THE SOVEREIGNTY OF GUANO ISLANDS
IN PACIFIC OCEAN

January 9, 1933.

E.S.R.
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D. Non-existent Islands

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Introduction

Although this memorandum deals with guano islands in the Pacific, it will be seen that some of the islands described apparently do not exist, and that most of them do not now, and never did contain guano. However, at one time or another they have been called guano islands, and have been said to exist in the Pacific Ocean. It was thought necessary to include within the scope of this memorandum islands which were listed by the Treasury Department as guano islands appertaining to the United States, and so appearing in Judge Moore's Digest of International Law, and islands for which preliminary papers were filed by claimants attempting to comply with the conditions of the Guano Act, because inquiries regarding them may still be made.

An effort has been made to make his memorandum inclusive. The papers relating to the so-called guano islands in the Archives of the State Department have been collected in separate volumes since the publication of Judge Moore's Digest, so that it has been possible to find papers relating to islands he did not describe. However, it should be noted, that there may well be other papers, relating perhaps to other islands, which could not be found. Even if all the volumes of Miscellaneous Letters in the Archives were searched, page by page, there might still be unheard of documents buried.
buried in some office safe.

No general discussion of the Guano Act, or of the international law relating to the acquisition of territory has been included herein because that has been dealt with in detail in another memorandum. The main purpose of this paper is to set forth the history of each island, chiefly in relation to the various claims of limited jurisdiction, or of full sovereignty which have been made to the islands, with a view to determining the present status of the United States claims to territorial sovereignty over them. Description of the islands and other geographic and historical details have been added with a view to aiding the determination of the possible uses and values of the islands.
PART I. ISLANDS TO WHICH ONLY THE UNITED STATES HAS A CLAIM.

I. ISLANDS FORMERLY CLAIMED BY HAWAII.

1. JOHNSTON ISLAND (JOHNSON'S, CORNWALLIS) AND SAND ISLAND (AGNES).

a. Geography.

Johnston or Cornwallis Island, at Latitude 16° 45' N, Longitude 169° 30' W, is a lagoon island, about 800 miles southwest of Honolulu, on a reef which extends 8 miles northeast and southwest. It is 1/2 a mile long, and 40 feet high at the eastern end. One mile northeast of Johnston is Sand (or Agnes) Island, 500 yards in diameter, and 8 feet high. Both islands are covered with long grass, but are without trees or bushes. Landing is difficult, and the anchorage is poor. Sea birds abound on the islands, and, fish are plentiful in the surrounding waters.¹

b. Discovery.

Johnston Island was discovered on December 14, 1807, by Captain Johnston of the British vessel CORNWALLIS. He merely noted the position of the island, and did not land there. It was re-examined and surveyed in 1859, by Lieutenant J. M. Brooks of the United States Survey schooner FENNIMORE COOPER.


On August 29, 1857, William H. Parker, of San Francisco, filed a notice of discovery of guano on Johnston and other Pacific islands (Ryan's, Parker's, Morrissin's, Cornwallis or Smith's and one unnamed). In his declaration, dated September 28, 1857, he alleged that he discovered "Johnston's" Island on January 15, 1852; that it was not in the possession or occupation of any government; that he took possession of it in the name of the United States, and now claims title to it under the Guano Act of 1856.

In December, 1857, Parker's "Amendatory Declaration", was filed with the Department of State. In this affidavit, dated December 20, 1857, he alleged that on January 15, 1852, he had discovered guano on the islands described in his previous declaration (which, as has been seen, included Johnston); that in the same month he took possession of the islands and claimed them for himself and the United States; that they were not in the possession or occupation of any other government or person; and asked that Letters Patent

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2. Brigham, op. cit. supra, Note 1, p. 81.

3. See Infra Part III, I.


Patent be issued to him, securing his rights under the Guano Act of 1856. An analysis of the guano on each of the islands was also enclosed, including a statement that there was about 93,980,000 tons of guano on Johnston. The analysis was made by R. F. Ryan, who said he owned a half interest in Parker's islands.6

It appears that Parker and Ryan associated with certain individuals in San Francisco (Byxbee and Stoddard) who chartered the schooner PALESTINE for a voyage to the islands Parker claimed to have discovered. The schooner arrived at Johnston Island on March 19, 1858, and the Captain, W. R. Ferriman, and Mate, Charles Rich, landed, raised the American flag, and took possession of the island on behalf of the owners and charterers of the schooner PALESTINE and in the name of the United States, erecting a notice to that effect. Parker also landed at this time, and about 1200 pounds of guano was taken on board.7 In an affidavit by Parker, dated April 28, 1858, in which the voyage is recounted, Agnes Island is mentioned by him for the first time, and is described as a small island 2 miles northeast of Johnston.8 Presumably, this is what is now known as Sand Island.9 On May 7, 1858, an affidavit by Captain Ferriman

6. Id.
9. Supra, Note 1.
Perriman, and Charles Rich, dated May 1, 1858, and describing the voyage of the PALESTINE, was submitted to the Department. The receipt of these papers was acknowledged, and the Department stated that they would be considered with the others in the case.

The Pacific Guano Company was formed on June 8, 1858, by R. G. Byxbe, A. B. Stoddard, W. Thompson, R. F. Ryan and C. S. Place, for the purpose of extracting and selling guano from Johnston Islands, (i.e., Johnston and Agnes) and from such other islands as the company might hereafter acquire. Parker appears to have been at one time a stockholder in this company. The Pacific Guano Company sent the PALESTINE on a second voyage and on her arrival at the island, on July 22, 1858, it was discovered that the island had been visited by a party from Hawaii, in the KALAMA, who had removed the American flag and replaced it by the Hawaiian flag. The party on the PALESTINE raised the American flag again, took on a cargo of guano, and left two men in occupation of the island.

In 1859 a dispute arose between Parker and the Pacific Guano Company. Parker claimed that he still had exclusive rights to the guano on Johnston Islands. The company, on the other hand, claimed that, although there was no assignment from Parker to the company, nevertheless Parker was a stockholder.

10. L. Blanding to L. Cass, Sec. of State, May 7, 1858, and enclosures, LaMS. Misc. Let te Guano, Johnston + Agnes.
11. L. Cass
stockholder in the company, was present at the meetings before the company was formed, and in fact accepted the stock in return for his remaining interests in the islands, as the discoverer under the Guano Act. The company also alleged that Johnston Islands, discovered on the first voyage of the PALESTINE, were not those originally discovered and described by Parker. Furthermore, the company claimed it had dispatched the second expedition and had actually occupied the islands, and made large investments in the enterprise.

The case was submitted to Attorney General Black who rendered a decision on the question July 12, 1859. After stating the facts, he held that neither Parker nor the Pacific Guano Company had obtained any rights in Johnston Island before the second visit of the PALESTINE, because under the Guano Act, a "symbolical possession was not enough."

12. Supra, Note 7.
13. C. Benham to L. Cass, Sec. of State, Feb. 1, 1859, 4 MS Miscl. Let. re Guano, Johnson and Agnes; do. to do., Mar. 4, 1859, Id; do to do., Mar. 15, 1859, Id; J. Appleton (Asst. Sec.) to C. Benham, Mar. 3, 1859, Id; Affidavit of W. R. Periman, Oct. 25, 1858, Id; Affidavit of C. Rich, Oct. 26, 1858, Id; Registration of the Palestine, Jan. 7, 1858, Id; Deposition of Byxbe, Thompson, Stoddard, Heye, Place and Blanding, Dec. 18, 1858, Id; Certificate of Incorporation, June 8, 1858,Id; Agreement between Parker and Ryan, and Stoddard and Byxbe, Dec. 19, 1857, Id; Copies from Books of the Co., certified Dec. 18, 1858, Id; W. H. Parker to L. Cass, Jan. 24, 1859, and enclosed analysis of Guano by J. A. Veatch, April 15, 1858, Id; C. Benham to L. Cass, Mar. 4, 1859, Id.; N. Bennett to the Att'y. Gen., May 9, 1859, Id.; J. Appleton, Asst. Sec. to J. S. Black, Att'y. Gen., June 29, 1859, and enclosures, Id.
enough." With regard to the visit to the island by the Hawaiian party and the Hawaiian proclamation of sovereignty, he found that no jurisdiction over the island vested in the Hawaiian Government, since that visit resulted only in "empty ceremony", and since the Hawaiian proclamation was made on July 27, 1858, subsequent to the second visit of the PALESTINE, on July 22, 1858, and at a time when the island was in the actual occupation of American citizens. He concluded, on this point, that the Pacific Guano Company had been in "actual, continuous, exclusive possession" of Johnston Islands from July 22, 1858; that it had built houses there, chartered vessels, made surveys and invested about $16,000 in the enterprise, and that therefore the case was "within the act of the 15th of August, 1856."\(^{15}\)

With regard to Parker's claim against the Pacific Guano Company, the Attorney General held that "...the conditions of the Act of Congress were not performed by Parker, and if the case stood upon his acts, there is no case for the discretionary power of the President."\(^{16}\) He added that whether or not Parker's representatives had an equitable share

15. Id.
16. Id., p. 369.
share in the company's profits was for the determination of a judicial tribunal. The Pacific Guano Company, on the other hand, had actually occupied the island, and had made considerable investments in the enterprise, and "is the proper party to give the bond required by that Act, (the Guano Act)."¹⁷

A bond, dated September 6, 1859, for two islands named "Johnsons Islands" was filed soon after this decision by the Pacific Guano Company.¹⁸ On December 9, 1859, a certificate, signed by Lewis Cass, Secretary of State, was issued to the Pacific Guano Company. It was in the usual form, stating that the Pacific Guano Company, composed of United States citizens, had filed the requisite notice of discovery of Guano on "Johnson's Islands", and of occupancy of those islands, and had entered into sufficient bonds under the Guano Act, and concluded:

"Wherefore, the said Pacific Guano Company is entitled, in respect to the guano on the said islands, 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 Pacific Guano Company shall abide by the conditions and requirements imposed by the Act of Congress aforesaid."¹⁹

Johnston

¹⁷ Id., p. 371.
¹⁸ Bonds, Bureau of Navigation Files, 53500N.
¹⁹ Copy in 4 MS. Misc. Let. re Guano, Johnson and Agnes.
Johnston Island appears on all the lists of Guano Islands compiled by the Treasury Department. On the list of August 23, 1867, "Johnston's (or Cornwallis)" is included, with the position taken from Lippincott's Gazetteer, and the notation that a certificate for this island has been issued to the Pacific Guano Company, San Francisco, California. On subsequent lists, no position for the island is given, and it is called "Johnson's Islands".

William Parker died in February, 1859. In 1870, one Harriet E. Parker attempted to revive his claim, alleging that the certificate to the Pacific Guano Company, signed by Secretary Cass, was a forgery. She stated that she was W. H. Parker's widow; and that she had acquired one-half interest in Parker's claim, through inheritance from her deceased son, and represented her daughter, Agnes Parker Burt, who held the other half interest, and she requested permission to file a bond for Johnston Islands under the Act of 1856. The Secretary of State replied to

20. 6 MS. Misc. Let. re Guano, Sombrero.
to Harriet Parker's Attorney as follows:

"...it is conceived that this Department has exhausted all its powers in relation to the Islands in question.... The Department must therefore decline to give advice, direction, or approval, in respect to the form, penalty or sureties in the proposed bond, and confines itself strictly, to an expression of its willingness, to put upon file any respectful [sic] papers, which you deem material to the interest of your client, leaving the effect, (if it is entitled to have any), to be determined by the appropriate judicial tribunal."

On May 8, 1873, Solicitor-General Phillips considered the claim of Mrs. Harriet E. Parker under the Guano Act Amendment of 1872, which gave to the widows and heirs of discoverers whatever rights the deceased had at his death, saving such rights in other people as might have vested before its passage. He reviewed the previous decision on Johnston Island by Attorney General Black in 1859, and concurred in his conclusions "upon matters as they stood in August, 1859." He found further that the rights of the Pacific Guano Company had vested before 1872, and were, therefore, expressly saved by the Amendment of 1872.

Mrs. Parker

23. H. Fish, Sec. of State, to T. S. Samson, April 12, 1870, 84 MS. Dom. Let. 153.

Mrs. Parker also claimed that the Pacific Guano Company had forfeited its rights by abandonment, and by other breaches of conditions of the bond. On this point the Attorney General said:

"Upon application at the office of the Secretary of State I am told that it has been the course of that Department to recognize such islands only while occupied for the purposes of procuring guano, and, therefore, upon a cessation of such occupancy, they became open again to discovery, possession, etc. If this allegation of forfeiture be true, I suppose that the islands are again subject to original proceedings before the Secretary of State. In such event, Mrs. Parker will be obliged to take possession and occupy before she can be heard; and when that hearing comes on, the question of forfeiture may be contested by those who pretend to adversary interests."

In spite of this decision, Mrs. Harriet E. Parker and Agnes Burt (née Parker) continued to file declarations and petitions, claiming that William H. Parker had been defrauded of his rights by members of the Pacific Guano Company. Judge O'Connor, the Examiner of Claims in the State Department, reviewed the case in an opinion dated November 26.

25. Id., p. 610.

26. Affidavit of Samuel Brevoort, May 29, 1873, 4 MS. Misc. Let. re Guano, Johnson and Agnes; Affidavit of Agnes Burtt, June 5, 1873, Id; Affidavit of Harriet E. Parker, July 8, 1873, Id.; Harriet E. Parker to H. Fish, Sec. of State, Feb. 7, 1874, Id; Petition of H. E. Parker, Feb. 17, 1874; H.E.Parker to Sec. of State, Feb. 20, 1874, Id.
November 26, 1873. He concluded that the question of William Parker's interest in the islands was a proper one for the determination of a court of equity, and added that Harriet E. Parker was evidently the legal representative of the Parker interests. By March, 1874, however, her case appears to have been abandoned even by the parties interested.

In 1879 Agnes Burt and Mrs. Melvina H. Parker renewed the case. Melvina H. Parker appears to have been the Captain's second wife, and claimed that she was his legal wife at the time of his death, Harriet having been divorced. There is a memorandum on file by Judge O'Connor, Examiner of Claims in the State Department, dated July 24, 1879, in which he states that the agent of these claimants "is pursuing a phantom", and that Parker merged his interest in the Pacific Guano Company, and that at any rate, all rights had been lost by abandonment, on August 19, 1884.

27. 5 Solicitors Opinions 143 (O'Connor, Nov. 26, 1873).
29. Edgar Hueston to W. Evarts, Sec. of State, July 22, 1879, and enclosure—4 MS. Misc. Let. re Guano, Johnson and Agnes; J. W. Butterfield to W. Evarts, Sec. of State, June 10, 1880 and enclosures, Id.
30. Id.
On August 19, 1884, the Secretary of State wrote regarding the claim of Mrs. Melvina Parker, stating that the claim had already been presented to the Department in November, 1873, and had been decided adversely to the claimant. In this note it was assumed that Harriet and Melvina were the same person, and that the change of names was a mere inadvertance. It was stated that no new facts had been presented since the case was considered in 1873, and that there were no grounds for the interference of the Department, or for a departure from the conclusion reached by Secretary Fish in 1873, and that this decision "must be accepted as the final conclusion of the Department in regard to this claim."31

In 1888, the claim was again raised, the difference between Harriet E. and Melvina H. Parker being pointed out,32 but the Department again refused to intervene, and stated that it would abide by the decision of Secretary Fish in 1873, approved in 1884.33

Apparently the Pacific Guano Company actually did occupy, and remove guano from Johnston Islands. At least

31. F. Frelinghuysen, Sec. of State, to Messrs. Severance and Travers, Aug. 19, 1884, 152 MS. Dom. Let. 248; See Severance and Travers to F. Frelinghuysen, Sec. of State, June 29, 1884, 4 MS. Misc. Let. re Guano, Johnson and Agnes.

32. C. F. Patterson to Sec. of State, Feb. 18, 1888, Id.

33. T. F. Bayard, Sec. of State, to C. F. Patterson, March 19, 1888, 167 MS. Dom. Let. 514.
two cargoes were brought from the island in 1862, and Captain Perriman stated in 1892 that he made three trips to the island besides the first in the schooner PALESTINE, and that his last trip was in about 1882, when he took 200 tons of guano from the islands to San Francisco.

In May, 1885, one J. M. Barratt inquired what the effect would be of a transfer of the Company's interest to an English corporation. The Department replied that under the Guano Act, American ownership appeared to be a condition precedent to the grant from which the right to export guano was derived, "and upon which the exercise of protection and jurisdiction on the part of the United States depends," and concluded:

"that assignment of a guano grant to an alien owner would annul the relationship which the Government of the United States holds under the existing statute."

Whether or not any such assignment was made cannot be determined from the records filed in the State Department.

In August, 1892, L. L. Lombard, who called himself an agent of the Pacific Guano Company, stated that the company had never abandoned its possession of Johnston Island. The State Department then requested proof by affidavit.

34. See D. D. Lord to W. Seward, Sec. of State, Mar. 15, 1862, 4 MS. Misc. Let. re Guano, Johnson and Agnes.
35. N. Y. Tribune, Aug. 6, 1892, clipping enclosed in C. A. Williams to J. Foster, Sec. of State, Aug. 15, 1892. Id.
36. J. M. Barrett to Sec. of State, May 11, 1885, Id.
37. T. F. Bayard, Sec. of State, to J. D. Barratt, May 13, 1885, 155 MS. Dom. Let. 362.
38. L. L. Lombard to Sec. of State, Aug. 5, 1892, 4 MS. Misc. Let. re Guano, Johnson and Agnes.
affidavit, on behalf of the company, "to show the nature and continuance of the alleged possession of Johnson's island by the parties in interest." It does not appear, however, that any such proof was ever submitted to the Department. It is probable that the company was not actively interested in the island, that the venture had not proved profitable, and that, in fact, the island was not at that time, being exploited by the company.

d. Claims of Hawaii and Great Britain.

As has been stated, after the first voyage of the PALESTINE, in 1858, Johnston Islands were visited by certain persons from Honolulu, (Allen and Hooper), in the Hawaiian schooner KALAMA. These individuals had apparently learned the position of the islands from the crew of the PALESTINE. Before their expedition they obtained a permit from the Hawaiian King to take possession of the islands in the name of the Hawaiian Government. On arrival at Johnston's Islands, Hooper and Allen tore down the American flag and the inscription left there by Captain Ferriman, and left the Hawaiian flag flying. On the second voyage of the PALESTINE, on July 22, 1858, this was discovered, and the events were reported both to the United States Commissioner at

40. Supra., Note 12.
41. 9 Op. Atty. Gen. 364; Deposition of E. Watts, Aug. 16, 1858, 4 MS. Misc. Let. re Guano, Johnson and Agnes; Affidavit of C. Rich, Sept. 4, 1858, Id.; Affidavit of W. R. Perriman, R. Byxbee, L. Blanding, Dec. 8, 1858, Id
at Honolulu\textsuperscript{42} and to the Secretary of State.\textsuperscript{43}

On July 27, 1858, the Hawaiian King issued a Proclamation claiming Johnston Islands as part of the Hawaiian Dominion, because of the acts of possession of Allen and Hooper, (both of whom were American citizens). This proclamation was published in the Hawaiian newspaper \textit{Polynesian} on July 31, 1858.\textsuperscript{44}

The Secretary of State instructed the United States Commissioner at Honolulu, James W. Borden, to report on the expedition of the KALAMA, saying that if the facts had been correctly stated, they were grounds for intervention. It was believed, however, that when the Hawaiian King was acquainted with the prior claim of the Pacific Guano Company, he would refuse to protect Allen and Hooper.\textsuperscript{45}

Mr. Borden accordingly made representations to the Hawaiian Government, and the Hawaiian Minister of Foreign Affairs replied that his Government was disposed to abide by whatever conclusions were reached by the United States, as it was really a dispute between American citizens. He added that the Hawaiian proclamation of July 27 was founded on the belief that the islands were unclaimed, and that if

\textsuperscript{42} L. Blanding to J. W. Borden, U.S. Com'r., Honolulu, Aug. 13, 1858, 4 MS. Misc. Let. re Guano, Johnson & Agnes
\textsuperscript{43} do. to L. Cass, Sec. of State, Sept. 4, 1858, Id.
\textsuperscript{44} J. W. Borden, U. S. Com'r., Hawaii, to L. Cass, Sec. of State, Nov. 8, 1858, 9 MS. Dispatches, Hawaii, No. 8.
\textsuperscript{45} L. Cass, Sec. of State, to J. W. Borden, U. S. Com'r. at Honolulu, Oct. 15, 1873, 2 MS. Instructions, Hawaii 79, No. 3
the United States found that the islands were part of its dominion before the proclamation, Hawaii would agree to this position. 46 After further representations, the Hawaiian Foreign Minister, in a note dated December 27, 1858, reiterated the statement that the proclamation was issued without knowledge of the United States claim, and added that Hawaii would acquiesce in the United States position upon presentation of proof that the first parties had actually occupied the islands, in compliance with the Guano Act, before the visit of the KALAMA. 47

While this was not a complete retraction of the proclamation, it was apparently accepted as such. It does not appear that any further proof of occupation was presented to the Hawaiian Government. In fact, that Government already had proof of what occupation there was after the first visit of the PALESTINE and before the visit of the KALAMA. Nevertheless, the KALAMA parties do not appear to have pressed their claim, and from the evidence on file in the Department, the Pacific Guano Company was not again molested on the islands. At least, no further complaints were made.

In 1892 formal possession was taken of Johnston Islands for Great Britain by Captain Roeke, of the H.M.S. CHAMPION. 48

46. J. W. Borden, U.S. Com'r. at Hawaii, to L. Cass, Sec. of State, Nov. 8, 1858, and enclosures. 9 MS. Dispatches, Hawaii, No. 8.

The United States was first notified of this annexation by L. L. Lombard, who purported to be an agent of the Pacific Guano Company. The State Department replied that it had not yet received official notification of the seizure of these islands, but that the press reports indicated that the island "was not occupied at the time the British officers took possession", and that the Department would be pleased to receive proof of the Pacific Guano Company's alleged possession of Johnston Islands.

In July and August, 1892, Mr. Stevens, the United States Minister to Hawaii, reported that the British annexation of Johnston Island had been done under orders from the British Admiral at Vancouver, who in turn acted upon the command of the British Colonial Office, which had been requested to annex the islands by the Canadian Government, probably because of the proposed trans-Pacific cable.

No evidence has been found indicating that the United States protested to Great Britain against this annexation.

49. L. L. Lombard to Sec. of State, Aug. 5, 1892, 4 MS. Misc. Let. re Guano, Johnson and Agnes.
The Pacific Guano Company, although it complained of the Act, apparently did not furnish the proof of its occupation of the island, as requested by the State Department, and, consequently, the United States appears to have assumed that it was abandoned, and open to annexation by Great Britain. At any rate it was stated in 1899 that "the records of the Department do not show that any representations were made by this Government at that time [1892] to that of Great Britain on the subject".

However, the Hawaiian Minister of Foreign Affairs did protest against the British annexation of Johnston Island, addressing the British Commissioner at Hawaii. The result of this protest does not seem to have been communicated to the Department by the United States Minister at Hawaii. In the 1917 Colonial Office List, however, it is stated that the British "Protectorate" declared over Johnston Island was "afterwards withdrawn", and the island was "acknowledged to belong to Hawaii, on condition that the right to land a cable

52. Supra, Note 50.

53. J. Hay, Sec. of State, to Sec. of Navy, Feb. 17, 1899, 235 MS. Dom. Let. 44.

cable is conceded if desired". 55

e. United States Claim under the Hawaiian Annexation.

Johnston Islands are now usually regarded as a part of the territory of Hawaii, and, consequently, as a possession of the United States. 56 No record has been found, however, indicating when or how the Hawaiian Government took possession of these islands, except the affair of the KALAMA in 1858, 57 and the conditional recognition of Hawaiian sovereignty by the British Government after 1892. 58 Johnston Islands ("Johnson's or Connwallis") were included in the list of Hawaiian Islands and dependencies transmitted to the Secretary of State by Mr. Carter, Commissioner of the Hawaiian Provisional Government, in February, 1893. 59 They were omitted, however, from a similar list compiled by the Commission appointed by the President pursuant to Public Resolution No. 51, entitled "Joint Resolution to provide for Annexing the Hawaiian Islands to the United States," approved July 7, 1898. 60 Nevertheless, in view of all the facts

55. Sir. W. Mercer, Collins, J. R. Robinson, The Colonial Office List (London, 1917). It should be noted that, although compiled from official records, this book is stated not to be an official publication.


57. Supra, Notes 40 and 41.

58. Supra, Note 55.

59. S. Ex. Doc. 76, 52 Cong. 2 Sess. p. 43.

60. S. Ex. Doc. 16, 55 Cong. 3 Sess. p. 4.
facts and history of these islands, it is reasonable to conclude that they passed under the sovereignty of the United States in 1898 with the annexation of the Hawaiian Islands and Dependencies. In recent years in answer to inquiries about Agnes and Johnston Islands, the State Department has indicated that it considers the islands as belonging to the United States, because they are a part of the territory of Hawaii. In 1914, it was said merely that the island is on the list of guano islands appertaining to the United States. In 1920, however, the British acknowledgment of Hawaiian sovereignty noted in the 1917 Colonial Office List was quoted. In 1929, it was said that there was no private ownership or control of Johnston Island, and that it was listed in a bulletin of the Department of Interior as being under the jurisdiction of the Hawaiian Islands. Finally, it was said that "Johnston Island belongs to the Hawaiian group", and is under United States sovereignty.

In

61. 30 Stat. 750.
63. N. H. Davis, Under Sec., to Sec. of Navy, July 26, 1920 (800.014/4).
64. G. H. Hackworth to P. J. Grimm, Mar. 8, 1929 (811.014/15).
In 1905 one more attempt was made to realize a profit in Johnston Island as a guano island. Affidavits and contracts were filed with the Department in January, 1905, showing that Agnes Burt York, evidently the original Agnes Burt, daughter of William Parker, had agreed to let one Underwood visit the islands and remove guano, and had assigned her interest in the islands to him upon certain conditions. It was reported to the Department that these parties sent a vessel to the islands in February, 1905, and raised the American flag there, in the name of President Theodore Roosevelt, and in behalf of Agnes B. York, and that they proposed to blast a passage through the reef and build a wharf there. It should be noted that in these papers it was stated, or implied, that the island now belonged to the United States. The Department merely acknowledged the receipt of these communications. Nothing more appears to have been done regarding the islands by Anges B. York, or persons claiming under her.

66. Affidavit of J. G. Wilson, Jan. 17, 1905, 4 MS. Misc. Let. re Guano, Johnson and Agnes; E. B. Southworth to J. Hay, Sec. of State, Jan. 20, 1905, and enclosures, Id.; B. A. Lockwood, to Sec. of State, Aug. 9, 1905 and enclosures, Id.; do. to do., Sept. 10, 1905, enclosures, Id.

In 1918 the General Board of the Navy reported that these two islands were not of use to the United States in war, and no use to an enemy. On June 29, 1926, by Executive Order No. 4467, "Johnston Island and Sand island" were set apart for the use of the Department of Agriculture as a refuge and breeding ground for native birds, and certain sections of the United States Penal Code were stated to be applicable in case of depredations on the birds committed on the islands.

68. J. Daniels, Sec. of Navy, to Sec. of State, Jan. 26, 1918 (811.014/22).
69. C. Coolidge, Exec. Order No. 4467, June 29, 1926 (811.014/152).
f. Assignments of Johnston and Sand (Agnes) Islands, (also of Ryans, Parkers, Morrisons, Cornwallis or Smith, and one unnamed island). 70


2. William H. Parker and R. F. Ryan to Asa Stoddard and R. G. Byxbe, December 19, 1857, 5/8 interest in Pacific Guano islands claimed by Parker, on certain conditions (which were apparently fulfilled).

3. C. B. Chadwick to Emily F. Miner, May 27, 1861, all his interest in a deed given by him to L. L. Lombard of 1/32 of Johnston Island. 71

4. Samuel G. Burt and Agnes Burt (his wife) to Joseph Granger and George F. Granger, June 19, 1869, all the interest of Agnes Burt in Guano islands in the Pacific, particularly Johnston and Agnes Islands. 75

5. Agnes Parker Burt to James Hueston, July 15, 1879, 1/2 her interest in all the property belonging to William H. Parker at his death, including certain guano islands,

(Morrison,

70. Unless otherwise noted, all assignments are filed in 4 MS. Misc. Let. re Guano, Johnson and Agnes.

71. No deed to Lombard is on file.

75. Filed March 30, 1880.
(Morrison, Parker, Ryan, Johnston, Agnes, and Cornwallis for Smith's) and 1/2 of all claims, etc, receivable by Agnes Burtt from the Pacific Guano Company.

6. (a) Malvina H. Parker to James Hueston, October 9, 1879, all her interest in William H. Parker's Pacific guano islands.

(b) James Hueston (and Cordelia Hueston) to Malvina H. Parker, February 4, 1884, same interest reconveyed, with the note that this deed was not to effect the interest of Agnes Parker.

7. J. G. Wilson to Spencer Stillwell, July 20, 1904, Parker's seven Pacific islands: Johnston, Agnes, Ryan, Morrison, Parker's, Cornwallis, and one unnamed.

8. (a) Agnes B. York, by J. G. Wilson, Atty. in Fact, to William H. Underwood, Trustee, November 21, 1904. Assignment of the Parker's seven islands (as named above) on certain conditions.

(b) William H. Underwood, by his attorney, E. B. Southworth, to Phineas Coleman, June 9, 1905, all his interest in the Pacific guano islands mentioned in Parker's declaration (the islands as named above, in deed of Wilson to Stillwell).

(c) Phineas Coleman to the United States Guano Company, of Arizona, August 3, 1905, same interest.

9. There

76. 6 MS. Misc. Let. re Guano, Serranilla.
9. There is also on file a statement by G. A. Knight that he was by deed part owner of Mrs. Malvina Parker's claim to the islands. 77

10. There is a petition, dated March 4, 1859, by F. A. Tallmadge and N. Bennett in which they claim to be assignees of Parker. 78 Tallmadge's claim is supported by a statement in the affidavit of Samuel Brevoort, dated May 29, 1873, that Tallmadge owned a 1/16 interest in the islands. 79

77. G. A. Knight to J. G. Blaine, Sec. of State, April 22, 1891, 4 MS. Misc. Let. re Guano, Johnson and Agnes.
78. Id.
79. Id.
2. FRENCH FRIGATES SHOAL

a. Geography

French Frigates Shoal, at latitude 23°46'30" N. and longitude 168°16' W. is a crescent-shaped atoll 90 miles west of Necker Island, which in turn is about 250 miles northwest of Niihau, the nearest inhabited island in the Hawaiian group. There are a number of small sand islets on the reefs, and a picturesque volcanic rock called La Perouse Pinnacle, about 180 by 45 feet square and 120 feet high, rises midway between the points of the crescent. The shoal is surrounded by barrier reefs, and the lagoon is partly filled with growing reefs and shifting sandbanks. Anchorages may be found, however, off the shoal. Brackish water may be obtained from wells on the islets; coarse grass and shrubs are the only vegetation, and birds, fish and sharks the only animal life to be found in the vicinity.

b. Discovery

French Frigates Shoal was discovered by La Perouse, the French explorer, on November 6, 1786. He called it Basse des Frégates Françaises, after the two frigates of the expedition. (In translation, the name should therefore be "Frigates", not "Frigate").

c. United


81. Ibid.
c. United States Claim under the Guano Act.

On April 5, 1859, the Secretary of the Navy sent the State Department a notice of the discovery of guano on the shoal by J. M. Brooke, commander of the United States surveying schooner FENIMORE COOPER. In an affidavit dated February 17, 1859, Brooke stated that he discovered guano on the shoal on January 4, 1859; that the shoal was unoccupied; that he took possession of it in the name of the United States, in accordance with the Act of 1856, that he landed and erected a cross with a notice to that effect; and that he claimed all the rights to which he was entitled as a discoveror and possessor under the Guano Act. In a letter to the Secretary of the Navy, Brooke described the shoal, and alleged that it contained about 25,000 tons of guano. The receipt of these papers was acknowledged by the State Department.

The State Department was also informed of Brooke's claim by J. M. Borden, the United States Commissioner at Honolulu,

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82. Isaac Toucey, Sec. of Navy, to L. Cass, Sec. of State, April 5, 1859, and enclosures, 3 MS. Misc. Let. re Guano, French Frigates Shoal.

83. Id., Enclosures.

84. L. Cass, Sec. of State, to I. Toucey, Sec. of Navy, April 9, 1859, 50 MS. Dom. Let. 213.
Honolulu, who stated that since the visit of the FENIMORE COOPER to the shoal, other parties had been there, and that Brooke appeared to have been mistaken as to the quantity of guano on the island. He reported that, at the request of the discoverer, he gave public notice of the discovery, in order to prevent any trespassing on private rights.\(^8\) 5

On June 7, 1859, George Baker, of New York, wrote the State Department, claiming that Brooke could not divest himself of his official capacity and take possession of the shoal for himself. Baker said that the ship SOUTH SEAMAN had recently been wrecked on the shoal, and that his men were engaged in saving the vessel, and had taken possession and occupation of the shoal. In support of his contentions he enclosed an affidavit, dated June 7, 1859, in which he alleged that he, and Lambert and Samuel Beatty gave notice that on March 10, 1859, the Beattys had discovered guano on the shoal; had taken possession of it in the name of the United States, and had ever since been in occupation of it; that it was unoccupied and not in the possession of any other jurisdiction; and that they desired it to be considered as appertaining to the United States.\(^8\) 6 The receipt of this communication does not seem to have been acknowledged by the Department.

\(^8\) 5. J. M. Borden, U. S. Com'r., Honolulu, to L. Cass, Sec. of State, May 21, 1859, 9 MS. Dispatches, Hawaii, No. 16.

\(^8\) 6. G. Baker to L. Cass, Sec. of State, June 7 1859, and enclosures, 3 MS. Miscl. Let. re Guano, French Frigates Shoal.
The only other mention of guano on French Frigates Shoal in the State Department's files is a reference in a letter from C. A. Williams of Honolulu (of the Phoenix Guano Company) to the discovery by the United States schooner PENCIMORE COOPER, and to the fact that the ship MODERN TIMES had left Honolulu sometime previous to March 28, 1859, to go to the shoal for a cargo. He also referred to the loss of the clipper whaleship SOUTH SEAMAN on the shoal. 87

It is clear that the United States Government never recognized the claims of either Brooke or Baker to guano on French Frigates Shoal under the Guano Act. There is no letter recording any such recognition. Furthermore, claimants did not comply with, or attempt to comply with, the conditions of the act. The shoal was never bonded, and does not appear on any of the lists of Guano Islands appertaining to the United States compiled by the Treasury Department. 88 d. United States claim under the Hawaiian Annexation.

Geologically, the French Frigates Shoal is a part of the Hawaiian group. These islands, from Oahu, the largest and easternmost, to Ocean Island, the westernmost, stretch some 2000 miles from southeast to northwest across the North Pacific Ocean. The Western group, from ocean to Dowsett Reef,

87. C. A. Williams to (ə), Mar. 28, 1859, copy, 3 MS. Misl. Let. re Guano, Enderburys.

88. See Bonds, Supra. Note 18; 6 MS. Misl. Let. re Guano, Sombrero; Id., Misl.
Dowsett Reef, are probably the tops of submerged mountains, raised by coral reefs, sand, and wind. The middle group, from Gardner to Nihoa or Bird Island, and including French Frigates Shoal, is all that is visible above water of the continuation of the mountain chain. This is the transition group between the coral mountains to the north, and the larger volcanic mountains to the south, the inhabited Hawaiian Islands. 89

By the Joint Resolution approved July 7, 1898, the cession of the Hawaiian islands and "their dependencies" to the United States, by the Government of the Republic of Hawaii, was accepted by the United States, and the islands were "annexed as a part of the territory of the United States". 90 French Frigates Shoal was included in the list of the Hawaiian Islands and dependencies transmitted to the Secretary of State by Mr. Carter, Commissioner of the Hawaiian Provisional Government, in February, 1893, 91 and in a similar list compiled by the Commission appointed by the President pursuant to Public Resolution No. 51, entitled "Joint Resolution to provide for annexing the Hawaiian Islands

91. S. Ex. Doc. 76, 52 Cong. 2 Sess. p. 43.
Islands to the United States", approved July 7, 1898. In view of these lists, and the absence of any claim to French Frigates Shoal by any other Government, and because of its geographic connection with the inhabited Hawaiian islands, it may be assumed that the shoal is one of "their dependencies".

The United States has, in fact, treated French Frigates Shoal, as a part of the territory of Hawaii. The entire chain of islands north of the inhabited Hawaiian islands, with the exception of Midway, has been set aside by the Federal Government to form the Hawaiian Islands Bird Reservation, said to be the largest and most populous bird colony in the world.93

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92. S. Ex. Doc. 16, 55 Cong. 3 Sen. p. 4.

3. PALMYRA (SAMARANG) ISLAND

a. Geography.

Palmyra, (or Samarang), at latitude 5°53' N., longitude 162°05' W., is about 963 miles south of Honolulu, 33 miles south of Kingman Reef, and 120 miles northwest of Washington Island. It is an atoll, 5-2/3 by 1-1/2 miles square, rising from a reef which extends about 8 miles, east and west. It is composed of many islands, none over 6 feet high, and the largest of which contains about 46 acres of land. There are three lagoons, but no passages connect them with the open sea. There are some anchorages off the island, but the currents are strong and shoals dangerous, and landing is difficult. Rainfall is heavy, and the islets are covered with bushes and cocoanut trees. Fish, sharks, and crabs are plentiful in the surrounding waters.94

b. Discovery.

Palmyra was discovered by Captain Sawle of the American vessel PALMYRA, on November 6 or 7, 1802. In 1874, it was surveyed by Commander J. S. Skerrett of the U. S. S. PORTSMOUTH.95


Captain W. W. Taylor, in his affidavit of February 12, 1859, relating to the discovery of guano on certain Pacific islands,

94. Pacific Islands Pilot, H. O. 166, Supra, Note 1, pp. 555-557.
95. Brigham, Op. Cit. Supra, Note 1, p. 127; H. E. Cooper to W. F. Frear, Gov. of Hawaii, Jan. 9, 1912 (Enc. in 711.411 Pl.3)
islands, listed "Palmyros", at latitude 5° 48' N., longitude 162° 20' W, and "Samarang islands", latitude 5° 10' N., longitude 162° 20' W. Samarang is another name for Palmyra but as he also listed "Palmyros" at a position different from that given for Samarang, it is probable that he intended to create the impression that there were two islands in that vicinity. Moreover, it should be noted that Captain Taylor did not state that he had landed on and taken possession of these specific islands. He alleged merely: "that many years since he cruised in the Pacific Ocean in the region embraced within Longitude (180°)....., and the western coast of America and Latitude (10°) ten degrees North and (20°) twenty degrees South, that he had been at many of the Islands hereinafternamed, in that region of the Pacific. That he has reason to believe they contain large and valuable deposits of guano....."96

Both Samarang and Palmyros as listed by Captain Taylor, are covered by Bond 9, dated February 8, 1860, and filed by the United States Guano Company,97 the assignee of Taylor's interest.98 Both islands appear on the lists of

96. Affidavit of Captain W. W. Taylor, Feb. 12, 1858, Copy filed with Bonds, Supra, Note 18.

97. Bonds, Supra, Note 18.

98. See Infra, Assignments to the U. S. Guano Co.
guano islands appertaining to the United States, compiled by the Treasury Department. On the list of August 23, 1867, there is also the notation that a certificate for these islands was issued to the United States Guano Company. No other evidence of the issuance of such a certificate has been found.

In 1862 a Hawaiian newspaper reported that in October, 1859, formal possession had been taken of Palmyra for the United States Government by Dr. G. P. Judd, agent of the American Guano Company, who visited the island in the Brig JOSEPHINE, and left a notice of his possession and an American flag on the island; that it was believed that the United States Guano Company claimed the island, and that a proclamation had been issued by the State Department at Washington in favor of one of these claims. Apparently, actual formal possession was taken of this island, other than the dubious possession alleged by Taylor.

No evidence has been found, however, to indicate that either of these guano companies ever occupied Palmyra for the purpose of removing guano, or in fact for any other purpose. In none of the descriptions of the island, with the exception of that in Captain Taylor's affidavit, does it

99. 6 MS. Misc. Let. re Guano, Misc.
100. Id., Sombrero.
it appear that there is any guano on it. The presence of commercial guano is especially unlikely in view of the heavy rainfall and occasional submergence of the island by the sea.

d. Claim of Hawaii.

In the latter part of the 1850's, Captain Zenas Bent and J. Wilkinson, naturalized citizens of Hawaii, settled on Palmyra Island, and made improvements on it. In 1862 they petitioned the Hawaiian Minister of the Interior, Prince Kamehameha, to extend the sovereignty of the Hawaiian kingdom over the island, and on February 26, 1862, this petition was granted and the King, Kamehameha IV, issued a letter of authority, authorizing Bent to take possession of the island as Hawaiian territory. Accordingly, on April 15, 1862, Captain Bent, sailing in the Schooner LOUISA, took possession of the island, leaving a notice to that effect in a bottle on the island, building a dwelling house there, and a curing house for bêche de mer (a kind of slug). He stated, in his report to the Minister of the Interior that he left five people on the island, and intended to return himself in a few days. On June 18, 1862, Prince Kamehameha issued the following proclamation:

"WHEREAS, On the 15th day of April, 1862, Palmyra Island, in latitude 5° 50' North, and longitude 161° 53' West, was taken possession of, with the usual formalities, by Captain Zenas Bent, he being duly authorized to do so, in the name of Kamehameha IV., King of the Hawaiian Islands.
Islands. Therefore, this is to give notice, that the said island, so taken possession of, is henceforth to be considered and respected as part of the Domain of the King of the Hawaiian Islands.\textsuperscript{102}

Since 1862 Palmyra Island has been owned by citizens or corporations of Hawaii, and the conveyances of the island have all been duly recorded in Honolulu. It does not appear that the island has been continuously occupied by the owners, or persons claiming under them, but it is evident that it has been used to a certain extent, and that it has never been considered worthless by any of its private owners.\textsuperscript{103}

e. Claim of Great Britain.

It is reported that Great Britain annexed the island on May 28, 1889,\textsuperscript{104} and that the Commander of the H. M. S. CORMORANT took formal possession of Palmyra on that date.\textsuperscript{105} There is some evidence that he left a notice to that effect on the island.\textsuperscript{106} This act of possession was evidently part of the British trans-Pacific cable scheme.\textsuperscript{107}

\begin{itemize}
\item \textsuperscript{102} H. E. Cooper to W. F. Frear, Gov. of Hawaii, Jan. 9, 1912; Z. Bent to Prince Kamehameha, Min. of Interior, Hawaii, June 18, 1862; Copy of Proclamation of June 18, 1862; All are enclosures in W. F. Frear, Gov. of Hawaii, to Sec. Interior, Jan. 10, 1912 (711.4114Pl8).
\item \textsuperscript{103} Id.
\item \textsuperscript{104} Brigham, Op. Cit. Supra, Note 1 , p. 127.
\item \textsuperscript{105} P. G. Advertiser, Aug. 13, 1897, Copy (Enclosure in 711.4114Pl8).
\item \textsuperscript{106} H. E. Cooper to W. F. Frear, Gov. of Hawaii, Jan. 9, 1912. Id.
\item \textsuperscript{107} See J. D. Rogers, Australasia, (Oxford, 1925), pp.307-308
\end{itemize}
Since that time the island has been labelled a British possession in some British publications, notably in the 1932 *Statesman's Year Book*. However, in a publication of the British Foreign Office of 1920 it is noted that the United States claims the island.

**f. United States Claim under the Hawaiian Annexation.**

Palmyra may be considered as United States territory because it was a part of the Hawaiian kingdom at the time of the annexation of Hawaii by the United States, in 1898. As has been seen, the Hawaiian Government formally extended sovereignty over the island in 1862, and it has since been owned by citizens and corporations of Hawaii. In the list of Hawaiian Islands and dependencies transmitted to the Secretary of State by Mr. Carter, Commissioner of the Hawaiian Provisional Government, in February, 1893, Palmyra Island is included. It is likewise included in a similar list compiled by the Commission appointed by the President pursuant to Public Resolution No. 51, entitled "Joint Resolution to provide for Annexing the Hawaiian Islands and Dependencies."  

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111. S. Ex. Doc. 76, 52 Cong. 2 Sess. p. 43.
Hawaiian Islands to the United States," approved July 7, 1898. The Joint Resolution annexing the Hawaiian Islands, does not mention the islands by name, but refers to the Hawaiian Islands and its dependencies. From the facts as described above it seems clear, however, that Palmyra was a dependency of the Hawaiian Government in 1898, and became, therefore, a territory of the United States upon the annexation.

The United States Government considered this question in 1912. In January of that year the Governor of Hawaii reported that the then owner of the island, Judge Henry E. Cooper, of Honolulu, believed that efforts were being made to assert British sovereignty over the island. He said that Father Rougier, owner of Fanning and Washington Islands, just south of Palmyra, had negotiated for the sale of these islands to a British syndicate; that he had offered to buy Palmyra from Judge Cooper; that upon Cooper’s refusal to sell, Father Rougier had stated that it was listed as a British possession in the High Commissioner's Office at Suva, Fiji. The Governor suggested that a United States vessel be sent to Hawaii to "confirm the claim of American sovereignty over it" in order to avoid possible difficulties in the future.1

Both 112. S. Ex. Doc. 16, 55 Cong. 3 Sess. p. 4.
113. 30 Stat. 750.
114. W. F. Frear, Gov. of Hawaii, to Sec. of Interior, Jan. 10, 1912, and enclosures (711.4114P18).
Both the State Department and the Navy Department agreed to this proposal, and the Secretary of the Navy contemplated sending a vessel to Palmyra with instructions to the commander to land there with a band and armed guard, and to take formal possession of Palmyra in the name of the United States.\textsuperscript{115} The State Department, however, pointed out that this would be inconsistent with the Department's previous attitude that the island already belonged to the United States, and wished the visit to avoid any show of force and to be merely for the purpose of reporting whether or not there was any evidence of a British claim on the island.\textsuperscript{116} This was agreed to and in February, 1912, Commander Southerland of the U. S. S. WEST VIRGINIA visited the island, and reported that there was no evidence on it of any effort on the part of Great Britain to claim sovereignty, and that it was uninhabited.\textsuperscript{117} The State Department then recommended that, if the island were considered

\textsuperscript{115} P. C. Knox, Sec. of State, to Sec. of Navy, Feb. 3, 1912 (711.4114Pl8); B. Winthrop, Acting Sec. of Navy, to Sec. of State, Feb. 9, 1912 (Id.,/1)

\textsuperscript{116} H. Wilson, Acting Sec. of State, to Sec. of Navy, Feb. 13, 1912 (Id.); See do. to do., Feb. 20, 1912, (Id.,/2); Sec. of Navy to Sec. of State, Feb. 23, 1912 (Id., /3).

\textsuperscript{117} B. Winthrop, Acting Sec. of Navy, to Sec. of State, Feb. 26, 1912 (Id. 4).
considered of any importance to the United States, some further and more positive assertion of sovereignty over the island be made, in order to avoid future international complications. 118 Accordingly the Department instructed the Governor of Hawaii as follows:

"Inasmuch as it appears from the report [of Southerland] that there is no evidence on Palmyra Island of an adverse claim of sovereignty thereto, and as American sovereignty over the Island, so far as the Department is informed, appears to be well founded, it is recommended that the Government of the Territory of Hawaii should in its official acts continue to recognize Palmyra Island as a part of that Territory, and should take occasion from time to time to have that fact appear in its public documents and on official maps of the Territory." 119

Since 1912, the Department has made various statements concerning the legal status of Palmyra, and appears to have grown gradually more confident of United States sovereignty over the island. 120 In 1923 it was said:

"Palmyra Island legally passed under the full sovereignty of the United States upon the annexation of the Hawaiian Islands by this country which took place on August 12, 1898. Palmyra Island now forms a part of the Territory of Hawaii." 121

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118. H. Wilson, Acting Sec. of State, to Sec. of Navy, Mar. 8, 1912 (Id.).

119. H. Wilson, Acting Sec., to Gov. of Hawaii, April 3, 1912 (Id.).

120. do. to Hon. Bœs Penrose, Mar. 14, 1912 (Id./6); do to G. E. Billings, May 8, 1912 (Id./9); A. A. Adée, Asst. Sec., to F. L. Long, Sept. 9, 1913(Id./10); do to Sec. of War, Mar. 12, 1920 (811.014/50).

The substance of this statement has often been repeated since that time, and there now seems to be no doubt that Palmyra is generally regarded as a United States possession. In 1924, it was reported that the inhabitants of Fanning and Washington Islands so regarded it.

Palmyra is not regarded as of much use to the United States, from a military point of view, by the Navy Department. In 1912 it was stated that the only military value of the island was the possibility of its use for a wireless station. In 1918, the General Board of the Navy reported that it was of no use to either the United States or to an enemy in war.

So far as the Department is informed, the copra business, for which the island has been developed, is not now — or was not in 1922, of any great importance. The island appears to be used occasionally for residence, and possibly for fishing purposes. It is apparently still owned by H. E. Cooper, and is leased to the Island of Palmyra Copra Co., C. and Q., managed by Mr. and Mrs. Fullard-Leo.

122. do. to G. S. Lee, Jr., July 21, 1925 (Id./12); T. Dennett (H.A.) to Mrs. Blandy, April 29, 1930 (Id./174a); E. C. Wynne (H.A.) to Nelson Brown, Aug. 27, 1931 (Id./222); State Dept. to Min. of Norway, Jan. 19, 1932, (Id./232).


124. Sec. of Navy to Sec. of State, Mar. 21, 1912, (711. 4114P18/7).

125. J. Daniels,
Footnotes continued:

125. J. Daniels, Sec. of Navy, to Sec. of State, Jan. 26, 1918 (811.014/28)

II. ISLANDS NOT CLAIMED BY ANY OTHER GOVERNMENT.

1. KINGMANS REEF (KINGMAN, MARIA SHOAL, CALDEU REEF, "DANGERS ROCK").

a. Geography

Kingmans Reef, at latitude 6° 25' N., longitude 162° 24' W., 33 miles north of Palmyra Island, and about 930 south of Honolulu. In the Pacific Islands Pilot it is described as a triangular atoll, about 9 1/2 by 5 miles in size within the 100 fathom line, and dry only at low water on the northeast, east, and southeast edges. However, in 1922 the members of an expedition to the reef reported that on the eastern end there is a small island, about 120 feet by 90 feet in size, and 5 to 6 feet high at high water. (The party was there at low tide, however.) Off the western shore a shoal stretch was said to extend about 400 feet, varying from 18 inches to 6 feet deep, and composed chiefly of live coral. At low water the reef extending on either side of the island was above water. This was reported to enclose a lagoon, about 10 miles long, with an entrance into it from the open sea about 24 feet deep. The lagoon, outside the shoal near the island, was found to be very deep, and the water smooth even in rough weather, presumably because of the protecting barrier reef.

b. Discovery

127. Pacific Islands Pilot, H.O. 166, Supra, Note 97, pp. 557-8

128. The Island of Palmyra Copra Co., to C. E. Hughes, Sec. of State, July 13, 1922, and enclosures (811.014K59).
b. Discovery

This reef is said to have been first seen and reported by Captain Kingman on the American ship SHOOTING STAR. It was also reported subsequently several times under different names by other shipmasters. In 1857 the British vessel TARTA struck on it. In 1897, it was surveyed by the British naval vessel PENGUIN. Commander Kilpatrick, on the American vessel EAGLE 40, saw land there in 1921, but failed to examine it closely because of rough seas.

c. United States Claim under the Guano Act.

Kingmans Reef appears on the list of alleged guano islands in Captain Taylor's affidavit of February 12, 1859 under the name of "Dangers Rock", at latitude 6° 30' N., longitude 162° 23' W, the position of Kingmans Reef. "Danger Rock", along with other so-called islands described by Taylor, passed by assignments to the United States Guano Company, and was bonded by them on February 8, 1860, (Bond 9). Consequently, "Danger" or "Dangers" Rock appears on the lists of Guano Islands appertaining to the United States.

129. The Honolulu Advertiser, July 15, 1922, Id.
130. Id.; Pacific Islands Pilot, H.O. 166, Supra, Noteff, pp. 557-8.
131. Taylor's affidavit, Supra, Note 96.
132. See Infra, Assignments to the U. S. Guano Co.
133. Bonds, Supra, Note 18.
States compiled by the Treasury Department, with the usual notation on the list of August 23, 1867 that a certificate for it was issued to the United States Guano Company of New York. 134

There is no other mention of Dangers Rock on file in the State Department. It is not by any means certain that there is or was any guano on this island, or even that there is such an island. It is, however, practically certain that no guano was ever removed from it, at least by claimants under the Guano Act. Moreover, Taylor's "discovery" may well have been fictitious, and he probably did not even land there. 135

d. United States Claim through Appropriation by an American Citizen.

On July 15, 1922, the Island of Palmyra Copra Company, a Hawaiian Corporation, notified the State Department that it had annexed Kingman's Reef in the name of the United States and for its own use on May 10, 1922. The Company stated that it believed this official notification was all that was necessary "in addition to listing it on our local tax returns." 136 Enclosed was a certified copy of the notice.

134. 6 MS. Misc. Let. re Guano, Misc., Id., Sombrero.
135. See Taylor's Affidavit, Supra, Note 96.
136. The Island of Palmyra Copra Co., ltd., to C. L. Hughes, Sec. of State, July 15, 1922 (811.014K59).
notice of possession, which was left on the island in a
glass jar, together with an American flag and copies of
Honolulu newspapers, by Lorrin A. Thurston, agent of the
Company. There was also a copy of his commission from
the Company, authorizing him to take possession of the
island in behalf of the United States.  Two clippings of
the Honolulu Advertiser were likewise enclosed, each with
accounts of the annexation by Mr. Thurston. 137

From these appers it appears that the Island of
Palmyra Copra Company, lessee of Palmyra Island, had been
interested in exporting copra, but that because of a
slump in the market after the World War, it had now turned
to fishing, and was interested in acquiring whatever island
there might be on Kingmans Reef for a fishing base,
since Palmyra was not available for this purpose because
of the difficulties of landing. It appears also that an
island said to be dry at high tide, and to bear no signes
of any submergence by the sea, and composed of broken
coral and sand, actually was found, landed upon, and form-
ally annexed. The proclamation was published in the
Honolulu Adviser, May 22, 1922, photographs taken of the
island and the landing party were published. 138

Mr. Thurston,

137. Enclosures, Id.
138. Id.
Mr. Thurston, the special agent of the Copra Company, thought that Kingman Reef might be valuable to the United States as a harbor, because the lagoon appeared to be deep, sheltered from rough weather at all times, and with a deep entrance into the open sea, and because the reef is situated at the crossing of two trans-Pacific routes, from Panama to the Philippines, and from San Francisco to Honolulu, Samoa, New Zealand, and Australia. 139

139. Article in The Honolulu Advertiser, July 15, 1922, Id.
2. SWAINS ISLAND (GENTE HERMOSA, JENNINGS, LA PEREGRINA, OLOSENGA ["OLOSEGA"], QUIROS, SWAIN).\(^{140}\)

a. Geography

Swains Island, at latitude 11° 03 1/2' S., longitude 171° 05 1/2' W., is 200 miles north of Apia and about halfway between the Samoan Islands and the Tokelau or Union Group. It is an isolated atoll about 5 or 6 (7 or 8?) miles in circumference and 80 feet high, surrounded by a coral reef. There is a brackish lagoon in the center containing several islets, but there is no entrance into the lagoon. There is no anchorage off this island, but a boat passage has been blasted through the reef, and a landing may be made on the western side. It used to be well-wooded, and there are said to be about 800 acres of coconut trees now on the island. The soil is poor, only sand and coral. There appears to be no guano there at present, and there probably never has been any.\(^{141}\)

b. Discovery

\(^{140}\). See J. C. Grew, Acting Sec., to Rand McNally and Co., July 10, 1925 (811.0141Q/29), quoting the decision of the U. S. Geographic Board in favor of the name "Swains", rather than any of the others given above. The native name is Olosenga, not Olosega, as it has been sometimes called.

\(^{141}\). Pacific Islands Pilot (H.0.166) Supra, Note\(^{94}\), pp. 525-6; Brigham, Op. Cit. Supra, Note 1, p. 70; M. Mitchell, V. S. Consul, Apia, Samoa, to Sec. of State, Aug. 20, 1910, No. 53 (811.0141Q/3).
b. Discovery

This island was discovered by the Spanish explorer Quiros, on March 2, 1606. He named it La Perengrina. Subsequently, Espinosa called it Isla de Gente Hermosa, from the beauty of its inhabitants. The position given by Quiros was so erroneous that Captain Swain, master of the American whaling bark, GEORGE CHAPLIN of Newport, Rhode Island, assumed he had discovered a new island when he landed there in 1850 or 1851. He left a report of his discovery with the American Consul at Sidney, New South Wales, and Commander Wilkes of the United States Exploring Expedition received this report and revisited the island in 1840, naming it Swain's Island. 142

d. United States Claim under the Guano Act.

The United States has some claim to this island under the Guano Act. "Quiros", at latitude 10° 32' S., longitude 170° 12' W. was included in the islands mentioned by Captain W. W. Taylor in his affidavit of February 12, 1859 in which he claimed to have discovered guano on certain Pacific islands. 143 Under this name, and at this position,


143. See Taylor's Affidavit, Supra, Note 96.
position, it was included in the blanket bond No. 9, of February 8, 1860, filed by the United States Guano Company, of New York, Taylor's Assignee.\textsuperscript{144} Subsequently, "Quiros", at this position, was included on the lists of Guano Islands appertaining to the United States, compiled by the Treasury Department.\textsuperscript{145} On the list of August 23, 1867, it is included among islands for which a certificate is said to have been issued to the United States Guano Company of New York.\textsuperscript{146} As with most of the other islands on Captain Taylor's list, there is no evidence that Captain Taylor ever landed on the island or in fact discovered guano there; and there is no evidence that guano was ever taken from the island or that it was occupied under the Guano Act by the discoverer or by any of his assigns. Moreover, no other evidence of the issuance of this certificate to the United States Guano Company has been found.

d. United States Claim through Appropriation by an American Citizen.

Swains Island has been occupied by an American citizen, however, since about 1856. Before that year, Captain Turnbull,

\textsuperscript{144} Bonds, Supra, Note 18; See Infra, Assignments to the U. S. Guano Co.

\textsuperscript{145} 6 MS. Miscl. Let. re Guano, Miscl.

\textsuperscript{146} Id., Sombrero.
Turnbull, a British subject, landed on the island and claimed it for himself. He died between 1882 and 1889. He is reported to have given Swains Island to Eli Jennings, an American citizen living in Samoa, in 1856. Eli Jennings lived on the island "continuously" from October 13, 1856, (1860?) until his death on December 4, 1878, with his Samoan wife, Maria, and their children, and native laborers imported for the most part from the Samoan and Union groups. Eli Jennings the Second, son of the first Eli and Maria, also resided on the island from the time of his father's death until his own death, in 1930. He was the devisee of his mother, Maria, to whom the island was left by Eli the first. At his death the property came into the possession (by Eli the Second's will) of a son-in-law, Carruthers, a British subject, and a son, Alexander Jennings, who, according to latest reports, still resides upon the island. Copra raising has been the chief, if not the only business of the Jennings family on the island.  

Apparently from 1856 until about 1909, "King Jennings" and his family reigned supreme upon Swains island, paying no taxes and submitting to no outside control or regulation.  

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147. Report of Lt. Com'r. Strum, U.S.S. FORTUNE, Nov. 25, 1918 (811.014/22); C. E. Hughes, Sec. of State, to Pres. Coolidge, April 9, 1924 (Id/34); Mason Mitchell, U. S. Consul, Apia, Samoa, to Sec. of State, Dec. 20, 1909, No. 40, (Id/1); Report of Lt. Com'r. Edgar, U.S.S. ONTARIO, May 15, 1925 (Id./33).
It is reported that they always flew the stars and stripes whenever a vessel touched there.\textsuperscript{148} However, there was no administrative connection between Swains Island and any American territory, and there does not appear to have been any between Swains and any British Territory or Protectorate, although in certain British publications it is included in the Union or Tokelau Group, and labelled "British".\textsuperscript{149} The American Consul reported in 1909 that "a few years ago" Great Britain "protectorated" Swains Island, and placed it under the jurisdiction of the British Commission of the Gilbert Islands Group.\textsuperscript{150}

In September, 1909, Captain Dixon, the British Resident Commissioner of the Gilbert Islands, visited Swains Island, and collected approximately $85 in taxes from Eli Jennings, without protest, according to the American Consul at Apia, Samoa. However, Jennings inquired of the latter whether he was bound to pay this as he believed the island was an American possession.\textsuperscript{151} The State Department merely informed the American Consul at Apia of William Taylor's notice of discovery of guano on Quiros Island, and

\begin{footnotes}
\item[148.] Report of Lt. Com'r. Strum, Supra, Note 147; See Mrs. R. L. Stevenson, The Cruise of the Janet Nichol, (Scribner's, N. Y. 1914) pp. 33-34.
\item[149.] British Possessions in Oceania (No. 144), Supra, Note 109, p. 14; Stewart's Handbook, Supra, Note 1, p. 500; Pac. Islands Year Book, H.O. 186, Supra, Note 126, p. 250.
\item[150.] M. Mitchell, U.S. Consul, Apia, Samoa, \textsuperscript{19} Sec. of State, Dec. 20, 1909, No. 40 (811.0141QL)
\item[151.] Id.
\end{footnotes}
and its bonding under the Guano Act, and called attention to the difference in the positions given for the island by the consul and by Taylor.\footnote{152}

In an opinion of the Solicitor, October 1, 1910, the Department was advised that the Government could not take jurisdiction of this island under the provisions of the Guano Act because it did not appear that the island was ever visited or occupied by Taylor, or that there was any guano on it which was either discovered or removed, and because:

"these defects are sufficient . . . . . to preclude the attachment of any private rights on the part of the alleged discovered or his assigns. The same defects would, it seems, also preclude the Government from taking jurisdiction of this island under the provision of this act." \footnote{153}

The Solicitor held, further, that the United States had not acquired sovereignty over the island under international law because both discovery and occupation must be accomplished with the sanction of the State, and it did not appear that Jennings had lived there "with the sanction of the United States or that the United States has ever exercised any actual sovereignty over the island." \footnote{154}

\footnote{152. \W. J. Carr, Asst. Sec., to M. Mitchell, U. S. Consul, Apia, June 18, 1910, No. 26. (811.0141Q/2). See also Id/3.}

\footnote{153. 1910, Part II, Sol. Op., (Also 811.0141Q/4).}

\footnote{154. Id.
The Department informed the American Consul as follows:

"From the facts before the Department, it is not clear whether Quiros Island was ever in fact discovered and occupied with the sanction of the United States, and whether the United States has ever actually exercised jurisdiction over the Island. In the absence of further evidence on these points, it is an unsettled question whether this Government could well maintain a claim to the sovereignty of this island, based on the mere occupation thereof by a private citizen".

It was added, however, that if Jennings believed he had a good claim against the British Government for taxes, he might present a statement to the Department for its consideration.155

The question was settled unexpectedly by Great Britain. Although no record has been found of any protest by the United States Government, on November 21, 1910, the British Assistant High Commissioner for the Western Pacific informed the American Consul at Apia that the British Government recognized Quiros Island as an American possession where the American flag had been flown continuously for the past fifty years, and that he had ordered a repayment of the taxes collected in 1909 to Mr. Jennings.156 The taxes were repaid on August 10, 1911, by the British Resident Commissioner of the Union Islands Group.157

156. M. Mitchell, U. S. Consul, Apia, Samoa, to Sec. of State, Nov. 28, 1910, No. 57 (811.0141Q5,6).
157. Do. to do., Dec. 27, 1911, No. 81, and enclosure (Id./8)
In 1912, Great Britain again impliedly recognized the sovereignty of the United States over Swains Island. The British Commissioner at Union Island requested the American Consul at Apia to inform Jennings that he must comply with British regulations when recruiting labor for "non-British territory" from islands under a British protectorate. The American Consul so instructed Jennings. 158

In 1913, the Governor of American Samoa recommended that Swains Island be placed under his control and jurisdiction. 159 The State Department saw no objection to the proposal; 160 nor did the Departments of War 161 and Navy 162 and the Department of Commerce wrote that it "considers it desirable". 163 Nevertheless, there was some doubt as to how this jurisdiction should be extended, whether by Executive Order, or by Congressional action, 164 and nothing was done for several years. In 1918, the General Board of

158. do. to do., April 11, 1912, (Id/10).
159. V. Blue, Acting Sec. of Navy, to Sec. of State, Nov. 18, 1913 (Id./11).
160. Lansing, Sec. of State, to Sec. of Navy, June 3, 1914 (Id).
161. L. M. Garrison (?) Sec. of War, to Sec. of State, July 9, 1914 (Id/18).
162. J. Daniels, Sec. of Navy, to Sec. of State, June 11, 1914 (Id/15).
163. E. F. Sweet, Asst. Sec. of Com., to Sec. of State, Nov. 6, 1914 (Id/19).
of the Navy reported that Swains Island was of no use to either the United States or to an enemy in time of war. 165

In 1918, the British Government transmitted to the State Department certain complaints regarding labor conditions on Swains Island, stating that:

"His Majesty's Government understands that the Island in question is United States territory, and they therefore think it right to submit these documents to the United States authorities." 166

Thereupon, the Governor of American Samoa ordered Commander Strum of the United States Navy to visit Swains Island and report on conditions there. Commander Strum found that there was no basis for any complaint, and concluded in fact, that the natives on Swains Island were exceptionally well treated. In his report he stated that he believed the complaints had been inspired and instigated by a British subject, Captain Allen, who was interested in obtaining a monopoly of the Swains Island copra trade, and in upsetting the Jennings title. 167 The results of this investigation were communicated to Great Britain. 168

In

165. J. Daniels, Sec. of Navy, to Sec. of State, Jan. 26, 1918, enclosure (Id/28).

166. C. Barclay, Br. Chargé, at U. S., to Lansing, Sec. of State, Jan. 30, 1918, (Id./22).


In 1923, the United States admitted in a rather tentative fashion, that Swains Island might belong to the United States. In a letter to the Board of Surveys and Maps of the Federal Government, the State Department said:

"Since Swains Island...is included within the list of Guano Islands appertaining to the United States, ......... and since no other country, so far as the Department is aware, exercises or claims the right to exercise sovereignty over the island, and moreover since the island has for a long period of time been in the possession of American citizens, and the only other Government which has ever assumed to exercise jurisdiction over the island has since recognized the island as American territory, I perceive no objection to its being tentatively indicated on the map as appertaining to the United States, notwithstanding that this Government has not formally declared the island to be under its jurisdiction."

In 1924, it was called to the Department's attention that the second Eli Jennings had died in 1920, and that no court would exercise jurisdiction in probating his will. The first Eli Jennings' will had been probated in the American Consular Court at Apia, but since the Convention of December 2, 1899, between the United States, Great Britain and Germany, the extraterritorial jurisdiction formerly exercised by these courts had been terminated. The Secretary of State was finally induced to recommend to the


170. The Department had been informed in 1914 that there was a controversy over the will of Maria Jennings—See M. Mitchell, U. S. Consul, Apia, Samoa, to Sec of State, Feb. 11, 1914, No. 108 (811.01410/13).
the President that he ask for Congressional action to include Swains Island in American Samoa, and put it under that territory's administrative and judicial authority. His recommendation was transmitted to Congress on May 23, 1924, and by a Joint Resolution of Congress, approved March 4, 1925, the sovereignty of the United States was extended over the Island. The Resolution recited that:

"Whereas Swains Island (otherwise known as Quiros, Gente Hermosa, Olosega, [should be Olosenga] and Jennings Island) is included in the list of guano islands appertaining to the United States, which have been bonded under the Act of Congress approved August 18, 1856; and 

"Whereas the island has been in the continuous possession of American citizens for over fifty years and no form of government therefor or for the inhabitants thereof has been provided by the United States; Therefore be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the sovereignty of the United States over American Samoa is hereby extended over Swains Island, which is made a part of American Samoa and placed under the jurisdiction of the administrative and judicial authorities of the Government established therein by the United States."

On

171. C. E. Hughes, Sec. of State, to Pres. Coolidge, April 9, 1924 (811.0141Q/24).

172. Id/27.


174. Id., See (811.0141Q/31).
On May 13, 1925, Lieutenant-Commander Edgar of the U.S.S. ONTARIO landed on Swains Island, proclaimed United State's sovereignty and the jurisdiction of American Samoa over it, and raised the American flag. 175 He rendered a report dated May 15, 1925, in which he described the conditions on the island and made some recommendations. He said that the labor conditions appeared to be good, and that the natives were contented. He regarded the island as quite rich, stating that about 20 tons of copra a month were exported. There was at that time a rather poor road around the island, several European and many native houses, a church, a Ford truck, and an old motorboat. He recommended procedure for the collection of customs, duties and taxes, through the American Consul at Apia, and proposed that someone be stationed on the island, who could report and inform the Government as to the conditions, and that the island be visited once a year by the station's ship. 176 This appears to be the latest information on file in the State Department regarding Swains Island. The population of the islands is reported as 99 in 1930. 177

175. Q. Roberts, U. S. Vice Consul, Apia, Samoa, to Sec. of State, July 9, 1925, No. 590 (Id./35).


177. Pacific Island Yearbook, Supra, Note 126, p. 249.
PART II. ISLANDS CLAIMED BY GREAT BRITAIN.

I. THE NORTHERN LINE ISLANDS.

1. WASHINGTON ISLAND (NEW YORK, PROSPECT). 178

a. Geography

Washington Island, at latitude 4° 43' N., longitude 160° 25' W., is 75 miles northwestward of Fanning Island. It is about 3 1/2 by 1 1/4 miles square, and 10 feet high. There is a fresh water lagoon or pond 1 1/2 miles long in the eastern part of the island. A fringing reef surrounds the island, part of it very close to shore, and part of it from 600 to 1000 yards out. There are exposed anchorages off the western side, and a dangerous landing through the reef, but there is no boat passage into the lagoon.

The soil of Washington Island is fertile, but the water supply is poor. Guano exists on the island, but the deposits are not now worked. There are peat bogs in the center where the old lagoons used to be, and the area around the fresh water pond is covered with luxurious tropical vegetation, cocoanuts, lofty palms and other trees. 179

There is another island called Washington, in the Marquesas Islands, at latitude 8° 54' S., longitude 139°, 33' W.


179. Id., Pacific Islands Pilot, Supra, Note 9, Pp. 553-555; Stewart's Handbook, Supra, Note 1, p. 413; Brit. Possessions in Oceania, Supra, Note 109, pp. 93-94; W.W. King, Report, 1924, Supra, Note 123.
33° W. This island is better known by its native name of Uattuka or Huahuna. It is, of course, entirely distinct from the "Guano island" of Washington or New York, northwest of Fanning Island. It should also be distinguished from the island of Eiao in the Washington Group of the Margnesas, which is also called New York.

b. Discovery

Washington Island was discovered by Captain Edmund Fanning, an American, in 1798, and named by him New York Island. He gave the same name to Eiao, in the Marginesas, in 1798. Washington appears to have been uninhabited for many years after its discovery.

c. United States Claim under the Guano Act.

On December 27, 1858, George W. Benson, subsequently an officer of the United States Guano Company, filed with the State Department documents relating to the discovery and claim to guano on Washington Island. The claim was based upon an affidavit, dated October 6, 1858, by James

James Hammond, shipmaster, of Newport, Rhode Island. Captain Hammond alleged that while sailing the American ship MOCTEGIMA (?), in September 1845, he discovered a barren, uninhabited island at latitude 4° 40' N., longitude 160° 07' W., "known on the charts as Washington Island"; and that, from his observations, he believed that there was guano on this island, as it seldom rained in that vicinity and the birds were numerous. A quit-claim deed, dated October 6, 1858, from Captain Hammond to George W. Benson, assigning all Hammond's interest in Washington island was also filed with the affidavit. 184 Washington Island is included in the Pacific islands covered by blanket bond No. 9, of February 8, 1860, filed by the United States Guano Company, the Assignee. 185

On the list of guano islands appertaining to the United States, compiled by the Treasury Department, August 23, 1867, Washington Island is included among those for which a certificate was said to have been granted to the United States Guano Company, of New York. 186 No other record of the existence of this certificate has been found.

184. Enclosure, Id.
185. Bonds, Supra, Note 18; See Infra, Assignments to the U. S. Guano Co.
186. 6 MS. Miscl. Let. re Guano, Sombrero.
There is only a letter from the State Department to G. W. Benson, acknowledging the receipt of the papers relative to Washington Island, and stating that they had been filed. 187

On the Treasury's list of August 23, 1867, "Washington or Uahuga" is listed as a bonded guano island, and the position given as latitude 80° 56' S., longitude 139° 33' W. 188

This is the position of the Washington Island in the Marquesas Group, which is the only Washington island also called Uahuka, and was certainly not the island described by Hammond. 189

On the subsequent lists compiled by the Treasury Department, Washington or (Uahuga) appears, but at the position named by Hammond. 190

Subsequent references to Washington Island indicate beyond a doubt that the so-called "Guano Island" of Washington is the Northern, "Line" Island and not the Marquesas Island. The alternative name Uahuga should never have been given on the Treasury Lists.

In 1862, a Hawaiian newspaper reported that "York" Island had been taken possession of, formally in 1859, by Dr. G. P. Judd, Agent of the United States Guano Company. 191

No other evidence


188. 6 MS. Misc. Let. re Guano, Sombrero.

189. See E. R. Knorr to W. Seward, Sec. of State, April 8, 1868, I. Id. Alta Vela.

190. 6 Id. Misc., Misc.

191. P.C. Advertiser, June 26, 1862, (enclosure in Gov. Frear to Sec. of State, April 3, 1912 (711.4114P13/8).
evidence has been found, however, to indicate that the island was ever actually occupied or exploited by the company, or by any other American claimant. In fact, there is no mention of this island in the correspondence of the State Department until 1918. In that year the General Board of the Navy noted that Washington had been taken possession of by Great Britain without protest by the United States, and that it was "no use to the United States. No use to an enemy." 192 In 1920, in reply to a request from the Secretary of the Navy that the State Department "definitely set forth" the ownership of Washington, the State Department replied that it had no official information upon which to base an authoritative reply, quoted the Century Digest and Cyclopaedia and Statesman's Year Book of 1919, to the effect that it was a British possession, noted that Washington was included by Great Britain in the Gilbert and Ellice Islands Colony established in 1892, and concluded by calling attention to the fact that it was included in Judge Moore's list of guano islands appertaining to the United States, bonded under the Act of 1856. 193 In 1924, the State Department wrote the Secretary of Commerce regarding the political status of Washington Island, which appeared to have been "...formally annexed by Great Britain." 194

192. J. Daniels, Sec. of Navy, to Sec. of State, Jan. 26, 1918 (811.014/28 Confidential).
193. Norman Davis, Under Sec., to Sec. of Navy, July 26, 1920 (800.014/4).
194. A. A. Adee, Acting Sec., to Sec. of Com., July 18, 1924 (811.014/110).
d. Claim of Great Britain

The British Protectorate over the Gilbert and Ellice Islands was proclaimed in 1892, and by an Order in Council of January 27, 1916 (effective April 21, 1916), Ocean, Fanning and Washington Islands were included within the boundaries of the Gilbert and Ellice Islands Colony. This appears to be the first formal act of possession by Great Britain over Washington Island, but apparently it was already "appropriated" along with other uninhabited islands in the Pacific, possibly in 1889, because of the British trans-Pacific cable scheme.

British occupation began some time in the 1870 decade. Captain Greig, a British subject, whose wife was a chieftess of Manihiki, settled on Fanning, with natives from his wife's home, and "established title by occupation" to both Fanning and Washington Islands. He was at the time a famous character in the South Pacific, and was known as the "King" of Fanning Island. He raised copra and took an American resident of Honolulu as partner, and during his life close connections were maintained with Honolulu. On his death suit was brought for the settlement of the estate, and the court at Suva, Fiji Islands, ordered the islands sold at auction and payment of the various interests.

195. 110 British and Foreign State Papers 93.
196. J. D. Rogers, Op. Cit. Supra, Note 107, p. 308; British Possessions in Oceania, Supra, Note 109, p.11,15
interests in cash. A Frenchman, Father Rougier, bought both Fanning and Washington Islands in 1908 at the auction for £27,000 cash. He owned them five years, clearing about £5,000 a year from the export of copra. He gradually replaced the Manihiki natives with Tahitians, and employed some of Greig's descendants as overseers. In about 1913 or 1914 Father Rougier sold the islands to C. A. Armstrong and Percy Armstrong, British subjects residing in Canada, for £70,000, and bought Christmas Island from Lever Brothers, of London, instead. The Armstrongs sold both islands to Messrs. Pelly, Mann, George and Company, for £200,000. Pelly and Mann formed a corporation, Fanning Island, Limited, Pelly owning two-thirds and Mann one-third of the stock.\footnote{197}

At present the island is occupied by the employees of this company, two or three white managers and about fifty Gilbert islanders. Canals have been dug, traversing the whole island, and connecting the lake with the sea, and many cocoanut trees have been planted. Practically the only connection between Washington Island and the outer world is through the company's steamer DORIS CRANE, which makes three or four trips a year between San Frands co, Fanning and Washington. Occasionally Washington is visited by the Deputy Commissioner, residing at Fanning, and representing

\footnote{197. S. W. King, Report, Supra, Note 123.}
representing the British Resident Commissioner at Ocean Island, the seat of Government for the colony. 198
e. Assignments.

1. James F. Hammond to George W. Benson, October 6, 1858, all his interest in deposits on Washington Island, latitude 4° 40' N., longitude 160° 07' W. 198A

2. George W. Benson to the United States Guano Co., January 4, 1860, all his interest in Washington Island (and in Gardners, Starbuck, Macauleys and Goat, and the islands assigned to him by Captain W. W. Taylor). 198B

198B. 3 Id., Caroline.
2. FANNING ISLAND

a. Geography

Fanning Island, at latitude 3° 31' N., and longitude 159° 21' W., is an atoll about 145 miles northwest of Christmas Island. It is 34 miles in circumference, and 9 1/2 by 4 miles square, with a land area of 17 square miles. The land encircles a large, shallow lagoon and is only about 2 or 3 feet high, except along the outer coast line where the sea has thrown up coral debris to a height of about 10 feet. There is an entrance to the lagoon at English Harbor on the northwest side, and two anchorages off the Island. Landing is difficult because of the surf except at Whaler Anchorage on the northwest side, where there is a pier.

There is considerable rainfall, and plenty of fresh water may be obtained from shallow wells. Game birds, crabs and fish may be obtained. Formerly, guano of an inferior quality was exported. The soil is fertile and there are many cocoanut trees on the Island, and also bananas, breadfruit, figs, pineapples, and arrowroot. The exporting of copra and pearl shell is now the chief industry. 199

b. Discovery

199. Pacific Islands Pilot, H. O. 166, Supra, Note 144, pp. 548-553; Pacific Islands Yearbook, Supra, Note 126, p. 87; British Possessions in Oceania (144), Supra, Note 109, pp. 83-84, 15-18.
b. Discovery

Fanning Island was discovered in 1798 by Captain Edmund Fanning, an American, in the ship BETSY.200

c. United States Claim under the Guano Act.

The only reference to any claim to Fanning Island under the Guano Act is found in Captain W. W. Taylor's affidavit of February 12, 1859, relating to the discovery of Guano Islands in the Pacific. In that affidavit Captain Taylor lists "America islands" at latitude 3° 40' N., longitude 159° 28' W. This position is very near to and just southwest of that now given for Fanning Island. Moreover, it is said that this group of islands was sometimes called the America Islands because they were at one time frequented by American Guano Traders.202 America Islands were included in Bond 9, dated February 8, 1860, filed by the United States Guano Company, the successor to Taylor's interest.203 With the other islands listed by him, it is included in the lists of Guano Islands appertaining to the United States compiled by the Treasury Department.204 On the list of August 23, 1867, it is noted

201. Taylor's Affidavit, Supra, Note 96.
203. Bonds, Supra, Note 18; See Infra, Assignments to the U. S. Guano Co.
204. 6 MS. Misc. Let. re Guano, Misc.
noted that a certificate for these Islands was issued to the United States Guano Company of New York, but no other record of the issuance of this certificate has been found.

No other reference to America Islands has been found in the files of the State Department. It may be assumed that if Fanning Island was meant, it was never taken possession of or occupied by a United States citizen claiming it under the Guano Act, for there is no record in the Department of any such act. If Fanning was not meant, no interest could have accrued to the United States, or to any other country, because America Islands at the position indicated do not exist, so far as can be ascertained.

d. Claim of Great Britain.

In April, 1888, the United States Minister to Hawaii reported that three islands in the Pacific, - Fanning, Penrhyn, and Christmas,- had been visited by the British ship CAROLINE, commanded by Sir William Wiseman, and "were formerly taken possession of by Captain Wiseman on behalf of the Government of Great Britain." This act of possession took place on March 15, 1888. The United States did

205. Id., Sombrero.
206. G. Merril, U. S. Min. to Hawaii, to T. F. Bayard, Sec. of State, April 4, 1888, 23 MS. Dispatches, Hawaii, No. 179.
did not protest the British action with regard to Fanning Island, although there was some protest as to Christmas.\(^\text{208}\) There is little doubt that the British appropriation of Fanning was accomplished because of its possible use as a cable landing in connection with the British Trans-Pacific Cable scheme.\(^\text{209}\) A cable station was in fact established on Fanning Island in 1902 for the transmission of messages from Vancouver Island to Suva, Fiji.\(^\text{210}\)

By an Order in Council of January 27, 1916 (effective April 21, 1916), Fanning Island was included within the boundaries of the Gilbert and Ellice Island Colony.\(^\text{211}\) Ocean Island, 1880 miles away, is the administrative center of this colony, but a Deputy Commissioner resides on Fanning, and exercises jurisdiction over Fanning and Washington.\(^\text{212}\)

British occupation of Fanning Island appears to have begun even before the formal act of possession in 1888. Some time in the 1870's, Captain Greig, a British subject whose wife was a chieftess of Manikiki, settled on Fanning with natives from his wife's home, and "established title by occupation" to both Fanning and Washington Islands.\(^\text{213}\)

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211. 110 Br. and For. State Papers 93.
212. Pacific Islands Yearbook, Supra, Note 126, p. 87.
213. S. W. King, Report, Supra, Note. 123.
For years he was known in the South Seas as "King" of Fanning Island. He planted cocoanut trees, and exported copra. He took as partner an American resident of Honolulu, and during Captain Greig's life, close connections were maintained with Honolulu. On his death suit was brought for the settlement of the estate, and a court at Suva, Fiji, ordered the Islands sold at auction and payment of the various interests in cash. A Frenchman, Father Rougier, bought both Fanning and Washington Islands in 1908 at the auction for £27,000 cash. He owned them five years, clearing about £5,000 a year from the export of copra. In 1913 or 1914 he sold them to the Armstrongs, British subjects, and they sold both islands to other British subjects who formed a corporation, The Fanning Island Limited.214

This Corporation is the present private owner and occupant of the Island. It is also occupied by about forty employees of the Cable Company which maintains a transmitting station there. There are two settlements, English Harbor and Whaler Anchorage. In 1928 the population was reported as about 300 natives and 8 whites, plus 40 Cable Company employees. The Cable repair ship calls or used to call at the Island twice a month, and the copra Company owns an auxiliary schooner which makes about four trips a year to San Francisco.215

124. Id.

215. Id.; Pacific Islands Pilot, H.O. 166, Supra, Note 214, pp. 548 et. seq.; Pacific Islands Yearbook, Supra, Note 126, p. 87; British Possessions in Oceania, 144, Supra, Note 109, pp. 83–84
3. CHRISTMAS ISLAND

a. Geography

Christmas Island in the Pacific, at latitude 1° 55' N.,
longitude 157° 20' W., is 205 miles northeast of Jarvis
Island, and 165 miles southeast of Fanning Island. It is
said to be the largest atoll in the world, having a land
area variously estimated at from 260 to 375 square miles
(60,000 acres) and a coastline from 95 to 100 miles long.

There is a large, shallow lagoon in the western part of
the island, and many salt water lakes are scattered all over
it. In the middle of the entrance to the lagoon is Cook
or Sandy Islet, flat and bare, with a boat channel on
either side. The shoaling of the lagoon and the lakes in­
dicate that the land is gradually rising. The average
height of the island is about 15 feet, but several hills
are from 35 to 40 feet high. There is a chain of sand
hills on the eastern coast and there are several cocoanut
groves in different parts of the island.

There is no harbor in the lagoon, but there are several
safe anchorages off the west coast, close in shore. The
reefs extending under water from the points of the island
are dangerous, particularly the southeast horn which ex­
tends 10 miles under water. There are the wrecks of eight
vessels on the eastern coast. No lights have been erected,
but there are two beacons, one on northeast point, and
one on southeast point, and a cairn stands on northeast point. 216

Much of the soil on the island is quite rich, and there is some guano. However, because of frequent, heavy rains, most of the deposits are washed away. 217 Although all the lakes are salt, fresh water runs into the lagoon in two places, and may be obtained from wells.

The rainfall appears to vary greatly in different years, from one inch in the latter half of 1915, to thirty inches in 1918, and seventy-five inches in the first five months of 1919. The northeast trade winds blow over the island from November to May, and from June to October the winds are generally from the east and southeast. The temperature is about 91° maximum and 74° minimum. 218

The vegetation is luxuriant, including several kinds of grasses, a few flowers, and shrubs. One grove of cocoanut trees was found on the island in 1777, when it was discovered by Captain Cook, and others have grown up naturally, or been planted, and appear to thrive, although one or two severe droughts killed many. The Taunu, an umbrella-shaped tree, is also found there. 219

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218. Supra, Note 216.

Many kinds of fish, and large green turtles are numerous in the lakes and around the island, and sharks infest the lagoon. Lizards and "land lobsters" abound, but there are apparently no rats, as on Howland's and Baker Islands, no snakes, and few flies. Birds, however, are extremely numerous and include boobies, red-tailed tropic birds, snowy-terns, curlews, and some land birds, such as quail and a kind of sparrow. The rare puffin bird is peculiar to Christmas Island. Birds eggs are a staple food of the island.220

b. Discovery

Christmas Island was discovered by the British captain, James Cook, on December 24, 1777. Cook was then Commander of the RESOLUTION and the DISCOVERY, and was making his third voyage in the Pacific Ocean which culminated in his discovery of the Sandwich (Hawaiian) Islands. On his way north, before he had found the latter, he landed at Christmas Island, and spent a week there, building an observatory on the islet at the entrance to the lagoon, from which to watch an eclipse of the sun. During his stay he caught over 300 pounds of turtles, and planted some yams and melons of which no trace remained in 1835.221

It

220. For details, see account of the birds and fish found there in 1835, Bennett, Op. Cit. Supra, Note 216.

It is said that Christmas Island was not visited again for fifty years. Then both American and English whalers, the "South Seamen", began to stop a few days at the island to replenish their supplies with turtle, fish, and eggs. Later shark catching vessels came from the Hawaiian Islands. From time to time, many vessels were wrecked on the submerged reefs around Christmas Island, due to the poor charting and treacherous currents. On October 10, 1836, Captain George Benson and H. F. Tresilian, of the English whaling schooner BRITON, were wrecked there, and remained nearly eight months before rescued by a passing vessel. J. A. Payne, American shipmaster, was shipwrecked there from January 4, to March 25, 1848. Except for these occasional sojourns, Christmas Island was uninhabited until about 1870.

c. United States Claim under the Guano Act.

On February 15, 1825, Captain John Stetson, of New Haven, Connecticut, landed on Christmas Island from the American

223. Stewart's Handbook, Supra, Note 1, p. 415.
American ship EQUATER. Subsequent discoveries of guano on other Pacific islands led him to believe that there was guano on Christmas, and on May 11, 1857, he assigned his interest in the supposed guano on Christmas Island to A. G. Benson. Benson authorized Captain Jason Pendleton, of the American ship JOHN MARSHALL, to land and take possession of Christmas Island in his behalf. Accordingly, on June 20, 1858, Pendleton landed there and took possession of the island in behalf of the United States, and A. G. Benson and his associates (subsequently, The United States Guano Company). Captain Pendleton revisited the island on May 12, 1859, while cruising on the ship IVANHOE, chartered by the United States Guano Company, and took off samples of guano.

In the latter part of 1858, The United States Guano Company, a New York Corporation formed on November 25, 1858, by A. G. Benson and his associates, filed with the State Department the affidavits by Stetson and Pendleton regarding their discovery of guano on and occupation of Christmas Island, and had claimed the interest in the island under the Guano Act. On December 30, 1859, the Company transmitted a

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228. Assignment in 3 MS. Miscel. Let. re Guano, Christmas.
229. Affidavit of Jason L. Pendleton, Dec. 9, 1859, and Copy of letter from A. G. Benson to J.L. Pendleton, April 20, 1858, Id.
231. Report
a bond for Christmas Island, dated December 29, 1859, and in January, 1860, it was filed in the Treasury Department. 233

On October 1, 1860 the United States Guano Company requested that the State Department issue the usual certificate to the Company, recognizing its interest in Christmas and Malden Islands. 234 The State Department replied:

"No proof has yet been furnished of the quantity, nor any analysis of the quality of the guano thereon, nor is there anything to show that the United States Guano Company is in actual possession of either island. Until these deficiencies shall be supplied, the Department will not consider itself justified in issuing the certificate requested." 235

Subsequently, on October 6, 1860, an analysis of two samples of guano taken from Christmas was submitted, one of which contained 22.48% insoluble phosphoric acid, and the other 8.75%; but the only proof of occupation produced was another affidavit by J. L. Pendleton, dated September 15, 1860, restating the circumstances of his visit of 1859 in the ship IVANHOE. 236 The Department merely acknowledged the receipt of

of these papers and filed them.\(^{237}\) On the list of Guano Islands appertaining to the United States, compiled by the Treasury Department, August 23, 1867, Christmas Island is placed with a group of other islands, beneath which there is the following notation: "Certificates for which have been issued to the United States Guano Company, New York."\(^{238}\)

There is no other definite evidence that a certificate was issued to the United States Guano Company for Christmas Island, but whether it was or not, the island appears on all the lists compiled by the Treasury Department. On the list of August 23, 1867, the position is given as latitude \(0^\circ 41'\) S., longitude \(157^\circ 30'\) W.,\(^{239}\) but on the subsequent lists of February 12, 1869, July 3, 1890, and September 16, 1893, the position is given as latitude \(01^\circ 58'\) N., longitude \(157^\circ 10'\) W.\(^{240}\)

There appears to be no evidence on file in the State Department, and apparently no report at all, of any actual occupation of Christmas Island by the United States Guano Company, except for the transitory visits of Stetson and Pendleton.


\(^{238}\) 6 MS. Miscl. Let. re Guano, Sombrero.

\(^{239}\) Id.

\(^{240}\) Id., Miscl.
Pendleton. In or before 1869, Great Britain issued a license to a British subject to exploit the island, and he did not report it occupied at that time by any one else. However, on July 5, 1872, an Englishman sent there by another British lessee, reported that a few days before the United States ship NARRAGANSETT took formal possession of Christmas Island, for the United States, putting up a notice to that effect on a board erected on the shore. The island was then found to be occupied by three employees of C. A. Williams of Honolulu. C. A. Williams appears to have been an American citizen. He was, at any rate a member of an American firm, and one of the founders of the Phoenix Guano Company, of New London, Connecticut. There is no record on file in the State Department to show whether he was an assignee of the United States Guano Company, or whether he was merely exploiting the island independently, without reference to the Guano Act or other claimants. He appears to have abandoned the island, however, by 1879.

On January 29, 1875, Sir Edward Thornton, the British Ambassador to the United States, inquired of the Secretary

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242. O. A. Williams to L. Cass, Sec. of State, Nov. 5, 1859, 3 MS. Misc. Let. re Guano, Enderburys; see Infra, Phoenix Islands.

Secretary of State - "with a view to avoid any question as to the right of sovereignty over Christmas Island, whether the Government of the United States has finally abandoned and withdrawn its claim to the island..." 244

He stated that the island was discovered by Captain Cook in 1777; and that in 1865, when a British subject applied to the British Government for a lease on various Pacific islands, including Christmas, for the extraction of guano, "the question of the sovereignty of Christmas Island was investigated, and it was decided that it might be considered as accruing to the Crown". Subsequently the British Government issued a license for Christmas Island to a resident of Tasmania, but in 1869 it was cancelled at his request because the island was found to be unproductive. On June 9, 1871, a license was granted to another British subject whose agent arrived at the island on July 5, 1872, and found that it was occupied by three employees of C. A. Williams, and that a few days before it had been taken possession of formally by the United States ship NARRAGANSETT. This license was also cancelled at the licensee's request although Great Britain "considered that it had exercised sufficient possessorial rights to support its claim to the sovereignty of the island..." 245


245. Id.
The Secretary of State replied to this communication, calling attention to the discovery of guano by Stetson "before 1857", the assignment to A. G. Benson, the possession taken by Pendleton, and the bond filed by the United States Guano Company, under the Guano Act, and to the recognition of the title of that company by the United States. The note concluded as follows:

"There being no other papers touching the question of ownership to the guano deposits on said island than those mentioned above, and no notification that said company have abandoned the island on file in the Department, they are still considered to be entitled to the protection guaranteed by the laws of the United States in their possessory right, so far as such occupation may be necessary to secure the company or its assigns the deposits of guano found thereon." 246

It is significant that in this note the United States appeared to limit its claim to Christmas Island to the duty of protecting the United States Guano Company or its assignees in the exclusive extraction of guano from the island, and made no mention of a claim to permanent territorial sovereignty over the island. This position with regard to Christmas Island is restated by the Department

246. W. Evarts, Sec. of State, to Sir E. Thornton, April 1, 1879, Id. 713.
Department in a letter to A. P. Brown, September 2, 1881:

"The United States possesses no sovereign or territorial rights over that island. United States citizens who discover on an island or their assigns are protected by this Government in the prosecution of their enterprise which extends only to appropriation and disposal of the guano thereon. This protection is extended under the Act of Congress on the subject .......

In April, 1888, the United States Minister to Hawaii reported that three islands in the Pacific, Fanning, Penrhyn, and Christmas, had been visited by the British ship CAROLINE, commanded by Sir William Wiseman, and "were formally taken possession of by Captain Wiseman on behalf of the Government of Great Britain". He reported that the British Commissioner in Hawaii said that the trade with these islands was insignificant "but that they were valuable as coaling stations and possibly may be useful for telegraphic purposes in the event a cable is laid between Vancouver and New Zealand." The Secretary of State notified Mr. Henry White, the United States Chargé at London, of the receipt of this dispatch, and instructed him to call the attention of the British Foreign Office to the correspondence of 1879 between the two countries "relative to the possessory right to Christmas Island", adding:

"It


248. G. Merril, U.S. Min. to Hawaii, to T. F. Bayard, Sec. of State, April 4, 1888, 23 Ms. Dispatches, Hawaii, No. 179.
"It seems proper, under the circumstances, and in default of more precise information, to reserve all other questions which may grow out of the reported occupation of the island." 249

Mr. White called the attention of the British Foreign Office to the correspondence of 1879, but failed to make any reservation of rights, as instructed. 250

The British Foreign Minister replied that although the American company had apparently failed to notify the United States Government officially that they had abandoned Christmas Island,

"...it is evident that it had been abandoned before the 17th of April, 1882, now six years ago, for when the master of the ship REGNO, belonging to Messrs. Henderson and Macfarlane, of Auckland landed on the island that day they found it unoccupied, and accordingly proceeded to hoist the British flag and to take possession of it in the name of the firm." 251

No answer to this communication has been found, and, apparently, no further instructions were given Mr. White, in spite of his failure to obey the first instructions. The United States appears to have acquiesced in Great Britain's contentions.

d. Claim of Great Britain

The British claim does not purport to rest upon the discovery of the island by Captain Cook, apparently because the

251. Lord Salisbury,
the title so acquired was never perfected by settlement, occupation, or use, before occupation by the United States intervened. The basis of the British claim is rather abandonment by the United States before 1888, and subsequent occupation by British subjects, and possession taken and jurisdiction exercised by Great Britain.

As early as 1865 Great Britain began to exercise a certain amount of jurisdiction over Christmas Island. In that year a British subject, (Dr. Crowther, of Tasmania?) applied to his Government for leases of various Pacific islands, and, after an investigation, it was decided that the sovereignty of Christmas Island "might be considered as accruing to the Crown", and a license was granted. Dr. Crowther found the island unproductive and in 1869 the license was cancelled at his request. On June 9, 1871, the British Government granted another license for Christmas Island to Alfred Houlder, for 9 years. His agent, Doctor Weston, discovered on July 5, 1872, that the island was already occupied by employees of C. A. Williams, and had been taken possession of by the United States ship NARRAGANSETT. This led to the cancellation of Houlder's license at his request, but in 1879 he requested another license

license, stating that Williams had then abandoned Christmas Island.\textsuperscript{252} This request occasioned the 1879 correspondence between the United States and Great Britain in which the United States maintained that the United States Guano Company was apparently still entitled to occupy the island, and to be protected there by the United States Government.\textsuperscript{253}

In spite of this position of the United States, British citizens continued their attempts to develop the island, and the British Government soon supported them, convinced that the American Company had in fact abandoned Christmas Island. There is evidence that Captain Grieg, a British citizen, owner of Fanning and Washington Islands, made unsuccessful attempts to exploit Christmas. He was succeeded by Henderson and Macfarlane who established a cocoanut plantation, which failed to pay.\textsuperscript{254} It has not been discovered how long they occupied the island, although there is evidence that their agents took possession in 1882, and were there in 1884, 1885, and 1888.\textsuperscript{255} Subsequently in about 1906 (?) a 99-year lease was issued by the British Government to Levers Pacific Plantations, Limited, English Soap

\textsuperscript{252} E. Thornton, Brit.Amb. to U.S., to W. Evarts, Sec.ofState Jan. 29, 1879, \textsuperscript{712} For. Rel. 1, 713.

\textsuperscript{253} W. Evarts, Sec. of State, to E. Thornton, Brit.Amb. to U.S., April 1, 1879, Id. 713.


\textsuperscript{255} Lord Salisbury, \textit{Supra}, Note 254.
soap manufacturers. Levers Brothers planted 70,000
cocoanut trees, at a cost of about £20,000, but due to
two or three unusually severe droughts many trees died,
and in 1913 the company decided to sell at cost. Father
Rougier, a French citizen, then interested in Fanning and
Washington Islands, bought the Christmas Island lease from
Lever Brothers in 1913 for £10,000. Being a French citizen,
he could not own the lease in his own name, so he incor­
porated a British company for £20,000, the Central Pacific
Cocoanut Plantations, Limited, which took over the lease
in 1914. The lease granted the company the exclusive
right to occupy the island for their own use for the pro­
duction of coconuts, oil, pearl shell and guano, for 87
years from January 1, 1914. Father Rougier owns all but
a few shares of this company, the others being held by
dummy stockholders. By 1916 Father Rougier had a settle­
ment on the island and began extensive plantings of cocoa­
nuts.256

Father Rougier is still reported to be the owner of
the leasehold. In 1924 he received all supplies from San
Francisco and sold his copra there, carrying on a trade
in the American schooner ROY SOMERS.257 There are several

villages

256. S.W.King, Report, Supra, Note 123.

257. Id.
villages on different parts of the island and a small wooden pier extends from the shore near one of them. In 1927, the population was reported to be 5 Europeans and 18 natives (Tahitians). Raising cocoanuts and exporting copra is practically the only business though some revenue is said to be obtained from Pearl fisheries. In 1924, 150 tons of copra was exported from the island, and 175 tons in 1925.* There is a small store with ordinary supplies, and the owner has some Ford cars, a truck, and a tractor. There is no coal, but plenty of firewood is obtainable. 258

Besides granting licenses and leases to British citizens to exploit Christmas Island, the British Government has taken formal possession of the island. As has been seen, this was done on March 17, 1888, by Sir William Wiseman, Captain of the British ship CAROLINE. His proclamation, stating that he took formal possession of Christmas Island in the name of Queen Victoria, and hoisted the British flag is printed in British and Foreign State Papers. 259 Finally by the Order in Council of July 30, 1919, the boundaries of the British colony of Gilbert and Ellice Islands, formally annexed by Great Britain in 1892, were extended to include Christmas


258. Pacific Islands Pilot. H.C. 166, Supra, Note 41, pp.545-54
Stewart's Handbook, Supra, Note 1, pp. 413-419.

259. 79, Br. and For. State Papers 1326.
Christmas Island, from and after the publication of the order in the *Western Pacific High Commission Gazette*. The order was published in the London Gazette, November 28, 1919.260

In 1924 Lieutenant Commander King of the United States Navy described the jurisdiction then exercised by the British Government over these islands. The British High Commissioner for the Western Pacific is the final authority in the Pacific; under him is a Resident Commissioner, whose residence is at Ocean Island, recently made the capital of the Gilbert and Ellice Islands Colony. A representative of the Resident Commissioner, locally called the Deputy Commissioner, resides at Fanning with jurisdiction over Washington, Fanning and Christmas, and "he comprised in himself the administrative, judicial, and fiscal authority of the district". 261

The 1932 *Pacific Islands Year Book*, reports that "periodical visits are made by a British Warship" to Christmas Island, and notes that the first visit of inspection by a District Officer, since 1919, was made in March, 1922, in H. M. S. CALCUTTA.262 Lieutenant Commander King remarked

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260. 112 Id. 582.

261. S. W. King, Report, *Supra*, Note 123.

262. *Pacific Islands Year Book, Supra*, Note 126, p. 87.
remarked that a British vessel of the South Pacific Patrol Squadron is "in the habit of making rare visits to Christmas." 263 There are no postal arrangements, and the only mails reach the island on ships chartered by the owner at Tahiti. The port of entry for Christmas is Fanning Island. The Company pays £200 a year to the Government of the Gilbert and Ellice Islands Colony, "and is thereby relieved of all taxation." 264 In The Reports on the Gilbert and Ellice Islands Colony, published by the British Colonial Office, for 1927-28, and 1928-29, there was no record of the European population on the island. In 1927-28 there were said to be 26 natives there. 265

e. Present Attitude of the United States

From 1918 to 1926 the State Department corresponded intermittently with the Navy Department regarding Christmas Island. In 1918, the General Board of the Navy reported that there was a precarious anchorage off the island, and that "at considerable expense, perhaps, a submarine or destroyer base might be established by dredging the lagoon and a passage to the sea." 266

263. S. W. King, Report, Supra, Note 123
264. Supra, Note 262.
266. J. Daniels, Sec. of Navy, to Sec. of State, Jan. 28, 1918 (811.014/28).
In 1920 the Secretary of the Navy requested the Department to set forth definitely the ownership of Christmas Island, which had hitherto been noted on the charts as unsettled as between the United States and Great Britain, in order that its status might be entered correctly in the new sailing directions published by the United States Hydrographic Office. A memorandum, prepared in the State Department, (Solicitor's Office), concluded: The American claimants did actually abandon Christmas Island before its occupancy by Great Britain in 1882; in the complaint of 1888 the United States Government made no claim that its sovereign rights had been usurped; and, finally, Great Britain had acquired sovereign and territorial rights over Christmas Island, and the United States had no such rights. However, it was suggested that because the Navy Department had reported that the island might be used as a submarine or destroyer base, and because there might be criticism of the State Department if it relinquished a useful claim, before the State Department should declare the Government had no claim to sovereignty over the island, the Navy should be required to state unequivocally that the island was of no use to the Government. The State Department's letter to the Secretary of the Navy, based in


in part on this memorandum, reviewed the history of Christmas Island up to that time, and concluded as follows:

"In view of the foregoing, particularly of the fact that no protest has ever been received from American citizens regarding their dispossession by Great Britain; the Department is not inclined to contest at this time the claim of Great Britain as to the extension of British sovereignty over Christmas Island by virtue of the proclamation of November 28, 1919.

"It is suggested, however, that it might be desirable not to make, at this time, a positive admission of British jurisdiction over the Island. If it would serve your purpose, it is suggested that a statement in the publication issued by the United States Hydrographic Office, to the effect that the sovereignty of Great Britain over Christmas Island is 'claimed by virtue of the proclamation of November 28, 1919,' might prove less embarrassing should facts later be presented which would make it desirable to contest the action of the British Government." 269

In 1921 the Department reaffirmed its position as stated in this letter. 270

In 1926 the Secretary of the Navy reported that Christmas Island was now thought to have a possible naval value as a communication center, or as an airplane base on an airway between Hawaii and Samoa, and added:

"Although Great Britain may have assumed and now exercises sovereignty over the island,

It

269. F. L. Polk, Under Sec., to Sec. of Navy, May 25, 1920 (846 N.01/2).

270. J. C. Grew, Under Sec., to Sec. of Navy, Dec. 19, 1921 (811.014/118).
it appears that the United States has claim to such sovereignty; and it is, therefore, recommended and requested that steps be taken to renew the claims of sovereignty of the United States to this island, with a view to establishing such claim definitely. 11271

The Department requested a statement of the Navy's views of the grounds on which such a claim might be made,

"in view of the formal assertion and exercise of sovereignty of the island by Great Britain, to which the United States does not appear to have made objection, and in view of the actual possession of the Island by Great Britain over a considerable period of time." 11272

The Navy Department merely reiterated the facts previously given by the State Department, and renewed its request, upon which, however, there appears to have been no action taken. 11273

In its statements contained in other letters, to persons outside the Government, the State Department has been somewhat indefinite. 11274 In a letter to William Hard, October 12, 1922, the Department said that the title to Christmas Island,

"as between the United States and Great Britain is still uncertain although there is no outstanding dispute between the two Governments in regard to this matter".

After

11272. J. C. Grew, Under Sec., to Sec. of Navy, April 7, 1921 (811.014/123).
11273. Sec. of Navy to Sec. of State, May 1, 1926 (811.014/124).
After noting the British Order in Council of 1919, and the lease to Rougier's Company, the letter continued:

"...The United States neither admitted nor questioned this latest claim of British sovereignty of Christmas Island, although...the United States by formal communications addressed to the British Government in 1879 and 1888 reserved all questions which might grow out of the occupation of the island by Great Britain...... No case involving the protection of American interests in any of the islands mentioned [Howland, Baker, Jarvis and Christmas] has been brought to the Department's attention in recent years.

"In view of the foregoing, the Department refrains from making any positive statement concerning the sovereignty of the islands, and, in the absence of circumstances indicating the desirability of raising the question officially with the British Government, it is not deemed advisable to enter into any present discussion of the question!" 275

Again, in a letter to the American Consul at Tahiti, who had reported that oppressive labor conditions probably existed on Christmas Island,279 the State Department said that it did not desire to raise any issue relating to the status of Christmas Island at that time.280 In 1924, it was said that the title to the island, as between the United States and Great Britain, "may be regarded as somewhat uncertain."281 In 1925 and 1930 it was said in addition that, although the Department had made no formal protest

279. H.F. Withey, U.S. Consul, Tahiti, to Sec. of State, May 23, 1922 (800.014/8).
281. J. C. Grew, Acting Sec., to Sec. of Com., July 18, 1924, (811.014/110).
protest or claim in respect to the British Order in Council of 1919, on the other hand--

"this Government has never relinquished such claims as it may have by virtue of the former occupancy of Christmas Island by American citizens". 282

Assignments


283. 3 MS. Misc. Let. re Guano, Christmas.
II. THE CENTRAL LINE ISLANDS

2. Jarvis Island (Bunker).

a. Geography

Jarvis Island (also called Bunker at one time) is one of the Line Islands in the Pacific Ocean practically on the equator, latitude 0° 22 1/2' S., longitude 160° 03' W. It is 365 miles Northwest of Malden Island, and 205 miles Southeast of Christmas Island. It is a raised coral atoll about 1 1/4 miles East and West, and 1 3/4 miles North and South on the West side, but only 1 mile across in that direction on the East side. The area is about 1000 acres. The lagoon in the center has been filled up, and the island shows unmistakable signs of elevation. The edges, around the lagoon, are 10 to 12 feet above sea level, but the center is only 7 to 8 feet high. There is a fair lee on the Western side of the island, but no anchorage. A white beacon in the middle of the West coast marks a boat channel blasted through the fringing reef. 284

The only vegetation is a little long, coarse grass (mesembryanthemum, portulecoa, etc.). In the middle nineteenth century, there were extensive deposits of guano on the island, chiefly in the dried-up lagoon. The guano rested

rested on a bed of gypsum and sulphate of lime which had been created largely by the evaporation of the sea water from the lagoon, which left deposits of salts, the more soluble of which were dissolved by rain, and the less soluble sulphate of lime remained. Along the edge of the lagoon the guano lay on the coral rock foundation. In 1924 it was reported that the "pay-dirt" was all gone, although heaps of low grade guano remained.

The following species of seabirds frequent the island in great numbers, for breeding: two or three varieties of gannets and boobies, frigate-birds, a few tropic birds, several varieties of terns, nodies, and petrels. Some game birds, curlews, snipe, and plova, frequent the island in the fall and winter, although apparently they do not breed there. There are also a few spiders, ants, flies and lizards, and numerous small rats about the size of large mice.

The climate is equable, the average temperature being about 80° F. all the year around. Rain falls in light showers not infrequently. The Trade winds blow steadily, from the southeast in summer, and from the northeast in winter.

The island is now reported uninhabited, although formerly

286. Report of S. W. King, Supra, Note 123.
formerly it was occupied by the employees of the guano companies. The white beacon was the only structure standing in 1924. Coral boulders mark the sites of former buildings, and there are a few graves, rusty rails and boilers. The wreck of the AMARANTHE (registered in San Francisco in 1913) is strewn on the coast, but there were no signs that the crew had camped on the island.

b. Discovery

The only information found relating to the discovery of Jarvis Island is the report that it was discovered by Captain Brown in the English ship ELIZA FRANCIS, on August 21, 1821. It may be inferred, perhaps, that Captain Brown was a British subject, and that he claimed Jarvis for Great Britain, by virtue of discovery. Apparently, however, it was not then occupied by British citizens, or by anyone else.

c. United States Claim Under the Guano Act

In 1880 (?) the American Guano Company, through A. G. Benson, President, and others, asked the State Department to recognize the claim of the company as assignee of Michael

288. Report of S. W. King, Supra, Note 123.

Michael Baker, the discoverer, to the guano on Jarvis Island under the Act of 1856. The "proof" submitted included an affidavit, dated August 30, 1856, by Michael Baker, a shipmaster of South Dartmouth, Massachusetts, in which he alleged: that in 1835 "he landed on a certain barren and uninhabited island known as the Isle of Jarvis", at latitude 0° 21' S, longitude 159° 52' W; that he again landed at Jarvis in 1836, 1845, and other times in search of eggs; and that he found the deposits of guano, although he did not at first realize its value. The Company also filed an affidavit by Edward Turner, a New York shipmaster, dated September 3, 1856, in which he stated that on December 22, 1855, he landed on a barren island, at the position given by Baker in his affidavit, and took possession of it in the name of the United States, claiming the guano as the property of the American Guano Co.

There


291. From this statement it is evident that the island was already discovered, and was marked by name on Baker's chart, and that Baker claimed only to have discovered the guano on Jarvis, and that Baker claimed only to have discovered the guano on Jarvis, and not Jarvis itself.


293. Affidavit of Edward W. Turner, Sept. 3, 1856, Id.
There is also an affidavit by Theodore Lewis, mariner, in which he said that on February 19, 1856, as agent for the American Guano Co., he landed at Jarvis and took possession of it in the name of the United States, and that it was unoccupied except for the house built by Captain Turner (which Turner did not mention). This affidavit is supported by one dated February 19, 1856, by Thomas F. Lucas, in which he said that in 1842 he had landed at an uninhabited barren island at latitude 0° 19' S., longitude 156° 52' W., and that on February 19, 1856, he landed again from the ship COREA and took possession of it as agent of the American Guano Co. However, the position given by Lucas is not the position of Jarvis as described by the other declarants, or by the present authorities, and there is no island at or near this point. Rough maps, and estimates of the value of the guano were attached to these sworn statements.

The American Guano Co. then sent Arthur Benson (Alfred's son) and Charles Judd of Honolulu to take possession of the island again for the company in 1857, and on January 16, they landed on Jarvis and left written declarations on the island.

294. Affidavit of Theodore Lewis, Sept. 3, 1856, Id.
295. Affidavit of T. F. Lucas, Feb. 19, 1856, Id.
296. Id.
island of possession taken for Alfred G. Benson and his associates. 297 In 1859 a chemist, R. Drysdale, was sent to the islands to report on the guano, and he stated that there were about 1,250,000 tons on Jarvis, that this guano was 81.21 per cent fixed salts, and that 75 per cent of these salts were phosphate of lime and magnesia. 298 One J. D. Hague, employed by the company, lived on Jarvis and other islands two years, from 1859 to 1861, inclusive. 299

On November 18, 1856, the bond of the American Guano Co. for Jarvis Island, dated October 28, 1856, was received and filed by the State Department. 300 It was probably sent to the Treasury Department not long afterwards.

In January, 1857, the United States sloop of war, St. Marys, under Commander Davis, was ordered to Jarvis and Baker Islands, probably at the instigation of Alfred G. Benson, the moving spirit in the enterprise. On December 3, 1857, the Secretary of the Navy reported to Congress that Commander Davis found nothing resembling guano on either island, but that:

"The American Guano Co. have previously, under the Act of August 18, 1856, given to the State Department the proper notice of discovery, and

300. Bonds, Supra, Note 18.
and entered into the required bond, Commander Davis, no conflicting claims appearing, took formal possession of the islands in the name of the United States, and deposited in the earth a declaration to that effect, executed on parchment and well protected. 301

After some further correspondence with the company, 302 the Secretary of State, on March 2, 1861, issued a certificate to the company,-" 302

"the proof furnished by the American Guano Company, relative to Jarvis and Baker Islands having been deemed by this Department a sufficient compliance with the Act of Congress of August 18, 1856, and bonds having been duly entered into pursuant to that Act. 303

The certificate recited that the required documents had been filed and concluded as follows:

"...the...American Guano Co. is entitled in respect to the guano on said islands, 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 American Guano Company shall abide by the conditions and requirements imposed by the Act of Congress aforesaid." 304

Jarvis


304. Id.
Jarvis Island was included on the lists of Guano Islands appertaining to the United States, sent by the Secretary of the Treasury to Collectors of Customs, with instructions to apply the coasting trade regulations to trade between those islands and the United States. 305

It is not possible to determine from the records the extent of the American occupation and use of Jarvis as a guano island. It is probable, however, that it was abandoned by the American claimants by 1889, as they did not appear to have protested to the State Department against the British act of Possession of that date. 305A

d. Claim of Great Britain

It is reported that Jarvis Island was "annexed" to Great Britain, June 3, 1889. 306 There is no proclamation or official notice of this kind printed in British and Foreign State Papers. However, in 1900, J. D. Hague informed the Department that --

"it is a matter of published record that formal possession of that island [Jarvis] was taken by the H.M.S. CORMORANT, I think in 1889, and that island is now indicated as a British possession on

305. 6 MS. Misc. Let. re Guano, Sombrero; Id., Misc.
305A. See infra, Notes 303, 307
Jarvis is not mentioned by name in the British Orders in Council relating to the Pacific islands. The Order of March 15, 1893, providing for the exercise of British jurisdiction in the Pacific islands, includes: Islands "which are for the time being British Settlements", (i.e., "any British possession which has not been acquired by cession or conquest, and is not for the time being within the jurisdiction of the legislature"); islands "for the time being under the protection of Her Majesty; and islands "for the time being under no civilized government." It specifically excluded any place "for the time being" within the jurisdiction of the legislature of any British possession, or within the jurisdiction or Protectorate of any civilized power. It further provided that jurisdiction under it shall only be exercised in Friendly, Navigators, Union, Phoenix, Ellice, Gilbert, Solomon, and Santa Cruz Islands; and in places not excluded by the Order, and situated within the following limits:

north,

307. J. D. Hague to John Hay, Sec. of State, Feb. 9, 1900. See also J. D. Hague to the Editors of the N.Y. Sun, Nov. 16, 1900, and editorial in the N.Y. Sun of that date.

north, from 140° East longitude, by parallel 12° North latitude to 160° West longitude, then south to the equator, east to 149° 30' West longitude, south to parallel 30° South latitude, West by meridian 140° East longitude. This area just excludes Jarvis.

In numerous British publications, however, Jarvis is classed with British possessions. It is included by name among the "British Line Islands," in a British Foreign Office publication of 1920. It is also enclosed in the Encyclopedia Britannica as one of the Line or "America" Islands, said to belong to Great Britain; and in the 1932 Statesman's Year Book, it is noted under the heading "The British Empire - Pacific Islands." On the other hand, the 1932 Pacific Islands Year Book and Stewart's Hand Book of the Pacific Islands do not indicate the sovereignty of Jarvis. In Australasia, it is said that in 1888 many pearl and guano islands in the Pacific were "appropriated" by Great Britain for the sake of the All-

British

309. Id. Vol. 85, p. 1053.
313. Supra, Note 126, p. 102.
314. Supra, Note 1, p. 510.
British Cable, and that among them was Jarvis. Sometimes the appropriation was accomplished merely by raising the British flag on the island, or by a British citizen obtaining a lease of the island from the British High Commissioner, and "in three or four cases the ceremony was deferred until 1892, or was deemed superfluous owing to the English title being as clear as noonday without it, or amounted only to the declaration of a Protectorate, although it is difficult to see how an empty island can be protected." Jarvis and Palmyra are cited as examples in the footnote to this sentence. 316 Subsequently it is said: "Protectorate is synonymous with annexation to the chance occupants of Jarvis and Palmyra today."317

The evidence also points to the conclusion that a British phosphate company took possession of the island sometime after 1889. In 1900 J. D. Hague wrote that Jarvis had passed into the hands of an English trading firm, either by sale, license, or abandonment by the American company, and thence to the Pacific Islands Company, Limited, an English corporation formed to take over the business "as a going concern" about January 1, 1897, and

316. Id., pp. 307-308.
317. Id., p. 316.
and the prospectus of this company indicated, in 1900, that the guano deposits were not then all gone.\textsuperscript{318} In the 1921 edition of Stewarts' Hand Book, it is said: "We believe this [Jarvis] is owned by some phosphate company, but not being worked at the present time," but in the 1922 edition this statement is omitted.\textsuperscript{319} The General Board of the United States Navy reported, in 1917, that Jarvis was leased to a British company.\textsuperscript{320} This statement is confirmed by the report of Commander King of the WHIPPOORWILL after his visit to Jarvis in 1924. He noted that the only structure then standing on the island was a beacon bearing the following inscription:

"Jarvis Island

Latitude 0° 22' 33" S.

Longitude 159° 54' 11" W.

"This Island is leased by His Britannic Majesty, King Edward 7th, to the Pacific Phosphate Company, Limited, of London and Melbourne."
Under lease dated 19th December, 1906.**
All Persons are Hereby Warned Against Trespassing."322

e. **Present Attitude of the United States**

So far as has been ascertained, the United States made no protest against the British appropriation of Jarvis in 1889.323 This may have been because the United States had no actual notice of it, or because by that time the American guano company had in fact abandoned the island, and the United States intended to abandon it, under the provisions of the last section of the Guano Act.324 It is not clear when the American company left the island, and when or how it came into the hands of a British company.325 The legend on the beacon, however, appears to be reliable evidence of the facts stated thereon, and Great Britain appears to have exercised some jurisdiction and control over the island. Whether the British company actually occupied Jarvis and removed guano is not known.

The United States Government appears to have been in doubt as to the status of Jarvis for many years. In 1917 the General Board of the United States Navy recommended that

322. Id.

323. No protest was found in the Notes to Great Britain, or Instructions, Great Britain, for the year following June 3, 1889.


325. See E. C. Wynne (HA) to Nelson Brown, Aug. 27, 1931 (811.014/222).
that the United States "regain ownership" of the Line Islands, 326 but in 1918 the same Board reported that Jarvis Island was "No use to the United States in war. No use to an enemy." 327 In a letter of March 12, 1920 to the Secretary of War, the State Department noted that Jarvis was a guano island under the Act of 1856 and added:

"These islands, by the above Act, are not dependencies of the United States but appertain to the United States, since they were first discovered by Americans." 328

In 1924 the Department of State informed the Secretary of Commerce that the title to Jarvis "as between Great Britain and the United States may be regarded as somewhat uncertain." 329 This assertion was repeated in 1929 with the following additional statements:

"...there is no outstanding dispute between the two Governments in regard to this matter. .......No case involving the protection of American interests in any of the Islands mentioned [Baker, Howland, Christmas, and Jarvis] has been brought to the Department's attention in recent years.

"In view of the foregoing, the Department refrains from making any positive statement concerning the sovereignty of the Islands, and, in the absence of circumstances indicating the desirability of raising the question officially"
with the British Government, it is not deemed advisable to enter into any present discussion of the question.330 In 1930, the Department wrote that Jarvis was bonded under the Guano Act, and that "The United States has not acquiesced in any claim which may have been made to Jarvis Island by foreign governments and reserves all right with respect to the island which the United States may have." 331

330. N. T. Johnson to Wm. Hard, Oct. 12, 1929 (811.014/164)

331. T. Dennett (H.A.) to C. A. Burkhart, Mar. 29, 1930, (811.014/172).
f. Assignments


II. THE CENTRAL LINE ISLANDS.

2. BAKER ISLAND (NEW NANTUCKET, PHOEBE).

a. Geography

Baker Island (also called New Nantucket, or Phoebe) is just north of the equator in the Pacific Ocean, at latitude $0^\circ 131/2^\prime$ S., longitude $176^\circ 33^\prime$ W. It is sometimes included geographically with the Phoenix Island group, but it is about 250 miles north of the nearest of these islands. Baker is a coral island, about 1 mile long east and west, and 1500 yards wide, and is surrounded by a fringing reef 200 to 400 feet wide, and slightly above sea level at low tide. The island is about 20 feet high. There is a fair lee shore, but no anchorage. A steep beach clear of coral is the only landing.

There is no fresh water, and little vegetation on Baker Island, except for sparse coarse grass. The guano which covered the island rested on a coral rock bottom and was not so strongly impregnated with sulphate of lime as was that on Jarvis.

The birds and animals on Baker Island are similar to those found on Jarvis and the climate is much the same.


The Southeast and Northeast trade winds blow steadily, although it is noted that from November to April they are frequently interrupted by westerly winds and bad weather. The sands of Baker Island are reported to shift from one end to the other twice a year with the change in the winds.

Baker Island is likewise uninhabited at present although it was once the scene of quite a settlement when the guano was being mined. Deep sea moorings were erected, a pier extended beyond the fringing reef; and there were several buildings on the island. In 1924, however, only the roofless walls of one coral stone building remained standing. The remains of two old wrecks on the reef, a few rusty boilers, and rough tombstones completed the desolate picture.

b. Discovery

Baker Island, also called New Nantucket, is said to have been discovered by Captain H. Foster of the barque JAMAICA, but the date of this discovery, the nationality of Captain Foster, and flag of the vessel are not given.

In an affidavit, dated August 30, 1856, Michael Baker, American shipmaster, claimed he discovered and landed on the island in 1832, and that it was not then marked on any chart; that he landed on it again on August 14, 1839, to bury

335. Pacific Islands Pilot, H.O. 166, Supra, Note 94, p. 524.
335A. S. W. King, Report, Supra, Note 123.
bury an American seaman, and that he then took possession of the island, raising the American flag. He revisited it in 1844, 1845, 1851 and 1854 and never found it occupied. These allegations are supported by an affidavit, dated March 22, 1856, of Captain George E. Netcher, of New Bedford, Massachusetts, in which he said that on August 18, 1842, while cruising for whales in the bark ISABELLA, he saw an island not marked on any chart; that he landed on it and found there a monument erected by Captain Baker over the grave of a seaman, buried in 1839 from the ship GIDEON HOWLAND of New Bedford; that he saw the same island often again in 1847, from the ship MAINE. A letter to Captain Netcher, apparently from a sailor on the ISABELLA in 1842, supports some of the Captain's statements.

**c. United States Claim under the Guano Act.**

Captain Baker's interest in Baker Island (described but not yet named) passed by assignments to Alfred G. Benson and others, Trustees of the American Guano Company, on September 1, 1855. In 1856 the American Guano Co. sent their

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339. John Deblois to Capt. Netcher, Mar. 24, 1856, Id.
340. See Infra, Assignments, (Baker Island).
their agents, Arthur Benson (son of A. G. Benson) and Charles A. Judd, to visit all the guano islands in which the company was interested. Judd reported that he arrived at Baker's Island on February 10, 1857, and that he took possession of it in the name of A. G. Benson and his associates, and that he sailed from there on February 12. 341 Apparently, after March, 1859, Baker's Island was actually occupied by the employees of the company, 342 and after July 15, 1859, the company's brig JOSEPHINE made regular trips from Baker to Howland's island every two months with supplies. 343

In January, 1859, R. Drysdale, a chemist sent out by the company, reported that Baker Island contained about 975,000 tons of guano; that 85.91% was phosphate of lime and magnesia; and that, !...this guano must be ranked among the most valuable of phosphate manures. 344 J. D. Hague also resided on Baker's Island from 1859 to 1861, as an employee of the company. 345

The recognition of the claim of the American Guano Company to Baker Island by the United States Government coincides


343. Affidavit of C. M. Judd, Supra, Note 341.


coincides with that accorded in the case of Jarvis. The company's bond for Baker, or New Nantucket, Island, dated August 28, 1856, was received and filed by the Department of State on November 18, 1856. The U. S. sloop of war ST. MARYS visited Baker, as well as Jarvis Island in the fall of 1857, and Commander Davis reported that there was nothing resembling guano on Baker Island. Nevertheless, no claims appearing in conflict with those of the American Guano Company, Commander Davis "took formal possession of the islands in the name of the United States, and deposited in the earth a declaration to that effect, executed on parchment and well protected."  

Finally, on March 2, 1861, after some further correspondence on the subject, a certificate was issued to the American Guano Company for Jarvis and Baker Islands, "the proof furnished by the American Guano Company, ... having been deemed by this Department a sufficient compliance with the Act of Congress of August 18, 1856, and bonds having been duly entered into pursuant to that act...."

The certificate recited the facts of discovery and notice of discovery by Baker and Jarvis, the location of the islands, and the assignment to the Company, which filed notices of occupation and the required bonds, and concluded:

"...Wherefore the said American Guano Company is entitled in respect to the guano on said islands, to all the privileges and advantages intended by that act to be secured to citizens of the United States.

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346. Bonds, Supra, Note 18.

States who may have discovered deposits of guano—provided always, that the said American Guano Company shall abide by the conditions and requirements imposed by the Act of Congress aforesaid. 348

Baker Island was included on the list of guano islands appertaining to the United States issued by the Treasury Department to the Collector of Customs, on August 23, 1867, with instructions to apply the coasting trade regulations to trade between those islands and the United States. 349 It also appeared on all the subsequent lists (1869, 1890, and 1893). 350

In August, 1862, William Russell, J. W. Delano and others, the bondsmen of the American Guano Company, informed the Department that the company had violated the conditions of the bond, and had shipped guano from Baker and Jarvis to Europe,—to Bordeaux and Hamburg,—before the amendment of 1862 permitting such trade under the Guano Act. The sureties alleged they had no power to restrain the company from committing this breach of the bonds, and requested that, if the company had thereby forfeited its rights under the Guano Act, they be appointed government agents to dispose


349. 6 MS. Misc. Let. re Guano, Sombrero.

350. Id., Misc.
dispose of the guano for the benefit of the United States Treasury. 351 There is on file a draft report by F. H. Ruggles, a member of the Department, dated September 1, 1862, in which he notes that a violation in regard to Baker Island only is shown, and that the origin of the petition is probably a business rivalry for the control of the guano trade. 352 On March 23, 1863, the Attorney General reviewed the case and found that the President had no duty to perform in regard to it. He also suggested that the request had some ulterior motives, as no man of business could believe a mere breach of his bond was a sufficient reason for releasing its obligations. 353 The sureties, however, presented a similar petition again on September 18, 1863, with affidavits and other proofs showing that guano had been shipped to Europe from Baker Island by the American Guano Company as early as 1860. 354 It is safe to assume that if the company had been found by the Department to have forfeited its rights, there would be some record of this decision on file. No such record has been found, and although it may exist, it is more likely, especially in view of

351. Wm. Russell and J. W. Delano to Wm. Seward, Sec. of State, Aug. 12, 1862, 3 Id., Baker & Jarvis.
352. Memorandum by F. H. Ruggles, Sept. 1, 1862, Id.
354. Wm. Russell to Wm. Seward, Sec. of State, Dec. 18, 1863, and enclosures, Id(Note 351).
of subsequent letters written by the Department, that nothing was done about the breach of the conditions of the bond.

On June 27, 1866, the Secretary of State asked the Attorney General whether British ships could take guano from Baker Island to Europe. Attorney General Speed held that under the Guano Act of 1856 such a trade was prohibited, but that the amendment of 1865, suspending the export prohibition of the Guano Act, repealed by implication the coasting trade section of that Act, and that, consequently, trade in foreign ships was allowed, by the Amendment of 1862, to all who had complied with section 2 of the Act of 1856, for 2 years after July 14, 1865. 355

How long the American Guano Company remained in control of the guano on the Baker island, or how long it actually occupied the island is not known. In 1870, the State Department wrote to Mr. R. W. Young:

"...It is not in the power of this Department to inform you whether Baker's Island is in the possession of the United States Guano Co., or whether it is unoccupied and vacant. A certificate of the claim of the American Guano Co. **** as discoverers or assignees of the discoverers of Baker's Island **** appears to have been issued some years ago." 356


356. H. Fish, Sec. of State, to R. W. Young, Mar. 10, 1870, 83 MS. Dom. Let. 447.
In 1876, and again in 1877, the Department received letters from the American Guano Company in regard to Phoebe Island, indicating that the company was then in existence and was still interested in obtaining guano. In 1898, it is stated that Baker was believed to be occupied "by employees of guano companies belonging to citizens of the United States who ship the deposits found thereon to this country and elsewhere." In 1931, the State Department wrote that it was unable to say whether or not the American Guano Company was still in existence.

d. Claim of Great Britain

The British claim to Baker Island appears to be based largely upon their claim to the Phoenix Islands, a group some 250 miles to the south. Some kind of formal possession may have been taken of Baker Island by Great Britain, but what kind, or when, has not been discovered. The British Order in Council of August 13, 1877, providing for the government


358. E. C. Wynne (HA) to Nelson Brown, Aug. 27, 1931, (811.014/222)
government of British subjects in some of the western Pacific islands, specifically applies to the Phoenix Islands, but Baker is not named. The Order of March 15, 1893, providing for the exercise of British jurisdiction in the Pacific islands, likewise includes the Phoenix group, but not Baker, but Baker does fall within the area included, and described by parallels and meridians, in that Order.

In certain British publications, Baker is labeled British. In the pamphlet published by the British Foreign Office in 1920, the Phoenix Islands are included, "with, farther to the North, Baker and Howland." A footnote remarks:

"It is difficult to know to what administrative area to assign these islands, as they were not mentioned in the Order in Council in 1892 annexing the Gilbert and Ellice Islands, with which it would seem natural to include them." The Pacific Island Yearbook for 1932 states that the Phoenix Islands were "formally annexed by Great Britain", and mentioned Howland and Baker Islands, "considerably to the northward" of the named Phoenix Islands. In Australasia, Baker is listed as part of the "so-called" Phoenix group, and is named as one of the pearl and guano islands "appropriated" by Great Britain, probably 1888-1889, but

359. 68 Brit. and Foreign State Papers 325.
360. 85 Id. 1053; See Supra, Note 309.
361. British Possessions in Oceania; Supra, Note 109, p.16.
362. Supra, Note 126.
but possibly not until 1892, because of the British trans-Pacific cable scheme.

It appears that Baker Island was actually occupied and mined for guano by a British company. In 1900, J. D. Hague, in a letter to the New York Sun stated that Baker Island had passed from the American owners, "some years ago", either by sale, license, or abandonment, into the possession of an English trading firm, and then to the Pacific Islands Company, Ltd., an English corporation, and that Baker and Howland:

"are now actually occupied by the above-mentioned English company, which is engaged at the present time in the shipment of guano therefrom under lease or license of the Colonial Office of the British Government and under the protection of the British flag." 364

In the British Foreign Office publication of 1920, it is said that the guano deposits on Baker Island were reported to have been abandoned in 1910, as the supply was exhausted; and that the Phoenix Islands (with which Baker is included) were leased to the Samoan Shipping and Trading Company, an Australian corporation, "to whom Lever Brothers transferred their rights", which works a few cocoanut plantations and exports copra. 365 The 1932 Pacific Islands Yearbook says that

364. N. Y. Sun, Nov. 16, 1900, (J. D. Hague, Letter to the Editors).
365. British Possessions in Oceania, Supra, Note 109, pp. 50, 73, 84-85.
that all the Phoenix islands, except McKean and Enderbury, are leased to this Samoan Company for 87 years from January 1, 1914; that the company maintains a European overseer on them and a small gang of native laborers; that the guano is all worked out and copra is the only product.

From all reports there are no cocoanut trees on Baker Island, however, and it is probable that this island is not occupied, and possibly is not even leased by this company. However, The United States never protested Great Britain's annexation, or appropriation, of the island.

e. Present Attitude of the United States

In recent years the State Department appears to have been in doubt of the legal status of the island. In letters of 1913, and 1914, the Department merely stated that Baker Island appeared on the list of guano islands appertaining to the United States. In 1917, the General Board of the Navy recommended that the United States "regain ownership" of the Line Islands, remarking that the ownership of Baker (and Howland) was uncertain. In 1918, however, the same Board reported that Baker Island was—"No use to the United States in war. No use to an enemy".

Subsequently,

366. Pacific Islands Year Book, Supra, Note 126, p. 272.
368. S. W. King, Report, Supra, Note 123.
369. J. Daniels, Sec. of Navy, to Sec. of State, June 1918, and enclosure, (811.014/28 Confidential).
Subsequently, various inconclusive statements were made by the Department regarding Baker, for example:

Baker and Jarvis "are a part of the guano islands, under the Act of August 18, 1856.... These islands, by the above Act, are not dependencies of the United States but appertain to the United States, since they were first discovered by Americans."370

Baker is one of the guano islands,—"the occupancy of which, if not subject to the jurisdiction of a foreign power, is granted by the Act of Congress to United States citizens under certain conditions for the purpose of removing guano therefrom".371

"The title [to Baker] as between Great Britain and the United States may be regarded as somewhat uncertain."372

In 1927, the Department said, with regard to Baker and Howland Islands,

"Although both of these islands are included among British possessions by certain British publications, this Department is not aware that the British Government has made any claim of sovereignty over the islands and they are still regarded as appertaining to the United States."373

In

370. A. A. Adee, Asst. Sec., to Sec. of War, Mar. 12, 1920 (811.014/50). The last phrase is incorrect. The Act relates to the discovery of guano, not islands.


372. (?) Acting Sec., to Sec. of Com., July 18, 1924 (811.014/110).

373. W. R. Castle, Asst. Sec., to Parke L. King, July 1, 1927 (811.014/35); do. to E. Van Cleef, Aug. 24, 1927 (Id./136).
In a letter to William Hard, October 12, 1929, the Department stated its position fully:

"The title [to Baker and others] as between the United States and Great Britain is still uncertain although there is no outstanding dispute between the two governments in regard to this matter. Although Howland's and Baker Islands are described in certain British publications as British possessions, the Department is not aware that any formal claim of sovereignty of these islands has been made by the British Government.

... No case involving the protection of American citizens in any of the islands mentioned has been brought to the Department's attention in recent years.

"In view of the foregoing, the Department refrains from making any positive statement concerning the sovereignty of the Islands, and, in the absence of circumstances indicating the desirability of raising the question officially with the British Government, it is not deemed advisable to enter into any present discussion of the question." 374

374. N. J. Johnson, to Wm. Hard, Oct. 12, 1929 (811.014/167)
Assignments 375


3. HOWLAND ISLAND (HOWLAND'S)

a. Geography

Howland Island, sometimes included in the Phoenix Group, some 250 miles to the southeast, is at latitude 0° 49' N, longitude 176° 43' W. It is about 35 miles north-east of Baker Island. It is of coral formation, about 2 miles long north and south, and 1/2 mile wide, the area being about 400 acres. It is from 18 to 20 feet high, and is surrounded by a fringing reef. There is a level plane of fine sand along the east coast. There is a fair lee off the west coast but no anchorage.376

There is more grass on Howland island than on Baker or Jarvis, and near the center are thickets of leafless "Kou" trees. (These trees, so named by the Sandwich Island natives, are numerous on many Pacific islands.) The tops of these trees appear to be dead, but the roots show signs of life after rain. The guano rested on a coral rock bottom, as at Baker Island. The same birds are found on Howland Island as on Baker and Jarvis, but there are more tropic birds, because there are coral boulders on Howland Island under which they make their nests. The rats on this island were extremely numerous when it was first occupied.377

Howland

Howland Island was never so well equipped and settled as Baker and no signs of any buildings remain. There is evidence, however, that at a very early time Howland Island was occupied by men, probably South Sea Islanders. In the center of the island are numerous excavations, the most extensive of which is several hundred feet long, 100' wide, and from 10 to 15' deep. The sides of this ditch are composed of sand and gravel carefully banked up and kept in place by coral stone walls. Among the brushwood are the remains of low flat mounds, regular in shape, built of gravel and walled up all around. They are about a foot high and are reported to be like those used by South Sea Islanders for foundations and the floors of houses. At the South end of the island a footpath was made across a bed of coral débris, the edges of the coral being sharp and painful to the foot. This path is several hundred feet long and is composed of flat smooth stepping stones, evidently laid by hand as the path is nearly at right angles with the ridges made by the sea. In 1862 the remains of a hut near the Western beach were found, and near it the fragments of a canoe, pieces of bamboo and a blue bead. A human skeleton was also found at that time buried under about a foot of sand, but it crumbled to dust when exposed to the air. It is quite probable that at least some of these remains were the work of South Sea Islanders.

378. S.W.King, Report, Suora, Note 123.
Islanders, and it may be that they brought the trees, for they appeared to be of more recent origin than the excavation. 379

b. Discovery

It is reported that the island itself was discovered by Captain George Netcher, master of an American whaling vessel, on September 9, 1842. 380 In an affidavit by Captain Netcher, dated September 8, 1856, he stated that he found this island in September, 1842, while on a whaling voyage, and that it was not then on any chart or publication. On his return from the voyage in 1846, he gave notice of the discovery to Faber, a manufacturer of charts in New Bedford, Massachusetts, and it was subsequently noted by him on the charts he sold. On February 12, 1848, he landed again on the same island in search of eggs, and took possession of it, naming it Howland's Island after the Lookout who sighted it; and since then he repeatedly visited it while on whaling voyages. 381


On May 2, 1857, Alfred G. Benson notified the State Department

379. J. D. Hague, Op. Cit. Supra, Note 217. The hut may have been that built in 1857 by Arthur Benson, see Infra, Note 325.


381. Affidavit of George Netcher, Sept. 8, 1856, 3 MS. Misc. Let. re Guano, Howland's.
Department that he claimed Howland's ("Nowlands") Island under the Guano Act, by assignment from Captain Netcher. 382 Subsequently Benson organized the United States Guano Company, incorporated in New York November 25, 1858, for 30 years duration. 383 The Company filed with the Department Captain Netcher's notice of discovery, 384 and affidavits by Arthur Benson, (Alfred's son), that the Company sent him to take possession of this Island as its agent, and that he landed there on February 5, 1857, built a house, raised the American flag, and claimed the guano for A. G. Benson and his associates. Sketches of the Island were also enclosed, and analyses of the guano found on the Island showing that it contained from 62 to 74% phosphate of lime and magnesia. 385

On October 27, 1858, the United States Guano Company, by Egbert Benson, President, notified the Department that it was prepared to execute the bond required by the Guano Act, and requested that its rights to the guano on Howland Island.

382. A. G. Benson to L. Cass, Sec. of State, May 2, 1857, Id.
384. Supra, Note 381.
Island be recognized by the Government. The Department asked for proofs of the value and amount of the guano, and of the assignment of Netcher's interest to the Company. This evidence was supplied, and, after some further correspondence, on June 11, 1860 the bond, dated December 3, 1858, was sent to the State Department, which forwarded it to the Secretary of the Treasury.

On August 21, 1860, a certificate signed by William Trescot, Acting Secretary of State, was issued to the United States Guano Company. It was in the usual form and recognized the company's exclusive rights and privileges under the Guano Act to the guano on Howland's Island. This proclamation was printed in the New York Tribune of August 21, 1860.

In 1859 the United States Guano Company sent a vessel to the Island for the purposes of mining the guano. On its arrival in June it was discovered that the Island was already occupied by employees of the American Guano Company, The American Guano Company, which had purchased Baker and Jarvis Islands, claimed Howland under an agreement or arrangement.

386. Egbert Benson et al. to L. Cass, Sec. of State, Oct. 27, 1858, 3 MS. Misc. Let. re Guano, Howland's.
387. J. Appleton, Asst. Sec., to Egbert Benson, Nov. 11, 1858, 49 MS. Dom. Let. 349.
389. do. to do., June 7, 1860, 52 Id. 329.
arrangement with Alfred G. Benson, under which the Company alleged it was also to take possession of such other Islands, besides Baker and Jarvis, of which Turner and Benson had knowledge. 391

The dispute between the two companies was brought to the State Department's attention on August 21, 1860, when A. G. Benson, then President of the United States Guano Company, protested to the State Department that the American Guano Company had no legal claim to Howland's Islands; referred to the certificate granted to the United States Guano Company; and requested the Department to send a United States Naval vessel to the Island "with the view to the peaceful maintenance of the action of the Department in the premises." 392 Various affidavits by Netcher, Arthur Benson and A. G. Benson, tending to support the claim of the United States Guano Company, were filed with the

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389A (cont.) A. G. Benson to J. Appleton, Asst. Sec., June 11, 1860, 3 MS. Misc. Let. re Guano, Howland's; L. Cass, Sec. of State, to A. G. Benson, June 14, 1860; 52 MS. Dom. Let. 346; do. to H. Cobb, Sec. of Treas, June 14, 1860, Id. 347; Bonds, Supra, Note 18.


the Department by A. G. Benson at or soon after this time. 393 C. S. Marshall, President of the American Guano Company, in a letter to the Department also dated August 21, 1860, protested the claim of the United States Guano Company to Howland's Island, alleging that the American Guano Company had taken possession of Howland's Island on February 5, 1857, and had since occupied it, built moorings there, and chartered ships for removing the guano. He added that his Company had deemed it unnecessary to file the bond required under the Act until a superior force should require them to seek Government protection, but that the Company was now ready to file such a bond if necessary. In conclusion he requested the revocation of the certificate issued to the United States Guano Company. 394 Apparently this letter was referred to the Attorney General, 395 but his opinion, if he wrote one, has not been filed or indexed.


394. C. S. Marshall to L. Cass, Sec. of State, Aug. 21, 1860, Id.

395. L. Cass, Sec. of State, to J. S. Black, Att'y. Gen., Aug. 31, 1860, Id.
In June, 1862, the assignee of the charter party libeled the ship ARCTIC which had been engaged by the American Guano Company for a voyage from Honolulu to New York, with an intervening voyage to Howland Island, to take guano to New York. The libelant sought to recover for freights and expenses incurred in erecting moorings on the Island according to the contract. The United States Guano Company intervened, alleging that the guano was taken unlawfully from the island; that in New York it was voluntarily given the American Guano Company without reserving a lien for freight; and that before the commencement of this suit, the United States Company had acquired the possession of the property, by an action at law against the American Guano Company.

The court held (in part) that it could not determine the question of the title to the land in a suit in Admiralty on a charter party, and rendered a decision in favor of the libelant.396

In 1865 the United States Guano Company requested that the State Department issue another certificate, relative to

to the Company's interest in Howland Island, signed by the President, but apparently nothing was done. 397

It appears that the American Guano Company had obtained an injunction restraining the United States Guano Company from landing upon Howland Island, occupying it, removing guano from it, and interfering with the American Company's exclusive right to the guano. The United States Guano Company, defendants, moved to vacate this injunction. The New York Supreme Court held (May 1, 1865) that the American Guano Company had no title to Howland Island, either by discovery or by any authority from the United States, and could not claim exclusive possession, and the right to take guano as against the defendants. In connection with this point the Court said: "It is not necessary for the purposes of this appeal, for us to decide upon the validity of this proceeding before the Secretary of State, or of this claim as now made. It is more proper to leave the decision of that question to the trial of the cause, or such proceedings as may be taken to have it set aside." 398

397. A. G. Benson to Wm. Seward, Sec. of State, Apr. 12, 1865, 3 MS. Miscl. Let. re Guano, Howland's.

The court also found that the defendants never took possession of the Island until September, 1861, and that before that, and before the certificate was issued to the defendants in August, 1860, the plaintiffs had taken possession, made improvements, and expended a large amount of money in developing the Island. Accordingly, it was decided:

1. Plaintiffs (The American Guano Company) had no right to the exclusive possession of Howland Island, or the guano on it, nor had they a right to exclude the defendants from the Island, and this part of the injunction was vacated;

2. Plaintiffs, however, should be protected in the property they had invested, and in the possession of the guano so mined, and that part of the injunction which restrained defendants from interfering with plaintiffs in mining and removing guano was continued;

3. Defendants should be restrained from interfering with plaintiffs, provided that in mining guano plaintiffs did not interfere with the property or work of the defendants, and part of the injunction was modified accordingly.

After this decision, which in effect left both companies in possession of the island, in October, 1865, the American Guano Company renewed its request for the revocation of the certificate.

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399. Id. 23 et seq.
certificate to the United States Guano Company, claiming that the certificate was "inadvertently and irregularly issued"; that it was signed without the President's authority; that it was invalid because not signed by the President; that Trescot, who did sign it, did so without authority. It was also said that the certificate should be revoked because A. G. Benson defrauded the Company; and because otherwise, the Company was without a legal remedy, as the Courts would not go behind the certificate. 400

The Attorney General considered this request, and ruled: that the proclamation was not illegally issued, but was valid and issued according to law; and that the question of fraud was not one for the determination of the State Department. The Attorney General expressly refused to decide whether the Secretary of State had the power to revoke the certificate, but decided merely that, upon the grounds stated, he ought not to do so in this case. 401 The American Company was notified of this decision. 402

400. Webb to W. Seward, Sec. of State, Oct. 18, 1865, and enclosures, 3 MS. Misc. Let. re Guano, Howlands.
401. 11 Op. Att'y. Gen. 397 (Speed, Nov. 13, 1865);
402. W. N. Seward, Sec. of State, to C. S. Marshall, Nov. 14, 1865, 71 MS. Dom. Let. 119, Seward, however, said he had "no authority" to revoke the certificate.
In 1869 the American Guano Company again repeated its request, which was again denied, the Secretary of State remarking that neither party could "be supposed desirous of the revocation of that evidence that the President thought it discreet that Howland's Island should be considered as appertaining to the United States, which is the principal effect of the proclamation." 403

Apparently the United States Guano Company continued to occupy the Island, and probably the American Company also. In 1868, the former requested the Government to build safe moorings on Howland Island, and also to request the Navy to detail a vessel of war to cruise regularly between the Navigator and Sandwich Islands, touching at the guano Islands. 404 The Secretary of State forwarded this request to the Secretary of the Navy, who replied that the Navy Department had neither authority nor funds to comply. 405

The Pacific Guano Company, a Massachusetts corporation, appears to be another American Company which occupied the island.


404. A. G. Benson to W. Seward, Sec. of State, Feb. 19, 1868, 3 MS. Misch. Let. re Guano, Howland's; do. to do., Mar. 14, 1868, Id.

island. This Company resulted from a private association of large shipping merchants in Boston and New York, one of which was the firm of Glidden and Williams of Boston which somehow "came into possession and control" of Howland Island. Apparently, the Pacific Guano Company obtained rights to the guano on the island from this firm. 406 "Previous to 1870" the company chartered in all 33 vessels to transport guano from Howland, and imported 42,607 tons of the guano. In about 1870, however, Howland Island was abandoned, at least by this company. 407 This is the last recorded occupation of Howland Island by American interests that has been found.

d. Claim of Great Britain

Howland Island, about 35 miles northeast of Baker Island, is usually mentioned in connection with the Phoenix Island group, although it is over 250 miles north of those islands. When, or how, Great Britain took possession of Howland has not been discovered. It is not named in the Order in Council of August 13, 1877, for the government of

407. Id., pp. 18-19.
of British subjects in the western Pacific, although Phoenix Islands are specifically included among those to which the Order applies.\textsuperscript{408} The Order of March 15, 1893, providing for the exercise of British jurisdiction in the Pacific Islands, also included the Phoenix group, but did not mention Howland Island by name, although it does fall within the large area described by parallels and meridians in that Order.\textsuperscript{409} In 1888 and 1889 certain pearl and guano islands in the Pacific were "appropriated" by Great Britain for the sake of the all-British cable, and Howland Island is said to be among those so appropriated, although it is possible that whatever ceremony was observed in taking possession of this island did not occur until 1892, if it occurred at all.\textsuperscript{410}

Howland Island is listed as a British possession in several British publications. The pamphlet published under the direction of the British Foreign Office in 1920, mentions

\textsuperscript{408} 68 Brit. and Foreign State Papers 325.

\textsuperscript{409} 85 Id. 1053.

\textsuperscript{410} J. D. Rogers, Op. Cit. Supra, Note 107, pp. 307-308.
mentions Phoenix Islands, "with, farther to the north, Baker and Howland," and a footnote to this paragraph reports:

"It is difficult to know to what administrative area to assign these islands, as they were not mentioned in the Order in Council of 1892 annexing the Gilbert and Ellice Islands, with which it would seem natural to include them." 411

The 1932 Pacific Islands Yearbook states that the Phoenix group was "formally annexed by Great Britain", and lists five of the principal islands by name, adding Howland’s and Baker, "considerably to the northwestward". 412 On the other hand, Brigham states only that Howland is claimed by Great Britain; 413 the 1932 Statesman’s Yearbook does not even list Howland’s Island, although it does Jarvis and Baker; 414 and Allen mentions Baker and Howland as part of the Phoenix group, "although they do not properly belong thereto", and gives no indication of sovereignty. 415

411. British Possessions in Oceania, Supra, Note 109, p.16.
412. Supra, Note 126, p. 272.
414. Supra, Note 108.
It is probable that Howland Island was at least claimed by a British company interested in removing the guano, but it is doubtful that there was actual occupation of the Island by this company. In 1900, however, J. D. Hague stated that Howland Island had come into the hands of the Pacific Island Company Limited, an English corporation, and that both Baker and Howland,--

"are now actually occupied by the above-mentioned English company, which is engaged at the present time in the shipment of guano therefrom under lease or license from the Colonial Office of the British Government and under the protection of the British flag."416

Stewart's Handbook for 1922 states that Baker and Howland and the Phoenix group -- "was at one time the seat of operations of the Phoenix Guano Company, but the supply is now exhausted."417 The British Foreign Office in 1920 noted that the Phoenix Islands (including Baker and Howland) were leased by Lever Brothers to the Samoan Shipping and Trading Company, of Sydney, Australia. The Samoan Company worked a few cocoanut plantations, and was reported to export from 700 to 1000 tons of copra a year. The same publication notes that the phosphate deposits on Baker Island were reported abandoned in 1910, but does not mention the operations of any guano company on Howland Island.418

416. N.Y. Sun, Nov. 16, 1900 (J.D. Hague to the Editors).
417. Supra, Note 1, The Phoenix Guano Co. was American. See Infra, Phoenix Islands.
418. Brit. Possessions in Oceania, Supra, Note 109, p. 16.
The Pacific Islands Yearbook for 1932 also reports the lease of the Samoan Company, and notes that the guano on these islands is all worked out, and that copra is the only product. There are said to be no cocoanut trees on Howland Island, and presumably the Samoan Company, which is not a guano company, does not occupy this Island.

e. Present Attitude of the United States

The present status of Howland Island is even more uncertain than that of Baker or Jarvis. Apparently Great Britain does or did claim the Island, but it may never have been occupied by British subjects. The United States has long been in doubt as to who had sovereignty of Howland Island. In 1898 the State Department noted that it believed Howland was then occupied by employees of American guano companies. In 1913 and 1914 the Department merely stated that Howland appeared on the list of guano islands appertaining to the United States. In 1917

419. Supra, Note 126, p. 272.

420. Thos. W. Gridler, Asst. Sec. to M. D. Lewis, May 7, 1898, 228 MS. Dom. Let. 320. There appear to be no definite grounds for this assertion.

421. J. Osborne, Acting Sec., to Rand McNally and Co., Sept. 6, 1913, (811.014/19); do. to F. L. Long, Sept. 9, 1913 (711.414P18/10); Lansing, Sec. of State, to Sec. of Interior, Dec. 10, 1914 (811.014/16)
1917, the General Board of the Navy recommended that the United States "regain ownership" of the Line Islands, and noted that the ownership of Howland Island was uncertain. 423 In 1918, however, the same Board reported that Howland Island was "No use to the United States in War. No use to an enemy." 423 In 1921 the State Department wrote that Howland was one of the guano islands,--

"the occupancy of which, if not subject to the jurisdiction of a foreign power, is granted by Act of Congress to United States citizens under certain conditions for the purpose of removing the guano therefrom." 424

In a letter of 1927 the Department added, with regard to Baker and Howland:

"Although both of these islands are included in British possessions by certain British publications, this Department is not aware that the British Government has made any claim of sovereignty over the islands and they are still regarded as appertaining to the United States." 425

422. S. W. King, Report, 1924, Supra, Note 123.

423. J. Daniels, Sec. of Navy, to Sec. of State, June, 1918 and enclosure (811.0141/28 Confidential).


425. W. R. Castle, Asst. Sec., to P. L. King, July 1, 1927 (811.0141/35); do. to E. Van Cleef, Aug. 24, 1927 (811.014/136); N. T. Johnson, Asst. Sec., to L. Williams, Jan. 30, 1929 (811.014/154); cf. S.W.Poggs, (HA) to J. Hicks, Nov. 19, 1928 (811.014/149) from which this statement was omitted.
In 1929, in a letter to William Hard, the last phrase is omitted, and the following additional statements are included:

"No case involving the protection of American citizens in any of the islands mentioned [Baker, Howland's, Jarvis, and Christmas] has been brought to the Department's attention in recent years.

"In view of the foregoing, the Department refrains from making any positive statement concerning the sovereignty of the islands and, in the absence of circumstances indicating the desirability of raising the question officially with the British Government, it is not deemed advisable to enter into any present discussion of the question." 426


2. A. G. Benson to G. W. Benson, March 29, 1856, all his right, title, and interest in Howland Island.

3. G. W. Benson to Egbert Benson, et al., Trustees of the United States Guano Co., October 26, 1858, same interest.

4. William W. Taylor to A. G. Benson, November 13, 1858, same interest.

5. A. G. Benson to George W. Benson, November 15, 1858, same interest.


7. G. W. Benson to The United States Guano Co., November 30, 1858, same interest.

427. Filed in 3 MS. Misc. Let. re Guano, Howland's.
II. THE SOUTHERN LINE ISLANDS.

1. MALDEN ISLAND (INDEPENDENCE).

a. Geography

Malden Island, or Independence Island, latitude $4^\circ 03'\ S.$, longitude $154^\circ 59'\ W.$, is in the south Pacific, roughly 400 miles southeast of Jarvis, and about 107 miles northeast of Starbuck Island. It is a low coral island, roughly triangular in form, about 5 miles long, and 4 miles wide at the eastern end. At no place is it more than 30 feet high. There are several salt water lagoons on the island, one very large. The presence of these lagoons and certain other signs indicate that the island is gradually rising. There is an indifferent anchorage on the lee side, and a pier and two small mooring buoys. Landing is very difficult because of the reefs and strong currents. 420A

The island is without fresh water. There is, or was until recently, a considerable amount of guano of varying quality. 421A Vegetation is limited to a few shrubs and plants, chiefly P\text{p}\text{etulaca} and the Kupatea-tree. In 1877 it was said that there were but ten botanical species on the

428. Brigham, Op. Cit. Supra, Note 1, p. 95; The name Independence was given to Malden in 1860.

420A. Pacific Islands Pilot, H.O. 166, Supra, Note91, pp. 542-544.

421A. Id.
the island. 422A

Birds, four or five kinds of insects, lizards, and a small specie of rat, are the only wild animal life inhabiting the island. Some of the birds,—a kind of petrel, a dark gray duck, a hawk, snipe and curlew—are occasional visitors and do not breed there. The sea birds, boobies, gannets, terns, frigate birds, prions, puffinafs, tropic birds,—breed there, most of them laying but one egg at a time. The eggs of the terns ("wide-awakes") are reported to be excellent food. 423A

The climate is remarkably equable, a record kept from 1890 to 1918 showing that the average maximum day temperature was 85° F., that only once it reached 99° and was never less than 75°. The trade winds blow steadily all year around. The rainfall, however, varies greatly from year to year. 424A In 1862, there was so much rain that the whole island looked like a meadow, but from that year to 1869 there was hardly any rain at all. 425A

b. Discovery

Malden Island was discovered on July 29, 1825, by Lord Byron, the British explorer, on the voyage on which he brought

424A. Pacific Islands Pilot, H.O. 166, Supra, Note44, p. 543.
brought the bodies of the Hawaiian King and Queen back to Honolulu. It was named after a lieutenant of the warship BLONDE, who went ashore in a whale boat and explored the island.\textsuperscript{426A} From that time until about 1860 it was not inhabited except possibly for the visits of the South Seamen in search of fresh eggs, and occasional shipwrecked crews.\textsuperscript{426B}

When the island was first visited by Europeans, it was uninhabited, but there were signs of previous habitation by human beings. These were thought by some to be merely the remnants of a present day native Polynesian village, but it is believed now that they date back to prehistoric times. There are the remains of what was apparently a pyramid and temples, from which a series of stepping-stone pathways lead to the sea. These paths all extend the same distance, but stop short before reaching the sea, indicating that the island has probably risen since they were built. There are various coral hut ruins, wells, kitchen heaps, and graves which yielded a few tools, ornaments,


\textsuperscript{426B} See Infra, Note 432A.
ornaments, and bones.  

In 1877, the native name for Malden Island, according to the traditions of the inhabitants of Manitiki, or Humphreys Island, was Tera Kupatea, a name derived from the only tree growing on the island. The natives named several of the chiefs who, they said, had lived there, and said that the people had been washed off the island. However, appearances did not warrant this assertion.  

Professor Brown, in 1919, wrote that these ruins could not have been built by any people living on the island as it is now, barren and incapable of supporting life. The vast accumulations of guano on top of the remains, the evidences of elevation of the island, showed that the structures must have been built long ago. He believed it probable that there had been an archipelago around Malden, and that perhaps Malden itself had been more fertile, but that these other islands had sunk, forcing the abandonment of Malden. The presence of many hidden, uncharted reefs in the vicinity, and of a volcanic axis just to the south, supports this theory.

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c. **United States Claim Under the Guano Act**

On December 13, 1858, the United States Guano Company filed papers with the Department of State relating to the discovery of guano on Malden, Arthur's and Christmas Islands. The affidavit of Captain George Netcher of New Bedford, Massachusetts, dated May 2, 1857, was the only one relating to Malden. Captain Netcher alleged that on May 15, 1842, he landed while sailing the American ship ISABELLA, on a barren uninhabited island, at latitude $40^\circ 15' S$, longitude $155^\circ W$, to obtain eggs and fish; that he took possession of the island "known by the name of Malden's Island", and frequently visited by American whaling ships; and that since his visit in 1842, he had learned that the deposit on the island was guano.

In the following year the United States Guano Company filed a bond, dated December 29, 1859, for Malden Island, which was sent to the Treasury Department by the State Department.

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432. Enclosure, Supra, Note 431, Id.

On October 1, 1860, the Company requested that the State Department issue a certificate to it for Malden and Christmas Islands, recognizing its exclusive interests in those islands under the Guano Act. The Department replied that no certificate could be issued until further proof was furnished of the quantity and quality of the guano on the islands, and of actual occupancy of them. Accordingly, on October 6, 1860, the United States Guano Company filed more affidavits, and an analysis of two samples of guano taken from Malden. J. L. Pendleton, in an affidavit dated February 14, 1860, alleged that in April 1859, he sailed from San Francisco in the ship IVANHOE, and that, as agent for the United States Guano Company, he "took formal possession of Malden Island," brought guano samples back, and made a chart of the island (annexed to the affidavit) In another affidavit, dated September 15, 1860, Pendleton repeated these allegations, adding that he landed on Malden on June 8, 1859, deposited there a declaration


436. Copy filed with Bonds, Supra, Note 18.
declaration of possession taken for the Company, built a
house, raised the American flag, and put up a notice to
the effect that he had taken possession of the island for
the United States Guano Company, acting under the authority
of the Guano Act of 1856, and the protection of the United
States. There was also a report by Pendleton dated January 1,
1860, to the President of the Company, describing the ap­
pearance of the island.\footnote{Enclosures, Supra, Note 17, MS. Miscl. Let. re Guano, Malden.}

No letter from the State Department has been found re­
ferring to the issuance of a certificate to the United
States Guano Company for Malden Island. However, on the
list of guano islands appertaining to the United States,
compiled by the Treasury Department on August 23, 1867,
Malden is included with those islands for which certificates
were said to have been issued to the United States Guano
Company.\footnote{6 Id., Sombrero.} It may be that a certificate was in fact is­sued and no copy kept, although the evidence submitted by
the Company of occupancy of the island was certainly very
slight. A letter written in 1866 by the Department refers
only to the fact that the United States Guano Company had
given "an approved bond" for the island.\footnote{W. Seward, Sec. of State, to Lewis Benton, April 30, 1866, MS. Dom. Let. 3.}
Malden Island was actually occupied from at least 1862, until about 1930, but it is impossible to determine who was in possession all that time. A scientist, who resided there from October, 1866, to March, 1869, reported conversing with a man who had been there since 1862, although elsewhere it was said, in 1862, that no cargoes had yet been brought from Malden. Other statements in the pilot books and various publications indicate that the island was worked for guano until very recently, but there is no indication of who worked it before 1922. On March 11, 1868, the President of the United States Guano Company informed the State Department that he had been informed by a third party that a British company, of Australia, was then removing guano from Malden. Evidently the United States Guano Company was not then occupying or working the island, and some British company was.

Apparently the State Department never protested against the British appropriation, or occupation of Malden Island. On the contrary, in answer to the United States Guano Company's

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442. Pacific Islands Pilot, H.O. 166, Supra, Note 94, pp. 542-544; Brigham, Op. Cit. Supra, Note 1; Pacific Islands Yearbook, Supra, Note 126, p. 106; British Possessions in Oceania, Supra, Note 109, p. 24.
443. A. G. Benson to W. Seward, Sec. of State, Mar. 11, 1868, 3 MS. Misc. Let. re Guano, Malden.
Company's letter of March 11, 1868, reporting the removal of guano from Malden by an Australian firm, and asking indemnity from the British Government, the Department replied as follows:

"[In the opinion of this Department, the Act of August 18, 1856, contemplated extending protection to those citizens of the United States only who shall discover guano deposit, not within the jurisdiction of any other Government and not occupied by citizens of another Government, and shall take peaceable possession thereof and occupy the same. It does not contemplate maintaining the rights of citizens as against the world, to islands which they may have discovered but have virtually abandoned by failure to occupy and possess. To entitled American citizens to the benefits of the Act they must conform to its provisions by a proper possession and occupation of the island or rock on which the guano is deposited. It is inferable from your statement that guano has been removed from [for] sometime from Malden Island without your knowledge or authority, that you have no one there to look after your interests. It is not the province of this Government to supply such agents. Nothing appears from your statement to imply any responsibility on the part of the British Government for the acts of a private corporation or its agents in respect to guano on Malden Island.""\(^444\)

Malden was included on all the lists of Guano Islands appertaining to the United States compiled by the Treasury Department, from that of August 23, 1867, to that of September 16, 1893.\(^445\) However, after 1868, only one letter appears to have been written by the State Department relating

\(^444\). W. Seward, Sec. of State, to A. G. Benson, Mar. 28, 1868, 78 Ms. Dom. Let. 255 (Italics Mr. Seward's).

relating to the status of Malden Island. On June 9, 1920, the Secretary of the Navy requested that the State Department "definitely set forth" the ownership of Malden Island. The Department replied: that it had no "definite, official information" upon which to base an authoritative reply; that according to the Statesman's Year Book of 1919, the British High Commissioner exercised jurisdiction over the island; that the Department had no information if any Americans were now removing guano from Malden; and that "no case involving the protection of American interests in that respect has been brought to its attention in recent years."

d. Claim of Great Britain

The claim of Great Britain to Malden Island rests in the first place upon its discovery by Lord Byron in 1825. Apparently, Malden was "appropriated" by Great Britain in 1866: and a "lease" was obtained for it from some one, and the British flag raised when possession was taken. However, there is no Proclamation or Order in Council relating to Malden Island published in British and Foreign State

446. J. Daniels, Sec. of Navy, to Sec. of State, June 9, 1920 (800.014/4).

447. N. H. Davis, Under Sec., to Sec. of Navy, July 26, 1920 (Id.)

Nevertheless, most publications on the subject list Malden as a British possession, and in 1920 the British Foreign Office included it among the British Line Islands.

Undoubtedly, British subjects have occupied Malden, probably since 1868, and possibly before then. The evidence that it was worked by an Australian firm in 1868 appears to be reliable. A record of the rainfall on the island was kept by some one from 1890 to 1918. The export of guano for 1900 was 10,000 tons, and there is also a record of the export of guano from Malden to Australia, and the exports to and imports from New Zealand, for the year 1912. In 1920 the island had large storage tanks for water, and was inhabited by natives imported from the Cook Islands to work the guano. On January 1, 1922, the island was leased to the Malden Island Proprietary Limited, of Melbourne, for 21 years from that date. However, it is now reported to be abandoned, and no longer inhabited.


451. Supra, Note 443.

452. Pacific Islands Pilot, N. O. 166, Supra, Note 34, p. 543.

453. Id.

454. Supra, Note 450, p. 25.

455. Id.

456. Pacific Islands Yearbook, Supra, Note 126, p. 106.

e. **Assignments**


2. Alfred G. Benson to George W. Benson, March 29, 1856, same interest.


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2. STARBUCK ISLAND (VOLUNTEER, HERO, STARVE, OR BARREN ISLAND).

a. Geography

Starbuck Island, (or Volunteer)\textsuperscript{459} latitude 5° 37' S., longitude 155° 53' W., is in the South Pacific, 106 miles southwest of Malden, and about 235 miles northeast of Penrhyn Island. It is 5 1/2 miles long, east and west, 2 miles wide, and 15 feet high. There is a beacon at the western end of the Island about 25 feet high. A reef surrounds the Island, extending 1000 yards from the shore, and the northern and northeastern points, where passages have been blasted through the reef, are the only places where a landing can be made. Landing is dangerous at all times, however, because of the strong currents and long, submerged reefs.\textsuperscript{460}

There was guano on Starbuck, but in 1922 the supply was said to be practically exhausted.\textsuperscript{461} In the center of the Island is an elevated lagoon containing large deposits of gypsum. The guano deposited on this foundation was reported to be strongly impregnated with sulphate of lime like the guano on Jarvis Island.\textsuperscript{462} The soil is mainly white.

\begin{footnotes}
\item[459] Brigham, Op. Cit. Supra, Note 1, p. 149.
\item[460] Pacific Islands Pilot, H.O. 166, Supra, Note\textsuperscript{44}, pp. 541-542.
\item[461] Stewart's Handbook, Supra, Note 1, p. 504.
\end{footnotes}
white coral sand, and there is little vegetation, chiefly green tangle and ice weed, and a few low shrubs.463

b. Discovery

According to Brigham, Starbuck Island was discovered by Captain Starbuck of L'AIGLE, a whaler (presumably British) in which the Hawaiian King, Liholiho, was taken to England, and was sighted again by Lord Byron in 1825 when he took the bodies of the Hawaiian King and Queen back to the Sandwich Islands.464 Other sources credit Lord Byron himself with the discovery, in 1825.465 Captain Starbuck was probably a British subject, as was Lord Byron.

c. United States Claim Under the Guano Act

On December 24, 1858, G. W. Benson, an officer of the United States Guano Company, filed papers with the State Department relating to the discovery of guano on Starbuck Island.466 In an affidavit of the same date, William H. Wood, a ship master of New Bedford, Massachusetts, alleged that on December 13, 1845, while sailing in the

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466. G. W. Benson to J. Appleton, Asst. Sec., Dec. 24, 1858, and enclosures, 6 MS. Misc. Let. re Guano, Starbuck.
American bark SCIENCE, he landed on a barren, uninhabited island "known as Starbuck Island," at latitude of 5° 25' S., longitude 152° 45' W.; that he rowed halfway around the Island in a whale-boat, and saw a pile of casks on the northeastern part of the Island from the wreck of the ship INDEPENDENCE; and that there were openings in the surrounding reef large enough for a small boat to pass through, and that outside the reef was an anchorage, used by the schoner which came from Tahiti to take off the cargo of the INDEPENDENCE. He claimed to have seen a deposit on the Island which he now believed to be guano. Filed with the affidavit of Wood was a quit-claim deed in which Wood assigned all his interest in the guano on Starbuck Island to George W. Benson.467

Subsequently, an affidavit by J. L. Pendleton, dated February 14, 1860, was filed with the Department. Pendleton alleged that in 1859, in the ship IVANHOE, under contract as agent of the United States Guano Company, he "visited" Starbuck Island (and "took formal possession of" Christmas and others). A sketch of "Starbuck or Hero Island", dated May 20, 1859, was appended to the affidavit.468 Finally, in 1860, the United States Guano Company filed a bond,

467. Id.

468. Papers filed with Bonds, Supra, Note 18.
dated February 8, 1860, for various islands in the Pacific, including Starbuck. 469

No letter from the Department has been found referring to a certificate issued to the United States Guano Company, recognizing the interest of that Company to guano on Starbuck Island under the Guano Act. However, in the list of guano islands appertaining to the United States compiled by the Treasury Department, August 23, 1887, Starbuck, (at latitude 5° 30' S., Longitude 155° 56' W.) is listed among the islands for which "certificates .... have been issued to the United States Guano Company, New York." 470 On the subsequent lists of February 12, 1869, July 3, 1890, and September 16, 1893, "Starbuck or Hero" is listed, with a reference to the bond of February 8, 1860, on the two later lists, and the same longitude is given for the island, but the latitude is changed from 5° 30' S., to 5° 25' S. 471


469. Id.
470. 6 MS. Misc. Let. re Guano, Sombrero.
471. Id., Misc.
notices of discovery of guano on certain islands in the Pacific. Among these papers was an undated affidavit by Thomas Long, master of the schooner E. L. FROST, in which a search for guano islands was made, and C. A. Williams. They alleged that on February 2, 1859, they saw an island at latitude 5° 40' S., longitude 155° 55' W., (practically the position of Starbuck); that they landed and took off samples of guano; that there were no signs of any previous human occupation; and that they took possession for the Company under the protection of the United States.\footnote{472} In an affidavit, dated November 14, 1859, Thomas Long alleged that in January, February, and March, 1859, he was master of the American schooner E. L. FROST, and was employed by C. A. Williams to search for guano islands; and that he visited "Starve or Barren" Island at latitude 5° 40' S., longitude 155° 55' W., the position given before by Williams and Long for the unnamed island.\footnote{473}


\footnote{472}{C. A. Williams and Co., Agents, to L. Cass, Sec. of State, Mar. 14, 1859, and enclosures, 3 G MS. Miscl. Let. re Guano, Enderbury.}

\footnote{473}{Id.}
islands, including Starve or Barren Island, described as at the position given in Long's affidavits. 474 This bond was forwarded to the Treasury Department on January 3, 1860, with the remark that the Phoenix Guano Company claimed the rights to the guano on those islands and "the protection of this Government therefore," under the Guano Act. 475

On December 31, 1859, the Secretary of State sent the Phoenix Guano Company a certificate for these islands. 476 The certificate was signed by Lewis Cass, Secretary of State, and was in the usual form, and stated that the Phoenix Guano Company had filed the request notices of discovery of guano on Starve or Barren Island, and on Phoenix, McKean, and Enderbury's Islands; that the Company had entered sufficient bonds under the Guano Act;—"wherefore the said Phoenix Guano Company is entitled in respect to the guano on the said Islands, 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 Phoenix Guano Company shall abide by the conditions and requirements imposed by the Act of Congress aforesaid." 477

474. Bonds, Supra, Note 18.


476. L. Cass, Sec. of State, to Hon. L. Foster (Senate), Dec. 31, 1859, Id. 329.

There is no doubt that the Starbuck or Hero Island claimed by the United States Guano Company is the same island as Starve or Barren Island claimed by the Phoenix Guano Company. There is no other island at or near the positions given for the two, and those positions are almost identical. As early as 1868 the Department was informed that it had recognized the claims of two companies to the same island, as appeared from the Treasury Department's list of guano islands of August 23, 1867. 478 However, nothing was done about it and on the subsequent lists both Barren or Starve, listed (at latitude 5° 40' S., longitude 155° 55' W.) and Hero or Starbuck (listed at latitude 5° 25' S., longitude 155° 56' W.) again appeared. 479

Guano is said to have been removed from Starbuck Island at various times, but nothing has been found to show when the island was occupied for this purpose, or by whom. 480 It may be that neither of the American companies claiming under the Guano Act ever in fact occupied Starbuck Island, no mention of the island has been found in the correspondence of the State Department after January, 1860.

d. Claim

478. L. R. Knorr, Hydrographer, to W. Seward, Sec. of State, April 8, 1868, 1 MS. Miscel. Let. re Guano, Alta Vela.
479. 6 Id. Miscel.
480. British Possessions in Oceania, Supra, Note 109, p. 118; Stewart's Handbook, Supra, Note 1, p. 504; Pacific Islands Yearbook, p. 325, Supra, Note 126.
d. Claim of Great Britain

Various British publications list Starbuck Island as a British possession, noting it merely as a small, uninhabited, "unattached" island. The British Foreign Office publication of 1920 includes Starbuck among the British Line islands. On the other hand, the 1932 Pacific Islands Yearbook gives no indication of the sovereignty of the island.

Certain authorities state that the British Government took possession of Starbuck in December 1866, but just how this possession was taken is not reported. No proclamation of annexation, or protectorate, or Order in Council relating to it has been published in British and Foreign State Papers. In 1888-89 England "appropriated" some pearl and guano islands, often by a "lease" of the island obtained by an Englishman from the British High Commissioner, or, before 1876, from some wandering commodore, and J. D. Rogers, in Australasia, adds: "often, too, as at Fanning, (1859), Malden (1866), Starbuck (1866), ... the flag was hoisted when these rights of ownership were exercised."

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481. Statesman's Year Book, Supra, Note 108, p. 426;
Encyclopaedia Britannica (N.Y. 1929), Pacific Islands, Vol. 17, p. 15; Stewart's Handbook, Supra, Note 1, p. 504.
482. British Possessions in Oceania, Supra, Note 109, p. 118.
483. Supra, Note 126, p. 323.
Whatever the act of possession Great Britain exercised in 1866, and subsequently, the United States apparently never protested against any violation of its or its citizen's rights to Starbuck Island. As has been said, it does not appear in the Department's files after 1860.
e. Assignments

1. Wm. H. Wood, of New Bedford, Mass., to Geo. W. Benson, Dec. 24, 1858, quit-claim deed of all his right, title and interest in and to the guano on Starbuck Island. 486

2. George W. Benson to the United States Guano Co., January 4, 1860, all his interest in Starbuck Island (and in Washington, Macauleys and Goat, Gardners, and Captain Taylor’s Islands). 487

486. 6 MS. Miscl. Let. re Guano, Starbuck.

487. 3 Id., Caroline.
3. VOSTOK ISLAND (VOSTOCK, WOSTOCK, STAVER)

a. Geography

Vostok or Staver Island, at latitude 10° 06' S., longitude 152° 23' W., is over 300 miles southeast of Starbuck and about 86 miles northeast of Flint. It is triangular in shape, about 1350 yards long and 80 feet high (including the tree tops). It is low, sandy, and thickly wooded. A narrow fringing reef surrounds the island and there is a boat passage through the reef to a landing place on the western side.

b. Discovery

Vostok was discovered in 1820 by Bellingshausen, the Russian navigator.

c. United States Claim under the Guano Act.

The claim of the United States to Vostok Island is based upon the claim of the United States Guano Company, which is supported only by an affidavit of William W. Taylor, a shipmaster of South Dartmouth, Massachusetts. In this affidavit, dated February 12, 1859, Taylor alleged that "many years since" he cruised in a designated, and very large, region of the Pacific, and had been at many of the islands he names; and that he now believed they contained

489. Pacific Islands Pilot, Supra, Note 94, p. 530.
contained valuable deposits of guano. On his long list of islands is "Stavers", said to be at latitude 10° 05' S., longitude 152° 16' W. 491 This is approximately the position now given for Vostok, and as Vostok was also known as Staver, it is almost certain that Taylor meant Vostok.

The United States Guano Company succeeded to Taylor's interest in this and other islands by assignments, duly filed with the State and Treasury Departments, 492 and filed a bond, dated February 8, 1860, purporting to cover all Taylor's islands, including "Stavers", or Vostok. 493

"Stavers", at the position designated by Captain Taylor, is included in all the lists of Guano Islands appertaining to the United States compiled by the Treasury Department. 494 On the list of August 23, 1867, there is the usual notation that certificates for the islands named by Taylor had been issued to the United States Guano Company, of New York. 495 No other record of the existence of this certificate has been found. Furthermore, there appears to be no evidence that Staver or Vostok Island was ever occupied by the United States Guano Company, or, in fact, by any other American interests. No mention of the island has been found in the files of the State Department after 1860.

d. Claim

491. Taylor's Affidavit, Supra, Note 96.
492. See Infra, Assignments, to the U. S. Guano Co.
494. 6 MS. Misc. Let. re Guano, Misc 1.
495. Id., Sombrero.
d. Claim of Great Britain

Vostok, like Flint, was evidently quietly appropriated by Great Britain in the 1880's, probably without any formal proclamation, in the interest of the British Trans-Pacific Cable scheme. 496 It is now listed by many British publications as a British possession 497 and, in 1920 was included among the so-called British Line Islands by the British Foreign Office. 498 It is now leased by Great Britain to S. R. Maxwell and Company of Auckland, and Tahiti, (who hold a lease for Flint and Caroline) for cocoanut plantations. 499 In 1926 it was reported uninhabited. 500

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497. Pacific Islands Yearbook, Supra, Note 126, p. 323; Stewart's Handbook, Supra, Note 1, p. 512; See also Brigham, Op. Cit. Supra, Note 1, p. 165. The Statesman's Yearbook (Supra, Note 108) does not mention Vostok.
498. British Possessions in Oceania, Supra, Note 109, p.25.
500. Supplement to H.O. 166, Supra, Note 453.
4. CAROLINE ISLAND (THORNTON)

a. Geography

Caroline Island, at latitude 10° S., longitude 150° 14' W., is an atoll about 123 miles eastward of Vostok Island, and 400 miles east of Penrhyn (entirely distinct from the better known Caroline Islands Group). It consists of a group of about 40 low islets on one coral reef about 7 miles long and 1 mile wide. There is a passage through the reef near the southwestern point where a landing may be effected, and there is an anchorage on the western side of the island. 501

There are two shallow wells, one on the northern island, called Nake Island, and one on the southern island, but the main source of fresh water is the rains collected in holes in the coral rock. The climate is warm and equable, and sudden showers are frequent. The vegetation is luxuriant, and coconut trees are plentiful. A wonderful variety of marine life is found in the lagoon sea, including many kinds of fish, eels, and innumerable sharks. The usual sea birds, chiefly boobies and terns, breed on the island, and it is also frequented by curlews, coots, and pigeons. The only native quadrupeds appear to have been small reddish-brown rats. 502

b. Discovery

501. Pacific Islands Pilot, Supra, Note 94, pp. 530-531; Pacific Islands Yearbook, Supra, Note 126, p. 323.

b. Discovery

Caroline Island was discovered by Lieutenant Broughton (presumably British) and named by him in honor of the eldest daughter of the then First Lord of the Admiralty. For many years it was seldom visited, though it was often sighted by the South Seamen on their way from the Society Islands to the North Pacific, cruising for whales.


The claim of the United States to Caroline Island is based on the same grounds as its claim to Vostok and Flint. In Captain Taylor's affidavit of February 12, 1859, relating to his alleged discovery of guano on Pacific islands, he lists Caroline Island, at latitude 9° 54' S., longitude 150° 07' W. This position differs from that now given for the island by only a few minutes, and the same island is undoubtedly meant.

The United States Guano Company succeeded to Taylor's interest in this island by assignments, duly filed with the State and Treasury Departments, and filed a bond, dated February 8, 1860, purporting to cover all Taylor's islands, including Caroline.

503. Id., p. 365.
504. Id., pp. 365-378.
505. Taylor's Affidavit, Supra, Note 96.
506. See Infra, Assignments, to the U. S. Guano Co.
507. Bonds, Supra, Note 18.
Caroline, at the position designated by Taylor, is included in the Treasury Department's lists of Guano Islands appertaining to the United States.\textsuperscript{508} There is the usual notation on the first list of August 23, 1867, that a certificate for the islands listed by Taylor has been issued to the United States Guano Company, of New York,\textsuperscript{509} but no other record of the existence of this certificate has been found. Nor is there any evidence that Caroline or Thornton Island was ever occupied in any way by the United States Guano Company or its assigns.

In May, 1883, it was visited by the U.S.S. HARTFORD, for the purpose of observing a total eclipse of the sun, but no claim to the island appears to have been made at that time.\textsuperscript{510}

d. The Claim of Great Britain

It is said that Caroline island was taken by England on July 9, 1868, though by what individual, or how, is not stated.\textsuperscript{511} However, in the 1870's the island was sold by one Captain Brothers, of Tahiti, to Messrs Houlder Bros. of London.

\textsuperscript{508} 6 MS. Misc. Let. re Guano, Miscel.
\textsuperscript{509} Id., Sombrero.
\textsuperscript{510} Pac. Islands Pilot, Supra, Note 94, p. 530.
\textsuperscript{511} Brigham, Op. Cit. Supra, Note 1, p. 51; Pacific Islands Pilot, Supra, Note 94, p. 530; See J. D. Rogers, Op. Cit. Supra, Note 107, p. 308.
London. At present it is held by S. R. Maxwell and Company, Ltd., of Auckland, New Zealand, and Tahiti, under a ninety-nine year lease from the British Government, dating from 1902. There are about 30,000 cocoanut trees on the island, and it is inhabited only by the plantation manager and a few native laborers.512 In 1926, there were only 10 people on Caroline Island.513

512. Stewart's Handbook, Supra, Note 1, p. 511; Pacific Islands Year Book, Supra, Note 12,p. 323, British Possessions in Oceania, Supra, Note 109, p. 118.
513. Supplement to H.O. 166, Supra, Note 453.
5. FLINT ISLAND

a. Geography

Flint Island, latitude 11° 26' S., longitude 151° 48' W., is a low, remarkably flat atoll about 2 1/2 by 1/2 miles square and 22 feet high. It is covered with brushwood and trees, and there are two small lagoons of brackish water in the center. A fringing coral reef extends seaward about 100 yards around the island, and much further at the north and south ends. There is no safe anchorage off this island, but a boat passage has been blasted through the reef to a landing place on the western side. There was guano on the island at one time, and there are now some cocoanut plantations, and considerable tropical vegetation.

b. Discovery

Flint Island is reported to have been discovered in 1801, but who the discoverer was does not appear.

c. United States Claim under the Guano Act.

The claim of the United States to Flint Island is based upon the claim of the United States Guano Company under the Guano Act of 1856. The only evidence supporting

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514. Pacific Island Pilot, Supra, Note 44, pp. 529-530; Stewart's Handbook, Supra, Note 1, p. 511; Pacific Islands Yearbook, Supra, Note 126, p. 123.

the company's claim is an affidavit by William W. Taylor, a ship master of South Dartmouth, Massachusetts, dated February 12, 1859. In this affidavit Captain Taylor merely alleged that "many years since" he cruised in a designated region of the Pacific, and had been at many of the islands named, and that he believed they contained guano. Among the islands he listed are "Flints", at latitude 11° 26' S., longitude 151° 48' W., the position now given for Flint, and "Flint" at latitude 10° 32' S., longitude 162° 05' W. 516 There is no island now known to be at the latter position, which is about halfway between Puka Puka and the Manahiki Islands. The "Flints" Island on Taylor's list, however, is evidently the island now known as Flint Island.

The United States Guano Company also filed a quit-claim deed, dated February 7, 1859, in which Taylor assigned all his interest in the islands he claimed to George W. Benson, and another deed, dated January 4, 1860, of the same islands from George Benson to the United States Guano Company. 517 Flint Island was covered by the blanket bond of the United States Guano Company, (Bond 9), dated February 8, 1860, 518 filed with the State Department February 16,

516. Affidavit of Wm. Taylor, Feb. 12, 1859, Supra, Note 96.
517. See Infra, Assignments to the U. S. Guano Co.
518. Bonds, Supra, Note 18.
February 16, and sent to the comptroller of the Treasury March 1, 1860.520 All the islands named by Taylor (including both "Flints" and "Flint") on the lists of bonded guano islands compiled by the Treasury Department, the list of August 23, 1867, note that a certificate for these islands had been issued to the United States Guano Company of New York.521 As has been said, no other record of the issuance of this certificate has been found. Nor is there any record of actual occupation of the island by the United States Guano company or its assigns. After 1860, Flint disappears entirely from the correspondence of the State Department.

d. Claim of Great Britain

Apparently, there has been no formal Act, Proclamation, or Order issued by the British Government relating specifically to Flint Island. The British claim to the island seems to have originated in the 1880 decade, when nearly all the unoccupied islands in the Pacific were "appropriated" by Great Britain with a view to assisting the all British cable scheme.522

On November 29, 1885, a 21 year lease was granted to John T. Arundel and Company, (?), presumably a British Company,

520. H. Cobb, Sec. of Treas., to L. Cass, Mar. 1, 1860, Id.
521. Id. Sombrero; Id., Misc.
Company, for cocoanut plantations. It is said that before this, guano was shipped from the island in some quantity, and that the island was leased for this purpose, but to whom or by whom is not stated. S. R. Maxwell and Company, Ltd., of Auckland, New Zealand, and Tahiti, now hold a 99 year lease of the island from the British Government. They export about 250 tons of copra a year and their employees, about 25 natives and one white manager, reside on the island. It is visited by sailing vessels from Tahiti three or four times a year. From 1903 to 1905, inclusive, meteorological observations were taken from the island.\(^{523}\)

Many British publications list Flint Island as a British possession,\(^{524}\) and the British Foreign Office in 1920 included it among the British Line Islands.\(^{525}\)

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523. Pacific Islands Pilot, Supra, Note 94, p. 529; Stewart's Handbook, Supra, Note 1, p. 511; Pacific Islands Yearbook, Supra, Note 126, p. 123; British Possessions in Oceania, Supra, Note 109, p. 118.

524. Stewart's Handbook, Supra, Note 1, p. 511; Pacific Islands Yearbook, Supra, Note 126, P. 123; J. D. Rogers Op. Cit. Supra, Note 107, p. 308. (The Statesman's Yearbook, Supra, Note 108, does not mention Flint at all)

525. British Possessions in Oceania, Supra, Note 109, p. 25.
IV. ISLANDS UNDER THE COOK ISLANDS ADMINISTRATION.

1. PENRHYN ISLAND (TONGAREVA, MANGORONGORO).

a. Geography

Penrhyn or Tongareva Island, (locally known as Mangorongoro) at latitude 9° S., longitude 158° W., is an atoll about 325 miles to the west of Vostok Island, and 190 miles northeast of Manahiki Island. It consists of a number of low islets, about fourteen feet high, on a reef about 12 miles long, and 7 miles wide, enclosing a lagoon 9 miles wide. There are several anchorages outside the lagoon, and one inside, and three passages through the reef to various islets.

There is little fresh water on the island. Fish are not plentiful, but pigs and chickens may be obtained. There are cocoamut trees and bananas, and copra and pearl shell are the main products. There are two villages on Penrhyn, each supplied with a 5000 gallon water tank. The native population in 1893 was about 500, in 1899, 417, in 1913 about 400, and in 1922, 370, plus six Europeans. There is a leprosy colony on one of the islets. 526

b. Discovery

Penrhyn Island was discovered by the British navigator, Captain,

Captain Sever, in the ship LADY PENRHYN, in 1788. 527

c. United States Claim Under the Guano Act

The United States claim to Penrhyn Island is based on the claim of the United States Guano Company which included Penrhyn on the Company's blanket bond of February 8, 1860. 528 The United States Guano Company derived its interest through assignments, originating with Captain William Taylor, the alleged discoveror of guano on the island. 529 In an affidavit dated February 12, 1859, Taylor alleged that he believed that there was guano on "Penrhyn's" Island, which he placed at latitude 30° 55' S., longitude 158° 07' W. 530 The island, misspelled "Penhuynes" and "Penhuyn's", is included on the lists of guano islands compiled by the Treasury Department, at the position given by Taylor. 531 On the list of August 23, 1867, it is noted that a certificate for this island was granted to the United States Guano Company of New York. 532 No other record has been found of the existence of this certificate. Furthermore, the island does not appear to have been occupied at all by the United States Guano Company, or its assigns.

d. The

528. Bonds, Supra, Note 18.
529. See Infra, Assignments to the U.S. Guano Co.
530. Taylor's Affidavit, Supra, Note 96.
531. 6 MS. Misc. Let. re Guano, Sombrero; Id., Miscel.
532. Id., Sombrero.
d. The Claim of Great Britain

In April, 1888, the United States Minister to Hawaii reported that three islands in the Pacific,—Fanning, Penrhyn, and Christmas,—had been visited by the British ship CAROLINE, commanded by Sir William Wiseman, and "were formally taken possession by Captain Wiseman on behalf of the Government of Great Britain". He added that the British Commissioner in Hawaii said that the trade with these islands was insignificant, but that they were valuable as coaling stations and possibly may be used for telegraphic purposes in the event that a cable is laid between Vancouver and New Zealand.\(^{533}\) The Secretary of State notified the United States representative at London of the receipt of this despatch, and instructed him to call the attention of the British Foreign Office to the correspondence of 1789 between Great Britain and the United States "relative to the possessory right to Christmas Island", but he did not mention Penrhyn.\(^{534}\) Penrhyn does not appear again in the correspondence of the State Department, and it may be inferred that the United States acquiesced in the action of the British Government.

\(^{533}\) G. Merrill, U. S. Min. to Hawaii, to T. F. Bayard, Sec. of State, Apr. 4, 1888, 23 MS. Dispatches, Hawaii, No. 179.

Government with regard to this island.

Sir William Wiseman's Proclamation, dated March 22, 1888, is presented in *British Foreign State Papers*, and entitled a proclamation "taking possession of Penrhyn Island." By an Order in Council of May 13, 1901, the Cook Islands, and other British islands within a designated area which included Penrhyn, were made a part of the colony of New Zealand, from the date June 11, 1901. Since that time Penrhyn has been administered as a part of the Cook Islands, and a dependency of New Zealand, governed by the Cook Islands Department of the New Zealand Government, through a Resident Commissioner at Rarotonga.

535. 79 British and Foreign State Papers, 1326.
536. 94 Id. 1300, 1306.
537. Pac. Islands Yearbook, Supra, Note 126, p. 33; Brit. Possessions in Oceania, Supra, Note 109, pp. 5, 38; Sir W. H. Mercer, A. J. Harding, G. Gent, *The Dominions Office and Colonial Office List for 1932* (London, 1932) p. 146; (It should be noted that although this book is compiled from official records, it expressly stated that it is not an official publication).
2. MANAHIKI ISLAND (MONAHIKI, HUMPHREY).

a. Geography

Manahiki or Humphrey Island, at latitude 10° 23' S., longitude 161° 01' W., is 190 miles southwest of Penrhyn Island, and 650 miles north of Rarotonga, Cook Islands. It is an atoll about 6 miles long and 5 miles wide at its greatest width. The land encircles a beautiful lagoon full of islets, about 6 miles in diameter. There are good landing places on the lagoon, but there is no opening into it, and there are no safe anchorages outside the reef.

There are many cocoanut trees and shrubs on this island, but the quality of the copra raised is poor. The lagoon used to contain much pearl shell of a very fine quality, but the supply has now been nearly exhausted. There are two main settlements on the island, each with 5000 gallon water tanks. The native population numbered 1200 in 1852, but in 1899 it had dwindled to 580, and in 1925 was said to be only 422.

b. Discovery

Manahiki was discovered in 1822 by Captain Patrickson in

538. Pacific Islands Pilot, Supra, Note 94, pp. 535-536; Brigham, Op. Cit. Supra, Note 1, p. 106; British Possessions in Oceania, Supra, Note 10, 8, pp. 49, 53; Pacific Islands Yearbook, Supra, Note 128, p. 41; Stewart's Handbook, Supra, Note 1, p. 497.
in the GOOD HOPE. There is no record of the master's nationality, or of the vessel's registration. 539

c. United States Claim under the Guano Act

The claim of the United States to Manahiki is based on the claim of the United States Guano Company, which included it on the company's blanket bond of February 8, 1860. 540 The company's interest was derived through assignments originating with Captain Taylor, the alleged discoverer of guano on this island. 541 In Taylor's affidavit of February 12, 1859, he alleged that he believed there was guano on "Humphreys" which he placed at latitude 10° 40' S., longitude 160° 52' W. 542 "Humphrye's" or "Humphrey's" was included in the lists of guano islands compiled by the Treasury Department at the position given by Taylor. On the list of August 23, 1867, it is noted that a certificate for this island was issued to the United States Guano Company of New York. 543 There is no other evidence of the existence of

540. Bonds, Supra, Note 18.
541. See Infra, Assignments to the U. S. Guano Co.
542. Taylor's Affidavit, Supra, Note 96.
543. 6 MS. Misc. Let. re Guano, Sombrero; Id., Misc.
of this certificate. Furthermore, Humphreys or Manahiki does not appear to have been occupied by the United States Guano Company, or by its assigns, and no mention of it has been found in the State Department's correspondence since 1860.

d. Claim of Great Britain

There is no record in British and Foreign State Papers of any British proclamation of possession or annexation of this island. However, it has been reported elsewhere that a British protectorate over the island was declared, and the flag raised, on August 9, 1889. Manahiki, like Penrhyn, Nassau, and Danger Islands was included in the area designated as a part of the colony of New Zealand by the Order in Council of May 13, 1901, effective June 11, 1901. Since that time it has been administered as a part of the Cook Islands, and a dependency of New Zealand, governed by the Cooks Island Department of the New Zealand Government, through a Resident Commissioner at Rarotongo.


545. 94 Brit. and Foreign State Papers, 1300, 1306.

546. British Possessions in Oceania, Supra, Note 109, pp. 5, 38; Pac. Islands Yearbook, Supra, Note 126, p. 41; Dominions and Colonial Office List, Supra, Note 537, p. 147.
3. RAKAHANGA ISLAND (RAKAANGA, RIERSON, REIRSON)

a. Geography

Rakahanga, at latitude 10° 02' S., longitude 161° 05 1/2' W., is about 20 miles north by west of Manahiki, and 670 miles north of Rarotonga, Cook Islands. It is very like Manahiki, though smaller. The soil is poor but there are coconuts on the island, and some native foods are raised. The island also contains a spring of medicinal water. There is no pearl shell in this lagoon. The anchorage and landing are poor.

There is a village at the southern end of the island. In 1922 the population consisted of 309 natives and one European. About 160 tons of copra were exported in 1902. The vessel of the London Missions visits the island periodically.

b. Discovery

The island was discovered by Bellingshausen, the Russian navigator, in 1820. He called it Grand Duke Alexander. Captain Patrickson rediscovered it in 1822, and called it Reirson.

547. Pacific Islands Pilot, Supra, Note 94, pp. 536-537; Stewart's Handbook, Supra, Note 1, p. 498; Pacific Islands Yearbook, Supra, Note 126, p. 42; British Possessions in Oceania, Supra, Note 109, p. 49, 53.

c. United States Claim under the Guano Act

The United States claim to this island is based on the claim of the United States Guano Company, which included it on the company's bond of February 8, 1860.\footnote{Bonds, Supra, Note 18.} The company's interest is derived through assignments originating with Captain Taylor, the alleged discoverer of guano on the island.\footnote{See Infra, Assignments to the U.S. Guano Co.} In Taylor's affidavit of February 12, 1859, he alleged that he believed there was guano on "Riersons", at latitude 10° 10' S., longitude 160° 53' W.\footnote{Taylor's affidavit, Supra, Note 96.} The island was included in all the lists of guano islands compiled by the Treasury Department at the position given by Taylor. On the Treasury Department's list of August 23, 1867, it was misprinted as "Pierson's", but on subsequent lists this was corrected to "Rierson's". On this list also appears the notation that a certificate for this island was issued to the United States Guano Company of New York.\footnote{6 MS. Miscl. Let. re Guano, Sombrero; Id., Miscl.} There is no other record of the existence of this certificate. In 1868, the Department was informed that the existence of this island at the position given by Taylor was doubtful.\footnote{E. Knorr to W. Seward, Sec. of State, April 8, 1868, 1 Id., Alto Vela.} There is no subsequent mention of this island in

\begin{footnotes}
\footnotetext{549. Bonds, Supra, Note 18.}
\footnotetext{550. See Infra, Assignments to the U.S. Guano Co.}
\footnotetext{551. Taylor's affidavit, Supra, Note 96.}
\footnotetext{552. 6 MS. Miscl. Let. re Guano, Sombrero; Id., Miscl.}
\footnotetext{553. E. Knorr to W. Seward, Sec. of State, April 8, 1868, 1 Id., Alto Vela.}
\end{footnotes}
in the correspondence of the Department, and it does not appear to have been occupied at any time by the United States Guano Company, or its assigns.

d. The Claim of Great Britain

It is said that a British protectorate was declared over Rakahanga on August 9, 1889.\textsuperscript{554} This island was included in the area which became part of the colony of New Zealand by the Order in Council of May 13, 1901, effective June 11, 1901.\textsuperscript{555} Since that date it has been governed as part of the Cook Islands and a dependency of New Zealand, under the Cook Islands Department of New Zealand, through a Resident Commissioner at Rarotonga.\textsuperscript{556}

\textsuperscript{554} Brigham, Op. Cit. Supra, Note 1, p. 135; Pacific Islands Pilot, Supra, Note\textsuperscript{94}, p. 536.

\textsuperscript{555} British and Foreign State Papers 1300, 1306.

\textsuperscript{556} British Possessions in Oceania, Supra, Note 109, pp. 5, 38, Pacific Islands Yearbook, Supra, Note 126, p. 42; Dominions and Colonial Office List, Supra, Note 537, pp. 148, 147.
4. DANGER ISLANDS: PUKAPUKA, MOTUKAVATA, MOTUKOE, (DANGEROUS ISLANDS.)

a. Geography

Danger Islands, at latitude 10° 53' S. longitude 65° 50' W., are about 300 miles west southwest of Manahiki, 210 miles northwest of Suvarov Islands, and 390 miles northeast of Samoa. They consist of three islands and several smaller keys on an atoll 7 1/2 miles long by 4 3/4 miles wide at the eastern end, but much narrower and without islets at the western end. Dangerous reefs and currents surround the islands; the lagoon is shallow and there is no entrance into it, and the only landing place is on the west side of Pukapuka, the northern island.

The soil on these islands is good, and limes, bananas, water cress, taro and coconuts are grown. There is fresh water on Puka Puka Island. Fowls, duck and wild pigeons may be obtained there. There is an extensive growth of pandanus or screw palms and there were many Tamanu trees, though now there are but few left. The wood of these trees is like Spanish mahogany, and is valuable for ship building and ornamental work. A green oil, known in the Indian Seas as "Woondel", is obtained from the seed of this tree and used for medicinal purposes, and the gum from the stem is used for perfume.557 A fair amount of pearl shell and copra

copra are obtained from the islands.\footnote{558}

The chief Islands of the groups are Pukapuka, Motukavata, and Motukoe. Pukapuka, latitude 10° 53' S., longitude 165° 45 1/2' W., the northern-most island, at the northeast corner of the atoll, is 80 feet high and covered with cocoanut trees. There are enormous prehistoric excavations on this Island. Motukavata, latitude 10° 58' S., longitude 165° 15' W., is long and low, but rises to a hill 150 feet high at the southern end. Motukoe, latitude 10° 53' S., longitude 165° 45 1/2' W., is thickly wooded and about 100 feet high, with a small key at the northern end of the island.\footnote{559}

b. \textbf{Discovery.}

Danger Islands were discovered and so named by the British explorer, Lord Byron, on June 21, 1765.\footnote{560}

c. \textbf{The United States Claim Under the Guano Act}

The United States claim to these Islands is based on the claim of the United States Guano Company, which included these Islands on the blanket bond of February 8, 1860.\footnote{561}

\footnote{558} \textit{British Possessions in Oceania}, Supra, Note 109, pp. 35.

\footnote{559} Brigham, \textit{Op. Cit. Supra}, Note 1, pp. 34, 108, 133. There are two other Pacific Islands named Pukapuka. See also \textit{Pacific Islands Pilot}, Supra, Note 94, pp. 539-540.

\footnote{560} Brigham, \textit{Op. Cit. Supra}, Note 1, p. 54; \textit{Pacific Islands Pilot}, Supra, Note 94, p. 539.

\footnote{561} Bonds, Supra, Note 18,
1860. The United States Guano Company derived its interest by assignments from Captain William Taylor, the alleged discoverer of guano on the islands.\textsuperscript{562} In an affidavit, dated February 12, 1859, Taylor alleged that he believed guano to be on "Dangerous Islands", which he placed at latitude 10° S, longitude 165° 56' W.\textsuperscript{563} The islands are listed as "Dangerous", at this position, on all the lists of the Treasury Department, and on the list of August 23, 1867, it is said that a certificate for these islands and the others described by Taylor, was issued to the United States Guano Company of New York.\textsuperscript{564} There is no other evidence of the existence of this certificate. Dangerous islands does not appear in the correspondence of the State Department after 1860. Furthermore, there is no evidence that they were ever occupied or even visited by the United States Guano Company, or its assigns.

d. Claim of Great Britain

Danger Islands are said to have been "formally annexed" to Great Britain in 1892.\textsuperscript{565} By British Order in Council of May 13, 1901, the Cook Islands, and other British Islands within

\begin{itemize}
  \item \textsuperscript{562} See Infra, Assignments to the U.S. Guano Co.
  \item \textsuperscript{563} Taylor's Affidavit, Supra, Note 96.
  \item \textsuperscript{564} 6 MS. Miscel. Let. re Guano, Sombrero; Id., Miscel.
  \item \textsuperscript{565} Pacific Islands Pilot, Supra, Note 94, p. 539.
\end{itemize}
within a designated area, which included the Danger Islands, were made a part of the colony of New Zealand, from the date of June 11, 1901. Since that time the Danger Islands have been treated as a part of the Cook Islands, and a dependency of New Zealand, governed by the Cook Islands Department of the New Zealand Government, through a resident Commissioner at Rarotonga.

There is a village on Pukapuka. The native population of this island was said to be 500 in 1925, and 587 in 1931. There is a Resident Agent on the islands, but the native chiefs govern in local matters. The islands have apparently always been inhabited, but in the middle nineteenth century slaving ships from Peru carried off many of the natives. Boats call at these islands now only about two or three times a year.

566. 94 British and Foreign State Papers 1300, 1306.
568. Id., Stewart's Handbook, Supra, Note 1. p. 498; British Possessions in Oceania, Supra, Note 109, p. 5.
5. NASSAU ISLAND.

a. Geography

Nassau Island, at latitude 11° 33 1/2' S, longitude 165° 25' W., is a small coral island 45 miles south southeast of Danger Islands. It is 1400 by 1000 yards square, and is surrounded by a fringing reef. There is no lagoon on Nassau, and no good anchorage. Landing is difficult, although it may be accomplished on the north side of the northwest point.

Good fresh water is plentiful. The soil is fertile, and breadfruit, bananas, taro, coconuts and lime trees grow there. 569

b. Discovery

Nassau was first reported by Captain Sampson of the American Whaler NASSAU, in 1835. 570 Captain Cazales reported it again in 1855, giving it approximately the same position as had Captain Sampson. 571


The United States claim to Nassau is based on the claim of the United States Guano Company, which included Nassau

569. Pacific Islands Pilot, Supra, Note 94, p. 541; British Possessions in Oceania, Supra, Note 109, pp. 49, 53; Stewart's Handbook, Supra, Note 1, p. 499.


571. E. Knorr to W. Seward, Sec. of State, April 8, 1868, 1 MS. Misc. Let. re Guano, Alta Vela.
Nassau on the blanket bond of February 8, 1860. The United States Guano Company derived its interest by assignments from Captain William Taylor, the alleged discoverer of guano on Nassau. In Captain Taylor's affidavit, dated February 12, 1859, he alleged that he believed guano to be on this Island which he placed at latitude 11° 30' S, longitude 165° 30' W. Nassau was included on all of the lists of guano islands compiled by the Treasury Department at the position given by Taylor. On the first list of August 23, 1867, it is said that a certificate for this Island, and the others named by Taylor, had been issued to the United States Guano Company of New York. There is no other evidence of the existence of this certificate, nor is there any evidence that the company or its assigns ever occupied the island. Nassau is not mentioned in the correspondence of the State Department after 1860.

d. Claim of Great Britain

Nassau appears to have been appropriated by Great Britain in 1888-1889, or possibly not until 1892, because of the British Trans-Pacific Cable scheme. It is said that

572. Bonds, Supra, Note 18.
573. See Infra, Assignments to the U. S. Guano Co.
574. Taylor's Affidavit, Supra Note 96.
575. 6 MS. Miscl. Let. re Guano, Sombrero, Id., Miscl.
576. Id., Sombrero.
that there was no formal act of possession with respect to Nassau, as it was deemed superfluous,—"the English title being as clear as noon-day without it".577 Nassau is now a dependency of New Zealand.578 By the British Order in Council of May 13, 1901, British Islands in a designated area of the South Pacific, which included Nassau, were made a part of the colony of New Zealand, from the date June 11, 1901.579 It was at one time leased to the Samoan Shipping and Trading Company, an Australian corporation,580 but is now said to belong to Burns, Philip Co., ltd.581 In 1921, the population consisted of one white overseer and about 23 natives, working the copra plantations for this company. Trading schooners occasionally visit the Island.582

578. Dominions and Colonial Office List, Supra, Note 537, p. 148; British Possessions in Oceania, Supra, Note 109, p. 5.
579. 94 British and Foreign State Papers, 1300, 1306.
580. British Possessions in Oceania, Supra, Note 109, p. 5; Pacific Islands Pilot, Supra, Note 94, p. 541.
582. Pacific Islands Pilot, Supra, Note 94, p. 541.
V. MISCELLANEOUS GROUPS.

1. PHOENIX ISLANDS: GARDNER (or KELHINS), HULL, SYDNEY, PHOENIX, BIRNIE, ENSDREURY, CANTON (SWALLOW, or MARY), and McKEAN.

a. Geography

The Phoenix Islands group is made up of eight small islands, just south of the equator, between the meridians 170° 41' W., and 176° 43' W. They are situated due north of Samoa, and about five hundred miles northeast of the Ellice Islands. The total land area of the Phoenix group is roughly eighteen square miles. The Great Circle tracks between Sydney and San Francisco and between Fiji and Hawaii, pass through the islands. They are all made of coral and small, of the usual lagoon type, surrounded by fringing reefs. 583 There are no harbors, but it was among these islands that the British flyer, Kingsford Smith, looked for a possible emergency landing place, if one had been necessary, when preparing for his flight in the SOUTHERN CROSS in 1928. 584

The climate is warm and equable, averaging 80° F. all the year around. The easterly trade winds blow all months of

583. Pacific Islands Pilot, Supra, Note 94, pp. 521-522; Stewart's Handbook, Supra, Note 1, p. 399.

584. Pacific Islands Year Book, Supra, Note 126, p. 272.
of the year. Little rain falls on the islands, practically none on Enderbury, though squalls and light rains occur frequently in the vicinity.585

585. Pacific Islands Pilot, Supra, Note94, pp. 521-522; British Possessions in Oceania, Supra, Note 109, p. 16.
(1) GARDNER, (KEMMIN, KEMMINS) ISLAND

Gardner Island, latitude 4° 37' S., longitude 174° 39' W., is the southwestern island of the Phoenix Group. It is about 2 miles long and 50 feet high (including the trees). The island is very fertile and densely wooded, and some cocoanut trees have been planted there. There is a lagoon on the island, but there is no navigable passage into it.586 Gardner is surrounded to a distance of 200 yards by a shallow shelf of hard black rock on which the sea breaks constantly, and landing on any part of the island is very difficult. Birds, rats, and large crabs are numerous, and both the sea and the lagoon are infested with sharks. The only fresh water to be found is that collected in pools after a rain.587

586. Pacific Islands Pilot, Supra, Note 4, p. 520; Pacific Islands Year Book, Supra, Note 126, p. 272; Stewart's Handbook, Supra, Note 1, p. 399.

587. Supplement to H. O. 166, Supra, Note 453, p. 24.
(2). HULL ISLAND

Hull Island, latitude 4° 31' 25" S., longitude 172° 18' 15" W., is 142 miles to the east of Gardner. There is a boat passage into the lagoon on the northwestern side. A surrounding coral reef makes landing difficult, except through this passage, and there is no anchorage. There are cocoanut plantations, a few pigs and fowls on this island, and two wells.


589. Pacific Islands Pilot, Supra, Note 44, p. 520-521; Supplement to H. O. 166, Supra, Note 453, p. 24; British Possessions in Oceania, Supra, Note 109, p. 16.
(3) SYDNEY ISLAND

Sydney Island, latitude 40° 27' 1/2" S., 171° 14' W., is 64 miles to the east of Hull. It consists of a coral reef surrounding a lagoon into which there is no opening. There is an anchorage on the western side of the reef. The island is about 2 by 1 3/4 miles square, and 20 feet high.

There are trees, and cocoanut plantations on the island, and 6 fresh water wells. There is or was guano. Wild ducks are found in the lagoon; the fish are poisonous, but turtles may occasionally be obtained. There are also a number of old stone ruins, and an ancient fish pond. 590

Phoenix Island, latitude 3° 42 1/2' S., longitude 170° 41 1/2' W., is the eastern island of the group. It is about 18 feet high, and 1200 yards long, by 1/2 mile wide, with an area of about 3 square miles. The lagoon in the center is said by some to be fresh, and the island is quite fertile, with extensive cocoanut plantations. Formerly there was some guano, said to be of good quality. The island is overrun with rabbits.


(5) BIRNIE ISLAND

Birnie Island, latitude 3° 35' S., longitude 171° 31' W., is 50 miles westward of Phoenix Island. It is about 1500 yards long, 1/4 mile wide, and 6 feet high. There is no anchorage, but a landing may be effected on the lee side. In the center is a shallow brackish lagoon. A few shrubs only grow on the island, and the fish are poisonous.

(6) ENDERBURY ISLAND

Enderbury Island, latitude 3° 17' S., longitude 171° 2 1/2' W., is about 30 miles northwest of Phoenix Island. It is 2 1/2 miles long, 1 mile wide, and 25 feet high. A fringing reef extends 100 to 200 yards off the shore; there is no anchorage, and landing is difficult. In the center of the island is a salt water lagoon. Fresh water cannot be found, and 2 small mangrove thickets and a few patches of grass are the only vegetation. There is some guano in the southern part of the lagoon.594

CANTON, or MARY ISLAND (MARY BALCOULT, or SWALLOW) 595

Canton Island, latitude 2° 49' S., longitude 171° 39' W., the northern island of the group, is about 32 miles west northwest of Enderbury Island. It is a coral atoll, from 10 to 20 feet high, varying in width from 50 to 600 yards, and containing a lagoon about 9 miles long, into which there is a boat passage. It is covered with low scrub trees and cocoanuts plantations. Formerly there was an extensive guano deposit. 596


596. Pacific Islands Pilot, Supra, Note 94, p. 523; British Possessions in Oceania, Supra, Note 109, pp. 84-85; Pacific Islands Year Book, Supra, Note 126, p. 272; Stewart's Handbook, Supra, Note 1, p. 399.
McKeans Island, latitude 3° 37' S., 174° 07' W., is 67 miles north northeast of Gardner. It is about 1 mile square and 15 feet high. It is composed of coral and sand, covered with bushes. There is (or was) some guano, chiefly in the elevated lagoon. As at Jarvis, the guano contained much sulphate of lime.\textsuperscript{597}

\textsuperscript{597.} Pacific Islands Pilot, Supra, Note\textsuperscript{34}, pp. 523-524; J. D. Hague, Op. Cit. Supra, Note 217, p. 20.
b. **Discovery**

It is reported that a Captain Emment discovered Sydney and Birnie Islands, but the date of the discovery, and the nationality of the discoverer, are unknown. Commander Charles Wilkes, of the United States Exploring Expedition of 1838, discovered Hull, on August 26, 1840, and McKean in the same year. He searched for Phoenix Island, previously reported by the ship PHOENIX, but could not find it. He visited Enderbury, however, which had apparently already been reported, but when or by whom is not known.

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c. **United States Claim Under the Guano Act**

On March 14, 1859, C. A. Williams and Company of New London, Connecticut, (afterwards the Phoenix Guano Company), filed with the State Department a notice of discovery of guano on certain Pacific Islands, viz: Starve or Barren (Starbuck), Phoenix, McKean, and Enderbury. In an affidavit by Thomas Long, master of the schooner E. L. FROST, in which the discoveries were made, and C. A. Williams, the deponents alleged that they landed on Phoenix Island on February 19, 1859, found guano there, and took possession of the Island in the name of the United States, erecting a board with an inscription to that effect, and burying a bottle containing papers proving their landing and possessory acts. They sighted Birnie Island, but apparently

(Footnotes on next page).
apparently did not land on it; but they landed on and took formal possession of McKean Island in the same manner as Phoenix. They sighted Enderbury but were unable to land because of strong currents, but stated that they were prepared to reexamine it, and to erect the necessary ship moorings there. There was also filed a supporting affidavit by John Rice and James Bush, first and second officers on the schooner E. L. FROST. The receipt of these documents was acknowledged, and on May 20, 1859, claimants inquired the amount of the bond required under the Guano Act. There was some further correspondence on

(Footnotes from preceding page)


599. E. R. Knorr, to W. Seward, Sec. of State, April 8, 1868, 1 MS. Misc. Let. re Guano, Alta Vela.

600. C. A. Williams & Co. to L. Cass, Sec. of State, Mar. 14, 1859, Copy in Id., Enderbury.

601. Id., Enclosures.

602. L. Cass, Sec. of State, to C. A. Williams, May 18, 1859, Copy, Id.

603. C. A. Williams to L. Cass, Sec. of State, May 20, 1859, Id.
on the subject, and other affidavits and samples of guano were filed with the Department by the Company. In a second affidavit by Thomas Long, dated November 14, 1859, he alleged that in the spring of 1859, as Commander of the American brig AGATE, charted by Williams, he visited and took possession of Enderbury Island, sighted before, and revisited Phoenix and McKean, removing samples of guano from them all.

In December, 1859, C. A. Williams and Thomas W. Williams, principals, for the Phoenix Guano Company, filed a bond, dated December 27, 1859, for Phoenix Island, McKean and Enderbury, (and for Starve or Barren Island, described under Starbuck Island). This bond was sent to the Treasury Department with the remark that the Phoenix Guano Company claimed rights to the guano on those islands "and the protection of this Government therefore" under the Guano Act.

On

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604. do. to do., Nov. 5, 1859, Id; L. Cass, Sec. of State, to C. A. Williams, May 31, 1859, Id; John Appleton, Asst. Sec., to C. A. Williams, Nov. 9, 1859, Id; C. A. Williams & Co., to L. Cass, Sec. of State, Nov. 16, 1859, Id; J. Appleton, Asst. Sec., to C. A. Williams and Col, Nov. 21, 1859, Id.

605. Affidavit, Thos. Long, Nov. 14, 1859, Id.

606. Bonds, Supra, Note 18.

On December 31, 1859, the State Department sent the Phoenix Guano Company a certificate, signed by the Secretary, for the above-named islands. This certificate was in the usual form, and stated that the Phoenix Guano Company had filed the requisite notices of discovery and bonds under the Guano Act, and concluded:

"Therefore the said Phoenix Guano Company is entitled in respect to the guano on the said Islands, 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 Phoenix Guano Company shall abide by the conditions and requirements imposed by the Act of Congress aforesaid."

In February, 1860, the United States Guano Company filed a bond, dated February 8, 1860, for various (unnamed) guano islands in the Pacific, and copies of papers already filed relating to some of these islands, claiming the guano on all of them under the Act of 1856. This bond was signed by A. G. Benson, President of the company, and T. M. Braine, Secretary, and was accompanied by a certified copy of the company's Resolution, authorizing the filing of the bond.

608. L. Cass, Sec. of State, to Hon. L. F. S. Foster, U. S. Senate, Dec. 31, 1859, Id. 329.
610. Bonds, Supra, Note 18.
Among the islands covered by this "blanket" bond for which other identifying papers were also filed, is Gardner Island, one of the Phoenix Group. These papers, sent the Department on January 21, 1859, include an affidavit by John P. Payne, dated January 21, 1859, in which he alleged that on December 29, 1842, he discovered and landed on a barren, uninhabited island, "hitherto unknown," but "now known on the charts as 'Gardner's Island'," and that there was a deposit on the island he believed to be guano. As discoverer of both the island and the guano, he claimed the guano under the Act of 1856. A sketch or map of the island was attached to this affidavit. There was also filed a quit-claim deed, an assignment by Payne of all his interest in and to the island and its deposits to George W. Benson (subsequently an officer of the United States Guano Company).

The bond ("bond 9") of the United States Guano Company, however, included all the islands of the Phoenix group, chiefly on the basis of an affidavit by William W. Taylor, a shipmaster of South Dartmouth, Massachusetts, dated February 12.


612. Enclosures, Id., See Also J. P. Payne to L. Cass, Sec. of State, Jan. 29, 1859, Id., Christmas.
February 12, 1859. In this statement Captain Taylor alleged that:

"...many years since he cruised in the Pacific Ocean in the region embraced within longitude (180°) and the western coast of America and latitude (10°) North and (20°) South... That he has been at many of the islands hereinafter named, in that region of the Pacific. That he has reason to believe they contain large and valuable deposits of guano..."

In conclusion he claimed the guano on the islands "known as the Caroline, Washington, and Sydney groups," listing their names and positions. The following islands of the Phoenix Group are found on Taylor's list. 613

<table>
<thead>
<tr>
<th>Island</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birnies</td>
<td>3° 35' S</td>
<td>171° 39' W</td>
</tr>
<tr>
<td>Phenix</td>
<td>3° 40'</td>
<td>170° 52'</td>
</tr>
<tr>
<td>Marys [Canton]</td>
<td>2° 53'</td>
<td>172° 00'</td>
</tr>
<tr>
<td>Enderburys</td>
<td>3° 08'</td>
<td>174° 14'</td>
</tr>
<tr>
<td>Sydneys islands</td>
<td>4° 20'</td>
<td>171° 00'</td>
</tr>
<tr>
<td>Kemins [Gardner]</td>
<td>4° 41'</td>
<td>173° 44'</td>
</tr>
<tr>
<td>[Mary Letitia]</td>
<td>4° 40'</td>
<td>173° 20'</td>
</tr>
<tr>
<td>[Farmers]</td>
<td>3° 00'</td>
<td>170° 50'</td>
</tr>
</tbody>
</table>

The positions given by Taylor for these islands are inaccurate and incorrect, and were probably intentionally made so, for many of the islands he claimed have never existed at all. Mary Letitia, and Farmers Islands have never been heard of elsewhere. It is possible that he intended to indicate Hull Island, or Gardner's Island by the former, and Canton or Marya Island by the latter, though

613. Taylor's Affidavit, Supra, note 96.
though Mary was also included in the list under that name. It is more probable that he invented those names and positions, knowing there was a group of islands in the vicinity, and shifted the positions of the islands correctly named intentionally. 614

Besides Taylor's affidavit, a quitclaim deed, dated February 7, 1859, in which William M. Taylor assigned his interest in those islands to G. W. Benson, was also filed with the Department, and an assignment of them by G. W. Benson to the United States Guano Company, dated February 4, 1860. 615 There was also an affidavit by Arthur Benson, dated February 8, 1860, in which he alleged that he had taken peaceful possession of Enderbury Island on July 9, 1859, and to which was attached a copy of the notice of possession taken that he left on the island, and an analysis of the samples of guano which he removed from it. 616 In an affidavit dated February 14, 1860, Captain J. W. Pendleton alleged that in April, 1859, he sailed from San Francisco

614. See E. R. Knorr to W. Seward, Sec. of State, April 8, 1868, 1 MS. Misc. Let. re Guano, Alta Vela.

615. See Infra, Assignments to the U. S. Guano Co.

616. Copy of Affidavit, Arthur Benson, Feb. 8, 1860, filed with Bonds, Supra, Note 18,
in the ship IVANHOE, under contract with the United States Guano Company, and as their agent "he visited Starbuck, Enderburys, and Birnies Islands and took formal possession of Christmas, Maldens, Howlands and Phenix Islands", bringing back samples of guano from them. Captain Lane, master of the IVANHOE, made charts or maps of each island, copies of which were attached to Pendleton's statement.\(^{617}\)

The only other evidence submitted relating to these islands are affidavits of Captain Taylor and G. W. Benson, dated February 8, 1860, in which they allege that they believe the guano on these islands to be worth at least \$500,000.\(^{618}\)

No letter has been found in which the Department forwarded the usual certificate to the United States Guano Company, recognizing its interest in any of the islands covered by Bond 9 under the Guano Act. However, all the islands described by Taylor were listed on the list of guano islands appertaining to the United States, compiled by the Treasury Department, August 23, 1867, and on that circular it was noted that certificates had been issued for them to the United States Guano Company of New York.\(^{619}\)

\(^{617}\) Affidavit of J. L. Pendleton, Feb. 14, 1860, and maps attached. Id.

\(^{618}\) Id.

\(^{619}\) MS. Misc. Let. re Guano, Sombrero.
In a letter of July 7, 1860, by A. G. Benson, President of the United States Guano Company, to the Department, he states that a certificate for these islands was issued to the company by the Secretary of State, April 29, 1859.620 The letter to which Benson refers, however, merely acknowledges the receipt of the papers sent the Department by the Company, and states that they have been filed,621 and does not mention a certificate. Later, in March, 1863, the attorney for the Phoenix Guano Company stated that a certificate for Enderbury Island had been "inadvertently" issued to the United States Guano Company on March 2, 1860.622 No letter of that date from the Department to the latter company has been found, however, and it is possible that no such certificate was issued at all.

The Treasury Department list of August 23, 1867 also included McKean, Phoenix and Enderbury, at slightly different positions from those given for the same islands for which it was said a certificate had been issued to the United States Guano Company, with a notation that certificates had been issued for them to the Phoenix Guano Company of New London, Connecticut.623 The apparent duplications

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620. A. G. Benson to L. Cass, Sec. of State, July 7, 1860, 3 Id., Enderbury.
621. J. Appleton, Asst. Sec., to G. W. Benson, April 29, 1859, 50 MS. Dom. Let. 266.
622. S. Miles to W. Seward, Sec. of State, 3 MS. Misc. Let. re Guano, Enderbury.
623. 6 Id., Sombrero.
and the inconsistency of granting exclusive rights to
two companies for the guano on the same islands was
called to the Department's attention on April 8, 1868,
by Mr. Knorr, an hydrographer, but apparently nothing
was done about it, for we find the same duplications on
the later Treasury lists, although some of the positions
are altered.

Both companies occupied some of these islands. McKean
was occupied since 1858, and in 1882 it was reported that
several cargoes of guano had been brought to the United
States from that island. Presumably, the occupants
were employees of the Phoenix Guano Company, for in March,
1859, C. A. Williams wrote that he had already sold a cargo
of guano from one of the islands to parties in Honolulu.
On November 5, 1859, he stated that the company was then
working McKean, had a large force of laborers there, and
had erected moorings and other facilities for working the
guano; and that 1000 tons of guano had been sold already,

624. E. R. Knorr to W. Seward, Sec. of State, April 8,
1868, 1 Id. Alta Vela.

625. 6 Id., Miscl. See also J. Appleton, Asst. Sec., to
C. Y. Lenman, Aug. 11, 1859, 3 Id. Enderbury; do.
to Albert Smith, Mar. 26, 1860, 52 MS. Dom. Let. 74.


627. C. A. Williams to Meñec Gonzell Mentune (?) and Co.,
Mar. 28, 1859, Copy, 3 MS. Miscl. Let. re. Guano,
Enderbury.
and two ships had been chartered for the trade.\textsuperscript{628} In March, 1860, the arrival of a cargo of guano from McKean at New London, the first import into the United States of the Phoenix Guano Company, was noted in a newspaper, and it was said that McKean was then the only island being exploited.\textsuperscript{629}

Both companies tried to get actual possession of Enderbury Island, A. G. Benson, president of the United States Guano Company, wrote the Department on July 7, 1860, referring to the papers filed by that Company with regard to Enderbury Island, and stated that the Company had sent agents there in February, 1859, and again in May, and that in September it had sent there a competent chemist and a surveying crew. In conclusion he requested the President to give the company the protection of the national forces in guarding its legal rights to Enderbury, and the other islands on the Pacific.\textsuperscript{630} This letter, to which no answer has been found, was evidently an effort on the part of the United States Guano Company to forestall the Phoenix Guano Company. This effort did not succeed, and the Phoenix Guano Company occupied Enderbury Island as well as McKean, and in January, 1861, had an agent, John Griswold, residing on the former. However, on January 5, 1861, Griswold was forcefully

\textsuperscript{628} C. A. Williams to L. Cass, Nov. 5, 1859, Id.

\textsuperscript{629} Albert Smith to L. Cass, March 25, 1860, Id.

\textsuperscript{630} A. G. Benson to L. Cass, July 7, 1860, Id.
forcefully evicted from Enderbury Island by a Captain Gunn, master of the ship EAGLE, and apparently acting under orders from the United States Guano Company.631 Captain Gunn left two of his men in possession and in April, 1861, other agents of the Phoenix Company were prevented from landing on Enderbury by these men, who were armed with cannon. The Phoenix Company men entered a formal protest with the American Consul at Honolulu, who issued a statement supporting their claim and affirming that the occupants with cannon were trespassers. The Phoenix Company men then obtained re-enforcements and returned to Enderbury and this time succeeded in taking and retaining possession of the island.632

On March 31, 1863, Samuel Niles, attorney for the Phoenix Company, forwarded a brief to the State Department reciting these facts, and alleging that the United States Guano Company had no claim to the island. He requested the cancellation of the certificate which he believed to have been issued to the United States Guano Company, subsequent to that issued to the Phoenix Company. 633

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631. Affidavit of John Griswold, March 14, 1861, Id.
632. Affidavits of A. M. Goddard, John Fletcher, George Hazard, dated May 22, 1861, and Deposition of John A. Parker, Mar. 28, 1862, Id.
633. S. Niles, Atty. for Phoenix Guano Co., to W. H. Seward, Sec. of State, Mar. 31, 1863, Id.
As has been seen there is no record (other than the Treasury list of August 23, 1867) of any such certificate to the United States Guano Company. No answer has been found to the letter from Niles and probably no action was taken upon it, nor has any record of a case in the United States Courts been found, determining the respective rights of the two companies to Enderbury, or to any other islands. 634 See Exec. Order 7 March 3, 1938, on opposite page.

d. Claim of Great Britain

All of the Phoenix Islands are now generally regarded as British possessions, at least by Great Britain. According to Brigham, a British Protectorate was proclaimed over Sydney on June 27, 1889, over Phoenix Island on June 29, 1889, over Birnie on July 10, 1889, and over Hull on July 11, 1889. 635 The Pacific Islands Pilot dates the Protectorate over Sydney June 28, 1889, and adds that the British flag was hoisted in each instance when the Protectorate was proclaimed, and that a British Protectorate was formally proclaimed over Gardner on May 28, 1892. 636

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634. It is stated in the Preliminary Report on this island, (Page 53), compiled in the Historical Advisers Office, that the courts decided in favor of the Phoenix Guano Company, but the sources cited for this statement do not support it.


No information has been found of any proclamations or orders relating to the other three islands, Enderbury, Canton, and McKean. The British Order in Council of August 13, 1877, for the Government of British subjects in Western Pacific Islands, listed certain islands to which the Order applied, and specifically included the Phoenix Islands, as did the Orders in Council of August 14, 1879, and September 6, 1880, amending the Order of 1877. The Order in Council of March 15, 1893, providing for the exercise of British jurisdiction in the Pacific Islands, likewise specifically applied to the Phoenix group.

Various British publications include all the islands of the Phoenix group among British possessions, stating generally that they were "formally annexed" by Great Britain in 1889-1892. In 1920, the British Foreign Office stated, with regard to the Phoenix Islands:

"It is difficult to know to what administrative area to assign these islands, as they were

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637. British and Foreign State Papers, p. 325 (Part II).
638. 70 Id. 277, 71 Id. 294.
639. 85 Id. 1053.
640. J. D. Rogers, Op. Cit. Supra, Note 107, p. 308; Encyclopaedia Britannica, Pacific Islands, p. 13 (1929); Pacific Islands Year Book, Supra, Note 126, p. 272, Stewart's Handbook, Supra, Note 1, p. 399.
were not mentioned in the Order in Council of 1892 annexing the Gilbert and Ellice Islands, with which it would seem natural to include them." 641

Apparenty there is now little actual connection between the British Government and these islands. In 1925 it was said that they were "ungoverned", 642 although in 1920 the Foreign Office reported that they were visited periodically by a Government steamer from the Gilbert Islands. 643 However, Great Britain has from time to time granted leases for the exploitation of the Phoenix Islands. On January 1, 1914, the Samoan Shipping and Trading Company, a Sydney firm, obtained a lease of all the islands except McKean and Enderbury for 87 years from Lever Brothers, a British corporation holding a lease under the British Government. 644 McKean and Enderbury are reported leased to the Pacific Islands Company (Enderbury in 1899). 645 The Samoan company planted coconut trees and exports copra, which is said to be the only product of the islands now, the guano being worked out. None of the islands are inhabited except Sydney and Hull, which are inhabited only by native employees of the lessee, and possibly an overseer. 646

641. British Possessions in Oceania, Supra, Note 109, p. 18.  
643. British Possessions in Oceania, Supra, Note 109, pp. 84-85.  
644. Id., Stewart's Handbook, Supra, Note 1, p. 399; Pacific Islands Yearbook, Supra, Note 126, p. 272. It is stated in the Pacific Islands Pilot, (supra, Note 983), that a Captain Allen holds the lease for these islands, but it is probable that he is connected with the Samoan company.
(footnotes continued)

644. company.


646. Id.
2. UNION ISLANDS (TOKELAU): FAKAOFU (BOWDITCH), NUKUNONO (DUKE OF CLARENCE), ATAFU (DUKE OF YORK).

a. Geography

The Union Islands, at approximately latitude 9° S., longitude 172° W., about half-way between the Phoenix Islands and Samoa, consists of three separate clusters of islands arising from coral reefs which enclose spacious lagoons. They are all low and covered with trees. The total land area is about 6 or 7 square miles. The chief islands are Fakaofu or Bowditch, Nukunono or Duke of Clarence, and Atafu (Oatáfu) or Duke of York. Fakaofu, at latitude 9° 23' S., longitude 171° 14' W., is a group of many islets on a coral reef 7 1/2 miles long and 5 1/2 wide. Nukunono, latitude 9° 10' S., longitude 171° 53 1/2' W. is an atoll about 8 by 6 miles square. There is no entrance into the lagoon, no anchorage, and landing is dangerous except in canoes. Cocoanuts, breadfruit and bananas grow on this Island, and fowls and fish may be obtained there. There is no fresh water on it. Atafu is an atoll from 8 to 10 feet high. There is no passage into this lagoon either, but there is a good anchorage off the northeast end, and a landing at the southern end. There are cocoanut, pandanus and casuarina trees on the Island, and fish, pigs, and fowl may...
may be obtained there. There is no fresh water, however.

The natives on these islands, a peaceful good-natured people, speak a dialect of Samoan. The population, about 1000, live mainly on Atafu and Fakaofu, the latter island having a supply of fresh water. Though the climate is said to be healthy, the natives suffer from tuberculosis and elephantiasis.  

b. Discovery

Nukunono was discovered by the British Captain Edwards in the H.M.S. PANDORA, in 1791. It was revisited by Commander Wilkes of the United States Exploring Expedition in 1840, and by the British naval vessel GOLDFINCH in 1896. Atafu was discovered by Lord Byron in 1865. Fakaofu was discovered by Captain F. Morvan of the ADOLPHE of Morlaix (?), and revisited or discovered in 1840 by Captain Hudson of the United States exploring expedition.  

c. United States Claim under the Guano Act

No record that Fakaofu Island was ever claimed by an American citizen under the Guano Act has been found. The other two Islands, however, are included in the blanket bond

647. Pacific Islands Pilot, Supra, Note 94, pp. 526-528; Stewart's Handbook, Supra, Note 1, p. 412. Pacific Islands Yearbook, Supra, Note 126, p. 247.

bond of the United States Guano Company of February 8, 1860.\textsuperscript{649} The company's interest in these islands derived from assignments from Captain Taylor, the alleged discoverer of guano on them.\textsuperscript{650} In his affidavit, dated February 12, 1859, Taylor alleged that he believed there was guano on Captain Taylor "Clarence", latitude 9\textdegree\,07' S., longitude 171\textdegree\,40' W., and on "Duke of York", latitude 8\textdegree\,30' S., longitude 172\textdegree\,10' W.\textsuperscript{651} Both Islands are listed under these names and at these positions on all the lists compiled by the Treasury Department, and on the list of August 23, 1867, it is stated that a certificate for them was issued to the United States Guano Company of New York.\textsuperscript{652} No other record of the existence of this certificate has been found. Moreover, there is no evidence that either of the Islands was ever occupied by the United States Guano Company, or its assignees. The islands are not mentioned in the correspondence of the State Department after 1860.

d. Claim

\textsuperscript{649} Bonds, Supra, Note 18.
\textsuperscript{650} See Infra, Assignments to the U. S. Guano Co.
\textsuperscript{651} Taylor's Affidavit, Supra, Note 96.
\textsuperscript{652} 6 MS. Miscl. Let. re Guano, Sombrero; Id., Miscl.
d. **Claim of Great Britain**

The British claim to Fakaofo, Nukunono, and Atafu originates in the act of Captain Oldham, who, while prospecting for the proposed British trans-Pacific cable, declared a protectorate over these islands, on June 20, to June 22, 1889. 653 By the Order in Council of February 29, 1916, published in the LONDON GAZETTE, May 19, 1916, the three Union Islands and their dependencies were annexed to the British Dominions, and included within the boundaries of the Gilbert and Ellice Islands Colony, formed in 1892. 654 Subsequently, however, it was decided to transfer the Union Islands to New Zealand, and by two Orders in Council of November 4, 1925, the Union Islands were excluded from the Gilbert and Ellice Islands colony and transferred to the Dominion of New Zealand. This Order authorized the Governor General of New Zealand to be the Governor of the Union Islands, and to delegate his authority to the Administrator of the Territory of Western Samoa. 655

The natives are governed by their own chiefs and village committees, under the supervision of the Samoan Administrator at Apia, which, since 1923, has been the port of entry.

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654. 110 British and Foreign State Papers 156.
655. 121 Id., 302, 303.
entry for the Union Islands. There is a wireless station on Fakaofu. A steamer from Sydney visits the Islands about four times a year, and a vessel from Samoa calls irregularly every few months. In Nukunono there is a village and a church, and about 100 tons of copra are exported from this island every year. The village on Atafu was destroyed in 1914 by a hurricane and tidal waves, but it has been rebuilt. About 50 tons of copra are exported annually from this Island.656

656. Pacific Islands Pilot, Supra, Note 94, pp. 526-528; British Possessions in Oceania, Supra, Note 109, pp. 14-15, 29-30, 82; Pacific Islands Yearbook, Supra, Note 126, p. 247.
3. MACAULEY ISLAND, $HAZARD ISLET (GOAT KEY).

a. Geography

Macauley Island, at latitude 30° 12' S., longitude 178° 28' W., is one of the four Kermadec Islands in the Southern Pacific, 65 miles south of Sunday Island. It is a volcanic island 780 feet high, almost circular in shape, and about a mile and a half in diameter with an area of 764 acres. The coasts are perpendicular cliffs about 600 feet high, ascendable at the lava cascade on the northeast side of the island. There is an extinct crater on Macauley. There are no harbors at this island. There is a small, sandy islet, called Hazard, off the eastern end of Macauley, and separated from it by a boat passage.

Although rainfall is plentiful, the natural water supply is said to be poor. The climate is mild and equable. The soil is fertile, dark, volcanic loam, but there is no reliable evidence of guano on the island. A fine grass grows there, and oranges, lemons, and bananas were planted. Cattle and sheep also were introduced at one time, and there are many wild goats. Fish and crabs abound in the waters near shore. There is no native population on Macauley.657

b. Discovery

b. Discovery

Macauley and Curtis Islands, of the Kermadec Group, were discovered in May or June, 1788, by the British navigators Lieutenant Watts (and Captain Sever) of the LADY PENRHYN. It was named after the father of Lord Macauley. The other islands, Raoul or Sunday Island, and L'Esperance or French Rock, were discovered in 1793 by the French explorer D'Entrecasteaux.658

c. United States Claim Under the Guano Act

On January 11, 1859, George W. Benson (of the United States Guano Company) filed with the State Department a notice of the discovery of Guano, on Macauley Island, and on a nearby Key, called Goat. The papers filed included an affidavit by Luther J. Briggs, shipmaster, of New York, dated January 10, 1859, in which he alleged that while cruising for whale in the American ship WILLIAM HAMILTON, on May 15, 1835, he discovered and landed on a barren uninhabited island at latitude 30°, 16' S., longitude 178°, 32' W.; that he discovered on this island, "known on the charts as Macauley's Island" and on the adjacent key, "called Goat Island", a large deposit "of what he now believes to be good guano"; and that he landed on Macauley

658. Brigham, Op. Cit. Supra, Note 1, p. 84; Stewart's Handbook, Supra, Note 1, pp. 515-517; Pacific Islands Yearbook, Supra, Note 126, pp. 103-104.
and took possession of it in the name of the United States; and that he now claims the guano on the island under the act of 1856. A deed of the same date was filed with the Briggs' affidavit, by which Luther Briggs assigned all his interest in the guano on these two islands to George W. Benson. 659

The State Department merely acknowledged the receipt of these papers and stated that they had been filed. 660 No record has been found of any later communication or proofs regarding either Macualey or Goat Island. The islands were never bonded, and do not appear on any of the lists of guano islands compiled by the Treasury Department. 661 So far as is known they were never occupied by the United States Guano Company, or by any other American citizens claiming under the Guano Act or otherwise.

d. Claim of Great Britain

For nearly a hundred years after their discovery these islands were not permanently inhabited. The only use made of them appears to have been by the British and American whalers who used Sunday Island as an ocean post office, depositing letters there for each other. Several attempts to settle Sunday Island have been made, the first in 1837 and the last in 1878, but the settlers abandoned their

661. 6 MS. Misc. Let. re Guano, Sombrero; Id., Misc.
their enterprizes either because of the occasional earthquakes, or the island's isolation. The last occupants remained there from 1878 until after 1914, but apparently since that time it has been unoccupied.

Macauley appears never to have been inhabited at all. However, it is visited annually by a British Government vessel, and a provision depot for shipwrecked mariners has been established at the lava cascade, on the northeast side of the island. In November, 1885, the Government of New Zealand requested the British Government to annex these islands. Accordingly, on July 31, 1886, Captain Francis S. Clayton, of the H.M.S. DIAMOND, landed at Sunday Island, raised the British flag, and issued a proclamation announcing the British sovereignty of the Kermadec Islands. On January 18, 1887, British Letters Patent were issued for the annexation of the Kermadec Group to the colony of New Zealand. Since that time they have been considered as a dependency of New Zealand.

662 Pacific Islands Yearbook, Supra, Note 126, pp. 103-104; New Zealand Pilot, Supra, Note 657, p.1458; British Possessions in Oceania, (144), Supra, Note 109, pp. 4, 46.

663 77 British and Foreign State Papers 1171; See Pacific Islands Yearbook, Supra, Note 126, pp. 103-4.

664 78 British and Foreign State Papers, 1018.

665 British Possessions in Oceania, Supra, Note 109, p.4; Brigham, Op. Cit. Supra, Note
4. DUCIE ISLAND (DUOER)

a. Geography

Ducie Island at latitude 24° 40' S. longitude 124° 48' W., is one of the southeastern Islands of the Pacific 190 miles to the east of Henderson Island. It is an atoll about 2 1/2 by one mile square, and 12 feet high. There was a boat passage into the lagoon but in 1882 a sand ridge blocked it. There is no anchorage, and landing is dangerous. There are low trees on the Island, and the only other living things visible on or near it are birds, fish and sharks. The climate is said to be warm, moist, and fairly equable.666

b. Discovery

Ducie Island was discovered by Captain Edwards in the British naval vessel PANDORA, in 1791.667

c. United States Claim under the Guano Act

On March 10, 1867, in a letter dated at Melbourne, one John Daggett applied to the Secretary of State for a lease of "Ducer Island", which he placed at the position of Ducie. He said that he wished to work the guano on the Island; that


that he was a citizen of Massachusetts, and that he personally had discovered the island. 668 The State Department replied enclosing a copy of the Act of 1856, and stated: that the applicant must establish that he was an American citizen; that the guano had not been previously discovered by others; that the Island was not occupied or within any foreign jurisdiction; that the applicant had taken and kept peaceful possession of it in the name of the United States; and that proof by affidavits of the quantity and quality of the guano must be submitted in order to fix the penalty of the bond. 669

Apparently Daggett never complied with these requirements. No other letter relating to Ducie Island has been found on file in the State Department, and the island was never bonded or included on the lists of guano islands compiled by the Treasury Department. 670

d. Claim of Great Britain.

Ducie Island was discovered in 1791 by a British subject. 671 Some British publications including one issued by the

668. John Daggett to W. Seward, Sec. of State, May 10, 1867, 3 MS. Misc. Let. re Guano, Ducer.

669. W. Seward, Sec. of State, to John Daggett, Sept. 4, 1867, 77 MS. Dom. Let. 60.


671. Supra, Note 667.
the Foreign Office, state that Ducie is a British possession,672 and it is said to have been annexed in 1902, together with Henderson and Oeno islands, and included in the district of Pitcairn, under the jurisdiction of the British High Commissioner for the Western Pacific.673 According to all reports, it is not inhabited, and never has been, at least not for any length of time.674

672. Stewart's Handbook, Supra, Note 1, p. 511; Pacific Islands Yearbook, Supra, Note 126, p. 42; British Possessions in Oceania, Supra, Note 109, pp. 25-26.


674. Stewart's Handbook, Supra, Note 1, p. 511; Brigham, Op. Cit. Supra, Note 1, p. 57; Pacific Islands Yearbook, Supra, Note 126, p. 42; British Possessions in Oceania, Supra, Note 109, pp. 25-26.
PART III. ISLANDS CLAIMED BY JAPAN, FRANCE, AND MEXICO.

I. ISLANDS CLAIMED BY JAPAN

1. MARCUS ISLAND (or WEEK'S ISLAND, MINAMITOROSHIMA).

a. Geography

Marcus Island, at latitude 24°, 14', N., longitude 154°, is 650 miles southeast of the Bonin Islands, 830 northeast of Guam, 1000 from Yokohama, and 2700 from Honolulu. It is a triangular shaped island about 5 miles in circumference and 60 feet high. It is well wooded, with a growth of underbrush and palm trees. A white sandy beach encircles the island. There are anchorages off the Western point, but landing is difficult on account of the extensive reefs and heavy surf. There are many birds, but the existence of much guano is doubtful. The climate is mild. The only fresh water available is rain water. 675

b. Discovery

This island, called Week's, was reported by Captain Gelett of the MORNING STAR, (of the American Mission Board) in 1864. It had been previously reported, however. 676 It was


was revisited in 1874 by the U. S. S. TUSCARORA, and in 1885 by the French naval vessel ECLAIREUR. 677

c. United States Claim Under the Guano Act

On October 14, 1889, the United States Minister at Honolulu forwarded to the State Department certain papers relating to the discovery and taking possession of Marcus Island by Captain Andrew A. Rosehill. In a declaration signed by Rosehill and three witnesses, dated June 29, 1889, at Marcus Island, Rosehill stated that on that day he took possession of the Island, raised the American flag, and claimed it for himself and the United States. This declaration was supported by an affidavit signed by B. Anderson and W. F. Forster, dated October 8, 1889. A map of the island was also enclosed with these papers. 678

The Department replied that these papers would be placed on file; called attention to the provisions of the Guano Act; and concluded as follows:

"...in the judgment of the Department they do not constitute sufficient proof 'that such island, rock, or key was at the time of the discovery thereof....in the possession or occupation of any other government'.......

"Neither of the papers submitted by Mr. Rosehill bears upon this important point.......

Should

677. Pacific Islands Pilot, H.O. 165, Supra, Note 675, pp.732-3

Should satisfactory proofs be furnished in accordance with the preceding sections of the statute, it would be necessary to furnish this Department a proper bond for the examination and approval of the President.\textsuperscript{679}

On February 3, 1902, Senator Perkins sent the State Department two more affidavits signed by Captain Rosehill. In one, dated June 22, 1899, at Honolulu, he stated that on June 29, 1889, he took possession of "Marcus or Week's Island" in the name of the United States; that he raised the American flag in the presence of three witnesses, now in China; that the island was not inhabited, and not in the possession or occupation of any other government. In the second affidavit, dated January 20, 1902, at Honolulu, the same allegations were repeated, but the island was described in greater detail, and Rosehill stated that he found there a deposit of Crown Earth Guano, and about 100,000 tons of Phosphate Guano on the island. In this affidavit he also alleged that he left an inscription on the island in a bottle, giving notice of his possession; and that he employed a man and his wife to live there for one year, and that this couple stayed eleven months, and were then taken off by a passing vessel; that in August, 1895, he revisited Marcus Island as Master of the Schooner NORMA, and found no signs of any occupancy subsequent to his agents; and that

that he landed there again in February, 1896, and found it still undisturbed. In conclusion he said that he was now prepared to give the bond required under the Guano Act, and asked that Marcus Island be considered as appertaining to the United States, and that his interest as the discoverer, under the Act, be recognized. With these affidavits there was also filed an analysis of two samples of guano, signed statements by several citizens of Hawaii testifying to Rosehill's veracity, and a copy of the notice of possession which he had left in the bottle. 680 These papers were sent to the Treasury Department. 681

On March 25, 1902, a bond of $50,000 for Marcus Island (A.A. Rosehill, principal, and Thomas Fitch and W. C. Peacock, sureties) was forwarded to the Secretary of the Treasury by Senator Perkins, with the request that if the bond was approved and a license issued, such license be sent to Thomas Fitch, of Honolulu. 682 The bond was simply dated March, 1902. 683 It was placed on file with the other bonds.


681. Sec. of State to Sen. Perkins, Feb. 8, 1902, 257 MS. Dom. Let. 454; F. Shaw, Sec. of Treas. to Sec. of State, Feb. 12, 1902, 4 MS. Miscl. Let. re Guano, Marcus.


683. Bonds, Id.
bonds relating to guano islands, but as no list of guano islands was compiled by the Treasury Department after 1893, Marcus Island does not appear on any of these lists of islands. On June 2, 1902, the Secretary of the Treasury wrote the Secretary of State that Rosehill's "official bond" for Marcus Island "has been approved as to form and execution, assuming that the penalty, etc., of the bond has been prescribed as provided by section 5574 R. C." "

d. Claim of Japan

On August 3, 1899, the Department was informed by the Navy Department that Japan had seized Marcus Island a few weeks ago, thinking the island might be desirable for a cable station in case of the construction of a cable between Honolulu and Guam. The State Department, however, took no action in regard to Marcus Island until 1902. In that year Japan learned of Captain Rosehill's claim, and, on July 15, informed the State Department that in 1898 Marcus Island was included with the Bonin Islands, and, under the Minami-Tari-Shima, had been placed under the jurisdiction of the local government of Tokyo; that a public notification

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684. 6 MS. Miscl. Let. re Guano, Miscl.; Id., Sombrero.
685. Acting Sec. of Treas., to Sec. of State, June 2, 1902, MS. Miscl. Let. Juen, 1902, Part I.
686. C. Allen, Acting Sec. of Navy, to Sec. of State, Aug. 3, 1899, Copy in 4 MS. Miscl. Let. re Guano, Marcus; See Brigham, Op. Cit. Supra, Note 1, p. 98.
notification to that effect was issued on July 24, 1898; and that
the island was leased to a Japanese subject, Mr. Midzutani, who
was engaged in catching birds and fish there; that there were
now 40 or 50 Japanese settled on the island; and that, finally, if
the United States had authorized Rosehill's occupation of the
island, this authorization should be revoked promptly in order
to avoid unnecessary complications between the two Governments.687

Judge Penfield, Solicitor in the State Department, decided as
follows, with reference to this note:

"The United States Government has not recognized the
occupation of Marcus Island by Captain Rosehill or anyone else
nor asserted title to or assumed jurisdiction over the island;
and, on the showing so far made, should not do so. If the
statements of fact made in the Japanese memorandum are
correct, that Government is entitled to the Island. If the
Japanese Government will furnish proofs of said statements,
the Department should copy the same to Captain Rosehill,
point out the defects in his own claim, and advise him that
the United States Government will not protect him in the
exercise of any acts of ownership in the Island."688

On July 24, 1902, the Japanese Government elaborated
the claim as stated in the earlier note, alleging that for

687. Instructions from Japanese Government, July 15, 1902,
presented to Sec. of State by Jap. Min., 7 MS. Notes from
Japan.

from Japan.
the last 23 years Japanese fishing and hunting vessels, in the prosecution of their business, had repeatedly visited Marcus Island, and had always found it entirely unoccupied and uninhabited; that in 1896, 20 Japanese established themselves on the island permanently, and ever since it had been in the "complete, continuous, exclusive, undisputed and peaceful occupation of Japan." The Japanese Government added that it was sending a man-of-war to the island as a precautionary measure, to prevent any hostility by the inhabitants upon the arrival of Captain Rosehill; that Mar. Ishii, the Secretary to the Minister of Foreign Affairs, was on the vessel, with instructions from his own government, and a letter from the American Minister in Tokyo, to Rosehill. The State Department had already instructed the United States Minister in Japan to advise Rosehill not to engage in any conflict on the island, but to await diplomatic settlement between the two Governments, and this was the substance of the letter forwarded to Rosehill on


690. D. J. Hill, Acting Sec., to A. E. Buch, U. S. Min. to Japan, July 19, 1902, Telegram, 5 Instructions, Japan 63.
on the Japanese cruiser by the American Minister. 691

On July 27, the Japanese cruiser KASAGI reached Marcus Island, and found 30 Japanese settled there. Captain Rosehill had not yet arrived, and the cruiser left 15 men and an officer on the island with the aforementioned notes to be delivered to him.692

On September 5, 1902, Senator Perkins was informed that the Department could not then decide the rights of Rosehill, as the question was then being discussed with the Japanese Government, and added:

"...this Government has not claimed title to, or asserted sovereignty over, the Island, and such conclusion as it may reach touching a merely jurisdictional claim would necessarily be limited by the conditions fixed in the Guano Acts."693

In the latter part of 1902, Thomas Fitch was merely informed that the Japanese Government had leased Marcus Island to a Japanese citizen for 10 years from September 21, 1898.694 On March 18, 1903, the Department wrote that Captain Rosehill's

691. A. E. Buck, U. S. Min. to Japan, to J. Hay, Sec. of State, July 22, 1902, 76 MS. Dispatches, Japan, No. 665.

692. Jap. Min. for For. affairs, to Sec. of State, Aug. 7, 1902, 7 MS. Notes from Japan; A. E. Buck, U. S. Min. to Japan, to J. Hay, Sec. of State, Aug. 6, 1902, 76 MS. Dispatches, Japan, No. 667.


Rosehill's claims "remain in abeyance awaiting direct settlement between the Governments of the United States and Japan. The latter has not presented the matter anew for such adjustment, and this Government finds itself embarrassed in taking the initiative by the fact that Captain Rosehill's claim under the Guano Act was not perfected by filing a bond until after Japan claimed sovereignty over the island." 695

The claim was again urged upon the Department in 1906. 696 On October 26, of that year, the Solicitor of the State Department reviewed the facts, and concluded that at the time of Rosehill's discovery in 1889 the island was in the possession and occupation of Japan, and that, therefore, the Act of 1856 had not been complied with, so that, even if all Captain Rosehill's proceedings were in perfect form, they were "unable to convey title either to the United States or to himself." 697 In accordance with this memorandum, the Department wrote an inquirer about Rosehill's claim that it could be of no service to him "in the premises." 698

Subsequent


Subsequent letters written by the State Department indicate clearly that the United States Government does not claim Marcus Island, and that it recognizes Japanese sovereignty over that island. In 1908 it was said merely that Marcus Island did not appear on the list of guano islands bonded in the Treasury Department, under the act of 1856.\footnote{699} In 1913, and again in 1921, it was said that:

"The United States appears not to have claimed title to, or asserted sovereignty over Marcus Island. It is understood that the Japanese Government regards this island as appertaining to Japan."\footnote{700}

Finally, in 1927, the Department inquired if Japan would permit the Western Union Telegraph Company to land a cable on Marcus Island. This request was refused by the Japanese Government, on the ground that the telegraph on Japanese territory was a government monopoly.\footnote{701}

There is little doubt that Japan now occupies, and exercises jurisdiction over, Marcus Island. Apparently it is still leased to a Japanese subject who exports albatross, sharks, and tunny fish by means of a sailing vessel which calls there three times a year. During the bird season, from October to January, there are said to be about 50 laborers on Marcus, brought from other Japanese islands. There is a settlement on the island, and a pier.\footnote{702}

\footnote{699} R. Bacon, Acting Sec., to J. Banks, April 21, 1908, 837-M, Num. File 13170.
\footnote{700} J. E. Osborne, Acting Sec. to Rand McNally and Co. Sept. 6, 1913, (811.014/9); A. A. Adee, Asst. Sec. to W. H. Rosehill, July 1, 1921 (811.014/61).
(Footnotes--continued)

700. See also G. H. Hackworth to P. J. Grimm, Mar. 8, 1929 (811.014/157)

701. W. R. Castle to Carlton, Pres. Western Union Telegraph Co., Dec. 30, 1927, (811.7311 bw 52/6); See also (811.7311 bw 52/1,2).

702. Pacific Islands Pilot (H.O.165), Supra, Note 675, pp. 732–733.
2. FARALLON DE PAJAROS AND URACAS
OF THE MARIANAS OR LADRONE ISLANDS
(PEAK ISLAND)

a. Geography

The Marianas archipelago is a chain of about 15 volcanic islands in the Northwestern Pacific extending about 480 miles, north and south. The northern-most island is Farallon (Farrallon) de Pajaros, sometimes mistakenly called Uracas, latitude 20°, 32' N, longitude 144°, 54' E. The Northern end of this island is an active volcanic cone about 1047 feet high. The island is barren for the most part, with a few trees and scanty vegetation on the southern shore. About 38 miles Southeast of this island is Uracas (Urracas) or Maug (Mang) Island, at latitude 20°, 01 1/2' N., longitude 145° 13 1/2' E. This island is composed of three separate islets, about 700 feet high, with connecting reefs forming a circle about 1 1/4 miles in diameter, enclosing a lagoon. Apparently the three islands are the remains of a sunken crater.

Neither Pajaros nor Uracas is inhabited now, though formerly the natives, the Chamorros, may have lived on them at various times.

b. Discovery


Brigham gives the position of Farallon de Pajaros as 20° 36' N., 144° 55' E., and of Uracas as 20° 08' N., 145° 19' E. The positions given in the text are taken from the Pilot Book and Supplement H.O. 165 (1931)
b. Discovery

The islands were discovered by Magellan, the Portuguese navigator, on March 6, 1521. He called them Islas de Las Velas Latinas (Islands of the Lateen Sails, a reference to the sailing powers of the native boats), but his crew or the subsequent Spanish settlers called them Islas de Los Ladrones (Islands of Thieves, a reference to the habits of the natives). In 1668, Queen Maria Ana of Spain sent missionaries to the islands, and they gave them the present name of Marianas, after the Queen. The northernmost island, Farallon de Pajaros, is said to have been discovered by Douglas, September 12, 1789. (His nationality is not reported.)

704

c. United States Claim under the Guano Act

On December 6, 1859, Frederick Crocker, a citizen of Massachusetts, filed a notice of discovery of Guano on an island which he called Peak Island, at latitude 20°, 20' N., longitude 145°, 10' E. In an affidavit dated December 3, 1859, he alleged that he landed on this island on April 20, 1855, and took possession of it in the name of the United States; and that he "then discovered what he has since learned to be a valuable deposit of guano". In a description of the island annexed to the affidavit he stated that it was

704. Pacific Islands Yearbook, supra, Note 126, p. 30; Brigham, Op. Cit. Supra, Note 1, pp. 98, 64.
was a barren, uninhabited island, about 3 miles in circumference, with active volcanic peak at the Northwestern end, and high bluffs all along the Southwest side. 705

The Department replied, acknowledging the receipt of the affidavit, and stating that in order to secure to the discoverer the benefits of the Act of 1856, it was necessary to show "an occupation of the Island", and to submit proofs of the quantity and quality of the guano on it, so as to enable the Department to determine the amount of the penalty of the bond. 706

Apparently no further proofs were submitted with regard to this island. It was never bonded under the Guano Act, and does not appear on any of the lists of guano islands composed by the Treasury Department. 707 There is no record of any American occupation of the island, either under the guano act or otherwise.

The island to which Crocker refers is evidently one of the Northern Marianas. The location he gives for Peak Island is nearest to that now given for Uracas, but the description given by Crocker fits the northern Island of Pajaros.


706. L. Cass, Sec. of State, to Frederic Crocker, Dec. 6, 1859, 51 MS. Dom. Let. 263.

707. 6 MS. Misl. Let. re Guano, Sombrero; Id, Misl.
Pajaros, rather than Uracas. If the latter had been intended it is probable that the three separate islands and connecting reefs would have been described by Crocker. It is possible, however, that the appearance of the island changed after Crocker's visit in 1844. In 1669 the island was described as a single island, with one volcanic cone. When this cone sank is not known.\(^{708}\)

d. Claim of Japan.

The first settlement by Europeans was that of the Spanish missionaries in 1668. Subsequently, the Spaniards conquered the natives, the Chamarros, and used the islands, especially Guam, the southernmost one, as a port of call for the Spanish galleons going from Acapulco to Manila, loaded with silver to pay the Spanish garrisons in the Philippines. After the United States took Guam in the Spanish-American War in 1898, Spain sold the remaining islands of the Mariana Group to Germany, in 1899. In 1914, at the beginning of the World War, Japan took all the Marianas (except Guam) and by the Treaty of Versailles Japan received a mandate over them, and is now the ruling power there.\(^{709}\)

\(^{708}\) Stewart's Handbook, Supra, Note 1, pp. 479-485.

\(^{709}\) Stewart's Handbook, Supra, Note 1, pp. 479-485; Pacific Islands Yearbook, Supra, Note 126, pp. 30, 24
II. ISLANDS CLAIMED BY FRANCE (AND MEXICO)

1. NUKUHIVA ISLAND, OF THE MARQUESAS (FEDERAL, SIR HENRY MARTIN, ILE BAUX, ADAMS, MADISON).

a. Geography

Nukuhiva, at latitude 8°, 52' S., longitude 140°, 08' W., is the principal island of the Marquesas Archipelago, in the South Pacific. It is about 14 by 10 miles in size, and contains several mountains, -- the highest peak being 3,890 feet above sea level,-- fertile valleys, and beautiful cascades and rivers. The best anchorage is on the southern coast, where there are three good harbors.

The soil is fertile; there is plenty of water on the island, and tropical fruits abound. At one time Nukuhiva was thickly populated by the natives, -- healthy cannibals, famous for their physical beauty, -- but the advent of the white man brought disease, opium, slavers, missionaries, and the natives died by the hundred. In 1860 there was a population of about 2000; twenty years later it had fallen to 800; in 1919 it was about 500.710

b. Discovery

Magellan is believed to have passed between the Marquesas and the Paumotus in 1521, but he did not mention the

the Marquesas. The credit for their discovery is usually given to the Spanish Commander, Mendana, who visited the islands in 1594, and named them Las Islas Marquesas de Mendoza, after his patron’s lady. They were revisited in 1774 by Captain Cook, the British navigator, and in 1791(?) by Captain Étiéenne Marchand, a Frenchman, who charted the northern islands, calling them Isles of Revolution. In 1791, Captain Ingraham, an American, also found these islands, including Nukuhiva, and several small islands around it, and called them Washington Islands. Nukuhiva was revisited by Hergest in 1792, and by Roberts in 1793. (Their nationalities have not been found reported.)

c. United States claim under the Guano Act.

In 1813, Captain David Porter, an American in command of the Essex, a privateer in the War of 1812, visited the Washington Group of the Marquesas and landed on Nukuhiva. He aided certain native tribes against others, and finally, on November 19, 1813, in the presence and with the consent of some of the native tribes, he issued a formal proclamation taking possession of the island, which he then called Madison’s Island, in the name of the United States. He left some captive ships at the island with about three officers and twenty men on board, but a tattooed Englishman named

named Wilson, who was living on the island, lead the natives in revolt against the Americans, and most of them were murdered.\textsuperscript{712}

The United States does not appear to have ratified Captain Porter's annexation of this island at the time. On January 4, 1859, Porter's son adverted to his father's actions at Nukuhiva, and inquired if the Guano Act of 1856 were retrospective, stating that he had proof that the Washington Islands (The Northern Marquesas) contained millions of tons of guano.\textsuperscript{714} The Department replied as follows:

"As it does not appear...that any guano was discovered on the island to which you refer and as the Act of Congress of the 18th of Aug. 1856, was intended to protect discoveries of guano only, the taking possession by your late father, Commodore Porter, of the island called Madison Island is not considered to be embraced by the provisions of that Act."\textsuperscript{715}

d. **Claim of France**

In May, 1842, the sovereignty of the Marquesas was ceded to France by a treaty negotiated with the native chiefs by Admiral Du Petit Thours. A French military colony

\textsuperscript{712} Pacific Islands Yearbook, Supra, Note 126, pp. 108-110

\textsuperscript{714} Id.

\textsuperscript{715} L. Cass, Sec. of State, to Commodore W. D. Porter, June 22, 1859, 50 MS. Dom. Let. 420.
colony was then established on the island, but was abandoned in 1859. However, the islands continued under French control. The Administrator resides on Hwa Oa Island, and the native chiefs act locally under his direction. 716

716. Stewart's Handbook, Supra, Note 1, p. 231; Pacific Islands Yearbook, Supra, Note 126, pp. 108-110; Pacific Islands Pilot (166), Supra, Note 94, p. 201; French Possessions in Oceania, Supra, Note 712, p. 23.
2. HUON ISLANDS: NORTH HUON, LELEIZOUR, FABRE, SURPRISE (D'ENTRECASTEAUX REEFS).

a. Geography

The Huon Islands, northwest of New Caledonia, consist of four islands: (latitude 18° 03' S., longitude 162° 58' E.), North Huon, Leleizour, (latitude 18° 18' S.), Fabre, and Surprise, (latitude 18° 31', longitude 161° 8'). They are all rather low, oval-shaped, coral islands on circular reefs, enclosing lagoons. North Huon or Huon, the northernmost of the group, is more than 1/2 mile long, and partly covered with trees. Leleizour is about 1300 by 850 yards in size and 12 feet high. Fabre, about two miles from Leleizour, is about 1100 yards long, and covered with moderately high trees. Surprise Island is nearly round, 550 yards in diameter, and 6 or 7 feet high. There is guano on all the islands, that on Surprise being the most ancient deposit. There are also mutton birds and turtle. No fresh water is to be found on any of them.717

b. Discovery

These islands were discovered 1791-93 by the D'Entrecasteaux Expedition sent out by France in 1791. They were named

named for Captain Huon de Kermadeck, the commander of the L'Espérance, one of the vessels on the expedition. 718

c. United States Claim under the Guano Act

On January 23, 1877, there was filed with the State Department a letter from Andrew C. Cushing dated January 20, 1877, in which Cushing stated that, by his attorney and agent, he had taken possession of and occupied "the Huon Islands in the South Pacific Ocean," and that the agent would remain there with a party of men to work the guano. He gave only the latitudes of "North Huon" (18° 02' S.) and of "Middle Huon" (18° 18' 37" S.), and stated that "South Huon" was four miles from "Middle Huon". In conclusion he asked for the protection of the United States and requested that the islands be taken under United States jurisdiction. 719 In reply the Department merely referred to the Guano Act of 1856, and stated that the application must conform strictly with the essential requirements of this law in order to receive consideration. 720 Cushing then


719. B. W. Harris to H. Fish, Sec. of State, Jan. 23, 1877, and enclosures, 3 Ms. Misc. Let. re Guano, Huon.

720. H. Fish, Sec. of State, to Hon. B. W. Harris, Jan. 29, 1877, 116 Ms. Dom. Let. 661.
then requested that his letter of January 20th be considered as his claim of the discovery of guano on these islands and occupation of them under the Guano Act. 721

On September 7, 1877, further affidavits were filed with the Department relating to the discovery of guano on and occupation of "Middle Huon Island" only, which was stated to be at latitude 18° 18' S., Longitude 163° 30" E.

In an affidavit dated at Melbourne July 24, 1877, Harry Kennard alleged that as Cushing's agent he landed on and took possession of Middle Huon Island (at the above position) on December 16, 1876; that the island was unoccupied, and had not been taken possession of by any other government; that it was of no value except for the guano; and that he left a part of men on the island to work the guano for Cushing, and intended to go back there himself and continue the occupation. These statements were supported by another affidavit dated July 16, 1877, by James Foules, master of the schooner JANET STEWART, of Melbourne, in which he alleged that he had visited Middle Huon Island and found it occupied by Kennard and his men. Another affidavit of the same date made by five of the crew of the brig REBECCA JANE, also confirmed Kennard's allegations. 722


It is impossible to tell now which of the four Huon Islands was described as Middle Huon in these affidavits. Leleizour is the island nearest to the position indicated, however.

Filed with these papers is a memorandum by Henry O'Connor, Examiner of Claims, dated November 12, 1877, in which he says:

"The Department has already passed on the claim adversely, but nothing need be said to Mr. Cushing except a simple acknowledgment." 723

Accordingly, on November 21, 1877, the Department wrote Cushing, merely acknowledging the receipt of the affidavits relating to the discovery of guano on Middle Huon Island. 724

There is no later reference to any of these islands in the correspondence of the State Department. Neither Middle Huon nor any of the others were ever bonded under the Guano Act, and consequently they do not appear on the lists of guano islands compiled by the Treasury Department. 725

It is evident, moreover, that the State Department did not consider that Cushing had complied with all the requirements of the Guano Act.

d. Claim of France

The Huon Islands were discovered by French navigators, and were annexed by France in 1853 as a dependency of New Caledonia.

723. Note attached, Id.
724. W. Evarts, Sec. of State, to A. C. Cushing, Nov. 21, 1877, 120 MS. Dom. Let. 525.
725. See lists in 6 MS. Miscl. Let. re Guano, Sombrero; Id. Miscl.
New Caledonia. Whether or not any guano was removed from these islands in the nineteenth century is not clear. It is said that guano works were established on Surprise Island in 1907, and that Leleizour was once worked for guano by an Australian Company. In 1913, the only export from New Caledonia and its dependencies to New Zealand was guano from the Huon Islands, exported by the Austral Guano Company, Limited, with headquarters at Auckland, New Zealand.

The only population ever on the islands appears to have been a few native laborers recruited from other islands, and laborers from Japan, and one or two European superintendents.

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727. Pacific Islands Pilot H.O. 165, Supra, Note 675, pp. 165, 166.
729. Id., P. 6; Stewart's Handbook, Supra, Note 1, p. 123.
3. BAMPTON ISLAND AND REEFS

a. Geography

Bampton Reefs, in the southwestern Pacific, about 300 miles west of the Huon Islands and northwest of New Caledonia, form the western edge of a bank extending to Chesterfield Reefs. The Bampton barrier is narrow, trending 22 miles northeast from its southern point, then 3 miles to the east, and 7 miles northward to North Elbow, latitude 19° 01' S., longitude 158° 27' E. It is a low, double edged reef with here and there an occasional rock about 6 feet above sea level, and there are a few small sand keys at the southern part of the reef.

Bampton Island, at latitude 19° 08' S., longitude, 158° 40' E., is about 200 by 120 yards in size, and 17 feet high, (including the bushes). It is surrounded by a fringing reef, but there is an anchorage on the west side. Two miles from Bampton Island is a sand key, 100 yards long.

North Bampton Reef, 3 miles northeast by east of Bampton Island, extends 48 miles in a northeastern direction and then 5.3 miles southeast and east, terminating in a sand key.

Northeast Bampton Reef begins about 1 mile southeast of North Bampton Reef. Nearly 5 miles from the south end of it is Renard Island, at latitude 19° 14' S., longitude 159° E., an island about 20 feet high, and 200 by 300 yards in size.
The northern extremity of Southeast Bampton Reef begins 3 1/2 miles south southeast of Renard Island, and extends 10 miles to the South. Skeleton Cay, a ridge of coral with a sand key in the center, rises a little to the southwest of the southern end of this reef. Five miles southwest of this cay are other detached reefs. 730

b. Discovery

No data relating to the discovery of these reefs and Keys has been found.


On January 30, 1860, a notice of discovery of guano on Bampton Island was filed in the Department of State. 731

In the affidavit, dated January 28, 1860, Arthur F. White, of Rhode Island, alleged that, while master of the bark JOSEPH BUTLER, on a whaling voyage, on December 18, 1856, he landed on the island "known by the name of Bampton", at latitude 19° S., longitude 162° E., found guano on it, and took possession of it in the name of the United States, raising the flag. He alleged also that the island was not


in the possession of any other people or government, and that this affidavit was made for the purpose of securing his rights as a discoverer under the Act of 1856. The Department replied,—that proof was required of the quality and quantity of the guano and "of continued possession of the deposit" before the penalty of the bond could be fixed, and that when this proof was furnished and the bond transmitted, the usual certificate would be issued to Mr. White. It should be noted that there is no island now charted at the position given by White, though possibly one of the Bampton Reefs extends to that point.

On March 10, 1860, R. W. Cameron informed the Department that White had admitted to him that he had never landed on Bampton Island, but that the guano he found was on an adjoining reef 40 miles away, and that from this he concluded that the island had guano on it also. Cameron stated that he was sending the ship ISAAC WALTON, under Captain Stephen Smalley to visit "the two Islands called Bampton Islands", and if advisable, to take possession of them. He added that he would not interfere with the reef claimed by White. The Department replied, enclosing

732. Enclosure, Id.
734. R. W. Cameron to L. Cass, Sec. of State, Mar. 10, 1860, 3 MS Misc. Let. re Guano, Bampton; Do. to Do. April 6, 1860, Id.
enclosing a copy of the Act of 1856, and stating that
proof of the quality and quantity of the guano on the
islands, and of the possession of the deposit, and of
its not being within the lawful jurisdiction of any other
government should be furnished. However, nothing more
appears to have been heard from Cameron regarding his
claim.

In 1871, Arthur White forwarded to the Department
an analysis of guano samples from Bampton Island (or Reef) and
an affidavit, dated March 28, 1871, in which he re-
ferred to his previous affidavit, and to his discovery made
in 1857, [sic] and stated that he had retained the posse-
sion taken on that date by sending an agent, in September,
1870, to visit it and bring back samples of guano.

To this communication the Department replied, noting
that according to White's first affidavit the discovery
was made on September 13, 1858, and concluding:

"It does not appear that you ever visited
the island since that time; that you then took
only a symbolical possession which has not been
renewed or maintained. The mere fact of your
sending an agent to procure a sample of the guano
deposit is deemed insufficient and not at all
meeting the requirements of the statute . . .
with regard to the quality and quantity of guano
found,

735. J. Appleton, Asst. Sec., to R. W. Cameron, April 9,
1860, 52 MS. Dom. Let. 120.

736. A. White to Col. F. W. Latham, Mar. 10, 1871, 3 MS.
Misl. Let. re Guano, Bampton.

737. A. White to H. Fish, Sec. of State, undated, and
enclosures, Id.
found, and of continued possession. 738

The Department again in effect denied the validity of the claim under the Guano Act in a letter of April 16, 1892, in answer to a telegram from White inquiring if he was entitled to the guano on Bampton Island. The Department stated:

"... although there does not appear to be on file in the Department any claim other than your own to that guano, it is not competent for the Department to guarantee your claim." 739

In spite of this refusal to recognize the claim, an assignment of one fifty-fourth of the guano deposit on Bampton Island was made by Arthur F. White to Stephen Budlong on February 10, 1892, and was filed with the Department on September 23 of that year. 740 In this deed the island was described as between latitudes 18° 30' S. and 19° 49' S., and between longitudes 158° 45' and 158° 10' E. This area includes several islands of the Chesterfield group, and it is not clear which Bampton Reef or island is intended.

On April 22, 1896, Arthur White asked for copies of the analysis of guano samples from Bampton Island filed with the Department, and these were sent to him. 741 Apparently

738. H. Fish, Sec. of State, to A. White, April 8, 1871, 89 MS. Dom. Let. 95; See also do. to Hon. H. E. Anthony, May 5, 1871, Id. 276.

739. W. F. Wharton, Asst. Sec., to A. F. White, April 16, 1892, 188 Id. 120.

740. 3 MS. Miscl. Let. re Guano, Bampton; J. Foster, Sec. of State, to O. Lapham, Sept. 27, 1892, 188 MS. Dom. Let. 292.
Apparently, he still retained some interest in the islands at that date. Since then, however, nothing more appears to have been heard from him, or from anyone else, regarding Bampton Island or Reefs. The islands were never bonded under the Guano Act, and consequently do not appear on any of the lists compiled by the Treasury Department. 742

d. Claim of France

Bampton Island and the adjacent reefs are usually regarded by geographers as part of the Chesterfield group, now recognized as a dependency of New Caledonia. In 1853, France took possession of New Caledonia and of its dependencies, the Loyalty, Chesterfield, and Huon Islands, and the Isle of Pines.

There is considerable amount of guano on all these islands, and there are also turtles. The Chesterfield islands are without permanent inhabitants. 743 It is reported that they are leased from the French Government by the Austral Guano Company, with headquarters at Auckland, New Zealand. 744

742. 6 MS. Misc. Let. re Guano, Sombrero; Id., Misc.
743. Discoveries and Acquisitions in the Pacific, Supra, Note 726, p. 2.
744. Stewart's Handbook, Supra, Note 1, p. 123.
4. CLIPPERTON ISLAND

a. Geography

Clipperton Island, in the North Pacific, at latitude $10^\circ 17'\ N$, longitude $109^\circ 13'\ W$, is 670 miles southwest of Acapulco Harbor, on the west coast of Mexico, 200 miles north of the Panama-Singapore trade route, and almost on the Panama-Honolulu route. It is a low lagoon island, consisting of a circular ring of land from 5 to 14 feet high, enclosing a large brackish lagoon, varying from a few inches to over 50 fathoms deep, the whole being about 2 miles in diameter. On the southeastern edge of the lagoon is a prominent rock, $62\ (82?)$ feet high. There are 5 small islands in the northwestern part of the lagoon called Egg Islands. Clipperton is surrounded by a fringe of coral reefs and rocks. Formerly, there were two entrances into the lagoon but these are now closed. The surf is very heavy, at times covering the whole island. There is an anchorage only for light draft vessels, and landing is extremely difficult at all times.

The climate is warm and equable. Rainfall is plentiful, and forms the only supply of fresh water. There is, or was, a considerable deposit of guano on the southern side of the Island (in spite of the rain and action of the sea). There is no vegetation, and the only animal life are the innumerable sea birds, sharks, and fish and crawfish.
There are no turtles. 745

b. Discovery

Clipperton Island is said by some authorities to have been discovered by Captain Clipperton, the British buccaneer, in 1705. 746 France, however, claims that the island was discovered by a French Captain in 1709, 747 and Mexico that it was discovered by unknown but undoubtedly Spanish navigators in the preceding century, and that it is the same island as the Isla de La Pasion, or Medanos, marked on old Spanish charts at or near the position now assigned to Clipperton. 748

c. United States Claim under the Guano Act

In 1892, Captain Frederick W. Perrien, sent the State Department an affidavit, dated October 5, 1892, in which he alleged that, as sailing master and navigator of the schooner CALEB CURTIS, on July 4, 1892, he discovered guano on Clipperton Island (which he placed at latitude 10° 17' N, longitude 109° 11' W); that he had discovered the Island itself in July, 1878; that on August 27, 1892, he landed there again and took possession of the Island in the name of the United States, for the benefit of himself and his associates.


associates, A. A. Cornell, P. J. Laflin, and J. A. Magee, jr.; that he built a house, raised the American flag, and left two American citizens on the Island to hold possession for him. He also stated that he wished to correct errors in his previous affidavit of July 30, 1892, with respect to the names of the parties interested and their financial capacities, the description of the Island, and any reference to the Stonington Phosphate Company. The receipt of these papers was acknowledged.

On October 26, 1892, another notice of discovery of guano on the same island was received by the State Department, from Shafter, Howard, President of the Stonington Phosphate Company, a California corporation organized September 23, 1892. He alleged that the Company had sent two expeditions in the last six months to this Island; and that before the Company was founded, Permien and the stockholders had agreed that Permien was to locate the Island on the first expedition, and was to have a one-sixth interest in the venture. He enclosed another affidavit by F. W. Permien, dated

dated July 30, 1892, in which most of the statements of his affidavit of October 5 were made, but in which Permien said that he took possession of the Island in the name of the United States and in behalf of the Stonington Phosphate Company, and named Pendleton and Foard as well as Cornell, Laflin and Magee, as his associates. This affidavit was supported by one made by P. J. Laflin, Master of the schooner--CALEB CURTISS, dated July 30, 1892, and by an affidavit of the first mate on the schooner A. P. CHRISTOPHERSON, dated October 10, 1892.751 This communication from the Stonington Phosphate Company does not appear to have been acknowledged.

On May 25, 1893, Melvin Chapman, President of the Oceanic Phosphate Company, also a California corporation, wrote President Cleveland, referring to F. W. Permien's discovery of guano on Clipperton, and to his full compliance with the Guano Act; stated that the Company was Permien's assignee; and requested that the amount of the penalty of the bond be fixed.752 In reply the State Department referred to Permien's two affidavits and his inconsistent position regarding the Stonington Phosphate Company, to the fact that there was no assignment on file showing the title of the Oceanic


Oceanic Phosphate Company, to the statement in Lippincott's Gazetteer, that Clipperton Island was claimed by France, and concluded: "If France has a prior claim to this Island, of course no action can be taken by this Department, in respect to its occupation and possession by citizens of the United States."753

Clipperton Island was never bonded under the Guano Act, and was never included on any of the lists of Guano Islands appertaining to the United States, compiled by the Treasury Department.754 On August 13, 1895, the Department wrote J. L. Thomas, Assistant Attorney General in the Post Office Department, reciting the facts as shown by the papers just described, noting that France was said to claim the island and concluding: "Clipperton Island is not found among the list of Guano islands appertaining to the United States, as shown by the bonds filed in the Treasury Department up to September 16, 1893."755 This position was reiterated in 1897.756

On


756. R. Ogney, Sec.of State, to E. S. Irvin, Feb. 26, 1897, 216 MS. Dom. Let. 197; W. W. Rockhill, Asst. Sec., to B. F. Carl, April 12, 1897, 217 Id. 215.
In January, 1898, the Department was informed, both by Senator Perkins and by the United States Minister to Mexico, that Mexico had sent a gunboat to Clipperton Island to take possession of it, and that the Mexican Commander had removed two of the Oceanic Phosphate Company's employees from the island, had prohibited the removal of guano, and had virtually confiscated the company's property on the island. In a letter from the President of the Oceanic Phosphate Company, to Mr. Clayton, United States Minister to Mexico, complaining of this action by Mexico, it was said that the company had occupied the island for the last 5 1/2 years without being disturbed, but that it was concerned "not for the possession and ownership of the Island so much as for the possession and ownership of the guano beds on it," and that if the Mexican Government desired to assume jurisdiction over the Island without interfering with the Company's operations, the Company would not object. In reply the Department forwarded copies of the letter to Thomas of August 13, 1895; stated that the French Ambassador had informed the Department on January 6, that France claimed the island by virtue of its


its discovery by a French Captain in 1709, and by formal
possession taken by a French Naval officer in 1858, and
concluded (in the letter to Senator Perkins):

"It is quite clear that the conditions pre-
scribed by our statutes have not been complied
with and that the Island can not be considered
'as appertaining to the United States'. There
is no ground upon which this Government can inter­
vene in the matter". 759

In answer to an inquiry from the French Embassy re-
garding the Department's views upon the refusal of the
Mexican authorities to permit the Oceanic Phosphate Company
to take guano from Clipperton Island, the Department
replied:

"... it appears that the Department held that
the conditions prescribed by the statutes of the
United States ........ for the purpose of ac-
quiring title to guano deposits under the protec­
tion of the United States, had not been complied
with by the Oceanic Phosphate Company, and that
its protest against the action of the Mexican
authorities could not therefore be supported." 760

759. J. Sherman, Sec. of State, to Sen. Perkins, Jan. 27,
1898, 225 MS. Dom. Let. 17; J. Sherman, Sec. of State,
to P. Clayton, U. S. Min. to Mexico, Jan. 31, 1898, 24
MS. Instructions, Mexico, p. 409, No. 288; do. to do.,
Feb. 4, 1898, Id., P. 414, No. 299, See J. B. Moore,
Acting Sec., to F. W. Permien, June 28, 1898, 229 MS.
Dom. Let. 607.

760. J. B. Moore, Acting Sec., to Jules Cambon, French
Embassy, June 28, 1898, X MS. Notes to France 509, No. 41.
It is clear that the State Department never recognized the interest of Permien or of his alleged assignees to the guano on Clipperton Island, under the Act of 1856. Various inquiries have been made from 1898 to the present time regarding the status of Permien's claim to the guano on the Island, and the sovereignty of the Island itself, and the Department has always reiterated its previous statements, frequently quoting the letters to Thomas and Perkins. In 1901 it was said that Permien, and those claiming under him "never perfected their title to the island under the Guano Acts." On September 23, 1903, the Department wrote that:

"The status of Clipperton Island has not been changed since the date of this Department's letter of January 27, 1898 to Senator George C. Perkins." Again, in 1905, the Department repeated that "its decision made in 1898 that the Island can not be considered as 'appertaining to the United States'"

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On March 18, 1911, the Navy Department informed the State Department that: "Clipperton Island is so small and so devoid of harbors that this Department is of the opinion that it possesses no strategic value for naval purposes. So far as this Department is concerned no good reason seems to exist for securing further information on this subject."  

In 1918, however, the General Board of the Navy reported as follows:

"...to make it [Clipperton] of any use whatever would require a considerable expenditure of money. However, if safety to the navigation of the waters in this locality requires the maintenance of a lighthouse on Clipperton Island, such a light should be maintained.

"If the United States has any claim to the island and there should arise a controversy between France and Mexico as to the ownership of the island which can be peaceably settled by the acquisition of the island by the United States, such a course would be advisable."  

On March 28, 1931, Secretary Adams wrote that Clipperton Island has "notable potentialities as a base for seaplanes. This characteristic, combined with its situation, roughly 600 miles southwestward of Acapulco, 1800 miles

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762. A. A. Adee, Acting Sec., to W. H. Hazel, Sept. 28, 1901, Id. 10244/1.
763. A. A. Adee, Acting Sec., to F. W. Permien, Sept. 22, 1903, 269 MS. Dom. Let. 221.
765. B. Winthrop, Acting Sec. of Navy, to Sec. of State, Mar. 18, 1911 (812.014 Cl/3) See also 812.01401/2.
766. J. Daniels, Sec. of Navy, to Sec. of State, Jan. 26, 1918, enclosure (811.014/28 Confidential).
miles westward of Balboa, and 1400 miles westward of the
Pacific terminal of the projected Nicaraguan canal, makes
it of interest in connection with naval operations in de-
fense of their inter-ocean routes.......

"From the point of view of the Navy Department the
ownership of this island by a non-American jurisdiction is
contrary to the interests of the United States." 767

After the Arbitration Award, hereinafter discussed, by
which France obtained the sovereignty of Clipperton Island,
there was some discussion of the application of the Monroe
Doctrine. This was referred to particularly in connection
with the Secretary of the Navy's letter quoted above. 768

In reply to that letter, however, the Secretary of State
noted that Clipperton Island was discussed in Cabinet meeting
and "that it was decided that no action should be taken re-
garding it"; and recalled the following facts:

"The United States acquiesced in the French
possession of the Island during the period 1858-1897,
when French sovereignty was apparently undisputed.
Nor were any representations, in regard to the Island,
made by this Government during the period 1897 - 1909
when the sovereignty of the Island was the subject of
diplomatic negotiations between France and Mexico."

The Secretary of State also quoted the Navy's letter of
March 18, 1911, stating that Clipperton Island was useless,
and noted that all the British, French and Dutch possessions

767. C. F. Adams, Sec. of Navy, to Sec. of State, Mar. 28,
1931 (812.014 01/23)

768. Memo, J. C. Greene, Feb. 14, 1931 (812.014c1/18); J.R.
Clark, U. S. Amb. to Mex., to Sec of State, April 10,
1931 (812.014c1/26).
in the West Indies are closer to the American inter-ocean
routes than is Clipperton Island, concluding: "I do not
see what action this Government could possibly take in the
premises."\textsuperscript{769}

d. Claims of France and Mexico

Evidently, Clipperton Island was not used, except
possibly by the buccaneers, or even landed upon until the
middle of the 19th century. On November 17, 1858, Lieutenant
Victor Le Coat de Kerwéguen, Commissioner of the French
Government, took formal possession of Clipperton Island,
on behalf of the Government of France. While cruising about
one-half mile from Clipperton Island on board the merchantman
L'AMIRAL, he drew up a document in which, according to the
orders transmitted to him by the French Navy Department, he
proclaimed and declared that the sovereignty of Clipperton
Island belonged from that date to Napoleon III, and to his
heirs and successors. Topographical measurements of the
island were taken, and a boat was landed with some of the
crew. After a second but unsuccessful attempt to land a
boat, the ship withdrew, without leaving any sign of
sovereignty on the Island. The Lieutenant, however, gave
official notice of his action to the French Consulate at
Honolulu, which informed the Hawaiian Government, and had
the Declaration of annexation published in English in the

\textsuperscript{769} H. L. Stimson, Sec. of State, to C. F. Adams, Sec. of
Navy, April 21, 1931 (812.014c1/23).
Honolulu newspaper, the POLNESIAN, December 8, 1858.\textsuperscript{770} It was copied from that paper and published in the New York Tribune, February 12, 1859.\textsuperscript{771} From 1858 until 1897, there was apparently no occupation or use of the Island by France. The Emperor had approved a concession for the exploitation of the guano on April 8, 1858, but the concession was never used. In 1892, the Oceanic Phosphate Company of California, began to exploit the Island, and according to its statements, remained in possession over five years without being molested by any foreign power.\textsuperscript{772} In about November, 1897, a French naval vessel cruising in the vicinity discovered the three employees of this Phosphate Company on the Island and reported to the French Government that they hoisted the American flag.

About this time the Mexican Government also heard that the Island was occupied by someone, and on December 3, 1897, ordered the Mexican gunboat DEMOCRATA to investigate.\textsuperscript{773} On December 13, 1897, the DEMOCRATA landed a boat on the Island, hauled down the American flag but, because the boat had upset on the way, the Mexican flag was lost and could not be raised then. On December 14, an effort was made to land

\textsuperscript{770} Clipperton Island Award, Supra, Note 49-\textsuperscript{749}, pp. 391-392.
\textsuperscript{771} See 3 MS. Miscl. Let. re Guano, Caroline.
\textsuperscript{773} Clipperton Island Award, Supra, Note 49-\textsuperscript{749}, p. 392.
land a second boat but the surf was too rough. One of the oarsmen, however, swam ashore through hordes of sharks and the heavy surf with the Mexican flag in a water tight tube tied around his neck, and it was then hoisted on the island with due ceremony! The commander of the DEMOCRATA took off two of the occupants, at their request, but one remained on the Island. The Company's property was not molested, but the employees were warned to evacuate the Island as it was Mexican territory.

France protested to Mexico against this act, and reserved all her rights to Clipperton Island. Mexico, however, continued to exercise a certain amount of jurisdiction over the Island. In April, 1898, the Mexican Government made a contract with Lord Stampbell, the President of the English Company of the Pacific Islands, for removing guano from Clipperton. This company is said to have built a wharf and settlement, and to have ceased to work the concession in 1914. In the years 1898 and 1911, military officers were nominated and sent to Clipperton Island. There were Mexican garrisons on the Island between 1905 and 1910, and from 1912 to 1916. The latter garrison was forgotten there, and all but one man starved to death. In 1900 the Mexican Government published a list of Mexican Islands, including Clipperton.


775. Mexico Pilot (H.O.84) Supra, Note 475, p. 67-68.
Clipperton. In 1906 Mexico informed France that the Mexican President had ordered a light house to be built there and that a commission had been sent to erect it. The light was erected, but Mexico has failed to maintain it.

After protracted but intermittent negotiations between French and Mexican Governments, on June 23, 1909, it was agreed to submit the controversy to arbitration by the King of Italy. On January 28, 1931, (22 years after the agreement to arbitrate), King Vittorio Emanuele rendered his decision, "that the sovereignty over Clipperton Island belongs to France, dating from November 17, 1859."

The arbitrator, in the first place, rejected the Mexican contention that the Island was discovered by Spanish navigators, and that by virtue of the papal bull of Alexander VI, it belonged to Spain and, after 1836, to Mexico, as Spain's successors. He stated, in this connection, that "it has not been proven that the island...was actually discovered by Spanish navigators. That they might have known it before the log-books on board the French vessels "LA PRINCESSE" and "LA DÉCOUVERTE", dated in 1711, had identified and described it, is a conjecture more or less

778. Clipperton Island Award, Supra, Note 472.746.
less probable, but from which one cannot draw any decisive argument". Furthermore, he found that it had not been demonstrated that Spain had actually exercised any possible potential right to incorporate the island to Spanish possessions (admitting the discovery may have been made by Spanish subjects). There was no evidence of any exercise of Mexican sovereignty until the expedition of 1897, so that when France proclaimed her right of sovereignty over Clipperton in November, 1858, the legal status of the island was that of **territorium nullius** and it was, therefore, open to occupation.

In the second place, the arbitrator rejected the Mexican contention that in 1897 the Island was still **territorium nullius**, because of lack of occupation and effective possession by France. In this connection it was said:

"Taking of possession consists in the act, or series of acts, by which the occupying state reduces to its possession the territory in question and takes steps to exercise exclusive authority there. Strictly speaking, and in ordinary cases, that only takes place when the State establishes in the territory itself an organization capable of making its laws respected. But this step is, properly speaking, but a means of procedure to the taking of possession, and, therefore, is not identical with the latter. There may also be cases..."
cases where it is unnecessary to have recourse to this method. Thus, if a territory, by virtue of the fact that it was completely uninhabited, is, from the first moment when the occupying state makes its appearance there, at the absolute and undisputed disposition of that State, from that moment, the taking of possession must be considered as accomplished, and the occupation is thereby completed."

After remarking that the Act of Berlin of 1885 did not apply to this territory, but only to territories on the coast of Africa, he concluded that Clipperton Island was legitimately acquired by France on November 17, 1858, and there is no reason to suppose France has since lost her right by derelictio since she has never had the animus of abandoning the island, "and the fact that she has not exercised her authority there in a positive manner does not imply the forfeiture of an acquisition already definitively perfected." 779

Although it is probable that neither France nor Mexico consider Clipperton Island of any commercial or strategic value, 780 nevertheless there was some agitation over the decision. Mexico has not yet accepted it, and has appointed a committee to study the award. 781

779. Id.

780. See U. S. Embassy, Paris, to Sec. of State, Sept. 23, 1912 (812.014cl/5); M. O'Shaughnessy, Sec. U.S.Emb., Mex. City, to Sec. of State, July 4, 1913 (812.014cl/6); J.R.Clarke, U.S. Amb. to Mex. to Sec. of State, April 9, 1931, teleg. (812.014cl/25) See (812.014cl/31).

781. See J.R.Clarke, U.S. Amb. to Mex. to Sec. of State, April 9, 1931 (812.014cl/25); do. to do., April 10, 1931 (812.014cl/26); do. to do. Nov. 23, 1931 (812.014 cl/32)
IV. ISLANDS PROBABLY NON-EXISTENT

1. ARTHUR'S ISLAND

a. Geography

The alleged discoverer of guano on Arthur's Island gave its location at latitude 3° 32' S., longitude 176° 5' W. There is no island now charted at or near this position. The only island in the Pacific named Arthur is "Eniwetok," one in the Marshall group, nowhere near the above position.

b. United States Claim Under the Guano Act

At the same time that a notice of discovery was filed for Malden Island, an affidavit by Captain Netcher, dated May 2, 1857, was submitted relating to guano on Arthur's Island. Captain Netcher alleged that on June 20, 1842, he landed on a barren, uninhabited island, at the position given above, "known on the chart as Arthur's Island", and frequented by American whalers; that he took possession of it in the name of the United States; and that he had since learned that it contained guano. Apparently the United States Guano Company discovered the mistake, or fraud, and Arthur's Island was never bonded. Nothing further was said about it in any of the State Department's correspondence, and

784. Supra, Note 518.782.
and it was not included on the Treasury Department's lists of guano islands appertaining to the United States.
2. PHOEBE ISLAND

a. Geography

It is said that Baker Island was once called Phoebe Island.\textsuperscript{786} The Pilot Book says that this name for Baker is older than either New Nantucket or Baker. There is no island at the position given by the alleged discoverer of guano on Phoebe, but it is near Baker and Howland.


On November 4, 1876, the American Guano Company notified the State Department of the discovery of the "true position of Phoebe Island", which was given as latitude 20° or 24° N., longitude 177° 20' or 24° W. The company alleged that it would at once proceed to occupy the island and remove guano, under the Act of 1856.\textsuperscript{787} On January 30, 1877, the company reported that it had despatched a vessel with men and materials to Phoebe Island, and inquired if there were any other claimants to the island.\textsuperscript{788} The Department replied in the negative.\textsuperscript{789}

In answer to another inquiry made July 1, 1880, regarding Phoebe Island, latitude 20° N., longitude 176° 40'.

\textsuperscript{786} Brigham, Op. Cit. Supra, Note 1, p. 131, Pacific Islands Pilot, Supra, Note 2, p. 524.

\textsuperscript{787} D. S. Stanford & H. Mather, Officers of American Guano Co. to Sec. of State, Nov. 4, 1876, MS. Misc. Let. Nov. 1876.

\textsuperscript{788} H. Mather, to Sec. of State, Jan. 30, 1877, MS. Misc. Let. Jan. 1877.

\textsuperscript{789} J. A. Campbell, Asst. Sec. of to H. Mather, Feb. 7, 1877, 117 MS. Dom. Let. 43.
the Department replied that the island was claimed by the American Guano Company which had despatched a vessel with men and materials to the island in January, 1877.

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790. W. Russen to Wm. Evarts, Sec. of State, July 1, 1880, 3 MS. Miscl. Let. re Guano, Phoebe

3. RYAN'S, PARKER'S, and MORRISON'S ISLANDS, CORNWALLIS or SMITH'S ISLAND, and an UNNAMED ISLAND.

a. Geography

Ryan's, Parker's and Morrison's Islands were reported to be at latitude 16° 59' N., longitude 167° 22' W. No islands are marked on the chart of the Pacific Islands Pilot at this position, and no description or mention of any islands of these names has been found in geographic or historical books on the Pacific Islands. This is true also of the Unnamed Island, said to be at latitude 15° N., longitude 172° 31' E. Cornwallis or Smith's Island, said to be at latitude 16° 46' N., longitude 169° 29' E, and about 20 by 30 miles square, is not marked on this chart either, nor described in the text. However, on the map in Stewart's Handbook, there is an island called Cornwallis marked near this position, and an island named Smith some distance to the southwest. This is the only evidence of the existence of any of these islands that has been found. Brigham, a more reliable authority than Stewart's Handbook, does not mention them at all. It may be assumed that their existence is at least doubtful, if not improbable.792

B. United

792. Affidavit of W. H. Parker, Sept. 28, 1857, See Infra, Note 793; Pacific Islands Pilot (H.O.165), Supra, Note 675, Route Chart; Stewart's Handbook, Supra, Note 1, Chart; Brigham, Op. Cit. Supra, Note 1.
b. United States Claim Under the Guano Act

On August 29, 1857, William H. Parker of San Francisco, filed a notice of the discovery of guano on Johnston and other Pacific Islands. In his declaration, dated September 28, 1857, he alleged that on January 13, 1852, he discovered three small islands in about latitude 16° 59' N., longitude 167° 22' W., which he called Ryan's, Parker's and Morrison's Islands; that in the same month he discovered another island not marked on any charts and containing guano, at latitude 15° N., longitude 172° 31' E., and that he discovered Cornwallis or Smith's Island at latitude 16° 46' N., longitude 169° 29' E., which island he said was about twenty by thirty miles square. He stated that these islands were not in the possession or occupation of any government; that he took possession of them in the name of the United States; and that he now claims title to them under the Guano Act of 1856.793 In December, 1857, Parker's "Amendatory Declaration" was filed. In an affidavit dated December 20, 1857, he alleged that on January 15, 1852, he had discovered guano on the islands described in his previous declaration; that in the same month he took possession of them and claimed them for himself and the United States; that they were not in the possession or occupation of any other government or person, and asked that letters patent be issued to him, securing

securing his rights under the Guano Act of 1856. Attached was an analysis of the guano on each island by R. F. Ryan, who held a half interest in all Parker's discoveries. Ryan stated that Ryan's, Parker's and Morrison's Islands contained about 27,877,400 tons of guano, Cornwallis or Smith's, about 495,616,000, and the unnamed island about 561,000 tons. 794

From time to time during the life of the various claims to islands discovered by Parker, these five islands were claimed along with Johnston Islands, 795 and assignments of them were made. 796 They were never bonded, however, under the guano act, and consequently, they were not included on any of the lists of Guano Islands appertaining to the United States compiled by the Treasury Department. 797

The latest inquiry regarding these islands, appears to have been made in 1914. 798 The Department replied that they were not listed as guano islands, and that the island said to be at latitude 15° N., longitude 172° 31' E., could not be identified. 799

794. R. F. Ryan to L. Cass, Sec. of State, Dec. 20, 1857, and enclosures, 4 MS. Misc. Let. re guano, Johnson and Agnes
795. See Edgar Hueston to W. Evarts, Sec. of State, July 23, 1879, and enclosures, 4 MS. Misc. Let. re Guano, Johnson and Agnes; E. B. Southworth to John Hay, Sec. of State, Jan. 20, 1905, Id.
796. See Supra, Assignments, Johnson I.
797. See lists in 6 MS. Misc. Let. re Guano, Sombrero; Id.Misc.
798. H. Melville Walker to W. J. Bryan, Sec. of State, June 29, 1914 (811.0141/3).
4. GALLEG0, BARBERS, SARAH ANNE, WALKERS, MAKIN, MATHews, DAVIDS, LOW, MARY LETITIAS, FAVORITE, FARMERs, ANNS, BAUMANS, FLINT (10° 32' S., 162° 05' W.), FRANCES, FRIENHAVEN, GANGES, GRONINQUE, LIDERONS, PESCADO, ROGEWEMS, AMERICA, PROSPECTS, SAMARANG ISLANDS (on Bond 9).

a. Geography

There appear to be no islands marked at or near the positions given for the following islands: Gallego, latitude 1° 42' N., longitude 104° 05' W.; Barbers, latitude 8° 54' N., longitude 178° 00' W.; Sarah Anne, latitude 4° 00' N., longitude 154° 22' W.; Walkers, latitude 3° 58' N., longitude 149° 10' W. Furthermore, no islands of those names are mentioned in various books on the Pacific Islands, with the exception of Walker, which is listed in Brigham as having been discovered by Captain Walker in 1814 at latitude 3° 34' N., longitude 149° 15' W., "existence doubtful."

There appear to be no islands at the positions given for the following islands: Makin, at latitude 3° 02' N., longitude 172° 46' W.; and Mathews, latitude 2° 03' N., longitude 163° 05' W.,

800. Affidavit, W. W. Taylor, Bonds, Supra, Note 96.
801. Pacific Islands Yearbook, Supra, Note 126; Stewart's Handbook, Supra, Note 1, Pacific Islands Pilot, H. O. 165, H. O. 166, Supra, Notes 94, 675; Brigham, Op. Cit. Supra, Note 1
longitude 173° 26' W. 803 There are two islands of the same names in the Gilbert Group, at similar positions except that the longitude is East and not West. Makin (Mackin) or Pitt, the northernmost of the Gilbert Islands, is at latitude 3° 20' 45" N., longitude 172° 58' 45" E. 804

Maraki or Matthew, of the Gilbert Islands, is at latitude 2° 00' N., longitude 173° 25' E. 805

Similarly, there are no islands now reported at the positions for the two following islands, supposedly located near the Union of Tokelau Group: Davids, latitude 0° 40' N., longitude 170° 10' W.; Low Islands, latitude 9° 33' S., longitude 170° 38' W. 806

The following islands are near certain islands of the Phenix Group, but there are no reported Pacific islands of these names, either in that group or anywhere else: Mary Lettias, latitude 4° 40' S., longitude 173° 20' W. (near Hull); Favorite, latitude 2° 50' S., longitude 176° 40' W.; Farmers, latitude 3° 00' S., longitude 170° 50' W. (near Mary or Canton). 807

The following islands form an apparently imaginary archipelago south of Tongarewa (Penrhyn), between Danger Islands

803. Affidavit of Captain Taylor, Supra, Note 96.
805. Id., p. 94.
806. Taylor's Affidavit, Supra, Note 96.
807. Id.
Islands (Puka Puka) and Caroline Island: Ann, latitude 9° 49' S., longitude 151° 15' W. (a position very different from that of Anne Island, of the Bismarck archipelago, or that of Anna or Current Island); Baumans Islands, latitude 11° 48' S., longitude 154° 10' W.; Flint, latitude 10° 32' S., longitude 162° 05' W. (a position distinct from that of Flint's Island, described at the same time, by the same man, (Captain Taylor) and at the position now ascribed to Flint Island); Frances, latitude 9° 58' S., longitude 161° 40' W. (evidently not the Peru or Francis of the Kingsmill group of the Gilbert Islands): Frienhaven, latitude 10° 00' S., longitude 156° 59' W.; Ganges, latitude 10° 59' S., longitude 160° 55' W. 808 (Brigham notes a reef or island of this name reported at latitude 39° 47' N., longitude 154° 15' E.); Groninque, latitude 10° 00' S., longitude 156° 44' W.; Liderons, latitude 11° 05' S., longitude 161° 50' W.; Pescado, latitude 10° 38' S., longitude 159° 20' W. (name given an island discovered by Quiros in 1606, and possibly the San Bernardo or even Solitaria discovered by Mendana in 1595 in latitude 10° 40', longitude not stated, which, in turn, may be what is now known as Danger or Puka Puka Island); Rogeweins Islands, latitude 11° 00' S., longitude 156° 07' W. 809

808. Id.

809. Id.; Brigham, Op. Cit. Supra, Note 1, pp. 38, 130; 69, 130, 142, 147.
The following islands are each adjacent to other islands, some of which are also known by these names:

America Islands, latitude 3° 40' N., longitude 159° 28' W. (a position just southwest of Fanning); Prospects, latitude 4° 42' N., longitude 161° 38'W. (a position due west of Washington Island, which is also called Prospect);

Samarang Islands, latitude 5° 10' N., longitude 162° 20' W. (a position just south of Palmyra, which is also called Samarang, but which was likewise listed by the same man, Captain Taylor, as "Palmyros" at latitude 5° 48' N., longitude 162° 20' W.)

b. United States Claim Under the Guano Act

All these islands, under the names and at the positions given above, were listed in Captain Taylor's affidavit of February 12, 1859, relating to his discovery of guano islands. In this affidavit he alleged "that many years since he cruised in the Pacific Ocean.....that he has been at many of the islands hereinafter named .........that he has reason to believe they contained large and valuable deposits of guano;" and that they were not in the possession of nor claimed by any nation or person except himself.

Taylor's interest in the alleged guano on these islands passed by assignments to the United States Guano Company of New York.


811. Taylor's Affidavit, Supra, Note 96.
New York. 812 This Company filed a bond (No. 9), dated February 8, 1860, covering all the islands mentioned in papers annexed. Among these papers was a certified copy of Taylor's affidavit. All the islands described by Taylor, therefore, may be regarded as covered by this bond. 813

The bond was filed in the Treasury Department. Consequently, all the islands included in it were listed by the Treasury Department as among the guano islands appertaining to the United States. 814 On the list of August 23, 1867, it is noted that certificates for these islands have been issued to the United States Guano Company of New York. 815 No other evidence that has been found indicating such a certificate, or certificates, was ever issued by the State Department.

As has been seen, some of the islands described by Taylor do exist, at least islands of the same names at or close to the same positions are now charted on the best maps of the Pacific Islands, and described in the various publications dealing with those islands. However, it is evident that Captain Taylor was probably influenced by his desire to sell his interest to the United States Guano Company, and that he drew upon his imagination, and upon old, inaccurate charts, for many of the islands. Frequently; he has listed

812. See Infra, Assignments to the U.S.Guano Co.
813. Bonds, Supra, Note 96.
815. Id. Sombrero.
listed as two islands what now appears to be one island with two names, varying the positions slightly.\textsuperscript{816} Some names he appears to have made up entirely. On the other hand, it is possible that some of the islands he describes have sunk, and that they really did exist at one time. This would hardly be true of all the twenty-one islands described above, however. Allowance should be made for inaccuracies in measuring longitudes at that time, as they had no means of checking their chronometers for months at a time, but there is not the same excuse for inaccuracies in measuring latitudes. In conclusion, it may be said, that these islands probably do not exist; that if they do, it is doubtful that they are guano islands; that at any rate, they have never been occupied by American citizens claiming under the Guano Act.

\textsuperscript{816} See Supra, Palmyra.
CONCLUSIONS

I. ISLANDS TO WHICH THE UNITED STATES ONLY HAS A CLAIM

1. JOHNSTON ISLAND, FRENCH FRIGATES SHOALS, PALMYRA ISLAND

Johnston Island (and Sand or Agnes Island), French Frigates Shoal, and Palmyra Island are now as much a part of the territory of the United States as the Hawaiian Islands proper. However, this is not due to any claim to those islands arising under the Guano Act. All three were a part of the Hawaiian Kingdom, before the annexation of Hawaii to the United States, and they passed to the United States as dependencies of the Hawaiian Islands under the Joint Resolution, approved July 7, 1898, and the formal transfer of sovereignty, accomplished on August 12, 1898.\footnote{817} In addition, the United States has extended its jurisdiction over each of these islands specifically, since the annexation of the Hawaiian Islands. Although Great Britain at one time laid claim to Johnston and Palmyra, the claims to them appear to have been abandoned, probably when it was seen that Fanning and not Palmyra or Johnston was the island suitable for a cable station.

2. KINGMANS REEF

It is difficult to reach definite conclusions on the legal status of Kingmans Reef because of lack of information.\footnote{817} I Moore's Digest pp. 509, 510.
It is not known whether or not there has been any occupation or use of the Reef by American citizens; and it is not even certain that there is an island there which is dry at high tide. However, it may be said: first, the United States has no valid claim to Kingmans Reef arising under the Guano Act; and second, the United States has an inchoate right to the Reef, possibly because of its discovery by Captain Kingman, if he was an American, as seems probable, and because of the formal possession taken by the Island of Palmyra Copra Company, and its use by that company, if there has been any such use. As yet there has been no formal sanction of the company's act by the United States. However, no other Government appears to claim Kingmans Reef, and it would seem that the United States Government could extend its jurisdiction over the island (always supposing that an actual island exists) and that it could then be considered as a part of the territory of the United States. Before any such action is taken, it might be advisable to find out if Kingmans Reef is of any possible use to American citizens, or to the Government.

3. SWAINS ISLAND

Swains Island is undoubtedly a part of the territory of the United States, not because of any claim arising under the Guano Act, but because of its occupation by American citizens; the formal extension of United States sovereignty over
over the island by the Joint Resolution of March 4, 1925, and the formal proclamation of sovereignty on May 13, 1925; and the actual administration of the island since that time by the Government of American Samoa. Great Britain, the only other government that ever attempted to exercise jurisdiction over Swains Island, has repeatedly recognized the sovereignty of the United States in the premises.

II. ISLANDS TO WHICH THE UNITED STATES AND GREAT BRITAIN HAVE CLAIMS.

1. Jarvis Island

It is difficult to reach a definite conclusion as to the sovereignty of Jarvis Island in the absence of more information than has yet been found regarding the use and occupation of the island by Great Britain and the United States. The island was bonded under the Guano Act and a certificate for it was issued; guano was removed from it by claimants under the act, though probably not after 1889; and formal possession was taken of Jarvis for the United States by an American naval officer in 1857. On the other hand, various secondary sources indicate that Great Britain took formal possession of Jarvis in 1889, and has exercised jurisdiction over it, at least to the extent of leasing it to a British corporation in 1906, if not also before then. In view of these facts, and of the numerous statements of the United States Government limiting the effect of the Guano Act to
mere protection of American citizens in the removal of
guano, and in view of the absence of any act by the
United States showing a contrary intention with regard to
Jarvis,—except for the formal possession taken in 1857
which was followed in 1889 by British appropriation without
protest from the United States,—it is reasonable to conclude
that the United States has abandoned any right it may have
had at one time to claim sovereignty over Jarvis Island
under international law by virtue of occupation under the
Guano Act. This does not mean, however, that the island
is now under British sovereignty. It might well be that
Great Britain has never acquired full sovereignty over
Jarvis, or that Great Britain has now abandoned the island.
In either case, it might be possible to revive or recreate
the claim of the United States successfully.

2. BAKER AND HOWLAND$ ISLANDS

More information regarding the reported British oc-
cupation of Baker and Howland Island is needed before
definite conclusions can be drawn as to the sovereignty of
these islands. Baker may have been discovered by an American
citizen, and Howland was, so far as can be determined;
both islands were bonded and certificates were issued for
them under the Guano Act; both were occupied by claimants
under the act who removed guano from Baker until about
1866, and from Howland$ until about 1870; and formal
possession
possession was taken of Baker for the United States in 1857 by an American naval officer. However, there was no protest by the United States against any appropriation of the islands by Great Britain. Furthermore, the evidence found tends to show that there has been such an appropriation, and actual occupation of Baker, and possibly of Howland by British subjects in about 1900. As in the case of Jarvis, the facts which have been discovered point to the conclusion that the United States has abandoned any right to claim territorial sovereignty over Baker and Howland Islands. However, there is less reason to believe that Great Britain has acquired sovereignty over Baker, or, more especially, over Howland, than over Jarvis, and consequently it might be easier for the United States to successfully advance a claim to these two islands, especially to Howland, than to Jarvis.

3. STARBUCK ISLAND

The status of Starbuck Island appears to be much like that of Jarvis, Baker, and Howland, except that there is even less information available regarding the actual occupation and exploitation of this island by either Great Britain or the United States. Starbuck was bonded and a certificate issued for it under the Guano Act; guano is said to have been removed from it, but whether by Americans
or by others does not appear. On the other hand, there was evidently some act of appropriation of Starbuck by Great Britain in 1866, without any protest by the United States. However, the sources which have been examined do not show that Great Britain has occupied or exercised jurisdiction over the island since then; nor does it appear that the United States has ever indicated an intention to assume complete and permanent sovereignty over the island. If Great Britain has now abandoned Starbuck, or if it was never occupied, or used by British subjects or the British Government, it might be possible for the United States to maintain a claim to this island successfully, especially if it were once occupied or used by American citizens.

III. ISLANDS TO WHICH THE UNITED STATES HAS NO VALID CLAIM.

A. ISLANDS CLAIMED BY GREAT BRITAIN

1. WASHINGTON AND FANNING ISLANDS

Although Washington, and possibly Fanning under the name "America Islands", was bonded under the Guano Act, and although some guano may have been taken from these islands by American citizens claiming under the Guano Act, the United States has no valid claim to territorial sovereignty over either Washington or Fanning Islands. The United States has never manifested any intention to assume such sovereignty.
sovereignty. On the other hand, and without any protest on the part of the United States, British subjects have occupied the islands since about 1870; the British Government took formal possession of Fanning in 1888, and possibly of Washington also; and both were incorporated as part of a British colony in 1916. It seems accurate to conclude not only that the United States has no valid claim to these islands, but that the evidence available indicates that Great Britain has territorial sovereignty over both of them.

2. CHRISTMAS ISLAND

Although Christmas Island was bonded, and was actually occupied, by claimants under the Guano Act, and a certificate for it was issued by the United States, the United States has now no valid claim to sovereignty over this island. The claim of the United States to Christmas Island under the Guano Act went only so far as to protect American claimants under the act in the removal of guano from the island while they were engaged in this pursuit. The so-called protests of 1879 and 1888 to Great Britain make this clear. Furthermore, the subsequent silence and inaction of the United States make it difficult, if not impossible, to find any later intention on the part of the United States to assume territorial sovereignty over Christmas Island, and such an intention is necessary, as well as occupation, if sovereignty is to be acquired under international
international law. Great Britain, on the other hand, took formal possession of the island in 1888; British subjects have been in actual occupation of the island since that time; and in 1919 it was formally incorporated in a British Colony. It is perhaps not inaccurate to say as the Department did in 1930,\(^{318}\) that the United States has never relinquished such claims as it may have by virtue of the former occupancy of Christmas Island by American citizens, but it would be more exact to add that there are no such claims, and to recognize that Great Britain now has sovereignty over Christmas Island.

3. MALDEN ISLAND

Malden Island was bonded and a certificate issued for it under the Guano Act, but the United States refused to protect the American claimant under the act against the alleged interference of a British company, because the island was evidently abandoned by the Americans. Furthermore, Malden appears to have been occupied and exploited from 1866 until recently by British subjects.

4. VOSTOCK, CAROLINE, FLINT PENRHYN (TONGAREVA), MANAHIKI (HUMPHREY), RAKAHANGA (RIERSON), DANGER ISLANDS, NASSAU, and NUKUNONO and ATAFU (DUKE OF CLARENCE and DUKE OF YORK) of the UNION ISLANDS.

These islands were all bonded under the Guano Act, but it is doubtful that any certificates were issued for their

\(^{319}\) See Supra, Note 282.
their exploitation by the United States, and it is probable that no guano was ever removed from them by American claimants under the Guano Act. The American claim to these islands is based only on the following documents in the State Department records: Captain Taylor's affidavit relating to his alleged discovery of guano on certain Pacific islands, many of which have been found to be non-existent, and most of which contained no guano at all; the blanket bond, No. 9, of the United States Guano Company, dated February 8, 1860, which purported to cover all these islands; and the Treasury Department's lists of Guano Islands appertaining to the United States, which were compiled from the bonds on file, and so included all the islands mentioned in the bonds, whether those islands existed or not, and whether the State Department had disavowed any claim regarding them on the part of the United States or not. It is evident that according to the evidence of the records of the State Department, the United States has no basis for a valid claim to sovereignty over any of these islands.

Moreover, all of them appear to be at least claimed by Great Britain. From the sources available it is impossible to conclude definitely that Vostok, Caroline, and Flint Islands are now under British sovereignty, although the information found tends to show they are, but it is possible to conclude that British sovereignty over the other islands herein described has been definitely established.

5. PHOENIX ISLANDS:
5. PHOENIX ISLANDS: GARDNER (KEMMINS), HULL, SYDNEY, PHOENIX, BIRNIE, ENDERBURY, CANTON (MARY), McKean.

Although perhaps the United States might once have laid a claim to territorial sovereignty to at least some of the Phoenix islands, there is now no basis for such a claim. All were bonded under the Guano Act, though some only on Bond 9, and certificates were issued for McKean and Enderbury, and these two were in fact occupied in the 1860's by American claimants. However, there appears to have been appropriation of all the islands, and effective occupation of them and repeated, public acts of jurisdiction over them by Great Britain since the American occupation, without any protest on the part of the United States. These islands now appear to be under the sovereignty of Great Britain.

6. MACAULEY ISLAND and HAZARD (GOAT) KEY, and DUCIE ISLAND

To Macauley Island and Hazard or Goat Key, and Ducie Island the United States never had any basis for a claim of any sort. Neither of these islands was ever bonded under the Guano Act, and there does not appear to have been any actual use or occupation of them by American citizens. Information gathered from available sources indicates that Great Britain has exercised jurisdiction over them, at least to the extent of placing them within certain administrative districts.
districts.

B. ISLANDS CLAIMED BY JAPAN

1. MARCUS ISLAND

The State Department refused to protect American claimants to Marcus Island under the Guano Act because it was believed that the island was under Japanese sovereignty before the American claimant's alleged discovery of guano. In 1912 the United States in effect recognized Japan's sovereignty over Marcus Island by requesting permission to land a cable there. It may be said, therefore, that the United States has no valid claim to sovereignty over Marcus Island. Moreover, all sources examined indicate that Marcus is under Japanese sovereignty.

2. "PEAK ISLAND, of the MARIANAS

"Peak" Island, apparently one of the northernmost of the Marianas, was never bonded under the Guano Act, and there is nothing to indicate that it was ever occupied by Americans, under the Guano Act or otherwise. There is no basis for a claim to sovereignty over this island by the United States, and no such claim has ever been made. The Marianas are now under Japanese Mandate, under the Versailles Treaty.

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C. ISLANDS CLAIMED BY FRANCE

1. NUKUHIVA (MADISON) HUON ISLANDS, BAMPTON REEFS

There is no valid basis for any claim to sovereignty by the United States over these islands. None of them were bonded under the Guano Act, and there is practically no evidence that they were actually used, exploited, or occupied by American citizens at any time. The formal possession taken of Nukuhiva in 1813 by an American Privateer was never ratified by the United States, and since 1842 this island appears to have been under the control and jurisdiction of France. The Huon Islands and Bampton Reefs appear to have been under French sovereignty since 1853, though it is possible that some of these islands have never been occupied by any person or government.

2. CLIPPERTON ISLAND

There is no doubt that the United States has no valid basis for a claim to sovereignty over Clipperton Island because of any claim arising under the Guano Act. Clipperton was never bonded under the act, and, although it was occupied by Americans removing guano, the United States refused to protect these claimants against Mexico when it appeared that that Government claimed the island. Nor can it be said that the United States has any claim to the island under
under international law because of the occupation by Americans in, and before, 1897, because there is no evidence of any intention to assume sovereignty. On the contrary, the records show that the United States believed the island belonged to either Mexico or France at the time of its occupation by Americans.

According to the arbitral award of January 28, 1931, France has sovereignty over Clipperton Island, but as this decision has not yet been accepted by Mexico, it cannot yet be said that this is the legal status of the island.

D. NON-EXISTENT ISLANDS

It seems hardly necessary to say that neither the United States nor any other Government has any claim to the islands which according to present information, do not exist. If, however, any of them are subsequently found to exist, the United States might have an inchoate right to acquire sovereignty, based on discovery.
APPENDIX

I. ASSIGNMENTS TO THE UNITED STATES GUANO COMPANY, NEW YORK.

1. James F. Hammond to George W. Benson, October 6, 1858, all his interest in deposits on Washington Island. 820

2. William H. Wood to George W. Benson, December 24, 1858, all his interest in deposits of guano on Starbuck Island. 821

3. Luther J. Briggs to George W. Benson, January 10, 1859, all his interest in deposits on Macauleys Island and Goat Key. 822

4. John P. Payne to George W. Benson, January 21, 1859, all his interest in Gardners Island, latitude 4° 40' S., longitude 174° 52' W. 823

5. William W. Taylor to George W. Benson, February 7, 1859, all his interest in deposits on the following islands: Caroline, Anns, Stavers (Vostok), Flint's (Flint), Baumanns, Rogeweins, Groninique, Frances, Flint, Nassau, Dangerous

819. For other Assignments to this Company, see Assignments, under Christmas, Howland, Malden.
820. 6 M.S. Misc. Let. re Guano, Washington.
821. 6 Id., Starbuck.
822. 4 Id., Macauleys and Goat.
823. 3 Id., Gardners.
Dangerous Islands (Danger Islands), Quiros (Swains), Low, Clarence (Nukunonu) Favorites, Duke of York (Atafu), Farmers, Birnies, Phenix, Marys, Enderburys, Frienhaven, Penrhyns (Tongareva), Pescado, Ganges, (Kakahaua), Riersons, Liderons, Humphreys, Sydney's, Mary Letities, Kemins, Davids, Barbers, Walkers, Sarah Anne, America, (Fanning?), Prospects (Washington?), Samarang (Palmyra?), Palmyros (Palmyra), Dangers Rock (Kingmans Reef), Makin, Matthews, Gallego. 824

6. George W. Benson to The United States Guano Co., January 4, 1860, all his interest in the islands assigned to him by W. W. Taylor (supra), Washington, Starbuck, Gardners, Macauleys and Goat Key. 825

II. GALAPAGOS ISLANDS

In Moore's Digest, reference is made to a letter of August 14, 1854, from the Secretary of State to the United States Minister of Ecuador regarding an alleged discovery of guano on the Galapagos Islands. 826 The letter indicates that Mr. De Brissot, an American citizen, did claim to have discovered guano on the Galapagos equal in quality to the Peruvian

824. Copy of Deed filed with Bonds, Supra, Note 18.
825. 3 MS. Miscl. Let. re Guano, Caroline.
826. 1 Moore's Digest 574.
Peruvian guano. This claim, however, originated in 1854 before the passage of the guano act, and consequently it cannot be regarded as a claim under the act. Moreover, the United States recognized the sovereignty of Ecuador over the Galapagos at that time, for the American Minister to Ecuador was instructed to find out if Ecuador would grant the United States exclusive rights to the guano on these islands, saving whatever rights De Brissot had or ought to have. 827

827. W. Marcy, Sec. of State, to Philo White, U. S. Min. to Ecuador, Aug. 14, 1854, I MS. Instructions, Ecuador, 54.
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The Sovereignty of

The Northwest Hawaiian Islands,
Midway Island, and Wake Island,
in the North Pacific Ocean.

January 4, 1933.

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Introduction

The islands described in this memorandum are islands in the North Pacific which are now claimed by the United States. All, except Wake, are a geological unit, and compose the Leeward or Northwest chain of the Hawaiian Islands, as distinguished from the Windward, or inhabited chain. The five southernmost islands and reefs of the Leeward Group represent a transition between the volcanic islands to the southeast, and the coral islands to the northwest, and include the following: Nihoa or Bird Island, Frost Shoal, Necker Island, French Frigates Shoal, and Gardner Island. The eight coral islands and reefs to the northwest of Gardner are Dowsett Reef, Maro Reef, Laysan Island, Lisiansky Island, Pearl and Hermes Reef, Gambier Shoal, Midway Island, and Ocean or Cure Island. These are probably the tops of submerged mountains, built up above sea level by the coral, and the action of wind and waves.¹ Wake is an isolated island, far to the southwest of the Leeward Hawaiian Islands, and not geographically a part of any group.²

¹. William A. Bryan, Natural History of Hawaii (Honolulu, 1905) p. 93.
². See infra, Geography (Wake Island).
As the bases for the United States' claim to the islands in the Northwest Group, except Midway, are the same or similar, these islands have been discussed together, so far as possible. The history of Midway however, has been distinct from that of the other islands in this geographic unit, and so too has that of Wake. These islands, therefore, have been dealt with separately. French Figates Shoal has been described already in a previous memorandum dealing with guano islands in the Pacific, but, as it is a part of the Leeward Hawaiian Group, both geographically and politically, and as information bearing on the claim of the United States to this Shoal has been found since the above mentioned paper was written, it will also be included in this memorandum for the sake of clarity and completeness. The reefs in the Hawaiian chain on which there appears to be no land above high water have not been described in any detail, because of the obvious difficulty in sustaining any claim to sovereignty over such territory.
I. THE NORTHWEST HAWAIIAN ISLANDS: (NIHOA OR BIRD, NECKER, FRENCH FRIGATES SHOAL, GARDNER, LAYSAN, LISIANSKY, PEARL AND HERMES REEF, OCEAN OR CURE.

a. Geography.

1. Nihoa Island. (Modu Manu, Moku Manu, Bird Island.)

Nihoa, at latitude 23° 03' 29" N., longitude 161° 55' 25" W., is 140 miles west northwest of Kawai, 120 miles northwest from Nihiu, the nearest inhabited island, 150 miles east of Necker Island and 244 miles northwest of Honolulu. This barren, rocky island is the southernmost and highest in the leeward chain; the peak, at the northwestern end being 900 feet high, and that at the northeastern end 869 feet. It is about 3/4 of a mile long and 1/4 of a mile wide, containing an area of about 500 acres. The sides are steep and precipitous, except at the south where the slopes are gradual. The island appears to be the eroded remains of an ancient, deeply submerged volcanic crater. It rises from a bank 20 miles long by 11 miles wide and 30 to 40 fathoms deep. There is no good anchorage off the island, and landing in Adams Bay, on the south side, is difficult.

3. W.T. Brigham, Index to the Islands of the Pacific Ocean (Honolulu, 1900) p. 119.
5. Ibid; Bryan, op. cit. supra, note 1, p. 98; Report of Commissioners, S. Ex. Doc. 16, 55 Cong. 3 Sess. p. 4.
2. Necker Island

Necker Island, at latitude 23° 34' 41" N., longitude 164° 42' 22" W., is another volcanic island, 155 miles west of Nihoa, and 400 miles northwest of Honolulu. It is the remains of a volcanic crater with 4 peaks, 235 to 300 feet high connected by a ridge. The sides are precipitous. The island is about 3/4 of a mile long and 500 feet wide at the widest part, with an area of about 400 acres. There is an anchorage off the lee shore and landings are possible in East and West coves. There is an extensive shoal off the South side.

3. French Frigates Shoal.

French Frigates Shoal, at latitude 23° 46' 30" N., longitude 166° 16' W., is a crescent-shaped atoll 90 miles west of Necker Island. There are a number of small sand islets on the reefs, and a picturesque volcanic rock called La Perouse Pinnacle, about 180 by 45 feet square and 120 feet high, rises midway between the points of the crescent. The shoal is surrounded by barrier reefs, and the lagoon is partly filled with growing reefs and shifting sandbanks. Anchorages may be found, however, off the shoal. Brackish water may be obtained.

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6. U. S. Coast Pilot, supra, Note 4, & Supplement (1929) p. 54; Brigham, op. cit. supra, note 3, p. 113; Bryan, op. cit. supra. Note 1, pp. 97-98; Report of Commission, supra, note 5.
obtained from wells on the islets. Coarse grass and shrubs are the only vegetation, and birds, fish, and sharks the only animal life to be found in the vicinity.  

4. Gardner Island

Gardner Island, at latitude 25° 01' N., longitude 168° 01' W., is a volcanic, cone shaped rock, 600 miles northwest of Honolulu, and 120 miles northwest of the large rock on French Frigates Shoal. The rock is 170 feet high, and 200 yards in diameter and is entirely surrounded by vertical cliffs, 60 to 70 feet high. There is a small island or rock a short distance from the main one, but there is deep water between them. A bank, 17 to 20 fathoms deep surrounds Gardner. Landings have been made, but are exceedingly difficult and dangerous.

5. Laysan Island (Müller)

Laysan Island at latitude 25° 42' 14" N., longitude 171° 44' 06" W., is 800 miles northwest of Honolulu, and 65 miles southwest of Maro Reef. This island is an elevated coral atoll, and not volcanic. It is about 1-3/4 by 1 mile in size, with an area of about 2000 acres.

7. U.S. Coast Pilot, supra, note 4, p. 50; Brigham, op. cit. supra, note 3, pp. 68-68; Bryan, op. cit. supra, note 1, pp. 93, 197.
acres, and 55 (?) feet high. There is a salt water
lagoon near the center about a mile long. A fringing
reef 100 to 500 yards wide surrounds the island, and
outside the reef is a bank about 6 miles wide, and 14
to 60 fathoms deep. There is a narrow boat passage and
an opening on the western side of the reef, and a land­
ing can be made, but it is only safe from April to
September, when the northeast trade winds prevail.

The soil, is sandy, and is covered with scrub
growth. Fish are abundant in the surrounding waters,
and Laysan is the home of some fifty species of birds,
five of which are found no where else in the world.
Tolerable drinking water may be obtained from wells.
There were extensive guano deposits on the inner slopes
of the sand rim of the island, varying from a few inches
to 2 feet in thickness. These deposits have been worked
extensively, and are now said to be practically exhausted.


Lisiansky Island, at latitude 26° 00' N., 173° 50' W., is 117 miles southwest of Laysan, and 920 miles
northwest of Honolulu. Like Laysan it is a small, low,
coral island, a mile long and 1/2 a mile wide, and 40
feet

9. U.S. Coast Pilot, supra, note 4, p. 56; Bryan, op. cit.
supra, note 1, pp. 95-97, 313, 318-320; P. S. Allen,
Stewart's Handbook of the Pacific Islands (Sydney, 1922)
p. 512; Brigham, op. cit. supra, note 9, p. 89; Report
of Commission, supra, note 5.
feet high. There is no central lagoon at Lisiansky, but the island is encircled by a reef, and on the western side this reef forms a lagoon 2-1/2 miles wide. Anchorage may be obtained in the lagoon although the entrance is hazardous, but landing is only possible from April to September, as at Laysan.

The land is covered with bushes. Sea birds and turtles abound. Brackish water may be obtained from shallow wells. Guano also existed on this island.\(^{10}\)

7. Pearl and Hermes Reef.

On the southeastern part of Pearl and Hermes Reef there is an island at latitude 27° 48' N., longitude 175° 51' W. The reef is an atoll, 40 miles in circumference and 16 by 9 miles in size, on which 12 small, low, sand islands form a crescent, with an opening to the northwest. Southeast island, at the position given above, is the largest in the group, and is covered with grass and low trees. There are the usual turtles, fish, and sea birds, but apparently little or no guano.\(^{11}\)

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8. Ocean Island (Kure, Curé).

Ocean Island, at latitude 28° 25' N., longitude 178° 25' W., is 56 miles west of Midway Islands, and 1800 miles northwest of Honolulu, at the northern limit of the coral belt, and the western limit of the Hawaiian chain. It is very like Midway, being an atoll 15 miles in circumference, inclosing a lagoon which is shallow and without an entrance, and which contains several small islands. Green Island, in the southeastern part of the lagoon, is 20 feet high and covered with shrubs. There are two small sand islands southwest of Green, about 10 feet high. From appearances severe storms apparently visit these islands as the sand has been piled up in conies.

It should be noted that this island is not the Ocean Island in the South Seas which is famous for its phosphate works. 12

9. Reefs.

Frost Shoal, Cambia Shoal, Dowsett Reef, and Maro Reef are scattered along this chain of islands, but all of them are completely submerged, and contain no islands.

Frost

Frost Shoal, once said to be about 90 miles northwest of Nihoa, has been taken off the charts.  

Gambia Shoal is 35 miles northwest of Pearl and Hermes Reef, and is covered by 14 fathoms.

Dowsett Reef, 133 miles southwest of Gardner Island, is a rectangular coral reef, 9 by 5 miles in size, awash in places, and generally entirely covered by breakers. It was named for Captain Dowsett of the whaling brig KAMEHAMEHA which struck on it July 4, 1872.

Maro Reef is 10 miles northwest of Dowsett. It is a roughly quadrangular coral reef about 35 miles in circumference generally completely covered by breakers. There is no land visible. It was discovered by Captain Allen of the American whaler MALO in 1830.

b. Discovery

Nihoa was discovered by Captain Douglas of the IPHICENIA, April 13, 1789. Neither the nationality of the Captain, nor the registration of the vessel appear to have been reported.

Necker
Necker Island was discovered on November 1, 1876, by La Perouse, the French navigator, and named by him for Louis XVI's famous Minister. There is evidence, however, that it was visited in prehistoric times by hunting and fishing parties from Kauai and from Niihau, Hawaiian Islands. Furthermore, the level portion of the top of Necker Island is covered with a number of curiously formed stone inclosures, possibly the remains of temples, in which remarkable stone images 15 inches high were found, and curious stone dishes. It is said that the design and workmanship of these relics indicates that they were probably made by some race other than the Hawaiians, although the latter is the only one known to have visited the islands at so early a period.

French Frigates Shoal was discovered by the French explorer, La Perouse, on November 6, 1786. He called it Basse des Frégates Françaises, after the two frigates of the expedition. (In translation, the name should, therefore, be "Frigates", not "Frigate" as it is often written.)

Gardner

20. Ibid, pp. 93, 97; Brigham, op. cit. supra, note 3, pp. 67-68.
Gardner Island was discovered by Captain Allen, of the American whaler, MALO, June 2, 1820. 21

Laysan is reported as "An American Discovery". It was named by Captain Stanikowitch (the discoverer?) in 1828, after his vessel. 22

Lisiansky was discovered by a Russian captain of that name, in the NEVA, October 15, 1805. 23

The Pearl and Hermes Reef was discovered in 1822 by two whaling vessels, the PEARL and the HERMES, both of which were wrecked near the eastern end of the reef on the same night within 10 miles of each other. 24

No report of the discovery of Ocean Island has been found.

c. Claims of Hawaii.

Before the annexation of the Hawaiian Islands to the United States in 1898, the Hawaiian Government had taken formal possession of all the islands in the Leeward Group, except Midway, Gardner, and Pearl and Hermes Reef. Midway was thought by the Hawaiian Government to belong to the United States. 25 Gardner was probably not visited because

22. Id., p. 89; Bryan, op. cit. supra, note 1, p. 95.
23. Id., p. 95; Brigham, op. cit. supra, note 3, p. 90.
24. Id., p. 129; Bryan, op. cit. supra, note 1, pp. 94-95.
because of its inaccessability, landings being almost impossible there. 26 Pearl and Hermes Reef may have been taken possession of, although no record of this has been found, in view of the fact that all the other islands claimed were so annexed, except Gardner, and in view of the Hawaiian claim to the islands in the area containing the reef, advanced formally in 1887. 27

Nihoa or Bird Island is said to have been known to Hawaiian chiefs in ancient times, and occasionally to have been visited by them. There is a report that possession was first taken of the island in 1822, by an expedition under the direction of Kaahumann, in charge of Captain William Sumner. It was revisited in 1857 by Captain John Paty, presumably for the Hawaiian Government. 28 In 1885 it was visited by an expedition headed by the then heir apparent, Princess Liliuokalani, and accompanied

26. Supra, Note 25.

27. Let. from A. P. Carter, January 10, 1887, supra, Note 25.

accompanied by the geologist, Dr. Sereno Bishop, and was then surveyed for the Hawaiian Government. 29

During the reign of Kamehame, Captain John Paty also visited Laysan and Lisiansky Islands in May, 1857, and took possession of them in behalf of the Hawaiian Government. A proclamation to that effect was published in the Hawaiian newspaper, Polynesian, August 27, 1857. 30

It is reported that Ocean Island was "taken possession of by the Hawaiian Government", September 20, 1886. 31 Another account states that it was "acquired" on that date by a Proclamation issued by Colonel J. H. Boyd, "by direction of the Government." 32

Necker Island was surveyed by Commander Brooks of the U.S.S. FENMORE COOPER, in 1859, but it does not appear to have been claimed then by either the United States or Hawaii. For a number of years, however, Hawaii is said to have claimed ownership of Necker Island. In 1894 it was rumored in Hawaii that a British vessel, the H. M. S. CHAMPION, then in Honolulu, proposed to take formal possession of Necker for Great Britain, and as there appeared to be some doubt whether the Hawaiian Government had ever formally taken possession of it, an expedition in charge of Captain J. A. King, Minister

29. Id. (Alexander Let.)
30. Id.; Let. from Haywood, Jan. 16, 1899, supra, Note 25.
31. Let. from Alexander, Aug. 28, 1900, supra, Note 25
32. Let from Haywood, Jan. 16, 1899, supra, Note 25.
Minister of the Interior, was organized for that purpose. On May 27, 1894, Captain King landed on Necker Island, nailed the Hawaiian flag to a pole, read a proclamation of possession, and left a copy of it in a copper case at the foot of the pole. On June 12, 1894, the President of the Hawaiian Provisional Government duly proclaimed the ownership of this island. On July 9, 1895, Captain King was again commissioned to visit the island in search of ancient relics. He found the proclamation had been opened, and a note made on it by the officers of the H.M.S. CHAMPION, that they had surveyed the island and shoal on September 24, 1894.33

On July 9, 1895, Captain King was commissioned to visit the French Frigates Shoal. According to King's report, he landed on an islet 30 yards from the large rock, which he was unable to climb, and raised the Hawaiian flag, read a proclamation, and took possession. He then landed on another "Sand Island" on the shoal, and "took possession of all the islands, rocks, and shoals, known as French Frigate Shoal", read a proclamation, and left it and the flag on the island in a copper cylinder. 34

In addition to taking formal possession of these islands, the Hawaiian Government notified the United States of

of its claim to all of them. On January 10, 1887, the Hawaiian Minister to the United States wrote the Secretary of State that:

"...formal possession has been taken in the name of His Majesty the King of Hawaii, of Ocean Island, in the North Pacific Ocean, lying in Lat. 28° 24' North and Long. 178° 26' West from Greenwich in a north-westerly direction from the Hawaiian group, and that His Majesty claims sovereignty over all the islands and islets which form the chain extending from the island of Niihoa of the Hawaiian group to Ocean Island, except Midway Island." 35

This communication was never formally answered. It was sent to the United States Senate on January 30, 1888, in response to a Resolution calling for all the correspondence with foreign governments relating to Midway Islands. 36

The Hawaiian Government also exercised jurisdiction over these islands before the annexation of the Hawaiian Islands in 1898. On March 29, 1890, Laysan and Lisiansky Islands were leased for twenty years, the lease being later assigned to the Pacific Guano and Fertilizer Company, formerly the North Pacific Phosphate and Fertilizer Company. In 1901 it was reported that, according to the Vice-President of the company, "Laysan Island is being worked for guano, the lease running until March 29, 1910," but that the lease for Lisiansky had lapsed because no guano, or other material was


was removed from the island "within five years" from the date of the lease. Subsequently, on February 15, 1894, a twenty-five year lease of Pearl and Hermes Reef, Morrell, (non-existent) Ocean, Midway, and French Frigates Shoal was granted to the same Company," so far as the Hawaiian Government holds the right of possession of said islands."

"In 1901 this lease was said to have lapsed for the same reason as had the lease of Lisiansky. 37

All the above named islands were included specifically on the list of Hawaiian Islands and dependencies submitted to the Secretary of State on February 11, 1893, by Mr. Carter, Commissioner of the Hawaiian Provisional Government. 38 All of them, with the single exception of Pearl and Hermes Reef, were also on the similar list found in the Report of the Commission appointed by the President pursuant to the Joint Resolution for the annexation of the Hawaiian Islands, approved July 7, 1898.39
d. United States Claim

It is submitted that the evidence set forth above demonstrates that all the islands in this group, except Midway, were dependencies of the Hawaiian Islands at the time of the United States annexation of the "Hawaiian Islands and their dependencies" by the Joint Resolution approved July 7, 1898. It may be assumed, therefore, that they passed under the sovereignty of the United States upon the passage of that resolution, and the formal transfer of sovereignty which took place on August 12, 1898.

Since 1898, the Government of the United States has claimed and exercised jurisdiction over these islands, and appears to have considered them part of the territory of Hawaii. In 1901 the Secretary of the Navy informed the Secretary of State that the Japanese Consul at Honolulu had inquired of the Governor of Hawaii regarding the ownership of the Northwest islands with a view to obtaining a lease for the Japanese Government, to insure the Japanese subjects fishing and bird catching privileges on those islands. The Governor of Hawaii replied, enclosing a letter from W. W. Alexander, a Government Surveyor, giving detailed information regarding the bases for the Hawaiian claim to Nihoa, Necker, French Frigates Shoal, Laysan, Lisiansky, and Ocean Islands, and stating that:

40. 30 Stat. 750
41. Moore's Digest 510.
that: "The whole chain of Islands and reefs with Ocean or Cure Island has for many years been considered as forming part of this group, both politically and geographically." The Secretary of State instructed the United States Chargé at Tokyo to watch for any sign of the Japanese desire to lease or control "the outlying westward islands of the Hawaiian Group." In July, 1903, the Governor of Hawaii reported to the Secretary of the Interior that Japanese subjects visited these islands periodically to kill the sea birds, and take the feathers, and that the birds were rapidly being exterminated. In this connection the Governor remarked: "The republic of Hawaii claimed possession of the following islands and reefs in the same chain in which Midway Island is situated: Cure or Ocean Island, Pearl and Hermes Reef, Lisiansky Island, Laysan Island, Gardner Island, French Frigate Shoal, Necker Island and Nihoa or Bird Island". He added that "these islands except Midway are a part of the Territory of Hawaii".

42. Long, Sec. of Navy, to Sec. of State, Mar. 12, 1901, and Enclosures, MS. Misc. Let. S. B. Dole, Gov. of Hawaii, to Sec. of State, April 12, 1901, Id.
43. To H. Hay, Sec. of State, to H. Wilson, U.S. Chargé, Tokyo, April 12, 1901, 4 MS. Instructions, Japan, 676, No. 343.
44. S.B. Dole, Gov. of Hawaii, to Sec. of Interior, July 6, 1903, Enclosure in T. Ryan, Acting Sec. of Interior, to Sec. of State, July 23, 1903, M.S. Misc. Let.
The information as to the Japanese deprivations was communicated to the Secretaries of State, Commerce and Labor, Treasury, Navy, and to the Attorney General. 45 In August, 1903, Commander Rodman of the U.S.S. IROQUOIS reported that in past years the Japanese visited the various Northwest islands and slaughtered the birds in great numbers. He reported that the Japanese had extended their operations from Midway to Ocean Island, Lisiansky, and Pearl and Hermes Reef, and that he had ordered them to leave Lisiansky. 46 The removal of the Japanese subjects from Lisiansky apparently caused no trouble. Government officials in the Department of Justice, and in the Navy in Hawaii were instructed to cooperate with local officials in preventing the destruction of the birds by the Japanese, 47 and the State Department brought the matter to the attention of the Japanese Government, asking for its cooperation. 48

In 1904, under orders from the Treasury Department, Captain Hamlet of the U.S.S. THETIS transported to Honolulu Japanese subjects found to be unlawfully on Lisiansky Island.

45. Ibid; notation on letter.
46. H. Rodman, U.S.N. to Ass. Sec. of Navy, July 1, 1903.
47. Enclosure in Acting Sec. of Navy to Sec. of State, Aug. 8, 1903, MS. Misc. Let.
48. Acting Atty. Gen. to Sec. of State, Aug. 3, 1903, Id.; Acting Sec. of Navy to Sec. of State, Aug. 19, 1903, MS. Misc. Let.
Island. This was done "at the request of the Honorable
Secretary of Commerce and Labor."\textsuperscript{49} The Japanese Consul
at Honolulu told his government that, in his opinion,
the Japanese found on the island were trespassers, and
the Japanese Government made no protest.\textsuperscript{50} Agitation
for the protection of the birds continued.\textsuperscript{51} On January 12,
1905, the United States Minister in Japan reported that the
Japanese Minister of Foreign Affairs had promised to order
Japanese ship captains not to engage in killing birds on
American islands, and to prohibit at least one firm, known
to be responsible for several of these expeditions, from
engaging in the business.

Finally, on February 3, 1909, President Roosevelt
issued the following order:

"It is hereby ordered that the following
islets and reefs, namely: Cure Island, Pearl
and Hermes Reef, Lysiansky or Pell Island,
Laysan Island, Mary Reef, Dowsett's Reef,
Gardiner Island, Two Brothers Reef, French
Frigate Shoal, Necker Island, Frost Shoal and
Bird Island, ........

are hereby reserved and set apart, subject
to valid existing rights, for the use of the
Department of Agriculture as a preserve and
breeding ground for native birds. It is un-
lawful for any person to hunt, trap, capture
wilfully

\textsuperscript{49} Taylor, Acting Sec. of Treas., to Sec. of State,
July 7, 1904, MS. Misc. Let.

\textsuperscript{50} J. Hay, Sec. of State, to L. C. Griscom, U.S. Min.,
Tokyo, July 12, 1904, 5 MS. Instrucions, Topan 171,
No. 66, See T. B. Loomis, Acting Sec. of State, to
Sec. of Interior, Nov. 3, 1904, 276 MS. Dom. Let. 316.

\textsuperscript{51} See Acting Sec. of Agriculture to Sec. of State, Nov.
8, 1904, M.S. Misc. Let. "Sec. of State, Nov. 1, 1904,
and Enclosure, Id. F. B. Loomis, Acting Sec. of State, to
L.
wilfully disturb, or kill any bird of any kind whatever, or take the eggs of such birds within the limits of this reservation except under such rules and regulations as may be prescribed from time to time by the Secretary of Agriculture. Warning is expressly given to all persons not to commit any of the acts herein enumerated and which are prohibited by law.

"This reservation to be known as the Hawaiian Islands Reservation."53.
II. MIDWAY ISLAND (BROOKS)

a. Geography

Midway Island or Islands, at latitude 28° 12’ 22” N, longitude 177° 22’ 20” W, is a low, circular atoll about 6 miles in diameter. The reef is about 5 feet high, and 20 feet wide and almost continuous except on the western side, and incloses 2 islands. Eastern island is 1-1/4 miles long, 6 to 12 feet high, and covered with trees, shrubs, and coarse grass. The soil is composed of sand and coral rock. Sand island, on the southern side of the reef, is 1-3/4 miles long and 43 feet high at the northern part. On the north side of this island are the buildings of the cable station, a flag staff, and the Midway Islands Light (28° 12’ 52” N., 177° 22’ 46” W.).

Welles Harbor, the gap in the barrier reef on the western side of the atoll, forms a satisfactory harbor in summer for vessels with a draft of not over 17 feet. There are anchorages both inside and outside the reef. The holding ground in Welles Harbor is sand, and not good. The water supply on Sand Island is good, but limited to 6000 gallons a day. 54

54. U.S. Coast Pilot & Supp., supra, note 4, p. 56; Bryan, op. cit. supra, note 1, p. 94.
b. Discovery

Midway Island was discovered by Captain N. C. Brooks, said to be an American citizen, of the Hawaiian bark, GAMBIA, on July 5, 1859. He landed, dug a well there, and raised a flag (whether American or Hawaiian does not appear) and, according to his own statement, - "as an extensive deposit of guano was found on one of the islands, possession was taken of the group, and notices left to that effect." It is said by several secondary authorities that Brooks took possession of Midway for the United States.

c. United States Claim

The discovery and possession taken by Brooks may or may not have given the United States a basis for a claim to sovereignty over Midway. Although Brooks appears to have been an American citizen, his vessel was of Hawaiian Registry, and he may have taken possession in behalf of Hawaii. Apparently, he did not file any application with the State Department for recognition of his interest under the Guano Act; nor did he forward any notice of his discovery of the island.

On


56. Bryan, op. cit. supra, note 1, p. 94; Brigham, op. cit. supra, note 3, p. 105; Allen, op. cit. supra, note 9, p. 504.
On May 13, 1867, Allan McLane, President of the Pacific Mail Steamship Company, requested the Navy Department to have the Island surveyed, as it was believed that Midway might be available as a coaling station. Accordingly, on May 28, 1867, under orders from the Navy Department, Captain William Reynolds, of the U.S.S. LACKAWANNA, "took formal possession of Brooks island and reefs, for the United States," and surveyed it. 57

In July, 1867, the Pacific Mail Steamship Company occupied one of the islands. Captain Reynolds reported on September 30, 1867, that the company's agent was established on the lower island. 58 Either the company, or the United States Navy landed some coal there, but attempts to make Midway a coaling station were evidently abandoned before long. 59 In 1914, however, it was reported that the coal was still there, buried under the sand. 60

Accordingly

57. S. Ex. Doc. 79, 40 Cong. 2 Sess. pp. 6-10.
58. Id.; S. Rep. No. 194, 40 Cong. 3 Sess.
60. Id.
In 1868, the correspondence of the Navy Department regarding Midway Island was submitted to the Senate. On January 28, 1869, the Committee on Naval Affairs reported that it would be practicable to open up the obstructions barring the entrance to the lagoon at Midway, and recommended that this be done. Accordingly, Congress appropriated $50,000 for making Midway Island into a naval station, and the Navy Department detailed the U.S.S. SAGINAW for work at Midway in connection with the expenditure of this money, under contract, in enlarging the channel through the reef into the lagoon. The SAGINAW was at Midway from time to time from March 24 to October 29, 1870. During this period a passage was made through the reef 15 feet wide and 400 feet long, but a width of 170 feet was considered to be essential. The appropriation being exhausted after this six months of work, the work stopped. The SAGINAW was subsequently wrecked on Ocean Island.

The


The next known occupation of Midway was in 1887. In that year Captain Walker, his wife, and crew of the WANDERING MINSTREL were wrecked on Midway, and lived there fourteen months, subsisting on fish and birds eggs.

On January 30, 1888, in response to a Senate Resolution requesting all the correspondence with foreign governments regarding Midway, the State Department replied that there was only a note of January 10, 1887 from the Hawaiian Minister to the United States, to which no formal reply had been made by the United States. In this note the Hawaiian Minister informed the Secretary of State that formal possession had been taken of Ocean Island in the northwest group in the name of the King of Hawaii, and that His Majesty "claims sovereignty over all the islands and islets which form the chain extending from the Island of Niihoa of the Hawaiian group to Ocean Island, except Midway Island." He referred to the discovery of this island by Brooks, the brief occupation by the Pacific Mail Company, the possession taken by the LACKAWANNA, and the effort to deepen the harbor entrance under the direction of the Captain of the U.S.S."SARANAC," and added that since then it is believed "no act of occupation

63A. Allen, op. cit. supra, note 9, p. 504

64. T. F. Bayard, Sec. of State, to Pres. Cleveland, Jan. 27, 1888, 17 MS. Report Book 72; Richardson, op. cit. supra note 26, p. 602.
occupation, protection or jurisdiction has been performed by the United States or by any citizen thereof." He informed the Department that the Hawaiian Government intended placing relief stations on these islands; that they should be under some recognized jurisdiction; and that unless the United States claims Midway as a United States possession, it would be advisable that Midway "with the rest of the chain be brought under the sovereignty of the Hawaiian Kingdom." In conclusion, he inquired whether or not the United States claimed Midway and, if so, whether the United States would relinquish its claim to Hawaii.\footnote{65}

Although this note was never formally answered, it may be that the Hawaiian Government was given some assurance of the position of the United States. At any rate, no attempt appears to have been made by Hawaii to take possession of Midway, as was done in the case of nearly every other island in the northwest group. It was said in 1899 that, in Hawaii, Midway was thought to belong to the United States.\footnote{66}

In 1899 the U.S.S. (?) NERO surveyed Midway in its search for a landing of the Trans-Pacific Cable.

\footnote{65. A. P. Carter, Note of Jan. 18, 1887, \textit{supra}, note 25.}
\footnote{66. Let. from Haywood, Jan. 16, 1899, \textit{supra}, note 25.}
Japanese subjects were found on Midway at that time, engaged in killing the birds for their feathers. 67

In 1900 Lieutenant Commander C. F. Pond, of the U.S.S. IROQUOIS, also made a survey of Midway and took many soundings to facilitate its use as a cable station. 68 On his arrival he found a colony of six Japanese living on Eastern Island, gathering bird feathers and killing thousands of birds. The Secretary of the Navy reported this to the Secretary of State, noting that it was proposed to establish a cable station on Midway and adding: "these Islands have always belonged to the United States, and at no time have they formed part of Hawaii." 69 The Secretary of State instructed Mr. Buck, the United States Minister at Tokyo, to inform the Japanese Government that the United States claimed the islands. 70 Accordingly, Mr. Buck wrote the Japanese Minister


68. Brigham, op. cit. supra, note 3, p. 105; Sec. of Navy to Sec. of State, Oct. 26, 1900, and enclosure, MS. Misc. Let.

69. Ibid.

70. John Hay, Sec. of State, to A. E. Buck, U. S. Min. to Tokyo, Nov. 9, 1900, 4 MS. Instructions, Japan, 651, No. 338.
Minister for Foreign Affairs on December 12, 1900, saying: "that Midway Islands belong to the United States, having at no time formed part of Hawaii, and that the settlement of Japanese there,...cannot be regarded as affording any basis for a claim to the Islands by the Japanese Government." 71 In reply the Japanese Minister said: "The Imperial Government have no intention to establish any claim in regard to the sovereignty of the Midway Islands." 72 This was reported to the Secretary of the Navy. 73

On August 24, 1900, the Japanese Consul at Hawaii inquired of the Governor of Hawaii regarding the ownership of the Leeward Islands, including Midway, with a view to obtaining a lease for the Japanese Government to protect Japanese subjects in their fishing and bird catching. 74 In reply the Governor submitted a letter written by W. W. Alexander, Government Surveyor, in which the only statement made regarding Midway was a brief reference to its discovery by Brooks, the survey

71. A. Buck, U.S. Min. to Tokyo, to J. Hay, Sec. of State, Dec. 13, 1900, 74 MS. Dispatches, Japan, No. 525; D. J. Hill, Acting Sec. of State, to Sec. of Navy, Jan. 10, 1901, 250 MS. Dom. Let. 162.

72. H. Wilson, U.S. Legation, Tokyo, 'c J. Hay, Sec. of State, Jan. 29, 1901, & Enclosures, 74 MS. Dispatches, Japan, No. 57.

73. J. Hay, Sec. of State, To Sec. of Navy, April 2, 1901, 251 MS. Dom. Let. 644.

74. Sec. of Navy to Sec. of State, Mar. 12, 1901, & Enclosures, MS. Misc. Let.
by the LACKAWANNA, and the occupation of the Pacific Mail Steamship Company. In addition, however, it was said that "the whole chain of Islands and reefs with Ocean or Cure Islands has for many years been considered as forming part of this group, both politically and geographically." 75

The State Department sent copies of this correspondence to the United States legation in Japan, with instructions to watch for any signs of a desire on the part of Japan to lease or control "the outlying westward islands of the Hawaiian Group." 76

In 1902 the Navy Department again reported the occupation of Midway by Japanese bird hunters, and proposed to send the U.S.S. ADAMS to investigate. 77 The Japanese heard that the United States proposed to eject Japanese subjects found on Midway and Wake Islands, and requested the State Department to protect the Japanese occupants, who were engaged in peaceful pursuits, and added that the Japanese Government had no intention of raising any claim to Midway Islands, or to Wake. The State

75. Ibid; S. B. Dole, Gov. of Hawaii, to J. Hay, Sec. of State, April 12, 1901, MS. Miscel. Let.
76. J. Hay, Sec. of State, to H. Wilson, U.S. Charge, Tokyo, April 12, 1901, 4 MS. Instructions, Japan 676, No. 343.
77. Acting Sec. of Navy to Sec. of State, Aug. 20, 1902, MS. Miscel. Let.
78. Takahari, Jap. Min. to U.S., to A.A.Adee, Acting Sec. of State, Aug. 18, 1902, 7 MS. notes from Japan, No.32.
State Department replied that this latter statement was gratifying, "because recognizing the prior rights of the United States Government to the possession of both those island groups and because eliminating any contingent assertion of claim or title which might be based upon the fact of adventitious settlement by Japanese subjects." The Department added that since the possession taken of Midway by Reynolds in 1867 "the undisputed sovereignty and jurisdiction of the United States thereover has been recognized." 79 This assertion was repeated to the United States Minister to Tokyo, with the qualification that "some sixteen years ago" it was suggested that Midway Islands were "confused" with the Hawaiian group, but that this was now immaterial as the Hawaiian Islands had become part of the insular territory of the United States. 80

The deportation of the Japanese occupants of Midway Islands remained in abeyance for a time. 81 In July, 1903, Commander Rodman of the U.S.S. IROQUOIS again reported the

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79. A.A. Adee, Acting Sec. of State, to Takahira, Jap. Min. to U.S., Aug. 26, 1902, 2 MS. Notes to Japan 99, No. 81.
81. See do., to Acting Sec. of Navy, Aug. 21, 1902, 261 MS. Dom. Let. 320; Acting Sec. of Navy to Sec. of State, Aug. 23, 1902, MS. Misc. Let.
the terrific destruction of the birds on Midway by Japanese, and the contamination of the water supply there, by reason of the presence of the birds carcasses. He had seized the chemicals the Japanese used to preserve the skins, warned them to desist, and ordered them to leave the islands. As Midway was under the jurisdiction of the Commander of the Naval Station at Honolulu, Commander Rodman had ordered the Superintendent of the Cable Company on Midway Islands to report any violations of law to him, and to prevent any further destruction of birds there, except for food.83 The State Department wrote the Navy Department that the possession taken by the LACKAWANNA in 1867 and "the fact that its dependence upon the United States has been formally recognized since that time, appear even in the absence of specific legislation, to confer upon the United States Executive discretion to prevent the depredation reported, the more so as the island is a landing place for the cable."84 The remaining islands of the northwest group, also resorted to by Japanese bird hunters, were said to be under the jurisdiction of the Hawaiian territorial government.85 These

83. T. Ryan, Acting Sec. of Interior, to Sec. of State, July 23, 1903, MS. Misc. Let.; Acting Sec. of Navy to Sec. of State, Aug. 8, 1903, MS. Misc. Let.
84. F. B. Loomis, Acting Sec. of State, to Sec. of Navy, Aug. 15, 1903, 268 MS. Dom. Let. 376.
85. Ibid.
islands, but not Midway, were included in the Hawaiian Islands [Bird] Reservation, created by Executive Order, February 3, 1909. The birds on Midway appear to have been protected merely by the orders of the Navy Department, which had jurisdiction over Midway.

As has been said, Midway was surveyed with a view to making it a cable station by the U.S.S. NEBO in 1899. In 1902 the Mackay cable was landed at Midway. By this cable, of the Commercial Pacific Cable Company, communication is maintained with Honolulu and Guam. Since 1902, the employees of the company have lived on Midway, the buildings of the company being on the lower island. Vessels visit the island regularly with provisions and supplies.

Since 1903, Midway Island has been under the jurisdiction of the Navy Department. By an executive order of

86. Supra, Note 53.
87. See H. Rodman, to Ass. Sec. of Navy, July 1, 1903, Enclosures, Acting Sec. of Navy to Sec. of State, Aug. 8, 1903, M.S. Misc. Let. Acting Sec. of Navy to Sec. of State, Aug. 19, 1903, Id; A.A. Adee, Acting Sec. of State to L.C. Grisom, U.S. Min. to Jap., Aug. 21, 1903, 5 MS. Instructions, Japan, 113, no. 13, Supra, note 67.
88. Supra, note 67.
89. T. Ryan, Acting Sec. of Interior, to Sec. of State, July 23, 1903, MS. Misc. Let.
90. Acting Sec. of Navy to Sec. of State, Aug. 8, 1903, and enclosures, MS. Misc. Let.; Bryan, op. cit. supra, note 1, pp. 93-94; Allen, op. cit. supra, note 9, p. 504; U.S. Coast Pilot, supra, note 54.
of January 20, 1903, it was provided that: "such public lands as may exist on the Midway Islands, Hawaiian group, .... are hereby placed in the jurisdiction and control of the Navy Department." In July, 1903, the Commandant of the United States Naval Station at Honolulu evidently had jurisdiction over Midway. No United States official lived on the islands, but the Naval Commander in charge at Honolulu requested the Superintendent of the Cable Company to carry out the laws and regulations pertaining to Midway, and to report any violations to the commandant at Honolulu. In 1923, the Attorney General of Hawaii reported that the Territory of Hawaii "succeeded to, and holds, no rights over those two islands [Midway]."

Although there has been no direct annexation or incorporation of Midway Island to United States territory by Congress, there has been legislation by Congress in regard to Midway, which may be regarded as an act of recognition on the part of Congress that Midway is a possession of the United States. Mention has already been made of the $50,000 appropriation in 1867-1870, for deepening the harbor. By an act of Congress

92. Acting Sec. of Navy to Sec. of State, Aug. 8, 1903, and Enclosures, MS. Misc. Let.
92A. J.A. Matthewman, Oct. 31, 1923, supra, note 63; cf. Governor's Report, 1920, 1921, that Midway was part of the county of Oahu, territory of Hawaii, 1923 so. op. II, p. 1541 (O'Neill) (811.0141 M58/9)
92B. Supra, note 63.
of March 3, 1905, the Secretary of the Navy was authorized to spend not over $1500 "in procuring a survey in estimate of cost for a channel into Welles Harbor, Midway Islands." By another act of the same date the Secretary of War was authorized to make a preliminary survey of Welles Harbor, Midway Islands. There does not appear to have been any further legislation regarding these Islands.

The State Department appears to have long regarded Midway as a possession of the United States. However, it has been recognized that it did not become such a possession by reason of annexation of the Hawaiian Islands in 1898. In answer to requests for information as to the island possessions of the United States, it has almost uniformly been said that these possessions include the Hawaiian Islands, Philippines, etc., and Midway Islands.

93. 30 Stat. 1097.
94. Id. 1156.
95. F.C. Knox, Sec. of State, to E.R. Stackable, Dec. 31, 1910 (611.014); do. to C.E. Prior, May 17, 1912 (Id./5); J.E. Osborne, Ass. Sec., to C.H. Grosvenor, June 29, 1914 (Id/14); F.L. Polk, to Sec. of Navy, Aug. 14, 1916, (Id./24); W. Phillips, Ass. Sec., to E.M. Travis, Nov. 5, 1919 (Id./43); to Harrison, Ass. Sec. to T. F. McFaddee, Aug. 2, 1926 (Id./128); cf G.H. N achworth to E.D. Chapman, Jan. 5, 1928 (Id./139).
III. WAKE ISLAND

a. Geography

Wake Island, latitude 19° 18' N., longitude 166° 35' E., is an isolated atoll, about midway between Honolulu and Guam. There are three islands from 10 to 20 feet high enclosing a shallow lagoon. The atoll is about 20 by 25 miles square, and the group of islands 4 1/2 by 2 miles. There is no fresh water, but heavy brush and umbrella and hardwood trees grow on the islands. Small boats can enter the lagoon at high tide through the southern passage. 96

b. Discovery

It is probable that Wake Island was the "San Francisco" discovered by the Spanish explorer Mendafia, but the credit for the discovery of Wake is usually given to the men on the PRINCE WILLIAM HENRY, 1796. The position of the island was fixed by the United States Exploring Expedition, under Commander Wilkes, in 1841. 97

c. United States Claim

On July 4, 1898, General F. V. Green, Brigadier General of the Volunteers; commanding the 2nd Detachment, Philippine

97. Ibid. (Pilot & Brigham)
Philippine Expedition, landed on Wake Island from the S.S. CHINA (U.S.S.?), and raised the American flag on the island. 98 However, this act was evidently not regarded as affording a sufficient basis for a United States claim to the island, for, on January 17, 1899, Commander Taussig of the U.S.S. BENNINGTON, also landed on Wake, and took possession of the island for the United States. Commander Taussig fired a 21 gun salute, and raised the American flag above a brass plate on which was the following inscription:

United States of America

William McKinley, President,

John D. Long, Secretary of the Navy,

Commander Edward D. Taussig, U.S. Navy,

Commanding the U.S.S. "BENNINGTON",

this 17th day of January, 1899, took possession of the atoll known as

Wake Island for the

United States of America.

There appeared to be no evidence of human habitation except for the remains of old wreckage on the beach. Commander Taussig acted under orders from the Navy Department,

98. G.H. Hackworth to E. E. Chapman, Jan. 5, 1928 (811.014/139); E. D. Taussig, U.S.N., to Sec. of Navy, Jan. 19, 1899, enclosure in Acting Sec. of Navy to Sec. of State, Aug. 21, 1902, MS. Miscl. Let.
Department, and from the President of the United States. 99

On June 23, 1902, the United States Army Transport
BUFFORD passed Wake Island and reported that it was then
inhabited by eight Japanese. 100 The Navy Department
proposed to have the U.S.S. ADAMS call at Wake Island
on her regular cruise, to investigate the matter, and
suggested that Japan be requested to withdraw the Japanese
"in view of the fact that the Island is the property
of the United States, and not open to colonization or
foreign settlement." 101

The State Department took the matter up with the
Japanese Minister to the United States, who reported
that the Japanese Minister of Foreign Affairs stated
with regard to Wake Island that the Japanese Government
"have no claim whatever to make on the sovereignty over
the island," but that the Japanese subjects there were
engaged in peaceful occupations, and should be properly
protected. 102 The State Department accepted this state-
ment as a recognition of "the prior rights of the United
States Government" to the possession of this island, and

99. C.H. Darling, Acting Sec. of Navy, to Sec. of State,
Aug. 9, 1902, and enclosures, Ms. Miscel. Let.; E. D.
Taussig, U.S.N., to Sec. of Navy, Jan. 17, 1899, and
Jan. 19, 1899, enclosure in Acting Sec. of Navy to
Sec. of State, Aug. 21, 1902, Id.

100. Acting Sec. of Navy to Sec. of State, Aug. 9, 1902, Id.
101. do. to Sec. of State, Aug. 20, 1902, Id.
102. Takahira, Jap. Min. to U.S., to A.A. Adee, Acting Sec.
of State, Aug. 18, 1902, 7 Ms. notes from Japan, No. 32.
called attention to the possession taken by Taussig in 1899, and the lack of evidence at that time of any signs of human habitation on the island. The question of deporting the Japanese on Wake (and Midway) was left in abeyance, but it was said that in any event they would be treated with consideration. 103

Although correspondence continued regarding the protection of the birds on the northwest Hawaiian Islands and Midway, nothing more appears to have been done to protect the birds, or to evict the Japanese hunters from Wake Island. Wake was not included in the Hawaiian bird reservation of 1909. 104 Furthermore, no action appears to have been taken with regard to Wake Island by the State Department since the representations to Japan of 1902. Nevertheless, since 1900 the State Department has listed Wake Island as among the possessions of the United States, or under United States jurisdiction, but it has not been included in the territory of Hawaii. 105

103. A. A. Adee, Acting Sec. of State, to Takahira, Jap. Min. to U. S. Aug. 26, 1902, 2 MS. Notes to Japan 99, no. 81.
104. Supra, note 52.
105. D. H. Hill, Acting Sec. of State, to Messrs. Perry, Mason and Co., April 18, 1900, 244 MS. Dom. Let. 381; P. C. Knox, Sec. of State, to E. R. Stachable, Dec. 31, 1910 (288.014); do. to C. E. Prior, May 17, 1912 (Id./51) J. E. Osborne, Ass. Sec. to C. H. Grosvenor, June 29, 1914 (811.014/14); F. L. Polk, to Sec. of Navy, Aug. 14, 1916 (Id./24); to Phillips, Ass. Sec. to E. M. Travis, Nov. 5, 1919 (Id./43); L. Harrison, Ass. Sec., to J. F. McFadden, Aug. 2, 1926 (811.014/128); S. W. Boggs to Julia Hicks, Nov. 19, 1926 (Id./149).
No record of any congressional legislation respecting Wake Island has been found. It was surveyed from the U.S.S. TANAGER in 1923, when an expedition including members of the Department of Agriculture, The Bishop museum of Honolulu, and the Hydrographic office, visited Wake and other Pacific islands.106

Conclusions.

The islands in the Northwest Hawaiian Group, consisting of Nihoa Island, Necker Island, the islands on French Frigates Shoal, Gardner Island, Laysan Island, Lisansky Island, the islands on Pearl and Hermes Reef, and Ocean (Cure) Island, are now possessions of the United States, by virtue of the annexation of the Hawaiian Islands and their dependencies to the United States in 1898. No other country appears to claim sovereignty over these islands.

Midway Island, or Islands, is a possession of the United States under international law, possibly by reason of its discovery by a United States citizen, and by its occupation and use by American interests, and its administration by the Navy Department; and under local law, by virtue of appropriations made by the United States Congress for surveying Welles Harbor, Midway Island.

In addition, it may be stated, that no other country appears to claim this island.

Wake Island is also claimed by the United States, and, according to the records found, is not claimed by any other country. The United States took formal possession of the island in 1899, and had already some basis for a claim to it in 1898, but since that time it appears to have
have been unoccupied and unused by either American citizens or interests, or by the Government. Furthermore no legislation regarding Wake Island has been enacted. Under the United States Constitution, some legislation is thought to be necessary in order to acquire territory. However, under international law, the claim of the United States to sovereignty over Wake Island would appear to be valid in the absence of any evidence of a claim, or basis for a claim, by another country.
DEPARTMENT OF STATE

THE LEGAL ADVISER

THE SOVEREIGNTY
OF
GUANO ISLANDS
IN THE
ATLANTIC AND INDIAN OCEANS.

December 4, 1932.
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INTRODUCTION.

In three other memoranda the islands in the Caribbean Sea and in the Pacific Ocean which were at one time claimed by American citizens under the Guano Act of 1856 have been studied with a view to determining whether or not the United States has, at present, any valid claim to sovereignty over those islands. There remained a few scattered islands for which notices of the discovery of guano were filed under the Act, but which were located in other oceans, and so could not be included in those memoranda. An account of these islands has been added, therefore, to complete the record of the claims of the United States to the so-called guano islands.

****
I. FOX ISLANDS, GULF OF SAINT LAWRENCE

a. Geography

Fox Islands are three small islands located in the Gulf of St. Lawrence, between Labrador and Newfoundland, but just off the south coast of Labrador, extending from latitude 50°58'15" N, longitude 58°44'45" W. to latitude 50°58'45" N. and longitude 58°45'22" W. They are two and a half miles from the eastern passage into Eagle Harbor and twelve miles southwest of the St. Augustine Chain. Apparently, they are similar to the other islands on that coast, and are merely raised sandbars, perhaps partially wooded.

b. United States Claim under the Guano Act

On May 1, 1899, William F. Lunt filed a notice of the discovery of guano on Fox Islands. He alleged that this group of islands, in the Gulf of St. Lawrence had been discovered by William J. Hewitt, Nelson A. Hewitt and himself, all residents of Massachusetts; and he gave notice of their intention to take possession of the islands in the name of the United States for the guano on them, under the provisions of the Guano Act. Finally, he requested advice as to the course to be pursued to enable

1. W.F. Lunt to Sec. of State, May 1, 1899. IMS. Miscl. Let. re Guano, Fox Islands.
enable them to acquire a title under the Guano Act, for purposes of removing the guano.³

The State Department merely acknowledged the receipt of this letter, and stated the requirements of the Guano Act, adding that the quality and quantity of the guano must also be shown in order to determine the amount of the penalty of the bond.⁴ No further papers appear to have been filed regarding these islands. They were never bonded, and do not appear on the lists of guano islands appertaining to the United States compiled by the Treasury Department.⁵

c. Claim of Great Britain

Fox Islands form geographically, and geologically a part of the coast of Canada on the Gulf of St. Lawrence, which is bounded in this region by Labrador on the north, and Newfoundland on the south.⁶ The United States appears to have no claim to them under the Guano Act, or otherwise, and they are undoubtedly part of the British possessions of the region.

5. 6. MS. Misc. Let. re Guano, Sombrero; Id. Miscle.
II. CONNÉTABLE ISLANDS, SOUTH ATLANTIC OCEAN.
(CONSTABLE ISLANDS)

a. Geography

Connétable Islands are two islands only fifteen miles northwest of Point Beaghue, on the mainland of French Guiana, South America. Le Grand Connétable is a barren, rocky islet 164 feet high. Le Petit Connétable, 3/4's of a mile southwest of the larger island, is small and flat, and only 3 or 4 feet above water at high tide. There is a channel between the two islands from 5 to 7 fathoms deep. There is phosphatic guano on Le Grand, and it is said that vessels moor about 100 years southwest of the island and are loaded from lighters at the rate of about 200 tons a day. There is a signal station on the summit of this island. 7

b. United States Claim under the Guano Act.

On May 19, 1857, J. W. Fabens filed a notice of his discovery of guano on certain islands, including Great and Little Constable Islands off the Coast of French Guiana, at latitude 4°52' N, longitude 51°50' W. He stated that the guano had been discovered by himself, or by his agents, during his residence as United States Consul.

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Consul at Cayenne, French Guiana, from 1844 to 1849, and requested that he be furnished with the form of bond necessary under the Guano Act. There is on file a memorandum, unsigned and undated, referring to this claim of Fabens to Connétable Islands, (and to his claim, filed at the same time, to Bird Rock off French Guiana, and to Great Guano Islands, Roncador, Little Corn Island, Man-of-War Key and Swan Islands in the Caribbean Sea). The memorandum, however, merely digests the allegations made by Fabens, states that no affidavits were filed with this claim, and does not report what action was taken on the claim by the State Department. No answer to Fabens's letter has been found. He became the President of the Atlantic and Pacific Guano Company which was interested in Swan Islands, but he filed no bond for Connétable Islands.

On October 11, 1877, George R. Field's notice of discovery of guano on "Constable Island" was filed. In an affidavit dated October 11, 1877, he alleged that in April of that year B. J. Wenberg and Company sent out an expedition from New York in search of guano islands, and

10. Ibid.
and that he sailed with the expedition as supercargo on the schooner PETER MITCHELL. He stated that they arrived at Constable Island, 22 miles from the coast of Cayenne, on June 30, 1877; that they landed and found it to be uninhabited and covered with phosphoric guano; that he raised the American flag and took formal possession of the island in the name of the United States. 11

Nothing further appears to have been done about this claim until July 29, 1878, when Alfred Lozier, attorney for B. J. Wenberg and Company of New York, filed an affidavit by Joseph Hughes, master of the schooner PETER MITCHELL, supporting the allegations made by Field and adding that Field was now deceased, and that B. J. Wenberg and Company were the surviving partners. 12

It is evident that the State Department refused to promise protection under the Guano Act to B. J. Wenberg and

11. Beebe, Wilcox-Hobbs to W. Evarts, Sec. of State, Oct. 11, 1877, 3 MS. Misc. Let. re Guano, Constable. See Sam Ward to F. W. Seward, Acting Sec., Aug. 26, 1873, Id. (Letter referring to an interview with Judge O'Connor in which he evidently expressed the opinion that Constable Island was too close to the mainland to be regarded as unclaimed, and in which it is said that Dr. Field's associates planned to send a vessel to the island in any event). See also C. Paysan, Act. Sec., to J. W. Feats, Nov. 6, 1880, 135 MS. Dom. Let. 132.

12. Alfred E. Lozier to W. Evarts, Sec. of State, July 29, 1878. Id.
and Company on Constable Islands, and that this refusal was based on the belief that the Islands were so close to the coast of the French Guiana that they might be considered as part of that territory. There is an opinion by Judge O'Connor, Examiner of Claims, dated August 13, 1878, in which he states that an examination of the most authoritative maps and atlases shows that the islands are a part of French Guiana; that the islands are colored the same on the maps, and are "close to the shore"; and that the "claim cannot properly be entertained." 13 This decision was evidently communicated to B. J. Wenberg and Company, for on August 26, 1878, they wrote that they were "disappointed" by the decision imparted to them through Lozier. They also inquired if there were any other claims to Constable Island. 14 The State Department replied that there were no other claims. 15 Apparently Fabens's claim was either forgotten or disregarded because it had never been supported by further proof or the filing of a bond.

The Department's decision regarding the claim of B. J. Wenberg and Company was repeated in 1880, in answer to an inquiry regarding the Department's conclusions as to

to the sovereignty of these islands, and it was said that
the law officer of the Department found the islands were
close to the mainland of French Guiano and that they were
marked on authoritative maps as "a part of the French
possessions pertaining to that colony". 16

On June 5, 1880, L. M. Doscher filed a notice by
James W. Jennett relating to his discovery of guano on
"Grand Connetable Islands". In an affidavit dated May 29,
1880, Jennett alleged that he discovered this guano
"or phosphatic rock" on April 21, 1879, on "Grand
Connetable Island"; that he landed, raised the American
flag and took possession of the Island for the United
States and for himself; and he asked for protection under
the Guano Act and recognition of his rights in this
island as the discoverer. There was also filed at this
time another affidavit by Jennett dated June 3, 1880, in
which he alleged that he could not file a notice sooner
because his witnesses had not been available. Affidavits
by Phil Mooney (May 29, 1880) and William J. Anderson
(June 2, 1880) supporting Jennett's first affidavit were
therein enclosed. 17

16. W.M. Evarts, Sec. of State, to C.J. Richards,
April 24, 1880, 123 Id. 557.
17. L.M. Doscher to W. Evarts, Sec. of State, June 5,
1880, and enclosures, 3 MS. Misc. Let. re Guano,
Constable.
On June 11, 1880, the Department acknowledged the receipt of Jennett's declarations and referred to the earlier claim of George B. Field, and to the Law Adviser's opinion regarding it, and concluded: "that this Island seemed to be a part of the territory of French Guiana, being as he believed, within common gun-shot of the port of Cayenne." 18

The only other mention of these islands found in the files of the Department is a letter from the Department of June 23, 1881, in which it is said merely that B. J. Wenber and Company claimed to have discovered guano and in April, 1877, and that the following year James W. Jennett made the same claim. 19 Neither Le Grand nor Le Petit Connétable was ever bonded under the Guano Act, and they do not appear on the lists of Guano islands appertaining to the United States compiled by the Treasury Department. 20

c. Claim of France

There can be no doubt that both Le Grand and Le Petit Connétable Islands are a part of the territory of French Guiana, and are under the sovereignty of France. 21

There

20. 6 MS. Misc. Let. re Guano, Misc.
There is, or was, a phosphate deposit on Le Grand Connétable, which is reported to have been worked for years by an American company. In February, 1882, T. C. Lewett, apparently an American citizen, informed the State Department that he had obtained a commission of the phosphate on this island from the Government of French Guiana, and that he was then in possession of the island, and was engaged in removing the guano, and in erecting a light furnished by France. Whether or not he was interested in the above mentioned "American company" is not known. From 1905 to 1914 the mean annual value of the phosphate output from this island was F. 10,930, but in 1920 it was said that the deposit appeared to be nearly exhausted.

22. Id. p. 43.
III. TRINIDAD ISLAND AND MARTIN VAZ ISLANDS, SOUTH ATLANTIC (Martin Vas)

a. Geography

Trinidad Island, at latitude 20° 30' S, longitude 29° 20' W., is 680 miles east of the coast of Espirito Santo, Brazil, in the South Atlantic Ocean. It is a mass of rock about 3 by 1 3/4's miles in size, with a central peak rising to a height of about 3000 feet. The island is about 4 1/2 miles long, and 2 miles wide at the widest part. There are two remarkable rocks on the eastern shore of the island, and on the eastern slopes is the only flat land, which is covered with coarse grass, acacia bushes and dead trees. Landing is exceedingly difficult because of the surf and coral rocks surrounding the shore, but there is a small bay, Cachoeira Bay, which affords anchorage.

Trinidad is uninhabited. There is plenty of fresh water in streams on different parts of the island, and considerable vegetation including an edible wild bean. A large part of it is covered with a forest of dead trees, evidently all killed at once, sometime after 1700, possibly by an eruption of volcanic ash. The only animals on the island are ferocious land crabs, turtles in the breeding season, and countless numbers of sea-birds. Goats and
hogs were planted on Trinidad in 1700, but they have long since died out. The sea around the island swarms with fish. The climate is very hot and oppressive, and rainfall is heavy even in the dry Summer season.

The aspect of Trinidad is well described by an Englishman, Mr. E. F. Knight, who remained on the island several months in 1890:

"The north side ... is the most barren and desolate portion of the island, and it appears to be utterly inaccessible. Here the mountains rise sheer from the boiling surf -- fantastically shaped of volcanic rock; cloven by frightful ravines; lowering in perpendicular precipices; in places overhanging threateningly, and, huge landslips slope steeply into the yawning ravines -- landslips of black and red volcanic debris, and loose rocks, large as houses, ready on the slightest disturbance to roll down, crashing into the abysses below. On the summit of the island there floats almost constantly, even on the clearest day, a wreath of dense vapour, never still, but rolling and twisting into strange shapes as the wind eddies among the crags .........."

"The scenery is indescribably savage and grand, and its effect was heightened by the roaring of the surf on the beach and the echoes of it in the ravines, as well as by the shrill and melancholy cries of thousands of sea-birds ....... The very colouring seems unearthly -- in places dismal black, and in others the fire-consumed crags are of strange metallic hues, vermilion-red and copper-yellow."

Martin Vaz

Martin Vaz Islands, latitude 20° 30' S, longitude 28° 51' W, are a group of three small, barren rocks about 26 miles east of Trinidad Island. The central and largest island is 300 feet high, and all three occupy a space of about two miles.  These islets are practically inaccessible.

b. Discovery and Early History.

The discoverer of Trinidad and Martin Vaz Islands may be known, but a superficial search has not revealed his name. In 1700, however, Trinidad was visited by the British explorer, Halley, in the PARAMORE PINK, afterwards Dr. Halley, Astronomer Royal. He landed there on April 17, 1700, took possession of the island in the king's name, and left the Union Jack flying there. It was Halley who left goats, hogs, and fowl on Trinidad.  

Sometime after his visit, there appears to have been a Portuguese penal settlement on the island. The remains of their huts and roads and an old pottery kiln could still be seen, high up on one of the mountains, in 1890. In 1803, the American, Amaro Delano, visited Trinidad, and found the goats and hogs left there by Halley, but spoke

29. Ibid, pp. 10, 129.
30. Ibid, pp. 139, 202, 203.
spoke of the Portuguese settlement, of which Halley makes no mention, as having been long since abandoned. It does not appear that Delano claimed Trinidad for the United States. In 1822, it was visited by Commodore Owen, presumably a British navigator. In 1889 possession appears to have been taken again for Great Britain, for, the next year, the remains of a flag were found and a tablet bearing the following inscription: "H.M.S. RUBY, February 26, 1889."

There is an old story that, in 1821, some pirates buried treasure and their murdered captain on Trinidad island. The treasure was said to have been taken from Peruvian churches at the time of the Peruvian revolution, and it included plate and massive gold candlesticks from the Cathedral at Lima, one of the richest cities in Spanish America. In the 1880 decade there were two expeditions from England, and at least three from the Americas, in search of this treasure. In 1890, Mr. Knight made a thorough search for it, remaining on the island several months, and conducting extensive diggings, for it was necessary to dig away huge landslides before the old land, existing at the time of the pirates, could be found.

32. Ibid, p. 121. (The captain of the RUBY was Captain Kennedy).
33. Ibid. pp. 14, 15, 17, et seq.
He did not find the treasure, however, though he always believed it had been buried there, but that either some one else had removed it, or he had not searched in the right place. 34

c. United States Claim under the Guano Act.

On February 9 (?), 1865, Michael B. Gregory of Boston filed a notice of his discovery of guano on Trinidad and "Martin Vas" Islands. He alleged that he was a citizen of the United States; that he had discovered, occupied, and taken possession of these islands, and the guano deposits on them; that they were not within the jurisdiction of any foreign government; and that he had taken possession of them in the name of the United States. He claimed the protection of the United States Government under the Guano Act of 1856. 35

This letter does not appear to have been answered, and no other papers have been found on file in the Department regarding these islands. They were never bonded under the Guano Act, and, consequently, they do not appear on the lists of Guano islands pertaining to the United States compiled by the Treasury Department. 36

34. Ibid, p. 255.
35. Michael B. Gregory to W. Seward, Sec. of State, Feb. 9 (?), 1865, 6 MS. Misc. Let. re Guano, Trinidad & Martin Vas.
36. Id., Sombrero; Ib, Misc.
d. Claims of Brazil and Great Britain.

According to the Encyclopaedia Britannica, both Trinidad and the Martin Vas Group belong to Brazil, and are politically part of the territory of the maritime state of Espirito Santo, one of the original captaincies given Vasco Fernandez Continbro by the Portuguese Crown. It is also stated that Great Britain twice attempted to take possession of Trinidad. This statement is partly substantiated by the record found of the visit of the HMS. RUBY in 1889, and by the account of Halley's visit in 1700. The only value of the islands is said to be that of a possible ocean cable station. 37

IV. PROVIDENCE ISLAND, SOUTH INDIAN OCEAN.

a. Geography

Providence Island at latitude 9° 14' S., longitude 51° 02' E., lies about 170 miles north of Madagascar in the South Indian Ocean. The island is on the northwestern end of Providence Reef which is crescent shaped, and about 24 miles long, north and south. Providence Island is 2 miles long and about 1/3rd of a mile wide. It is wooded, the trees being mainly cocoanut palms, and Casuarinas. Slightly brackish drinking water may be obtained from wells. There is a village on the island, and the population consists of about two dozen people. The chief industry is the exportation of cocoanut oil.

b. Discovery

The Seychelles Islands, some 400 miles north of Providence, were discovered by the Portuguese navigator, Pedro Mascareguas, in 1505. They were occupied only by pirates until M. Picault took possession of them in 1743, in the name of the King of France. Some of the islands were then settled by the French who made spice plantations there. Providence Island received its name

name from the crew of the French Frigate HEUREUSE which was wrecked on the reef in 1763. 40

c. United States Claim under the Guano Act.

On August 22, 1867, John C. Daggett of Melbourne, Australia, requested the State Department to grant him a lease of Providence Island in the South Indian Ocean, which he placed at latitude 9° 9' S., longitude 51° 7' E. He alleged that he discovered the island "or the guano thereon" about twenty-two years before, while he was the master of the American whaling ship EDWARD OF HUDSON (?). He also said that he was a citizen of Massachusetts; that the island was claimed only by himself, and belonged to the United States; and that he required it for removing the guano.

Daggett had also applied for a lease on Ducie Island in the South Pacific, and on September 4, 1867, the Department had replied to this request, enclosing a copy of the Guano Act, and stating that it was necessary for him to prove his citizenship by affidavits; and that he must show that he discovered the guano, that the island was not within a foreign jurisdiction or occupied by anyone, that he had taken possession; and that he must

file a statement of the quality and quantity of the guano. In a letter of October 28, 1867, in answer to Daggett's inquiry regarding Providence Island, the Department referred to its letter of September 4, and added:

"a discovery twenty-two years ago will not enure to your benefit, if in the meantime the island has been occupied by other persons or has fallen into the possession or jurisdiction of any other government." No other letters regarding Providence Island have been found in the files of the State Department. The Island was never bonded under the Guano Act, and does not appear on any of the lists of guano islands appertaining to the United States compiled by the Treasury Department. It is evident that the conditions and requirements of the Guano Act were not complied with in the case of Providence Island, even if possession ever was taken of it by Daggett or his assigns, which does not appear.

d. **Claim of Great Britain.**

Providence Island is now under the government of Seychelles, a British colony. Mahé, the largest of the Seychelle Islands, some 400 miles north of Providence, was captured from the French by Captain Newcome of the H.M.S. ORPHEUS, May 17, 1794. After the capture of Mauritius by the British in 1810, Seychelles was formally incorporated into that colony. By Letters Patent of August 31, 1903, Seychelles was made a separate colony under its own government.
Various British publications include Providence Island among the present dependencies of Seychelles. It is reported to be owned by the Persian firm of Said and Co., of Mahé Island, Seychelles, and is visited every four months from Seychelles.

(Footnotes for pp. 19-20.)

42. W.H. Seward, Sec. of State, to T.C. Daggett, Sept. 4, 1867, 77 MS. Dom. Let. 60.

43. W. H. Seward, Sec. of State, to T. C. Daggett, Oct. 28, 1867, Id. 275.

44. 6 MS. Miscl. Let. re Guano, sombrero; Id, Miscl.

45. Dominions office list, supra, note 30.


47. South India Ocean Pilot, supra, note 29.
V. ASHMORE REEF, INDIAN OCEAN.  
(Caller Reef)

a. Geography

Ashmore Reef, in the Indian Ocean, is about 200 miles off the northwest coast of Australia, 80 miles south of Timor, and 15 to 30 miles south of Hibernia Reef. It is a coral reef extending about 16 miles, east and west, and has three low islets rising from it. West Islet, latitude 12° 13' S., longitude 123° 01' E, is 1200 by 700 yards square, 8 to 10 feet high, and has a fresh water well in the center of it. Middle Islet, 3 1/2 miles southeast of West Islet, is 400 by 230 yards square and 9 feet high. It is composed of sand covered with coarse grass, and the top is slightly depressed. East Islet, 3 1/2 miles to the east of Middle Islet, is 400 yards square, and 9 feet high, and is also composed of sand covered with grass. On the northern edge of the reef there are four passages into the lagoon. Anchorages may be found anywhere along the northern side of the reef. In season there are turtle on these islands and bêche-de-mer. 48

b. Discovery

It is said that this reef was discovered in 1811 by Captain Ashmore of the British vessel HIBERNIA. 49

c. United

49. *Memo left with Sec. of State by Sir Edward Thornton, Br. Min. to U.S., June 27, 1878, 103 MS. Notes from Great Britain.*
c. United States Claim under the Guano Act.

On October 7, 1878, the United States Vice Consul at Melbourne, Australia, forwarded papers to the State Department relating to the discovery of guano on Ashmore Shoal by Amasa T. Webber, an American citizen, and master of the American bark, SADIE F. CALLER. The Vice Consul reported that on about February 1, 1878, Webber had told him of the discovery of this guano, and had said that he had applied to the United States for protection under the Guano Act. Webber asked the Vice Consul in his capacity as merchant, to help him form a company. Accordingly, the Melbourne Guano Company, Limited, was formed, under an existing Act of Parliament of the Colony (of Australia), and Webber transferred his interest in the islands he discovered, or which he might discover in future, to the Company. Webber retained a half interest, and Lord, — the Vice Consul, — and two others (Smith and Martin) each had a sixth interest. The Company chartered Webber's vessel by the month, and on February 20 it sailed for the Ashmore Islands. An Australian revenue cutter found Webber in possession of one of the islands, apparently removing guano, and flying the American flag, and he found another group in possession of another of the islands, of the same shoal purporting to be there under the authority of
of the Dutch Government. 50

Although the Vice Consul said that Webber had applied to the United States under the Guano Act, 51 no record of any application before November 21, 1878, has been found. On that date one William H. Mailler wrote the Department, apparently in behalf of Webber, giving an account of the facts similar to that given by Vice Consul Lord on October 7. 53 Both reported also that Webber had tried to obtain a lease of the Islands from the Governor of New South Wales, Sir Hercules Robinson. The Governor, however, was unwilling to grant the lease because he believed that the United States might have a protectorate over the Islands under the Guano Act. Accordingly, Lord and Mailler inquired regarding the Department's attitude towards the lease of the Islands to Webber by the British authorities. 54

On December 13, 1878, Judge O'Connor, the Examiner of Claims in the State Department, reviewed the case and concluded: "There is no American protectorate over the island or its guano product under the laws of the

United

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51. Ibid
52. See W. Evarts, Sec. of State, to Sir Ed. Thornton, Br. Min. to U.S., July 2, 1878, 17 MS. Notes to Great Britain 572.
53. William H. Mailler to W. Evarts, Sec. of State, Nov. 21, 1878, 3 MS. Misc. Let. re Guano, Ashmore Reef.
54. Ibid; Lord, U.S. Vice Consul, to F.W. Seward, Ass. Sec., supra, note 41.
United States referred to [the Guano Act], Mr. Webber's claim has never been perfected or recognized by the Department." He added that Vice Consul Lord should be told that: "This Government lays no claim to the island or its products, either on its own behalf or in behalf of any of its citizens"; and that American citizens were at liberty to make any contracts with foreign governments. The State Department instructed the Vice Consul accordingly, adding that: "no formal consent of this Government is, therefore, necessary in order to enable Mr. Webber, or his assigns to enter into the proposed arrangement with the Colonial Government."  

It is clear that the State Department did not recognize Webber's claim to Ashmore Shoal arising under the Guano Act. No other claim under that act appears to have been filed, and the islands were never bonded, and do not appear on the lists of Guano islands appertaining to the United States compiled by the Treasury Department.  

d. Claim of Great Britain  

There is evidence tending to show that a lease for Ashmore Shoal was obtained by Webber, or by the Melbourne Guano Company, from the Colonial Government of Australia.

57. 6 MS. Misc. Let. re Guano, Sombrero; Id., Misc.
It is reported that Great Britain took formal possession of the Islands on Ashmore Reef in 1878. Moreover, the Islands were occupied by this Guano Company and guano apparently was removed. In 1881 the British Ambassador to the United States reported that in 1879 the Melbourne Guano Company claimed the right to remove guano from these islands under duly issued British license, and that the Browse Island Company, also formed in Australia, claimed it had a right to the guano on those islands through a concession of the Netherlands Government of India. Mr. Howlett, of Texas, was interested in this Company. It was said that he obtained a concession from the Governor General of the Netherlands, India, on August 11, 1878, but that it was annulled on October 12, on information being received from the American Consul at Melbourne that there was an American concession on the Islands. Although it appeared, subsequently, that the concession was British, and not American, the Netherlands Government considered the controversy closed on the question of sovereignty of the Islands, since Great Britain then exercised sovereignty over them.

58. Australia Pilot, supra, note 39; see clipping from The Melbourne Age, Aug. 14, 1878, enclosure in S. Lord to F. W. Seward, supra, note 41.
The State Department merely acknowledged the receipt of the British memorandum setting forth the history of the controversy between the two guano companies, and stated that the subject would receive the consideration of the Department. 60 Nothing more appears to have been done, however, and no further record of Ashmore Reef is found in the files of the Department.

No mention of Ashmore Reef could be found in various publications dealing with British colonial possessions, or islands in that region. However, it does appear on various British maps of the region, and it is probable that it is still considered a British possession, and a dependency of Australia.

60. T. G. Blaine, Sec. of State, to Victor Drummond, Br. Amb. to U.S., Oct. 31, 1881, 18 MS. Note to Great Britain 618.

61. See Encyclopaedia Britannica, supra 3 note 28, Index; The Statesman's Yearbook (London, 1932); Dominions office list, supra, note 30.
CONCLUSIONS.

The United States has no claim under the Guano Act or otherwise, to sovereignty over Fox Islands, Connétable Islands, Trinidad and Martin Vaz Islands, Providence Island (Indian Ocean), or the islands on Ashmore Reef. Notices of the discovery of guano on all these islands were filed by Americans claiming under the Guano Act, but the other conditions of the act were not complied with; they were not bonded; and the United States never recognized any of the islands as appertaining to the United States under that act. Furthermore, the State Department expressly refused to grant any rights under the act to claimants interested in Grand Connétable and Ashmore Islands.

Very little information has been found as to what governments do control these islands at present, but the authorities consulted indicate that Fox Islands, Providence Island, and Ashmore Reef are probably under the sovereignty of Great Britain, and Connétable Island—of France. Trinidad and Martin Vaz Islands may be under the sovereignty of Brazil, though Great Britain also appears to have some claim to Trinidad.
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In making this general index to the entire volume (the pages of which have been numbered by numbering machine to correspond to the similar bound volume in the Office of the Legal Adviser), each page of the entire volume has been scanned, and an effort made to include all significant references to island names. It has not been found feasible, however, to cite all pages on which the name of every island appears, particularly in the case of islands frequently mentioned (e.g., Navassa, Baker, and Aves) in discussing the legal aspects of claims to other islands.

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