agriculture, 1900), p. 274.

26. Encyclopedia Americana, op. cit. supra., note 23.

27. C. L. Bartlett, op. cit. supra., note 24.

(Peruvian guano was said to benefit crops several years after its application to a field, and was alleged to be more beneficial in content and more efficient than ordinary barn manure.)

See also petitions of citizens of those States, S. Ex. Doc. 25, 35 Cong. 2 Sess. (Feb. 5, 1859), p. 28; 6 Miscl. Let. re Guano.

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practically the only guano on the market was Peruvian. The Peruvian Government owned its guano concessions and controlled the price, paying off its national debt from the profits derived from granting exclusive privileges to certain companies to engage in the guano trade. In 1853 guano was selling at from \$50 to \$55 a ton at Baltimore and Richmond, and efforts were made through diplomatic channels to induce Peru to lower the price. With this end in view a treaty of July 13, 1850, was finally negotiated, but was rejected by Peru, and it seemed hopeless to make any further attempts to induce Peru to lower prices. Furthermore, some of the high price was probably due to the necessity of the long voyage around Cape Horn, and even if the trade restrictions were removed, it would still be expensive to transport it to the eastern United States.²⁸ This condition of affairs led to the adoption of the Guano Act of 1856.

The form of the Act was influenced by another factor. Certain enterprising Americans had already discovered new deposits of guano on islands in the Pacific and Caribbean, and wanted protection. In 1854 Philo Shelton

was

²⁸ H. Ex. Doc. 70, 33 Cong., 1 Session, Mar. 1, 1854;
S. Ex. Doc. 25, 35 Cong., 2 Session, Feb. 5, 1859;
S. Ex. Doc. 80, 31 Cong., 1 Session, Sept. 27, 1850;
S. Ex. Doc. 59, 31 Cong., 1 Session, June 29, 1850.

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was expelled from Aves Island, where he was engaged in removing guano, by an armed Venezuelan force. Shelton submitted a memorial to the United States. He saw that his claim could be effectively contested by Venezuela unless the United States asserted ownership over the Island; so he proposed a statute very much like the one which was finally adopted.²⁹ Another memorial submitted to Congress by the counsel for the American Guano Company also urged the adoption of legislation "which, conceding the right of eminent domain to rest with the United States, will impart a generous exception to the discoverers and their assignees, and at the same time secure a beneficial interest in the discoveries to the citizens of the country generally."³⁰ This memorial urged the United States to acquire Bakers Island, and alleged that: "we can as a nation take and maintain jurisdiction over them (uninhabited islands),

²⁹ Papers submitted by Henry Sanford, S. Ex. Doc. 25, 34 Cong., 3 Session, pp. 35-93; S. Ex. Doc. 10, 33 Cong., 2 Session, pp. 465-466. Under Shelton's statute, however, the right of sovereignty and eminent domain of a derelict or abandoned guano island, discovered and occupied by an American citizen, would automatically vest in the United States unless expressly declined. The statute as adopted requires an affirmative acceptance of some sort.

³⁰ Senate Misc. Doc. No. 60, 34 Cong., 1 Session, Vol. I (May 28, 1856), p. 6.

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islands), protect and confirm the private rights of the citizens making the discovery, and their assignees." 31

After the passage of the act, during the thirty years from 1869 to 1898, 283,871 tons of guano, valued at \$3,229,832 were brought into the United States from the islands. The production was apparently very irregular, varying from a minimum of 1176 tons in 1890 to 17,930 in 1878.^{31a} No guano was brought in from 1901 to 1904, inclusive. This probably lead to the notice to the Collector of Customs in 1906, directing them to discontinue giving quarter yearly reports of guano brought from the islands, but to make a special report of the quantity and value of any guano which should hereafter be brought to the United States.^{31b}

The decline in the guano trade was probably due to the introduction of cheaper substitutes, such as the large deposits of phosphate of lime discovered in the Carolinas and Georgia.^{31c} Also, there may have been some disappointment in the quality of the guano obtained from the islands. Guano of commercial value is limited chiefly

31 Id. pp. 7-8.

31a T. S. Palmer, *op. cit. supra*, note 25, p. 275.

31b Notice to Collector of Customs, Oct. 19, 1906,
Dept. of Commerce and Labor Circular No. 132;
(Information obtained by telephone from Mr. Asmuth,
Com. Dept., July 1, 1932).

31c The Pacific Guano Co., Cambridge 1876 p. 24;
Report of H. Com. on Ways and Means, Mar. 2, 1891,
Doc. 4040, No. 2890, 51 Cong., 2 Session.

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chiefly to the hottest, driest tropic regions, a few degrees from the equator, because it solidifies there, undergoing little chemical change, whereas in the rainier climates the soluble salts are dissolved. Peruvian guano came largely from the Chincha Islands where it never rains at all, so that the deposits accumulated for centuries and retained the most valuable substances.^{31d} In the Caribbean, however, there is considerable rainfall. Although samples of guano vary greatly in composition, there are, roughly speaking, two kinds: nitrogenous, such as that from the Chincha Islands, and phosphatic, like that taken from Bakers Island. The latter has lost all of manurial value except the insoluble phosphate of lime.^{31e} The ingredients especially prized are ammoniacal salts, phosphoric acids, and other alkalis, particularly potash.^{31f}

2. Interpretations of the Guano Act.

Since its passage, the Guano Act of 1856 has been interpreted several times by the judicial branches of the United States Government. The whole act was construed

by

^{31d} The Encyclopedia Americana, supra, Note 23; E. Bartlett, Guano, Its Origin, Properties and Use. N. Y., 1845, page 21.

^{31e} T. S. Palmer, op. cit. supra., note 25, p. 274.

^{31f} Encyclopedia Americana, op. cit. supra., note 23.

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by Attorney General Black in an opinion of June 2, 1857, in which he made the following points:

- A. "The President may consider an island as appertaining to the United States, and protect it accordingly, upon the following facts being established.
1. That a deposit of guano has been discovered upon it by an American citizen.
 2. That it is not within the lawful jurisdiction of any other government.
 3. That it is not occupied by the citizens of any other government.
 4. That the discoverer has taken and kept peaceable possession thereof in the name of the United States.
 5. That the discoverer has given notice of these facts as soon as practicable to the State Department, on his oath.
 6. That the notice has been accompanied with a description of the island, its latitude and longitude.
 7. That satisfactory evidence has been furnished to the State Department showing that the island was not taken out of the possession of any other government or people.
- B. "After the President shall be satisfied on these points, and shall thereupon decide to treat the island as an appurtenance of the United States, he may allow the discoverer or his assigns to keep exclusive possession for the purpose of taking off the guano and selling it." Before this right can be given he must file the necessary bond conditioned: "that he will provide all needful facilities for getting the guano off within a certain time; that he

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will give up his possession whenever his right to hold it shall be lawfully terminated; and, generally, that he will obey the laws of the United States on the subject." 32

C. The discoverer holds his interest at the pleasure of Congress. He is in effect a tenant at will of the nation.³³

D. "The President is not bound, against his own conviction of public policy to declare any particular island as appertaining to the United States. The law forbids him to do so before the prerequisites above mentioned are complied with, and leaves it to his discretion afterwards. But he may do it without waiting for an adverse claim to be set up." 34

In a second opinion, Attorney General Black decided that the case submitted to him was one permitting the exercise of the President's discretionary power, under the Act of 1856, and decided which of the two claimants was the proper party to give the bond. The facts were as follows: Parker, an American citizen, saw Johnson's Island in 1852, and visited it in the PALESTINE, in March 1858, when he stayed on the island seven days, planted flags and tablets, and removed a half ton of guano. The Pacific Guano Company, of which Parker was a stockholder, was formed June 8, 1858, to extract guano from Johnson's Island. On June 14, one Allan arrived

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32 9 Op. Atty. Gen. 30, 30-31.

33 Id. 31-32.

34 Id. 32.

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at the Island and raised the Hawaiian flag. The PALESTINE, belonging to the Pacific Guano Company, arrived July 22, 1858, took on guano, and left two men on the islands. Later the company built houses, ships, and made surveys. On July 27 the Hawaiian Government issued a proclamation declaring its sovereignty over the island. On these facts the Attorney General held that: since actual possession and occupation were express conditions of the Act, and symbolical possession was not enough, neither Parker nor the Pacific Guano Company had any rights before the second visit of the PALESTINE; since Allan's visit resulted in "nothing more than empty ceremonies that could vest no jurisdiction over the island in the Hawaiian Government," and the Hawaiian proclamation was made when the island was "in the actual occupation of American citizens," and further "an actual continuous occupation having been kept up by the company from July 22," the case was within the Guano Act.³⁵ On the second point he held that: "the conditions of the act of Congress were not performed by Parker, and if the case stood upon his acts, there is no case for the discretionary power of the President."³⁶ Parker got no right under the

³⁵ 9 Op. Att'y Gen. 364 (July 12, 1859), 368-369.

³⁶ Id. p. 369.

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the Act by seeing the islands in 1852 because: "Speculative claims anticipating discoveries are not sanctioned by the act of Congress. No claim under the Act of 1856 can have any earlier inception than the actual discovery of guano deposit, possession taken, and actual occupation of the island....whereon it is found."³⁷ Whether Parker's representative had an equitable share in the company's profits was for the determination of a judicial tribunal. Finally, the Pacific Guano Company was found to be the proper party to give the bond.³⁸

In an opinion on the petition of one Kendall, for protection in his possession of Cay Verde, an alleged guano island, the Attorney General stated that: as the island is "distinctly asserted by the British government to be within its jurisdiction," Lord Lyons having given notice that removal of guano by an American would be considered "not only a trespass, but a hostile aggression," the President "has no right under the law to annex the island to the United States, or to put any American citizen in possession of it, until the diplomatic question raised by the British minister shall be finally settled, and not then unless it be settled in our favor." ³⁹

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³⁷ Id. 369-370.

³⁸ Id.

³⁹ 9 Op. Att'y Gen. 406 (Dec. 14, 1859, Black).
(Italics added.)

In an opinion of Attorney General Speed, it was held that the Secretary of State should not revoke a proclamation issued by the State Department allowing the United States Guano Company to take guano off Howland's Island, but the question of whether or not this could be done was expressly left undecided. The Attorney General said that only the President could question the Secretary's authority to issue the proclamation; that it need not be signed by the President or sealed by the United States seal since the Act does not specify how the President shall manifest his decision; and that a proclamation issued by the State Department was the usual procedure, and added: "It has been the general practice of the Government, by proclamation, to make known to the world any action of the Government that may affect other governments, or the citizens or subjects of other nations."⁴⁰ He held also that if the proclamation was obtained by fraud, as was alleged, the claimant could obtain relief in the courts, but that the State Department could not determine that question.⁴¹

When British ships took guano from Baker's Island to Europe in 1866, the Attorney General held: "By this act,

⁴⁰ 11 Op. Att'y Gen. 397 (Speed, Nov. 13, 1865), 399.

⁴¹ Id. 400-402.

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act (Act of 1856), the Government secures to the discoverer (a citizen of the United States) of guano upon an unoccupied island, rock, or key, the exclusive use thereof, but upon the condition that the guano is for the use of citizens or residents of the United States, and that the guano is to be brought away in vessels having coasting-licenses, and under the laws regulating coasting trade. Under the Act of 1856, guano could not be taken from one of those islands, rocks, or keys, to any foreign country; or, as the act declares, that, for the purposes of the trade, they shall appertain to the United States, it may be properly said that the act prohibits the export of guano." He found, however, that the amendment of 1865 (suspending the export prohibition) repealed by implication the section making the guano trade a coasting trade, and that, in accordance with this amendment, all who had complied with Section 2 of the Act of 1856 might, for two years after July 14, 1865, "export guano in any vessels that other merchandize can be exported in from the United States." 42

The next interpretation of the Act is found in Whiton v. Albany and Narragansett Insurance Companies.⁴³

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⁴² 11 Op. Atty. Gen. 514 (Speed, June 27, 1866), 514, 515.

⁴³ 109 Mass. 24 (1871).

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In that case the question was raised as to whether Navassa Island was a guano island, because the insurance policy sued upon prohibited voyages from all guano islands, except the Peruvians, and the ship had been lost on a voyage from Navassa. The court held the evidence of the Secretary of State's proclamation issued to the discoverer, confirming his interest in Navassa, was improperly excluded:

"The public acts and documents offered in evidence tended to show that the United States had acquired, and had asserted against foreign governments, a title in the Island of Navassa by discovery and lawful possession, as authorized by the Law of Nations." ⁴⁴

Johnson's Island was again discussed in 1873, when Mrs. Parker, the discoverer's widow, claimed rights under the Amendment of 1872.^{44a} The Attorney General held Mrs. Parker had no rights as successor to Parker because: "The compound character required by the act of 1856 of one at once discoverer, possessor, and occupant, never was sustained by Mr. Parker in severalty." ⁴⁵

When he died, his rights as an outsider perished, and any other citizen was entitled to carry out the policy of the Guano Act in regard to these islands, except that
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⁴⁴ Id. 31

^{44a} Supra, note 17.

⁴⁵ 14 Op. Atty. Gen. 608 (Phillips, May 8, 1873), 609.

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the rights of the Pacific Guano Company had vested, and were therefore saved by the Act of 1872. In answer to the allegation that the company had forfeited its rights by abandonment, the Attorney General said: "Upon application at the office of the Secretary of State I am told that it has been the course of that Department to recognize such islands only while occupied for the purpose of procuring guano and, therefore, upon a cessation of such occupancy, they became open again to discovery, possession, etc. If this allegation or forfeiture be true, I suppose that the islands are again subject to original proceedings before the Secretary of State. In such event, Mrs. Parker will be obliged to take possession and occupy before she can be heard..."⁴⁶

In Jones v. United States,⁴⁷ a case in which the defendant appealed to the Supreme Court from a conviction of murder committed on Navassa Island, the court upheld the Circuit Court's jurisdiction, under § 5576 of the Guano Act, and declared the act constitutional. In an opinion by Mr. Justice Gray, it was said that the sections
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⁴⁶ Id. 610.

⁴⁷ 137 U. S. 202 (1890).

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of the act after the first two "manifestly apply only to islands which the President has determined shall be considered as appertaining to the United States."⁴⁸

He said further:

"By the law of nations, recognized by all civilized States, dominion of new territory may be acquired by discovery and occupation, as well as by cession or conquest; and when citizens or subjects of one nation, in its name, and by its authority or with its assent, take and hold actual, continuous and useful possession, (although only for the purpose of carrying on a particular business, such as catching and curing fish, or working mines), of territory unoccupied by any other government or its citizens, the nation to which they belong may exercise such jurisdiction and for such period as it sees fit over territory so acquired. This principle affords ample warrant for the legislation of Congress concerning guano islands. Vattel. lib. 1, c. 18; Wheaton on International Law (8th ed.) §§ 161, 165, 176, note 104; Halleck on International Law, c. 6 §§ 7, 15; 1 Phillimore on International Law (3d ed.) §§ 227, 229, 230, 232, 242; 1 Calvo Droit International (4th ed.) §§ 266, 277, 300; Whiton v. Albany Ins. Co., 109 Mass. 24, 31."⁴⁹

In the Jones Case, the court declared that Navassa "must be considered as appertaining to the United States."⁵⁰

The evidence on which this conclusion was based included: the memorial of the discoverer, his request for protection, his bond, the United States' reply to Haiti rejecting that

⁴⁸ Id. 210.

⁴⁹ Id. 212.

⁵⁰ Id. 224.

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that Government's claim, the usual proclamation issued to the discoverer by the Secretary of State, the fact that an armed vessel was ordered to the island to protect the discoverer, subsequent letters again rejecting Haiti's claim, and the Secretary of the Treasury's circular and list of guano islands under coasting trade regulations. Finally the court found that evidence of loading guano on foreign ships (a procedure which was a breach of the discoverer's bond) should be excluded because the breach of a condition of the bond affected only the discoverer's rights and not the dominion or jurisdiction of the United States.

In Duncan v. Navassa Phosphate Company,⁵¹ the court refused to allow the petition of the widow of the discoverer of Navassa Island for dower in the island. The court decided the case on the theory that the discoverer's interest was an estate at will, not ~~an~~ subject to dower at common law. In this connection it was said that Duncan's interest was "a license to occupy the island for the purpose of removing the guano; this right cannot last after the guano is removed; by the express terms of the act it may be terminated at any time 'at the pleasure of Congress'."⁵² The ruling of the lower court was affirmed,

⁵¹ 137 U. S. 647 (1891).

⁵² Id. 651-2.

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affirmed, but for entirely different reasons. The lower court's decision was based on the theory that neither the discoverer nor the United States had acquired any rights in the land itself, and that the Guano Act did not give the United States any territorial sovereignty or domain over guano islands.⁵³ The opinion of the Supreme Court, however, and not that of the lower Federal Court, represents the law of the case, and should be regarded as controlling.

In Downes v. Bidwell⁵⁴ it was held that Porto Rico was "a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution."⁵⁵ In Mr. Justice White's concurring opinion the guano legislation was cited as an example sustaining this decision. He said "numerous islands have been brought within the dominion of the United States under the authority of the act of August 18, 1856..."⁵⁶ and quoted from the opinion in the Jones case. Mr. Justice Fuller, however, in his dissenting opinion, appeared to regard the guano islands as terra nullius, and was unable to see "why the discharge
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⁵³ Grafflin v. Nevassa Phosphate Co., 35 Fed. 474 (1888).

⁵⁴ 182 U. S. 244 (1901).

⁵⁵ *Id.* 287.

⁵⁶ *Id.* 304.

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by the United States of its undoubted duty to protect its citizens on terra nullius, whether temporarily engaged in catching and curing fish, or working mines, or taking away manure, furnishes support to the proposition that the power of Congress over the territories of the United States is unrestricted."⁵⁷

In 1918 Acting Attorney General J. W. Davis considered the case of Swan Islands. He concluded, on the facts before him, that: "the United States has never acquired sovereignty of any kind or to any extent over the Swan Islands by reason of the provisions of the Guano Islands Act of August 18, 1856."⁵⁸ In reaching this conclusion he argued: that the only action taken by the United States was the filing of the bond in 1863, and the lists the Secretary of the Treasury sent to the Collectors of Customs; and that there had been no "executive action" taken by the President or Secretary of State "which could be construed as an exercise of the discretion conferred upon the President by the Act of August 18, 1856, such as to amount to a declaration that the Swan Islands were considered as appertaining to the United States."⁵⁹ After the first period of occupation of the islands

⁵⁷ Id., 372-373.

⁵⁸ 31 Op. Atty. Gen. 216 (Davis, Feb. 8, 1918), 220.

⁵⁹ Id., 219.

islands from the discovery of guano in 1857 to abandonment by Adams (the agent of the discoverer's assignee) in 1904, Mr. Davis concluded that the President would have been authorized to exercise his discretion, but that all right acquired by virtue of the discovery ceased at the time of this assignee's abandonment. As to the second period of occupation, from Adams' return (in his own right, 24 hours after abandoning the island as agent) to date, the Guano Act had not been complied with, no bond having been filed, and the President could not exercise his discretion under the Act. The Attorney General concluded, however, that the United States had acquired certain rights over the islands because of their continuous occupation by American citizens, and said "no other country has any proper claim to these islands, and the United States Government may at any time assert its sovereignty over them by appropriate action...", the form of which is for the executive and legislative branches of the Government to decide.⁶⁰ Finally he held that the Swan Islands Company, the assignee of Adams, had certain inchoate rights under the Guano Act depending on its filing a bond, but "such rights would have been limited merely to the protection of the United States during the operation of the said islands.

⁶⁰ Id., 223.

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islands. The property rights of said company, irrespective of the Guano Islands Act, are dependent upon the assumption of sovereignty over the islands by the United States Government. Upon such assumption, there can be no doubt that the rights of the company in the lands occupied and improved by it will become at least so equitably fixed as to warrant some provision for a compensation by the Government."⁶¹

This opinion was in part overruled by Attorney General Sargent, who held: that the certificate issued by the Department of State to the discoverer's assignees who filed the bond was such "executive" action as was required by the Guano Act; and that Mr. Davis would have agreed had he been supplied with a copy of this certificate.⁶² Mr. Sargent concluded: "the certificate of Secretary Seward, dated February 11, 1863, that all the steps required by the Act of 1856 have been complied with, is 'equivalent to a declaration that the President considered the island as appertaining to the United States'", and that "evidence of the exercise of this discretion (of the President) may be manifested by the announcement

⁶¹ Id., 224.

⁶² 34 Op. Atty. Gen. 507 (Sargent, June 24, 1935). It seems clear from Mr. Davis' opinion that he would have reached the same conclusion as Mr. Sargent if he had seen the certificate.

announcement or certificate of the Secretary of State."⁶³ He added that the abandonment by the company was of no effect so far as United States sovereignty is concerned, once that sovereignty had been extended.

Other government officials have also expressed themselves on the meaning and effect of the Guano Act. Numerous examples might be given of denials that any territorial rights were exercised by the United States over guano islands. For instance: In 1914, replying to a request for a list of the possessions of the United States, Mr. Osborne, Assistant Secretary, said: "there are also a number of guano islands appertaining to the United States under the Guano Act of 1856, but over these the United States claims no sovereign or territorial rights. It simply protects, under these acts, United States citizens who discover guano thereon, or their assigns, in the prosecution of their enterprise which extends only to the appropriation and disposal of guano."⁶⁴ On the other hand, the Department has usually refrained from such expressions and merely quoted the

⁶³ *Id.*, 514. The Jones Case, *supra*, note 47, is relied upon in this opinion of the Attorney General.

⁶⁴ Osborne, Ass. Sec'y, to Mr. Grosvenor, June 29, 1914, 811.014/14; See also Phillips, 3rd Ass. Sec'y, to Mr. H. M. Walker, July 13, 1914, 811.0141/13; Seward, Sec. of State, to Don Ignacio Gomez, Min. of Nicaragua and Honduras at Washington, Dec. 10, 1868, MS 2 Notes to Nic. leg'n 9.

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the statute of 1856, and given brief accounts of the record history of the islands under examination.⁶⁵

More important than these statements, as an indication of the government's interpretation of the Guano Act, are certain positive acts of jurisdiction and control exercised by the United States under the authority of the Act. In July, 1858, an armed vessel was ordered to Navassa Island to protect American citizens removing guano from interference by Haiti.⁶⁶ The Jones Case shows that the United States could and did assume jurisdiction over crimes committed on a guano island recognized as "appertaining to the United States."⁶⁷

The instructions sent out from time to time by the Secretary of the Treasury to the Collectors of Customs indicate that the provisions of the Guano Act relating to the coasting trade were to be enforced with reference to guano from the islands listed. These lists were compiled by the Treasury Department from the bonds, and were approved by the State Department before being made public. There are three such lists, dated respectively August 23, 1867, February 12, 1869, and ^{October} ~~December~~ 12, 1871.

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65. See W. Phillips, Ass. Sec'y to Mr. Edward Alexander, April 21, 1917, 811.0141/20; A.A. Adee, 2nd Ass. Sec'y, to Mr. Henry Trumore, Oct. 11, 1912, 811.0141 Se 6/5.
66. Jones v. U. S., supra, note 47, 221.
67. Id.

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A copy of the letter was sent the Secretary of State, July 3, 1890, and another copy to the Assistant Secretary of the Treasury, September 16, 1893.⁶⁸

In the Petrel Guano Co. v. Jarnette, the District Court enforced the coasting trade provisions by refusing to permit the recovery of freight for guano shipped from Roncador in a British vessel.⁶⁹

Although the primary purpose of the guano legislation was to enable American citizens to obtain guano, and not territory, nevertheless, it is clear that the United States has the power to acquire territorial sovereignty over islands occupied under the Guano Act. This conclusion is supported not only by the interpretation of the act by United States officials, but by the act itself. The condition that the island be uninhabited, and not within the lawful jurisdiction of any other country indicates that other conditions of the act are inconsistent with such jurisdiction. They have been so regarded by foreign governments protesting against the occupation of islands within their jurisdiction by American citizens under the act.⁷⁰ Furthermore, the language

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⁶⁸ First list in 6 misc. let. re Guano, 2237-2238; others reported in I Moore's Digest 566-567.

⁶⁹ Petrel Guano Co. v. Jarnette, 25 Fed. 675 (Oct. ct. E. D., N. C. 1885).

⁷⁰ See British attitude in regard to Cay Verde, *supra*, note 39.

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of the last section of the act, providing for the privilege of abandoning the islands after the guano is removed, implies the United States may have obtained possession, and may retain it.

It is also clear that the United States has exercised this power in certain cases. The various jurisdictional acts performed by the United States under the authority of the Guano Act indicate an intention to assume exclusive control over the islands. Whether the United States has thus acquired territorial sovereignty over the islands on Serrana, Serranilla, Roncador, and Quito Sueño Banks depends upon the facts and history relating to these particular islands, as does the secondary question of whether that sovereignty has been retained, provided it was once acquired.

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III. History of Territories Adjacent to The Islands.

The history of the Caribbean region from its discovery by Columbus to the present time has been studied frequently, and in detail, but there is practically no mention of anything taking place on Serrana, Serranilla, Roncador and Quito Sueno before the middle of the nineteenth century, although it is plain that their existence was known by the beginning of the seventeenth century. Apparently the islands themselves had no history before modern times. This inference is reasonable in view of their tiny size and comparative uselessness to the early adventurers and settlers who were interested chiefly in seeking gold, forming plantations, and trading with the Indians along the coast of the Spanish Main.

Since the claims of Colombia, Nicaragua, and Honduras are all based in part upon discovery, and upon settlement of and sovereignty over adjacent territory, it is necessary to consider the early history and development of the Western Caribbean region. Moreover, as there is very little relating to the individual islands before 1850, it is not necessary to consider the development of each group of islands separately before that date.

A. Discovery

In the exposition of the Colombian claim it is alleged that Columbus discovered the islands of San Andres and Providence in 1492, the native name for one of the islands being Abacoa. It is assumed that this discovery included the discovery of Santa Catalina, Roncador, Quito Sueno, Courtown, Albuquerque and Serrana, "all joining to form the archipelago or group of Old Providence."⁷¹ In the Nicaraguan claim to Serrana, it was said that the name Serrana showed the island must have been discovered by Spaniards.⁷²

It is impossible that Columbus could have discovered either San Andres or Old Providence Island on his first voyage.⁷³ Historians have concluded that in 1492 Columbus reached the Bahamas first, landing on several of those islands, proceeded to the northeast coast of Cuba and San Domingo, and then sailed home to Spain without having entered the Inner Caribbean Sea.⁷⁴ There is some doubt as to which of the Bahamas Columbus found on this voyage. The Colombian

contention

71. Julio Rengifo, Colombian Chargé d'Affaires, to the Sec'y. of State, January 18, 1893, 8 MS Notes from Colombia.

72. Seward, Sec'y. of State to Don Ignasus Gomez, Min. of Nic. at Washington, December 10, 1868, 2 MS Nicaraguan Leg'n. 9.

73. Old Providence is often referred to as Santa Catalina which is really another very small island, so close to Old Providence as to have been once connected with it by a bridge. In this report the name Old Providence will be used to designate both Old Providence proper, and the islet Santa Catalina.

74. Roselly de Lorgues-Christophe Colomb. (Paris, 1856)

Vol. 1, pp. 279-280; map by Fernandez de Navarrete, (Madrid, 1825) in F. R. Hart, Admirals of the Caribbean. (1922); W. Shepherd, Historical Atlas, (N.Y.1911) p.105.

contention that islands named Providence and San Andres were discovered may be correct, but they are not the Colombian islands of Providence and San Andres in the Southwestern Caribbean Sea, but British islands of the same names, in the Bahamas. There are two adjacent islands in the Bahama group named Providence, (New Providence, now better known as Nassau, after its largest town) and Andros. There is also one named Abaco, which may have been the Abacoa mentioned by Colombia.⁷⁵ There is a story that the Bahama island of Providence was once called Abacoa, and afterwards received the name of Providence from an Englishman who had been twice shipwrecked on its coast.⁷⁶

There is no evidence that Columbus discovered either Old Providence, or San Andres, the Colombian islands, or any

75. Imperial Atlas of the World, Rand McNally (1917) 3; Navarrete's Supra; Raggeveens Atlas, Map of Bahamas dated 1675 (an island called Abacoa is charted).

76. Thomas Jefferys, The West India Islands (London, 1775). Mr. Jeffries states that the island was abandoned by the English in 1708 and that it was a pirate refuge until 1718 when Great Britain sent a governor armed with a party, whereupon "they left off pirating and soon became a regulated colony".

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any of the four groups of islands under consideration on any of his succeeding voyages. On the second voyage, 1493-94, he skirted the Lesser Antilles, and explored the southwest coast of San Domingo, Cuba and Jamaica; on a third, in 1498, he touched at the mainland of South America Trinidad and San Domingo. On neither of these trips did he come any where near the disputed islands. On the fourth voyage, however, he skirted the south coast of Jamaica, sailed north by the Cayman Islands, and then across the Caribbean Sea to the Gulf of Honduras, and down the coast of the mainland to the narrow part of the isthmus, and then directly north to Little Cayman Island and Cuba.⁷⁷ It is just possible, but not probable, that he may have sighted some of the banks in question, but it is quite certain he did not land on them. No mention is made of any such islands by Columbus, and as the voyage was far to the north of them, and as he was in a terrible storm all the way to Cape Gracias a Dios, which he reached on September 14, 1503, it is impossible for him to have seen them before then. After reaching the Cape, he kept very close to the mainland and could not have seen them on his southward journey. Furthermore, he was searching for the northeast passage, and for gold and would not have paid
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77. Sheppard, op. cit. supra, Note 74. Navarette's map, op. cit. supra, Note 74.

any attention to these barren islands, had he come near them.⁷⁸

While it is apparent Columbus did not discover either Old Providence, San Andres, or the islands under consideration, it is probable that they were first noticed by Spaniards, who were the first to explore that region. In 1508 Vincente Pinzon and Juan Diaz de Solis explored along the Bay of Honduras and Cape Gracias á Dios.⁷⁹ Other Spanish explorers skirted the mainland and the isthmus in the first decade of the sixteenth century, and some of them may have seen the islands. It was not until 1565 that the English navigator, Sir John Hawkins, entered the Caribbean Sea, to be followed in 1585 by Sir Francis Drake.⁸⁰ By that time the Spanish trade with the mainland was under way, and the navigators must have known of these banks, with their dangerous, hidden reefs.

It is evident, moreover, that the islands were known under their present Spanish names, by the 17th century, for
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78. Roselly de Lorgues, op. cit. supra, Note 74, pp. 209-217; Charles Paul MacKie, The Last Voyages of the Admiral of the Ocean Sea (1892), pp. 437-465.

79. Sheppard, op. cit. supra, Note 74; The Encyclopedia Americana (N.Y. 1932) Vols. 22 and 25.

80. Hart, op. cit. supra, p. 14.

they are found on maps of that period.⁸¹ In a map of the Antilles by Herrera, dated 1601, the positions of "La Seranilla" and "La Serrana" are given.⁸² In a Dutch Atlas of 1675 there are two maps showing the islands: On one Serranilla and Serrana are given, Santa Catalina and San Andres; on the other, all four of the banks are given on a map devoted exclusively to them. On this map, one tiny island is marked on Serranilla, none on Quito Sueno, and two on Serrana. Between Serrana and Quito Sueno is a reef marked "Elinde Clippe", to the south is "Roncadores", and to the right of Santa Catalina, is a reef "Musquetiers".⁸³ This map shows that the existence of the banks and islands under Spanish names was well known by 1675, but gives no other indication who discovered or first charted them, and no indication of sovereignty.

On most of the maps examined there has been no indication of sovereignty over these islands, although the Spanish names for them are always given, with slight variations

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81. The story of the Englishman, shipwrecked on Roncador in 1636 shows that the island was known as Roncadores at that date, but that it was not frequented by ships. See infra, note 103.
82. Sen. Ex. Doc. 38, 40th Congress, 2d session, serial No. 316, Plate 15.
83. Raggeveen, Atlas Van De West Indien (Amsterdam, 1675).

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variations in spelling. They appear on maps of the 18th century made by cartographers of various nationalities. All are given on a French map of 1731,⁸⁴ and directions and distances are given in detail in a British Atlas of 1771.⁸⁵ On Jefferys' chart of 1775 (British),⁸⁶ an alternate name for Serrana, "Pearl Islands," is given, and on an American map printed by Laurie and Whittle in 1794, two aliases for Serrana are given, "Pearl Islands" and "English Bank", and there is a notation to the effect that Quito Sueno is called "Guana Reef" by the Baymen.⁸⁷ On 19th century charts there is little change. Arrowsmith's chart of 1816 gives all the islands, and adds the aliases "Pearl Island" and "Guana Reef" for Serrana and Quito Sueno, respectively.⁸⁸ On a French map of 1870 Quito Sueno is also given

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84. d'Anville, Map of West Indies (1731), reprinted in C. H. Haring, The Buccaneers of the West Indies in the 17th Century. (N.Y. 1910)
85. Captain Joseph Smith Speer. The West India Pilot (London, 1771), pp. 49-50. (Captain Speer notes that he "served upwards of twenty years in the West Indies.")
86. op. cit. Supra, Note 76.
87. Laurie & Whittle, Complete Pilot for the West Indies, (1794) No. 8, No. 19.
88. Thompson, New General Atlas (1816).

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given the names "Oupre L'Oeil", and "Guana".⁸⁹ Hobbs' chart of 1849-56 shows a detailed knowledge of the channels around the cays and of the character of the islands.⁹⁰ Publications of the Hydrographic Department of the United States in 1893, based on British surveys of 1833-35, likewise show an intimate knowledge of the geographic features of the islands.⁹¹

Although no exact information has been found as to the discoverer of Roncador and Quito Sueno, Serrana and Serranilla, nor even as to the discoverer of the larger, more attractive islands of Old Providence and San Andres, it is reasonable to conclude that, while Columbus did not discover them, it is probable that some Spanish navigator did in the early 16th century. The fact that the Spanish explored this region first, and that the names appear to have been Spanish, with little variation, from earliest times, supports this conclusion. However, it is not proved.

89. Brué and Vuelleincin, Map of the West Indies (1870?)

90. J. S. Hobbs, General Chart of the West Indies (London, 1849, additions 1856).

91. H. O. Pub. Nos. 1372, 1373, 1374, (War and Navy Depts. 1893); H. O. Pub. No. 1489 (Washington, 1895).

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b. Settlement

There has never been any real settlement on any of the small islands under discussion, and the early history of the region relates chiefly to the Spanish Main and to the islands of Old Providence (Santa Catalina) and San Andres. Since, Colombia insists that their history includes that of Roncador, Quito Sueno, and Serrana, and probably Serranilla, a brief summary of it will be given, from the 17th century to the present time.

Old Providence was first occupied in 1630 by English Puritans sent out by the Providence Company, a British corporation, under the direction and management of the Earl of Warwick and his associates. Upon the arrival of the colonists Old Providence was uninhabited, except for a few Dutchmen who were permitted to remain ~~on~~, but not to control the colony.⁹² The colony was to have been a home for Puritans, but it was such a convenient place from which to attack the richly laden ships coming from the Spanish Main, that the Puritans soon indulged in piratical raids.⁹³

This

92. A. P. Newton, *The Colonizing Activities of the English Puritans* (New Haven, 1914), pp. 52-97.

93. Newton, *op. cit. supra*, Note 92, 152. Small boats from Guatemala loaded with gold and bound for Cartagena (where the cargo was reloaded onto the heavily guarded Spanish galleons) passed close to Old Providence and could be easily attacked.

This profitable occupation was encouraged by the home company, and in January, 1636, after the repulse of the Spanish attack on Old Providence in 1635, the British King granted the settlers Letters of Reprisal.⁹⁴ The home government kept in fairly close touch with the colony,⁹⁵ and from Old Providence two other British settlements were made, one by Captain Sussex Gammock, on Cape Gracias á Dios, and one by Captain Samuel Axe, on a large island of the Mosquito [Moskito] Keys, between Old Providence and the Cape, soon after 1630.⁹⁶ The British were finally expelled from Old Providence in 1641, by the Spanish.⁹⁷

The Spaniards remained comparatively undisturbed in the Caribbean from that date until the British captured Jamaica in 1665.⁹⁸ Old Providence was garrisoned by the Spanish and used as a penal settlement until its recapture in 1665 by the English privateer, Captain Edward Mansfield.⁹⁹

The

94. Id. pp. 195-207.

95. Id. pp. 216-223. Two Governors were sent to Old Providence from England.

96. Id. pp. 140-165.

97. Id. pp. 143-144.

98. Id. p. 321.

99. Op. cit. Supra, Note 84, pp. 135, 137.

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The Spanish recaptured it in 1666, but the Englishman, Sir Henry Morgan, took it again in 1670, and used it as a basis for his attack on Panama.¹⁰⁰ Although the Spanish regarded Morgan as a buccaneer, the council of Jamaica gave him a vote of thanks and he later was appointed Governor of Jamaica.¹⁰¹ After about 1680, the Jamaicans turned against the buccaneers, who took to attacking all ships and not just Spanish ships, thereby becoming pirates in the eyes of all. It is said that the pirates used Old Providence Island as a base, but after the French attack on Cartagena in 1697, their power became less and less, and in the first quarter of the 18th century they were finally driven from the seas.¹⁰²

Although the islands of Old Providence and San Andres, and the Mosquito coast and Keys were occupied and their possession was disputed from time to time during the 17th century, no evidence has been found of any use of the islands of Roncador, Quito Sueno, Serrana, or Serranilla. There is, however, an account of the shipwreck of an Englishman and four others on the island of Roncador in 1636. The Englishman had escaped from Old Providence in a small boat, intending to attack one of the Guatamala frigates, but he was

blown

100. Id. pp. 139, 163.

101. Op. cit. Supra, Note 74, pp. 91-101

102. Id. p. 169.

blown off his course and his boat was wrecked on "the tiny sandy islet of Roncador or 'The Snorer'". The Island is described as barren and without fresh water and frequented by sea birds in the breeding season. His companions died, but the Englishman managed to live there two and a half years, subsisting on fish, birds, and rain water, until he was rescued by a Dutch ship which brought him into Old Providence in February, 1639.¹⁰³ The fact that it was over two years before he was rescued shows how little the island was frequented at that time, and the account of Roncador indicates that these Keys were then, and probably for many years to come, regarded only as barren, uninhabited, useless rocks.

During the Eighteenth Century Old Providence seems to have been practically deserted. Jefferys, in 1775, spoke of English trading establishments along the Bay of Honduras and the Mosquito coast, (on Cape Gracias á Dios), where the Indians "admit no other Europeans in their country", and of Blewfields Lagoon, as frequented by people from Jamaica in search of mahogany, fish, and turtles "both on the coast and in the adjacent islands". Old Providence, however, was said to be "at present uninhabited", and Jeffereys added that, as it is one of the best islands in
the

103. Newton, op. cit. supra, Note 92.

104. Newton, op. cit. supra, Note 93, pp. 17-18.

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the Indies, though small, "it is surprising that Old Providence has been forsaken and desolate since the last century".¹⁰⁴

During this century the Spanish were endeavoring to push the English back from the coast. By the Convention of London, of July 14, 1786, between England and Spain, it was agreed that English subjects should evacuate the Mosquito country and its adjacent islands.¹⁰⁵ This was not carried out at once, however, and the English have retained what is now British Honduras to this day.

From the beginning of the Nineteenth Century, Spain exercised a loose control over Old Providence, San Andres, and the adjacent territory on the mainland, except for two years, from 1806 to 1808, when the British held Old Providence.¹⁰⁶ By the Royal Order of November 30, 1803, the "islands of San Andres" were separated from Guatemala and attached to the Vice-Royalty of New Granada, "together with all the coast comprised between Chagrés and Cape Gracias á Dios." Since it is upon this Royal Order that Colombia bases its title to the islands of Roncador, Quito Sueno, and Serrana, it is well to quote it in full:

"The Junta of Fortifications and Defense of the Indies in opinions rendered September 2 and October 21 last, has expressed its views

on

104. Jefferys, op. cit. Supra, Note 76, pp. 16-17.

105. Estado Actual de La Question de Limites entre Nicaragua y Colombia (1925), (Translation).

106. Rengifo, op. cit. Supra, Note.71

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on the development, populating and defense of the islands of Sanit Andres, their separation and the separation of that part of the Mosquito coast extending from Cape Gracias a Dios inclusive as far as the River Chagres of that Captaincy General, and incorporation with the new Kingdom of Granada; and the King having agreed with the opinion of the Junta, I am sending to Your Lordship [The Captain General of Guatemala] upon his Majesty's order (and also to the Viceroy of the said Realm) a copy of the said opinions for your knowledge and execution so far as it concerns you."¹⁰⁷

After the separation of the Spanish colonies from Spain in the early Nineteenth Century (1815-1821) (107A) Colombia, or New Granada, as it was then called (1831) (107B) continued to control, to some extent, San Andres and Old Providence Islands, and Courtown and Albuquerque Keys. In 1868 the American Minister at Bogota wrote that San Andres and Old Providence were formerly under the nominal jurisdiction of Bolivar, but that a year ago they were ceded to the United States of Colombia and "for fifteen years previous Bolivar had exercised no jurisdiction over them". He adds that: "the only government that has existed there is that of Justices of the Peace, elected by the inhabitants"; that they trade in coconuts, cattle, turtles and tortoise shells, and that "there is but little or no
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communication

107. Limites entre Nicaragua y Colombia, op. cit. supra, Note 105.

107A. Phanor James Eder, Colombia (N.Y. 1813) p. 38.

107B. Id. p. 39.

communication between them and Colombia, which is utterly unable to govern them.¹⁰⁸ In 1893, the Colombian Minister to the United States notified the Secretary of State that American vessels were bringing salt into Old Providence and San Andres contrary to Colombian law, and would hereafter be treated as smugglers. The United States replied that American shippers would be notified.¹⁰⁹ Evidently Colombian sovereignty over these two islands was not disputed by the United States at that time, nor has it been since, though Nicaragua did dispute it.^{109A}

Twentieth

At the beginning of the Century the islands of San Andres and Old Providence were said to be under the government of Cartagena, Colombia, but apparently little attention had been paid to them. There were then some two or three thousand inhabitants, mostly English speaking, who exported coconuts to the United States. Americans published the only paper; there were no schools, and but three chapels, two Protestant and one Catholic. The Catholic Priest was appointed from Baltimore, and not be the Archbishop of Cartagena; only stamps of the Republic of Panama were used, and the sole connection with

South America

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108. Sullivan, U.S. Min. at Colombia, to Seward, Sec'y. of State, Mar. 30, 1868, II For. Rel. 1868, 1061. Jennett was probably mistaken in saying, in 1869, that Old Providence was then claimed by the British. (See Jennett's Declaration, June 5, 1869, 5 MS. Miscl. Lat. re Guano.
109. Rengifo, minister of Colombia, to Gresham, Sec'y. of State, Aug. 4, 1893 (transl.), 8 MS Col Notes; Gresham, Sec'y. State, to Rengifo, Aug. 8, 1893, VII MS Notes to Col. 211.
- 109A. See *Infra*, Notes 112, 113.

South America was via Colon.¹¹⁰ In the Central American Pilot, for 1927, San Andres is called the seat of the government of the territory comprising San Andres, Old Providence, "and the neighboring cays". The population of the whole group is listed at three thousand, chiefly American planters and Jamaica negroes.¹¹¹

In 1919, Nicaragua presented to Colombia a claim to San Andres and Old Providence as well as to the Mosquito coast Keys, but Colombia refused to consider it.¹¹² Nevertheless, Nicaragua in September, 1925, took pains to refute the Colombian position that the Royal Order of 1803 gave Colombia sovereignty over these islands and the Coru Islands, maintaining that this Order was for specific purposes of defense and development only, and not for the determination of boundaries, and that the Colombian occupation and government of the islands was de facto only and not de jure.¹¹³ The dispute between Colombia and Nicaragua was finally settled by a treaty of 1928 in which Colombia recognized "the sovereignty and absolute dominion" of

Nicaragua

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110. Harrison, U.S. Chargé at Bogota, to the Sec. of State, July 18, 1913, (821.014).
111. Central America and Mexico Pilot, H.O. No. 130, (1927) p. 239.
112. Glenn Stewart, LA, Memo, May 19, 1919 (821.0141/6); Philip, U.S. Min. to Colombia, to Sec. State, Oct. 18, 1919 (811.822/68); Summerlin, U.S. Amb. to Mexico, to Sec. State, Aug. 29, 1922 (821.014/10).
113. Limites entre Nicaragua y Colombia, op. cit. Supra, Note 105.

Nicaragua over the Mosquito coast between Cape Gracias á Dios and the San Juan River, and over the Mangle or Corn Islands", and Nicaragua recognized Colombia's sovereignty over "San Andres, Old Providence, Santa Catalina, and all other islands, small islands and Keys which are part of the San Andres archipelago." This treaty, however, provided that "the cays of the Roncador, Quito Sueno, and Serrana, the dominion over which is in litigation between Colombia and the United States of America, are not included in this treaty". No mention was made of Serranilla.¹¹⁴

Although the first real settlement of Old Providence and San Andres was made by the English in 1630, the subsequent history of the islands leads to the conclusion that they are now Colombian, as are the keys to the south, Courtown and Albuquerque, and, further, that they were Colombian in the middle of the Nineteenth century, at the time of the "discovery" of Guano on the islands under consideration by James W. Jennett, an American citizen. Colombia's ownership of the islands of Old Providence and San Andres was not recognized by Nicaragua until 1928, however.

Whether or not the keys to the north, on Roncador, Quito Sueno, Serrana, and Serranilla banks, should be included in the so-called Providence, or San Andres archipelago depends upon various factors. There is no definite formula for the determination of when an island is or is not

114. Treaty of 1928 between Colombia and Nicaragua (811. 0141019/381,382).

not a part of an archipelago, and when it should or should not belong to the country owning the nearest island. Occupation and use of the islands may be as significant as their location in the determination of their legal status. Consequently the history of each of these groups of islands must be considered separately.

IV. History of Roncador and Quito Sueno.

A. Geography

Roncador bank is a coral bank about seven miles long and three and a half miles wide, and Roncador Key, (or Cay) at latitude 13° 15' N., longitude 80° 40' W., is on the north end of the bank. It is about twelve feet above water and 600 by 630 yards in size, and is composed of sand and coral without trees or bushes, but with some guano on it. Brackish water may be obtained by digging wells, but there is no good drinking water on the island. This island is entirely surrounded by a barrier reef, but on the western edge of the bank there is good anchorage.¹¹⁵ Roncador is about 75 miles east of Old Providence, 60 miles south of Serrana, and over 200 miles east of the nearest mainland, the coast of Nicaragua.

The above description differs considerably from that given by James W. Jennett, the American citizen who claimed to have discovered guano on the Roncador in December, 1866. Jennett alleged that there was a good harbor and anchorage, fresh water, plenty of firewood, fish and turtles.¹¹⁶ His statements

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115. Central American Pilot, op. cit. supra. Note 111, pp. 232-233; E. M. Douglas, Boundaries, Areas, Geographic Centers, and Altitudes of the United States and the Several States (Wash. 1930) p. 55.
116. J. W. Jennett's Declaration of Discovery, May 26, 1869 enclosure, Lincoln and Willard to Fish, Sec'y. State, Aug. 9, 1869, 5 MS. Miscl. Let. re Guano.

statements were supported by the declarations of Henry Stevens and George Nelson, first and second mates on the schooner PETREL in which the discovery was said to have been made.¹¹⁷ From their descriptions and from Jennett's water-color map of the island¹¹⁸ it would appear to be a comfortable place in which to live. As these statements were made by interested parties, however, and as they are contradicted by later, authenticated descriptions, it is believed that they are not only inaccurate but entirely imaginative.

Quito Sueno is described as a coral bank about 34 miles long and 8 miles wide, 7 to 20 fathoms under water, with patches of dry land at intervals. It is at latitude 14° 29' N., longitude 81° 08' W. (position of the United States light).¹¹⁹ In 1920 the Commissioner of Lighthouses reported that there were only coral heads visible above the reefs,¹²⁰ and in 1926 it was reported that the only objects above water over the whole bank were the light and a small rock eight miles south

117. Declarations of Henry Stevens, and of Geo. Nelson, May 28, 1869, 5 MS Misc. Let. re Guano.

118. 5 MS Misc. Let Re Guano.

119. Central American Pilot, op. cit. supra, Note 111, pp. 233-234; Douglas, op. cit. supra, Note 115, pp. 54-55.

120. Report of E. M. Trott, Sup. of Lighthouses, and Conway, Commissioner of Lighthouses, July 10, 1920, (811.822/94)

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south of it, though it was noted that a key might soon be formed at the northwest end of the bank.¹²¹ The bank is thirty miles north of Low Key, at the north end of Old Providence Reef, and 41 miles west of Southwest Key of Serrana, and about 130 miles from the Nicaraguan coast.¹²²

121. Central American Pilot, op. cit. supra. Note 111, pp. 233-234.

122. Ibid. Jennett's description of this bank is quite different from the above, and apparently completely imaginative. He alleges that the island was 2 1/2 by 1 mile in size, with fresh water, firewood, eggs, birds and turtles, and about 50,000 tons of guano, and that two men lived on the island three months. (See *Infra*, Notes 132, 135).

b. The Claim of The United States

It has been seen that Roncador Key was probably discovered by Spaniards in the Sixteenth Century, but that so far as can be ascertained, it was not occupied during the Sixteenth, Seventeenth or Eighteenth Centuries, except by a shipwrecked Englishman,^{122A} though it might have been used to a certain extent by fishermen in search of turtles and eggs. That it has been used by fishermen in the Nineteenth and Twentieth Centuries is quite certain. A fisherman's hut may usually be seen on the Key, though it is probably only occupied by the men at intervals from March to August, during the turtle breeding season. There is also a coral wall at the north end of the Key, six feet high and 40 by 50 feet square.¹²³ Colombia alleges that the fishermen are Colombian citizens from San Andres and Old Providence,¹²⁴ but it is probable that, because of its situation and character, fishermen from all the surrounding territory, including Jamaica and Nicaragua, have used the island.

The American claim to Roncador arises through occupation under the Guano Act. The first claimants to the
discovery

122A. *Supra*, Note 103.

123. *Id.* pp. 232-3; Report of E. M. Trott, *op. cit. supra*, Note 120.

124. Rengifo, *op. cit. supra*, Note, 71.

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discovery of guano were not, however, recognized by the State Department as having any interest in the island. On May 19, 1857, J. W. Fabens filed a memorial alleging that he had discovered guano on Roncador during his residence as United States Consul at Cayenne, French Guiana, from 1844 to 1849, and during his subsequent residence at San Juan de Norte. No affidavits or bonds were filed with this claim and it was apparently disregarded.¹²⁵ On February 26, 1870, Isiah Respass, Daniel McCarter, and Jeremiah Abbott filed a declaration of discovery of Roncador in 1858, made by Captain Abbott of the schooner LOUISA, chartered by Respass. It is alleged that Abbott made several trips to Roncador; that he performed ceremonies showing possession of the island was taken in the name of the United States; that he brought away cargoes of guano and sold them in Baltimore; and that claimants had a ship ready to sail to load guano in 1870 and had not abandoned their claim.¹²⁶ No answer could be found to this letter, and apparently no action was taken by the Department.

On

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125. John Davis, Acting Sec'y., to Samuel Sloan, Aug. 26, 1883, 148 MS. Dom Let. 67; See also Memo, unsigned and undated, in 6 MS Misc. Let Re Guano.
126. Jeremiah Abbott, Declaration of Discovery, Feb. 26, 1870, 5 MS. Misc. Let. re Guano; Davis to Slaen, supra, Note 125.

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On August 9, 1869, J. W. Jennett's declaration of discovery of a deposit of guano on Roncador on December 7, 1866, was filed with the State Department. He alleged: that he landed, built a house, set up a flag-staff, dug a well, carved his name and date on the rocks; and that the island contained about 100,000 tons of guano; that it was not in the jurisdiction of any other country or inhabited by citizens of any other country; and that it had a good harbor and anchorage, fresh water, firewood, and plenty of fish and turtles.¹²⁷ The declarations of Henry Stevens and George Nelson, both dated May 28, 1869, and obviously made under Jennett's supervision, substantiated Jennett's declaration.¹²⁸ On October 7, 1869, Jennett filed additional evidence of his occupation of the island, alleging that on August 31, 1869, he landed two men on Roncador, with provisions for three months, the men having been hired by Jennett to stay on the island until his return.¹²⁹ This statement is verified by the declaration of Captain Eaden, of the LAVINIA, the boat which supposedly took the men to the island. The Captain added that the men could live comfortably on the island at least

six

127. J. W. Jennett, *supra*, Note 116.

128. Stevens and Nelson, *Supra*, Note 117.

129. J. W. Jennett, Memorial, Oct. 7, 1869. 5 MS. Misc. Let re Guano.

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six months although they only had provisions for three, because there were plenty of natural resources.¹³⁰ Jennett likewise submitted to the State Department a verified copy of the contract made with the two men on board the LAVINIA, August 18, 1869.¹³¹

There is no declaration of discovery of guano on Quito Sueno before J. W. Jennett's, dated March 10, 1869. In this declaration he alleged that he discovered the island on December 3, 1866, that it was not occupied, etc., that he built a house, dug a well, etc., that there were about 50,000 tons of guano on the island, that he took on board a boat-load and left the island, January 12, 1867.¹³² In an earlier statement dated June 30, 1866, relating to his first trip on the schooner PETREL, he alleged that he took a ton of guano from Quito Sueno and that:

"Some one had been there and taken away a cargo, from appearances, several years previous, but could not find good fresh water, fit for drinking, but would do for cooking purposes. This island being small and not much shelter does not afford a good harbor, or break the sea sufficient to make it smooth, thus guano could not be lightered here only in fine weather." ¹³³

This

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130. Eaden, Declarations, Sept. 2, 1869, and Aug. 31, 1869, 5 MS Misc. Let re Guano.
131. Contract, Aug. 18, 1869, 5 MS. Misc. Let. re Guano.
132. Jennett. Declaration of Discovery, Mar. 10, 1869, 5 MS. Misc. Let re Guano. This declaration is supported by statements of Henry Stevens and George Nelson, as in the Case of Roncador, Ibid.
133. Jennett, Statement of June 30, 1866, 5 MS Misc. Let. re Guano.

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This does not coincide very well with his later declaration about Quito Sueno,¹³⁴ nor with his additional evidence relating to the voyage in 1869 on the LAWINIA. In the latter declaration Jennett says he landed two men with three months' provisions on Quito Sueno on March 10, 1869.¹³⁵ This statement is supported by a copy of the contract of hire,¹³⁶ and by a certificate of Captain Eaden, September 11, 1869, in which he says he found the two men on Quito Sueno, where they had been since March, and gives a glowing account of the island.¹³⁷ Jennett may have confused Quito Sueno with Serrana,¹³⁸ but as he also described Serrana in detail, and drew elaborate pictures of all the islands, it is more probable that he merely lied. Obviously no one could live from March to September on Quito Sueno bank, almost all of it being completely under water. All of Jennett's statements are therefore of very doubtful veracity, especially those describing the character of the islands.

The

134. Supra, Note 132.

135. Jennett, Declaration, Oct. 7, 1869, 5 MS. Misc. Let. re. Guano.

136. Contract dated Sept. 7, 1869, 5 MS. Misc. Let. re. Guano.

137. Certificates of Eaden, Sept. 7 & Sept. 11, 1869, 5 MS Misc. Let. Re. Guano.

138. See Samuel Schwenk to Wm. Wharton, Ass. Sec'y. June 28, 1892, 5 MS. Misc. Let. re Guano. Schwenk says Quito Sueno was sometimes called Quito Serano, and that Jennett confused them.

The State Department, however, accepted and approved his bond for \$200,000 for Roncador and Quito Sueno (also Pedro, and Petrel islands) on November 27, 1869,¹³⁹ and on November 30, 1869, a proclamation was issued to Jennett by the Secretary of State, Hamilton Fish, certifying that:

"James W. Jennett is entitled in respect to the guano upon the said islands and keys to all privileges and advantages intended by that act to be secured to citizens of the United States, while and so long as he abides by, and fulfills the conditions of said bond, and the requirements of the Act of Congress aforesaid."¹⁴⁰

This proclamation has never been found in the State Department, due no doubt to the fact that it was customary to give the original to the discoverer himself, no copy being retained, but there is every reason to believe that the proclamation was issued. (See J. C. B. Davis, Acting Sec., to Mr. D. M. Carter, Mar. 29, 1870. 83 MS Dom. Let. 612; Hamilton Fish, Sec. of State, to Mrs. Henrietta Stevens, May 10, 1870, 84 MS Dom. Let 426; J. B. Moore, Third Ass. Sec., to J. W. Jennett, Nov. 19, 1889, 5 MS Misc. Let. re Guano; S. K. Schwenk, to Brown, Chief Clerk, June 30, 1892, 5 MS. Misc. Let. re Guano; Wm. Wharton, Acting Sec. to S. K. Schwent, June 23, 1892, 187 MS Dom. Let. 49; A. A. Adee, 2nd Ass. Sec., to Schwenk, Feb. 26, 1904, 272 MS Dom. Let. 485.)

After

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139. Lincoln and Willard, Att'ys to Jennett, to Fish, Sec. of State, Nov. 26, 1869, and C. B. Davis to Lincoln and Willard, Nov. 27, 1869, 5 MS. Misc. Let re Guano.
140. Copy of the Proclamation, enclosure in S. K. Schwent to A. A. Adee, Ass. Sec., Mar. 17, 1904, 5 MS. Misc. Let. re. Guano.

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After the issuance of this certificate, some guano was removed from Roncador by Americans, but there is no evidence that any guano was taken from Quito Sueno, probably because there was no guano there. Jennett took guano from Roncador in 1883;¹⁴² in July and August, 1884, he removed about 794 tons for shipment to the United States;¹⁴³ and in 1885, three or more cargoes were removed by the Petrel Guano Company and some one is said to have actually occupied the island in behalf of the company.¹⁴⁴ The Colombian Minister himself reported that Mr. Edward Bailey, an officer of the Colombian Guano and Phosphate Company, engaged laborers at Jamaica in January, 1891, took them to Roncador, excavated 950 tons and shipped 350 from the island. He left twelve men on the island awaiting his return, and after four months, seven of them left in a boat and five others disappeared. Two corpses were found on the island in March, 1892, by turtle fishermen from San Andres and Providence,

and

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142. Jennett to Schwenk, Dec. 4, 1883. MS. 5. Misc. Let. re Guano.
143. Jennett's Statement of Account, Aug. 23, 1884, enclosed in letter from David Harrison to R. W. Flournoy, May 25, 1932 (811.0141 C19 776).
144. See Petrel Guano Co. v Jarnette, Supra, Note 69; Condert Bro. to Thos. F. Bayard, Sec. State, May 22, 1885, 5 MS. Misc. Let. re Guano.

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and the Prefect of San Andres who came to investigate the affair.¹⁴⁵ The Petrel Guano Company sued the Colombian Phosphate Company for its removal of Guano in 1891, and recovered.¹⁴⁶ After 1900, no guano was brought into the United States from any of the guano islands,¹⁴⁷ but some may have been taken to foreign countries. There is a possibility that the Caribbean Guano Company took guano off Roncador in about 1912,¹⁴⁸ but after that time probably none was removed by American citizens. The United States Consul at Bluefields, Nicaragua, reported in 1925 that guano deposits on Roncador and Quito Sueno "are not being exploited at present, according to information received; nor is there any contemplated project for their exploitation known to officials and others in the Providence Consular District."¹⁴⁹

During the time guano was being removed from Roncador, numerous assignments of interests in the guano on both

Roncador

145. Rengifo, op. cit. supra, Note 71.

146. Petrel Guano Co. v. Schooner Effie J. Simmons, Jan. 27, 1893, unreported case, copy enclosed in Harrison to Flournoy, May 25, 1932.

147. Supra, Chapter II, b.l. note 31B.

148. E. A. Alexander to Redfield, Sec. Com., Mar. 8, 1911 (811.0141/20).

149. McConnico, U. S. Consul at Bluefields, Nicaragua, to Sec. St. Oct. 19, 1925, (844 d. 0141/3)

Roncador and Quito Sueno were made, the first in point of time being May 15, 1870, and the latest October 18, 1911.¹⁵⁰ The list of assignments, and apparent record title is given in the appendix, their only importance at this point being to show that at least as late as 1911 the American citizens interested in the islands did not consider that they had been abandoned.

Besides actual removal of guano from Roncador by American citizens other acts of a sovereign nature have been performed by the United States Government. First, Jennett's exclusive interest in both Roncador and Quito Sueno was recognized by the Secretary of State by the proclamation of November 30, 1869.¹⁵¹ Second, both islands were included in the Treasury Lists of 1871 and 1890, directing Collectors of Customs to enforce the coasting trade provisions of the Guano Act with respect to these and other islands.¹⁵² Although in 1876 a British company did remove guano from Roncador, contrary to the Guano Act,¹⁵³ in 1885 the District Court refused to allow recovery of freight for shipping guano from Roncador on the British ship IOLANTHE on the ground that the shipping contract was in violation of the Guano Act, and was, therefore, illegal and unenforceable.¹⁵⁴

Finally

150. See Appendix, *infra*.

151. *Supra*, Note 140.

152. 5 *Misc. Let re Guano*; I Moore's Digest 567; 6MS. *Misc. Let. re. Guano*, 2330.

153. Sir Adrian Bailie, *Brit. Amb. to U.S. to Richardson*, Sept. 11, 1926 (811.822/108).

154. *Petrel Guano Co. v. Jarnette*, *Supra*, Note 69.

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Finally, in 1919, by Presidential Proclamation, the islands of Roncador and Quito Sueno were declared to be, pursuant to the Guano Act, "under the sole and exclusive jurisdiction of the United States and out of the jurisdiction of any other government", and, were set aside for lighthouse purposes.¹⁵⁵ Self-operating lights were accordingly erected on the two banks in June, 1920.^{155A} These are positive acts of sovereignty exercised by the United States Government over Roncador and Quito Sueno.

Before their effect can be measured, however, it is necessary to consider the diplomatic history of these islands. Both Colombia and Honduras claim them and the grounds for these claims must, of course, be discussed before any conclusions as to United States sovereignty can be drawn.

155. Proclamation of Feb. 25, 1919, (Quito Sueno and Serrana), and Proclamation of June 5, 1919 (Roncador), signed by Pres. Woodrow Wilson, (811.822/106).

155A. Lansing, Sec. of State, to Philip. U.S. Min. to Col., Sept. 20, 1919 (cable), Oct. 16, 1919, (811.822/63,65).

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c. The Claim of Colombia

The Colombian claim was first advanced officially on December 8, 1890, when the Colombian Minister at Washington addressed the following note to the Secretary of State:

"The proper Colombian authority having been informed that Mr. J. W. Jennett, an American citizen, was working without permission of the Government of Colombia, the guano deposits on the islets of Roncador and Quito Sueno in the Archipelago of Providencia, inquired of said Mr. Jennett by what right he was thus proceeding, and the latter stated under oath that he was acting by virtue of a written permit to that effect, granted to him by the Government of this Republic.

"The Government of Colombia, which has been informed of the undertaking referred to cannot credit such an assertion, since it has long known the justice and loyalty which characterize the acts of the Government of the United States, which would not comport with the concession of a permit to carry on operations on territory notoriously belonging to a neighboring and friendly nation, and being certain that there is some misunderstanding in the case which is necessary to be explained, it instructs me to make the proper investigations.

"In accordance with the abovekindly inform me if the Government of the United States has in any way authorized Mr. J. W. Jennett to make use of the guano deposits referred to, which is the foundation of the matter in question." 156

The Secretary of State replied that Jennett's statement was "substantially correct", and quoted Section 5570 of the act

156. Don Julio Rengifo, Colombian Min. to the U. S. to Elaine, Sec. of State, Dec. 8, 1890. 8 MS. Colombia Notes.

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Act of 1856. He summarized the basis for the United States claim: listing Jennett's declaration of discovery, the filing and approval of his bond, and the Treasury Department's List of 1871, which included Roncador and Quito Sueno among the islands "appertaining to the United States"; and added that in the twenty years since 1871 "no adverse claim of sovereignty was set up". He found that the Colombian claim could not rest upon territorial contiguity: since the nearest inhabited land was Old Providence Island, claimed by the British,^{156A} which was 75 miles from Roncador, since Colon was 240 miles from Roncador, and since both Roncador and Quito Sueno lie nearer to Costa Rica, Honduras, and Nicaragua than to Colombia. He concluded that "the Department is also uninformed of any acts of occupancy and possession on which a title could be asserted by Colombia".¹⁵⁷

On January 18, 1893, Colombia submitted the grounds upon which the claim was based, and it is the only detailed statement of that nature ever received by the Department.¹⁵⁸

1. It is alleged that after the Secretary of State's note
of

156A. The belief that Old Providence was claimed by Great Britain is derived from a statement to that effect made by Jennett, and Capt. Eden of the LAVINIA, Sept. 2, 1869, 5 MS Miscl. Let. re Guano.

157. Elaine, Sec. of State, to Don Julio Rengifo, Colombian Minister to U.S., Jan. 19, 1891, VII MS. Notes to Colombia 178.

158. Rengifo, op. cit. supra, Note 71.

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of January 19, 1891, "the works undertaken in those islands appear to have been completely abandoned and to have been confined to the removal of guano without effecting any establishment whatever not even an elementary establishment indispensable for the maintenance of a permanent occupancy" and it was thought that Mr. Jennett would not persist in continuing to work the guano banks. (It is to be noted that in the same document Colombia says the islands are unfit for any colonial establishment, and cannot be permanently inhabited.) It was discovered, however, that Jennett had not abandoned the islands, and the story of the discovery of the laborers hired by Mr. Bailey in 1891 is recounted.^{158A}

2. Colombian sovereignty over the island was acquired by virtue of the discovery of the islands of Providence and San Andres by Columbus in 1492, and:

"At a relatively short distance from them was found the island of Santa Catalina, the keys of Roncador, Quito Sueno, Courtown, Albuquerque and Serrano Banco, all joining to form the archipelago or group of Old Providence. In view of the situation in the vicinity of these islands and keys it is to be presumed that one and the same geological change caused them to rise to the surface of the waters, and that they have a continuous basis on the ocean bed."

3. Because of the occupation of Old Providence by Spain after 1660, and Colombia's control over the island since 1803, and the jurisdiction exercised by Colombia over the

Providence

158A. Supra, Note 145.

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Providence archipelago as part of the Province of Cartagena since the revolution and the foundation of Colombia (New Granada), Colombia had perfected the territorial rights acquired by virtue of the discovery. In this connection emphasis is put on the Royal Order of November 30, 1803,¹⁵⁹ by which it is alleged the Providence archipelago, and the coast from Chagres to Cape Gracias á Dios was "annexed" to the Vicé-Royalty of New Granada. Mention is also made of an exploring expedition from New Granada, under one Don Miguel Patino, and of a map made by this expedition which "fixed the geographical position of the islands and keys which formed the Providence archipelago and naturally include Roncador and Quito Sueno."¹⁶⁰ 4. Since that time Colombian sovereignty and possession has been uninterrupted, except for a few isolated and illegal acts which were protested at the time by Colombia. One of these acts was the voyage of the American ship ST. LAWRENCE, in 1853, when guano was removed from Roncador, and taken to Baltimore, in spite of the order of the Prefect of San Andres that the ship was not to leave port. This action was said to have given rise to a Colombian decree of November 15, 1854, prohibiting removal of guano from the Providence archipelago, which was sent to the American Consul, Sanchez, by a note
of

159. Supra, Note 107.

160. This map has not been found.

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of November 22, 1854.¹⁶¹

5. Jennett was not even the "discoverer" of guano, because old maps prove that the existence of guano on the keys was known at least before 1858, and Jennett, therefore, could not obtain rights even under the Guano Act.

6. The citizens of San Andres and Old Providence have visited the islands from time immemorial, staying on the keys during the turtle breeding season.

7. No protest against the American action was made before by the Colombian Government because it was ignorant of the Treasury List of 1871, no formal notice having been sent to Colombia. Moreover, that silence could not prejudice Colombian rights since prescription does not concede a title of dominion under international law.

8. Great Britain has no claim to Old Providence, which was always Colombian.

This memorial was never answered by the United States, because it was thought that an answer might prejudice the pending Costa Rica-Colombia boundary arbitration.¹⁶² Colombia, however, did not let the matter drop. In a report of the Colombian Minister of Foreign Affairs to the Colombian Congress of 1892 it was said:

"Certain traders of the United States have landed on the keys of Roncador and Quito Sueno, in the Colombian archipelago of

Providence,

161. No copy of this Decree has been found in the Archives of the State Department.

162. Memorandum of A. A. Adee, attached to the Colombian note of 1893, 8 MS Colombia Notes; See infra, Note 165.

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Providence, and have taken away, without the permission of this Government, large quantities of guano which exist in those islands, and which is a part of the property of the Republic. Our Legation in Washington has complained of these acts, which constitute a violation of our territory and defraud the nation of a source of wealth, the improvement of which ought to be attended to at once.

"There is no doubt that these islands are a part of the Colombian domain, since they form a part of the Providence archipelago, and although uninhabited, from lack of water and vegetation, they are still occupied, so far as the circumstances admit, by the inhabitants of the neighboring islands, who periodically visit them in search of tortoise shell. Moreover, the Government in past times, has made contracts renting the keys for the working of guano deposits, by that means exercising acts of public domain. The renewal of these contracts and the necessary steps to enable the authorities of Providence to maintain the national possession of the keys, would be a safeguard for their territory and would increase the public revenues." 163

In a similar report in 1894 the Colombian Minister for Foreign Affairs alleged: that "the Secretary of State declared that the permission granted to the extractors of guano to be of no value on Colombia proving its rights before 1869, the date when the permission was granted"; and that "abuses that were being committed by certain traders, who, without any permission from Colombia, export large quantities of guano from the islets of Roncador and

Quito

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163. Enclosure in Dispatch No. 374, J. Abbott, U.S. Min. to Colombia, to Foster, Sec. of State, Aug. 4, 1892, 49 MS Colombia. The Secretary of State acknowledged the receipt of this despatch and sent the American Minister at Colombia copies of the Colombian Minister's note of December 8, 1890, and the Department's reply of January 19, 1891. See Foster, Sec. of State, to Abbott, U.S. Min. to Col. Sept. 16, 1892, 18 Instructions, Colombia 326.

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Quito Sueno;" and that the assertion that the island was res nullius was false, "as the islets are the property of Colombia by virtue of perfect titles of dominion and of public and repeated acts of possession. Roncador and Quito Sueno form part of the archipelago of Providencia belonging to the Republic, of which it has been in peaceful possession since its existence, as it was formerly owned by Spain; and besides the inhabitants of the neighboring islands make use of these islets for stations in certain periods of the year for the fishery of tortoise shells and to cultivate as much as possible that part of the territory."¹⁶⁴

164. Report of Colombian Minister of Foreign Affairs, Enclosure in Dispatch No. 75, Sleeper, U.S. Chargé at Bogota, to Gresham, Sec. State, Oct. 1894, 1894 For. Rel. 197-198.

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In the same year, the United States proceeded to second a request made by Sweden and Norway for the erection of lights on Roncador by the Colombian Government. On October 30, 1894, the Secretary of State wrote to the Secretary of the Navy, stating that the Government of Sweden and Norway had recommended to the Colombian Government that a light should be built on Roncador, and that the United States had been asked if it had taken any similar action. The letter continued:

"As you are probably aware, the Government of Colombia has recently moved to obtain from the United States an explicit recognition of its sovereignty over the various islands and cays belonging to or dependent upon the New Providence group, alleging in support thereof rights claimed to be derived through a certain Royal Order of Spain in 1803, conferring upon the Vice-Royalty of New Granada certain administrative powers over the Caribbean islands and coast as far north as Cape Gracias á Dios. This claim being involved in the still unarbitrated dispute between Colombia and Costa Rica, this Government is unprepared to take any step which might appear to sanction the Colombian contention in this regard, but as the de facto administration of the islands and coast in question has long been exercised without controversy by Colombian agents at New Providence, a request of the suggested character might be made by Colombia without prejudice to ultimate issues of right and solely in the interest of general navigation, should you concur with me as to the expediency of so doing." 165

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165. Gresham, Sec. of State, to Sec. of Navy, Oct. 30, 1894, 199 MS. Dom. Let. 279. Evidently the Secretary of State was not then aware that the United States claimed any interest in Roncador.

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When the Secretary of the Navy replied that a light would be a great aid to navigation, instructions were sent to the United States Minister at Colombia, transmitting the note from the Minister of Sweden and Norway of October 22, 1894,—" it being understood by the Swedish Government that the dangerous rock in question is a Colombian dependency,"- and requesting the Minister to "inform the Minister for Foreign Affairs that this Government cordially commends the suggestion of the Swedish and Norwegian Government and would be gratified to learn that the establishment of this greatly needed light had been determined upon."¹⁶⁶

The United States Minister, submitting the reply of Colombia, called the Department's attention to its inconsistent attitude:

"It appears that the United States granted a license to certain traders to take guano from Roncador and other islands in the vicinity, and that the United States have never retired the license. The Minister of Foreign Affairs, calls especial attention to this matter in his last report to Congress, claiming that the islands belong to Colombia, and that the United States exceeded its proper rights in granting such a license. In the letter from the State Department, to this Legation, asking the Republic of Colombia to establish a light house on Roncador Reef, the Department claims that the Island is a part of the territory of Colombia. I...simply call your attention to the fact that in the letter to this Legation, in regard to a light-house,

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166. Gresham, Sec. of State, to Jacob Sleeper, U.S. Min. to Colombia, Nov. 26, 1894, 18 Colombia Instructions 446.

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it is admitted that the island is in the territory of Colombia." 167

The Colombian Foreign Minister replied in part as follows:

"Wherefore and inasmuch as Roncador Reef is included in the Archipelago of San Andres and San Louis de Providencia, which is an integral part of Colombian territory, the Department of the Treasury is now making a study of the matter, and has requested certain data from the Departments of Bolivar, and Panama, which is necessary in order to come to a decision in regard to the matter." 168

Upon receipt of this despatch, the State Department notified its Minister to Colombia that the request that Colombia erect a light -

".....did not profess to determine the question of territorial sovereignty.

"This Department is aware that the claims of Colombia along the Caribbean coast are in controversy, and has no disposition to prejudge any question of Colombian right. As a fact, Colombia has exercised administrative powers over the principal island of the New Providence group, and we may properly take cognizance of this de facto occupation without considering the de jure title." 169

Here the matter rested, so far as the diplomatic claims were concerned, until 1919. In 1915, however,

Colombia

167. Luther McKinney, U.S. Min. to Colombia, to Gresham, Sec. of State, Jan. 19, 1895, 52 MS Colombia, No. 91.

168. Id., Enclosure No. 1.

169. Edwin F. Uhl, Acting Sec. to McKinney, U.S. Min. to Colombia, Feb. 28, 1895, 18 Colombia Instructions 466. The State Department still refused to see the point, and appears either to have been unaware of United States claims to Roncador, or to have admitted Colombia's right as between Colombia and the United States.

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Colombia asserted sovereignty over the islands by granting an exclusive concession to a Colombian citizen, Mr. Usategui, to extract guano from Roncador and Quito Sueno, Serranilla, and South West Cay (Serrana) "and to use them for certain other purposes for twenty-five years."¹⁷⁰ The Department replied to an American citizen reporting this concession, that the United States had "refused to acquiesce in Colombia's claim of title to the islands."¹⁷¹ The question was apparently settled by a contract between the Colombian and a Mr. Mason, an American citizen, giving the latter an option on the exportation of guano from the above Keys.¹⁷² The State Department wrote Mason May 2, 1920, enclosing the Presidential Proclamations of 1919 regarding Serana, Roncador and Quito Sueno, and adding: "You will observe from these Proclamations that these islands are considered as under the jurisdiction of this Government."¹⁷³

The second official Colombian protest followed the Presidential Proclamations of February 25, and June 5, 1919, declaring that, pursuant to the Act of 1856, Serrana, Quito Sueno and Roncador "are now under the sole and exclusive jurisdiction of the United States and out of the jurisdiction

170. Mr. Alexander to Redfield, Sec. of Com., Mar. 8, 1917 (811.0141/20); see also Philip, U.S. Min. to Col. to Sec. State, Oct. 25, 1919, and Jan. 10, 1920 (811.822/71, 83)

171. Phillips, Ass. Sec. to Alexander, Apr. 21, 1917 (811.0141/20)

172. Philip, U.S. Min. to Col., to Sec. of State, Feb. 7, 1920 (811.822/84).

173. A.A. Adee, 2nd Ass. Sec., to Edward Mason, May 5, 1920 (811.822/83)

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jurisdiction of any other government", and reserving the Keys on these banks for light-house purposes.¹⁷⁴ The origin of these Proclamations is significant. On January 29, 1919, the State Department wrote the Commerce Department, in answer to an inquiry about the erection of lights on Courtown and Old Providence Islands, that the sovereignty over those islands was then in dispute between Nicaragua and Colombia, and that the State Department did not wish to take any action until the dispute was settled.¹⁷⁵ A request for haste from the Commerce Department,¹⁷⁶ led to a cable to the American Minister to Colombia asking him to get permission from the Colombian Government for the United States to erect lights on Courtown and Old Providence, and stating: "You will also inform the Government of Colombia that this request does not signify the taking of any attitude on the part of the United States Government toward the various claims concerning the sovereignty of the islands in question."¹⁷⁷ In May, 1919, Colombia finally sent a refusal to grant this permission, declaring that Colombia would
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174. Supra, Note, 155.

175. Phillips. Ass. Sec. to Sec. of Com., Jan. 29, 1919 (811.822/32).

176. Redfield, Sec. of Com. to Phillips. Feb. 7, 1919 (811.822/39)

177. Poak, Acting Sec., to Philip, U.S. Min. to Col., Feb. 12, 1919, (Cable, 811.822/38a).

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erect the lights.¹⁷⁸ The United States had little faith that Colombia would do so, and as a result the Proclamations were issued, and the towers were erected on Roncador, Quito Sueno, and Serrana, and were in operation by June, 1919.¹⁷⁹

[REDACTED]

[REDACTED]

[REDACTED]; noted that the United States had not requested permission from Colombia to erect these lights; called attention to the grounds for the Colombian claim, as stated in 1893, and to the alleged explicit recognition of Colombian sovereignty by the United States in seconding Sweden's request that Colombia erect a light on Roncador.¹⁸⁰ The State Department agreed to discuss the question of ownership in a friendly manner.¹⁸¹ On June 17, 1920, Colombia again stated the grounds for its claim, listing: the United States recognition of Colombian sovereignty in 1895; the fact that many maps, American made, show

178. Phillips, Acting Sec., to Redfield, Sec. of Com. May 28, 1919 (811.822/54).

179. Supra, Note 155.

180. Hernando y Caro, Col. Min. of Foreign Affairs, to Phillip, U.S. Min. to Col., Sept. 13, 1919; Enclosure, Philip to Sec. of State, Sept. 17, 1919 (811.822/64).

181. Philip to Sec. of State, Nov. 4, 1919 (811.822/75).

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show that the keys were within the jurisdiction of New Granada; that certain maps show that the existence of guano on these islands was known long before Jennett's discovery; and the guano concession to Mr. Uscategui, granted by Colombia in 1915.¹⁸²

In 1926, Colombia again asserted jurisdiction over the islands by arresting British fishermen off Quito Sueno, charging them with illegal fishing in Colombian waters. The British Ambassador wrote the United States Secretary of State that, as Quito Sueno was an almost totally submerged and uninhabited rock forty miles from Old Providence, "His Majesty's Government are disposed to hold that a formation of this nature can not be regarded as subject to the sovereignty of Colombia"; and inquired whether the United States had asked permission of Colombia to erect a light on this rock, and "whether the United States Government in fact recognize Colombian sovereignty over Quito Sueno Bank."¹⁸³ The United States replied it had never asked such permission, and enclosed a copy of the Proclamation of February 15, 1919 "reaffirming" the position "that these islands and banks are under the sole and exclusive jurisdiction of the United States and out of the jurisdiction of

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182. Conversation, Col. Min. to U.S. and Dr. Rowe (LA), June 17, 1920 (811.822/88).

183. Sir Esme Howard, Brit. Amb. to U.S., to Kellogg, Sec. of State, June 4, 1926 (811.822/106).

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of any other government."¹⁸⁴ The British note to Colombia stated: that because of the distance of the bank from the Colombian mainland, the water in the vicinity of the island was open water where any one could fish; that the allegation of Colombian sovereignty could not be sustained since the United States, because of its lighthouse, also claimed sovereignty; and that Great Britain preferred to wait until this question was settled, for the moment merely claiming that, since it was open water, British fishermen must not be interfered with.¹⁸⁵ The Colombian claim of sovereignty was then reiterated by the Colombian Minister in a conversation with a member of the State Department, August 23, 1926.¹⁸⁶

The question was temporarily settled by an exchange of notes between the United States and Colombia, April 10, 1928. Before this agreement was made, the State Department was informed by the Commerce Department that the latter had no knowledge

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184. Kellogg, Sec. of State, to Sir Esme Howard, Brit. Amb. to U.S., June 12, 1926 (811.822/106).
185. Conversation, a member of the U.S. State Department and Mr. Balfour, of the British Embassy, Aug. 2, 1926 (811.822/108).
186. Conversation, Dr. Olaya, Col. Min. to U.S. and Mr. Stahler, LA, Aug. 23, 1926 (811.822/108).

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knowledge of any statute which would "make it unlawful for Colombian fishermen to take fish in the waters appertaining to the keys, and the Department has no objection to such fishing in these waters."¹⁸⁷ The agreement left the question of sovereignty over Serrana, Quito Sueno, and Roncador undecided, and provided:

"whereas both Governments have claimed the right of sovereignty over these islands; and whereas the interest of the United States lies primarily in the maintenance of aids to navigation; and whereas Colombia shares the desire that such aids shall be maintained without interruption and furthermore is especially interested that her nationals shall uninterruptedly possess the opportunity of fishing in the waters adjacent to those Islands, the status quo in respect to the matter shall be maintained and the Government of Columbia will refrain from objecting to the maintenance by the United States of the services which it has established or may establish for aids to navigation, and the Government of the United States will refrain from objecting to the utilization, by Colombian nationals, of the waters appurtenant to the Islands for the purpose of fishing."¹⁸⁸

Since that treaty the United States has refrained from granting any license to American citizens to remove guano from the coast.¹⁸⁹ Although it was reported in

1932

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187. MacCracken, Acting Sec. of Com., to Sec. of State, Oct. 15, 1927 (811.0141 019/23).
188. Treaty of April 10, 1928, U.S. and Colombia, Treaty Series No. 760 1/2; See also F. White, Ass. Sec., to David Harrison, June 30, 1932. (811.0141 019/84); Stimson, Sec. of State, to Paul Squire, U.S. Consulate Kingston, Jamaica, June 11, 1932 (Cable, 811.0141 019/79).
189. White to Harrison, supra, Note 188.

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1932 that the Colombian Consul in Jamaica had threatened that an American ship leaving Jamaica to load guano on Serrana and Roncador would be seized by Colombian coast guards;¹⁹⁰ and that the consul had granted permission to a Colombian citizen to take guano off Serrana, the Colombian Minister to the United States agreed with the State Department that no permits to remove guano should be granted by either country until the question of sovereignty was finally settled.¹⁹¹

190. Cournoyer, U.S. Vice-Consul at Kingston, Jamaica, to Stimson, Sec. of State, April 29, 1932 (811.0141C19/69).

191. Conversation, Dr. Lozano, Col. Min. to U.S. and James Rogers, Assn't Sec., June 21, 1932 (811.0141C19/85).

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d. The Claim of Honduras.

The claim of Honduras to the islands of Roncador and Quito Sueno was not advanced until 1928, after the publication of the agreement of 1928 between Colombia and Nicaragua. In a note of December 24, 1928, to the United States Secretary of State, Honduras asserted that it had documents "proving its complete dominion" over Roncador and Quito Sueno, and enclosed a copy of a note to the Nicaraguan Minister of Foreign Affairs to the effect that the Government of Honduras was ready to defend its rights to Roncador and Quito Sueno, "making immediately its respectful but firm protest in the carrying on of a contest which directly injures the territorial integrity of Honduras."¹⁹² A similar protest was presented to Colombia, which categorically refused to entertain the claim.¹⁹³ The United States replied by quoting the Proclamation of Secretary Fish of November 30, 1869, relating to Jennett's interest in Roncador, the President's Proclamation of June 5, 1919 (Roncador); and the Department's approval of Jennett's occupation of Quito Sueno, November 26, 1869, its

inclusion

192. Izaguirre, Honduran Chargé ad interim at Wash., to Kellogg, Sec. of State, Dec. 4, 1928 (translation, 811.0141C19/44).

193. Cafferey, U.S. Min. to Col. to Sec. of State, Oct. 2, 1929. Enclosure, (811.0141C19/54).

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inclusion in the treasury list of 1871, and the Proclamation of February 25, 1919 (Quito Sueno); and concluded: "From the foregoing it will be evident that this Government has already regarded Quito Sueno Banks and Roncador Cay - since their discovery by Jennett - as being under the sovereignty and jurisdiction of the United States and it can not, therefore, admit any claim of a foreign nation to sovereignty over these islands."¹⁹⁴ Copies of this note were sent to the American Ministers at Nicaragua and Colombia.¹⁹⁵

194. Kellogg, Sec. of State, to Izaguirre, Honduran Chargé at Wash., Dec. 26, 1928 (811.0141 C19/46).

195. See 811.0141 C19/47, 48, 49.

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V. History of Serrana

a. Geography

Serrana Bank is a large tongue-shaped bank, steep on all sides, and surrounded by an almost solid barrier-reef except on the west and southwest. There are three low islands on the bank. One, North Key (or Cay) at latitude $14^{\circ} 17'$ N., longitude $80^{\circ} 24'$ W., at the northwest end of the reef, is about 300 by 150 yards square. It is composed of sand, shells and driftwood, and has bushes on it about five feet high. Midway between North and Southwest Keys are the Northwest Rocks, two patches of rock and sand 1800 yards apart and two feet high. Southwest Key, the largest of all the islands on these four banks, is about 1000 by 3000 yards square and is thirty-two feet high. It is made up of sand, grass, brushwood and broken coral; it has or had one cocconut tree on its summit; and fresh water can be obtained from wells. The only landing is on the north side, but temporary anchorage may be had one-half mile northwest of the Key. The United States light is on this Key. South Keys are four in number: Narrow Key, about 600 yards long, composed of broken coral; South and Little Key ($14^{\circ} 21'$ N., $80^{\circ} 15'$ W.), made up of sand and grass about three feet high; and East Key, similar to Little Key. About one-half mile to the
northeast

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northeast is a cluster of rocks above water. Small craft only can anchor in the lagoon in this bank.¹⁹⁶ The Superintendent of Lighthouses in 1920, reported that the islands were covered with bushes to a height of six feet and that there was some guano in certain places on the islands.¹⁹⁷

Serrana Bank is in the center of the group under discussion, being about 60 miles north of Roncador, 60 miles east of Quito Sueno, and 75 miles south of Serranilla. It is approximately midway between Serranilla, the farthest north of the banks, and Old Providence, being about 75 miles northeast of the latter. The nearest mainland, the Nicaraguan coast, is over 200 miles west of Serrana.

196. Douglas, op. cit. supra, Note 155, p. 55;
Central American Pilot, Supra, Note 155, pp. 230-232.

197. Report of Trott, Supra, Note, 120.

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b. The Claim of the United States

J. W. Jennett is also the "discoverer" of guano on Serrana ~~Keys~~. In a declaration of June 30, 1866, he states; that he arrived at Serrana in the schooner PETREL on June 26, 1866 and lay under Booby ~~Key~~ three days, "this Island having been previously discovered by me to have a deposit of guano on it in the year of 1857"; and that he took on board fresh water, firewood and about a ton of the best guano, "which does not appear to contain any Ammonia, but Phosphate of lime, and not much Carbonate".¹⁹⁸ In the assignment made by Jennett and John Cobb to Moro Phillips, February 15, 1868, it is alleged: that Jennett and Cobb discovered guano on Serrana; in September, 1867, they took "peaceful possession of the said island in the name of the United States of America, and occupied (and erected a building upon) the said island at the time last mentioned, and dug and brought away a cargo of guano from the said island to the port of New York".¹⁹⁹ Jennett's declaration of discovery of the islands in April, 1867, was filed with the State Department, February 15, 1868, and contains the usual allegations.²⁰⁰

In

198. Jennett's Declaration, June 30, 1866, 5 MS Miscl. Let. re Guano.

199. 5 MS. Miscl. Let. re Guano.

200. Enclosure, Peter Clark to Wm. Seward, Sec. State, June 26, 1868, 5 MS. Miscl. Let. re Guano.

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In a declaration, dated May 8, 1868, Jennett listed ^{eleven} islands on Serrana Bank, (though there are but six) as follows:

North Keys	(2)	14° 25' N.	80° 20' W.
N.E. "	(1)	14 24	80 14
Triangle Keys	(3)	14 20	80 05
Avelor	(1)	14 18	80 08
Sand	(1)	14 16	80 15
Booby	(1)	14 14	80 30
North Rocks		14 20	80 20
Serrana		14 15	80 24

He requested that the title to all but Serrana Key, which had been sold, be conferred on him.²⁰¹ In a supplementary declaration of July 28, 1868, Jennett alleged: that he chartered the schooner MARY MANKIN in September, 1867, to take laborers to Serrana Bank; that he stayed on the islands from September 27 to the latter part of November when he left with a cargo of guano, six laborers remaining in possession and occupation of the island until his return.²⁰² The nature of Jennett's occupation of Serrana is further revealed in another letter of Jennett's in which he says he discovered the islands in 1857 and occupied them from 1860 to

201. Jennett's Declaration, May 8, 1868, 5 MS. Misc. Let. re Guano.

202. Jennett's Declaration, July 28, 1868, 5 MS. Misc. Let. re Guano.

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to 1861 until the Civil War broke out, when he abandoned them until 1867 when he fitted out a vessel and took charge of them again. He adds: "my object in putting them under the American flag is to sell them"; and that he would sell them to the Government, as they are adapted for a coal depot because of the "splendid harbor", and good fresh water and firewood, but that the Government is too "long-winded".²⁰³ Jennett's declarations are supported by a certificate of John Cobb, Master of the MARY MANKIN, in which he says that in October, and November of 1867, 260, 270 tons of guano were removed from the islands, (204) and by the testimony of P. S. Borden, Master of the brig HENRY LAWRENCE, and of Philip Stanhope, also of the HENRY LAWRENCE.²⁰⁵

Before the United States recognized Jennett's claim to Serrana Keys, there was considerable correspondence on the subject. In July, 1868, the Secretary of State, Seward, acknowledged the receipt of Jennett's first papers relating to his discovery, and said:

"This

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203. J. W. Jennett to G. L. Walker, Nov. 3, 1868, 5 MS. Miscl. Let. re Guano.
204. John Cobb's Declaration, Mar. 16, 1868, 5 MS. Miscl. Let. re Guano.
205. Declarations of Borden, June 8, 1868, and Stanhope, June 10, 1868, 5 MS. Miscl. Let. re Guano.

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"This acknowledgment is not to be construed as a recognition of the validity of the claim..... It has been held by the Attorney General that actual occupation of the island where guano has been discovered is an express condition of the act of Congress which is not complied with by a mere symbolical possession or occupancy, as by the planting of a flag, the erection of a tablet, an inscription or other like acts. From the position of the islands described, it is quite probably that they may be claimed to be within the lawful jurisdiction of some of the governments holding the nearest mainland or adjacent islands. Mr. Jennett will be at liberty to file any further evidence in respect to the distance of the islands from the mainland and other islands actually occupied, as may be proper for the consideration of such claim in case it should be made." 206

This led to Jennett's supplemental memorial, and his testimony that he left men on the islands.²⁰⁷ Seward then asked for an analysis of the guano on the islands, and an approximate statement of the amount and value of this guano, and fixed the penalty of the bond required at \$50,000.²⁰⁸ Jennett complied with these requirements,²⁰⁹ but still his claim was not recognized because the Minister of Nicaragua and Honduras protested against his occupation of the islands, on the ground that they were within the jurisdiction

206. Seward, Sec. of State, to Peter Clark, Att'y. for Jennett, July 1, 1868, 79 MS. Dom. Let. 43.

207. Supra, Note 202; Jennett to Seward, Sec. of State, July 23, 1868, 5 MS. Miscl. Let. re Guano.

208. Seward, Sec. of State, to Jennett, July 31, 1868, 79 MS. Dom. Let. 148.

209. 5 MS. Miscl. Let. re Guano.

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jurisdiction of Honduras. The Secretary of State said: "No certificate can be issued to you by this Department until the merits of that claim of the Republic of Honduras are settled."²¹⁰ Jennett denied the validity of the claim of Honduras or Nicaragua, saying that no citizens of any other government had occupied the islands since 1857, and stating that he was at that moment in possession of and occupying those islands: "I have my employees on them now, and have been living on them myself seven different times since 1857."²¹¹ Secretary Seward replied that the Nicaraguan protests - "will have such effect as the facts, which may be proved in support of it, will warrant and no more. Your right will depend upon the fact, if it shall eventually be established, that the banks and cays in question are not within the lawful jurisdiction of any foreign government. The protest of the Minister renders it proper for this government to suspend an immediate recognition of your claim but will not prejudice its future examination."²¹² Finally, the State Department

sent

210. Seward, Sec. of State, to Jennett, Sept. 14, 1868, 79 MS. Dom. Let. 312. The Secretary was evidently mistaken in saying that Honduras claimed Serrana. The correspondence (see *infra*) shows it was Nicaragua.
211. Jennett to Seward, Sec. of State, Oct. 3, 1868, 5 MS. Misc. Let. re Guano.
212. Seward, Sec. of State, to Jennett, Oct. 8, 1868, 79 MS. Dom. Let. 394.

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sent Jennett certified copies of the papers he had filed with the Department.²¹³ The certificate, dated December 11, 1868, and signed by Seward, stated: that the enclosed copies of papers relating to Jennett's claim are true copies; and that "this certificate is not to be construed as implying any determination of this Government against a right, asserted in behalf of the Republic of Nicaragua to extend its jurisdiction over these islands or some of them."²¹⁴ The meaning of this phrase is clarified by a reference to the opinion of the Examiner of Claims on this subject in which he advises the Secretary that: "the law does not provide for anything like a formal acknowledgment of the validity of Mr. Jennett's claim which is always open to examination."²¹⁵

The State Department subsequently confirmed this qualified approval of Jennett's interest in Serrana by refusing to entertain the Nicaraguan claim,²¹⁶ and by stating, in a letter to Mrs. Jennett, that Jennett, and
his

214. Copy of Certificate, Dec. 11, 1868, signed by Seward, Sec. of State, 5 MS. Misc. Let. re Guano.

215. II Opinions and Reports of the Examiner of Claims, 589.

216. See Infra, Note 228.

213. Seward to Sec. of State to Jennett, Dec. 11, 1869; 79MS. Dom. Let. 592.

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his legitimate assignees, "seems to be entitled to the protection of the United States against the interference of any foreign government".^{216A} Serrana was included in the list of islands in the second order of the Secretary of the Treasury to the Collectors of Customs (February 12, 1869) directing the latter to enforce the coasting trade provisions of the Guano Act. This list was first submitted to the State Department for corrections and approval.²¹⁷ The later lists also included Serrana, as an island "appertaining to the United States!"²¹⁸

No specific references to removal of guano from Serrana have been found, other than Jennett's. Although his statements are not reliable, he may really have taken guano off Serrana in 1867, and possibly at other times. Various assignments of guano of the Serrana islands were made from time to time, the earliest being dated May, 1869, and the latest January, 1895.²¹⁹ It may be that during the intervening years some guano was actually taken off the islands.

On

216A. Hamilton Fish, Sec'y. of State, to Mrs. Henrietta Stevens, June 21, 1869, 81 MS. Dom. Let. 289; see also Wm. M. Evarts, Sec. of State, to Mr. Russell, Apr. 5, 1878, 122 MS. Dom. Let. 384.

217. McCulloch, Sec'y. of Treas. to Seward, Sec'y. of State, Jan. 7, 1869, 6 Misc. Let. G.

218. I Moore's Digest, 567.

219. See Appendix.

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On the other hand, the assignments may have been entirely for speculative purposes, and not for the bona fide exploitation of the islands. At any rate, the fact that assignments were made shows that the individuals concerned did not regard the islands as abandoned.

It is clear from the testimony of disinterested observers that the islands have been frequented by fishermen. The Central American Pilot (1927) says that: "In the turtle season, March to August, the bank is visited by fishing craft from Jamaica and neighboring islands and their masts and temporary huts may be seen at this period."²²⁰ In 1880, the superintendent of the lighthouse reported that the island was uninhabited, but that there was one fisherman's hut at the north end of the Cay.²²¹

By the President's Proclamation of February 25, 1919, it was declared that, pursuant to the guano act of 1856, Serrana Bank was "now under the sole and exclusive jurisdiction of the United States and out of the jurisdiction of any other Government". In the same proclamation it was reserved for lighthouse purposes. In June a lighthouse
was

220. Central American Pilot, Supra, Note 111, p. 230.

221. Report of Trott, Supra, Note 120.

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was erected on Southwest Cay.²²² There followed the Colombian protests, described above in connection with Roncador and Quito Sueno. For some time both Colombia and the United States referred to the light on Serranilla, but as there was no light on Serranilla at that time and there never has been, it is assumed that Serrana was meant.²²³ This controversy was temporarily adjusted by the exchange of notes between the United States and Colombia in April, 1928, described above.²²⁴

Subsequent to the building of the lighthouse, but before the Agreement of 1928, the United States manifested its control over the island in another fashion. In answer to a request from an American citizen in March, 1922, that he be permitted to remove birds' eggs from Serrana to sell them to Jamaicans,²²⁵ the State Department quoted the Proclamation of 1919; then referred to Article 5 of the Convention of August 16, 1916, between the United States and Great Britain, for the Protection of Migratory Birds, and
to

222. Supra, Note 155.

223. Supra, Note 155. Finally Serrana is referred to. Philip U.S. Min. to Col. to Sec. State, Oct. 15, 1919, (811.822/68).

224. Supra, Note 188.

225. Latham, U.S. consul at Kingston, Jamaica, to Sec. of State, Mar. 9, 1922 (811.0141/67)

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to the Act of Congress of July 3, 1918, passed to give this treaty effect; noted that the United States was protecting the same species of birds as those on Serrana along the Gulf Coast; and concluded that the United States was not disposed to favor the application for permission to take off eggs.²²⁶ The Department considered such a concession "would be an evasion of the Act of Congress of July 3, 1918".²²⁷

In 1932, it was said that the Colombian Consul at Kingston, Jamaica, had given someone permission to take eggs and manure off Serrana key.²²⁸ The United States, in a conversation with the Colombian Minister, stated that the Treaty of 1928 did not contemplate any use of the island by Colombia or Colombian nationals but only the use of the surrounding water for fishing purposes.²²⁹ A second request by an American citizen to take eggs from Serrana and Serranilla was denied by the United States in June, 1932, on the grounds that the applicant had apparently no interest in the islands under the Guano Act.²³⁰

226. Carr, Ass. Sec. to Latham, U.S. Consul at Kingston, Jamaica, May 26, 1922 (811.014/71).

227. Id., Jan. 16, 1923 (811.014/85).

228. C. E. Scott to Sec. of State, May 21, 1932 (811.0141019/74)

229. Memo. and note, Mr. Hackworth, June 14, 1932, (811.0141 019/81).

230. Mr. Hackworth, LE, to C. E. Scott, June 20, 1932.

c. The Claim of Nicaragua.

The State Department notified Nicaragua and Honduras of the American claim to discovery of guano on Serrana, and inquired whether either Government claimed jurisdiction over these islands.²³¹ Honduras replied that the islands were so far south that they must be in Nicaraguan territory.²³² Nicaragua claimed the islands by virtue of right of discovery, and proximity to the Nicaraguan coast. The Examiner of Claims rejected this claim because: the island was 160 miles from the nearest point in Nicaragua, and 75 miles from Old Providence; neither Nicaragua nor Spain had ever actually occupied the island; and, in fact, Nicaragua only alleged "priority of right to acquire title. This does not amount to actual or even constructive jurisdiction over the territory, and ought not to take it out of the category of unappropriated land open to the first-comer." He added that the distance from the mainland was too great to make it a part of Nicaraguan territory, especially as this small island could be no menace to Nicaraguan security, and concluded that Jennett should be given certified copies of

his

231. Seward, Sec. of State, to Senor Don Ignacio Gomez, Min. of Nic. and Honduras, Feb. 27, 1868, 2 MS. Notes to Nicaraguan Legation 4.

232. See Memo. by R. L. K. (LA), Dec. 18, 1928 (811.0141C19/45)

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XX

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his filed papers.²³³ (This was done, see Supra, V, b)

Secretary Seward's reply to the Nicaraguan Government was evidently based on this report of the Examiner, but it contained certain additional statements:

"It appears, that the reasons for the claim of jurisdiction by Nicaragua over that island, are that its name shows that it must have been discovered by Spaniards, that Nicaragua has inherited the rights which Spain acquired by that discovery, and that the vicinity of the island to the mainland of Nicaragua, also imparts or strengthens a right in the latter to jurisdiction over it.

"In reply, I regret to inform you that the reasons referred to are not deemed sufficient for the exclusion or disturbance of citizens of the United States who may visit the island for the purpose of removing guano therefrom. It is not proved or even asserted by Nicaragua that the island was ever occupied by Spain, by Nicaragua, or by any other power or by their subjects or citizens.

"The fact that it may be nearer to Nicaragua than to any other country or the possessions of any other country can not, it is conceded, impart to her any right of exclusive jurisdiction. The fact that it has never been inhabited by Nicaraguan citizens or taken possession of by the Government of that Republic or by any other power shows that it has been regarded derelict, and leaves it clear that the guano found thereon by citizens of the United States, may justly be taken away by them without violating any right or claim of any state, nation, individual possessor or claimant.

"Under the circumstances, this Government will conceive it to be its duty to protect

such

233. II Opinions and Reports of E. Peshine Smith, Examiner of Claims, Dec. 8, 1868, p. 586.

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such citizens, pursuant to the Act of Congress [of August 18, 1856] This act, however, as you will perceive, does not contemplate the permanent occupation of any territory upon which citizens of the United States may discover guano, consequently, the island of Serrana will not be fortified by this Government, nor will it in any way be occupied by the United States after the guano referred to shall have been removed by its discoverer." ²³⁴

Nicaragua appears to have made no reply to this note, and neither Nicaragua nor Honduras has made any other protest against the occupation of Serrana Keys by the United States. The treaty of 1928 between Nicaragua and Colombia relating to the legal status of islands in the vicinity of Serrana expressly excluded Serrana from its provisions because the sovereignty over Serrana was disputed by the United States and Colombia.²³⁵

234. Seward, Sec. of State, to Ignacio Gomez, Min. of Nic. Dec. 10, 1868, 2 MS. Notes to Nicaragua 9. (italics added).

235. Supra, Note 114.

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d. The Claim of Colombia.

The first protest of Colombia, in 1893, related specifically only to Roncador and Quito Sueno. Nevertheless, Serrana was then included in the islands said to form the Providence (or San Andres) Archipelago, alleged to have been discovered by Columbus.²³⁶ Although this is the only reference to Serrana in that statement, it might be considered sufficient at least to notify the United States that Colombia considered Serrana as Colombian territory.

No record has been found of any acts of occupation, or any assumption of jurisdiction by Colombia over Serrana until 1915. In that year the concession was granted by Colombia to Mr. Uscategui, a Colombian citizen, to remove guano from certain keys, including Southwest Key of Serrana Bank.²³⁷ As has been seen, the United States did not admit Colombia's right to make this concession.²³⁸

Colombia did protest against the erection of the light on Serrana in 1919. The protests, however, and the answers of the United States referred at first to Serranilla,

no

236. Supra, Note 158.

237. Supra, Note 170.

238. Supra, Note 171.

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no doubt meaning Serrana, because there was no light on Serranilla. The error was finally perceived, although no mention is made of it,²³⁹ and Serrana, not Serranilla, was included in the Treaty of April 10, 1928, between the United States and Colombia.²⁴⁰ Since then, Serrana has been included in the subsequent informal conversations and negotiations.

239. *Supra*, Note 223.

240. *Supra*, Note 188.

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VI The History of SERRANILLA.

a. Geography

Serranilla, at latitude $15^{\circ} 50'$ N, longitude $79^{\circ} 50'$ W, is ^{a coral bank,} roughly circular in shape and about 24 by 20 miles square. There are three small keys composed of sand and coral on the southeast side of the bank. East Key (or Cay) is about 600 by 100 yards in size, with bushes seven feet high. Middle Key, 500 yards across, is similarly covered with bushes. 600 yards to the west is a dry ridge of rocks. Beacon Key, latitude $15^{\circ} 48'$ N, longitude $79^{\circ} 51'$ W, is a half mile long, composed of sand and coral, with samphire grass rising eight feet above the sea. There is a beacon of coral stones twenty-five feet high on the western end of the key erected in 1835. Brakish water, containing much lime, may be obtained from wells on Beacon Key. There is good anchorage about a mile to the northwest.²⁴¹

Serranilla is the farthest north, and the farthest west of the four banks. It is 75 miles north of Serrana, the nearest bank, and about 80 miles southwest of Pedro Bank, a British possession lying south of Jamaica. Old Providence is over 150 miles southwest of Serranilla. The nearest point on the mainland, Cape Gracias á Dios, is about 220 miles to the west of Serranilla, and Jamaica is roughly the same distance to the northeast.^{242.}

241. Central American Pilot, supra, Note 111, pp. 227-228.

242. Ibid, Map, frontispiece.

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b. The Claim of the United States

On May 24, 1869, J. W. Jennett filed a declaration of discovery of guano, December 18, 1866, on Serranilla Keys. The declaration contains the usual allegations, an estimate of the value of the amount of guano at 100,000 tons, and a request that the islands be considered as appertaining to the United States, under the Guano Act.²⁴³ Jennett's allegations were substantiated by certificates of Henry Stevens, first mate on the PETREL in 1869 and George Nelson, second mate.²⁴⁴ In a second notice of discovery, June 23, 1877, Jennett refers to his first discovery in December 18, 1866, his acts of taking possession, and his notice of discovery in 1869, and adds:

"that I visited said Islands, Rocks or Keys in May 20, 1875, and found said Islands and Keys wholly unoccupied by any human being, that I remained in quiet peaceable possession, and found them the same, and undisturbed since my first discovery and occupation in 1866, and that said deposits had not been disturbed or interfered with during that time, or since".²⁴⁵

There was a second "discovery" of Serranilla, by Pascal Quinan. He filed a certificate with the State Department

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243. Jennett's Declaration, May 24, 1869, 6 MS. Misc. Let. re Guano 1962. In an earlier statement, dated June 30, 1866, Jennett said Serranilla Island was very small and low, with some guano. - 5 MS. Misc. Let. re Guano.
244. Certificates of Stevens, and Nelson, May 25, 1869, 6 MS. Misc. Let. re Guano 1964, 1965.
245. Jennett's Declaration, June 23, 1877, 6 MS. Misc. Let. re Guano 1981. Jennett made and filed with the Department, a map of Serranilla Island, which looks remarkably like all the other islands of which Jennett drew pictures. - 6 MS. Misc. Let. re Guano 1970, 1971.

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Department on October 25, 1882, which read in part as follows:

"I did, in January A. D. 1879, discover a deposit of guano on certain keys, I caused these keys to be again visited in 1881 and again in July, 1882."

He described the keys; alleged that they were totally unoccupied at the time of the said discovery of guano, and that he raised the American flag over one of them and took possession of the whole in the name of the United States; that the keys contain about 40,000 tons of guano, valued at \$40,000; and requested they be considered as appertaining to the United States-"upon my furnishing further satisfactory evidence that said keys are not in the possession or occupancy of any other government or of any other persons not in my interest or service; and upon my occupying more fully, and shipping the guano from said islands for the benefit and behoof of the citizens of the United States".²⁴⁶

The action taken by the State Department with regard to these conflicting claims of discovery is not clear. Though Quinan filed no bond, he wrote the Secretary of State acknowledging the receipt of authenticated copies of certain papers relating to his discovery of guano deposits

on

246. Pascal Quinan's Declaration, Oct. 25, 1882, enclosure in Quinan to Frelinghysen, Sec. of State, 6 MS. Misc. Let. re Guano 2022.

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on Serranilla no proclamation seems to have accompanied these papers, however.²⁴⁷ ^(Serranilla) Whose discovery preceded Quinan's, does not appear to have received any certificate or proclamation, such as he received in connection with the other islands. He filed no bond for Serranilla. In 1877, the State Department replied unequivocally to an inquiry regarding Serranilla as follows: "The United States lays no claim to jurisdiction over the islands in question."^{247A} However, William Van Derlip, an assignee claiming under Jennett, did file a bond on September 8, 1879, and again on September 13, 1880, and the Examiner of Claims advised that the Department of State recognize his claim.²⁴⁸ Although no certificate or document issued to Van Derlip has been found, some recognition was evidently accorded to him, as the State Department notified Mr. Rastus Ransom, another of Jennett's assignees, that: "the Department holds that the title to the guano deposits on these keys vested in Mr. Van Derlip", but added that

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247. Quinan to Frelinghysen, Sec. of State, Jan. 10, 1883, 6 MS. Misl. Let re Guano, between pp. 2004-2005.
- 247A. F. W. Seward, Ass. Sec. to H. W. Heironmis and W. Fensley, Nov. 26, 1877, 120 MS. Dom. Let. 572.
248. O'Connor, Opinions and Reports of Examiner of Claims, Opinion of Nov. 12, 1879.

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that the courts were, of course, open to other claimants.²⁴⁹ Nevertheless, in view of this letter some recognition must have been accorded Van Derlip. No proclamation appears to have been issued to him, but this is explained by the fact that this practice was discontinued after about 1869.²⁵⁰

There has been no formal act, other than this recognition of Van Derlip's interest, which would constitute notification of the assumption of jurisdiction over Serranilla by the United States. As has been said, no proclamation was issued to the discoverer or his assignees. Serranilla was not included in the Treasury list of 1871, since the island was not bonded until 1879.^{250A} Nor has the Government ever issued formal proclamation, such as the proclamations of 1919 regarding Roncador, Quito Sueno, and Serrana, announcing that Serranilla was under the sole and exclusive jurisdiction
of

249. Frelinghuysen, Sec. of State, to Rastus S. Ransom, Dec. 26, 1884, 153 MS. Dom. Let 511. See Also Porter, Ass. Sec. to Mr. Throldike Saunders, April 2, 1885, 154 MS. Dom. Let. 658.

250. I Moore's Digest 561-562.

250A. The lists of bonded islands, transmitted from the Treasury Department to the State Department in 1890 and 1893, Serranilla was included. Garrison, Acting Comptroller, to A. A. Adey, 2nd Ass. Sec., July 3, 1890, 6 MS. Misc. Let. re Guano 2330, 2331, 2335.

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of the United States. No light has been erected on Serranilla, nor has any use been made of the island, other than the extraction of guano by private citizens. It is, moreover, impossible to say how much or when this guano was removed, though it is probable some was taken off about 1880-1885.²⁵¹

251. Thorndike Saunders to Rastus Ransom, May 27, 1884, (6 MS. Misc. Let. re Guano 2038) Quinan stated in 1884 that he had shipped guano from Serranilla, (see copy of Deed, Pascal Quinan to Philip Snowden. Oct. 13, 1884. 6 MS. Misc. Let. re Guano 2032). In 1890, Jennett states he had never worked Serranilla Islands, except to remove samples, (Deed from J. W. Jennett to Arthur Brach, Nov. 10, 1890, 6 MS. Misc. Let. re. Guano 2043).

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c. The Claim of Colombia

Colombia is the only government other than the United States that appears to have laid any claim to sovereignty over Serranilla, and that claim has never been presented through diplomatic channels to the United States. Its existence is only inferred from certain records of the State Department which indicate that Colombia regards Serranilla as a part of the Providence Archipelago, and as under Colombian jurisdiction.

Serranilla was never mentioned in the exposition of Colombia's claim in 1893. The first, and practically the only record available of any act of jurisdiction by Colombia over Serranilla is the concession to Mr. Uscategui, in 1915, to remove Guano from certain islands, including Serranilla.³⁵² The United States and Colombia did not correspond on this subject, and it was not until 1919, after the erection of lights on the other three banks, that Serranilla was mentioned in the diplomatic negotiations between the two governments. Even then, as has been seen, it was by mistake, Serrana and not Serranilla being what each side had in mind. Serranilla was dropped from the

correspondence

352. Supra, Note 170

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correspondence when this mistake was discovered, though no
action was made of the error.²⁵³ Furthermore, Serranilla
was not included in the treaties of 1923 between Colombia
and Nicaragua, and Colombia and the United States, and has
not figured in any of the subsequent negotiations.

In spite of the paucity of evidence in support of
Colombia's claim, the concession to Mr. Uscategui is alone
sufficient to show it does exist. The lack of evidence in
the State Department files of any other sovereign rights
exercised by Colombia over Serranilla may be due to the
fact that Colombia has never been called upon to produce
such evidence. Nevertheless, it is clear that Colombia
never has protested against the United States occupation of
Serranilla, although a formal protest would almost certainly
be made if an occasion should arise.

253. Supra, Note 223.

VII Analysis of The Claims of Foreign States.a. The Claim of Colombia to Roncador and Quito Sueno.

The Colombian claim to Roncador and Quito Sueno is based primarily upon discovery of the islands by Spain, Colombia's predecessors in title.²⁵⁴ This has been discussed above, and the conclusion was reached while the islands were not discovered by Columbus; it is probable that since the discovery was made by Spanish navigators.²⁵⁵ Nevertheless, this has not been proved, and unless the actual discoverer can be determined, it may be doubted that there is a sufficient foundation for a territorial claim based on discovery. In this connection, the award in the Clipperton Island case (France and Mexico) is significant:

"According to the actual state of our knowledge, it has not been proved that this island,..... had been actually discovered by the Spanish navigators. That they might have [discovered it].....is a conjecture more or less probable, but from which one cannot draw any decisive argument."^{255A}

Second, it is claimed that by virtue of the Royal Decree of 1803, the Province of New Granada obtained the control of the islands which, therefore, passed to

Colombia

254. Supra, IV C.

255. Supra, III a.

255A. Award of Victor Emmanuel III, King of Italy, in the Clipperton Island Case, Jan. 28, 1931, between France and Mexico,- Vol. 26 A.J.I.L.390, 392-3 (April, 1932)

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Colombia after the revolution, and not to any other Spanish colony.²⁵⁶ The order related to "The islands of San Andres,and....that part of the Mosquito Coast extending from Cape Gracias á Dios inclusive as far as the River Chagrés!"²⁵⁷ There is nothing to show that this order related to the islands in question, except the allegation that a map of the Providence Archipelago, made pursuant to this Royal Order, included Roncador and Quito Sueno. This map has not been found, but if it does include these islands, and if it is an official map, it is some evidence that Spain did claim them, as part of the San Andres Archipelago, at that time. Still there is no evidence of any occupation, use, or other act of jurisdiction and control relating to these particular islands some 75 miles away from Old Providence. Furthermore, it is clear that the Decree did not establish Colombian sovereignty over all the territory it comprised, since the Nicaraguan-Colombian Treaty of 1928 recognizes the sovereignty of Nicaragua over the Mosquito Coast and the adjoining Keys.²⁵⁸

Both

256. Supra, III c.

257. Supra, Note 107.

258. Supra, Note 114. 1 yr. A. A. Adey noted (Mar. 9, 1896) that Colombia only pressed this claim to the Mosquito Coast in the hope of gain in case a canal were built across Nicaragua. (Memo attached to McKinney, U.S. Min. to Col. to Olney, Sec. of State, Feb. 12, 1896, 53 MS. Colombia; No. 157.)

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Both the allegations of Spanish discovery and of Colombian succession under the Royal Order of 1803, depend largely upon the theory of territorial contiguity. Old Providence, the nearest Colombian territory, is seventy-five miles from Roncador and forty from Quito Sueno. It is, moreover, a volcanic island, very fertile and suitable for cultivation and habitation,²⁵⁹ while Roncador is a barren key of sand and coral, and Quito Sueno nothing but coral rocks.²⁶⁰ The islands are no more part of one geological formation than are Cuba and San Domingo, or Old Providence and the Isthmus. The Mosquito ~~Keys~~ are about the same distance from Old Providence as Serrana and Roncador, and are admittedly Nicaraguan territory. Pedro and Serrana Banks are about equidistant from Serranilla, but the islands on Pedro Bank belong to Great Britain.²⁶¹ Whether or not certain islands are part of an archipelago is a question which cannot be determined a priori, merely by looking at their position on the map. Especially is this true when the islands in dispute are small, barren,

and

259. Central Am. Pilot, supra, Note 111, pp. 234-235. San Andres is similar in character to Old Providence. Ibid pp. 239-241.

260. Supra, Note 115.

261. I 1917 Solicitors Opinions 584, Mr. Hackworth, Apr. 9, 1917.

and of a different character and not suitable to the same uses as the nearest occupied island.

Third, it is alleged that Colombian possession of Roncador and Quito Sueno has been practically uninterrupted since 1803. This assertion is substantiated in part by the Colombian Decree of 1854, prohibiting the removal of guano from the Providence Archipelago. The Decree was said to be caused by the action of the American ship ST. LAWRENCE in 1853, in removing Guano from Roncador contrary to the orders of the Prefect of San Andres.²⁶² Although the records in Baltimore indicate only that the ST. LAWRENCE came from the Spanish Main,²⁶³ Colombia declares that on the basis of evidence collected from the natives in the vicinity, it had taken Guano from Roncador. There is, moreover, no record in the State Department of the Colombian Decree of 1854, and no notice from the American consuls or minister that it had been communicated to them. However, granting that the facts are as Colombia claims, the Decree does not appear to have been enforced in so far as the Guano islands are concerned; for there is no complaint of its violation by Colombia until 1890,²⁶⁴ and apparently no complaint

262. Supra, IV, c.

263. A. A. Adee, Acting Sec. to Don Rengifo, Col. Min. to U.S., Aug. 29, 1892, 7 MS. Notes to Colombia 203.; See also John W. Foster to Don Rengifo, Aug. 16, 1892, 7MS. Notes to Colombia 202.

264. It was not until 1892 that Colombia made any inquiry of the United States concerning the activities of the St. Lawrence. Evidently the inquiry made at that time was for the purpose of obtaining evidence for the exposition of Colombia's claim in 1893. see Supra, Note 263.

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complaint by American citizens of any Colombian interference.

The only other possessory act alleged by Colombia is the occupation of Roncador and Quito Sueno by fishermen from Old Providence and San Andres during the turtle breeding season (March to August). That the banks are now and have been for some time frequented by fishermen is clear. They have built huts and probably stayed on Roncador at intervals; but Quito Sueno Rock is evidently uninhabitable even by fishermen, and the only use they could make of that bank is to fish around and over it.²⁶⁵ It is impossible to determine from the evidence now available for how many years fishermen have gone to these banks.²⁶⁶ It is, moreover, difficult to believe that these fishermen were only Colombian citizens. In fact, there is evidence that at least some of them came from Jamaica and the Mosquito Keys.²⁶⁷ Colombia claimed an exclusive right in 1926, when the British fishermen were arrested off Quito Sueno, but this was not admitted by Great Britain, and it is doubtful that before then there was even an attempt to make the fishing right exclusive.

Even

265. Central American Pilot, Supra, Note 111.

266. Jennett never mentioned them, though he was sometimes at the islands during the fishing and turtle season. However, he would not have mentioned them if he had seen them for fear of injuring his claim; so no reliance can be placed on his silence.

267. Central American Pilot, Supra, Note 111, p. 230.

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Even if it be admitted Colombian citizens, from Providence and San Andres, have fished off Roncador and Quito Sueno from the early nineteenth century, still it is questionable what rights of territorial sovereignty this gives Colombia. In the Aves Island Case, involving a question of sovereignty over a barren island, similar to those under discussion, it was held that the Netherlands had acquired a right to fish off Aves Island, but that the Island belonged to Venezuela, the first Government to assert sovereignty over it. The language of the award in a case so similar to the instant case is significant:

"Considering that even though the fact seems to be proven that the inhabitants of, a possession of The Netherlands, go to fish for turtles and to gather eggs on the Island of Aves, this fact cannot serve as a basis for the right of sovereignty, because it only indicates a temporary and precarious occupation of the Island, fishing not being in this case an exclusive right, but the consequence of the abandonment of it by the inhabitants of the nearby regions, or by its legitimate owner.....considering finally, that the Government of the Netherlands has done nothing else except to utilize the fishing of the said island through its colonists, while the Government of Venezuela was the first to have armed forces there, and to exercise acts of sovereignty, thus confirming the dominion which it acquired by a general title derived from Spain.....the ownership of the island in question belongs to the Republic of Venezuela, the indemnization for the fishing which the Dutch subjects ceased to take advantage of remains as a charge upon the latter (Venezuela), if in fact it deprives them of the utilization thereof....." 268

It

268. Supra, Note 4 (italics added).

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It is also asserted that Colombia's silence from 1871, when Roncador and Quito Sueno were included by The Secretary of the Treasury in the list of islands "appertaining to the United States", to 1890, was because Colombia was ignorant of this list, no formal notice of an American claim to the islands having been sent out, and that in any event, prescription creates no title in international law.²⁶⁹ After the Berlin Declaration of 1885 requiring formal notice of claims to territory in Africa, notice was sometimes given of claims to other territory, but it does not appear to have been recognized as a rule of international law.²⁷⁰ In fact, the Berlin Declaration, which relates only to Africa, and binds only signatories and not the United States, shows that it was necessary to make a special rule to that effect. It is not notice, but notoriety that is important. In the Clipperton Island Case it was said:

"The regularity of the French occupation has..... been questioned because other Powers were not notified of it. But it must be observed that the precise obligation to make such notification is contained in Art. 34 of the Act of Berlin,which.....is not applicable to the present case. There is good reason to think that the notoriety given to the act, [of taking possession of Clipperton in the name of France] by whatever means, sufficed at the time....."^{270A}

Whether

269. *Supra*, IV c.

270. I Moore's Digest 267-268; Hyde, *Op. cit. Supra*, Note 11 pp. 171-173; Oppenheim, *op. cit. Supra*, Note 8, p. 386.

270A. Clipperton Island Case, *supra*, Note 265A.

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Whether prescription does or does not create a good title to territory under international law, Colombia's silence cannot but prejudice the Colombian claim because it indicates that either Colombia did not know before 1890 of the action of American citizens on the islands, or that Colombia knew but did not care. Moreover, as has been shown above, there is considerable authority for the proposition that prescription (uninterrupted, undisputed possession) may create a good title to territory in international law. Whether twenty years is long enough, however, to create such rights, is questionable. ²⁷¹

The fact that the United States did not reply to the Colombian protest of 1893, cannot be regarded as an admission of the strength of Colombia's position, since the reason for this silence was the fear of disturbing the pending arbitration of the boundary between Colombia and Costa Rica. ²⁷²

At

271. Supra, II a.

272. Memo. by A. A. Adee, Sept. 11, 1894, attached to Rengifo's note of Jan. 18, 1893. 8 MS. Colombia, Notes. There is, however, another memo attached to the same document, by a Mr. Richardson, giving it as his opinion that Colombia's claim was established and the islands should not be considered as appertaining to the United States. This opinion was not adopted by the Department, as is clear from Mr. Adee's memo, Supra.

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At this period, the United States Government appears confused about the exact nature of Roncador and Quito Sueno and of the claims to them.²⁷³ This is evident from the request that Colombia build a light on Roncador. The subsequent note declaring that this request had nothing to do with the question of sovereignty de jure, but only de facto, does not help the situation appreciably.²⁷⁴ However, this admission of Colombian sovereignty, if it is an admission, relates only to Roncador and has nothing to do with Quito Sueno. Moreover, its effect as an admission is counteracted by the Proclamation of 1919, asserting that the United States had already acquired sovereignty over Roncador by virtue of occupation under the Guano Act.

Colombia also alleged that Jennett was not even the discoverer of guano on the islands, since certain early maps noted its existence on them.²⁷⁵ The only indication of that nature on the maps examined for this report is that "Guana Reef" is sometimes given as an alias for Quito Sueno.²⁷⁶

Guano

273. See Bayard, Sec. of State, to Don Ricardo Becerra, Col. Min. to U.S., Nov. 14, 1885, 7 MS. Notes to Col. 54, 60. The interest of the United States in a possible Panama on Nicaragua Canal probably influenced both Colombia's and the United States' attitude regarding anything in the western Caribbean Sea during these years.

274. Supra, Note 169.

275. Supra, IV C.

276. Supra, Notes 87, 88, 89.

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Guano is the generic term for certain sea birds,²⁷⁷ and the name "Guana Reef" may have been derived from Guan rather than Guano, especially as it is applied to Quito Sueno, on which there could never have been much guano.²⁷⁸ In the second place, the fact that the existence of guano was known before Jennett's "discovery" makes no more difference than does the fact that the existence of the islands themselves was known. The word "discover" in the act means discover for the purposes of the act, and one is only a discoverer within the meaning of the act if one has complied with all the conditions therein prescribed. This is clear from the opinion of the Attorney General relating to a claim to Johnson's Island, in which it is said that once a Guano Island has been abandoned under the Act, it is again open to "discovery".²⁷⁹

The second presentation of the Colombian claim to Roncador and Quito Sueno in 1919 alleges no new grounds, except the so-called admission of the United States in
1894

277. Encyclopedia Britannica; Guan.

278. Supra, IVa.

279. Op. cit. Supra, Note 45.

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1894, (when Colombia was asked to build a light on Roncador) which has already been discussed.²⁸⁰ Colombia might claim, however, that previous to the erection of the lights in 1919, the United States had abandoned the islands, after the removal of Guano had virtually ceased in about 1900, and that they had been used and occupied by Colombian fishermen through whom Colombia had acquired title. This contention would presuppose that the United States had acquired sovereignty by virtue of Jennett's discovery and use of the islands, and it should be noted that once sovereignty has been acquired, it will not be readily presumed abandoned. The action by the State Department in 1894, and the last section of the Guano Act,²⁸¹ which might point to abandonment of the islands, are counteracted by the fact that as late as 1911 Guano may have been removed from Roncador, and by the subsequent behavior of the United States in erecting lights on both islands without requesting permission from any other Government. The action or non-action of its citizens could not prejudice the rights of the United States Government once sovereignty had been acquired. Moreover,

it

280. Supra, Note 2374.

281. Supra, Note 16.

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it is only a matter of twenty-five years at the most that the islands can be said to have been unused by either United States citizens or the United States Government. This can scarcely be called sufficient time to create a presumption of abandonment, but even if it did, in conjunction with the United States request of 1894 which might indicate an intent to abandon, the presumption is rebutted by the Proclamation of 1919 and the erection of lights. With regard to abandonment, the United States is in a stronger position than was France in the Clipperton Island Case, yet it was held ^{there} that:

"There is no reason to suppose that France has.... lost her right by derelicta, since she never had the animus of abandoning the island, and the fact that she has not exercised her authority there in a positive manner does not imply the forfeiture of an acquisition already definitely perfected.^{281A}

281A. Clipperton Island Case, Supra, Note 265A.

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D. The Claims of Colombia to Serrana and Serranilla

All the arguments given above to refute the Colombian claim to Roncador and Quito Sueno apply with even greater force to the claims to Serrana and Serranilla. With the exception of a passing reference to Serrana in 1893, these two islands were mentioned for the first time in the second presentation of Colombia's claim to Roncador and Quito Sueno, in 1919. As has been pointed out, Colombia then refers to Serranilla, undoubtedly meaning Serrana on which the light was built. Nevertheless, in view of the Colombian concession in 1915 to Mr. Uscategui, it may be assumed that Colombia intends to claim Serranilla also.²⁸²

Because of failure to protest the United States occupation and use of Serrana until 1919, about fifty years after the American occupation of the island had begun, Colombia's claim to this island is far weaker than the claim to Roncador and Quito Sueno. It is weaker yet with regard to Serranilla, since it was not included in the protests of 1919, except by mistake, and was not mentioned in the consequent treaty of 1928. Serranilla, moreover, is further away than any of the other islands, being 75 miles north of Serrana, and as far again from Old Providence.

282. *Supra*, Vd, VIc.

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c. The Claim of Honduras to Roncador and Quito Suena.

The claim of Honduras to Roncador and Quito Suena may be quickly dismissed. In the first place, although it is stated that Honduras has documents proving its dominion, no documents have ever been submitted. In the second place, the claim was not advanced until 1928, approximately sixty years after the United States had authorized Jennett's use of the islands by the Proclamation of Secretary Fish of November 30, 1869.²⁸³ Either Honduras was unaware of the American occupation of the islands during those years, in which case there must have been very little connection between Honduras and the islands, or Honduras did not think of claiming the islands until 1928. It is significant that in 1869, when the United States notified Honduras and Nicaragua of Jennett's claim to Serrana, that Honduras replied the island was so far south it probably belonged to Nicaragua, not Honduras.²⁸⁴ Quito Suena is in about the same latitude as Serrana, and Roncador several degrees farther south.

It is plain that a claim advanced so long after the territory in question had been occupied and used by the
United States

283. Supra, IV d.

284. Memo (LA), Mar. 23, 1929 (811.0141 019/52)

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United States could not be regarded as worthy of serious consideration. Moreover, it was definitely rejected by the United States in 1928,²⁸⁵ and has not been presented again.

285. Supra, Note 194.

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d. The Claim of Nicaragua to Serrana.

The Nicaraguan claim to Serrana, advanced in 1868, may be regarded as obsolete, since it has never again been presented to the Department. In his reply to Nicaragua, Secretary Seward rejected the claim as based upon insufficient grounds, but he did not conclusively affirm United States sovereignty over Serrana. He declared: that the United States will protect its citizens in the execution of the Act of 1856, but that the Act does not contemplate permanent occupation of the island, and that consequently Serrana will not be fortified by the United States, nor occupied after the Guano is removed.²⁸⁶ This interpretation of the Guano Act has been superceded by others, typified by the Jones Case,²⁸⁷ and by the Presidential Proclamations of 1919.²⁸⁸ The erection of a light on Serrana, pursuant to the Proclamation, occasioned no protest from Nicaragua. Moreover, from the Treaty of 1926 between Nicaragua and Colombia it may be inferred that Nicaragua has abandoned whatever claim it had to Serrana, since it is only declared that the sovereignty over that island is in dispute between the United States and Colombia.

286. Supra, Note 234.

287. Supra, Note 47.

288. Supra, Note 155.

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VIII. Summary of the Position of The United States

a. Claim of the United States to Roncador.

The United States' claim to sovereignty over Roncador is based on the following grounds: the territory was abandoned and derelict at the time it was "discovered" by Jennett in 1866; the United States acquired sovereignty because of the actual occupation and use of the island by Jennett and his assignees, for purposes of extracting guano, under the Guano Act; the United States recognized his or his assignees' exclusive privileges; and finally, a light was erected on Roncador in 1919 by the United States, under claim of right.²⁸⁹

As Colombia apparently made no attempt to use Roncador or to assert any exclusive rights over the island from the time of its discovery in the 16th Century until the middle of the 19th Century, it is fair inference that if any kind of sovereignty over the island had ever accrued to Spain, by virtue of a discovery which is not proved, it had not been perfected by any subsequent acts, and that consequently the island was derelict and abandoned, open to use by the first comer.²⁹⁰ Colombia's only evidence of any sovereigns acts from the 16th to the middle of the 19th Centuries are

the

289. Supra, IV b.

290. Supra, II a.

the Royal Order of 1803, followed by an exploring expedition, and the Decree of 1854, and there is little to show either that these decrees were made effective, or that they related to Roncador. The value of that evidence has already been discussed,²⁹¹ and it is only necessary to add that, regardless of who discovered it, Roncador was abandoned territory in 1866.

It is clear that mere symbolic acts of possession were not considered sufficient to give the discoverer, or the United States, any rights under the Guano Act.²⁹² It is also clear that the possession of Roncador was actual and not merely symbolic. Whether or not Jennett's allegations that he left men on the island in 1869 are true, it is certain he did go to the island several times between about 1880 and 1893, and that he and other American citizens removed guano from Roncador, possibly as late as 1911.²⁹³ Furthermore, the erection of the light on Roncador in 1919 is a possessory act involving occupation of the island.²⁹⁴

The United States manifested its intention to assume complete territorial sovereignty over Roncador a number of times

291. Supra VII a. See also Clipperton Island Case, Supra, 260A

292. Supra, II b 2, see 9 Op A. Hyben, Supra, Notes 32, 35; see also Henry Triscot, Acting Sec., to S. K. Zook, July 28, 1860, 52 MS. Dom. Let. 484.

293. Supra, IV b.

294. Ibid.

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times. First, the proclamation of the Secretary of State, of November 30, 1869, though somewhat ambiguous in its wording, has been held to be an indication of United States sovereignty.²⁹⁵ Second, the inclusion of Roncador in the list of islands "appertaining to the United States" of 1871, has also been held evidence of this intention, and of the fact of sovereignty itself.²⁹⁶ Third, a Federal Court has actually enforced the coasting trade provisions of the Guano Act with regard to Roncador.²⁹⁷ It can scarcely be doubted that these acts of authority, done under the Guano Act, are sovereign acts. That they were regarded as such by other countries is clear from the protests that were made from time to time.²⁹⁸ That the United States not only assumed jurisdiction, but intended to do so, is clear from the wording of the proclamation of 1919: "Whereas, pursuant to the foregoing Act of Congress, [Guano Act of 1856] Roncador Cay in the western part of the Caribbean Sea is now under the sole and exclusive jurisdiction of the United States and out of the jurisdiction

295. Jones v U.S. Supra, Note 47; See II b2.

296. Duncan v Navano Phosphate Co., Supra, Note 51; See II b 2.

297. Supra, Note 69.

298. See II b 2.

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jurisdiction of any other government."²⁹⁹ This proclamation negatives the Colombian contention that the United States recognized Colombian sovereignty over Roncador in 1894, when the United States requested Colombia to erect a light on the Key.³⁰⁰ It also rebuts any possible presumption of abandonment which might have arisen after the guano had ceased to be removed from Roncador. In this connection it should be noted that the island has never been stripped of its guano, and the last section of the act, preserving the privilege of abandoning the island, applies "after the guano shall have been removed....."³⁰¹

299. Supra, Note 155.

300. Supra, IV c.

301. Supra, Note 16.

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b. The Claim of the United States to Quito Sueno.

The position of the United States with regard to Quito Sueno differs from its position in regard to Roncador, in that Quito Sueno Island is nothing but a small, low rock, which could not be occupied or even used by human beings at all, in all probability.³⁰² Neither the United States, nor the Colombian Government appeared to be aware of this, and officials of both Governments have repeatedly affirmed it has been occupied, and have referred to it as a sizable island, containing guano.³⁰³

Because of its geographic nature, and because of the facts which have been stated in connection with Roncador, it is almost certain that Quito Sueno rock was entirely derelict at the time of Jennett's discovery. Jennett's statements as to his occupation of Quito Sueno must be false, however. It is probable that the only occupation of any sort of Quito Sueno is the erection of the light, by the United States in 1919,³⁰⁴ unless fishing off and over the bank by Colombian and other fishermen may be called occupation.

The United States has asserted sovereignty over Quito Sueno in much the same manner as it has over Roncador,

by

302. Supra, IV a.

303. Supra, IV b, c.

304. Supra, Note 155.

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by proclamation by the Secretary of State, by listing it as an island "appertaining to the United States" in 1871, and by the President's proclamation of 1919.³⁰⁵ Whatever the merits of the United States' claim to Quito Sueno before the erection of the light, it is plain that no other country had any better claim,³⁰⁶ and that by that act, jurisdiction was asserted by the United States, and occupation, as effective as possible under the circumstances, was established.

305. Supra, IV b.

306. See Supra, VII a.

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c. The Claim of the United States to Serrana.

The claim of the United States to Serrana rests upon grounds similar to those on which its rights to Roncador and Quito Sueno are founded, with some slight variations. In the case of Serrana, there is but little evidence of any actual removal of guano after about 1870. The removal of guano in the decade preceding that year, and the erection of the light in 1919, are probably the only uses made of the islands by the United States or its citizens.³⁰⁷

With regard to the evidence of an intention to assume sovereignty, there is also some difference between this case and that of Roncador and Quito Sueno. A certificate was issued to Jennett, relating to Serrana, but it expressly refuted any implication which might be drawn from it that the United States denied the Nicaraguan claim to the island.³⁰⁸ Subsequently, it was stated that the Nicaraguan claim rested on insufficient grounds, and that United States citizens extracting guano would be protected, but that Serrana would not be fortified or permanently occupied by the United States after the guano was removed.³⁰⁹

There

307. Supra, V b.

308. Supra, Notes 214, 215.

309. Supra, Note 234.

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There is still guano on the islands, however.³¹⁰ Furthermore, by the proclamation of 1919, the United States evinced its belief that complete sovereignty over the island had been already acquired under the Guano Act.³¹¹ The erection of a light, and the refusal of the Government in 1932 to grant a permit to an American citizen to remove eggs from Serrana, because this would be contrary to a treaty between the United States and Great Britain, were further acts of sovereign control and jurisdiction exercised by the United States over Serrana.³¹²

310. Supra, Note 197.

311. Supra, Note 155.

312. See Supra, V b. *negotiating birds*

d. The Claim of the United States ~~and~~^{to} Serranilla.

The sovereignty of the United States over Serranilla rests upon grounds different from those discussed in connection with the other islands. In the first place, as has been pointed out, Colombia's claim to Serranilla is much weaker than its claim to the others, and no other Government has ever in any way contested the ownership of Serranilla by the United States.³¹³ On the other hand, the United States has not exercised such positive acts of jurisdiction over Serranilla as it has over any of the other three.

There has been little, if any, actual occupation or use of Serranilla by the United States or its citizens. From the declarations of Jennett and Quinan, it appears that the islands were visited a few times between 1866 and 1882, but that neither of these men ever actually removed guano from them during that time.³¹⁴ Furthermore, no light has been erected on Serranilla, and no other possessory action taken by the United States.

The only expressions of any intention to assume sovereignty over Serranilla are found in letters to American citizens, stating that Serranilla "appertains" to the
United States,

313. See Supra, VII b.

314. Supra, VI b.

United States, and in the fact that the interest of Van Derlip, an assignee of the discoverer, in the islands was recognized,³¹⁵ The practice of issuing proclamations signed by the Secretary of State, was discontinued after about 1869,³¹⁶ and it is probable none was issued for Serranilla, to Van Derlip or anyone else. The islands were not included in the Treasury letter of 1871, because they were not bonded until 1879.³¹⁷ The mere filing of assignments with the State Department is no evidence that the island described therein is to be regarded as appertaining to the United States.^{317A}

It might be said, therefore, that there is insufficient evidence of any occupation of Serranilla islands by the United States, and no evidence of an intention on the part of the United States to assume territorial sovereignty over Serranilla. On the other hand, there is even less evidence of any such occupation or expression of such intention on the part of any other Government. In the absence of any claim superior to that of the United States, and in view of the fact that there was some activity on or in relation to Serranilla by the United States, the claim of the latter would appear to be valid.

315. Supra, VI b.

316. I Moore's Digest 561-562.

317. Supra, Note ~~245~~ 250A.

317A. Memo, (E.H.H., in So.) Oct. 27, 1911, 5 MS Misc. Let. re Guano.

IX CONCLUSIONSA. Sovereignty

1. The United States has acquired territorial sovereignty over the islands and rocks on Roncador, Quito Sueno, and Serrana Banks, because of the occupation, control and use of those islands by the United States under the Guano Act of 1856, in accordance with international law. The proclamations of 1919, and erection of lights on Roncador, Quito Sueno, and Serrana, supports this position, and negates any presumption that the United States did not intend to assume full sovereignty over these islands, or had abandoned them after the guano had ceased to be removed.

The grounds upon which the claims of Nicaragua to Serrana, of Honduras to Roncador and Quito Sueno, and of Colombia to Quito Sueno and Serrana, are based, are insufficient to defeat the claims of the United States, or to establish territorial sovereignty under international law. The claim of Colombia to Roncador, however, is strengthened by the fact that in 1894 the United States requested Colombia to erect a light on that island.³¹⁸ In spite of both prior and subsequent acts and statements showing that the United States did claim sovereignty over Roncador, an
arbitral

318A. Supra, IV c.

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arbitral court might agree with Colombia that this request was in effect an admission of Colombian sovereignty over the island by the United States, and an abandonment of the United States claim.

2. The United States has the right to acquire territorial sovereignty over the three islands on Serranilla Bank. According to the evidence available, no other country has any lawful interest in those islands. They have been occupied by the United States under the Guano Act, but there has been no formal, unequivocal, and public manifestation of an intention on the part of the United States to assume sovereignty over them. Although formal notice of a claim of sovereignty is said to be unnecessary under international law, in order to perfect the United States claim to Serranilla, it would be advisable to issue a proclamation, as was done in the case of Nauassa, Roncador, Quito Sueno, and Serrana,³¹⁹ so as to rebut any presumption which might arise under the last section of the Guano Act³²⁰ that the United States intended to use the islands temporarily, for guano purposes only, and had now abandoned them entirely.

3. In

319. Phillips, Ass. Sec. to Redfield, Sec. of Com., Jan. 29, 1919. (8114822/32); Memo (So.), Proposed Establishment of Aids to Navigation on The Serrana and Quito Sueno Banks, Old Providence Island, and Courtown Cays.

320. Supra, Note 16.

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3. In view of the award in the Aves Islands Case (The Netherlands and Venezuela)³²¹ and of the similarity of the circumstances of that case to those under discussion, it is possible that, if the dispute over the islands in question were arbitrated between Colombia and the United States, Colombia might be found to have acquired a right to fish in the waters off the banks, and to use the islands for fishing purposes, by reason of long, undisputed user, even though the United States were said to have sovereignty. The available evidence as to the length of such use, whether it applies to all or only some of the banks, and its exclusive nature, is not sufficient to justify any definite conclusion on this point.

321. Supra, Note 4.

B. Utility and Value.

1. Since the only objects above water on Quito Sueno Bank are the light and a small low rock, and since this rock probably contains no guano and could not be used at all,³²² it seems foolish to quarrel over the "sovereignty" of this bank. The British contention that it is open water,³²³ at least so far as fishing is concerned, appears to be reasonable under the circumstances, and no reason is perceived why Colombia or any other country should object to the maintenance of the light by the United States, as this benefits all navigation in the vicinity, unless it is feared that the rock could be fortified, as was Heligoland during the World War.

2. Roncador, Serrana, and Serranilla banks do contain actual islands. There are no good harbors; fresh water exists only on South West Key of Serrana; and as the islands are all of coral formation, there are probably no minerals of any value on them. They are so small, low, and barren it would be difficult for men to live on them any length of time. On the other hand, there is some guano on these islands, although its commercial value has probably been greatly exaggerated.³²⁴ There are also turtles, birds eggs, and fish

in

322. Supra IV a.

323. Supra, Note 185.

324. Supra, II b. 1.

in the surrounding waters, all of which commodities have considerable market value. The Keys on Roncador and Serrana have been recommended for some sort of military or naval base,³²⁵ and it is possible that the islands might be of value to the United States in case of war. They might also be of use for a weather station.

325. Conversation, Major Greely, War Plans Division, and a member of LA, April 9, 1930 (811.0141 019/59).

C. Duties of Sovereignty

1. The Treaty of April 16, 1916 between the United States and Great Britain, For the Protection of Migratory Birds, and the Act of Congress of July 3, 1918, making the treaty effective, by declaring the capture, transportation, etc., of certain birds, their eggs or nests, a misdemeanor,³²⁶ have been held applicable to the birds (boobies or terns) on Serrana. The same species are no doubt found on the other three banks. The United States protects these birds on islands in the Gulf of Mexico, and should also protect them on its islands in the Caribbean. This would probably be expensive, especially as the inhabitants of neighboring territories are accustomed to taking birds eggs from the islands for sale in Jamaica, but, on the other hand, it would save the birds.³²⁷

2. The Guano Act has provided many opportunities for speculation and fraud. The bonds required under the Act, had to be filed with the State Department, but the filing of assignments was not compulsory and many were never recorded at all. Consequently there have been successive assignments of one island by one assignor, and assignments
by

326. III Malloy, Treaties 2645; Supra, Note 226

327. Ritchie to Sec. of State, (?) 1930 (811.0141 C19/60) Thurston, Acting Chief LA., to Ritchie, Aug. 13, 1930 (811.0141 C19/63). Reporting "Robbery" of eggs by ships from Panama, Colombia, and Cayman Islands.

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by all his various assignees in apparent ignorance of conflicting claims, and profits have been reaped at the expense of the public and innocent parties.³²⁸ Although it is often impossible to tell who is the proper party in interest, and, although this is for the courts to determine, the State Department has to make some preliminary and tentative judgments in order to determine who should file the bonds under the Act, and who, if any one, is entitled to the protection guaranteed by the Act. The same inefficient, inequitable system which has heretofore obtained under the Guano Act, should not be permitted to continue.

328. See Appendix, *infra*.

D. Recommendations

1. The Guano Act should be repealed, since the demand for guano has largely disappeared, and since the provisions of the Act have created opportunities for fraud and dishonest speculation with which the State Department has been wholly unable to cope. It has been repeatedly said that the interest of the discoverer and his assignees was but a license subject to the will of Congress.³²⁹ If, however, any rights so acquired may be said to have vested so that pecuniary loss would be occasioned to assignees by the repeal of the Act, there should be provisions for indemnification by the Government.³³⁰ In most instances the loss would probably be on paper only. There should also be a provision saving any rights of territorial sovereignty which the United States may have acquired by virtue of occupation under the Guano Act, so that the repeal of the Act could not be construed as a denial of these rights, but only as a revocation of the licenses granted individuals under the Act.

2. If any further use of Serranilla Islands is contemplated, a proclamation, similar to those issued in the case of Nauassa, Roncador, Quito Sueno and Serrana, should
be

329. Supra, II b 2; See Notes 32, 35.

330. See 3 op. A.H. Gen. 216, Supra, Note 58.

be issued by the United States. This procedure would probably occasion new protests and hitherto unheard of claims, however. The same result could be accomplished by obtaining Colombia's recognition of United States sovereignty over Serranilla. This would publish the fact that the United States intended to claim Serranilla islands and had not abandoned them.

3. The legal status of these islands must be settled, for new problems regarding them continue to arise which cannot be solved until the sovereignty of the islands is determined. These are not only questions of which, if any, American citizens may exploit the resources of the islands, but there are other important questions of jurisdiction, for it is said that the islands may be used as a base by narcotic smugglers, acting under cover of pretended Guano expeditions.³³¹

Colombia is at present the only foreign government that appears to be seriously contesting the claims of the United States, and the dispute between these two Governments should be resolved as soon as possible, and in favor of the United States. If Colombian recognition of United States sovereignty over the islands and rocks on these four banks cannot be obtained by persuasion, resort must be had either to bargaining, or to arbitration.

331. Information obtained from Mr. Fuller (Far East) July 28, 1932. (Mr. Fuller says McCarthy, apparently connected with the Caribbean Guano Co., is suspected of dealing in narcotics.)

ANNEX 6

Letter from the Government of Antigua and Barbuda with regards to maritime treaties and a protest with regard to the status granted to Isla Aves, 19 June 1997.

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B. Protests from States

1. Antigua and Barbuda

Letter dated 19 June 1997 from the Government of Antigua and Barbuda with regard to maritime treaties and a protest with regard to the status granted to "Isla Aves"

I present my compliments and refer to the Maritime Treaties signed by the Republic of Venezuela and the United States of America which entered into force on 24 November 1980; Republic of Venezuela and the Kingdom of the Netherlands which entered into force on 15 December 1978; Republic of Venezuela and the French Republic which entered into force on 28 January 1983.

I have the honour to inform that the Government of Antigua and Barbuda wishes to recall that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, rocks which cannot sustain human habitation or an economic life of their own shall have no exclusive economic zone or continental shelf.

The Government of Antigua and Barbuda wishes to recall further that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, the artificial installation and structure erected adjacent to "Isla Aves" shall not possess the status of an island and shall have no territorial sea of its own and its presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

The Maritime Boundary Treaties referred to above appear to grant "Isla Aves" full status of territorial sea, exclusive economic zone and continental shelf. The Government of Antigua and Barbuda has not acquiesced in the maritime boundary treaties.

The Government of Antigua and Barbuda protests the status granted to "Isla Aves" in the above-mentioned maritime boundary treaties and kindly requests the Secretary-General of the United Nations in his capacity as the depositary of the 1982 United Nations Convention on the Law of the Sea to communicate this note to the parties to the said Convention. ^{3/}

2. Portugal

Note verbale dated 28 August 1997 from the Embassy of Portugal in Canberra addressed to the Department of Foreign Affairs and Trade of the Government of Australia ^{4/}

1. The Government of the Portuguese Republic took notice of the signature of a treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an exclusive economic zone boundary and certain seabed boundaries. ^{5/}

In addition to subject matters that concern Australia and Indonesia (only), the treaty purports to establish the exclusive economic zone boundary between Australia and the Non-Self-Governing Territory of East Timor.

^{3/} Transmitted to the States parties to the United Nations Convention on the Law of the Sea in note verbale LOS/SP/1, dated 12 August 1997.

^{4/} A/52/323 - S/1997/691, annex.

^{5/} For the text of the treaty, see p. 107 below.

ANNEX 7

Note from the Permanent Mission of St. Kitts and Nevis to
the U.N. Secretary-General, 16 July 1997.

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2. In such point, the "treaty follows the path of the treaty between Australia and the Republic of Indonesia on the zone of cooperation in an area between the Indonesia Province of East Timor and northern Australia", dated 11 December 1989, now with the aggravating circumstance that it intends to establish a permanent delimitation of the spaces (exclusive economic zone) appertaining respectively to Australia and to the Non-Self-Governing Territory of East Timor.
3. Portugal does not recognize the intended delimitation and contends that on such matter the signature of the treaty constitutes one violation more to the status of East Timor as a Non-Self-Governing Territory within the meaning of Chapter XI of the Charter of the United Nations, and to the rights of the people of East Timor, as well as to the status of the administering Power of the Territory.
4. The Government of Portugal recalls that during the proceedings of the East Timor case Australia formally acknowledged and the International Court of Justice took due notice thereof (para. 31 of the Judgment), that "the Territory of East Timor remains a Non-Self-Governing Territory and its people has the right to self-determination". Portugal maintains that the "de jure" recognition by Australia of the incorporation of East Timor in Indonesia is inconsistent with such acknowledgement.
5. The Government of Portugal reminds that, by its Judgment of 30 June 1995, the International Court of Justice declined to exercise jurisdiction in the East Timor case because, in the Court's view, "in order to decide the claims of Portugal, it would have to rule, as a prerequisite, on the lawfulness of Indonesia's conduct in the absence on that State's consent". "Whether the power to make treaties concerning [in the case] the continental shelf resources of East Timor belongs to Portugal or Indonesia would depend on whether Indonesia's entry into and continued presence in the Territory are lawful" (para. 35).

Portugal strongly emphasizes that Indonesia's entry into and continued presence in the Non-Self-Governing Territory of East Timor are unlawful, because they violate two fundamental rules of international law: the prohibition of the use of force and of territorial acquisition by the use of force, and the principle of self-determination of peoples.

7. Therefore the Government of Portugal lodges its most vehement protest against the signature by the Government of Australia of the treaty between Australia and the Republic of Indonesia establishing an exclusive economic zone boundary and certain seabed boundaries, in as far as such treaty relates to the Territory of East Timor.

3. St. Kitts and Nevis

Note dated 16 July 1997 addressed to the Secretary-General of the United Nations referring to the bilateral maritime boundary delimitation treaties^{6/}

Note to the Secretary-General of the United Nations from the Government of St. Kitts and Nevis referring to bi-lateral maritime boundary delimitation treaties made between:

1. Republic of Venezuela and the United States of America; entered into force 24 November 1980;
2. Republic of Venezuela and the Kingdom of the Netherlands; entered into force 15 December 1978;

^{6/} Communicated by the Permanent Mission of St. Kitts and Nevis to the United Nations in a note verbale dated 16 July 1997.

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3. Republic of Venezuela and the French Republic; entered into force 28 January 1983;

with regard to the status of the Venezuelan territory known as "Isla Aves"

The Government of St. Kitts and Nevis wishes to recall that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, rocks which cannot sustain human habitation or an economic life of their own shall have no exclusive economic zone or continental shelf.

The Government of St. Kitts and Nevis wishes further to recall that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, the artificial installation and structure erected adjacent to "Isla Aves" shall not possess the status of an island and shall have no territorial sea of its own and its presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

The maritime boundary treaties referred to above appear to grant "Isla Aves" full status of territorial sea, exclusive economic zone and continental shelf. The Government of St. Kitts and Nevis has not acquiesced in the maritime boundary treaties referred to above.

The Government of St. Kitts and Nevis protests the status granted to "Isla Aves" in the above-mentioned maritime boundary treaties and kindly requests the Secretary-General of the United Nations in his capacity as the depository of the 1982 United Nations Convention on the Law of the Sea to communicate this note to the parties to the said Convention. ^{7/}

4. Saint Lucia

Note dated 23 July 1997 concerning its position with regard to Aves Island (Isla Aves) ^{8/}

The Ministry of Foreign Affairs and International Trade of Saint Lucia presents its compliments to the Secretary-General of the United Nations in New York and has the honour to inform the latter of the position of the Government of Saint Lucia concerning the according of island status to Aves Island (Isla Aves), which status has been recognized by the Governments of Venezuela, the United States of America, France and the Netherlands.

The Government of Saint Lucia hereby expresses its dissatisfaction with the granting of such status to Isla Aves and further informs that it will not recognize the same.

In that regard, the Government of Saint Lucia is recommending that Venezuela enter into negotiations with all other entities involved with the expressed intention of arriving at a decision based on wider regional participation.

^{7/} Transmitted to the States parties to the United Nations Convention on the Law of the Sea in note verbale LOS/SP/2, dated 13 August 1997.

^{8/} Communicated by the Ministry of Foreign Affairs and International Trade of Saint Lucia to the United Nations in a note verbale dated 23 July 1997.

ANNEX 8

Note from the Permanent Mission of Saint Vincent and the Grenadines to the U.N. Secretary-General, 8 August 1997.

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5. Saint Vincent and the Grenadines

Note dated 8 August 1997 addressed to the Secretary-General of the United Nations referring to the bilateral maritime boundary delimitation treaties^{9/}

Note to the Secretary-General of the United Nations from the Government of Saint Vincent and the Grenadines referring to bilateral maritime boundary delimitation treaties made between:

1. Republic of Venezuela and the United States of America; entered into force 24 November 1980;
2. Republic of Venezuela and the Kingdom of the Netherlands; entered into force 15 December 1978;
3. Republic of Venezuela and the French Republic; entered into force 28 January 1983,

with regard to the status of the Venezuelan territory known as "Isla Aves"

The Government of Saint Vincent and the Grenadines wishes to recall that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, rocks which cannot sustain human habitation or an economic life of their own shall have no exclusive economic zone or continental shelf.

The Government of Saint Vincent and the Grenadines wishes further to recall that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, the artificial installation and structure erected adjacent to "Isla Aves" shall not possess the status of an island and shall have no territorial sea of its own and its presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

The maritime boundary treaties referred to above appear to grant "Isla Aves" full status of territorial sea, exclusive economic zone and continental shelf. The Government of Saint Vincent and the Grenadines has not acquiesced in the maritime boundary treaties referred to above.

The Government of Saint Vincent and the Grenadines protests the status granted to "Isla Aves" in the above-mentioned maritime boundary treaties and kindly requests the Secretary-General of the United Nations in his capacity as the depository of the 1982 United Nations Convention on the Law of the Sea to communicate this note to the parties to the said Convention.^{10/}

^{9/} Communicated by the Permanent Mission of Saint Vincent and the Grenadines to the United Nations in a note verbale dated 8 August 1997.

^{10/} Transmitted to the States parties to the United Nations Convention on the Law of the Sea in note verbale LOS/SP/3, dated 9 September 1997.

ANNEX 9

Letter, Legation of Colombia to the United States
(18 Jan. 1893).

(Translation)

LEGATION OF COLOMBIA.

Washington, January 18, 1893.

No. 5.

Honorable Mr. Secretary:

Under date of the 8th of December 1890, and in my capacity as Chargé d'Affaires ad interim of Colombia, I had the honor to address your Department begging to be informed if it were or were not true that the Government of the United States had authorized the American citizen J. W. Jennet to remove guano from the deposits existing upon the Roncador and Quitasueño keys, which my Government holds to form an integral part of its territory. Your predecessor in the important post you fill, the Hon. James G. Blaine, answered me by means of a communication of the 19th of January, 1891, that the Government of the United States had in fact granted such authorization to Mr. Jennet by reason of his having fulfilled the requisites fixed by section 5570 of the Revised Statutes, in pursuance of the law passed by Congress on the 18th August, 1856; that Jennet had presented himself in 1869 as the discoverer of guano upon the islands of Roncador and Quitasueño, claiming as such the benefit of the aforesaid statutes. That on the 22nd of November of the same year (1869) the aforesaid Mr. Jennet, in union with other persons, had given the requisite bonds in order to acquire the right to work the guano beds, which bond had been approved by the Department of State on the 26th of that month. Mr. Blaine also noted

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that on the 12th of October, 1871, the Department of the Treasury had published a list of the islands ~~belonging~~ to the United States and containing deposits of guano, among which ~~they~~ ^{were} included Roncador and Quitasueño; and that during the period of nearly twenty years which had elapsed between the date of that publication and the date of my note, Colombia had made no claim of dominion over those islands. He concluded by controverting in advance the argument which he supposed Colombia might allege in support of her pretensions in view of the keys being in the vicinity of her territory; affirming that the nearest land thereto is the island of Providence, the sovereignty of which he said is claimed by the British Government, and averring that the Department of State had no knowledge of any act of occupation or possession executed by my Government which might be alleged in its favor as a proof of dominion.

It would have been easy, ~~thereupon~~ ^{forthwith}, to controvert the argument set forth in the note in question as the ground for the authorization granted to Mr. Jennet and for the rights of sovereignty acquired by the United States of America over those keys in view of the supposed discovery made by him, by presenting a clear and precise statement of the incontestable titles which Colombia has to consider herself the owner of those islands; but taking note of the fact that the works undertaken in those islands appeared to have been completely abandoned and ^{to have been} confined to the removal of guano, without affecting any establishment whatever, not merely such as section 5570 of the Statutes, upon which the grant is based, specifies as necessary for the enjoyment of the granted privilege, but not even an elementary establishment indispensable for the maintenance of a permanent

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occupancy; it was believed that Mr. Jennet would not persist in continuing to work the guano beds, and that there was no urgency in keeping up a discussion concerning the sovereignty of those keys in view of the suspension of the destruction of the wealth therean stored. But later facts have arisen to show that Mr. Jennet, or his representatives, have not abandoned the intention to remove the guano under cover of the authorization to that end which they have received from the Government of the United States. Mr. Edward B. Bailey, who is styled one of the chief officers of the "Columbia Guano and Phosphate Co." with headquarters in this Capital, went to Jamaica in the month of June, 1891; engaged several laborers there under contract; went with them to Rencador where he excavated 950 tons of guano, of which 350 tons were shipped on the vessel in which he returned to this country, the remaining 600 being left in cars of 12 of the laborers brought from Jamaica with the promise of returning for them in the course of three weeks. This period not only having elapsed, but three and one-half months more, without Mr. Bailey fulfilling his promise, seven of the twelve men left in charge of the guano, being destitute of all means of subsistence on that arid and desert island, embarked in a small boat, and were picked up after having sailed for four days by a vessel named "Eucefalous" which carried them to the neighboring island of San Andres. Nothing was known of the five laborers who were left upon the key ^{until} ~~until~~ the month of March of last year, at which season, following an immemorial custom, the turtle fishers of San Andres and Providence visited Rencador and Quitasueño for the purpose of pursuing their

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industry, and then they found upon the first of the islands in question two unburied corpses, already reduced to skeletons, which were without doubt two of the five Jamaicans who remained finally in charge of the guano. The spot where the corpses were found and their position clearly showed that death had come upon them in the midst of the most absolute destitution.

The Prefect of the province of San Andres---to which the keys in question belonged--having been notified of this fact, he immediately repaired to Rencador for the purpose of investigating, if possible, the cause of the death of the two laborers, in order to locate the resultant responsibility; but, as was natural, he was unable to ascertain anything; the offence had taken place during that period of the year when the island is totally deserted, and death had doubtless been caused by starvation. In view of this fact he deemed it proper to remove to San Andres the small boat which he found at Rencador, left there doubtless by the vessel upon which the guano had been laden, in the hopes that some one might appear to claim the boat, and thus furnish the basis for an investigation of the evident crime.

In the presence of facts of such gravity, which I am certain will be duly appreciated by the Honorable Secretary, my Government neither can nor should defer longer the determination of its rights to Rencador and Quitasueño keys, to the end of obtaining the recognition of its dominion on the part of the Government of the United States, thus putting an end to an exploitation which impairs ^{the} public resources

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of the nation, and at the same time put itself in a position to prevent or punish more efficiently and independently the crimes which may be committed in a part of the territory subject to its jurisdiction; and to that end it has instructed me to give due course to the initiated discussion, which I now propose to do by means of the present communication.

As well in the desire to proceed methodically in my analysis of the rights of Colombia as for the purpose of clearly establishing the origin of those rights, it will be necessary for me to go back to a very remote epoch, and to prove that from the original discovery the islands of the Providence group, of which the keys in question form a part, have been considered as belonging, first to the Crown of Spain, and subsequently to the Republic of Colombia, in virtue of the succession of the latter to all the rights and choses in action in the section of South America known in the Colonial times under the name of the Vice Royalty of New Granada. I beg, therefore, the Honorable Secretary to be pleased to pardon me the extended but necessary statement of facts which I now proceed to make.

The islands of San Andres and Providence were discovered by Columbus in his first voyage, 1492, the native name being Abacoa. At a relatively short distance from them was found the island of Santa Catalina, the keys of Roncador, Quitaeueño, Courtown, Albuquerque and Señano Banco, all joining to form the archipelago or group of Old Providence. In view of the situation and proximity of these islands and keys it is to be presumed that ^{one and} the same geological change caused them to rise to the surface of the waters, and that they have a continuous basis on the ocean bed.

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The Government of Spain, which took possession of that group by right of conquest, determined in 1595 that one of the islands which composed it, Santa Catalina, should be fortified in order to maintain there a garrison which should assure a tranquil control of that part of its possessions in those disturbed times; and in 1660 that island was perfectly defended and guns mounted. Notwithstanding this a short time after the buccaneer Mansvelt seized the island, expelling the Spanish garrison, but it was recaptured by the Governor of Panama, a Spanish authority, in 1664. The buccaneers again captured it in 1665, and the Spaniards once more regained possession the 15th. of August of the same year.

The island of Santa Catalina again fell under the power of the buccaneers, this time under the leadership of Morgan, Mansvelt's successor, on the 21st of December, 1670; but it was forthwith returned to Spain when those seas were finally purged of piracy.

Under the uninterrupted dominion of the Crown of Spain the Providenc archipelago thereafter remained; and by a Royal Order of the 30th of November, 1803, it was definitely annexed to the Vice Royalty of New Granda, together with all the coast comprised between Chagros and Cape Gracias á Dios. Don Tomas D'Neill, who was the first Governor of the Archipelago after the mentioned annexation, found himself constrained to surrender to superior English forces in Santa Catalina on the 26th of March, 1806; but the island returned to the power of Spain towards the end of 1808, in virtue of the treaty concluded between the Government of Great Britain and the Junta of Seville.

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One of the immediate results of the aforesaid Royal Order of November 30, 1803, was that the authorities of the Vice Royalty of New Granada sent out an exploring expedition which, under the command of Don Miguel Patino, was undertaken in the sailing gun-boat "Concepcion" for the purpose of visiting the coast and islands recently annexed; which expedition projected a map and fixed the geographical position of the islands and keys which form the Providencia Archipelago, naturally including Roncador and Quitasueño.

The possession and domain which the Crown of Spain thereafter continued to exercise over the Archipelago in question were not again subsequently disturbed by any foreign power, and were maintained until the victorious insurrection of the Colonies against the Mother-country took place. This event having occurred and the independence and sovereignty of the different sections of Spanish America having been assured by the institution of autonomous Governments by mutual agreement among them, based upon principles of equity and justice, each one of these sections now became an independent Republic and conserved the material and jurisdictional limits which at the time of the separation from Spain bound the respective Vice Royalty, Captain Generalcy, Provincial Government, etc; and the present Republic of Colombia---which was the Vice Royalty of New Granada in the Colonial times---under authority of the so often mentioned Royal Order of November 30, 1803, continued in the exercise of dominion and jurisdiction over the Providencia Archipelago, of which, I repeat, the keys of Roncador and Quitasueño form an integral part; which Archipelago subsequently was erected into the canton of San Andres, and formed a part of the province of Cartagena.

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The Republic of Colombia has since continued in tranquil and pacific possession of the islands and keys in question, for its possession cannot be deemed to have been disturbed therein by isolated and individual acts of arbitrary excavation of guano committed upon certain of the keys, and accomplished under shadow of the impunity which is made inevitable by the remoteness of those possessions from other inhabited points of the same Archipelago and by the unfit-ness of those keys for any Colonial establishment. In the year 1858, for example, there arrived at San Andres an American bark named St. Lawrence, under command of S. R. Kimball, who hired certain of the inhabitants to go thither in the capacity of sailors, proceeding in the first place with them to Rencador, where he excavated and embarked several tons of guano which he carried to the port of Baltimore, where he arrived on the 19th of August of the aforesaid year. In Baltimore the said Kimball chartered a barkentine in order to go to Rencador and take in a new cargo of guano, which was done, the barkentine touching on its return voyage at the island of San Andres for the purpose of disembarking the men who a short time before had been shipped by Kimball as sailors on the "St. Lawrence". When the Prefect of the canton of San Andres, Señor Ricardo Bowie, learned the character of the cargo of the barkentine, he communicated to her Captain an order not to leave the port, based upon the fact that the cargo which had been laden at Rencador belonged to the Republic, which order the Captain easily evaded since the Prefect Bowie did not possess the material means necessary to effectively execute it.

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But if the Republic of Colombia for the causes above set forth, and, as may be added, its notorious lack of naval power, has been impotent to prevent abuses of the class which I have just mentioned, it has not shown itself indifferent thereto, and has done whatever was in its power to prevent or punish them, the case arising. This assertion is fully demonstrated by its attitude in the case of Kimball: The then Governor of the Province of Cartagena, his Excellency Dr. Rafael Nuñez, now titular President of the Republic, having been informed of the outrage committed by Kimball, issued under date of 15th November, 1854, a decree prohibiting the removal of guano from the existing deposits already well known in the Providence Archipelago, or any other guano deposits which might be thereafter discovered in the same group, and declaring that the offenders would be judged and punished as defrauders of the Treasury of the Republic. This decree contained a provision that it should be communicated to the foreign consuls resident in the city of Cartagena, which provision was fulfilled with respect to the consul of the United States of America, who at that time was Señor Ramon Leon Sanchez, by means of official note dated 22nd November of the same year (1854). I suppose that Señor Leon Sanchez communicated the contents of that note to the Department of State, in compliance with his duty.

The extended statement of facts which I have thus made concurs in clearly setting forth the following points: First, that the islands and keys which form the Archipelago or group of Providence have been known from a remote epoch; second, that the dominion and possession of that group have been exercised from time immemorial by the Crown of

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Spain in the first place, and subsequently by the Republic of Colombia; third, that the existence of guano in the keys of Rencador and Quitasueño was known at least prior to the year of 1858, at which time phosphates had already been removed therefrom, although unlawfully; and fourth, that the Republic of Colombia has done everything that was possible to avoid the impairment of its perfect rights.

From these positive premises the following conclusions logical and inevitably flow: First, that when Mr. J. W. Jennet appeared before the Department of State in the year 1869 as the discoverer of deposits of guano on the keys of Rencador and Quitasueño, asking the extension to him of the benefits granted by section 5570 of the Revised Statutes, he committed, to say the least, an error, for the existence of such deposits was known more than fifteen years before, at which time guano had already been excavated; second, that the keys of Rencador and Quitasueño were from remote times under the legal dominion of the Government of Colombia, and there was no room for considering them as a territory without an owner, the only case in which the Section of the Revised Statutes to which I have referred has any application; and third, that the procedure of Mr. Jennet in removing guano from the keys, far from being a ground for acquiring a prerogative, in reality subjected him to a penalty, for ^{an act} which had already been declared to be an offence by the competent authority.

The ends which I propose to accomplish by this present communication, which are to obtain an express recognition on the part of the Government of the United States of America of the sovereignty of Colombia over the keys of Rencador and

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Quitasueño and the annulment of the authority granted to Mr Jennet for the removal of the guano thereon, will, I am assured, be fully attained by the facts which I have thus set forth, taking into account the precedents of equity laid down by the Government of the United States in analogous controversies which have occurred with some of the Spanish American Republics; but I do not wish to conclude this note without making answer to the remaining arguments which are contained in your Department's note of the 19th of January, 1891, thus fortifying, still more, if need be, the rights which I claim.

It is said to me that the Government of the United States had no knowledge of any act of occupancy or possession performed by Colombia on the keys of Roncador and Quitasueño upon which it could base any title; and although the statement which I have herein set forth satisfactorily answers this objection, I will permit myself to call the attention of the Honorable Secretary to a point of decisive importance in this regard. The inhabitants of the islands of San Andres and Providence---subjects of the King of Spain before the emancipation and Colombian citizens since--- have from time immemorial devoted themselves to the turtle fisheries, which constitute one of their most important and lucrative industries, and for that purpose have periodically, at the season of the year appropriate for such pursuits, visited the keys of Roncador and Quitasueño, which are the breeding grounds of those useful animals; remaining on those keys until their purpose is accomplished; constructing wells for the collection of potable water, and executing in general all necessary works for the fulfillment of their objects, or

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for improving the conditions of their temporary sojourn.

The aforesaid keys are not, neither can ^{they} be permanently inhabited; they are barren islands without any kind of vegetation; they are destitute of the elements necessary for the life of man, and the passing but periodical sojourn which the inhabitants of the more fertile contiguous islands make thereon, as well as the pursuit of the turtle fisheries, of which, as I have stated, those keys are the breeding grounds, constitute the sole useful purpose of which they are susceptible

and the sole acts of possession which are practicable, to which acts no objection has been raised in the course of centuries. I entertain the hope that to this argument will be given all the scope and force which it possesses, since the Government of the United States bases upon an analogous and perhaps more ample course of reasoning its rights in the controversy which it maintains with Great Britain concerning the seal fisheries in Bering Sea.

It is likewise adduced as an argument against the rights of Colombia, in the note now under consideration, that during a period of more than twenty years no protest was made against the inclusion of the keys of Roncador and Quitasueno, among the guano-bearing islands and keys belonging to the United States in the list published by the Department of the Treasury on the 12th of October, 1871. In reply I have to say that the Government of Colombia was ignorant of such inclusion; if it had been formally communicated to it at the time the present protest would assuredly have been made forthwith; and that its silence, on the other hand, should in no case prejudice its rights since prescription does not concede a title of dominion under international law,

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and the acts or the rights of a nation are exercisable at any time.

It will be well in conclusion to make known to the Honorable Secretary that in respect to the island of Providence, the nearest land to the ~~Keys~~ of Roncador and Quitasueño, as your Department intimates, there exists no claim whatever of dominion on the part of Great Britain; and that now, as in past years, it remains under the government of the authorities of Colombia; ruled by its laws, and forms a part with the group to which it belongs under the name of the Province of San Andres of the Department of Bolívar. I make the foregoing observation without, however, thereby admitting that proximity or remoteness can be regarded as factors when the bases of rights of dominion are under consideration.

As documents in proof of the assertions contained in this communication which lack historic basis or have not the force of public notoriety, this Legation possesses the declaration of ~~various~~ ^{several} of the inhabitants of San Andres whom Kinsall shipped on that island as members of the crew of the bark "St. Lawrence", declarations recently taken before the competent authority. It possesses, moreover, the documents filed on the arrival of that vessel in the port of Baltimore in August 1853; for although in those documents the guano on board is stated to be of Mexican origin, this is doubtless an error, for the following reasons: First, because in the manifest of entry there is no statement, as is customary, of the port of Mexico whence it was shipped, it being merely said that it was taken in the Spanish Main, under which generic name are likewise desig-

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nated the islands and keys which compose the Province Archipelago. Second, because, according to data furnished by the Mexican Minister of the Treasury there is no record that the bark "St. Lawrence" touched in any of the Atlantic ports of that Republic in the epoch in question; and third because the declarations of the inhabitants of San Andres who formed part of the crew of the "St. Lawrence" to which I have above referred contradicts such an assertion, affirming that the guano was taken from the Rencador key. This Legation likewise possesses a copy of the note sent on the 22nd of November, 1854 to the American Consul, Señor Ramon Leon Sanchez, notifying him of the provisions of the decree issued by the Governor of the Province of Cartagena on the 15th of the same month, to which reference has been made in the course of this communication, and the declarations of several of the Jamaicans, who accompanied Edward B. Bailey in his expedition to Rencador key in June, 1831.

My Government, knowing the elevated sentiments of justice entertained by that of the United States of America in its determinations, confides that in the present case, taking account of the legality of its pretensions, it will expressly recognize the sovereign right of Colombia over the keys of Rencador and Quitasueño, and that in consequence it will revoke the authorization granted to Mr. J. W. Jennet for the removal of guano therefrom, making appropriate notification thereof to him, or to his representatives.

I am with sentiments of the highest and most distinguished consideration the Honorable Secretary's

Faithful servant,

Julio Rengifo,

Chargé d'Affaires ad interim Colombia.

Translated by
A. A. Adams.
Jan. 25, 1893.

ANNEX 10

Figures

Annex (pages 495 to 521) not reproduced