

- DEPARTMENT OF STATE
- ~~NOT~~ THE LEGAL ADVISER

THE SOVEREIGNTY

OF

GUANO ISLANDS

IN THE

CARIBBEAN SEA.

September 30, 1932.
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DEPARTMENT OF STATE

THE LEGAL ADVISER

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DEPARTMENT OF STATE

THE LEGAL ADVISER

INTRODUCTION

The islands included in this report, with the exception of The Monks, are those in the Caribbean Sea named by American citizens applying for the recognition of those islands by the United States under the Guano Act of August 18, 1856.¹ The Monks were said to contain guano, and were occupied by American citizens, but before the passage of the Guano Act, and no claim was made to them under that Act. However, Judge Moore lists them as guano islands and for that reason they have been described herein. The ^{Swan} islands, ^{and} of Roncador, Quito Sueno, Serrana, and Serranilla, which fall within the scope of this report, are not included because their histories have been fully described in a separate memorandum^a. For the same reason a discussion of the Guano Act and its interpretation has been omitted.

It is to be hoped that the information here set forth will enable the United States to determine the islands in the Caribbean Sea over which it now claims or may legally claim, sovereignty, and the bases for such claims.

¹ § 5570 - 5578 Rev. Stat; 48 U.S.C.A. § 1411 - 1419.

PART II. ISLANDS TO WHICH THE UNITED STATES HAS A CLAIM.

I. NAVASSA ISLAND

a. Geography.

Navassa Island, latitude 18° 24' N, longitude 75° 01' W., lies at the southern end of the Windward Passage. It is 36 miles west southwest of Cape Dame Marie, Haiti, and 74 miles east northeast of Morant Point, Jamaica. The Island is about 2 by 1 miles square, and from 130 to 250 feet high. It is of volcanic origin, composed largely of limestone, lined with veins of iron pyrites, the crevasses between the rocks being filled up with guano, making the surface nearly level. The summit is covered with stunted palm trees and cactus and is inhabited by iguanas (tree lizards) and numerous sea birds. All sides of the Island are steep-sloping, white cliffs, except for Lulu Bay, at the southwest side, where small vessels may anchor.

b. United States Claim under the Guano Act.

On December 3, 1857, a declaration of the discovery of guano by Peter Duncan on Navassa Island was filed in the Department of State. Duncan's deposition, dated October 18, 1857, stated that the discovery was made on July 1, 1857, and that possession was taken September 29. He prayed that

his

²
West Indies Pilot (Washington, 1927) Vol I, H. O. 128, ✓
 pages 358 - 359.

his rights under the Guano Act be recognized, and that the Island be considered as appertaining to the United States. An analysis of the guano found on the Island was enclosed, and showed that it consisted of a concentrated phosphatic manure, 70.63 per cent bone phosphate of lime.³ On April 24, 1858, a "Certificate of Peaceable Possession" was forwarded to the Department. This consisted of the deposition of John L. Lewis, mariner, dated March 15, 1858, stating that Lewis, as Duncan's agent had been in peaceable, uninterrupted possession of Navassa since September 18, 1857.⁴ In December 1857, the Department received a deed of assignment, dated November 18, 1857, from Peter Duncan to Edward O. Cooper of all the former's right, title, and interest in the guano on Navassa Island.⁵

In June and July of 1858 one J. H. Whitehurst wrote the Secretary of State that he had discovered guano on Navassa in 1855; that he found the Island in the possession of Haiti; that he entered into negotiations with the Haitian Government

3. John H. Philip, Attorney for Duncan, to Lewis Cass, Secretary of State, December 3, 1857, and enclosures. Sen. Ex Doc. 37, 36 Cong, 1 Sess. page 2.

4. do. to do. April 24, 1858, and enclosure, Ibid page 6.

5. Deed filed in 5 MS Misc1. Let. re Guano, Navassa; See R. W. Bliss, Ass. Sec., to Staples, Cocke, and Hazlegrove, July 27, 1922 (811.0141/32).

Government in the winter of 1855-56 for a lease, but that this was not completed. He concluded by protesting against the claim of others (not named), and against considering the Island as one which falls within the provisions of the Guano Act.⁶ Apparently these protests were ignored, as no reply to them has been found.

The United States first recognized and in fact approved Duncan's and Cooper's interest in Navassa Island in 1858. In April of that year, E. K. Cooper, Agent for Edward O. Cooper, Duncan's assignee, informed the Department that Emperor Soulouque of Haiti was about to send an armed expedition to Navassa to remove the 60 Americans then digging for guano on the Island.⁷ This in fact happened and in the spring of 1858 Haiti sent two men-of-war to Navassa, and the Commander ordered the men to stop removing guano, and stood by to see that no more work was done. Later there was a second expedition from Haiti, and Frazer, the Company Superintendent on the Island, was informed that the Haitian Government had leased the Island to a citizen of Jamaica. Frazer communicated with Cooper, and with the United States Consul at Port au Prince, and registered a formal protest against the

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J. H. Whitehurst to Lewis Cass, Secretary of State, June 16, 1858; do. to do., July 15, 1858, 5 MS. Misc. Let. Re Guano, Navassa.

⁷

E. K. Cooper to Lewis Cass, Secretary of State, April 23, 1858, Ibid; S. Ex. Doc. 37, supra note 3 page 3.

the acts of the Haitian Government.⁸ In June, 1858, Cooper⁹ protested to the United States Government.

The Secretary of State determined to protect the interests of Duncan and Cooper in Navassa Island, and on July 7, 1858, requested the Secretary of the Navy to send a warship to Navassa for that purpose:

"The President being of the opinion that any claim of the Haitian Government to prevent citizens of the United States from removing guano from the Island of Navassa, is unfounded, and that in this case it is advisable to exercise the authority vested in him by the 5th section of the Act of Congress approved August 18, 1856, directs that you will cause a competent force to repair to that Island, and will order the officer in command thereof to protect citizens of the United States in removing guano therefrom against any interference from authorities of the Government of Haiti, or of any other government."¹⁰

A copy of this communication was sent to Cooper,¹¹ as was also a report of Commander Turner of the SARATOGA regarding¹² his visit to Navassa. Turner stated that the trouble was started by two Englishmen from Jamaica who obtained a lease of Navassa from Haiti and persuaded Haiti to expel the Americans.

⁸ See John L. Frazer to Capt. E. K. Cooper, May 26, 1858, 5 MS. Misc. Let. Re Guano, Navassa; E. K. Cooper to Cass, Secretary of State, August 23, 1858, Ibid, S. Ex. Doc. 37, page 12.

⁹ E. K. Cooper to Lewis Cass, Secretary of State, June 17, 1858, Ibid page 7.

¹⁰ Lewis Cass, Secretary of State, to Isaac Toucey, Secretary of Navy, July 7, 1858, Ibid. page 9.

¹¹ L. Cass. Secretary of State, to E. K. Cooper, July 8, 1858, Ibid page 9.

¹² do. to do., September 16, 1858, Ibid, page 16, et seq.

Americans. The SARATOGA first visited Port au Prince in order to demonstrate the power and intention of the United States, and on August 7 reached Navassa. Commander Turner wrote Frazer, the Phosphate Company's agent on the Island, as follows:

"I have . . . to authorize that you will go on with the prosecution of your business of storing and loading your ships with guano, in spite of any protest or opposition that may be made from any quarter whatever, assuring you by authority that you will receive the full protection of the Government of the United States where you are and in what you are doing, and I hereby caution all persons, of any government whatever, who may visit Navassa, to abstain from the slight interference with you, on pain of the displeasure of my Government and its prompt retributive action, which will hold to a strict accountability all and any such persons, let their pretext or authority be what it may. . . .

"The Government is determined to extend to you that protection to which your Company, under the laws of our country, is entitled." ¹³

After the Secretary of State had requested the Navy to send a warship to Navassa it was discovered that neither Cooper nor Duncan had filed the bond prescribed by the Guano Act. Accordingly, on July 12, 1858, the Secretary of State reminded Cooper of this provision and fixed the penalty of the bond at \$100,000. ¹⁴ At Cooper's request the amount was reduced to \$50,000. ¹⁵ The bond of Cooper and Duncan for

Navassa

¹³ Ibid, enclosure.

¹⁴ Cass, Secretary of State, to E. K. Cooper, July 12, 1858, Ibid, page 10.

¹⁵ do. to do. August 18, 1858, Id. page 11.

Navassa Island was dated August 31, 1858, and was sent to¹⁶ the State Department on September 22, 1858. For some reason it was not forwarded to the Treasury Department¹⁷ until December 7, 1859.

About a year after the episode of the SARATOGA, Charles Gwinn, attorney for Cooper, wrote the Secretary of State that he believed the Guano Act required some affirmative action by the President, which would be an exercise of his discretion to declare the Island appertaining to the United States. Accordingly, Gwinn suggested that the Department issue a certificate to Duncan and Cooper recognizing their rights under the Guano Act. He enclosed a draft form which was corrected by someone in the Department and was subsequently used, not only with regard to¹⁸ Navassa but with regard to other islands also. On December 8, 1859, the Department notified Gwinn that the Attorney General believed there was no legal objection to the granting of this certificate and accordingly a certificate, substantially that submitted by Gwinn, was enclosed.¹⁹

It

¹⁶ E. K. Cooper to Cass, Secretary of State, September 2, 1858, 5 MS. Misc. Let. Re Guano, Navassa.

¹⁷ L. Cass, Secretary of State, to Howill Cobb, Secretary of Treasury, December 7, 1859, 51 MS. Dom. Let. 267.

¹⁸ C. I. M. Gwinn to L. Cass, Secretary of State, October 13, 1859, MS. Misc. Let. October, 1859.

¹⁹ John Appleton, Assistant Secretary, to C. I. M. Gwinn, December 8, 1859, 51 MS. Dom. Let. 271.

It stated that Peter Duncan, a citizen of the United States, had filed with the State Department the required notice of the discovery of guano on and the occupation of the Island of Navassa, in the name of the United States; gave the position of the Island; that Edward K. Cooper, also a citizen of the United States and Duncan's assignee, had given bonds in accordance with the provisions of the Guano Act; and concluded,

"Wherefore the said Edward K. Cooper is entitled, in respect to the guano on the said island, to all the privileges and advantages intended by that act to be secured to citizens of the United States who may have discovered deposits of guano; provided always, that the said Edward K. Cooper shall abide by the provisions imposed by the act of Congress aforesaid." ²⁰

c. Subsequent Acts of Recognition by the United States; Protests of Haiti.

In November, 1858, in answer to a protest from B. C. Clark, the agent for the Government of Haiti, the Department replied as follows:

"...a citizen of the United States having exhibited to this Department proofs which were deemed sufficient that that island [Navassa] was derelict and abandoned, with guano of good quality, and having applied for the protection of this Government in removing the guano therefrom, pursuant to the act of Congress of the 18th of August, 1856, . . . that application has been

granted

granted. You will notice, however, that the act does not make it obligatory upon the Government to retain permanent possession of the Island." ²¹

Again, in the same year, the Department stated that:

". . . The Government of the United States has determined to maintain the rights of its citizens to the island of Navassa." ²²

Navassa Island has been included in all the lists of guano islands compiled by the Treasury Department and sent to Collectors of Customs with instructions to apply the coasting trade regulations to trade with those islands, according to the Guano Act. On the first list on August 23, 1867, it is listed as "Nevassa," with the position, and the notation that a certificate had been issued to E. K. Cooper of Baltimore, Maryland. ²³ On the subsequent list of February 12, 1869, and as far as can be ascertained, on all later lists the name is spelled "Navassa." ²⁴

There is no doubt that the coasting trade provisions of the Guano Act were actually applied in the case of Navassa Island. In January, 1860, the British Minister to the United States protested against the confiscation

of

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- ²¹ John Appleton, Assistant Secretary, to B. C. Clark, Agent for Haiti, November 17, 1858, Doc. 37, Supra Note 3.
- ²² L. Cass. Secretary of State, to Vose, Livingston and Co., July 31, 1858, 49 MS, Dom. Let. 74.
- ²³ 6 MS. Misc. Let Re Guano, Misc.
- ²⁴ Ibid.

of the British vessel LAUREL under the above-mentioned provisions, and contended that this was an extension of the meaning of the phrase "coasting trade" which impaired the reciprocity obtained by the negotiations of 1849 between the United States and Great Britain.²⁵ The State Department notified the Secretary of the Treasury²⁶ who replied that under the Navigation Act of March 1, 1817, prohibiting foreign-owned vessels from transporting merchandise between ports of the United States, and under Section 5575 of the Guano Act, confiscation of a foreign ship engaged in trade with the guano islands was the only course possible. He added that remission was promptly granted when it appeared that there was no criminal intent, and that the remission of the forfeiture of the LAUREL'S cargo was granted under the most favorable conditions authorized by the law and the circumstances of the case.²⁷

In 1871 the Supreme Court of Massachusetts had occasion to determine the question of whether Navassa was commonly known as a Guano Island.²⁸ The action was on an insurance

²⁵ Lord Lyons, British Minister to U. S., to L. Cass, Secretary of State, January 11, 1860, 39 MS Notes from Great Britain.

²⁶ L. Cass, Secretary of State, to Lord Lyons, Brit. Min. to U. S., January 17, 1860, 8 MS Notes to Great Britain, 306.

²⁷ H. Cobb, Sec. of Treas. to L. Cass, Sec. of State, Feb. 23, 1860, MS. Misc. Let, Feb. 1860; L. Cass, Sec. of State, to Lord Lyons, Brit. Min. to U. S., Feb. 24, 1860, 8 MS Notes to Great Britain 307.

²⁸ Whiton v. Albany Insurance Co., 109 Mass. 24 (1871).

insurance policy which prohibited voyages from all guano islands except the Peruvians, and recovery was sought for a vessel which had been lost on a voyage from Navassa Island. In the trial evidence consisting of the following documents was excluded: The State Department's letter of July 7, 1858, to the Secretary of the Navy; Duncan's memorial; letters from E. K. Cooper and from the Secretary of State relative to the naval expedition of 1858; letters from the Secretary of State requiring the bond, and acknowledging its receipt; Commander Turner's reports regarding his visit to Navassa; the Department's letter of November 17, 1858, to Clark; and the proclamation of the Secretary of State of December 8, 1859. On appeal the court held the evidence should have been admitted to prove that Navassa was a guano island, and stated that:

"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."²⁹

The Haitian Government did not protest the United States occupation of Navassa until July 19, 1872, when³⁰ formal protest, supported by documentary evidence, was filed with the Department. A second protest was sent on March 19, 1873.

The

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Ibid, page 31.

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Stephen Preston, Haitian Min. to U. S., to H. Fish, Sec. of State, July 19, 1872; Mar. 19, 1873, MS. Notes from Haiti.

The Secretary of State answered the first protest on December 31, 1872. He summarized the bases for the Haitian claim as follows: Discovery of the Island by Columbus; Spanish conquest, and the Franco-Spanish Treaty ceding to France part of St. Domingo; the Declaration of Independence of Haiti of 1803; the Ordinance of 1825 issued by Charles X of France recognizing the independence of the Island of St. Domingo; the Treaty of 1828 with Haiti in which France relinquished all claim to the Island; and, finally, half a century of peaceable, uninterrupted possession by Haiti. In reply, the Secretary of State declared:

"Not one instance is given of the actual occupation of the Island previous to its possession and occupancy by citizens of the United States in 1857."

The guano, the only thing of value on the Island, had been undisturbed up to that time, and it was reasonable to infer that it had not been discovered by Haiti. Furthermore, in none of the treaties mentioned was Navassa included by name, and

"No instance is given in which Haiti has ever attempted to enforce any of its revenue laws in Navassa."

The Secretary of State maintained also that the appearance of Navassa on 16th century maps proved nothing except that the position of the Island was known at that time, adding:

"It

"It is difficult to understand why the specification in or omission of Navassa from any maps ancient or modern, or a mere statement of the position of that Island by geographers could give to any nation a right to sovereignty over it."

He remarked that Haiti's argument amounted at most to

"a claim to a constructive possession, or rather to a right of possession; but, in contemplation of international law, such claim of a right to possession is not enough to establish the right of a nation to exclusive territorial sovereignty."

With regard to the claim of Duncan and Cooper under the Guano Act, the Secretary said:

"The negative propositions of non-occupancy and absence of jurisdiction of any other Government were shown to exist by satisfactory proof; by the very best evidence of which such a case is in its nature susceptible--the entire absence of inhabitation and the undisturbed condition of its rich deposits of guano. . . . although fifteen years have elapsed since Duncan and Cooper discovered and settled upon the Island, no evidence has been yet adduced by Haiti going to establish the affirmative proposition of its ever having been occupied or even showing any act of jurisdiction having been exercised over it by that Government."

He concluded by saying that the cases of Alto Velo and of Key Verd were not comparable to that of Navassa, because the two former were much nearer to the mainland and adjacent islands, and, moreover, had been specifically included by name in territorial laws of the claimant governments.
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In

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H. Fish, Sec. of State, to Stephen Preston, Haitian Minister to U. S., Dec. 31, 1872, I MS Notes to Haiti 124.

In the second note of June 10, 1873, the position of the United States is reiterated. In answer to the new allegation that Haitian fishermen have visited Navassa for many years, it is said that these are but "isolated facts" insufficient to establish the proprietorship of a nation; that fishermen of other nations undoubtedly visited Navassa too; that these visits were merely for temporary shelter while passing, and were of an occasional nature and not of the permanent character necessary for jurisdiction or title. The United States adverted again to the absence of evidence of any Haitian Act or law relating specifically to Navassa, saying:

"The extension of the laws of an Empire over a colonial possession forms one of the chief muniments of the nation's title to sovereignty over the colony, and the absence of these important links in the chain of testimony advanced in the support of Haiti's claim to sovereignty over Navassa must, I submit, appear to any reasonable mind fatal to that claim, nor can this absence be supplied by the facts of contiguity of situation, or that Navassa had . . . remained a wilderness."

In conclusion, Haiti's proposal to have third parties³² decide the question was summarily rejected.

In 1889 the Navassa Phosphate Company was in possession of the Island, and had over a hundred colored laborers and
about

about a dozen white superintendents there. On September 14, 1889, a riot occurred between the colored employees and the officers in which several of the latter were killed. A United States warship was ordered to the scene.³³ Later, three of the men were convicted of murder in the District Court of Maryland under section 5576 of the Guano Act. On appeal, the Supreme Court (in Jones v. United States) affirmed the judgment of the lower court, and held that the Guano Act was constitutional, and that Navassa Island "appertained" to the United States under that Act. The evidence upon which the latter conclusion was based included, besides the documents mentioned in the Massachusetts case,³⁴ the State Department's notes of 1872 and 1873 rejecting Haiti's claim, and the Treasury Department's circular to Collectors of Customs with the lists of guano islands. The Court also ruled that evidence of loading guano on foreign ships (a breach of the discoverer's bond) was properly excluded in this case, because the breach of a condition of the bond affected only the discoverer's rights,³⁵ and not the dominion or jurisdiction of the United States.

In the same term the Supreme Court decided Duncan v.

Navassa

33

Adee, Acting Sec., to Lincoln, U. S. Min. to Great Brit., telegram, Sept. 19, 1889, 29 MS. Instructions, Great Brit.127

34

Supra Note 28.

35

Jones v. U. S., 137 U. S. 202 (1890).

³⁶
Navassa Phosphate Company. In this case the petition of Duncan's widow for dower in Navassa Island was disallowed on the theory that the discoverer's interest was an estate at will, not subject to dower at common law. It should be noted that while the Supreme Court affirmed the decision of the lower court, it did so for different reasons. The opinion of the lower court,³⁷ based on the grounds that the Guano Act did not give either the United States or its citizens any territorial sovereignty or domain over guano islands, is, therefore, superseded by that of the Supreme Court.

In 1896 the Spanish Minister reported various filli-bustering expeditions to Cuba managed by United States citizens. Among others, the steamer DAUNTLESS was said to have taken arms and ammunition on board at Navassa Island.³⁸ The District Attorney at Brunswick, Georgia, where the DAUNTLESS was held, thought that the vessel could not be prosecuted for a violation of the neutrality laws of the United States because, under the ruling of the Jones Case, the Guano Act extended the United States statutes for the punishment of offenses on the high

³⁶ 137 U. S. 647 (1891).

³⁷ Grafflin v. Nevassa Phosphate Co., 35 Fed. 474 (1888).

³⁸ E. Duprey de Lôme, Span. Min. to U. S., to Sec. of State, Sept. 4, 1896, 38 MS Notes from Spain.

high seas to like offenses done on Navassa, and a violation of neutrality was not "a crime upon the high seas" within the meaning of the Federal criminal statutes.³⁹ The DAUNTLESS was detained ten days, however, awaiting the production of evidence showing a violation of the neutrality laws, and then was libeled for the non-payment of certain fines under sections 4499, 4234, and 4197 of the Revised Statutes. Apparently there was at this time no prosecution of the DAUNTLESS for the alleged filibustering expeditions, but whether this was because of the above-mentioned legal difficulty, or lack of proof is not clear.⁴⁰ Much later, in 1908, James A. Woodward, Superintendent of Navassa from 1892 to 1898, reported that the DAUNTLESS and other vessels carrying expeditions to Cuba⁴¹ had called at Navassa in 1896.

In April, 1891, a colored laborer employed on Navassa by the Navassa Phosphate Company complained to the President that he was wrongfully detained there after the expiration of his contract of service. Thereupon the Government sent a naval vessel

³⁹ M. N. Rockhill, Acting, to the Att'y Gen., Sept. 10, 1896, 212 MS. Dom. Let. 432.

⁴⁰ do. to E. Duprey de Lôme, Span. Min. to U. S., Sept. 11, 1896, XI MS. Notes to Spain 215; do. to do., Sept. 29, 1896, Id. 224; Olney, Sec. of State, to do., Oct. 27, 1896, Id. 235; do. to do., Nov. 12, 1896, Id. 239.

⁴¹ J. A. Woodward to President of U. S., Jan. 11, 1908, 739 MS. Numerical File 10640.

vessel to investigate conditions on the Island, and it was found that the man had been unlawfully detained, and that a condition of revolt existed among the men. The Naval Officers Board reported as follows:

"The discipline maintained on the island seems to be that of a convict establishment, without its comforts and cleanliness, and that, until more attention is paid to the shipping of laborers, by placing it under Government supervision to prevent misunderstanding and misrepresentation, and until some amelioration is shown in the treatment of the laborers, these disorders will be of constant occurrence." 42

After this report the President, in 1891, recommended legislation putting labor contracts for work on Navassa and other guano islands under the supervision of a commission, and recommended that an officer be appointed to reside on the Island to adjust disputes and see that the men were humanely treated. He insisted that Navassa Island "has . . . been recognized by the President as appertaining to the United States", and added:

"It is inexcusable that American laborers should be left within our own jurisdiction without access to any Government officer or tribunal for their protection and the redress of their wrongs." 43

Apparently no action was taken pursuant to this recommendation, although

42

Report of Naval Officers Board, quoted in message of President Benjamin Harrison, Dec. 9, 1891, 1891 For. Rel. XIV.

43

Ibid; See also A. A. Adey, Ass. Sec., to General Benjamin Harrison, Dec. 3, 1897, 223 MS. Dom. Let. 141.

although it is reported that the Government appointed a Governor of the Island, and that Mr. Woodward was the last Governor.⁴⁴ Woodward himself reports that he was⁴⁵ superintendent there from 1892 to 1898, and it is not clear from the correspondence whether he was appointed by the Government or by the Phosphate Company.

d. Occupation of Navassa, Attitude of the United States.

As has been said, Peter Duncan, the discoverer under the Guano Act, assigned his interest in Navassa to E. O. Cooper, by a deed dated November 18, 1857.⁴⁶ Cooper in turn assigned to the Navassa Phosphate Company, for \$300,000, his interest. The Company was organized in New York State on September 9, 1864.⁴⁷ It actually occupied the Island and removed guano therefrom until May 7, 1898, when the Government removed all the inhabitants in a warship because of the outbreak of the Spanish American War.⁴⁸

After

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- 44 W. Crawford to R. Bacon, Acting, Jan. 28, 1908, 739 MS. Numerical File 10640.
- 45 J. A. Woodward to Pres. of U. S., Jan. 11, 1908, Id.
- 46 Deedfiled in 5 MS. Misc1. Let. Re Guano, Navassa.
- 47 Horatio King, stockholder of the Co., to A. A. Adeo, Ass. Sec., Jan. 29, 1908, 739 MS. Numerical File 10640. The State Department has no copy of the assignment from Cooper to the Navassa Phosphate Co. See R. W. Bliss, Ass. Sec., to Staples, Cooke, & Hazlegrove, July 27, 1922 (811.0141/32).
- 48 W. Crawford to R. Bacon, Acting Sec., Jan. 28, 1908, 739 Numerical File 10640; L. Harrison, Ass. Sec., to J. Lawrence, Nov. 2, 1922 (811.0141/33).

After the abandonment of the Island in 1898, the Phosphate Company and the State Department were informed that thieves, apparently Haitians, had stripped the Island of everything movable which had been left there by the Company. The Company finally sent Dr. John Lawrence to take possession of and sell the remaining property. The United States Minister to Haiti reported that the Haitian Government had seized the goods and imprisoned the parties found in possession of them, and had turned over the goods to the American Consul who sold them and held the proceeds⁴⁹ in trust for the Company.

Some time in January, 1899, John Fowler, President of the Navassa Phosphate Company, presented to the State Department a claim for \$10,413.82 against the Government of Haiti for the action of its citizens in removing the Company property from Navassa in 1898. The letter was withdrawn at Fowler's request, but the State Department replied that no liability on the part of Haiti had been shown for the piratical acts of its subjects in pillaging Navassa, there being no evidence
of

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J. B. Moore to Navassa Phosphate Co., June 30, 1898, 229 MS. Dom. Let. 646; do., to do., July 1, 1898, Id. 663; Navassa Phosphate Co., (Fowler), to Sec. of State, July 2, 1898, MS. Misc. Let. P & I, July, 1898; J. B. Moore, Ass. Sec., to J. H. Fowler (Pres. Navassa Phosphate Co.), July 9, 1898, 230 MS. Dom. Let. 107; L. A. Dent, U. S. Consul, to J. B. Moore, Ass. Sec., July 10, 1898, 36 MS. Consular Let., Kingston, Jamaica, No. 173; W. F. Powell, U. S. Min. to Haiti, to Sec. of State, Feb. 13, 1899, 34 MS. Dispatches from Haiti, No. 511.

of negligence on the part of Haiti in preventing the act,⁵⁰
no Government complicity, and no refusal to punish.

In 1922 Dr. Lawrence inquired of the Department regarding the status of the Navassa Phosphate Company's claim against the Haitian Government, alleging that he had a 10 per cent interest in the claim by virtue of a contract with the Company. The Department replied enclosing the letter of April 15, 1899,⁵¹ to Fowler. On March 12, 1923, the Department informed Lawrence of the procedure for the presentation of claims before the Claims Commission created by the Protocol of⁵² November 3, 1919, between the United States and Haiti. Later in the same year the Department supplied Lawrence, at his request, with the names of Washington attorneys who were⁵³ handling the claims. There is no report in the Department of the final settlement of any of these claims against Haiti.

After the abandonment of Navassa in 1898, an action was brought by a creditor, in August, 1900, to dissolve the Company, and a default judgment was entered against the Company on August 27 and a receiver (Mr. Johnson) appointed. He

sold

50 John Hay, Sec. of State, to John Fowler, Pres. Navassa Phosphate Co., April 15, 1899, 236 MS. Dom. Let. 354.

51 L. Harrison, Ass. Sec., to J. Lawrence, Nov. 2, 1922 (811.0141/33).

52 W. Phillips, Under Sec., to Navassa Phosphate Co. (J. Lawrence), Mar. 12, 1923 (438.11 N 22).

53 do. to J. Lawrence, April 30, 1923 (438.11 N 22/1).

sold the Island at auction on September 15, 1900, to Wyatt Owen for \$25,000 (\$750 cash and the balance on time).

Horatio King, a minority stockholder, discovered that the action dissolving the Company was fraudulent, and moved to set aside the judgment. The motion was granted in July, 1901; the costs and expenses were paid, and the sale was set aside.⁵⁴

It is not clear from the correspondence whether Owen or the Phosphate Company was occupying the island in 1901, before the sale to the former was set aside, although it was probably Owen.⁵⁵ However that may be, it is quite certain that Woodward was Superintendent on Navassa in March, 1901, for Mrs. Woodward wrote the Department requesting that a naval vessel be sent to Navassa to rescue her husband and the men there whom she feared were starving. Accordingly the MAYFLOWER was sent. The Commander reported that he had left provisions, and the men were all right.⁵⁶

Subsequently

⁵⁴ Horatio King to A. A. Adey, Ass. Sec., Jan. 29, 1908, 739 MS. Numerical File 10640; Russel A. Johnson to R. Bacon, Ass. Sec., Dec. 21, 1907, Id.

⁵⁵ See *supra*, Note 54; R. A. Johnson to D. J. Hill, Acting Sec., Mar. 7, 1901, MS. Misc. Let Part I, Mar. 1901; Wyatt Owen to D. J. Hill, Ass. Sec., Mar. 28, 1901, Id; John Hay, Sec. of State, to Sec. of Navy, April 1, 1901, 251 MS. Dom. Let. 622.

⁵⁶ Sec. of Navy to Sec. of State, Mar. 22, 1901, MS. Misc. Let. Mar. 1901; John Hay, Sec. of State, to Sec. of Navy, Mar. 28, 1901, 251 MS. Dom. Let. 532; Sec. of Navy to Sec. of State, Mar. 28, 1901, MS. Misc. Let; Sec. of State to Sec. of Navy, Apr. 1, 1901, 251 MS. Dom. Let. 622; Wyatt Owen to D. J. Hill, Ass. Sec., Mar. 28, 1901, MS. Misc. Let; Ass. Sec. to W. Owen, Mar. 30, 1901, 251 MS. Dom. Let. 564.

Subsequently, in the same year, it was reported that Navassa was about to be abandoned as the guano supply was practically exhausted.⁵⁷ There is one statement from which it may be inferred that the island was still occupied in 1904, but it is probable that there was a mistake in the date given,⁵⁸ as all other evidence tends to show that no guano was removed from Navassa after 1901, although the agents of the Phosphate Company may have visited it from time to time subsequent to that date.⁵⁹

Navassa again figures in the State Department correspondence in 1904, and in 1905. [In the latter year W. S. Carter inquired of the Department if he might purchase Navassa Island from the United States. The Department replied ". . . this Government possesses no territorial sovereignty over the Island of Navassa."⁶⁰ This position was reiterated in 1907, with the following additional statement:

"United

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- ⁵⁷ Isaac McKinley to John Hay, Sec. of State, Feb. 6, 1901, MS. Misc. Let.
- ⁵⁸ R. A. Johnson to R. Bacon, Ass. Sec., Dec. 21, 1907, 739 MS. Numerical File 10640.
- ⁵⁹ H. King to A. A. Adey, Ass. Sec., Dec. 30, 1907, Id; W. Crawford to R. Bacon, Acting Sec., Jan. 28, 1908, Id; Sec. of Navy to Sec. of State, Mar. 2, 1901, MS. Misc. Let.
- ⁶⁰ R. Bacon, Ass. Sec., to W. S. Carter, Dec. 4, 1905, 286 MS. Dom. Let. 2.

"United States citizens who discover guano, or their assignees, are protected by this Government in the prosecution of their enterprises, which extend only to the appropriation and removal of the guano thereon . . . Navassa Island has not been stricken from the list of guano islands appertaining to the United States . . . The law is silent upon the subject whether non-use of the privilege of working the guano causes a forfeiture of the privilege . . . Neither does the law prescribe any method by which the Government of the United States can determine when the guano has all been removed." 61 ✓

This position is an apparent contradiction of the Department's previous behavior regarding Navassa, and of a letter written in 1904 in answer to an inquiry from the Commerce Department, asking if Navassa was "sufficiently" a part of the United States for the Government to erect a light on it. The Secretary of State, after remarking that this was not for the determination of the State Department, continued "cheerfully" as follows: ✓

"Navassa is an Island 'appertaining to the United States', and, in my opinion, this Government has authority, if it is deemed necessary, to erect a lighthouse there. The statute authorized the President, under certain specified conditions, to consider guano islands as appertaining to the United States. These conditions have been declared to exist in the case of Navassa, and the Island is considered as appertaining to the United States. As the Island is territory appurtenant to the United States, I believe this Government has the right to exercise jurisdiction over it in such manner as it sees fit."

He

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State Dept. to Dudley and Michener, Jan. 3, 1907; Letter not found, quoted in Sol. Op. Sept. 25, 1907, 1907 Sol. Op. Pt. II, 627, at 630, 631.

He then cited the Jones Case, and added that authority to erect the light could be deduced from section 5577 of the Revised Statutes authorizing the employment of the naval force of the United States, adding:

"The establishment of a lighthouse there [on Navassa] may be deemed to be necessary to carry out the express purpose of the law. The power to do the one thing would seem to include incidentally the power to do the other." 62 ✓

In 1907 the Isthmian Canal Commission inquired if a light could be erected on Navassa. 63 ✓ The Department replied enclosing a memorandum of the Solicitor dated September 25, 1907, in which it is maintained that the United States has not surrendered jurisdiction over Navassa under the Guano Act, but that the Government had so interpreted the Act that it could not say Navassa "belongs" to the United States within the meaning of section 4661 of the Revised Statutes. This section provides as follows:

"No lighthouse, beacon, public piers, or land mark, shall be built or erected on any site until cession of jurisdiction over the same has been made to the United States."

The State Department added, however, that internationally speaking this Government is in a position to assert full sovereignty over Navassa Island . . . and that no other government

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John Hay, Sec. of State, to Sec. of Com. and Labor, Mar. 5, 1904, 272 MS. Dom. Let. 628.

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R. R. Rogers to A. A. Adey, Assis. Sec., Dec. 21, 1907, 739 MS Numerical File 10640.

government could reasonably object to such assertion. It was suggested that legislative cooperation was necessary for the Board of Lighthouses to erect the light, although the War Department might have authority to do it without such legislation.⁶⁴

In 1911 the Secretary of Commerce and Labor forwarded another request to the State Department regarding the erection of a lighthouse on Navassa and got approximately the same reply that the Canal Commission received in 1908, with an additional remark that, "there has been no subsequent change in the status of the Island . . ."⁶⁵

Evidently the Commerce Department grew tired of this procedure, and an appropriation of \$125,000 was obtained from Congress for the erection of a light on Navassa Island, by the Act of October 22, 1913.⁶⁶ On December 27, 1915, the Commerce Department advised the State Department of its intention to erect the light, and also a radio station, and inquired regarding the enforcement of the neutrality laws with regard to the latter.⁶⁷ The request was forwarded to

⁶⁴ A. A. Adey, Acting Sec., to R. R. Rogers, July 20, 1908, 739 MS. Numerical File 10640; So. Op. 1907, Part II, p. 627.

⁶⁵ H. Wilson, Acting Sec., to Sec. of Com. and Labor, April 22, 1911 (811.822/4).

⁶⁶ Act of Oct. 22, 1913, 38 U. S. Stat. at Large, Part I, 1915, p. 224.

⁶⁷ Sweet, Ass. Sec. of Com., to Sec. of State, Dec. 22, 1915 (811.822/10).

to the Navy Department which assented to the erection of the radio station and suggested certain regulations.⁶⁸

Before the erection of the light was begun, President Wilson issued a proclamation dated January 17, 1916, which recited the first section of the Act of 1856; stated that "Whereas, pursuant to the foregoing Act of Congress, the Island of Navassa is now under the sole and exclusive jurisdiction of the United States and out of the jurisdiction of any other government"; adverted to the Act of October 22, 1913, granting an appropriation for the erecting of a light on Navassa; and concluded that Navassa is proclaimed and "is hereby reserved for lighthouse purposes, such reservation being deemed necessary in the public interests, subject to such legislative action as the Congress of the United States may take with respect thereto."⁶⁹

On August 27, 1916, the Commerce Department informed the State Department that it was erecting the light on Navassa, and that the radio station, owned by the United States Government but temporarily operated by the contractors engaged in building the light, had been licensed by the Commissioner of Navigation, Department of Commerce, but that

Great

⁶⁸ J. Daniels, Sec. of Navy, to State Dept., Jan. 11, 1916 (811.822/11).

⁶⁹ 39 Stat. at Large, Part II, 1917, p. 1763.

Great Britain had not yet recognized the station, and that such recognition was imperative in order that messages could be transmitted from Jamaica, the contractor's base of supplies.⁷⁰ Accordingly, a request for such recognition was made to Great Britain, and that Government authorized the Governor of Jamaica to issue the necessary license to the British Company there.⁷¹

[At present the light on the Island is maintained by the United States Government and the light keepers and radio operators live on the Island. There are no wharves or marking buoys in the Bay, and cranes on the cliff hoist the supplies ashore. There is a narrow gauge track from Lulu Bay to the lighthouse by which cars are hauled by cable. The Government also maintains the radio station and a mercurial barometer, and a naval vessel from the Guantanamo Naval Station visits the Island about once in three months with supplies.⁷²

e. Renewed Protests by Haiti.

When the Haitian Government learned that the Department of Commerce was erecting a light on Navassa, it entered a formal

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Sweet, Acting Sec. of Com. to Dept. of State, Aug. 23, 1916, (811.822/23).

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W. H. Page, U. S. Amb. to Great Brit. to Sec. of State, Nov. 13, 1916 (811.822/29).

⁷²

West Indies Pilot (Washington, 1927) Vol. I, H. O. 128, pages 358 - 359.

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formal protest against what was termed "an invasion of the sovereign rights of the Republic of Haiti on the Island."⁷³

The Secretary of State replied that the present administration of Haiti had never been formally recognized by the United States, so that it was not necessary for the latter to take official notice of the protest as requested. However, for the sake of the record, the Secretary called attention to Secretary Fish's notes of December 31, 1872, and June 10, 1873, adding:

"The Department of State is unable to discover that the Government of Haiti has since produced any argument or evidence that would affect the position then taken by the United States."⁷⁴

Since the erection of the light, the State Department has uniformly and unequivocally declared that Navassa forms a part of the territory of the United States. In an opinion of the Solicitor of 1917 it is stated that:

"It would, therefore, appear that this Government is committed to the view that it has the right to control and use Navassa Island, and such control and use would naturally extend to purposes of war as well as those of peace."⁷⁵

Various letters have been written to private citizens giving

73

Solon Ménos, Haitian Min. to U. S., to Lansing, Sec. of State, July 5, 1915 (811.822/8).

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Lansing, Sec. of State, to Solon Ménos, Haitian Min. to U. S., July 14, 1915 (811.822/8).

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Sol. Op. 1917, Part II, pages 665 - 683.

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a brief history of Navassa, citing the Presidential Proclamation of January 17, 1916, and noting that this action was based upon the Guano Act and also upon the Act of October 23, 1913.^{76✓} Navassa has also been included as one of "the possessions of the United States, outside the territorial boundaries of the United States."^{77✓}

In 1932, the United States Charge at Haiti reported that in the proposed amendment of the Haitian constitution Navassa Island was specifically included as part of Haitian territory. He told the Haitian Foreign Office that the Island belonged to the United States, but the Minister for Foreign Affairs replied that Haiti has always considered Navassa Island as Haitian territory, and that he thought it was time some settlement was made of the question.^{78✓} The State Department replied giving a summary of the history of the Island, referring to the Department's answers to Haiti in 1873 and in 1915, adding that there had been no change in the Department's position since the latter date; and instructed the

⁷⁶ C. E. Hughes, Sec. of State, to R. A. Armbruester, June 10, 1924 (811.0141/33a); Dept. of State (G.H.H.) to W. Leese, Mar. 13, 1928 (811.0141/37); W. R. Castle, Acting Sec., to R. F. Nichols, Sept. 1, 1932 (811.0141/54).

⁷⁷ W. R. Castle, Ass. Sec., to Parke L. King, July 1, 1927 (811.0141/35).

⁷⁸ J. F. McGurk, U. S. Charge at Haiti, to Sec. of State, June 15, 1932, No. 422 (838.011/125).

the American representative to inform the Haitian Government that the United States did not believe Haiti would include any statement regarding Navassa in its constitution "which is not brought out by the facts and the law."⁷⁹ ✓
 This ^{despatch} ~~(despatch)~~ was not received until after the Assembly had passed the article in question,⁸⁰ ✓ and the American Minister did not think it advisable to make representations at that time. He asked to be instructed "to make a formal reservation of our rights, setting forth the facts outlined in the Department's instruction . . . and stating that the Island is now actually occupied by the United States for the purpose of maintaining a lighthouse there."⁸¹ ✓ The Depart-
 ment authorized the Minister to take this action.⁸² ✓

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F. White, Ass. Sec., to J. F. McGurk, U. S. Chargé at Haiti, July 5, 1932, No. 207 (838.011/125).

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"Titre I Du Territoire de la Republique."

"Les Iles adjacentes faisant partie integrant du territoire sont:....La Navase...."

See Copy of Haitian Constitution, as amended July 15, 1932, enclosure, Munro, U. S. Min. to Haiti, to Sec. of State, July 25, 1932 (838.011/129).

81

Letter, Ibid.

82

F. White, Ass. Sec., to Munro, U. S. Min. to Haiti, Aug. 13, 1932, Id.

II. PETREL ISLAND (BAJO NUEVO)

a. Geography.

Bajo (Shoal) Nuevo or New Reef, latitude $15^{\circ} 50'$, longitude $78^{\circ} 40'$, is an oval shaped, coral bank in the Caribbean Sea, about 100 miles southwest of Portland Rock on Pedro Bank. Bajo Nuevo is about 14 by 5 miles square. There are two reefs on it; East Reef, and West Reef, and on the ends of both reefs are "sand bores" or keys. West Reef is nearly in the middle of the bank, and at the north end of this reef rises Low Key, a barren key composed of sand, broken coral and driftwood, about 5 feet high and 300 by 50 yards in size. There is a small pond on the key frequented by seals, and it is said that the animals are hunted in March and April by men in fishing vessels from Old Providence and St. Andrew. There is a fair anchorage off the key in moderate weather.

b. United States Claim under the Guano Act.

On August 9, 1869, James W. Jennett filed a notice of his discovery of guano on "the island of Baxo Nueva or New Shoal Bank", latitude $15^{\circ} 52' 20''$, longitude $78^{\circ} 33'$. Jennett's declaration, dated June 5, 1869, alleges that

he

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West Indies Pilot, H. O. 128 (U. S. 1927) Vol. I, pages 422 - 423.

he discovered guano on Petrel Island, situated at the northeastern extremity of the above-named bank, 1 1/2 miles within the edge of the bank, and 132 miles southwest from Pedro Bluff, on the south side of Jamaica. A crayon map of the island was enclosed, on which it is represented as 1 1/2 by 1/2 or 1/3 miles square! There was also an affidavit, dated May 26, 1869, signed by Jennett, stating that the guano on Petrel Island was discovered in December, 1866, and containing the usual allegations that the island was unoccupied, et cetera. These declarations were supported by certificates of the first and second mates on the PETREL (in which the voyage of discovery was made) dated May 28, 1869.⁸⁴ On October 12, 1869, the following additional evidence^(probably false) of Jennett's occupation of Petrel Island was filed: A second declaration by Jennett dated October 7, 1869, in which he says he landed two men on Petrel Island on August 27; an agreement dated August 28, 1869, between Jennett and two men from Martinique who promised to remain on the island three months; a certificate of Captain Eaden of the LAVINIA, that he visited the island on August 27, 1869, and landed two men there for Jennett.⁸⁵ There is also another

⁸⁴ Lincoln and Willard, Attys of Jennett, to Hamilton Fish, Sec. of State, Aug. 9, 1869, and enclosures, 5 MS. Misc. Let. Re Guano, Petrel.

⁸⁵ do. to do. Oct. 12, 1869, Ibid.

another affidavit by Captain Eaden dated September 11, 1869,⁸⁶
to the same effect.

On November 26, 1869, Jennett's bond for Petrel Island,
or Boxo Nueva (and for Pedro Key, Roncador, and Quito Sueno),⁸⁷
was filed with the Department. The State Department
approved his bond and sent it to the Secretary of the Treasury,
remarking that it was understood Jennett claimed the exclusive
right of occupying the island.⁸⁸ The Secretary of the Treasury
notified the Collectors of Customs that Petrel Island was to
be considered as appertaining to the United States under the
Guano Act of 1856, and therefore subject to coastwise trading
regulations.⁸⁹ The certificate or proclamation of November 30,
1869, issued by Secretary Fish to Jennett (see ^{infra}~~supra~~, under
Pedro Key), included Petrel Island, and there is no doubt
that the State Department recognized Jennett's exclusive
interest in the ^(alleged) guano on that island.⁹⁰ Petrel Island was
included on the later lists sent to the Collectors of Customs⁹¹
by the Secretary of the Treasury.

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- 86 Certificate of Eaden, Sept. 11, 1869, Ibid, Pedro.
- 87 Lincoln and Willard to Hamilton Fish, Sec. of State, Nov. 26, 1869, Ibid.
- 88 H. Fish, Sec. of State, to Geo. Bontwell, Sec. of Treas., Nov. 26, 1869, 82 MS. Dom. Let. 382.
- 89 See Geo. Bontwell, Sec. of Treas., to State Dept., Dec. 1, 1869, 5 MS. Misc. Let. re Guano, Petrel.
- 90 See Pedro Draft.
- 91 See 6 MS. Misc. Let Re Guano, misc.

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Various assignments of the guano supposed to be on Petrel Island were made by American citizens until 1911, but no evidence that any guano was ever removed from the Key has been found. Furthermore, there is no record of any statement made or position taken by the State Department with regard to Petrel Island since the issuance of the certificate to Jennett in 1869. The only mention of the island subsequent to that time, except for the assignments filed with the Department, is a statement made in 1925 by the American Consul at Kingston, Jamaica, that of the four groups Roncador, Quito Sueno, Petrel, and Pedro, the latter

is

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is the only one under the Government of Jamaica.

It would seem, therefore, that the island is not claimed by Great Britain as part of Jamaica. It may be that, should the United States revive its claim, the Government of Colombia would contest it, on grounds similar to those alleged in the Colombian claim to Roncador and Quito Sueno. It should be noted that the West Indies Pilot states that citizens of San Andres and Old Providence frequent the island in search of seals. ⁹⁸ Moreover, since apparently neither the United States Government nor its citizens has ever actually occupied or used Petrel Island, and since there has been no assertion of jurisdiction over it by the United States since 1869, it is reasonable to assume that the United States has now lost by abandonment whatever interest it may once have had in and to Petrel Island.

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U. S. Consul, Kingston, Jamaica, to Sec. of State,
Oct. 15, 1925 (844 d.0141/2).

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Supra, note 83.

Assignments.

1. James W. Jennett to Henrietta Stevens, May 5, 1870, all his interest in the guano on Petrel Island (also on Pedro Keys, Roncador, and Quito Sueno).

Henrietta Jennett (née Stevens) to the Petrel Guano Company, January 10, 1881, same interest. ⁹²

The Petrel Guano Company, March 23, 1893, resolution authorizing Robert L. Pierce to remove guano from any one or all islands in the Caribbean Sea belonging to the Company "with the view of effecting the sale of said islands."

Robert L. Pierce to The Venezuela Phosphatic Fertilizer Company, March 23, 1893, all his interest in the above contract with the Petrel Guano Company. ⁹³

The Petrel Guano Company (represented by Samuel Schwenk) to the Caribbean Guano Company (represented by George Crater), October 18, 1911, same interest acquired from Henrietta Jennett, supra. ⁹⁴

2. James W. Jennett to James H. Lancaster, December 11, 1890, all guano on Baxo Neuva Island and Bank. ⁹⁵

3. Henry

⁹² Filed in 5 MS. Misc. Let. re Guano, Roncador, Quito Sueno.

⁹³ Ibid, Petrel.

⁹⁴ Supra, note 92.

⁹⁵ Enclosure, Senator Walter Edge to Frank B. Kellogg, Sec. of State, Jan. 25, 1928 (811.0141 c19/26; see also /19, /28).

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3. Henry Dewey, on November 7, 1881, filed a notice with the State Department of an alleged contract dated May 10, 1880, by which Jennett granted to Dewey 1/2 interest in all the Caribbean guano⁹⁶ islands Jennett might discover.

Conclusion: The record title to the guano on Petrel Island, if there is any there, is in the Caribbean Guano Company.

III. MONITO (MONITA) ISLAND

a. Geography.

Monito Island, situated in the Mona Passage about midway between Puerto Rico and Haiti, is three miles north northwest of Mona Island. There is a clear channel between Mona and Monito. Monito is a barren islet, about 400 yards in diameter, and its sides are composed of low but steep cliffs. There is a rock on the west side at which a landing can be made, although it is dangerous. The island is frequented by numerous flocks of sea birds.

Mona Passage, between Point Jiguero, Puerto Rico, and Cape Engaño, Haiti, is 61 miles wide. In the center, at the south entrance, is Mona Island. It is about 6 miles long and 3 1/2 wide, and is of volcanic formation, with steep perpendicular cliffs on the north and northeastern sides, rising to a height of about 279 feet. On the southern side the cliffs are lower, with a narrow strip of lowland between them and the water, and the shores are fringed with detached coral reefs. On the northwestern and northeastern coasts there are many caves, with stalactites and stalagmites. These caves have become deposits for guano. There are on the island many wild cattle, goats, hogs, sea birds, and tortoises. There is also ^alight at latitude 18° 05' N., longitude 67° 51' W. On the southeastern side is Playa Pajaro,

Pajaro, a settlement with stores and dwelling houses, built⁹⁹
by a guano company.

b. United States Claim under the Guano Act.

There are two declarations of discovery of guano on Monito Island. The first is that of Jacob Stokely, filed on May 28, 1859. He enclosed a deposition dated February 25, 1859, in which he alleged: that he made the discovery on November 1, 1855, while he was master of the schooner GENERAL SCOTT; that the island (which he said was known as "L. Monita") was then barren and uninhabited; and that he loaded the schooner with guano and took it to Baltimore. He also stated that when he returned to Monito it was still unoccupied; but that two persons, both allegedly representing the Captain-General of Puerto Rico, and one being George Latimer, American Consul at the port of St. Johns, Puerto Rico, appeared and ordered him off the island; and that he was forced to leave. In conclusion he prayed for such protection as the United States laws might allow him.¹⁰⁰

The second notice of discovery was apparently presented to the State Department by Messrs. Patterson and Murguondo,
in

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West Indies Pilot (U. S. 1927) H. O. 128, Vol. I, pages 542 - 544.

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H. Stockbridge, Att'y for Stokley, to Pres. James Buchanan, May 28, 1859, and enclosures, 4 MS. Misc. Let. Re Guano, Monito.

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in July, 1859. The papers included: the deposition
of John Cole, master of the schooner BRILLIANT, dated
July 26, 1859, in which he alleged that he made a dis-
covery of guano on "Monita" Island on June 13, 1859, that
it was uninhabited, not within the lawful jurisdiction of
any other country, and that he took possession of it; and
supporting depositions of Henry Johnson, mate on the schooner
BRILLIANT, and of four seamen from the same schooner, both
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dated July 26, 1859.

Before either of these claims was presented to the
Department, the Spanish Minister to the United States
notified the Department, on June 16, 1856, that certain
American vessels had been found taking guano from "Monito"
Island, and that they had been evicted, pacifically, by
order of the Captain-General of Puerto Rico. The Minister
stated that this island was "a possession of Spain and a
dependency of Puerto Rico," and requested the Secretary of
State "to take such measures as may notify parties interested
that the Mona and Monita Islands are Spanish possessions and
dependencies of the Captaincy-General of Puerto Rico and
that

101

See John Appleton, Ass. Sec., to Patterson and Murguiondo,
Aug. 2, 1859, 50 MS. Dom. Let. 505.

102

Depositions of John Cole, Henry Johnson, and 4 Seamen,
4 MS. Misc. Let. Re Guano, Monito.

that the authorities of the latter will not allow any vessel, under what pretext soever, to export guano from them, without previously obtaining the requisite permission to that effect."¹⁰³ The Secretary of State replied, noting that the islands of Mona and Monita were claimed as dependencies of Puerto Rico, and stating that "agreeably to your request, an official notice to that effect has been published."¹⁰⁴

The Department apparently took no action on Stokely's claim, beyond acknowledging receipt of his papers and stating that for the United States to protect citizens under the Guano Act the island in question must not be within the lawful jurisdiction of any other government.¹⁰⁵ However, the Department did inform Messrs. Patterson and Murguondo of the contents of the Spanish Minister's note of June 16, 1856, and of Jacob Stokely's alleged discovery of guano on Monito in November, 1855.¹⁰⁶

No evidence has been discovered of any further representations made by Patterson and Murguondo, or by John Cole, regarding Monito, but in 1863 Stokely's claim was again

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- 103 Don Escalante, Spanish Min. to U. S., to W. L. Marcy, Sec. of State, June 16, 1856, 16 MS. Spanish Legation, notes from (translation).
 - 104 W. L. Marcy, Sec. of State, to Don Escalante, Span. Min. to U. S., June 19, 1856, 7 MS. Notes to Span. Legation 83. (No publication of such a notice has been found.)
 - 105 John Appleton, Ass. Sec. to H. Stockbridge, Att'y, June 8, 1859, 50 MS. Dom. Let. 374.
 - 106 John Appleton, Ass. Sec., to Patterson & Murguondo, Aug. 2, 1859, Ibid 505.

again urged upon the Department. ¹⁰⁷ The Secretary of State replied by referring to the Spanish Minister's protest in June, 1856, and added:

"This claim to jurisdiction [by Spain] has thus far been acquiesced in by the Government of the United States, and the Department is not now aware of any good reason for denying it." ¹⁰⁸

Once again, in 1875, Stokely's claim was presented by John S. Edwards, and Jesse H. Whitehurst, Stokely's successors in interest. There is on file an undated memorial signed by J. H. Whitehurst, recounting the eviction of ¹⁰⁹ Stokely from Monito in 1859, and enclosing various exhibits. John S. Edwards, in a memorial dated September 23, 1875, also recited these facts, and requested a navy escort for ¹¹⁰ vessels which he proposed to send to Monito for guano. This memorial was sent to the Navy Department and there is a note on the back, signed "J.A.B., Solicitor," dated December 28, 1875, to the effect that these claimants had never complied with the conditions of the Guano Act; that Monito is Spanish, and that it would be absurd to recognize Edwards' claim. Reference is also made to Secretary Seward's letter of

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- ¹⁰⁷ B. H. Hanna, Att'y for Stokely, to Wm. Seward, Sec. of State, Dec. 15, 1863, 4 MS. Misc. Let. Re Guano, Monito.
¹⁰⁸ Wm. H. Seward, Sec. of State, to B. H. Hanna, Jan. 14, 1867, 63 MS. Dom. Let. 17.
¹⁰⁹ Memorial of J. H. Whitehurst and enclosures, 4 MS. Misc. Let. Re. Guano, Monito.
¹¹⁰ Ibid.

of 1864. The Edwards memorial was filed by the State Department on March 1, 1878.¹¹¹ On May 3, 1877, Judge O'Connor, Examiner of Claims, concluded that Edwards could not properly remove guano from Monita Island for the following reasons: "The discovery or right has never been recognized by this Government"; No bond for the island was ever filed; Stokely's right of discovery, if he ever had any, had been lost by abandonment, for the discovery was in 1855, and in 1859 he only asked for damages, and took no further steps to protect his title; and finally, the rock in question is within the jurisdiction of Puerto Rico. He added that the request for a navy escort was absurd and that:

"We had a three-years' diplomatic contest with Haiti about the little island of Navassa. 112 It was not worth the time that was spent on it."

There can be no doubt that Edwards' claim was rejected although no record has been found of any letter to that effect from the Department.

c. United States Claim to Monito as Part of Puerto Rico.

By the Treaty of Peace of December 10, 1898, between the United States and Spain, Spain ceded to the United States

"the

¹¹¹ Ibid.

¹¹² Henry O'Connor, Examiner of Claims, May 3, 1877, 9 MS. Op. and Rep. No. 2.

"the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies . . ."¹¹³ There is no doubt that the "other islands" include Mona, which has long been regarded as adjacent to and part of Puerto Rico.¹¹⁴ The island of Mona is included in the municipality of Mayaguez, Puerto Rico, and according to the United States Census Report for 1930, it had in that year a population of 35.¹¹⁵ The light on the island is maintained by the United States Bureau of Lighthouses.

No specific reference to Monito Island as part of Puerto Rico has been found, but this may be explained by the fact that Monito is so small, and is completely barren and uninhabited. There can be no doubt, however, that it is generally regarded as contiguous to Mona, being only three miles from it, and that Monito as well as Mona, is one of the islands adjacent to Puerto Rico, under the Organic Act of March 2, 1917,¹¹⁶ and belongs to the United States.¹¹⁷

- 113 Treaty of Dec. 10, 1898, U. S. and Spain, Art. II, Malloy, Treaties, Vol. 2, page 1690.
- 114 See Organic Act of Porto Rico, as amended to March 4, 1927, (Wash. 1927); De Golia, Porto Rico, What it Produces and What it Buys, U. S. Commerce Dept. No. 785 (Wash. 1932), p. 1; M. S. Wolf & I. A. de Mier, A Guide Book to Porto Rico (N. Y. 1928), p. 45; E. M. Douglas, Boundaries, Areas, Geographic Centers and Altitudes of the United States (Wash. 1930), p. 47; See also Ham. Fish, Sec. of State, to Stephen Preston, Haitian Min. to U. S., Dec. 31, 1872, I MS. Notes to Haiti, 124, 136.
- 115 Fifteenth Census of the United States, Porto Rico (Wash. 1930), p. 11.
- 116 Supra, Note 114.
- 117 See Post Route Map of Porto Rico and Virgin Islands, Jan. 1923, U. S. A. (which shows Monito and Mona as part of Puerto Rico territory); See also U. S. Coast Pilot, West Indies (Wash. 1929), p. 111.

PART II. ISLANDS TO WHICH THE UNITED STATES HAS NO CLAIM.

I. ISLANDS CLAIMED BY VENEZUELA.

1. AVES (BIRD) ISLAND.

a. Geography.

Aves Island, latitude, $15^{\circ} 42'$ N., longitude, $63^{\circ} 38'$ W., is an isolated island in the eastern Caribbean Sea, west of the Leeward Islands group in the Lesser Antilles. There is another island of the same name between Bonaire and Los Roques, about seventy-five miles north of the Venezuelan Coast. The Aves in the Leeward Islands (more than 350 miles from the Venezuelan coast), is $3/4$ of a mile long by 5 yards wide, and is only 8 feet high. It is a coral island rising from a submerged bank of considerable size, and is surrounded by a barrier reef, except on the west side where a landing is possible. There is no fresh water on the island, and there are no trees, but it is covered with grass about 6 inches high.

There is said to be no appearance of guano on the island at the present time. During March and April fishermen from St. Eustatius and neighboring islands visit Aves in search of eggs which are sold in large quantities at St. Thomas. In the fishing season a schooner makes three voyages between Aves, St. Thomas, Saba and St. Eustatius islands.

118 West Indies Pilot (Washington, 1929) H. O. 129, pp. 135 - 136.

b. Claim of Shelton et al. against Venezuela.

Two years before the passage of the Guano Act of 1856, Messrs. Lang and Delano notified the State Department that their agent had discovered deposits of guano on Aves Island in June, 1854, and had taken possession of the island under the American flag, and that they were then engaged in shipping guano. They inquired whether they had a right to

possess the island.¹¹⁹ The State Department replied: that it was probable Aves Island had long since been discovered and named by Spaniards, but that presumably it was not considered desirable for settlement; and that the Department could only determine what action to take when occasion arose.¹²⁰

On January 15, 1855, Messrs. Sampson, Tappan and Shelton, associated with Lang and Delano, protested to the State Department against their forceful ejection from Aves Island by an armed Venezuelan force. This ejection took place on December 13, 1855,^{4?} when a Venezuelan vessel of War, commanded by one Dias, appeared at Aves, ordered the American flag down, and the American occupants off the island, and raised the Venezuelan flag; and on December 21, when the Venezuelan forces

119 Lang and Delano to Caleb Cushing, Att'y Gen., Aug. 29, 1854, S. Ex. Doc. 25, 34 Cong. 3d Sess., p. 2.

120 Marcy, Sec. of State, to Lang and Delano, Sept. 12, 1854, Ibid p. 3.

forces landed about twenty armed men on the island.¹²¹
In April, 1856, H. S. Sanford, attorney for Shelton,
presented a memorial claiming \$341,000 damages for the
eviction (\$28,500 for actual loss, \$312,500 for the guano
said to be on the island, valued at \$12.50 a ton), and
asking for the restoration of the island. Affidavits and
sworn statements were submitted at this time in proof of
claimants' actual discovery of the guano and occupation of
the island.¹²²

The Secretary of State accordingly instructed Mr. Eames,
United States Minister to Venezuela, that American citizens
had been forcibly evicted from the "derelict" island of Aves
by Venezuelan forces, and requested him to discover what
title Venezuela had to the island, adding:

"Venezuela has had no actual possession
of that island--no military or civil estab-
lishment thereon, no continued occupancy by
its citizens. She has exhibited to the
world no such manifestations of ownership
as any other nation is bound to recognize
or respect. She certainly can found no
plausible pretext to claim it as her own
by reason of its proximity to any of her
acknowledged territories. Other powers
have possessions much nearer to it than
any of hers.

"Unless Venezuela has the rightful
sovereignty over that island, the act of

her

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- 121 Sampson and Tappan and Shelton to Marcy, Sec. of State,
Jan. 15, 1855; Sen. Ex. Doc. 10, 36 Cong. 2 Sess. p. 5,
et seq.
122 Memorial of H. S. Sanford, April 19, 1856, Ibid; See
also S. Ex. Doc. 25, supra, Note 119.

her authorities in disturbing our citizens in their occupations there was wrongful, and gives them a just right to indemnity."¹²³

Mr. Eames reported: that Venezuela had no title to Aves Island; that both France and the Netherlands claimed the island; that the expulsion by Venezuela was motivated by the desire to grant a concession to certain American citizens (the Philadelphia Guano Company) for the removal of guano from Aves Island. He noted that the occupation of Aves on December 13 was timed so that it was known in Venezuela when this contract was about to be signed.¹²⁴

The United States urged this claim upon Venezuela, and engaged in a series of protests and negotiations from 1855 until 1859.¹²⁵ On January 2, 1857, the State Department remarked, in connection with a defense raised by Venezuela:

"... Were the claims of other nations rather than Venezuela to the sovereignty of the island sustained, that condition, if anything, only aggravates the wrong perpetuated by her officers upon the citizens of the United States. It is no defense for the spoliation of their property, their forcible expulsion, and the heavy losses, that the island belonged to some other nation than Venezuela."¹²⁶

Claimants

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- ¹²³ W. L. Marcy, Sec. of State, to C. Eames, U. S. Min. to Venezuela, Jan. 24, 1855, No. 12, S. Ex. Doc. 25, supra, Note 119, p. 4.
¹²⁴ C. Eames, U. S. Min. to Venezuela, to Marcy, Sec. of State, Ap. 26, 1855, Ibid, p. 5.
¹²⁵ Ibid; see also Doc. 10, supra note 121.
¹²⁶ Marcy, Sec. of State, to C. Eames, U. S. Min. to Venezuela, Jan. 2, 1857, Doc. 25, supra Note 119, p. 34.

Claimants continued to press their claim upon the United States, and at one time, in 1857, applied for letters of reprisal, authorizing them to take forcible measures to indemnify themselves. No action on this application appears to have been taken, however.

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The dispute was finally settled by a convention signed by Mr. Turpin, the United States Minister to Venezuela, and Mr. Sanajo, the Venezuelan Minister of Foreign Relations, on January 14, 1859, and ratified by the Venezuelan legislature on February 1, 1859. Ratification by the United States Senate was not considered necessary, as it was merely a convention for the adjustment of a private claim. By this convention (Articles 1 and 2) Venezuela agreed to pay \$130,000 to indemnify the claimants, with interest at five per cent per annum on the gross amount of the indemnity. Article 3 provided as follows:

128.

"In consideration of the above agreement and indemnification, the Government of the United States, and the individuals in whose behalf they had been made, agree to desist from all further reclamation [for] the Island of Aves."

(The next clause,--"abandoning to the Republic of Venezuela
whatever

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See V Moore's Digest, p. 122 - 3; Doc. 10, Supra, Note 121, p. 242, 466.

whatever rights may pertain to them",--was deleted by the Venezuelan legislature, and this was agreed to by the United States Minister.)¹²⁸

There was considerable difficulty in collecting this sum. In 1862 Secretary Seward instructed the United States Minister to protest against the non-payment of installments due under the Aves Island convention,¹²⁹ and on January 24, 1863, the United States threatened to send a warship to La Guayra to enforce its demands for payment.¹³⁰ By a convention of June 5, 1863, the export dues of certain Venezuelan ports were set aside for the benefit of the sum due the claimants.¹³¹ Again in October, 1869, the final settlement of the claim was urged,¹³² but it was discovered that Mr. Sanford, attorney for the claimants, had on September 12, 1864, made a full settlement of the claims with the Venezuelan Government, and had given Venezuela the following receipt:

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- 128 Doc. 10, supra note 121, p. 456 - 460, 472.
129 Wm. Seward, Sec. of State, to Hon. W. Sturup, Consul General of Denmark at Caracas, Ven., Ap. 22, 1862, 2 MS. Misc. Let. Re Guano, Aves. W. H. Seward, Sec. of State, to E. D. Culver, U. S. Charge at Caracas, July 30, 1862, 1 MS. Venezuela, Instructions 242, No. 5.
130 do. to do. Jan. 24, 1863, Ibid 259, No. 18. See also Ibid p. 262, 271, 285.
131 See supra, Note
132 Ham. Fish, Sec. of State, to J. R. Partridge, U. S. Min. to Venezuela, Oct. 5, 1869, Ibid, 139, No. 17.

"I hereby acknowledge to have received from the Government of Venezuela through the General Credit and Finance Company of London, full satisfaction of the dues under the Convention made at Valencia on the fourteenth of January, 1859, between the United States and the Republic of Venezuela, known as the Aves Island Convention, and I hereby on behalf of the creditors under said Convention relinquish all claims on the Government of Venezuela in virtue of the same, or of the Convention of the 5th of June, 1863, hypothecating for its benefit the export dues of certain ports of Venezuela." 133

c. Claim of the Atlantic and Pacific Guano Company against the Netherlands.

On September 13, 1859, the Netherlands' Minister to the United States requested information regarding the Atlantic and Pacific Guano Company of New York, and its claim to the right to dig guano on Aves Island, which for "time immemorial has been acknowledged to belong to the Netherlands possessions of the West Indies." He added that the sovereignty over this island was in dispute between the Netherlands and Venezuela, but that this question had been referred to arbitration by a convention concluded August 5, 1857, and that "while waiting for this arbitration, the Government of the Netherlands flatters itself that the citizens of the United States will respect a right of property and of sovereignty which can not be contested by their Government." 134

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| | The |
| 133 | Ham. Fish, Sec. of State, to James R. Partridge, U. S. Min. to Venezuela, Dec. 7, 1869, 2 MS. Ven. Instructions, 147, No. 26. |
| 134 | R. Van Limburg, Netherlands Min. to U. S., to Lewis Cass, Sec. of State, Sept. 13, 1859, 4 MS. Netherlands, Notes From (translation). |

The Secretary of State replied that he had no information regarding this Company and inquired by what right the Netherlands claimed the island.¹³⁵ The Dutch Minister replied: that the Netherlands owned Aves by virtue of two centuries of continued possession; that Aves used to be connected with Saba Island, a Dutch possession, by a sand bank; that the Dutch subjects of St. Eustatius and Saba frequented the island for eggs and fish every year. He referred to various maps and authorities to sustain his¹³⁶ contentions.

On March 1, 1860, Joseph S. Williams filed a memorial alleging: that on a date left blank one James Leeds had discovered Aves Island, abandoned and derelict, and taken possession of it for the Atlantic and Pacific Guano Company; that on October 29, 1858, Samuel Fowler, agent of the Company, landed on the island and found other Americans digging there; that on January 23, 1859, a Dutch sloop of war, the GOVERNOR MCINTOSH, ordered Fowler off the island under claim of Dutch sovereignty; and, finally, that Fowler was consequently forced to abandon the island, and the Company was damaged

135 Cass, Sec. of State, to Van Limburg, Netherland Min. to U. S., Sept. 20, 1859, 6 MS. Netherlands, Notes to, 137.

136 Van Limburg, Netherlands Min. to U. S., to Cass. Sec. of State, Dec. 10, 1859, 4 MS. Netherlands, Notes From.

damaged \$265,000 which the United States should obtain from
 the Netherlands on behalf of the claimants. Various docu-
 ments were submitted in support of these allegations.
 The claim was again presented in 1861, and in 1866.

Although no letter from the Department rejecting this
 claim has been found, there is little doubt that it was
 rejected. In a memorandum^{-andum} signed by Mr. Hunter, dated May 2,
 1862, it is said:

"There is nothing in the Department to
 show that the Company has complied with the
 requirements of the Act of Congress in re-
 gard to the guano on Aves Island . . . If
 any citizens in the United States have such
 a claim, they must be P. S. Shelton of Boston
 and his associates . . .

"Hitherto no steps have been taken towards
 prosecuting the claim of the Atlantic and Pacific
 Guano Company."¹⁴¹

E. Peshine Smith, Examiner of Claims, also reviewed the
 claim and noted particularly: that the island was re-
 discovered; that it was not clear whether or not the other
 Americans Fowler found there were working for the Dutch
 Government, or under a separate claim of discovery; and
 that the prompt abandonment by Fowler, in spite of assurances
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- 137 Joseph S. Williams to Lewis Cass, Sec. of State, Mar. 3,
 1860, 2 MS. Misc. Let. Re. Guano, Aves.
 138 Ibid.
 139 do. to W. H. Seward, Sec. of State, Aug. 19, 1861, Ibid.
 140 Ward H. Lamore to Seward, Sec. of State, Feb. 21, 1866,
 Ibid.
 141 Memo by W. H. Hunter, May 2, 1862, Ibid.

by the Dutch Governor of St. Eustatius that he did not intend to prevent the removal of guano from the island, led to the suspicion that a claim against the Dutch Government was probably considered more profitable than working the guano. He concluded as follows:

"It is to be considered whether Venezuela, having paid our claims for her appropriation of the island, has not, as against us the right to continue the appropriation; so that no American unless he connects himself with a title under Venezuela, can ask us to intervene in his behalf.

"There seems to be no evidence that this Company has qualified itself under the Act of August 18, 1856, to ask the protection of this Government. The policy seems to be that they should take possession for the United States.

"The case is now too obscure to justify any representation to the Government of the Netherlands. I have no opinion as to the title of that Government."¹⁴²

d. Claim of the Aves Guano Company under the Guano Act.

On May 20, 1859, James W. Jennett filed a notice of discovery of guano on "De Aves," in October, 1856. The Statement contains the usual allegations, and is supported by the declarations of the mates on the schooner PETREL.¹⁴³

On November 4, 1869, Jennett filed additional evidence of his

¹⁴² E. Peshine Smith, Examiner of Claims, Vol. I, Op. and Rep. P. 75, No. 15.

¹⁴³ C. D. Willard, Atty for Jennett, to Hamilton Fish, Sec. of State, May 20, 1859, and enclosures, 2 MS. Misc. Let. Re. Guano, Aves.

his discovery and occupation of the island, alleging that on February 10, 1869, he employed two men to stay on Aves for six months. These statements were also supported by ¹⁴⁴ affidavits.

By various assignments the Aves Guano Company acquired Jennett's interest in Aves Island, and on October 21, 1880, ¹⁴⁵ filed a bond, as required by the Act of 1856. This bond was transmitted to the Treasury Department for filing, and ^{marked} ¹⁴⁶ was "approved" by the State Department. A letter to the President of the Company was prepared, in which the Company's exclusive interests in Aves under the Guano Act of 1856 was ¹⁴⁷ recognized, but this letter was never sent. Judge O'Connor, Examiner of Claims, concluded: that Jennett was bound to have notice of the antecedent proceedings (Shelton's claim), regarding Aves Island, and could not be considered a discoverer; and that, Jennett's title failing, the title of ¹⁴⁸ the Aves Guano Company was likewise invalid. Accordingly, the

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- 144 Lincoln and Willard to Ham. Fish, Sec. of State, Nov. 4, 1869, and enclosures, Ibid.
 - 145 Wm. A. Torrey, Pres. of Aves Guano Co., to Wm. Evarts, Sec. of State, Oct. 21, 1880, Ibid.
 - 146 John Hay, Acting Sec., to John Sherman, Sec. of Treas. Oct. 27, 1880, 135 MS. Dom. Let. 43.
 - 147 State Dept. (no signature) to Wm. A. Torrey, Oct. 27, 1880, Draft in Vd. 12. Op and Rep. 541.
 - 148 O'Connor, Examiner of Claims, Dec. 9, 1881, Vol. 14, Op. and Rep. p. 30.

the President of the Aves Guano Company was notified:

" . . . that the facts and circumstances are not such as to warrant the recognition of the claim in question by the Government of United States under the provisions of the Act of Congress of 18th August, 1856." 149

Again, in 1883, the Department said:

"no promise of recognition of the claim was made by the Department. . . "150

e. Arbitration between Venezuela and The Netherlands.

The award of the Queen of Spain concerning the sovereignty of Aves Island, under the convention of August 5, 1857, between Venezuela and The Netherlands, was rendered on June 30, 1865.

The conclusion reads as follows:

"... the ownership of the Island in question belongs to the Republic of Venezuela, the indemnization for the fishing which the Dutch subjects will cease to take advantage of remains as a charge upon the latter (Venezuela), if in fact it deprives them of the utilization thereof, in which case the rate for the said indemnization shall be the liquid annual income from the fishing calculated for the last five years, capitalizing it at five per cent."151

Venezuela elected to permit the continuation of the Dutch
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fishing.

The

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- 149 F. T. Frelinghuyser, Sec. of State, to Thorndike Saunders, Jan. 16, 1882, 140 MS. Dom. Let. 389.
150 John Davis, Acting Sec., to Knevalls & Ransum, Mar. 12, 1883, 146 MS. Dom. Let. 123.
151 Award of the Queen of Spain, Moore's Arb. 5037 - 5041 (translation).
152 Ibid.

The award appears to be based upon the following conclusions:

1. The islands of Aves and Saba are not now connected by a sand bank, and were not so connected when the Dutch took possession of Saba;

2. Even though the inhabitants of St. Eustatius have frequented Aves three or four months a year since the middle of the eighteenth century, in search of turtles and eggs "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;"

3. Although Venezuela, in the concession for the extraction of guano on Aves to the Philadelphia Guano Company, stipulated that no indemnity would be required of it if it were dispossessed of the island, this condition was no proof in favor of the Netherlands claim;

4. There was no doubt Aves belonged to Spain as part of the West Indies, and descended to Venezuela as part of the territory of the Audiencia of Caracas;

5. Although it had never been occupied by Spain, the "temporary residence" by Dutch citizens was no more than "a precarious occupation which does not constitute possession";

6.

6. Finally, the Government of Venezuela was the first to have armed forces there and "to exercise active sovereignty, thus confirming the Dominion which it acquired by a general title derived from Spain."¹⁵³

Assignments

I. Record Title of the Aves Guano Company.

1. James W. Jennett to Edwin L. Parker, January 21, 1870, all his interest in guano on De Avis or Bird Island.

2. Edwin L. Parker to James W. Jennett, March 22, 1870, same interest.

3. James W. Jennett to Stewart Newell, October 20, 1870, same interest.

Stewart Newell and L. Harwood, March 15, 1880, agreement by which Newell authorized Harwood to dispose of Newell's interest in the island on certain conditions.

4. Stewart Newell to the Aves Guano Company, May 21, 1880, same interest as that received from Jennett.

5. The Aves Guano Company, by Thorndike Saunders, Receiver, to Thorndike Saunders, September 22, 1882, same interest (and also the Company's interest in Serranilla and Western Triangle Islands).

In connection with this assignment, there is a statement signed by Saunders, dated July, 1882, that:

"None of these claims of title have been recognized by the United States Government. The claim as to Aves Island has been refused recognition by that Government, and none of the deposits on the islands are in the possession of the Company or anyone on its behalf at this time."

II. No

154 Unless otherwise noted, all assignments filed in 2 MS. Misc. Let. Re Guano, Aves.

II.

No assignments were recorded under the claim of Philo Shelton et al., nor under the claim of the Atlantic and Pacific Guano Company.

2. LOS MONJES, OR THE MONKS

a. Geography.

The Monks is a group of small, rather high, barren islands in the Southern Caribbean Sea, just north of the entrance to the Gulf of Venezuela. North Monks, 22 miles from Cabo Chichivacoa, is a group of five rocks about 135 feet high. South Monks, latitude 12° 22' N., longitude 70° 54' W., 7 1/2 miles from North Monks, are two rocks close together, about 230 feet high. East Monks, about 3 1/4 miles from South Monks, is 180 feet high.¹⁵⁵

b. Claim of Gowen and Copeland against Venezuela.

In June, 1854, Messrs. Gowen and Copeland, American citizens, discovered guano on The Monks.¹⁵⁶ At the time of this discovery the rocks were both "uninhabited and uninhabitable, there being no vegetation and no water, nor were there any visible signs to indicate that they had ever been occupied by any human beings."¹⁵⁷ Upon analysis, the guano proved to be exceptionally rich, and Gowen and Copeland sent men, machinery, and materials to the Islands, instructing their

¹⁵⁵ West Indies Pilot (Wash. 1929), H. O. 129, Vol. II, p. 399.

¹⁵⁶ Brief for Venezuela, before the Claims Commission, under the Convention of Dec. 5, 1885, between the United States and Venezuela, Dept. of State, Archives.

¹⁵⁷ Opinion of Findlay, for the Commission, John E. Gowen and Franklin Copeland vs. Venezuela, No. 16, Ibid.

their agents to take possession in the name of the United States, for the use and benefit of themselves. Accordingly, possession was taken in this manner on December 14, 1854,¹⁵⁸ and for about a year claimants worked the deposit.

In August, 1855, a Venezuelan armed vessel visited the Islands and ordered the party to leave, but they refused.¹⁵⁹ On about the first of December, 1855, a Venezuelan man-of-war appeared at the Islands, landed soldiers, seized the equipment and materials of the claimants, and expelled their employees under threats of imprisonment.¹⁶⁰ It appears that this expulsion was connected with the similar act by Venezuela at the same time on the Island of Aves, and with the concession granted by Venezuela to the Philadelphia Guano Company.¹⁶¹ On January 10, 1856, claimants, in order (as they said) to prevent further losses, entered into an agreement with the Philadelphia company which permitted them to continue to work the Islands for fifteen months.¹⁶²

Gowen and Copeland claimed damages against Venezuela for the seizure of their property and the expulsion of
their

158 Report of the case, cited Note 3, in Moore's Arb. 3354 - 3359.

159 Brief for Claimants, supra, Note 156.

160 Opinion of Findlay, supra, Note 157.

161 See C. Eames, U. S. Min. to Venezuela, to Marcy, Sec. of State, April 26, 1855, S. Ex. Doc. 25, 34 Cong. 3 Sess. p. 5.

162 Moore's Arb., supra, Note 158.

their men to the amount of \$383,646.¹⁶³ Apparently neither of the claimants believed that they or the United States had acquired the Islands, by virtue of claimants' possession of them, and in fact there is evidence that they thought the Islands belonged either to Venezuela or to New Granada. In view of the Aves Island case, however, Copeland believed he¹⁶⁴ had a good claim.

The case was arbitrated before the Venezuelan Claims Commission under the convention of December 5, 1885, between the United States and Venezuela. The Commission allowed claimants \$20,000. Commissioner Findlay, speaking for the Commission, refused to decide the question of whether Venezuela or New Granada had sovereignty over the Islands, and stated that the Commission -

"are disposed to rest their decision upon the simple proposition that the claimants, in taking possession of a barren rock, or group of rocks, in the high seas, unoccupied and uninhabited, and as far as the proof shows never occupied, for the temporary purpose of removing a valuable deposit, which they were the first to discover, cannot be treated as trespassers, subject to be removed by the strong hand, and to be despoiled of their possessions without redress."¹⁶⁵

It is evident, moreover, that the award does not rest upon any finding that the United States had sovereignty of the

163 Brief for Claimants, supra, Note 159.

164 F. Copeland to Lewis Cass, Sec. of State, Nov. 25, 1857, copy in State Dep. Archives, filed with the case papers.

165 Moores Arb. 3355

the Islands. It is said that the attempt to take possession in the name of the United States was a nugatory act; that the United States never claimed jurisdiction, and made no protest when its flag was hauled down under the orders of the Venezuelan commander; and that "we are speaking now of an occupation merely as distinguished from an actual appropriation with a view to sovereignty." Apparently the liability of Venezuela is based rather on the circumstances that the Islands appeared to be derelict and that Venezuela did not in the first instance warn the claimants against landing upon the Islands under a claim of jurisdiction. The \$20,000 is the alleged value of the plant claimants set up upon the Island. It is expressly said that no interest is allowed "owing to the imperfection and obscurity of the proof with reference to the value of the plant."¹⁶⁶

166 Opinion of Findlay, supra, Note 157.

3. LOS ROQUES

a. Geography.

Los Roques, latitude $11^{\circ} 58' N.$, longitude $66^{\circ} 41' W.$, is a large group of keys situated in the southeastern part of the Caribbean Sea, off the north coast of Venezuela. The keys are on a dangerous reef, about 13 by 24 miles square. They are all low except El Roque. The largest Island, Cayo Grande, at the southeastern point of the reef, is 7 by 6 miles in size. Cayo de Sal, close to the western end of Cayo Grande, is a narrow key 7 miles long. There are a number of smaller islands in a ten mile area north and northwest of this key. Blackman's Cay, at the edge of the reef, $3 \frac{3}{4}$ miles south of El Roque, is a low island covered with bushes. Two to 3 miles north of this key are Pirate, Namans, Northeast, and French keys, of a coral and sand formation, and covered with samphire grass, mangroves and dwarf trees.

El Roque, at the northern extremity of the group, is nearly 2 miles long by about 1500 yards wide, and is 386 feet high. The western part of this key is composed of moderately high limestone hills. Stone is quarried here, and there is a small settlement (chiefly fishermen) on the western side of the Island. There is a well on El Roque, but the supply is uncertain. On the easternmost bank of
the

the Island is Los Roques light, and at the northern extremity of the whole group there is an excellent anchorage. 167

b. United States Claim under the Guano Act.

On May 28, 1869, James W. Jennett filed a declaration of discovery of guano on Los Roques, giving the position as latitude 11° 50' N., longitude 66° 40' W., and enclosing 168 the usual affidavits and supporting declarations. On November 4, 1869, he filed additional evidence of his occupation of the Islands, alleging that he made a contract with two men to remain on the Islands for 6 months, and 169 submitted supporting affidavits.

Apparently Jennett filed no bond for these Islands under the Guano Act, and they were never listed by the Treasury Department as appertaining to the United States. 170 In 1871, the State Department said:

"Los Roques Islands are not under the protection and jurisdiction of the Government. A citizen or citizens of the United States claim to have discovered guano on these Islands, but their title is not regarded as sufficient to warrant official recognition under the law on that subject." 171

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- 167 West Indies Pilot (Wash. 1929), H. O. 129, Vol. II, pages 366 - 368.
- 168 C. D. Willard, Att'y for Jennett, to Ham. Fish, May 28, 1869, and enclosures, 4 MS. Misc. Let. Re Guano, Los Roques.
- 169 Lincoln and Willard to Ham. Fish, Sec. of State, Nov. 4, 1869, and enclosures, Ibid. See also Affidavit of Capt. John Eaden of the LAVINIA, Sept. 11, 1869, 5 Ibid, Pedro.
- 170 6 Ibid, Misc.
- 171 Ham. Fish, Sec. of State, to W. Orange and Co., June 10, 1871, 89 MS. Dom. Let. 528.

II. ISLANDS CLAIMED BY THE DOMINICAN REPUBLIC

1. ALTA VELA (ALTO VELO) ISLAND

a. Geography.

Alta Vela, latitude $17^{\circ} 28'$ N., longitude $71^{\circ} 38'$ W., is a small island $6 \frac{1}{2}$ miles southwest of the southwestern extremity of Beata Island. Beata, about 4 miles square, is 6 miles west of Point Beata on the island of Haiti, and is connected with the mainland by a bank 12 to 18 feet under water. Alta Vela, a bell-shaped hill 500 feet high, is about $\frac{3}{4}$ of a mile long and $\frac{1}{2}$ a mile wide. To the east are several large rocks close to the shore. The coast is rocky but approachable, and there is an anchorage off an old pier on the northwest side of the island and a cove where boats can land. The channel between Beata and Alta Vela is clear, though there is usually a heavy swell there and the trade route is outside both islands. Black Rock rises 20 feet high $\frac{1}{2}$ miles to the north of Alta Vela; and 10 miles west of Beata is Fraile Rock, 200 yards long and 25 feet high. ✓

There is a light on ~~the~~ Alta Vela, maintained by the Dominican Republic, but there are no inhabitants other than the light keepers, and occasional fishermen who come to both Alta Vela and Beata to dry their fish. There is no fresh water, but the light has a reservoir. The ruins

of

of old phosphate works may still be seen on the island. ¹⁷²

b. Claim of W. T. Kendall under the Guano Act.

On May 14, 1860, W. T. Kendall of Baltimore, sent a notice of his discovery of guano on Alta Vela to the State Department. He alleged: that the brig DELTA, commanded by his agent, Captain Daulby, anchored at Alta Vela March 19, 1860, and that Daulby "discovered upon said island a deposit of guano, and in the name of the United States took possession of it, and loaded his vessel . . . and sent her home;" that Captain Daulby remained on the island with two men, "to work and hold possession of the same;" and that "said island lies out of the jurisdiction of any other government, and uninhabited at the time of discovery." Kendall requested "the proper entry to be made in my name as the owner and discoverer of said guano deposits." ¹⁷³ On June 5 Kendall asked that the amount of his bond be fixed; filed, as additional proof of his discovery, a declaration signed and attested by the master of the DELTA and two members of the crew; and stated that the guano on the island was 66 per cent ¹⁷⁴ bone phosphate of lime, worth \$15.00 a ton in Baltimore.

In.

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- 172 West Indies Pilot, (Vol. I, H. O. No. 128 (Washington, 1927) pages 492 - 494.
- 173 W. T. Kendall to Lewis Cass, Sec. of State, May 14, 1860, I Misc. Let. Re Guano; S. Ex. Doc. 38, 40 Cong., 2 Sess., p. 26.
- 174 W. T. Kendall to Lewis Cass, Sec. of State, June 15, 1860, and enclosure; Declaration of Kendall, June 6, 1860, attested by Daulby, Gordon, and Pugh, I Misc. Let. Re. Guano, S. Ex. Doc. 38, 40 Cong. 2 Sess., p. 27.

In reply the State Department referred to another claim of discovery of Alta Vela by Patterson and Murguiondo, through their agent Captain Kimball, also dated May 14, 1860, and added:

"Under these circumstances, and, also since no evidence is furnished by you of the quantity of guano upon that island, no certificate of any respectable chemist as to its quality; and further, as from the name of the island it must have been discovered by Spaniards, and from its position may be claimed as within the jurisdiction of the Dominican Republic, a compliance with your request to prescribe at this time the penalty of the bond is not deemed advisable." 175

Kendall then sent an analysis of the guano and declared that Alta Vela was not within the jurisdiction of Haiti, and that he landed on the island ten days before Captain Kimball's arrival. 176 Nevertheless, despite Kendall's repeated efforts to establish his claim, 177 the Department refused to alter 178 its position.

c. Claim

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- 175 John Appleton, Ass. Sec., to W. T. Kendall, June 7, 1860, I Misc. Let. Re Guano; S. Ex. Doc. 38, 40 Cong. 2 Sess., p. 28.
 - 176 W. T. Kendall to Lewis Cass, Sec. of State, June 19, 1860, I Misc. Let. Re Guano; S. Ex. Doc. 38, 40 Cong. 2 Sess., pages 28 - 29. (The Guano was found to be 29.16% phosphoric acid, and 70.84% lime, etc. The percentage of phosphoric acid was said to equal 63.18% of bone phosphate of lime.)
 - 177 W. T. Kendall to Lewis Cass, Sec. of State, June 22, 1860; W. T. Kendall to Wm. Seward, Sec. of State, Ap. 9, 1861; See also Mrs. Sarah Daulby to Lewis Cass, Sec. of State, Feb. 13, 1861; do. to Black, Sec. of State, Feb. 13, 1861; I Misc. Let. Re Guano.
 - 178 Wm. H. Trescott, Ass. Sec., to W. T. Kendall, June 21, 1860, Ibid, Sen. Ex. Doc. 38, 40 Cong. 1 Sess., p. 29.

c. Claim of Patterson and Murguiondo under the Guano Act,
and for Damages against the Dominican Republic.

Patterson and Murguiondo of Baltimore, in a letter of the same date as Kendall's (May 14, 1860), gave notice of the discovery of Alta Vela, by their agent, Captain S. R. Kimball of the schooner BOSTON, and alleged that they had taken possession of the island and that it was occupied at that time by Kimball and his crew.¹⁷⁹ This declaration was supported by an affidavit of Captain Kimball.¹⁸⁰

No certificate of recognition was accorded these claimants, however. In answer to their request for duplicates of certificates "acknowledging us as discoverers of the guano deposits on Alta Vela", which they claim to have received,¹⁸¹ the Secretary of State replied:

"that certificate [already issued] merely attested the correctness of copies of original papers filed by you, and that none of a prior date relating to Alta Vela had been received by the Department."¹⁸²

No bond was filed by Patterson and Murguiondo at this time, though

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- 179 Patterson and Murguiondo to Lewis Cass, Sec. of State, May 14, 1860, I Misc. Let. Re. Guano; S. Ex. Doc. 38, 40 Cong. 2 Sess., p. 27. See also G. T. Mason to Lewis Cass, Sec. of State, July 26, 1859, referring to said claimant's interest in a guano island, I Misc. Let. Re. Guano.
- 180 S. W. Kimball's declaration, July 13, 1860, enclosed in G. Burry to W. Trescott, Acting Sec., July 16, 1860, I Misc. Let. Re. Guano; S. Ex. Doc. 38, 40 Cong. 2 Sess., p. 30.
- 181 Patterson and Murguiondo to Hunter, Ass. Sec., Jan. 1, 1861, I Misc. Let. Re Guano; S. Ex. Doc. 38, 40 Cong., 2 Sess., p. 31.
- 182 Jeremiah S. Black, Sec. of State, to Patterson and Murguiondo, Jan. 2, 1861, Ibid.

though one dated March 18, 1861, signed by them and by Chapron and Elliott, was sent to the Secretary of State¹⁸³ January 25, 1866.

Nevertheless, Patterson and Murguiondo proceeded to work the island, and their men occupied it for seven months, removing over 1,000 tons. On October 24, 1860, a Dominican man-of-war, the MERCED, appeared at Alta Vela, and ordered the men to leave within twenty-four hours. As they had no boat at the time, they were taken off on the MERCED and brought to St. Domingo City. The Dominican Government, while asserting its right to remove the men and try them, volunteered to put them at the disposal of Jonathan Elliot, the United States Commercial Agent at St. Domingo. Nevertheless, Captain Kimball, who arrived at St. Domingo was not allowed to clear his ship from the port, and all were¹⁸⁴ detained there about a month. On these facts Patterson and Murguiondo presented a memorial to the State Department asking

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- 183 Bond, \$50,000, Mar. 18, 1861 (sent by J. S. Black to the Sec. of State, Jan. 25, 1866), I Misc. Let. Re. Guano.
- 184 John Miller to S. W. Kimball, Oct. 24, 1860, and enclosures; J. Elliott, U. S. Commercial Agent at St. Domingo, to Miller, Oct. 28, 1860; Felipe D. F. de Castro, Min. of For. Aff. of Dominica, to Elliott, supra, Oct. 28, 1860; Elliott to de Castro, Oct. 29, 1860; Kimball to Elliott, Nov. 15, 1860; Elliott to Kimball, Nov. 15, 1860; de Castro to Elliott, Nov. 19, 1860; Elliott to de Castro, Nov. 20, 1860; Evertz, Commander of St. Domingo Port, to Elliott, Nov. 28, 1860; Elliott to de Castro, Nov. 29, 1860; Declarations of S. R. Kimball, Nov. 30, 1860, Jan. 11, 1861, and of J. Miller, Jan. 7, 1860; all in I Misc. Let. Re. Guano, and S. Ex. Doc. 38, 40 Cong., 2 Sess.

asking for the intervention of the United States, under the Guano Act, and claiming damages to the amount of \$22,363.86,¹⁸⁵ as their actual loss.

The Secretary of State, J. S. Black, replied that the Government was supposed to protect them in legally acquired rights to guano but added:

"Inasmuch, however, as the Dominican Republic is understood to claim jurisdiction over Alta Vela, a claim which another applicant was informed, in June last, might probably be asserted on account of the position of the island the Department deems it proper, before taking other steps in the matter, to . . . ascertain from the Dominican Government the grounds on which its claim to the island is based."¹⁸⁶

Mr. Cazneau, United States Special Agent to the Dominican Republic, reported to the Secretary of State that the Dominican Republic claimed Alta Vela as within the line of the old Spanish colony, and part of the province of Azua, by the Dominican law of 1855, which mentioned Beata and Alta Vela by name. He added, however, that there was no evidence of any de facto acts of sovereignty by Dominica¹⁸⁷ other than the sending of the MERCED.

J. S. Black

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- 185 Memorial of Patterson and Murguiondo to J. S. Black, Sec. of State, Jan. 8, 1861; Ibid, also in House Mis. Doc. 10, 40 Cong, 3 Sess.
- 186 J. S. Black, Sec. of State, to Patterson and Murguiondo, Jan. 14, 1861, I Misc. Let. re Guano; S. Ex. Doc. 38, 40 Cong., 2 Sess., p. 48.
- 187 Black, Sec. of State, to Cazneau, Jan. 15, 1861; Cazneau to Black, Feb. 19, 1861. Ibid.

J. S. Black, then became attorney for the claimants, and recommended to Seward, Secretary of State, that the Government intervene promptly in behalf of Patterson and Murguiondo.¹⁸⁸ Nothing was done, however, until 1867, because of the Civil War, and because of certain other negotiations which were in progress with the Dominican Republic during 1866.¹⁸⁹ On May 1, 1866, the Examiner of Claims reported that no reason was apparent why the claim should not be urged upon the Dominican Republic as soon as diplomatic relations were established with that Government.¹⁹⁰ On June 17, however, he recommended that the claim be rejected. He maintained that the fact of lawful jurisdiction by another government must be negatived by claimants under the Guano Act, and that such jurisdiction could exist although no actual possession had ever been taken or maintained, adding:

"What kind of possession could be kept of a barren islet destitute of water?"

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- 188 J. S. Black to Seward, Sec. of State, Mar. 27, 1861, I Misc. Let. Re Guano.
- 189 Report of Seward, Sec. of State, S. Ex. Doc. 38, 40 Cong., 2 Sess., pp 8 - 9. (During this period requests for intervention continued to be made: Petitions of certain merchants of Blatimore, Mar. 17, 1866, and Feb. 11, 1868; J. S. Black to Seward, Sec. of State, Ap. 8, 1866, and April 17, 1866; Black Lamon and Co. Atty's for Murguiondo's firm, to Seward, Sec. of State, Mar. 27, 1867; J. S. Black to A. Johnson, Pres. of U. S., July 22, 1867; in I Misc. Let. Re. Guano; S. Ex. Doc. 38, 40 Cong., 2 Sess.)
- 190 II Op. and Rep. of The Examiner of Claims 724.

He concluded that claimants had not disproved the jurisdiction of either Haiti or the Dominican Republic over Alta Vela, and that:

"It is enough that either had it, to make it improper for this Government to support the claimants in the demand for damages."

Furthermore, the Dominican Republic had asserted its rights as soon as occasion arose, and

"Alta Vela, judging from the charts, is near enough to Beata to be deemed an appendage to it, and so an appendage to the mainland, upon the principle that its occupation by strangers would menace the security of both."¹⁹¹

This opinion was accepted by the President, July 18, 1867.¹⁹²

Claimants did not accept it however,¹⁹³ and on September 19, 1867, the Examiner wrote another opinion in which he held that the mere fact that the island was over three miles from the mainland would not of itself open it to occupation by the first comer; that the de facto occupation of Beata by Haitians (as claimants alleged) when they took possession of Alta Vela, did not aid the claimants, as Haiti's jurisdiction over the island was as fatal to their claim as Dominica's; and that the fact that Alta Vela

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- 191 I Op. and Rep. of The Examiner of Claims 561 (June 17, 1867); I Misl. Let. Re Guano; S. Ex. Doc. 38, 40 Cong., 2 Sess.
- 192 Memorandum, S. Ex. Doc. 38, 40 Cong., 2 Sess., p. 53.
- 193 J. S. Black to Pres. Johnson, Aug. 7, 1867, Ibid, I Misl. Let. Re. Guano.

was not exclusively claimed by either government was immaterial. He added:

"The strong probability is that neither government attached much importance to a desolate Key destitute of wood and water, and only resorted [to] occasionally by fishermen. This kind of occupation was enough, for an island of that character, to take it out of the category of land without any proprietor and open to the first occupant. The Government having the island might very well tolerate such occasional use of it by its neighbors, without derogating from its just rights. When it was discovered the island had a value it was time enough to assert its title, against those who were robbing it of that value by carrying away the deposits of guano."¹⁹⁴

In yet another opinion, the Examiner remarked that no certificate of recognition was ever given for Alta Vela, and that no bond was filed by claimants (before the events¹⁹⁵ in question).

Claimants apparently abandoned their claim for damages, but continued to insist that the United States send a warship¹⁹⁶ to put them in possession of Alta Vela. Finally, in January, 1868, the claim was submitted to the Senate with a report by Secretary Seward in which he stated that he could not recommend favorable action because claimants were ejected from

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- 194 Opinion of E. Peshine Smith, Examiner of Claims, Sept. 19, 1867; I Misc. Let. Re Guano.
 195 Opinion of Smith, supra, Oct. 7, 1867, I Op. and Rep. of The Examiner of Claims 783; I Misc. Let. Re. Guano.
 196 Black Lamon and Co. Atty's, to Seward, Sec. of State, Sept. 19, 1867; Patterson and Murguiondo to Pres. Johnson, Oct. 24, 1867; I Misc. Let. Re Guano.

from the island before their bond was filed, and because the island was within the jurisdiction of the Dominican Republic. The latter point was proved by the Dominican laws of 1844, and 1854, incorporating Alta Vela, by name, into Dominican territory; by the boundary between Dominica and Haiti, recognized since 1777; by the proximity of Alta Vela to Beata; and by the fact that Columbus discovered both islands.¹⁹⁷

Claimants, of course, did not accept this report, and continued to press their claim.¹⁹⁸ Finally, on May 10, 1870, it was submitted to the President who determined that there was no reason for reconsidering the former conclusions, which were listed as follows:

1. It is incumbent upon claimant to show affirmatively that the island is not at the time of its discovery within the lawful jurisdiction of any other government;
2. When a foreign government asserts a claim, the President has no right to "annex the island to the United States or to put any American citizens in possession of it" until the diplomatic question is settled, and not then unless it be settled in favor of the United States;

3. The

197 S. Ex. Doc. 38, 40 Cong., 2 Sess.

198 Black Lamon and Co. to Pres. Johnson, Feb. 7, 1868, Ibid. (In a letter of Sept. 10, 1869, the Secretary of State affirmed that the United States Government had "declined to recognize" the claim. See Hamilton Fish, Sec. of State, to Messrs. Spofford, Teleston and Co., Sept. 10, 1869, 82 MS. Dom. Let. 55.)

3. The memorial and evidence of claimants "do not disprove" the jurisdiction of the Dominican Republic asserted by that Government.

The President thereupon directed that no further proceedings should be taken in the premises except to inform the parties concerned of his determination.¹⁹⁹

d. Claim of the Alta Vela Guano Company.

On February 19, 1866, one Henry Root informed the State Department that he proposed to remove the guano from Alta Vela if the Government would afford him protection.²⁰⁰

Secretary Seward replied as follows:

"There are already two parties claiming rights as discoverers of that island, and the right is denied by St. Domingo whose authorities ejected them. The claim made by these parties for damages covering the whole value of the guano is still under consideration. If either of them satisfy this Government that their claim is just, and it should require indemnity from St. Domingo, that Republic would seem by making payment to acquire a right to retain the guano, if it did not originally possess it. Under these circumstances this Government cannot encourage any of its citizens in resorting to the island unless they obtain the consent of the authorities of St. Domingo. As it lies opposite to a boundary understood to be in dispute between that Power and Hayti, it would be a reasonable precaution to seek the consent of Hayti also."²⁰¹

Accordingly

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- 199 Memorandum, signed by Hamilton Fish, Sec. of State, and one other (signature illegible), May 10, 1870, in I Ms. Misc. Let. Re Guano.
- 200 Henry Root to Seward, Sec. of State, Feb. 19, 1866, I MS. Misc. Let. Re Guano; S. Ex. Doc. 38, 40 Cong., 2 Sess.
- 201 Seward, Sec. of State, to Henry Root, Feb. 21, 1866, Ibid.

Accordingly, Root, Webster and Clark, officers of the Alta Vela Guano Company, obtained a concession from the Dominican Republic and began to remove guano from the island. 202 In answer to an inquiry regarding the Patterson and Murguiondo claim, the State Department informed Webster that if those claimants "are found to have acquired the exclusive right to dig guano, under the law regulating the subject, the subsequent grant to you by the Dominican Republic will not affect it, and this Government will be under no obligation to aid you in enforcing as against a foreign state any rights which flow from a contract with it into which you voluntarily entered." 203 In answer to another letter from the Alta Vela Guano Company, the Secretary replied, January 22, 1868, that he had noted the statement that this New York Corporation had invested considerable money in removing guano from Alta Vela and was in active business there now, under a concession from Spain and the Dominican Republic, and added: "If you think proper you may furnish this Department with authenticated proofs of the statements which you

202 T. R. Webster to Seward, Sec. of State, Sept. 12, 1867.
Ibid.

203 Seward, Sec. of State, to T. R. Webster, Sept. 14, 1867,
Ibid.

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you have thus made."

In March, 1871, C. H. Neill, another representative of this company, requested the intervention of the United States, alleging that in January, 1868, he had been evicted from Alta Vela, in spite of his contract with the Dominican Government, by an English company which had loaned money to President Baez of Dominica on the security of a mortgage on Alta Vela. 205
The State Department replied that the Government could not intervene in such cases and added: "This policy has been followed upon similar applications from other persons than 206
yourself in relation to this very Island of Alta Vela."

e. Summary of the United States Claim under the Guano Act.

It is clear that, although three separate groups of American citizens actually took possession of Alta Vela and removed guano from the island, the United States never recognized their interests under the Guano Act. Not only was there no affirmative action by the United States which might lead to the conclusion that Alta Vela was ever considered as

appertaining

204 S. Ex. Doc. 38, 40 Cong., 2 Sess., p. 59.

205 C. H. Neill to Hamilton Fish, Sec. of State, Mar. 7, 1871, I MS. Misc. Let. Re Guano.

206 Fish, Sec. of State, to C. H. Neill, Mar. 11, 1871, 88 MS. Dom. Let. 477.

appertaining to the United States, but there was action contradicting any such conclusion. For example: in a note to the representative of Haiti on June 10, 1873, the Secretary of State said:

"In the case of Alto Velo it was shown to have been included by name within a political and also within a judicial district of St. Domingo. Alto Velo was the subject of legislation and the theater of judicial administration under the sovereignty and laws of St. Domingo." 207

Apparently the United States accepted the contention of the Dominican Republic that Alta Vela was part of the territorial domain of that country.

207 Hamilton Fish, Sec. of State, to Preston, June 10, 1873, I MS. Notes to Haiti, 153, 161; See do. Dec. 31, 1872, Ibid, 124, 144.

III. ISLANDS CLAIMED BY GREAT BRITAIN

1. KEY VERD (CAYO OR CAY VERDE).

a. Geography.

Key Verd (Cayo or Cay Verde), latitude $22^{\circ} 01' N.$, longitude $75^{\circ} 10' W.$, is a narrow island about two-thirds of a mile long, situated just within the southeastern extremity of the Great Bahama Bank. A hill at one end of the island rises to a height of 72 feet, and the whole island is covered with low sea-grape trees and prickly-pear bushes. Anchorage is poor, and landing difficult on account of the surrounding rocks and reefs, and usually strong breezes. The island is frequented by large flocks of boobies and man-of-war birds.

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b. United States Claim under the Guano Act.

On May 24, 1859, W. T. Kendall filed a declaration of discovery of guano on Key Verd as follows:

"Seven months since I discovered a key lying in latitude $22^{\circ} 2'$ North and longitude $75^{\circ} 10'$ West . . . 30 to 40 miles from any other land, Island or Key; This Island was discovered by one of my Captains sent in a voyage for the discovery of guano and brought to me several cargoes from that place, again in the 31st March last, I sent the brig called the DELTA commanded by Captain Richard Dolby [Daulby] with orders to build

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208 West Indies Pilot, H. O. No. 128, Vol. I (Wash. 1927), p. 143. (There are two other Keys called Verde in the Caribbean region, at quite different locations.)

a house or shanty upon said Island and place there men for its protection and holding possession under the Act of 1856 to take away guano.

"Be pleased to inform me if my proceedings have been in accordance with law. . ."209

The State Department acknowledged the receipt of this communication and sent Kendall a copy of the Guano Act.²¹⁰

On June 29, 1859, Kendall wrote again, alleging that his vessels were then engaged in taking guano from Key Verd and that he had men on the island, and enclosing an affidavit of Captain Daulby, of the DELTA, and Charles Smith, also of the DELTA. These affidavits, dated June 21, 1859, described the discovery of guano on the Key in November, 1858, and averred that there were then no inhabitants on the island, that Daulby took possession of it in the name of the United States and Kendall, that he returned there April 12, 1859, and "made a permanent location."²¹¹ The State Department replied:

"... the President has heretofore deemed it his duty, in the exercise of the discretion conferred upon him by the Act of Congress of the 18th of August, 1856, to abstain from recognizing the privileges for which that act provides, unless

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- 209 W. T. Kendall to Lewis Cass, Sec. of State, May 24, 1859, III MS. Misc. Let. Re Guano; S. Rep. 280, 36 Cong. 1 Sess.
- 210 John Appleton, Ass. Sec. to W. T. Kendall, May 26, 1859, Sen. Rep. 280, 36 Cong. 1 Sess.
- 211 W. T. Kendall to Lewis Cass, Sec. of State, June 29, 1859, and enclosures, Ibid, and III MS. Misc. Let. Re Guano.

he shall receive proof that the guano claimed to have been discovered is of a quality and in quantity such as would render it important in a national point of view."²¹²

c. The claim of Great Britain.

On July 11, 1859, the British Minister to the United States, notified the State Department that Key Verd and other keys in the vicinity from which it was reported that guano was being taken by American merchants "belong to the Bahama Government, that many of them are leased to private individuals, and from none of them can guano be extracted without permission of the local authorities."²¹³ He enclosed a letter from the Governor of the Bahamas in which it was stated that:

"Key Verd and some other of these keys are leased, and . . . the abstraction of guano from them by foreigners is not only a trespass, but an aggression of a hostile character."²¹⁴

The Secretary of State replied that the substance of this communication would be made known to Kendall, who claimed the privileges of the Act of 1856, supposing that he had made a discovery of guano on the key.²¹⁵

Accordingly

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- ²¹² J. Appleton, Ass. Sec., to W. T. Kendall, June 30, 1859, Ibid; 50 MS. Dom. Let. 443.
 - ²¹³ Lord Lyons, Brit. Min. to U. S., to Lewis Cass, Sec. of State, July 11, 1859; 38 MS. Notes from Great Britain, S. Rep. 280, 36 Cong. 1 Sess, pages 8 - 9.
 - ²¹⁴ C. V. Bayley, Governor of Bahamas, to Lord Lyons, Brit. Min. to U. S., July 1, 1859, Supra, Note 213.
 - ²¹⁵ Lewis Cass, Sec. of State, to Lord Lyons, Brit. Min. to U. S., July 14, 1859, 8 MS. Notes to Great Britain; Sen. Rep. 280, 36 Cong., 1 Sess., p. 9.

Accordingly the Department notified Kendall of the
 216 British complaint. Kendall replied that he was prepared to prove the island was unoccupied at the time of his discovery, was unfit for occupation, and was not within British jurisdiction, and added:

.."up to this time the President of the United States has not exercised the discretion entrusted to him, so that I could execute the bonds required by said Act of Congress and which I tender myself ready to do..."217

In another letter, September 5, 1859, Kendall again recounted the circumstances of his alleged discovery and possession, and described his forcible ejection from the island by an Englishman, Theodore Farrington, who arrived at the island in the summer of 1859 and forced Kendall's men whom he found there to work for him. This story was supported by the formal depositions (used in a local trial) of Captain Daulby and William Price, the latter having been in command on the
 218 island when Farrington arrived there.

The Attorney General, J. S. Black, rendered an opinion on Kendall's petition for recognition of his interest in Key Verd, on December 14, 1859. He held that before an

American

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- 216 J. Appleton, Ass. Sec., to W. T. Kendall, July 14, 1859; 50 MS. Dom. Let. 470; Sen. Rep. 280, 36 Cong. 1 Sess; III MS. Misc. Let. Re Guano.
- 217 W. T. Kendall to Lewis Cass, Sec. of State, July 27, 1859, Sen. Rep. 280, 36 Cong., 1 Sess; III MS. Misc. Let. Re Guano.
- 218 W. T. Kendall to Lewis Cass, Sec. of State, Sept. 5, 1859, and enclosed depositions, Ibid.

American citizen could benefit under the Guano Act -

"it must appear that the island . . . was not, at the time of its discovery, within the lawful jurisdiction of any other government. In the present case, Cayo Verde is distinctly asserted by the British Government to be within its jurisdiction. 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."²¹⁹

The State Department wrote the United States Consul at Nassau, in the Bahamas, requesting information "respecting any acts of jurisdiction which may have been exercised over this island by the British authorities previous to the visit of Captain Dolby . . . in November, 1858; also, if the deposit of guano on the island was known to the inhabitants of the Bahamas prior to the above-mentioned date!"²²⁰ The Consul replied that he had no reason to doubt Key Verde was one of the Bahamas as reliable charts placed it on the edge of the Bahama Bank, and added that he did not think any guano had been taken from this particular key by inhabitants of the Bahamas before November, 1858.²²¹

On March 19, 1860, Kendall was informed that -

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- 219 9 Op. Atty Gen. 406 (Black, Dec. 14, 1859); See also Sen. Rep. 280, 36 Cong., 1 Sess., p. 22.
- 220 J. Appleton, Ass. Sec., to I. J. Merritt, U. S. Consul at Nassau, Bahamas, Feb. 9, 1860, Sen. Rep. 280, 36 Cong., 1 Sess., p. 23.
- 221 I. J. Merritt, U. S. Consul at Nassau, Bahamas, Ap. 30, 1860, to Sec. of State, Dispatch No. 13, Ibid, and III MS. Misc. Let. Re Guano.

"The President does not feel authorized, under the circumstances, to take any measures by which the said Island (Key Verd) would be considered as appertaining to the United States."²²²

Thereupon Kendall presented a memorial to Congress, citing as a precedent for intervention in his behalf, the protection accorded an American citizen on Navassa Island, and asking for an indemnity of \$105,604.00.²²³ The Senate Committee rejected the claim on June 16, 1860, and in its report stated that the Committee saw no reason to review the decision of the President, and asked to be discharged from the consideration of the memorial.²²⁴

There the matter rested until 1900 when Kendall's daughter, Mrs. Emma A. Steiff, inquired about his claim to guano on Key Verd. The Department replied as follows:

"The required notice of discovery, verified by affidavit, as to Cayo Verde, was in compliance with the terms of the Act filed in the Department of State by William T. Kendall in 1859. But claim was made to the island by the Government of Great Britain as being one of the Bahama group as was shown by charts prepared and published years previous to Mr. Kendall's claim of discovery.

"It became necessary, therefore, for Mr. Kendall to furnish satisfactory evidence that the island was not, at the time of his discovery thereof and of his taking possession or occupation thereof, in the possession or occupation of any other Government. This has never been done, and consequently, Cayo Verde does not appear in the list of Islands appertaining to the United States under the Act of Congress approved August 18, 1856."²²⁵

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- 222 Lewis Cass, Sec. of State, to Robert J. Brent, Mar. 19, 1860, Ibid.
 223 Kendall's Memorial, Sen. Rep. 280, 36 Cong., 1 Sess., pp 2 - 4.
 224 Ibid, pp 1 - 2.
 225 John Hay to Joseph Wheeler, H. Rep., Ap. 7, 1900, 244 MS. Dom. Let. 230.

2. MORANT KEYS

a. Geography.

Morant bank is a coral bank 10 to 18 fathoms under water, about 10 miles long and 3 miles wide, situated in the Caribbean Sea, 33 miles southeast from Morant Point, the eastern extremity of Jamaica. Three small islands, each surrounded by reefs, rise from the bank, and form a crescent about three miles long. The currents are dangerous but there is a fair anchorage near the Keys. Northeast Key, latitude $17^{\circ} 25' N.$, longitude $75^{\circ} 58' W.$, is about seven feet high and is sometimes divided into three islets by the sea, which washes over the connecting sand spits. There is a pond of brackish water on this key, and fresh water may be obtained from wells. Southeast Key, one mile south of Northeast Key, is about eight feet high and covered with bushes. Water may also be obtained on this key and it has a good landing beach. Southwest Key, one mile southwest of Southeast Key, is ten feet high, and is very small, with a few bushes and a cairn on it.

On Northeast Key there are one or two houses, a small pier and a water tank, and on Southeast Key there were, in 1890, several huts in good repair. On Southwest Key there
is

is "a rocky ledge used as a pier for shipping guano." In March the sea birds come to these keys in great numbers and in April the islands are covered with their eggs which are collected and brought to Jamaica. Later in the summer turtles are caught, but the supply is becoming scarcer every year. There is guano on the keys but it is of a poor quality. 226

b. United States Claim under the Guano Act.

On May 24, 1869, James W. Jennett filed a notice of discovery of guano on Morant Keys (latitude 17° 30' N., longitude 75° 55' W.). He alleged that in December, 1866, he visited these four keys, called Northeast Key, Sand Key, Savannah Key and Seal Key; that the islands were unoccupied, and not in the lawful jurisdiction of any other government; that he took possession of them, raised a flag, built a house, et cetera; that they contained 150,000 tons of guano; and prayed that they be considered as appertaining to the United States, and that he be considered the owner of the deposit, in accordance with the Guano Act of 1856. 227 These allegations are substantiated by the certificates of Henry Stevens and George Nelson, Chief and Second Mates of the schooner PETREL, in which the discovery was said to have been

226 West Indies Pilot (1927), Vol. 1, No. 128, pp. 360 - 361.

227 Declaration of J. W. Jennett, May 24, 1869, 5 MS. Misc. Let. Re Guano, Morant.

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 been made; and by a crayon map of the keys. These
 declarations were filed in the State Department, but nothing
 further appears to have been done about Jennett's claim at
 229
 that time.

On May 26, 1877, Jennett filed a second declaration
 calling attention to his discovery and occupation of Morant
 Keys in December, 1866, and his notice of discovery in 1869,
 and continuing as follows:

"I visited said Islands or Keys in the month
 of May 10th A. D. 1875, and found said Islands . . .
 totally, or wholly unoccupied by any human being. ..
 I remained there in quiet and peaceful possession
 . . . and . . . said deposits had not been disturbed
 or interfered with during that time or since."

He concluded by asking that the islands be considered as
 appertaining to the United States and that he be recognized
 230
 as the owner of the deposits. The State Department, how-
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 ever, took no action.

On October 17, 1877, Prudencio de Murguiondo, notified
 the State Department that on August 1, 1877, Jennett assigned

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- 228 Declarations of Henry Stevens, and George Nelson, May 25,
 1869, and Crayon Map, 5 MS. Misc1. Let. Re Guano, Morant.
 229 See Wm. Evarts, Sec. of State, to John Sherman, Sec. of
 Treas., Mar. 20, 1878, 122 MS. Dom. Let. 228.
 230 J. W. Jennett's Declaration, May 26, 1877, 5 MS. Misc1.
 Let. Re Guano, Morant.
 231 Supra, Note 229.

all his interest in Morant Keys to him (Murguiondo); and that, on August 2, he sent the schooner EVA, commanded by Captain Shelly, who was instructed to land on the islands and take possession of them. Murguiondo asked to be protected in removing guano from Morant Keys, under the Act of 1856.²³² Evidence was submitted to the Department showing that the EVA anchored at Morant Keys in September, 1877, and removed some guano, after taking possession of the islands for²³³ Murguiondo.

The State Department, however, did not promise any protection to Murguiondo or recognize his claim; on the contrary, the Secretary of State informed Lamon, Murguiondo's partner and attorney, that protection could not be granted as Great Britain had taken formal possession of the Keys in 1862 "by landing a force of men on them, firing a canon, unfurling the British flag, and declaring them under the protection of the English Government," and that the Government of Jamaica had recently leased the Keys to one Charles Uter, for five²³⁴ years. Nevertheless Murguiondo and Lamon continued to occupy

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- 232 Prudencio de Murguiondo to The Sec. of State, Oct. 16, 1877, 5 MS. Misc. Let. Re Guano, Morant.
 - 233 do. Oct. 17, 1877, Ibid. Ward H. Lamon, Att'y for Murguiondo, to Evarts, Sec. of State, Nov. 2, 1877, Ibid.
 - 234 Lamon to Evarts, Sec. of State, Nov. 20, 1877, Ibid; See Hoskinson, U. S. Consul at Kingston, to F. W. Seward, Ass. Sec., Oct. 30, 1877, 27 MS. Consular Let., Kingston, Jamaica, No. 118.

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occupy the islands and remove guano from them.

On December 23, 1877, the British man-of-war BLANCHE arrived at Morant Keys and the Commander ordered Murguiondo's employees, whom he found on the Keys, to haul down the American flag and to leave the islands, alleging that these keys were British territory. Captain Miller, the American Commander on the islands, showed the British Captain a copy of a telegram from the Secretary of the Treasury to the Collector of Customs at Baltimore directing him to permit the EVA to clear coastwise for Morant Keys, under the Guano Act. of 1856. The British Captain was not impressed, however, and the Americans had to leave the islands. They protested before the American Consul at Kingston, Jamaica, and he reported the occurrence to the State Department. ²³⁶ Murguiondo claimed that because of the telegram to the Collector of Customs from the Secretary of the Treasury, the United States had in fact recognized Morant Keys as appertaining to the United States under the Guano Act, and that consequently the American claimants were entitled to the protection of the ²³⁷ Government against Great Britain.

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- 235 do, Nov. 24, 1877, and enclosures, Shelly to Murguiondo, Nov. 20, 1877, 5 MS. Misc. Let. Re Guano, Morant.
- 236 See Ward H. Lamont to Evarts, Sec. of State, Jan. 8, 1878, and enclosures, Ibid; F. W. Seward, Ass. Sec., to Ward H. Lamont, Jan. 24, 1878, 121 MS. Dom. Let. 428; Lamont to Evarts, Sec. of State, Jan. 29, and Feb. 2, and Feb. 5, 1878, 5 MS. Misc. Let. Re Guano, Morant; Lamont to Evarts, Feb. 11, 1878, Ibid; Hoskinson, U. S. Consul at Kingston, to F. W. Seward, Dec. 27, 1877, 27 Consular Let., Kingston, Jam., No. 127.
- 237 Lamont to Evarts, Sec. of State, Feb. 11, 1878, 5 MS. Misc. Let. Re Guano, Morant.

The State Department asked the American Consul at Kingston, Jamaica, for further details.²³⁸ He reported: that the Jamaican Government had formally taken possession of Morant Keys in 1862; that Jennett was a "worthless adventurer"; and that Murguiondo had arranged to lease the keys from the Jamaican lessee, Charles Uter, for four years for \$3,000.²³⁹ Ward H. Lamon, Murguiondo's partner, protested to the State Department that this arrangement was unauthorized, and that Murguiondo was acting without authority from the Morant Guano Company.²⁴⁰ The Examiner of Claims, Judge O'Connor, suggested that Murguiondo was selling out his American partners, and that Uter was merely an instrument to suit Murguiondo's purpose, and thought that Uter "has no more title to Morant Cays than His Infernal Majesty had to the Kingdoms of the world."²⁴¹ However, there is another note by Judge O'Connor saying that "of course if the islands are recognized as British, that is the end of the matter,²⁴² the BLANCHE was right."

In spite of repeated protests from Ward H. Lamon and Murguiondo,²⁴³ the State Department refused to intervene

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- 238 F. W. Seward, Ass. Sec., to Geo. E. Hoskinson, U. S. Consul at Kingston, Ap. 5, 1878, 88 Despatches to Consuls 634.
- 239 Hoskinson, U. S. Consul at Kingston, to F. W. Seward, Ass. Sec., Jan. 23, 1878, 28 MS. Consular Let., Kingston, Jamaica, No. 132.
- 240 Lamon to Evarts, Sec. of State, undated, 5 MS. Misc. Let. Re Guano, Morant.
- 241 O'Connor, Examiner of Claims, Feb. 25, 1878, 9 Op. and Rep. No. 50.
- 242 Note signed O'Connor, attached to Hoskinson, U. S. Consul at Kingston, to F. W. Seward, Ass. Sec., May 6, 1878, 28 MS. Consular Let., Kingston, Jamaica, No. 149.
- 243 Supra, Note 236.

in their behalf against the British Government, and it is apparent that no action was taken by the State Department recognizing either Jennett's claim as discoverer, or Murguiondo's and Lamon's as assigness.²⁴⁴ Murguiondo tendered a bond, dated October 20, 1877, in accordance with the requirements of the Act,²⁴⁵ but it was evidently not accepted, for on March 20, 1878, William Evarts, the Secretary of State, said:

"This Department has not yet recognized the validity of the pretensions of these parties (Lamon and Murguiondo) to the rights accorded under the statute to claimants coming within the privileges."²⁴⁶

In the latter part of 1879 a bond was filed by William Van Derlip, dated September 7, 1879, covering Morant Keys, Serranilla Keys and Arenas Key. Van Derlip claimed as an assignee of Jennett's.²⁴⁷ This claim was considered by the Examiner, who concluded as follows:

"As to Morant Keys the Secretary in 1877, on the application of Mr. Murguiondo and Colonel Ward H. Lamon decided that it could not be properly claimed under the Act of August, 1856, . . . as it was evidently appertinant to the Island of Jamaica and therefore a possession of Great Britain. The question then as to that Island is considered res adjudicata in the Department."²⁴⁸

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- 244 See Wm. Evarts, Sec. of State, to John Sherman, Sec. of Treas., Mar. 20, 1878, 122 MS. Dom. Let. 228.
 245 Bond, signed by Murguiondo as principal, Lamon, Sparks and Cutler as sureties, dated Oct. 20, 1877, 5 MS. Misc. Let. Re Guano.
 246 Supra, Note 244.
 247 A. Wm. Hunter, Acting Sec. to John Rice, Sept. 30, 1879.
 248 O'Connor, Nov. 12, 1879, 11 Op. and Rep. No. 29.

This opinion on Morant Keys must have been communicated to Van Derlip, but the letter has not been found, although there is evidence that it was written.²⁴⁹ The bond, as it stood, was filed with the Secretary of the Treasury, and consequently Morant Keys appears on the later lists sent by the Secretary of the Treasury to the Collector of Customs.²⁵⁰

On April 15, 1882, Lamon wrote to Mr. Frelinghuysen, the new Secretary of State, claiming damages arising out of the action of the British warship BLANCHE at Morant Keys in 1877.²⁵¹ Judge O'Connor, Examiner of Claims, advised the Secretary that Secretary Evarts had considered the claim carefully and refused to recognize it, under the provisions of the Guano Act, "on the ground that the Cay Morant's contiguity to Jamaica rendered it a British possession;" and added that "as these claimants never secured title under the Act, they have in my opinion no claim for damages."²⁵² Accordingly, the Secretary notified Lamon that as Secretary Evarts had "declined to admit the validity of the claim . . . it is considered

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- 249 See Frelinghuysen, Sec. of State, to Rastus Ransom, Dec. 26, 1884, 53 MS. Dom. Let. 511; Porter, Ass. Sec., to Thorndike Saunders, Ap. 2, 1885, 154 MS. Dom. Let. 658.
- 250 See Comptroller to Adey, Ass. Sec., July 3, 1890, List of Islands bonded, 6 MS. Misc. Let. Re Guano.
- 251 Lamon to Frelinghuysen, Sec. of State, Ap. 15, 1882, 5 MS. Misc. Let. Re Guano, Morant.
- 252 O'Connor, Ap. 25, 1882, filed with Lamon's letter, supra, Note 251.

considered that the facts now presented by you do not afford any just grounds for the interference of this Government. " ²⁵³

c. Basis of the Claim of Great Britain.

There is no doubt that Great Britain claimed Morant Keys before Jemmett's alleged discovery of guano. There is a report that in 1826 a British Admiral on the West Indian station had cocoanut trees planted on the keys, and that in May, 1832, the keys were again visited by a detachment of the British West Indian squadron and samples of soil were removed for examination. ²⁵⁴ There is also evidence that in 1862 the crew of a British merchant vessel was in possession of the islands, and forcibly prevented an American Captain from removing guano. ²⁵⁵ On October 12, 1862, John Ward, Commander of the British steamship STYX landed on and formally took possession of Morant Keys in behalf of Great Britain, and by a proclamation of February 23, 1863, the Governor of Jamaica took possession of the keys. ²⁵⁶ On March 3, 1882, the keys were formally annexed to and made dependencies

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- 253 Frelinghuysen, Sec. of State, to Lamon, Ap. 26, 1882, 141 MS. Dom. Let. 615.
- 254 Clipping from The Shipping and Mercantile Gazette, letter to the Editor, from Geo. Peacock, dated Nov. 28, 1877, in 5 MS. Misc. Let. Re Guano, Morant.
- 255 Capt. John Streett to Wm. Evarts, Sec. of State, Dec. 14, 1870, Ibid.
- 256 Certificate of John Ward, Oct. 13, 1862; Proclamation of the Gov. of Jamaica, Feb. 23, 1863, 63 British & Foreign State Papers (London, 1879) p. 797.

dependencies of the Island of Jamaica.²⁵⁷

In June, 1864, Letters Patent were issued to the Governor of Jamaica, giving him authority to grant leases of and licenses to take guano from all guano islands "within the West Indian naval station which were not already dependencies of any British colony and which were, or might be declared to be, subject to British sovereignty." Since that time leases have been granted from time to time for the collecting of guano, booby eggs and turtles from Morant Keys.²⁵⁸

In 1922 a citizen of Little Cayman Island had a concession from the Jamaican Government to remove eggs from Morant Keys, for £50 a year.²⁵⁹

The average yearly import of eggs to Jamaica from Morant Keys for the years 1917 to 1921, inclusive, was 366,700.²⁶⁰

Huts and other facilities have been built on the Keys.²⁶¹

In 1913 the American Government requested the British Government to build a light on Morant Keys, but this has not been

done.²⁶²

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- 257 73 British and Foreign State Papers (London, 1889) p. 53.
 258 Sinclair and Fyfe, The Handbook of Jamaica (1882), p. 496.
 259 C. L. Latham, U. S. Consul at Kingston, Jamaica, to Sec. of State, Nov. 4, 1922 (811.014/81).
 260 do. to do., Nov. 10, 1922 (811.014/83).
 261 Supra, Note 226.
 262 See Meyer, Sec. of Navy, to Sec. of State, Feb. 27, 1913; Daniels, to Sec. St., Feb. 3, 1915; Lansing, Sec. of State, to Sec. of Navy, July 30, 1915; Lansing, Sec. of State, to W. H. Page, U. S. Amb. to Great Britain, July 30, 1915; (811.0141 C 19/10, 11, 12).

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Assignments

1. J. W. Jennett to Thomas A. Mitchell, May 10, 1869,
guano on four Morant Keys (also on Serranilla and
Arenas Keys).²⁶⁴

Thomas A. Mitchell to John Wilson, Trustee, November 22, 1876 same interest as above (warranty deed).
John Wilson, Trustee, to the Caribbean Island Guano Company, November 22, 1876, same interest (warranty deed).

Caribbean Guano Company to John Wilson, Trustee, December 1, 1876, same interest (deed of trust, security for a bond issue of \$400,000).

Caribbean Guano Company to William L. Van Derlip,
August 21, 1879, same interest (deed of conveyance).²⁶⁵

Thomas A. Mitchell to William L. Van Derlip, September 20, 1879 (release indenture, Morant Keys (?)).

2. J. W. Jennett to Prudencio de Murguiondo, agent (of his wife, Julia), August 1, 1877, all the assignor's interest in guano on Morant Keys.

Prudencio de Murguiondo to J. W. Jennett, August 1, 1877, one-half interest in the guano on Morant Keys.

J. W. Jennett

263 Unless otherwise noted, filed in 5 MS. Misc. Let. Re Guano, Morant.

264 5 MS. Misc. Let. Re Guano, Serranilla.

265 6 MS. Misc. Let. Re Guano, Serranilla.

J. W. Jennett to P. de Murguiondo, December 29, 1877,
one-half interest in guano on Morant Keys.

Prudencio de Murguiondo to Ward H. Lamon, October 6,
1877, one-fourth interest in guano on Morant Keys.

Julia de Murguiondo to Ward H. Lamon, December 7,
1877, one-fourth of her interest in guano on Morant
Keys.

3. PEDRO KEYS

a. Geography.

Pedro Bank, lying 40 to 50 miles southwest of Jamaica, is approximately 100 miles long and 55 miles wide at the western part. It is from 8 to 15 fathoms under water, except on the southern portion where there are shoals and keys. Portland Rock, 40 miles from Portland Point, Jamaica, and 8 miles within the eastern end of Pedro Bank, is 290 yards long and rises to a height of 30 feet. Blower Rock, 5 miles southwest of Portland Rock, is 120 yards long and 2 or 3 feet high. There are four keys at the southern edge of the bank. Northeast Key, at latitude $17^{\circ} 03''$ N., longitude $77^{\circ} 45''$ W., $18 \frac{1}{2}$ miles from Portland Rock, is about $\frac{1}{4}$ of a mile long and 160 yards wide and is covered with bushes. Middle Key, $2 \frac{1}{2}$ miles from Northeast Key, is small and covered with brushwood. Southwest Key, about $\frac{1}{3}$ of a mile long, is covered with high bushes and has a pond of brackish water in the center. In 1900 a beacon and five cocoanut trees stood on this key. South Key, $2 \frac{3}{4}$ miles from Southwest Key, and 1 mile within the edge of the bank, is 220 yards long and 8 feet high, and is composed almost entirely of dead coral. There are fair anchorages off the Keys.

b. United

266 West Indies Pilot (1927), H. O. 128, Vol. I, pp. 418 - 422.

b. The United States Claim under the Guano Act.

On March 10, 1869, J. W. Jennett filed with the State Department a notice of discovery of guano on the four Pedro Keys in June, 1866. The declaration, dated June 30, 1866, contained the usual allegations and was witnessed by seamen²⁶⁷ on the schooner PETREL, in which the discovery was made. On May 28, 1869, Jennett's attorneys submitted additional evidence of his occupation of the Keys, consisting of another notice of discovery, an affidavit of Captain Eaden of the LAVINIA, dated September 11, 1869, and a contract between Jennett and two men of Martinique, dated August 18, 1869. Captain Eaden alleged that he visited Pedro Keys on August 25, 1869, found two men there employed by Jennett, and that he left them on the Southwest Key of Pedro Bank.²⁶⁸ On October 12, 1869, Jennett submitted the following evidence of his actual occupation of Pedro Keys: A sworn statement by Jennett dated October 1, 1869, alleging that on March 6, 1869, he landed two men on Southwest Key, and that on August 28, 1869, they were still there and that he left them provisions; a second declaration of Captain Eaden, dated August 26, 1869, describing the Keys and alleging that

267 Sworn statement by J. W. Jennett, dated June 30, 1866, 5 MS. Misc. Let. Re Guano, Pedro.
268 C. D. Willard, Att'y for Jennett, to Hamilton Fish, Sec. of State, May 28, 1869, and enclosures, Ibid.

that he found the two men there; the contract between the men, Paul and Molet, and Jennett, dated August 26, 1869, in which the men promised to remain on the Southwest Key of Pedro Bank for three months, or until Jennett returned; and a crayon map of the Keys.²⁶⁹ On November 26, 1869, Jennett filed a bond for Pedro Keys (also for Petrel or Boxo Nueva, Roncador, and Quito Sueno), in accordance with²⁷⁰ the provisions of the Guano Act of 1856.

The bond was approved by the State Department and sent to the Secretary of the Treasury with the remark that:

"It is understood that James W. Jennett claimed exclusive right of occupying certain islands or keys called Pedro Keys. . ." 271
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Jennett was notified of this action, and was given a certificate or proclamation, signed by Hamilton Fish, Secretary of State, and dated November 30, 1869, which recited that James W. Jennett had complied with the provisions of the Act of August 18, 1856, and concluded:

"Wherefore the said James W. Jennett is entitled in respect to the guano upon the said islands and keys, to all the privileges and advantages intended by that Act to be secured to citizens of the United States, who may have

discovered

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- 269 Lincoln and Willard, Jennett's Attorneys, to Hamilton Fish, Sec. of State, Oct. 12, 1869, and enclosures, Ibid.
- 270 do. to do., Nov. 26, 1869, Ibid.
- 271 Hamilton Fish, Sec. of State, to Geo. Bontwell, Sec. of Treas., Nov. 26, 1869, 82 MS. Dom. Let. 382.
- 272 J. C. B. Davis, Ass. Sec., to Lincoln and Willard, Nov. 27, 1869, Ibid 395.

discovered deposits of guano, while and so long as he abides by and fulfils the conditions of the said Bonds and requirements of the Act of Congress aforesaid." 273

The Secretary of the Treasury included Pedro Keys among the islands listed as appertaining to the United States under the Guano Act, and notified collectors of customs to apply the coastwise regulations to Pedro Keys, according to the
274
Act.

c. The Claim of Great Britain.

In January, 1878, the State Department learned, both through a disinterested American citizen, and through the American Consul at Kingston, Jamaica, that the British
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had formally taken possession of Pedro Keys in 1863.

Nevertheless, no investigation was made and Pedro Keys remained on the list of islands appertaining to the United States under the Guano Act. Because of this, in 1884, proceedings were instituted against the British brig NATALIE at Norfolk, Virginia, for violation of the navigation laws of the United States in trading between Pedro Keys and American ports, on the ground that Pedro Keys was an American possession.

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- 273 Copy of Proclamation in 5 MS. Misc. Let. Re Guano, Pedro; See also J. C. B. Davis, acting Sec., to Carter, Mar. 29, 1870, 83 MS. Dom. Let. 612; Fish, Sec. of State, to Mrs. Henrietta Stevens, May 10, 1870, 84 Id. 426; Wharton, Acting Sec. to Schwenk, June 23, 1892, 187 Id. 49; Adee, Ass. Sec., to Schwenk, Feb. 26, 1904, 272 Id. 485.
- 274 Geo. Bontwell, Sec. of Treas., to Sec. of State, Dec. 1, 1869, 5 MS. Misc. Let. Re Guano, Pedro. See also lists in 6 Ibid, Misc.
- 275 A. Wellington Hart to The President, Jan. 11, 1878, 5 MS. Misc. Let. Re Guano, Pedro; Geo. E. Hoskinson, U. S. Consul at Kingston, to F. W. Seward, Ass. Sec., Jan. 23, 1878, 28 MS. Consular Let., Kingston, Jamaica, No. 132.

possession. The British Minister to the United States protested and sent the Secretary of State a copy of a notice which appeared in the LONDON GAZETTE of March 14, 1882, stating that Letters Patent had been issued by the British Government for the annexation to Jamaica of Morant and Pedro Keys, of which possession had been taken by the British Government in 1862, and 1863, respectively. ²⁷⁶ He requested an inquiry in regard to the NATALIE which he said was "lawfully trading between the British possession of Pedro Cays (Jamaica) and American ports." ²⁷⁷ Thereupon, the Secretary of State informed the Secretary of the Treasury of the complaint, noting that in 1878, the State Department had received reports from the American Consul at Jamaica that the British claimed title to Pedro Keys, and that the Consul regarded ²⁷⁸ this claim as sound and fatal to Jennett's claim. The NATALIE was released on December 13, 1884, and the British ²⁷⁹ Minister was notified.

In 1887, the British Minister presented a claim on behalf of the owners of the NATALIE for damages for the seizure and detention of the brig. ²⁸⁰ The Secretary of State asked the Secretary of the Treasury to estimate the damages, stating that:

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- 276 Sir L. S. Sackville West, Brit. Min. to U. S., to Frelinghuysen, Sec. of State, Dec. 1, 1884, 111 MS. Notes from Great Britain.
 - 277 Second note, same date, Ibid.
 - 278 F. Frelinghuysen, Sec. of State, to Sec. of Treas., H. McCulloch, Dec. 5, 1884, 153 Dom. Let. 366.
 - 279 Frelinghuysen, Sec. of State, to L. S. Sackville West, Jan. 7, 1885, 19 MS. Notes to Great Britain, 597.
 - 280 L. S. Sackville West, Brit. Min. to U. S., to T. F. Bayard, Sec. of State, Feb. 21, 1887, 114 Notes from Great Britain.

"This Department is of the opinion that Pedro Keys was not at the time of the seizure of the NATALIE and is not now a guano island 'appertaining to the United States.'" 281

It was decided that the United States would allow the owners of the NATALIE the sum of \$476.60 for demurrage, and \$205.00 282 for the compensation of the crew.

There is no doubt but the British Government formally 283 landed on and took possession of Pedro Keys on July 13, 1863. In June, 1864 Letters Patent were issued to the Governor of Jamaica authorizing him to grant leases for the removal of guano from islands which might belong to Great Britain, and leases for Pedro Keys at the rate of 75 pounds a year were 284 granted. The islands were annexed to Jamaica on March 3, 1882, and a notice of the annexation was published in the 285 LONDON GAZETTE, March 14, 1882. There are temporary huts on some of the keys and cocoanut trees were planted on North- 286 east and Southwest Keys.

Concessions

- 281 T. F. Bayard, Sec. of State, to C. G. Fairchild, Sec. of Treas. May 7, 1887, 164 MS. Dom. Let. 114.
- 282 T. F. Bayard, Sec. of State, to Sir L. S. Sackville West, Brit. Min. to U. S., July 19, 1887, 20 MS. Notes to Great Britain, 467. See also J. D. Porter, Ass. Sec., to Coudert Brs., May 28, 1885, 155 MS. Dom. Let. 518; Murguiondo to T. F. Bayard, Sec. of State, Dec. 7, 1885, 5 MS. Misc. Let. Re Guano, Pedro.
- 283 See letters patent, annexation of Morant and Pedro Keys to Jamaica, Mar. 3, 1883, Vol. 73 Brit. and Foreign State Papers 531.
- 284 Sinclair and Fyfe, Handbook of Jamaica (Jamaica, 1882) pp. 496, 500.
- 285 Supra, Note 283.
- 286 Supra, Note 284.

Concessions for the removal of birds, eggs, and turtles from Pedro Keys are granted from time to time by the Jamaican Government. For the years 1917 to 1921, inclusive, the average yearly importation of eggs from Pedro Keys to Jamaica was 217,320. It is said that the supply does not decrease because the birds, called "noddys" and "sooty terns" lay only one egg a season, and if that is removed, lay another, and so on, so that the same number of birds are hatched in the end as if no eggs were taken at all. In 1922, it was reported that a concession for the collection of birds, eggs, and turtles from Pedro Keys (except Southwest Key) was granted a citizen of Little Cayman Island for £ 80 a year, and in 1925 the Keys were leased to a Jamaican concern for 7 years, for £300 a year.

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- 287 C. L. Latham, U. S. Consul, Kingston, Jamaica, to Sec. of State, Nov. 10, 1922 (811.014/83).
- 288 do. to do., Nov. 4, 1922 (811.014/81).
- 289 U. S. Consul, Kingston, Jamaica, to Sec. of State, Oct. 15, 1925 (844 d. 0141/2).

The United States did recognize Jennett's interest in the guano on Pedro Keys, but subsequently withdrew this recognition, and unequivocally acknowledged the British claim to sovereignty over the islands. In 1917, the State Department wrote that:

" . . . from evidence coming to the Department's attention subsequent to the approval in 1869 of Mr. Jennett's bond, it would appear that these Keys are not to be considered as now appertaining to the United States." 292

292 Wm. Phillips, Ass. Sec., to E. A. Alexander, April 21, 1917 (811.0141/20); Opinion of Solicitor (Mr. Hackworth) 1917 Sol. Op. Part I pages 584, 586.

Assignments

1. J. W. Jennett to Henrietta Stevens, May 5, 1870, all his interest in guano on four Pedro Keys (also all Roncador, Quito, Sueno, and Petrel Islands). Henrietta Jennett (née Stevens) to the Petrel Guano Company, January 10, 1881, same interest.
The Petrel Guano Company (represented by Samuel Schwenk) to the Caribbean Guano Company (represented by George Crater) October 18, 1911, same interest.²⁹⁰
2. Declaration of Henry Dewey, November 7, 1881, that he had a half interest in all guano islands discovered by Jennett under contract, dated May 10, 1880.²⁹¹

290 5 MS. Misc1. Let. Re Guano, Roncador and Quito Sueno.

291 Ibid, Pedro.

4. SOMBRERO ISLAND

a. Geography.

Sombrero Island, latitude 18° 36" North, longitude 63° 28" West, is situated in the Angedaga Passage, separating the Virgin Islands group of the West Indies from the Leeward Islands. It is on a small coral bank, and is 1800 by 400 yards square. It is composed of jagged points of coral rock rising to a height of 40 feet in the center, and covered with a few prickly pear bushes. The sides are precipitous and rocky, and there is no good harbor, but there is an anchorage on the west side of the island. Sombrero is 40²⁹³ miles from the nearest inhabited land, St. Martin Island.

b. The United States Claim under the Guano Act.

A notice of the discovery of guano on Sombrero Island by Messrs. Copeland and Gowen was filed with the State Department in the latter part of 1856. Claimants' affidavit, dated November 13, 1856, alleged that they had employed Captain Meltiah Jordan, jr., to go on a voyage of discovery; that he had, on one of these trips, discovered guano deposits on Sombrero and had brought back a sample; that they had dispatched a second vessel commanded by Captain John Jordan, with

²⁹³ West Indies Pilot, Vol. II, H. O. 129 (1929) pp. 104 - 105.

with instructions to take and retain possession of the island; and that such possession was taken. These declarations were supported by an affidavit of Meltiah Jordan, jr., dated July 16, 1857. However, they were not considered sufficient to warrant recognition of the interest of Gowen and Copeland.²⁹⁴

A bond was filed by the discoverers in February, 1857, but, as it was not signed by Copeland and Gowen but only by one Ellis as their attorney, and as the Department had received no notice of his power of attorney, the Attorney General, Jeremiah Black, advised: "That the bond be treated as no bond at all."²⁹⁵ His opinion was communicated to Messrs. Wood and Grant, apparently assignees of the discoverers,²⁹⁶ in a letter of September 28, 1857.

In spite of the non-recognition of their claim by the United States, the discoverers' assignees occupied the island and removed guano. In 1861 Ross W. Wood and Son reported

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- 294 The affidavits have not been found in the archives of the State Department, but they are cited in Lewis Cass, Sec. of State, to Messrs. Wood and Grant, July 1, 1857, 47 MS. Dom. Let. 165. See also Bond, dated Feb. 13, 1857, Gowen and Copeland, principals in VI MS. Misc. Let. Re Guano.
- 295 9 Op. Att'y Gen. 128 (Black, Nov. 5, 1857).
- 296 John Appleton, Ass. Sec., to Wood and Grant, Sept. 25, 1857, 47 MS. Dom. Let. 390. See also Ibid, pp. 385, 165. Two letters written by the Department in January, 1860, confirm this account of the transaction: John Appleton, Ass. Sec. to A. C. M. Pennington, Jan. 12, 1860, 51 MS. Dom. Let. 354; Lewis Cass, Sec. of State, to A. G. M. Pennington, Jan. 28, 1860, 51 MS. Dom. Let. 407.

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reported to the Secretary of State that A. C. Elliott of Baltimore, formerly part owner of the island, had threatened to take possession of Sombrero by force, and make use of it for the Confederacy, or possibly for the slave trade. Wood & Son alleged that on October 22, 1861, they had 45 laborers on the island. They asked for protection against such expeditions as Elliott's, at the same time acknowledging that Sombrero Island "has never been proclaimed American territory."²⁹⁷

The Secretary of State replied that Major General Dix had sufficient authority to deal with the case of Elliott in Baltimore.²⁹⁸ A letter was sent, however, to the Secretary of the Navy remarking on "the vital importance, at the present time, of the guano island of Sombrero, belonging to the United States, and the necessity of its protection by one of our armed vessels."²⁹⁹

c. The Claim of Great Britain.

In 1863 Sombrero again figures in diplomatic correspondence. Wood, still occupying the island, reported that the British Frigate PHAETON, commanded by Captain Latham, had

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| | | visited |
| 297 | Ross W. Wood & Son to Seward, Sec. of State, Nov. 20, 1861, MS. Misc. Let. Nov. 1861. See also L. C. L. Huntington, at St. Martin Is., to Seward, Sec. of State, Aug. 3, 1861, MS. Misc. Let., Aug. 1861. | |
| 298 | Seward, Sec. of State, to Messrs. Ross W. Wood & Son, Nov. 25, 1861, 51 MS. Dom. Let. 491. | |
| 299 | Seward, Sec. of State, to Gideon Welles, Sec. of Navy, Sept. 10, 1861, 55 MS. Dom. Let. 63. | |

visited Sombrero March 18, 1863, and forced the Americans on the island to haul down the American flag. Captain Latham, however, had apparently admitted that the question of sovereignty over the island was not settled, and had permitted the American occupants to put the flag up again, at the same time claiming they had no right to do so. Wood & Sons reported that they had been in continuous, peaceful possession since December 1, 1856. They asked the advice of the Secretary of State, admitting that they had not secured any proclamation of American sovereignty over the island under the Guano Act of 1856, but alleging that they could prove continuous occupation since 1856, and that several hundred tons of guano still remained upon the island, although they had shipped about 50,000 tons, and that this guano was 75 to 80 per cent phosphate of lime. They declared, further, that since the blockade of the Southern ports, they had shipped almost entirely to England; and that they were only interested in removing the guano from the island: -

"We of course do not desire to occupy the Sombrero Key one day after ceasing shipments of guano, and to anticipate the permanent occupation of the island by any power or person would be absurd."

They added that they would not object to working the guano under the British flag, but that they had invested so much capital

capital in the enterprise that they could not stop now with-
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out great loss.

The Secretary of State referred the matter to Charles Francis Adams, United States Minister to Great Britain, with the following instructions:

"Although this Government has not yet contracted the obligation to protect the occupancy of the island by citizens of the United States upon the terms prescribed by the Act of August 18th, 1856, it cannot be indifferent to any unwarrantable disturbance of the present occupants by the officers of a foreign power. You will consequently make a representation on this subject to Earl Russell and inquire whether, and upon what grounds, the British Government claims sovereignty over the Island of Sombrero. If no such claim exist, you will suggest that Captain Latham's proceedings seem to the President to deserve some censor from the British Government . . ."301

Adams accordingly addressed the following note to Lord Russell, of the British Foreign Office:

"I do not understand that the Government of the United States has yet contracted any obligation to protect the occupancy of this particular island by its citizens, although by the terms of an Act of Congress . . . of 1856 . . . it has certainly given encouragement to the prosecution of the objects sought to be obtained, so far as to promise them protection in the possession of such islands as are not claimed by or in the possession of any other government. It cannot, however, be indifferent to the uncourteous mode adopted by

Captain

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- 300 Ross W. Wood & Co to Seward, Sec. of State, Ap. 17, 1863, Pt. II MS. Misc. Let. April, 1863; Affidavit of Robert Matches, Mar. 18, 1863, Ibid, enclosure.
- 301 Seward, Sec. of State, to C. F. Adams, May 5, 1863, 18 Great Britain, Instructions 483, No. 582.

Captain Latham, of disturbing the present occupants of Sombrero, who have temporarily established themselves there under the expectation of such support." 302

Lord Russell gave instructions to Lord Lyons, British Minister to the United States, 303 who wrote Secretary Seward that:

"Captain Latham's proceedings were not prompted by any desire to interfere with the commercial adventures of American citizens, but were adopted in order to assert the Queen's rights over an island regarded as a Dependency of the British Crown."

He added that Great Britain was willing to authorize the Governor of the Leeward Islands to grant a five-year license for the removal of guano to the Americans interested. 304

Seward replied that, while the United States did not claim sovereignty over the island, "we are not prepared to acknowledge that the pretension of Great Britain to that sovereignty, has any just foundation, in fact or in law," and, accordingly, the American citizens could not be recommended to apply for a British license "as such a recommendation would alone be tantamount to an acknowledgment that Sombrero is rightfully a dependency of the British Crown." 305

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- Lord
- 302 C. F. Adams, U. S. Min. to Great Britain, to Seward, Sec. of State, July 2, 1863, Enclosure 1, 83 Great Britain, Adams Dispatches, No. 443.
- 303 Ibid, enclosure 2; see also Seward, Sec. of State, to C. F. Adams, U. S. Min. to G. B., July 23, 1863, 18 Great Britain, Instructions 541, No. 659.
- 304 Lord Lyons, Brit. Min. to U. S., to Seward, Sec. of State, Aug. 6, 1863, 53 MS. Great Britain, Notes From.
- 305 Seward, Sec. of State, to Lord Lyons, Brit. Min. to U. S., Aug. 10, 1863, 10 MS. Notes to Great Britain 202.

Lord Russell, who was not prepared for this answer of the Secretary of State, made inquiries of Adams, who urged Lord Russell to consider the American claimants' situation "separately from other points involved in the proceedings, so far as to relieve them from the difficulties of their position." ³⁰⁶ Accordingly, Lord Russell reported that Great Britain had granted to Wood and Co. a lease of the island of Sombrero, but added:

"Her Majesty's Government are aware that the Government of the United States desired to reserve to themselves the right, if they should think fit hereafter to do so, of calling in question the title of Her Majesty to this island, and they understand that on the present occasion it is mutually agreed between the two governments that the acquiescence of the United States Government in this particular act of Her Majesty's Government is not to prejudice or to affect any claim which the United States may hereafter think fit to advance with respect to Sombrero." ³⁰⁷

Secretary Seward expressed his approval of this arrangement. ³⁰⁸

Subsequently, however, the United States never claimed any right to sovereignty over Sombrero Island. No acceptable bond

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- 306 C. F. Adams, U. S. Min. to G. B., to Seward, Sec. of State, Sept. 10, 1863, 84 MS. Great Britain, Adams Dispatches, No. 495, with enclosures.
 - 307 C. F. Adams, U. S. Min. to G. B., to Seward, Sec. of State, Ap. 8, 1864, - Enclosure, Russell, Brit. For. Office, to C. F. Adams, Mar. 23, 1864, Part I 1864 For. Rel. 584.
 - 308 Seward, Sec. of State, to C. F. Adams, U. S. Min. to G. B., Ap. 28, 1863, 19 MS. Great Britain, Instructions, No. 726.

bond for the island was ever filed, according to the records
in the State Department, ³⁰⁹ although the island was listed
on the first list of islands compiled by the Secretary of
the Treasury on August 23, 1867, and sent to collectors of
customs. ³¹⁰ In answer to an inquiry from the Secretary of
the Treasury in 1868, ³¹¹ the Secretary of State replied:

"Nothing has been discovered to show
that the title of citizens of the United
States to guano on the island was ever re-
cognized by the President." ³¹²

The lease to Wood and Company by the British Government
³¹³ apparently ceased in 1893. By a British Order in Council
of August 10, 1904, the island of Sombrero was formally
annexed

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- 309 See C. I. M. Gwinn to Trescott, State Dept., Oct. 30, 1860, VI MS. Misc. Let. Re Guano (Re filing of a new bond. This was not done, however, so far as can be ascertained. See 79 MS. Dom. Let. 204, infra Note 312).
- 310 VI MS. Misc. Let. Re Guano. It is not on later lists.
- 311 H. McCulloch, Sec. of Treas., to Seward, Sec. of State, Aug. 12, 1868, VI MS. Misc. Let. Re Guano.
- 312 Seward, Sec. of State, to H. McCulloch, Sec. of Treas., Aug. 14, 1868, 79 MS. Dom. Let. 204.
- 313 Sir Charles P. Lucas, A Historical Survey of the British Colonies, Vol. II, The West Indies (1905), pp. 157 - 8.

annexed to the colony of the Leeward Islands.³¹⁴ The
British Board of Trade maintains a lighthouse on the island,
and it is attached administratively to the Presidency of the
(British) Virgin Islands.³¹⁵ The United States does not
appear to have protested against this annexation.³¹⁶

314 Ibid; British and Foreign State Papers (1908) Vol. 97,
p. 146.

315 Lucas, Op. Cit. supra, Note 313; West Indies Pilot,
supra note , pp. 104-5; Statesman's Year Book
(London, 1932) pp. 340, 342.

316 No protest is found in Foreign Relations Volumes, and
D. C. R. was unable to find anything on Sombrero Island.

IV. ISLANDS CLAIMED BY MEXICO

1. THE TRIANGLES (EL TRIANGULOS), ALACRANS KEYS (CHICA, PEREZ, PAJOROS) and ARENAS KEY

a. THE TRIANGLES (EL TRIANGULOS)

1. Geography.

The Triangles (or El Triangulos) are two coral reefs eight miles within Campeche Bank on the northwest coast of the Yucatan Peninsula, in the Gulf of Mexico. Western Triangle Reef is about 700 yards long, and at the southwest end there is a small key about 200 yards long, composed of sand and coral which forms a wall 11 feet high on the east side. Western Triangle Light is on this key. Between the Western and Southern Triangle Reefs there is a coral island, latitude, $20^{\circ} 55'$ N., longitude, $92^{\circ} 13'$ W. It is 600 by 200 yards square, about 17 feet high, and there is a heap of stones on it about 24 feet high. There is a tolerable landing on the northwest side of this island. ³¹⁷

2. United States Claim under the Guano Act.

On September 13, 1879, Captain James W. Jennett filed a Notice of Discovery of guano on three Triangle Islands, two Eastern, and one Western. He enclosed a Notice, dated

September 1,

³¹⁷ Central America and Mexico Pilot (1927) H. O. 130,
pp. 320 - 321.

September 1, 1879, in which he alleged: that the discovery of guano on these islands was made on February 15, 1879; that he first visited them in 1860, and revisited them and removed samples of guano in 1867, 1869, 1875, 1877 and 1879; that in 1879 he chartered the schooner MARY MATILDA and landed on Eastern Island on February 15, taking formal possession of the Island in the name of the United States. This declaration was supported by the affidavits of two³¹⁸ seamen of the MARY MATILDA, dated September 1, 1879.

Although no bond for any of the Triangle Islands appears to have been filed until 1880, "Triangle keys (three in number)" are listed on the Secretary of the Treasury's list of February 12, 1869. "Western Triangles" appears on the 1890³¹⁹ list. Western Triangle was bonded on September 18, 1880,³²⁰ by the Aves Guano Co., and the bond was approved by John Hay, Acting Secretary of State, October 27, 1880.³²¹ On October 15, 1894, the State Department reported that there was nothing to show that the President had exercised his discretion, under the³²² Guano Act, with regard to Triangle Islands.

b. Alacrans

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- 318 J. W. Jennett to Wm. Evarts, Sec. of State, Sept. 13, 1879, and enclosures, 1 MS. Misc. Let. Re Guano, Alacrans, and 6 Ibid, Triangles.
 - 319 6 MS. Misc. Let. Re Guano, Misc.
 - 320 See W. Gresham, Sec. of State, to Hon. John B. Gordon, Oct. 19, 1893, 194 Dom. Let. 56, 60.
 - 321 Acting Sec. of Treas. to Sec. of State, and enclosure, Oct. 12, 1894, Misc. Let. Part I, Oct. 1894.
 - 322 E. Uhl, Acting Sec., to Arthur Brash, Oct. 15, 1894, 199 MS. Dom. Let. 147.

b. ALACRANS KEYS (CHICA, PEREZ, PAJORAS)

1. Geography.

Alacrans reef, on Campeche Bank in the Gulf of Mexico, is 65 miles north of the coast of Yucatan. It is a half-moon shaped, coral reef, 14 miles long and 8 miles wide at the widest part. Three miles from the northern point of the reef there is a small sand key, about 10 feet high, covered with grass and bushes. Two black rocks rise from the northeast edge of the reef. Perez Island, at the southern end of the reef, is a narrow ridge 800 yards long, covered with grass and brushwood. There are sometimes fishermen's huts on this Island and at the center is Alacrans Reef Light, latitude, 23° 24' N., longitude, 89° 42' W. At the southeastern extremity of the reef are two small sandy keys, Pajoras and Chica. They are about 500 yards apart, and both are about 5 feet high, covered with grass and brushwood. There is a small key three miles northwest of Perez Island, covered with bushes about 12 feet high. There is an excellent reef harbor for small vessels between the shoals extending from Perez to the other keys.

2. United

323 Central America and Mexico Pilot (1927) H. O. 130, pp. 317 - 318.

2. United States Claim under the Guano Act.

On September 13, 1879, Captain James W. Jennett filed a Notice of his discovery of guano on three Alacrans Islands, named Perez, Chica, and Pajoras. He enclosed a Declaration, dated September 1, 1879, substantially similar to his declaration in regard to Triangle Islands, and the supporting affidavits of two seamen on the MARY MATILDA, dated September 1, 1879.

The three Islands of Alacrans Bank were bonded on June 21, 1884, and all included and listed separately by name in the later lists compiled by the Treasury Department. The bond was filed by the South American Bird Guano Co., and was formally approved by John Davis, Acting Secretary of State, July 24, 1884, with regard to Pajoras and Chica Islands. The State Department said, on October 15, 1894:

"There is nothing to show that the President of the United States has ever exercised the discretion vested in him by the Guano Islands Act of August 18, 1856, whereby such islands may be considered as appertaining to the United States."

C. ARENAS

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- 324 J. W. Jennett to Wm. Evarts, Sec. of State, Sept. 13, 1879, and enclosures, 1 MS. Misc. Let. re Guano, Alacrans. (Although Jennett apparently attempted to assign two more islands of the Alacrans group, which he called Placoa and Baraderos, he filed no notice of discovery of any such islands. See Wm. Wharton, Acting Sec., to Arthur Brash, Oct. 21, 1891, 183 MS. Dom. Let. 600; do. to do., Nov. 23, 1891, 184 Ibid 193.)
- 325 See W. Gresham, Sec. of State, to Hon. J.B. Gordon, Oct. 19, 1893, 194 MS. Dom. Let. 57, 61.
- 326 6 MS. Misc. Let. Re Guano, Misc.
- 327 Acting Sec. of Treas. to Sec. of State, Oct. 12, 1894, and enclosure, Part I Misc. Let. Oct., 1894.
- 328 Edward Uhl, Acting Sec., to Arthur Brash, Oct. 15, 1894, 199 Dom. Let. 147; do. to Wilbur, Ibid.

c. ARENAS KEY

1. Geography

Arenas Key, latitude 23° 07', N., longitude 91° 24', W., is about 12 miles within the Campeche Bank, in the Gulf of Mexico, at the southeast end of a detached coral reef. It is about 300 by 200 yards square, and is said to be extending northward. It is covered with grass and at the southeast end there is a 20 foot wall of coral blocks thrown up by the sea. On the Key is a light, maintained by the Mexican Government, and two dwelling houses. The Island is frequented by sea birds in April and May, and occasionally by seals. There is a snug anchorage for small vessels and a wharf on the northwest side of the Key.

2. The United States Claim under the Guano Act.

On May 24, 1869, Captain James W. Jennett filed a Notice of discovery of guano on Arenas Island. He alleged that the discovery was made on January 18, 1867, on the schooner PETREL, and made the usual declarations which were supported by a crayon map of Arenas Island, and certificates of the First and Second Mates on the schooner PETREL, dated May 5, 1869. On February 12, 1894, an assignee claiming under Jennett filed another Declaration by Jennett, dated May 24, 1876,

329 Central America and Mexico Pilot (1927) H. O. 130 pp 319-320. relating

330 J. W. Jennett's Notice of Discovery, May 24, 1869, and enclosures, 2 MS. Misc. Let. Re Guano, Arenas.

relating to his discovery of Arenas in January, 1867, and further declarations by the First and Second Mates of the PETREL, dated May 25, 1869.³³¹

There is also a second Notice of discovery of guano on Arenas Island, dated March 3, 1880, filed by John G. Wallis on March 20, 1880. He alleged that on January 11, 1880, he landed and took possession of Arenas Island in the name of the United States; that on January 17 he loaded the schooner EBEN H. KING with 130 tons of guano, and left 14 laborers on the island; and he prayed that it be considered as appertaining to the United States and that his interests be protected under the Guano Act of 1856. These allegations were supported by affidavits of James Bunker, Master of the EBEN H. KING, and of Lieutenant Commander Ackley, of the schooner EAGRE, United States Coast Survey.³³²

There is also on file a certificate by Benjamin Smith, Master of the brig FIDELIA, dated July 1, 1880, in which he alleged that in May, 1880, he removed 500 tons from Arenas Key, acting under orders from John G. Wallis, and that he found Wallis's employees on the Island.³³³ On October 18, 1881, Wallis's bond was filed, and was approved by

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- 331 John F. McGuire to Gresham, Sec. of State, Feb. 12, 1894, and enclosures, Ibid.
 - 332 J. G. Wallis to Wm. Evarts, Sec. of State, Mar. 20, 1880, Ibid.
 - 333 Certificate of Benjamin Smith, July 1, 1880, Ibid.

by the Secretary of State, and transmitted to the Treasury
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Department.

It appears that the State Department never recognized the interests of either Jennett or Wallis under the Guano Act. With regard to the interest of Jennett and his assignees in Arenas, the Department stated, in 1878, that "they hold
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no title or right emanating from this Government." In 1881, the State Department informed the First Comptroller of the Treasury that neither Jennett nor his assignees had taken
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any steps after filing the notice of discovery in 1869. When Wallis filed his Declaration of Discovery, the Depart-
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ment merely informed him of Jennett's prior Notice. In 1885 the Department stated that it was "unable to find that either of these alleged discoveries was recognized by a
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President's proclamation." Again in 1894 it was said that:

"There is nothing to show that the President of the United States has ever exercised the discretion vested in him by the Guano Islands Act whereby such islands may be considered as appertaining to the United States." 339

Nevertheless

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- 334 See B. F. Fisher, Att'y for Wallis, to Wm. Hunter, Ass. Sec., Dec. 8, 1880, Ibid; Henry O'Connor, Examiner of Claims, Dec. 7, 1881, Vol. 14 Op. and Rep. p. 47.
- 335 Wm. Evarts, Sec. of State, to Lewis Sedner and Sons, June 7, 1878, 123 MS. Dom. Let. 208. See also O'Connor, Examiner of Claims, Nov. 12, 1879, Vol 11, Op. and Rep., No. 29.
- 336 F. G. Blaine, Sec. of State, to Wm. Lawrence, Sept. 1, 1881, 139 MS. Dom. Let. 22. See also Henry O'Connor, Supra, Note 334.
- 337 C. Payson, 3rd Ass. Sec., to J. G. Wallis, Mar. 24, 1880, 132 MS. Dom. Let. 287.
- 338 J. D. Porter, Acting Sec., to P. de Murguiondo, Jan. 18, 1886, 158 MS. Dom. Let. 482.
- 339 E. Uhl, Acting Sec., to Jerome B. Graybill, Oct. 15, 1894, 199 Ibid 147; do. to Gatchell, Oct. 16, 1894, Ibid 157.

Nevertheless a bond for Arenas Key, dated September 8, 1879, filed by William Van Derlip, and a bond filed by J. G. Wallis, dated October 18, 1880 (approved by the State Department January 24, 1881),³⁴⁰ for "The Island of Arenas" were sent to the Treasury Department by the State Department. Consequently on the Treasury list of 1890 both Arenas Key and the Island of Arenas are listed, the same longitude being given for both, but with a difference in latitude of 17' and 20".³⁴¹

In October, 1881, an American citizen, William Adams, lessee of John Wallis, was engaged in removing guano from Arenas Key. The Mexican authorities sent the Mexican gunboat LIBERTAD to investigate and to assert the authority of the Mexican Government. The Commissioner of the gunboat ordered the American flag pulled down, raised the Mexican flag, and removed the Americans from the island.³⁴² Adams complained to the State Department, alleging that Arenas Island had been recognized by the United States as a "duly bonded guano island", and that it was recognized as such by

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- 340 Acting Sec. of Treas. to Sec. of State, Oct. 12, 1894, and enclosure, Part I Misc. Let. Oct. 1894.
 341 6 MS. Misc. Let. Re Guano, Misc.
 342 P. H. Morgan, U. S. Mint. to Mexico, to Sec. of State, Nov. 9, 1881, 74 Dispatches from Mexico, Nos. 302, 303.

by customs officials, who cleared ships bound for Arenas coastwise, acting under the authority of the Secretary of the Treasury.³⁴³

The Secretary of State replied that Mexico claimed jurisdiction over Arenas Key, and regarded Adams and his employees as trespassors on the property of Mexico, and concluded that:

"This Department has not been able to reach the conclusion that the island was, if at all, sufficiently derelict to warrant a demand of reparations from that Government." 344

In answer to a second demand for protection by Wallis's attorney,³⁴⁵ Secretary Bayard, in 1885, quoted Secretary Frelinghuysen's letter in answer to Adams's protest, and added that there was "no new fact which would justify my departure from the conclusion of my predecessor in this respect."³⁴⁶

d. The claim of Mexico to The Triangles, Alacrans Keys, and Arenas Key.

In 1882 the Secretary of State wrote the Mexican Minister to the United States about the expulsion of the Americans from

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- 343 Wm. L. Adams to Hon. J. H. Brewer, June 21, 1882; do. to J. G. Blaine, Sec. of State, Oct. 31, 1881, 2 MS. Misc. Let. Re Guano, Arenas.
 - 344 F. Frelinghuysen to Hon. J. H. Brewer, June 15, 1882, 142 MS. Dom. Let. 411. See also Henry O'Connor's Report, Supra, Note 334.
 - 345 B. F. Fisher to Frelinghuysen, Sec. of State, June 30, 1884, 2 Misc. Let. Re Guano, Arenas; do. to do., Jan. 28, 1885, Ibid.
 - 346 T. F. Bayard, Sec. of State, to Hon. J. B. Everhart, Mar. 10, 1885, 154 MS. Dom. Let. 421.

from Arenas key in October 1881, and enclosed the Department's letter to Honorable J. H. Brewer rejecting Adams's claim for damages on the ground that the island was claimed by Mexico and was not sufficiently derelict to warrant such a claim.³⁴⁷

In 1885 the Mexican Minister called the Secretary of State's attention to the action of the American schooner SARAH E. KENNEDY which he said had removed guano from Arenas key, and violated Mexican territory.³⁴⁸ In a second note the Mexican Minister remarked that the Treasury Department included Arenas in the list of islands appertaining to the United States under the Guano Act, recalled the Secretary of State's letter to the Mexican Government in 1882, notifying Mexico of the rejection of Adams's claim, and suggested that the Treasury Department be informed of the State Department's position.³⁴⁹ Subsequently, the Mexican Minister requested that Arenas Island be stricken from the Treasury list of guano islands appertaining to the United States, and that the bond filed with the Treasury Department and bearing the formal approval of the State Department be cancelled in order to facilitate the success of

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- 347 F. Frelinghuysen, Sec. of State, to M. Romero, Mex. Min. to U. S., June 29, 1882, 8 Notes to Mex. Leg'n 343; supra, Note 343.
- 348 M. Romero, Mex. Min. to U. S. To T. F. Bayard, Sec. of State, Oct. 19, 1885, 35 MS. Notes from Mexico.
- 349 do. to do., Dec. 10, 1885, Ibid.

of a proposed suit by the Government of Mexico in the courts of the United States against the SARAH E. KENNEDY.³⁵⁰ The State Department replied that it could not intervene in a judicial action of this sort.³⁵¹ The Mexican Minister answered, reiterating the claim of Mexican sovereignty over the island, because of its proximity to the coast of Yucatan and repeated acts of jurisdiction over the island by the Mexican Government, and said that the suit had been abandoned and that he only wished that the island to be stricken from the list in order to avoid any international complications.³⁵²

The State Department refused to admit Mexican sovereignty over Arenas, and said that its letter of 1882, regarding the claim of Adams "does not assert the proprietorship of the United States, over that island, or renounce it, yet it certainly does not affirm that the title thereto rests in the Government of Mexico." The Department, however, promised to notify the Secretary of the Treasury of the Mexican Government's position, so that the Treasury Department could adopt the

350 Do. to do., Dec. 14, 1885, Ibid.

351 J. D. Porter, Ass. Sec., to M. Romero, Mex. Min. to U. S., Jan. 18, 1886, 9 MS. Notes to Mexico 144; See F. Wharton, Solicitor, Dec. 22, 1888, Vol. 18 Op. and Rep. 148.

352 M. Romero, Mex. Min. to U. S., to T. F. Bayard, Sec. of State, Jan. 19, 1886, 35 MS. Notes from Mexico.

the course it thought best regarding the omission of Arenas
³⁵³ from list. Accordingly the Treasury Department was
³⁵⁴ notified. Moreover, the various claimants to the island
 were requested to furnish the Department with any evidence
 they might have that, at the time of the alleged discovery
 of guano, the island was not within the lawful jurisdiction
³⁵⁵ of any Government.

In January and February, 1886, there was further cor-
 respondence between the State Department and the Mexican
 Minister on this subject, and Mexico submitted voluminous
 proofs that it had performed specific acts of jurisdiction
 over Arenas prior to Wallis's "discovery" in 1880, and prior
 to Jennett's in 1867. These proofs included: evidence that
 a Spaniard in 1804 formally took possession of the island
 and established an observatory there; various laws and
 treaties of Mexico which mentioned or dealt with the islands
 along the coast on the Campeche Bank; and evidence of con-
 tracts and concessions to remove guano from Arenas granted
³⁵⁶ by the Mexican Government. Again, in March, 1887,

additional

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- 353 A. A. Adee, Acting Sec., to M. Romero, Mex. Min. to
 U. S., Jan. 30, 1886, 9 MS. Notes to Mex. 152.
 - 354 A. A. Adee, Acting Sec., to Daniel Manning, Sec. of
 Treas., Jan. 30, 1886, 158 MS. Dom. Let. 597.
 - 355 T. F. Bayard, Sec. of State, to B. F. Fisher, to L. M.
 Simpson, and to J. G. Wallis, Feb. 26, 1886, 159 MS.
 Dom. Let. 173. See also T. F. Bayard, Sec. of State, to
 D. Manning, Sec. of Treas., June 30, 1886, 160 Dom. Let. 616
 - 356 M. Romero, Mex. Min. to U. S., to T. F. Bayard, Sec. of
 State, Jan. 30, 1886, 35 MS. Notes from Mex.; do. to do.
 Feb. 1, 1886, Ibid; do. to do., Feb. 27, 1886, Ibid; do.
 to do. Ap. 23, 1886, Ibid; do. to do., June 21, 1886, and
 enclosures, Ibid. See also T. F. Bayard, Sec. of State,
 to M. Romero, Mex. Min. to U. S., Feb. 26, 1886, 9 MS.
 Notes to Mex. 163

additional evidence, in the form of a printed pamphlet on
the history of Arenas Key, was submitted by Mexico. ³⁵⁷

The matter rested until 1894, when the Mexican Minister formally requested that the islands "Cayo Arenas, Arenas, Triangulos, Pajaros, Perez, and Chico in the Archipelago of Alacrans" be stricken from the Treasury list. This was apparently the first time that the Mexican Government protested against the American claims to the three Alacrans islands. He enclosed a letter from the Mexican Minister of Foreign Relations, giving the history of Arenas key and its occupation by Mexico since the early nineteenth century; quoting the award of the King of Spain in the Aves Island arbitration between Venezuela and the Netherlands; and noting a request made by the United States in 1891, that Mexico permit an American fishing company to use Arenas ³⁵⁸harbor.

Upon receipt of this note, the State Department requested the Treasury Department to state upon what data ³⁵⁹the Treasury's list of islands was based. The Comptroller replied that the list in question was compiled "from bonds on file in the Office of the First Comptroller of the Treasury,

September 16,

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- 357 M. Romero, Mex. Min. to U. S. to T. F. Bayard, Sec. of State, Mar. 4, 1887, 36 MS. Mexico, Notes from.
 - 358 M. Romero, Mex. Min. to U. S. to Gresham, Sec. of State, Oct. 1, 1894, and enclosures; 43 Notes from Mexican Legation; 2 MS. Misc. Let. Re Guano, Arenas (translations)
 - 359 Uhl, Acting Sec., to Sec. of Treas., Oct. 3, 1894, 199 MS. Dom. Let. 49.

September 16, 1893." ³⁶⁰ The Secretary of State then notified the Mexican Minister as follows:

" . . . it is not necessary for me to express any opinion whether these islands have heretofore belonged, or do now belong to Mexico. A careful search of the records of the Department fails to show that the President of the United States ever declared that they should be 'considered as appertaining to the United States.'

"I have, therefore, requested the Secretary of the Treasury to have them stricken from the list of guano islands appertaining to the United States, and he has promised to take action accordingly." ³⁶¹

In the letter to the Secretary of the Treasury the Secretary of State said:

"A careful search of the files of this Department has been made for the purpose of ascertaining whether or not the President, in pursuance of the discretion vested in him by Section 5570 of the Revised Statutes, ever declared that these islands should 'be considered as appertaining to the United States.' No evidence can be found of such a declaration. Neither can there be found in this Department any explanation of the approval of such bonds. Their approval cannot, I think, be considered as an exercise of the President's discretion . . . , although your Department was naturally lead by the circumstance of finding the bonds on file, to including the islands in the list mentioned.

"The Mexican Government insists that the islands are within its territory and lawful

jurisdiction,

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- 360 Acting Sec. of Treas., to Sec. of State, and enclosure, Oct. 12, 1894, Part I MS. Misc. Let. Oct. 1894.
361 Uhl, Acting Sec., to M. Romero, Mex. Min. to U. S., Nov. 27, 1894, 10 MS. Notes to Mexico 89.

jurisdiction, and that under the terms of Section 5570, they never could have been 'considered as appertaining to the United States.' However this may be, it seems safe to say that they never have been so 'considered' within the meaning of that Section.

" . . . [Claimants interested] . . . are unable to produce any evidence showing that as to such islands the President has ever exercised the discretion vested in him by the guano islands Act.

"I have therefore to request that the islands

viz: Arenas, Perez, Chica, Pejoras, and the Western Triangles, as well as Arenas Key, may be stricken from the list of guano islands appertaining to the United States." 362

Accordingly, this was ordered by a Circular sent to Collectors
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of Customs, November 21, 1894.

Although the State Department refused to admit specifically to Mexico that Mexico had a title to either Arenas key or to any of the other keys mentioned above, it is evident that Mexico's claim to jurisdiction was regarded as sufficient to defeat the claim of the United States under the Guano Act. In 1890, before the islands were stricken from the list, the State Department informed an interested American that it was "unable to controvert" Mexico's claim, after the documents
showing

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- 362 W. Gresham, Sec. of State, to Sec. of Treas., Nov. 17, 1894, 199 MS. Dom. Let. 437.
363 Treasury Dept. Circular, Nov. 21, 1894, 2 MS. Misc1. Let. Re Guano, Arenas.

showing Mexico's title" were submitted in 1886, and that "since that time the Government of the United States has practically acquiesced in the Mexican claim of jurisdiction." ³⁶⁴ Later, in 1901, the Department said:

"Satisfactory evidence having been produced by the Government of Mexico to show that at the time of, and previous to, the alleged discovery by James W. Jennett . . . the Alacrans group was in the lawful jurisdiction and possession of that Government, it was stricken from the list of guano islands . . ." ³⁶⁵

In 1902, in a letter to an assignee of Jennett's, enclosing the Mexican Minister's note of October 1, 1904, the Department said:

"It is apparent that it was not considered that satisfactory evidence had been furnished to the Department that the island [Arenas] was not, at the time of the alleged discovery thereof, within the lawful jurisdiction of any other Government. It was never declared by the President that it should 'be considered as appertaining to the United States.'" ³⁶⁶

Again in 1926, and in 1928, the Department stated that Mexico had produced satisfactory proof that Alacrans was within that Government's jurisdiction, and "accordingly" ³⁶⁷ it was stricken from the Treasury's list.

The

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- 364 Wm. Wharton, Ass. Sec., to T. P. Brewer, Mar. 22, 1890, 177 MS. Dom. Let. 243.
 - 365 John Hay, Sec. of State, to J. B. Altman, Ap. 12, 1901, 252 MS. Dom. Let. 137; See also T. W. Oridler, 3rd Ass. Sec., to G. W. Hawley, June 28, 1900, 246 Ibid 158.
 - 366 David J. Hill, Acting Sec., to F. T. McGuire, Ap. 14, 1902, 258 Ibid 596.
 - 367 L. Harrison, Ass. Sec., to McDonough and McDonough, Feb. 5, 1926 (811.0141 C 19/18); F. B. Kellogg, Sec. of State, to Senator Edge, Jan. 31, 1928 (811.0141 C 19/28).

The Mexican Government now maintains lights on Western
Triangle, Arenas, and Perez Keys.³⁶⁸ It is reported that
a concession to work the guano on Arenas Key has been
granted by the Mexican Government. Moreover, there are
two houses and a small wharf³⁶⁹ on this Key, and temporary
fishermen's huts may sometimes be seen on Perez Island.

368 A Handbook of Mexico, British Admiralty (London, 1920),
pp. 205, 206.

369 Supra, Note 329.

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Assignments

I. The Triangles

1. James W. Jennett to Charles C. Lightenhome,
January 1, 1880, mortgage on Western Triangle.

Charles C. Lightenhome to John Olburn, February 23,
1880, same interest.

2. J. W. Jennett to the Aves Guano Company,
May 29, 1880, guano on Western Triangle ³⁷¹ (the other
two Triangles "having been previously conveyed to
Chambers Brothers of New York") ³⁷² This deed was to
be void on certain conditions.

3. J. W. Jennett to Arthur Brash, October 6,
1890, guano on the northern half of Eastern Triangle.

J. W. Jennett to Arthur Brash, October 25, 1890,
guano on the south half of Eastern Triangle.

J. W. Jennett to Arthur Brash, December 18, 1890,
guano on Western Triangle.

370 Unless otherwise noted, assignments filed in 6 MS. Misc.
Let. Re Guano, Triangles.

371 Ibid, Seranilla.

372 The lease of Triangle, Arcas, and Alacrans Keys from
J. W. Jennett to Chambers Brothers, January 10, 1880,
was not recorded in the State Department. A copy of it
was sent to the Department on December 12, 1892, but
was returned because it was not authenticated. See
Wm. Wharton, Ass. Sec., to H. F. S. Chambers, Dec. 7,
Dec. 10, and Dec. 16, 1892, 189 MS. Dom. Let. 369, 404,
446.

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II. Alacrans Keys.

1. J. W. Jennett to Edward Steele, October 15, 1883, Guano on Alacrans keys: Perez, Chica, and Pajaros Islands (and North Key of Serrana).

Edward Steele to James S. Rogers, May 1, 1884, same interest.

James S. Rogers to the South American Bird Guano Company, May 31, 1884, same interest.

James S. Rogers to John L. Piper, November 4, 1887, same interest (the deed to the South American Bird Guano Company being cancelled because of the Company's failure to give the consideration).

2. Guano on Pajoras (Pajaros) Island.

J. W. Jennett to John H. Hall, July 10, 1890.

John H. Hall to Arthur Brash, August 13, 1890.

John H. Hall to Arthur Brash, March 21, 1891
(deed of release).

3. J. W. Jennett to Arthur Brash, December 22, 1890, guano on Placoa Island, Alacrans bank.

J. W. Jennett to Arthur Brash, December 24, 1890, guano on Baraderos Island, Alacrans bank (deed of release). (The State Department notified Arthur Brash
that

373 Unless otherwise noted, assignments filed in I MS. Misc1.
Let. Re Guano, Alacrans.

that there was no record of any discovery of guano on these Islands by Jennett, and that they were not listed either under Alacrans or under their own names.)³⁷⁴

4. Guano on Chica Island.

J. W. Jennett to Jerome B. Graybill, July 23, 1890.

Jerome B. Graybill to J. M. Wilbur, December 1, 1892.

J. Mason Kirby, Agent for Jerome B. Graybill,³⁷⁵ to John B. Altmann, August 3, 1892.

5. Guano on Perez Island.

J. W. Jennett to J. H. Lancaster, December 11, 1890.

J. H. Lancaster to Charles E. Wellborn, April 20, 1899, guano on Alacrans and adjoining keys (and on Roncador).³⁷⁶

374 Wm. Wharton, Acting Sec., to Arthur Brash, Oct. 21, 1891, 183 MS. Dom. Let. 600; do. to do., Nov. 23, 1891, 184 Ibid 193.

375 Altman notified the Department that Wilbur held in trust for him, J. B. Altman to Dept. of State, June 20, 1900, I MS. Misc. Let. Re Guano, Alacrans. See T. W. Cridler, Ass. Sec., to J. Altman, Aug. 8, 1899, 239 MS. Dom. Let. 197.

376 Copy enclosed: Senator Edge to Kellogg, Sec. of State, Jan. 31, 1928 (811.0141 C 19/25).

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III. Arenas Key.Assignments under Jennett's Claim of Discovery.

1. J. W. Jennett to Thomas A. Mitchell, May 10, 1869, guano on Arenas key (also on Serranilla, and ³⁷⁸ Morant keys).

Thomas M. Mitchell to John C. Wilson, trustee, ³⁷⁹ November 22, 1876, same interest.

John C. Wilson, trustee, to the Caribbean Guano ³⁸⁰ Company, November 22, 1876, same interest.

The Caribbean Islands Guano Company to William L. ³⁸¹ Van Derlip, August 21, 1879, same interest.

Thomas A. Mitchell to William Van Derlip, September 20, 1879, same interest (deed of release). ³⁸²

William Van Derlip to Sarah A. Van Derlip and George W. Ballock, trustee, August 25, 1879, guano on Arenas key.

George W. Ballock, trustee, to the West India Guano Company, August 27, 1879, same interest.

The West India Guano Company to the Union Trust Company of New York, September 1, 1879, same interest

(deed

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- 377 Unless otherwise noted, assignments filed in 2 MS. Misc.
 Let. Re Guano, Arenas.
 378 6 Ibid, Serranilla.
 379 5 Ibid, Morant.
 380 Ibid.
 381 6 Ibid, Serranilla.
 382 Ibid.

(deed of trust, security for \$1,000.00 bond issue).

2. J. W. Jennett to Pascal A. Quinan, September 9, 1878, 1/4 of his interest in guano on Arenas Island.

3. J. W. Jennett to Michael Hooper, Maybury G. Kraft, and John M. Hennaman, November 6, 1878, 3/4 of his interest in guano on Arenas Island.

4. J. W. Jennett to Jerome B. Graybill, October 21, 1890, guano on Arenas Island (deed of release).

Jerome B. Graybill to John F. McGuire, May 23, 1893, guano on Arenas Island (quitclaim deed of all the interest he may have received through Jennett).

Assignments under Wallis's claim of discovery.

1. John G. Wallis to Pascal A. Quinan, February 27, (24?), 1880, 1/2 of the interest which he has³⁸³ or may acquire in guano on Arenas key.

Pascal A. Quinan to Sydney Long, September 6, 1879, 1/2 of his present interest and interest that he might acquire, in guano on Arenas keys (also 1/4 interest in³⁸⁴ Arcas keys).

2. John G. Wallis and Pascal A. Quinan to George C. Harrison, April 3, 1880, 1/2 the guano on Arenas key,
(agreement

383 Note Jennett's deed to Quinan (supra) of Sept. 9, 1878, of 1/4 of his interest in guano on Arenas Island.

384 I MS. Misc. Let. Re Guano, Arcas.

(agreement to convey on certain conditions being performed).

Pascal A. Quinan, John G. Wallis, and George Harrison to William Adams, May 7, 1881, twenty-year³⁸⁵ lease of Arenas Island or key.

4. Pascal A. Quinan to Henry Harper, January 7, 1885, agreement to convey Arenas Island (and Arcas Island) on the performance of certain conditions.

Pascal A. Quinan to Henry Harper, January 21, 1885, guano on Arenas keys (quitclaim deed).

Henry Harper to Guy W. Hawley, March 9, 1885, authorization to remove a certain amount of guano from Arenas Island in one year.

385 Ibid.

2. ARCAS KEYS

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a. Geography

The three Arcas Keys are about eleven miles within the southern edge of the Campeche Bank in the Gulf of Mexico, on the western side of the Yucatan Peninsula. Middle Key (or Centro Cay), at latitude $20^{\circ} 13' N.$, longitude $91^{\circ} 58' W.$, is about 1200 by 400 yards square, and is composed mainly of sand, which rises at the south end to a hill about 21 feet high, covered with grass and bushes. There are two lights on this Key maintained by the Govern-³⁸⁶ment of Mexico, and some wooden dwellings. East Key, composed of broken coral, rises from a detached reef about 600 yards southeast of Middle Key. It is about 400 by 200 yards square and 10 feet high. West Key, 1600 yards west of Middle Key Light, is a small islet composed of broken coral, about six feet high, with a pole beacon on it. There is a possible anchorage off the Keys on the west side between³⁸⁷ north and west reefs.

b. United States Claim under the Guano Act.

On May 14, 1879, Pascal A. Quinan filed a notice of his discovery of guano on Arcas Keys, and alleged that he took

386 British Admiralty, A Handbook of Mexico (London, 1920), p. 206.

387 Central America and Mexico Pilot (1927) H. O. 130, pp. 322 - 323.

took possession of them, and that they were uninhabited and not within the lawful jurisdiction of any foreign government.³⁸⁸ On August 26, 1879, Quinan filed a memorial in which he alleged that the discovery of guano on the three Arcas Keys was made in December, 1878; that the Keys contained about 150,000 tons of guano, and requested that they be considered as appertaining to the United States, and that his interest in them be recognized under the Guano Act of 1856, upon his furnishing further evidence that they were not within the jurisdiction of any other country.³⁸⁹ On April 19, 1880, additional evidence of Quinan's possession of Arcas Keys was forwarded to the Department, including: an affidavit by Quinan, dated April 16, 1880, in which he alleged that on January 12, 1880, he landed on North Key of the Arcas group with Captain Bunker of the schooner EBON H. KING, John G. Wallis, and a number of laborers, and started shipping guano; and affidavits of Captain Bunker, dated February 27, 1880, and John G. Wallis, dated March 20, 1880, to the same effect.³⁹⁰ On June 8, 1880, Quinan's attorneys requested favorable action by the State Department on this claim.³⁹¹

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- 388 Pascal A. Quinan to Wm. Evarts, Sec. of State, May 14, 1879, I MS. Misc. Let Re Guano, Arcas.
 - 389 Sidney C. Long to Wm. Evarts, Sec. of State, Aug. 26, 1879, and enclosures, Ibid.
 - 390 Shellborn and Wilson to the Sec. of State, Ap. 19, 1880, and enclosures, Ibid.
 - 391 Do. to do., June 8, 1880, Ibid.

On September 3, 1879, James W. Jennett filed a notice of his discovery of guano on Arcas Islands and inclosed: his sworn statement, dated September 1, 1879, that he discovered guano on the three Keys (named Northeast, Southeast, and Little), on February 20, 1879, and that he first visited them in 1860, and revisited them in 1867, 1869, 1875, and finally 1879, when he was on the schooner MARY MATILDA; and an affidavit of two seamen (Lowe and Lynch) of the MARY MATILDA, dated September 1, 1879, supporting Jennett's allegations.³⁹² On September 27, 1879, Jennett wrote the State Department that Quinan's claim was fraudulent, that Quinan had never been south of Cape Hatteras, and had obtained all his information on Arcas Keys from Jennett.³⁹³

A third declaration of discovery of guano on Arcas Keys was filed on March 10, 1898. This is not a formal notice of discovery, but is merely a declaration in a deed, dated May 18, 1893, in which Captain Alfred J. May, the alleged discoverer, made an assignment of part of his interest in Arcas Keys, and stated: that he found guano on the Keys; that they were wholly uninhabited and abandoned; that he took possession of them in the name of the United States, and left two

American

392 J. W. Jennett to Wm. Evarts, Sec. of State, Sept. 3, 1879, and enclosures, Ibid.
 393 Do. to do., Sept. 27, 1879, Ibid.

American citizens in possession of the Keys two months ago (presumably two months before May 18, 1893).³⁹⁴

It does not appear that any of these claims were ever recognized by the United States. No bond for Arcas Keys was ever filed, and they do not appear on any of the lists compiled by the Treasury Department.³⁹⁵ On May 6, 1880, Judge O'Connor the Examiner of Claims, considered Quinan's claim and concluded as follows:

"There is no opposing claimant, and no protest from any other Government.

"The only question for the Secretary's determination is whether from the proximity of the island to Mexico it is to be considered per se dependency of that Republic. It is more remote from Mexico than the Island of Navassa is from Haiti, and if I had to pass on the question I would say that Quinan has made out a prima facie case under the provisions of Title 72 of the Revised Statutes." 396

There is no evidence, however, that the Department took any action pursuant to this opinion. Both before and after the date of that opinion, the Department stated to persons interested that there were conflicting claims
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394 Chas. F. Estwick to the Chief Clerk, Mar. 10, 1898, and enclosed deed of assignment, Capt. May to The Gulf Commercial Co., May 18, 1893, Ibid.

395 See 6 Ibid, Misc1; I Moore's Digest, 567.

396 Henry O'Connor, Examiner of Claims, May 6, 1880, I Ibid, Arcas; Vol. 14, Op. and Rep. p. 12. (He also advised that a bond of \$5,000 would be sufficient for Arcas Keys.)

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of discovery. On July 23, 1887, the State Department
said:

" . . . no controversy has, as yet arisen between this Government and that of Mexico with regard to deposits of guano on the Arcas Keys. So far, only, two American citizens have filed in this Department declarations of discovery of guano deposits in these Keys, viz: James W. Jennett and Pascal A. Quinan." 398

On June 6, 1892, the Senate passed a resolution calling for a report from the Secretary of State in regard to the guano deposits on Arcas Keys, and, accordingly, the correspon-
dence on file was transmitted to the Senate on July 25, 1892.³⁹⁹
Apparently no action was taken, however. In 1897, the Department wrote that the status of Arcas Keys remained as shown by the correspondence submitted to the Senate, and that no
assignments had been filed since that time.⁴⁰⁰

c. The Claim of Mexico.

On June 20, 1899, the State Department requested the American Ambassador to Mexico to ascertain "discreetly and unofficially" whether the Mexican Government claimed Arcas
Keys.⁴⁰¹ The Mexican Foreign Minister replied, enclosing

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- 397 See John Hay, Ass. Sec., to J. G. Wallis, Dec. 11, 1879, 131 MS. Dom. Let. 7; J. D. Porter, Ass. Sec., to Thos. W. Buckley, Feb. 5, 1886, 158 Ibid, 651. See also Wm. Evarts, Sec. of State, to Sydney Long, July 10, 1879, 129 Ibid, 44.
- 398 J. D. Porter, Ass. Sec., to C. M. Shelley, July 23, 1887, 164 Ibid, 677.
- 399 S. Ex. Doc. No. 151, 52 Cong. 1 Sess.
- 400 Wm. R. Day, Ass. Sec., to Hon. H. D. Mouey, Sept. 27, 1897, 221 MS. Dom. Let. 208.
- 401 John Hay, Sec. of State, to Powell Clayton, U. S. Amb. to Mexico, June 20, 1899, 25 MS. Instructions, Mexico, p. 35, No. 151.

a pamphlet on the subject of Mexican sovereignty over Arenas, and a digest of the United States - Mexican correspondence of 1885, 1886, and 1894, regarding Arenas Key, and stated: that Arcas was nearer to the Mexican shore than Arenas, that he considered them part of the Arenas group, and "that they are claimed by the Mexican Government."⁴⁰² Accordingly, interested American citi-⁴⁰³zens were informed that Mexico did claim Arcas Keys. The following year, Mr. Cridler, Assistant Secretary, wrote as follows:

"I have examined the records of this Department and find that the Government of Mexico claims ownership of the Arcas Cays as being part of the Arenas Group . . .

"I cannot find that the Department ever made any representations to the Mexican Government on the subject of the Arcas Cays. It cannot therefore be said that this Government has either recognized or disputed the Mexican claim." 404

In April, 1904, Dr. W. G. Hague telegraphed the Department, referring to Senate Executive Document 151 which he said "recognizes American citizens' rights to guano deposits on Arcas Cays," and continuing as follows:

"Mexican

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- 402 Powell Clayton, U. S. Amb. to Mexico, to Sec. of State, July 22, 1899, and enclosures, 141 MS. Dispatches, Mexico, No. 240.
- 403 A. A. Adey, Acting Sec., to Hon. Horace Chilton, Aug. 2, 1899, 239 MS. Dom. Let. 78.
- 404 Thos. W. Cridler, Ass. Sec., to Hon. J. H. Southard, Feb. 26, 1900, 243 Ibid 226.

"Mexican Consul New Orleans states Mexico has rented this island . . . United States owners prepared to work island. Do we have United States protection? Mexican Ambassador today claims island. Can we now leave New Orleans with American ship and bring in cargo?" 405

The Department replied:

"Arcas Cays are claimed by Mexico and do not appear on list of guano islands appertaining to the United States bonded under the Guano Acts." 406

The Department reiterated the latter statement in 1913. 407

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- 405 Dr. W. G. Hague to John Hay, Sec. of State, Ap. 20, 1904, telegram I MS. Misc. Let. Re Guano, Arcas.
- 406 F. B. Loomis, Acting Sec., to Dr. W. G. Hague, Ap. 21, 1904, telegram, 274 MS. Dom. Let. 667.
- 407 J. B. Moore, Counselor, to M. F. Marx, July 16, 1913, (811.0141 Ar/4, 7); See also 811.0141 Ar/1, 4; 811.0141 Se 6/5.

ASSIGNMENTS OF GUANO ON ARCAS KEYS

I. Assignments by Quinan.

1. Pascal A. Quinan to Sydney C. Long, September 6, 1879, 1/4 of his interest in Arcas Keys (and 1/2 in interest in Arenas Key).

Sydney C. Long to George B. Starkweather, December 12, 1887, 1/4 interest in Arcas Keys.

2. Pascal A. Quinan, John G. Wallis, and George C. Harrison to William Adams, May 7, 1881, a twenty-year lease of the Arcas Keys with mining privileges (also Arenas Key).

3. Pascal A. Quinan to Phillip M. Snowden, October 13, 1884, 3/4 interest in guano on Arcas Keys (also all interest in three Seranilla Keys).

4. Pascal A. Quinan to Henry Harper, January 7, 1885, agreement to convey Arcas Keys (and Arenas Key) on certain conditions.

II. Assignments under Snowden.

1. Richard Contee and William S. Odell, trustees, and Phillip M. Snowden, February 24, 1887, agreement to purchase 1/2 Snowden's interest in Arcas Keys on certain conditions.

408 Unless otherwise noted, assignments filed under I MS.
Misc. Let. Re Guano, Arcas.

2. Phillip M. Snowden to John C. Parcel and John Silvers, February 4, 1887, agreement to sell $1/2$ interest in Arcas Keys on certain conditions.

3. John C. Parcel and John Silvers, February 4, 1887, agreement by Silvers to release his interest in Arcas Keys to Parcel on certain conditions.

4. Phillip N. Snowden to Sayles J. Bowen and John Parcel, May 7, 1887, $1/8$ interest in Arcas Keys.

5. Sayles J. Bowen and John Parcel to George B. Starkweather, September 27, 1887, $1/16$ interest in Arcas Keys.

6. George B. Starkweather to John Parcel and John Silvers, December 31, 1887, agreement to sell $1/4$ interest in Arcas Keys on certain conditions.

7. Sayles J. Bowen to John C. Parcel January 18, 1888, $1/16$ interest in Arcas Keys on condition that Parcel pay Bowen's promissory notes to Snowden.

8. John Silvers to John C. Parcel, January 21, 1889, $1/16$ interest in Arcas Keys as security for a debt. Deed to be void if Silvers pays debt to Parcel.

9. John C. Parcel to Joseph R. Fagan, February 8, 1889, $1/64$ interest in Arcas Keys. Vendor's lien for \$153 reserved.

10. Phillip

10. Phillip M. Snowden to John Taylor, May 29, 1891, 5/8 interest in Arcas Keys.

11. Mary Parcel, widow of John Parcel, and Bruce Parcel, his son (Parcel's sole heirs and legatees) to Joseph R. Fagan, July 1, 1891, 1/64 interest in Arcas Keys.

12. John C. Parcel to William F. Geyer, February 13, 1889, 1/64 interest in Arcas Keys. ⁴⁰⁹

13. William F. Geyer to Robert R. Roberts, June 29, 1897, 1/64 interest in Arcas Keys. ⁴¹⁰

14. Robert R. Roberts to Robert D. Ruffin, December 12, 1899, all his interest in Arcas Keys ⁴¹¹ (and Serranilla).

15. Robert R. Roberts (by J. G. Wilson, Attorney), ⁴¹² to Spencer Stillwell and Co., April 14, 1904, 90 day option to purchase Arcas Keys, with right to import guano therefrom during that period.

16. J. G. Wilson, Attorney for Quinan's property, to Spencer Stillwell and Co., July 20, 1904, agreement to sell Arcas Keys (also Serranilla and certain Pacific ⁴¹³ Islands) on certain conditions.

17. Robert

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- 409 6 MS. Misc. Let. Re Guano, Serranilla.
410 Ibid.
411 Ibid.
412 Power of Attorney to sell Arcas and Serranilla Keys given J. G. Wilson by R. R. Roberts, February 9, 1904, Ibid.
413 Ibid.

17. Robert R. Roberts (by J. G. Wilson, Attorney) to E. B. Southworth, September 21, 1905, agreement to⁴¹⁴ sell all his interest in Arcas Keys (and Serranilla).

18. Robert R. Roberts to Edwin Christy, October 11, 1905, all his interest in Arcas Keys (and⁴¹⁵ Serranilla).

19. Edwin Christy to the Atlantic and Pacific Guano⁴¹⁶ Co., October 17, 1905, same interest.

20. Atlantic and Pacific Guano Co. to the Tradesman's Trust Co. of Philadelphia, October 17, 1905, deed of trust as security for bond issue. (Deed signed for the Company by James Brady, President, and Edwin Christy, Secretary.)

III. Assignments under Ruffin.

1. Robert D. Ruffin to William H. Parsons, August 15, 1904, all his interest in Arcas Keys (and⁴¹⁷ Serranilla).

2. William H. Parsons to Robert D. Ruffin, April 6, 1905, all his interest in Arcas Keys.

3. Robert D. Ruffin to E. B. Southworth, trustee, September 19, 1905, agreement to convey Arcas Keys (and Serranilla).

4. Robert

⁴¹⁴ Ibid.

⁴¹⁵ Ibid.

⁴¹⁶ Ibid.

⁴¹⁷ Ibid.

4. Robert D. Ruffin to the Atlantic and Pacific Guano Company, October 11, 1905, guano on Arcas Keys (and Serranilla). Agreement by the company to recovery on certain conditions.

5. Robert D. Ruffin and the Atlantic and Pacific Guano Co., Oct. 14, 1905, agreement to deliver deed to Arcas Keys (and Serranilla) on certain conditions.

6. Captain Alfred May to the Gulf Commercial Co. of New Jersey, May 18, 1893, conveyance of $3 \frac{1}{2}$ undivided fifths of all his right, title and interest in Arcas Keys.

3. GREAT ISLAND

a. Geography.

Great Island is on the Chinchorro bank in the Bay of Honduras, 14 miles off the east coast of the Yucatan Peninsula. It is a dangerous bank 24 miles long and 6 1/2 to 9 1/2 miles wide. Sand Key (Cayo Lobos) is 600 yards from the southern part of the reef, 1600 yards within the bank. It is 100 yards long and about 5 feet high, composed of sand and coral, with a few cocoanut trees on it. Great Key, in the middle of the lagoon, about 2 miles from the eastern edge of the bank, is a low ledge of sand about 2 1/2 miles long. It is covered with mangrove, buttonwood, and cocoanut trees, 30 to 40 feet high, and encloses a salt water lagoon about a mile long. North Keys, two low narrow islands close together, are about 1600 yards long, and are 1 3/4 of a mile within the northern edge of the bank. There is a light on the northernmost of the two North Keys, at latitude 18° 46' N., longitude 87° 19' W.⁴¹⁸

b. United States Claim under the Guano Act.

On January 8, 1887, James W. Jennett filed a notice of discovery of guano on Great Island or Key and the two
North

⁴¹⁸ Central America and Mexico Pilot (Wash. 1927) H. O. 130, pp. 305 - 306.

North Keys on Chinchorro bank. This notice, which was dated December 23, 1886, is supported by affidavits of the same date which, however, relate only to Great Island.⁴¹⁹ The Department acknowledged the receipt of these documents and, as requested, returned to Jennett a duly authenticated copy of the notice.⁴²⁰ Apparently no other action was taken by either Jennett or the Department. An assignment was filed, however, dated December 22, 1887, by which Jennett assigned and released all his interest in the guano on Great Island to the Chinchorro Phosphate Company.⁴²¹

The light on Great Island (and also one on Cayo Lobos on the same Bank), is maintained by the Government of Mexico⁴²² and there seems to be little doubt that the Island is a possession of Mexico.

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- 419 J. W. Jennett to T. F. Bayard, Sec. of State, Jan. 8, 1887, and enclosure, 3 MS. Misc. Let. Re Guano, Great Island.
- 420 J. D. Porter, Ass. Sec., to James W. Jennett, Jan. 14, 1887, 162 MS. Dom. Let. 567.
- 421 3 MS. Misc. Let. Re Guano, Great Island.
- 422 British Admiralty, A Handbook of Mexico (London, 1920), p. 203.

V. ISLANDS CLAIMED BY HONDURAS AND NICARAGUA

1. VIVARIO (VIVORILLA)

a. Geography

Vivario keys (called Vivorilla by American claimants) are 4 1/2 miles southwest of Grand Becerro key on the Miskito bank, about 75 miles north of Cape Gracias á Dios in the Caribbean Sea and opposite Carataca Lagoon. There are several keys in this group, all covered with trees and bushes. The north and south keys are 1 3/4 miles apart. Grand Vivario key is the southernmost, and a crescent-shaped reef extends from it to the northern key. A bank extends 8 miles northwest from the north key, and various rocks and coral heads are visible above water on this bank. There is a possible anchorage west of the reef on which the keys are situated.

423

b. United States Claim under the Guano Act.

Two notices of discovery of guano on "Vivorilla" key were filed with the State Department. The location given leaves no doubt that "Vivorilla" is the same Key as Vivario.

424

The

423 Central America and Mexico Pilot (1927) H. O. 130, p. 223.

424 Ibid. See also H. C. Hall, U. S. Min. to Central America, to T. F. Bayard, Sec. of State, Feb. 23, 1888, 1888 For. Rel. Part I, p. 132, No. 779.

The first, sent by Prudencio de Murguiondo on August 16, 1882, alleged that Vivorilla key was discovered by Captain James S. McLeod, Master of the schooner JOHN L. THOMAS, and agent of Murguiondo, on June 30, 1882; and that, at the same time, guano on certain other keys called The Hobbies, in sight of Vivorilla, was also discovered. Affidavits of Captain McLeod and Captain Charles Stevens, dated August 16, 1882, supporting these allegations were enclosed with the notice of discovery.

The second notice of discovery was filed by Julius R. Schultz on September 14, 1887. He alleged that his discovery of guano on Vivorilla key was made on March 20, 1886; and that on January 31, 1887, he took possession of the key and had remained in peaceful possession since that time. He enclosed affidavits of Captain Hodgson and Captain Peterson, certified by the United States Consul at Bluefields, Nicaragua, in support of his allegations.

Before any notice of discovery was filed, there is evidence that certain American citizens were interested in Vivorilla key; for on August 7, 1882, the Secretary of the

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- 425 P. de Murguiondo to F. Frelinghuysen, Sec. of State, Aug. 16, 1882, 6 MS. Misc. Let. Re Guano, Vivorilla.
 426 Inclosures, Ibid.
 427 Notice of Discovery, Julius R. Schultz, Sept. 14, 1887, and enclosures, Ibid.

the Treasury requested the State Department to furnish him⁴²⁸
with information regarding the "nationality" of Vivorilla.

The Department replied that it had no information on this⁴²⁹
subject, and requested Mr. Hall, the United States Min-
ister to Central America, to find out to what country⁴³⁰
Vivorilla belonged. Mr. Hall replied as follows:

"From its proximity to the coast, being about
the same distance therefrom as . . . the Islands
of Ruatan and Bonaca . . . , there can be little
doubt that the Cay belongs to Honduras." 431

Later he enclosed a report by Mr. Burchard, the United States
Consul at Ruatan, who concluded:

"These Cays certainly ought to belong to Hon-
duras, by reason of their proximity to its
territory, although I am positive that neither
the Government nor people of this country, with
the exception of a few Caribs and Mosquito
Indians, have any knowledge of their existence." 432

Mr. Burchard also referred to the British annexation of
Zapotilla keys, in spite of the protests of Honduras, and
in spite of the fact that these keys are much nearer the
coast of Honduras than Vivorilla, and that Honduras had⁴³³
actually exercised jurisdiction over them. On January 25,
1883,

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- 428 Chas. F. Folger, Sec. of Treas., to F. F. Frelinghuysen,
Sec. of State, Aug. 7, 1882, Ibid.
- 429 John Davis, Acting Sec., to Chas. F. Folger, Sec. of Treas.,
Aug. 14, 1882, 143 MS. Dom. Let. 335.
- 430 John Davis, Acting Sec., to Wm. Henry Hall, U. S. Min. to
Central America, Aug. 14, 1882, 18 MS. Instructions,
Central America, 257, No. 6.
- 431 Henry Hall, U. S. Min. to Central America, to John Davis,
Acting Sec., Sept. 11, 1882, 19 MS. Dispatches, Central
America, No. 13.
- 432 Do. to do., Dec. 14, 1882, Ibid, No. 41, and enclosures;
Wm. Burchard, U. S. Consul at Ruatan, to W. H. Hall,
Oct. 22, 1882.
- 433 Ibid.

1883, the State Department forwarded these two despatches⁴³⁴ to the Treasury Department, without comment.

After Schultz had filed his notice of discovery, the State Department again wrote to Mr. Hall with instructions that he should "ascertain whether Vivorilla key is under⁴³⁵ the dominion of Honduras or other nation." Mr. Hall replied that he did not doubt that the key belonged to Honduras, and enclosed a telegram from the Governor of the Department of Colon to the Foreign Minister of Honduras⁴³⁶ to that effect. On November 13, 1888, Mr. Hall reported that Vivorilla was also claimed by Nicaragua, and enclosed a newspaper report of an exclusive concession granted by the Nicaraguan Government to Don Quadra for five years "to extract and export the guano which may be found on the islands and keys of the Atlantic, pertaining to the Republic." Mr. Hall added that he did not believe either Nicaragua or Honduras would attempt to dispossess Mr. Schultz, who had been in possession of the key for nearly two years. He also enclosed a report from the United States Consul at San Juan de Norte, Nicaragua, giving an account of the

Nicaraguan

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- 434 John Davis, Acting Sec., to Charles Folger, Sec. of Treas., Jan. 25, 1883, 145 MS. Dom. Let. 334.
 435 T. F. Bayard, Sec. of State, to H. C. Hall, U. S. Min. to Central America, Jan. 25, 1888, 1888 For. Rel, Part I, p. 119, No. 540.
 436 H. C. Hall, U. S. Min. to Central America, to T. F. Bayard, Sec. of State, Feb. 23, 1888, Ibid, 132, No. 779.

Nicaraguan attempts to exercise jurisdiction over Vivorilla keys. It appears that Schultz had a concession from Nicaragua allowing him to prospect for guano along the coast, but that this concession had been forfeited, because Schultz's partner had murdered his wife, or for other reasons, and that the Nicaraguan Government refused to renew or grant him another
437
concession.

It is evident that the United States never recognized any American citizen's claim to Vivorilla under the Guano Act. The keys were never bonded, and do not appear on any
438
of the lists compiled by the Treasury Department. Mur-
guiondo's notice of discovery of Vivorilla, and also of the Hobbies, appears to have been completely ignored. With regard to Mr. Schultz's notice, the Department stated, on January 25, 1888, that its decision "has been deferred owing
439
to a question of sovereignty over the island." After receiving the above-mentioned communications from Mr. Hall, the Department notified Schultz's representative that jurisdiction over Vivorilla key was claimed by both Nicaragua
and

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- 437 W. H. Hall, U. S. Min. to Central America, to T. F. Bayard, Sec. of State, Nov. 13, 1888, 30 MS. Dispatches, Central America, No. 887, and enclosures.
438 See 6 MS. Misc. Let. Re Guano, Misc.
439 G. Rives, Ass. Sec., to J. Gorham Moale, Jan. 25, 1888, 166 MS. Dom. Let. 671.

and Honduras, and said:

"While the Department is, under the circumstances, precluded from recognizing Mr. Schultz's title as desired, the nationality of the key being in dispute and claimed by two friendly Governments, it may be some satisfaction to know that Mr. Hall expresses the belief that inasmuch as Mr. Schultz has enjoyed possession of the key for nearly two years, neither Government will likely attempt to dispossess him." 440

440 G. Rives, Ass. Sec., to J. Gorham Moale, Dec. 12, 1888,
171 MS. Dom. Let. 71.

2. GORDA KEY

a. Geography

Gorda Key rises from Gorda bank, 45 miles long and 3 to 20 miles wide, situated on the Miskito bank. The key is about 70 miles northeast of Cape Gracias a Dios. It is 200 yards in diameter, and 12 feet high, and is composed of sand and broken coral. There is a possible, but dangerous, land-⁴⁴¹ing on the northwestern end of the key.

b. United States Claim under the Guano Act.

In February, 1887, James W. Jennett filed a notice of his discovery of guano on Gorda Key on May 3, 1883. He made the usual allegations, stated in addition that he remained upon the Island until the 31st of May, and enclosed support-⁴⁴²ing affidavits.

On February 19, 1887, Jennett filed a⁴⁴³ second notice of discovery, referring to his first notice.

The Department merely acknowledged the receipt of the papers and returned to Jennett a duly authenticated copy of⁴⁴⁴ his declaration.

No further record of Gorda Key in the State Department archives has been found until 1919, with the exception of an assignment dated November 2, 1888, in

which

441 Central America and Mexico Pilot (Wash. 1927), H. O. 130, p. 220.

442 Declarations of J. W. Jennett, James Cook, E. Odehe, Feb. 19, 1887, 3 MS. Misc. Let. Re Guano, Gorda.

443 J. W. Jennett to T. F. Bayard, Sec. of State, Feb. 19, 1887, Ibid.

444 J. D. Porter, Ass. Sec., to J. W. Jennett, Mar. 3, 1887, 163 MS. Dom. Let. 286.

which Jennett released all his interest in guano on Gorda Key to the Chinchorro Phosphate Company of New Jersey. ⁴⁴⁵

c. The Claim of Honduras.

Early in 1919, the Department of Commerce notified the State Department that a light on Gorda Key should be erected. The State Department reported that the American Minister to Honduras stated that there seemed to be no doubt that Gorda Key belonged to Honduras. On the request of the Commerce Department, the Secretary of State instructed the American Minister to Honduras to obtain permission from the Government of Honduras for the United States to erect and maintain such a light. The Minister of Foreign Affairs replied that this would have to be done by a convention between the United States and Honduras ratified by the Honduran legislature. Because of civil disturbances in Honduras, this attempt was apparently abandoned for the time being, ⁴⁴⁶ though again in October, 1920, the question was revived.

445 J. W. Jennett to the Chinchorro Phosphate Co. Nov. 2, 1888, 3 MS. Misc. Let. Re Guano, Gorda.

446 See A. A. Adey to Sec. of Com., Mar. 19, 1919, and Jones, U. S. Min. to Honduras, to Sec. of State, Mar. 10, 1919, 811.822/44; do. to do., May 26, 1919, Ibid/60; and see also enclosures 46, 58, 60, 61, 62, 92.

VI NON EXISTENT ISLANDS

1. Geography of "Booby" and "Woody" Islands.

Booby and Woody islands, upon which citizens of the United States claim to have discovered guano, are in fact non-existent. The position of Booby is given as latitude ⁴⁴⁷ 14° 14' N., longitude 80° 30' W. There is no island at this position, although it is not far from the Southwest key of Serrana. Woody island is said to be latitude 12° 47' N., longitude 82° 30' W., but there is nothing at, or ⁴⁴⁸ anywhere near, this position.

2. "Booby" Island.

a. United States Claim under the Guano Act.

In a declaration regarding Serrana Keys, signed by James W. Jennett, dated June 30, 1866, he alleges that he lay under Booby key three days, "this having been previously discovered by me to have a deposit of guano on it in the year ⁴⁴⁹ of 1857." In a declaration dated May 8, 1868, also relating to Serrana islands, Jennett listed 11 keys on this bank, including Booby key at the position given above. ⁴⁵⁰

On

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- 447 Declaration of J. W. Jennett, June 30, 1866, 5 MS.
Misc. Let. Re Guano, Serrana.
448 Declaration of Pascal A. Quinan; Nov. 21, 1887, 6 Ibid,
Woody.
449 Supra, Note 447.
450 Ibid.

On December 4, 1886, Pascal A. Quinan filed a notice of discovery of guano upon "'Booby' or 'Woody'" key on November 13, 1886. He described the position of the island as latitude 14° 30' N., longitude 80° 15' W., which is near the North key of Serrana Bank.⁴⁵¹ In an assignment of Booby Key ("erroneously called Woody in my notice") by Quinan to Sydney Long, dated November 24, 1887, the position is changed⁴⁵² to that given by Jennett for Booby key.

The State Department appears to have regarded Booby key as one of the keys on Serrana bank. However, in the list compiled by the Treasury Department, dated February 12, 1869, Booby Key, at the position given by Jennett, is listed separately. On none of the other lists does this key appear.⁴⁵³

⁴⁵¹ 3 MS. Misc. Let. Re Guano, Booby.
⁴⁵² Ibid.
⁴⁵³ 6 Ibid, Misc.

Assignments of Booby

1. James W. Jennett and Mary A. Jennett, his wife, of Baltimore, to Benjamin Rhodes and John Russell, May 17, 1876, all interest in guano on the 10 keys of Serrana bank⁴⁵⁴ (which included Booby key).

2. Benjamin Rhodes to John Russell, March 5, 1878,⁴⁵⁵ 1/2 interest in the 10 keys on Serrana.

3. James W. Jennett, by Jennie Jennett, his Attorney in fact, to Cleveland W. Goff, February 6, 1891, all the following property:

"Booby key, Sandy key, Anchor key, Three Triangle keys, North East key, Two North West Rocks keys situated in the Caribbean Sea."
(These keys must be those Jennett named as part of the Serrana group.)⁴⁵⁶

4. Cleveland W. Goff to John V. McDuffie, May 20, 1891, release of his 1/2 interest in Booby and the other keys named above.⁴⁵⁷

5. Cleveland W. Goff to Harriet L. Scribner, May 27, 1891, release of 1/4 interest in above-named keys.⁴⁵⁸

6. Pascal A. Quinan to Sydney C. Long, November 24, 1887, 1/2 interest in guano on Booby key, "also erroneously called Woody".⁴⁵⁹

454 5 Ibid, Serrana.

455 Ibid.

456 3 Ibid, Booby.

457 Ibid.

458 Ibid.

459 Ibid.

3. "WOODY" ISLAND

a. United States Claim under the Guano Act.

On November 21, 1887, Pascal A. Quinan signed a notice of discovery of guano on Woody island on August 1, 1887. He alleged that the island was situated at latitude 12° 47' N., longitude 82° 30' W.⁴⁶⁰ No attention appears to have been paid to this notice, and the island was never bonded and never listed as appertaining to the United States.⁴⁶¹ On November 18, 1887, Mr. Adee, Assistant Secretary, stated:

"I cannot recall any notice of discovery of guano on Woody island."⁴⁶²

460 Sydney C. Long to Sec. of State, Nov. 21, 1887, and enclosure, 6 Ibid. Woody.

461 Ibid, Misc1.

462 A. A. Adee, Ass. Sec., to Sydney C. Long, Nov. 18, 1887, 166 MS. Dom. Let. 179.

463

Assignments of Woody

1. Pascal A. Quinan to Sydney C. Long, November 24, 1887, 1/2 interest in guano on Woody Island.
2. Pascal A. Quinan and Sydney C. Long to James Kell,⁴⁶⁴ June 13, 1888, 1/3 interest in guano on Wood Island.
3. Pascal A. Quinan to Sydney C. Long, August 15, 1888, his remaining 1/3 interest in guano on Woody Island.
4. Sydney C. Long to James Kell and Jacob Bradbeck, April 11, 1890, 1/3 interest in guano on Woody key.

463 Unless otherwise noted, assignments filed in 6 MS. Misc1.
Let. Re Guano, Woody.

464 3 Ibid, Booby.

CONCLUSIONS

I. Islands to Which the United States Has a Claim.

1. Navassa.

The only island included in this report which now undoubtedly belongs to the United States is Navassa, and even in this case, the United States title is still denied by Haiti. Nevertheless, there is no doubt that Navassa is now United States territory, by virtue of actual use, occupation, and control of the island by American citizens and by the Government, and the subsequent erection and maintenance of a lighthouse, radio station, and mercurial barometer on the island by the United States Government.

According to the records in the State Department, the Navassa Phosphate Company still has the ^{record title to} ~~exclusive rights in~~ the guano on the island, if any remains, under the Guano Act.

2. Petrel Island.

The only other island described herein which might be said to appertain to the United States under the Guano Act is "Petrel" Island, on Bajo Nuevo, or New Reef. The status of this island is very like that of the Serranilla Keys. The United States has taken no action with respect to this island since 1869, when the Secretary of State issued a

certificate

certificate to Captain Jennett recognizing his interest in Petrel Island under the Guano Act. Assignments of guano on Petrel Island were filed until 1911, but there is ^{reliable} no evidence that the island was ever actually occupied in any way. However, no other nation appears to have claimed the island, and if the United States wishes to use it, there would appear to be a ^{slight} legal and historical basis for such action.

On the other hand, if the United States did claim Petrel Island now, it is probable that Colombia would protest on the grounds that it belonged to Colombia, by virtue of discovery by Spaniards and occupation and use by Colombian fishermen or seal hunters from Old Providence. If such a claim were made, and if it were founded on fact, the United States might be said to have lost by abandonment whatever interest it may once have had in the island.

3. Monito.

Monito Island is undoubtedly United States territory at the present time, because of its contiguity to Mona Island, part of Puerto Rico. However, it is clear that Monito was not acquired under the Guano Act, but under the Treaty of December 10, 1898, between the United States and Spain.

II. Islands to Which the United States Has No Claim.

1. Islands Claimed by Venezuela: Aves, The Monks (Los Monges), Los Roques.

American citizens recovered damages for their eviction by Venezuela from Aves Island, and from The Monks, but these events took place before the passage of the Guano Act, and the United States never claimed sovereignty over the islands, either under the Guano Act or otherwise. Similarly, the United States never claimed Los Roques, although a notice of the discovery of guano thereon was filed by an American citizen.

2. Islands Claimed by the Dominican Republic: Alta Vela.

The United States Government refused to press the claims of American citizens for damages for their eviction from Alta Vela against the Dominican Republic, chiefly because it was believed that the island was part of the territory of the Dominican Republic.

3. Islands Claimed by Great Britain: Key Verd, Morant Keys, Pedro Keys, Sombrero Island.

When the British Government protested, under claim of sovereignty, against the removal of guano by American citizens
from

from Key Verd, in the Bahamas, ^{and from} Morant Keys, and Pedro Keys, the United States refused to protect its citizens under the Guano Act.

In 1864, the United States formally reserved its rights to Sombrero Island, but never again claimed it. At that time, the United States appears to have had at least as sound a claim to Sombrero as Great Britain, but by its failure to assert any claim after 1864, and failure to protest the British annexation of Sombrero in 1904, the United States must be deemed to have abandoned whatever interest it may once have had in this island.

4. Islands Claimed by Mexico: The Triangles, Alacrans (Ohica, Perez, Pajaros), Arenas Key, Arcas Keys, Great Island.

The United States finally ^{and formally} abandoned all claims to The Triangles, Alacrans Keys, Arenas Key, and Arcas Keys, after the Mexican Government had repeatedly protested, under claims of sovereignty, against the acts of American citizens, and the United States Government, under the Guano Act with respect to these islands.

Although a notice of discovery of guano on Great Island was filed, the United States never took any action with respect to this island under the Guano Act.

5. Islands

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5. Islands Claimed by Honduras and Nicaragua: Vivorilla Keys (Vivario), Gorda Key.

The United States refused to protect American citizens claiming an interest in Vivorilla Keys under the Guano Act when it was ascertained that both Honduras and Nicaragua claimed the Keys.

A notice of discovery of guano on Gorda Key was filed in 1887, but the Government took no action with respect to this island until 1919, when it requested Honduras to build a light on it.

6. Non-Existent Islands: Booby, Woody.

For years the State Department filed assignments of the alleged guano on these non-existent islands, and Booby at least is on one of the Treasury Department's lists of guano islands appertaining to the United States. As a result, the "discoverers," Jennett and Quinan, appear to have profited considerably at the expense of innocent parties.

Map

Map

Map

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See page 419 (pt. II, Islands to which
the United States has no claim)

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THE SOVEREIGNTY OF GUANO ISLANDS
IN THE CARIBBEAN SEA (SUPPLEMENT
TO PART II, "ISLANDS TO WHICH THE
UNITED STATES HAS NO CLAIM")

February 20, 1933
Le -- ESR

VII. ISLANDS CLAIMED BY CUBA

1. CALAPATCH ISLAND

(AVALO, ABALO CAY)

a. Geography

Calapatch Island or Key is located at approximately latitude $21^{\circ} 34'$ N., longitude $82^{\circ} 10'$ W. in the Caribbean Sea.¹ It is east of the southeastern point of the Isle of Pines, and just west of Cantiles Key, which is on the western side of the Rosario Channel, an entrance into the Gulf of Batabano. This gulf is between the southern coast of Cuba, at the western end of the island, and the Isle of Pines. Calapatch Key is about three miles long at its greatest length.² It was said to have contained deposits of phosphatic guano.³

b. United States Claim under the Guano Act

On April 12, 1901, Louis Davidson filed the memorial of William Augustus Varty relating to the latter's claim to Calapatch Island. In the memorial,

dated

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1. See. J. Hay, Sec. of State, to H. G. Squiers, U.S. Min. to Cuba, Nov. 14, 1903, I MS. Instructions, Cuba, 222, No. 287 (in which this position is given as that found by the Hydrographic Office).
 2. West Indies Pilot, H. O. 128 (Washington, 1927), Vol. I, pp. 347-348; General Staff, War Dept., Map of Cuba (Washington, 1911); Vina, Map of Cuba (Rand-McNally).
 3. See Louis Davidson, Atty., to J. Hay, Sec. of State, April 12, 1901, and enclosures, MS. Misc. Let; H.G. Squiers, U.S. Minister to Cuba, to Sec. of State, May 17, 1905, and enclosure, 14 MS. Despatches, Cuba, No. 1248.

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dated March 16, 1901, William A. Varty alleged that on that date he landed on "Cay Calapatch" or "Cay Avalo", at latitude $21^{\circ} 24'$ N., longitude $81^{\circ} 10'$ W, found it unoccupied, and took formal possession of it, raising the American flag and erecting a sign under the flag staff with the following inscription:

"Notice! no trespassing on this Key --
W. A. Varty, owner."

He stated that he was an American citizen, born in Kentucky, and temporarily a resident of Habana; that he intended to occupy and live on the key and exploit the guano thereon; that he had employed an agent to occupy it for him now; that the key had never been permanently occupied and had not been claimed for many years, and was not in the jurisdiction of any other government. Furthermore, he alleged that he made a formal claim under section 5570 R.S. (The Guano Act) and he petitioned for the "right of exclusive claim in and to and for the pre-emption" of Calapatch or Avalo key. The allegations in this memorial were supported by photographs of the petitioner standing on the island under the American flag, and by an affidavit of Louis Davidson, Varty's attorney, dated April 12, 1901, stating that he accompanied Varty on March 16, when he

landed

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landed on and made formal claim to the island. In his letter to the Department, Davidson requested that the memorial

"may be properly recorded, entered upon and made a part thereof, of the record of the DEPARTMENT OF STATE OF THE UNITED STATES, and further, that such action may be thereafter taken by the Department of State in relation to this memorial as the circumstances therein shall require."⁴

The receipt of this letter and its enclosures was acknowledged by the State Department.⁵

Nothing further appears to have been done about this claim until 1903. On August 15, 1903, Herbert Janorin Browne filed with the State Department an original deed of conveyance by which William A. Varty assigned all his right, title and interest in and to Calapatch Island to Browne. The deed was dated July 24, 1903, at Habana. After stating the approximate position of the island, the deed recited that Varty's right in the island was his

"right of discovery and possession, under the United States Statute of 1856 relating to guano islands, as evidenced by papers filed in the State Department in Washington, in due form in the year 1901, this island being one

of

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4. Louis Davidson to J. Hay, Sec. of State, April 12, 1901, and enclosures, MS. Misc. Let.
5. Ibid., (notation "Ack'd Apl. 25" on Davidson's letter).
No copy of the letter of acknowledgment has been found.

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of the islands ceded to the United States of America by Spain, under the Treaty of Paris, duly ratified, the suzerainty thereunder departing from the Government of Spain to the Government of the United States, and no adverse title of possession or otherwise appearing thereto."⁶

The consideration for this transfer was \$15,000 in notes, to remain an incumbrance on the island until fully paid.⁶ On October 12, 1903, Browne filed a quitclaim deed, of that date, from Varty to him, relating to Calapatch Island and acknowledging that the consideration mentioned in the first deed had been paid in full.⁷ The Department acknowledged the receipt of both of these deeds, stating, with respect to the last, that:

"This Department receives this paper and files it with the other papers in its archives relating to Calapatch Island, merely as an office of record, and without prejudice to any prior governmental or individual rights that may exist."⁸

On November 22, 1903, H. J. Browne transmitted to the Department a bond for the sum of \$50,000, under the provisions of the Guano Act, stating that "This is to apply to the proper operation of Calapatch Island. . . ."⁹ No. copy of the bond has been found in the files of the

Department

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6. H. J. Browne to Sec. of State, Aug. 15, 1903, and enclosure, MS. Misc. Let.
 7. H. J. Browne to Sec. of State, Oct. 12, 1903, and enclosure, MS. Misc. Let.
 8. F. B. Loomis, Asst. Sec., to H.J. Browne, Nov. 12, 1903, 270 MS. Dom. Let. 340; A.A. Adey, Acting Sec., to H.J. Browne, Aug. 20, 1903, 268 MS. Dom. Let. 442.
 9. H.J. Browne to Sec. of State, Nov. 22, 1903, MS. Misc. Let.

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Department, nor was it put with the other bonds kept by the Treasury Department. However, on December 16, 1903, the State Department replied to Browne's letter of November 22, acknowledging the receipt of the bond, and stating that it had been forwarded to the Secretary of the Treasury.¹⁰ In a letter of the same date to the Secretary of the Treasury, the Department states that it is transmitting Browne's bond for Calapatch Island, pursuant to Section 5574 R.S., and that it encloses copies of instruments filed with the Department relating to the Island (Varty's Memorial, and the two assignments mentioned above).¹¹

Calapatch Island does not appear on the lists of guano islands appertaining to the United States compiled by the Treasury Department.¹² This is probably because no such list appears to have been made after 1893, and the claim to Calapatch was not filed until 1901.

In September 1904 William H. Rohrer, of the District of Columbia, filed a copy of an agreement, dated May 14, 1904, in which H. J. Browne, represented

as

10. A.A. Adey, Acting Sec., to H.J. Browne, Dec. 16, 1903, 271 MS. Dom. Let. 122.

11. A.A. Adey, Acting Sec., to Sec. of Treas., Dec. 16, 1903, 271 MS. Dom. Let. 134. (Browne's attorneys stated that the bond had been filed with the Department of Commerce and Labor. See Ralston and Siddons to J. Hay, Sec. of State, Aug. 13, 1904, MS. Misc. Let.)

12. See list in 6 MS. Misc. Let. Guano, Sombrero, Id., Misc.

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as the owner of Calapatch or Avalo Key, "including little Calapatch or little Avalo", assigned 1/100th interest in the key to Rohrer for \$2500, retaining the power to sell the island and remove the guano. Another similar agreement between the same parties, dated September 14, 1903, was filed at the same time. By this deed Browne assigned 1/40th interest in the island to Rohrer, for \$2500.¹³ The Department merely acknowledged the receipt of these agreements and stated that they had been placed on file.¹⁴

In August, 1904, Messrs. Ralston and Siddons, attorneys for Browne, notified the Department that on July 11, 1904, the Government of Cuba had served Browne with a notice to quit Calapatch Island by the 31st of that month. They stated that Browne and his associates had invested \$20,000 in the island, and proposed to spend \$75,000 more to put the phosphate on the market. After reviewing the papers filed with the Department, the attorneys concluded that Spain never exercised sovereignty over this island and added that even if Spain had done so, Spanish sovereignty did not pass to Cuba as

"the

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13. W. H. Rohrer to J. Hay, Sec. of State, Sept. 14, 1904, and enclosures, 3 Id., Calapatch
 14. F. B. Loomis, Acting Sec., to W.H. Rohrer, Oct. 26, 1904, 278 MS. Dom. Let. 109.

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"the Island has been absolutely undeveloped at all times in its history, save for a brief period, ending more than twenty years ago, when it was abandoned by whoever may have undertaken to work upon it, and it has been derelict ever since."¹⁵

The Department replied stating that the American Minister in Cuba had been instructed to put Browne's claim before the Cuban Government, to ask what objections Cuba had to Browne's title, and to state that the Department would be glad if the proceedings against Browne were suspended until the controversy was settled diplomatically by the two Governments.¹⁶

A year previous to this correspondence, in October, 1903, the American Minister in Cuba had forwarded to the Department a letter to him from William A. Varty, inquiring whether the United States considered that the Keys forming a chain eastward from the Isle of Pines belonged to the jurisdiction which governed the Isle of Pines, and whether they were embraced in the treaty between the United States and Cuba which recognized Cuba's sovereignty over the Isle of Pines. The Minister wrote to the Department that he presumed this treaty

would

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15. Ralston and Siddons, Attys., to J. Hay, Sec. of State, Aug. 13, 1904, MS. Misc. Let.; See also do. to do., Aug. 4, 1904, ibid.
16. F. B. Loomis, Asst. Sec., to Ralston and Siddons, Aug. 16, 1904, 276 MS. Dom. Let. 511.

would cover all adjacent Keys, but he requested instructions.¹⁷ The Department merely replied that the Isle of Pines alone was mentioned in the Platt Amendment and the Treaty, listed the papers relating to the island filed by Varty and Browne up to that time, and quoted its reply to Browne of November 12, 1903, that the papers were filed without prejudice to prior existing rights.¹⁸

In August, 1904, the Department sent the American Minister in Cuba a copy of Ralston and Siddons' letter of August 13, 1904, and instructed him to request the Cuban Government to state the grounds of its objections to Browne's claim, and to suspend proceedings against Browne until the matter could be settled diplomatically between the Governments.¹⁹ The American Minister reported that the latter request had been acceded to by the Cuban Foreign Office, although Browne "will not be allowed, in the meantime, to extract guano or any other product from the said key", and that Cuba inquired by what right the United States exercises or claims sovereignty over the key, "which is one of those adjacent to the Island of Cuba and which is included

within

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17. H.G. Squiers, U.S. Min. to Cuba, to Sec. of State, Oct. 1, 1903, and enclosure, 8 MS. Despatches, Cuba No. 679.
18. J. Hay, Sec. of State, to H. G. Squiers, U.S. Min. to Cuba, Nov. 14, 1903, 1 MS. Instructions, Cuba, 222 No. 287; See supra, note 8.
19. J. Hay, Sec. of State, to H.G. Squiers, U.S. Min. to Cuba, Aug. 15, 1904, 1 MS. Instructions, Cuba, 319, No. 417.

within the boundaries which Article II of the Constitution fixes as national territory."²⁰ This despatch was forwarded to Browne's attorneys.²¹

In January, 1905, Ralston and Siddons suggested that a proviso be inserted in the Isle of Pines treaty which would state that nothing in the treaty shall be deemed to release or convey to or vest in Cuba title to any key adjacent to the Isle of Pines and containing guano, which key being unoccupied, was taken possession of by United States citizens before May 20, 1902, under the Guano Act. On that date the appendix to the Cuban Constitution was promulgated, and it contained a provision that the title to the Isle of Pines was to be settled later. The basis for Browne's claim was reviewed again, and it was stated that after he had filed his bond, the Chief of the Diplomatic Bureau had informed Browne that the old practice of issuing proclamations by the President confirming individual rights in guano islands had been abandoned, and ^{that} there was, therefore, nothing else for Browne to do to perfect his title. It was alleged that Spain had never actually exercised sovereignty over

this

20. H.G. Squiers, U.S. Min. to Cuba, to Sec. of State, Sept. 3, 1904, and enclosures, 12 MS. Despatches, Cuba, No. 1057.

21. A.A. Adey, Acting Sec., to Ralston and Siddons, Sept. 14, 1904, 277 MS. Dom. Let. 296.

this island, and that, even if it had, Spanish sovereignty never passed to Cuba; that the treaty of peace of 1898 must be regarded as ceding to the United States the islands surrounding Cuba.²² The Department replied that the suggested proviso "does not appear to be germane to the treaty itself, which relates only to the Isle of Pines", and therefore "the Department would be unable to approve of the adoption of the proviso as an amendment to the treaty."²³

Ralston and Siddons then suggested the following provisions as a modus vivendi:

1. Until otherwise determined by the joint action of the United States and Cuba, Browne and his associates shall remain in undisputed possession, occupation, and control of Calapatch Island and its approaches, with full rights to exploit and develop it, build thereon, export products freely without interference from either Government, and to fish three miles from shore;

2. Browne and his associates shall pay Cuba 7 1/2 cents United States gold per ton of phosphates exported from the island, and the Cuban Government may place an agent on the island to supervise these payments or may supervise them in any other way;

3. Except for the collection of this sum,
for

22. Ralston and Siddons to J. Hay, Sec. of State, Jan. 7, 1905, MS. Misc. Let.

23. J. Hay, Sec. of State, to Ralston and Siddons, Jan. 19, 1905, MS. Dom. Let. 510.

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for the duration of the agreement Cuba shall not exercise any act of sovereignty over the island, collect import or export taxes or require that vessels loading for the island enter or clear from Cuban ports;

4. If the agreement be determined upon, Browne and his associates shall remain in undisturbed possession of the island, and no greater tax than the 7 1/2 cents mentioned above shall be collected;

5. . . . "nothing in this agreement contained shall be considered as an admission of the validity either of the title claimed by the Cuban Government to said Island or by said J. H. Browne and his associates and assigns under the Guano Act or Amendments thereto, but this agreement is made simply to preserve the status quo."²⁴

This proposition was sent by the State Department to the American Minister at Habana, with expressions of approval.²⁵ The Minister reported, however, that the Cuban Government was unwilling to agree to these terms.²⁶ The Cuban Secretary of Foreign Affairs stated that:

" . . . the Government cannot agree to the establishment of that Modus vivendi, because it is openly opposed to the decisive precepts of the laws in force relative to state property and its acceptance would signify an abandonment, although of a provisional

character

24. Ralston and Siddons to J. Hay, Sec. of State, Mar. 16, 1905, MS. Misc. Let.

25. A.A. Adey, Acting Sec. to H. G. Squiers, U.S. Min. to Cuba, Mar. 21, 1905, 1 MS. Instructions, Cuba, 387, No. 490.

26. H. G. Squiers, U.S. Min. to Cuba, to Sec. of State, April 25, 1905, 14 MS. Despatches, Cuba, Telegram.

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character, of the right of sovereignty which the Republic has over the said Key."²⁷

It has also stated that Browne could apply to the proper administrative authorities who might grant a concession to him for the island, after his compliance with any pre-requisites and legal formalities.²⁸

On May 17, 1905, the American Minister transmitted the Cuban Foreign Office note, setting forth the bases for the Cuban claim to the island.²⁹ The Minister assumed that the Secretary of State did not care at this time, and pending the ratification of the Isle of Pines Treaty, to enter into any extensive controversy with the Cuban Government over the sovereignty of Calapatch Island if there were any possibility of settling the matter on the basis suggested by Mr. Browne. He stated that he had so represented the affair to the Cuban Foreign Office, and that he presumed "that the question of sovereignty will not be brought up again but that the matter will be allowed to drift indefinitely."³⁰

Evidently the Department agreed to let the matter

"drift

27. Juan F. O'Farrill, Cuban Sec. of For. Affairs, to H.G. Squiers, U.S. Min. to Cuba, April 20, 1905, enclosure in H. G. Squiers to Sec. of State, April 28, 1905, ibid. No. 1235.

28. Ibid.

29. See infra.

30. H.G. Squiers, U.S. Min. to Cuba, to Sec. of State, May 17, 1905, 14 MS. Respatches, Cuba, No. 1248

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"drift indefinitely". The only subsequent instruction to the Cuban Minister relating to Calapatch Key is dated July 22, 1905.³¹ This instruction enclosed a letter from one Reginald Schroeder to the Secretary of State, in which Schroeder claimed that he had been granted a concession to Calapatch Island by the Cuban authorities under Cuban law; that this concession had since been transferred, with the consent of the Cuban authorities, to the Avalo Improvement Company, a Delaware corporation, of which he was a stockholder and an officer; that he protested the actions of the American Minister in behalf of Browne who had no title to the island under the guano act.³² In transmitting this letter to the Minister the State Department merely remarked:

"You will take no action in regard to this matter without receiving express instructions from the Department."³³

So far as has been determined, no other instructions were sent.

c. Claim of Cuba

The bases for the Cuban Claim to sovereignty of

Calapatch

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31. A.A. Adey, Acting Sec. to H. G. Squiers, U.S. Min. to Cuba, July 22, 1905, I MS Instructions, Cuba, 412, No. 522.
32. R. Schroeder to Elihu Root, Sec. of State, July 19, 1905, MS. Misc. Let.
33. Supra, Note 31.

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Calapatch Island (called Abalo Key) were set forth in a note by the Cuban Secretary of Foreign Affairs to the American Minister, under date of May 2, 1905.³⁴ In the first place, it was stated that Spain did exercise sovereignty over the Key, and that it was in fact used. In support of this assertion it was said that in 1878 Messrs. Arrarte and Olmos requested a concession for working on the keys or small islands off the south coast of Cuba appearing on the Madrid Hydrographic Department's map of 1876. A copy of this map was enclosed, and on it appears "Abalo" Key. The concession was granted, and from May 5, 1879, to the latter part of 1884 these men worked the islands for guano. In 1884 an annulment of the concession was requested and obtained after the guano had been exhausted. As proof of these allegations, and of their application to Calapatch or Abalo Key, copies of the application for the concession, extracts from the books of the men working the island and from customs entries were enclosed. These documents indicate that guano was taken from Abalo in the years mentioned. It was also said that Cantiles

Key

34. O'Farrill, Cuban For. Sec. to H. G. Squiers, U.S. Min. to Cuba, May 2, 1905, enclosure in Squiers to Sec. of State, May 17, 1905, 14 MS despatches, Cuba, No. 1248.

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Key, adjacent to Calapatch, had been conveyed by a former government of the island to one L. Ferran who paid taxes on his estate there now, and ^{that} this act of sovereignty confirmed the Spanish Government's dominion of Cantiles Key, and consequently over the neighboring Key, Abalo. There was also enclosed a pamphlet printed by P. de Murguiondo, of Baltimore, in 1882, in which he advertised himself as an importer and vendor of "Avalo Cuba Bird Guano".

In the second place, the Cuban Foreign Secretary claimed that the sovereignty over this key now rested solely with Cuba. Under article I of the Treaty of Peace of 1898, Spain relinquished all claim to sovereignty over Cuba, and it was said that "Cuba" always included the adjacent keys. In support of this assertion an order of General Wood, Military Governor of Cuba, dated April 14, 1902, and relating to the study of the Constitution of Cuba, was cited. Article 2 of this Constitution was also cited, for it included within the territory of the republic

"Cuba as well as the islands and key adjacent thereto and which were together with Cuba under Spanish sovereignty until the ratification of the Treaty of Paris of December 10, 1898."³⁵

The

35. Quoted in ibid.

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The only exception to this statement was the Isle of Pines, the sovereignty over which was to be settled later.

The Cuban Government likewise noted that Browne could not have complied with the Guano Act of the United States, as Avalo was within a foreign jurisdiction at the time Browne's claim was said to have arisen, and as the guano act expressly provided for the absence of any foreign jurisdiction over the key.

Although it was not specifically mentioned by the Cuban Government, it would seem that the principle of contiguity in relation to territorial sovereignty over islands adjacent to the mainland or to other islands which are adjacent to the mainland would also support the Cuban claim. Calapatch Key is one of a string of keys extending from the southern point of the Isle of Pines east and then north to the coast of Cuba. These keys, together with the Isle of Pines, form the southern boundary of the Gulf of Batabano.³⁶ At the time the controversy over Calapatch Key arose, however, the United States had not yet relinquished its claim to the

Isle

36. See supra, note 1.

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Isle of Pines, and, had this claim been recognized, it is possible that Calapatch Key would have been considered contiguous to the Isle of Pines rather than to Cuba.

The treaty between the United States and Cuba adjusting the title to the ownership of the Isle of Pines makes no mention of any outlying or adjacent keys. This treaty was signed March 2, 1904, but it was not ratified until March, 1925, ratifications being exchanged on March 23 of that year. Article I of this treaty provides that the United States . . . "relinquishes in favor of the Republic of Cuba all claim of title to the Island of Pines situate in the Caribbean Sea near the southwestern part of the Island of Cuba. . . .".³⁷

d. Conclusions

It seems clear that the United States has no valid claim to territorial sovereignty over Calapatch Island. Although one of the claimants under the guano act filed a bond for the island, and the State Department appears to have sent the bond to the Treasury Department, the Cuban contention that the island was already within a
foreign

37. Treaty between the United States and Cuba for the adjustment of the Title to the ownership of the Isle of Pines, March 2, 1904 (ratified March 23, 1925), Treaty Series No. 709 (Washington, 1925).

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foreign jurisdiction, and that, therefore, the conditions of the guano act were not in fact complied with, has never been refuted by the United States, and furthermore, this contention appears to be justified by the evidence submitted by the Cuban Government. By its failure to press the claim or to answer the Cuban memorandum, and its long silence on the subject, the United States appears to have recognized or acquiesced in the Cuban claim to sovereignty over Calapatch Island.

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