To Professor
Geo. Davidson
by one of his admirers
J. Alexander Forbes

MEXICAN TITLES

IN THE

STATES AND TERRITORIES

OF THE

UNITED STATES

BY

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MEXICAN TITLES

In the States and Territories of the United States.

The King of Spain acquired dominion over the lands now contained within the bounds of Arizona, New Mexico and Colorado, California, Nevada, Utah and Wyoming, by conquest from the aborigines (Indians) living in a savage state in that locality.

These aborigines had no custom or usage in regard to title to lands although not all were nomadic in their habits; some were agriculturalists, some built towns, but none of them had any settled law recognizing what is called title to lands; they simply took and held possession from time to time of what they wanted individually or collectively. In the expedition of Col. Don Juan Bautista de Anza, who came by order of the Spanish Viceroy to settle the port of San Francisco, in the year 1774, an examination was made of the Casas Grandes, buildings said to have been erected by the ancestors of the Indians now inhabiting Arizona, *i. e.* Pimas, Papagoes, and the Gila tribes. There De Anza discovered the immense ditches evidently at one time intended to irrigate the entire plain. The Apaches have no kindred with the above mentioned tribes, having simply been pushed from their Eastern homes by other tribes, and the natural course of white immigration in later years.

At the time the Spaniards conquered New Spain, or the southern portion of this continent, a code was promulgated by the Spanish Crown called the Recopilacion de Indias, applying to the territory in question and expressly respecting the rights of the aborigines to the soil.[A]

These rights were, in brief: that they should not be disturbed wherever they had fixed possessions; to which end the Spanish Crown ordered Indian communities to be formed, and sent missionary priests to con-

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A. *As to Indians' rights, see:*

The first law given in Cigales on the 21st March, 1551, by Charles V., and re-affirmed by Philip II., Law 1, Title 2, B. 6, Rec. of Indias.

Law 8, Title 3, Book 6, of the same Code.

Royal decree of June 4, 1687.

Royal decree July 12, 1695.

Ordinances Nos. 88 and 89 of Philip II., contained in tbe 7th Chapter of the same Code.

It is clear from the whole tenor of Spanish and Mexican Laws, that the Indians were entitled in equity, and by strict law, to all the lands they actually possessed and cultivated, whenever such lands can be properly designated by well-defined boundaries. Both Spain and Mexico have always acknowledged this principle to be a just one.

See laws above cited and decree of President Benito Juares even as late as September, 1867.

On February 23, 1781, Viceroy Martin de Mayorga published a decree of the audiencia prohibiting Indians from selling their real estate without license from the proper authority. This remained in force until the Independence of Mexico which made all inhabitants of the Mexican Nation equal before the law.

The plan of Yguala adopted on the 24th of February, 1821, made Indians Mexican citizens, etc.

The Treaty of Cordova, dated August 24, 1821, re-affirms the principle above mentioned.

The decrees the of Mexican Congress of the 24th of February, 1822, and 9th of April, 1823, again reiterates the same principle.

The United States Supreme Court in United States *v.* Ritchie, 17 How., 525, has held that Indians could purchase, hold and sell real estate under the Mexican law.

All Spanish legislation on the subject shows the care and protection given to the Indians by the Crown.

For further information see Royal decrees July 12, 1695; June 5, 1811; February 9, 1811; March 13, 1811.

gregate the Indian tribes in fixed localities, the seats or headquarters of which were called Missions. Within the districts so formed no Spanish subject or stranger was allowed to acquire title to lands without the consent of the missionary fathers in charge and the Indians of the community. By Royal Decree of Sept. 13, 1813, and Aug. 17, 1833, all Missions were secularized, *i. e.* the monastic dominion of the priests over the Indian communities ceased, and in its place came the conversion of those Missions into Indian Pueblos or Towns with a Municipal Government by magistrates elected by the Indians themselves, subject however to regulation by the Government.[B]

Under both of these forms of Government the aborigines were only allowed the right to possess and cultivate the lands in community, but had no individual rights therein. Each community of Indians that reached a population of 400 inhabitants was allowed two square leagues of land and no more, but this was not in fee, only for the time being and subject to divestment by the Crown at any time. Then followed in 1821 and 2, the jurisdiction of the Mexican Empire which preserved the same laws. This condi-

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B. *With reference to Pueblos:*

See Art. 1 and 2, Title 11, of the Regulation of Presidios (Garrisons), dated September 10, 1792, and Article 50 of the ancient regulation of the Viceroy Marquis of Casapuerte, dated April 20, 1729, that was ordered to be observed by Royal order of the 15th May, 1779.

See also Laws 10, Title 5; 2 and 9, Title 7; 1, 2 and 3, Title 10; Book 4, the Recopilacion de Indias.

See also Law 1, Title 3, Book 5, and Laws 5, *et seq.*, Title 17, Book 4, of the same code.

tion of things continued until the formation of the first Mexican Republic, in 1823.[C]

Some Arizona lands stand on a different footing from those in California and New Mexico, being derived by grant from the independent State of Sonora. Lands in Sonora were granted upon sale to the highest bidder made by the State Treasurer, by virtue of the provisions of the 11th Article of the law of the 4th of August, 1824, in which was granted by the Federal Government of Mexico to the State of Sonora all the revenue not thereby reserved to the general government.

C. *Manner of granting lands.*

Under the Spanish Regime Mercedes or grants of land were made to communities as well as to individuals, and upon the application of the interested party or parties, due notice was given to the residents of the neighboring localities and there being no objection either from the Indians or Spaniards titles was issued to the applicant making a record of the same in the book entitled "Libro de Gobernacion" that was kept in the city of Mexico.

Subsequently petitions were addressed to the President of the Royal Audiencia of the District within which the land was situated; there were only two Audiencias, one at the city of Mexico and the other at Guadalajara.

Subdelegados, as they were termed, or commissioreas of the same Audiencias were sent out to make grants and these would receive and pass upon applications presented to them. Under the ordinance of Intendentes of December 4, 1786, the subject matter was confided to the Intendente General, who simply was authorized to sell the land applied for to the highest bidder.

Grants made in New Mexico and Colorado must have been recorded in Santa Fe and the city of Mexico.

Grants made in Arizona should be found recorded either in Chihuahua or Hermosillo, in which localities the ancient Archives of Internal Provinces seem to exist.

In August 22, 1776, Don Theodora de Croix was appointed Commandant General of Sinaloa, Sonora, Californias, New Biscay, Coahuila, Texas and New Mexico. He resided in Arispe, Sonora. No power seems to have been given to him to sell lands; but in June 21, 1786, Don Jacobo Ygaste y Loyola ratifies donations made by Governor Don Pedro Fages, in 1784, to Manuel P. Nieto, Juan Jose Domingues and Jose Ma Verdargo. In California subsequently Don Pedro de Nava, Commandant General, also, by his order of March 22, 1791, authorized the Captains of the several Presidios to make grants of lands to individuals for meritorious services.

The public land within the state was one source of revenue. A law of the State of Sonora, passed May 20th, 1825, prescribed the manner of acquiring such public land.

The State Treasurer was required to duly advertise the land for sale for a time specified, sell same to the highest bidder, give him a written grant, etc. The magistrates were required to give him judicial possession and protect him in the full enjoyment of the same.

On August 18th, 1824, the Congress of the Mexican Republic passed a law providing for the colonization of the territories of the Republic, of which the land comprised within the present geographical limits of California, Nevada, Utah, Wyoming, Colorado, New Mexico and Arizona was a part.

On November 21, 1828, regulations were made and promulgated by the Executive Government of Mexico for carrying into effect this former law. Under the above provisions all subsequent titles were issued in said states and territories.

As an incentive to colonization of vacant lands the Governors of the several territories were authorized to make grants of lands with the approval of the Territorial Deputation, and later the Departmental Assembly, which consisted of a body elected by the Mexican citizens of the territory in which they resided.

Upon receipt of such grant the grantee was required to present his title papers to a judicial officer, generally the Alcalde of the nearest town, who was required

to give him judicial possession, in doing which, a location of the boundaries was made and recorded.

A provision was made by law for the recording of these grants, and proceedings leading up to them, in the office of the Secretary of State of the Department. In all cases the Governors preserved a memorandum of the fact of granting. Besides these grants by the Territorial Governors, the Spanish Crown, during its dominion, and the Empire and Republic, during theirs, made grants from time to time to their subjects for meritorious services. These were a separate character of grants, but the record was preserved in same way. Under these conditions the inhabitants of the states and territories in question held their lands on February 2, 1848, when the Treaty of Guadalupe Hidalgo was concluded at that city between the United States of America and the United Mexican States, the ratifications of which were exchanged May 30th, 1848. This treaty fixed a boundary line between the two governments, by which certain territory, including the present California, Nevada, Utah, Wyoming, Arizona, New Mexico and Colorado became the territory of the United States.

The treaty stipulates in Articles VIII and IX for the freedom and protection of the Mexican citizens inhabiting the territory ceded in the enjoyment of their property, and also expressly provided that the rights of non-resident Mexicans to property within said territory should remain inviolate, and that the said owners, their heirs or Mexicans acquiring the

same thereafter by contract. should enjoy with respect to it, guarantees equally ample as if the same belonged to citizens of the United States. Without any treaty stipulation the property of Mexicans thus situated would doubtless have been entitled by the law of nations, to such protection from the government of the United States. Soon after this the U. S. Congress created a Commission in California to pass upon the validity of grants in the territory ceded, with right of appeal to District Court and then to Supreme Court.

A portion of the lands in the territory thus added to the United States, claimed by individuals and corporations, rests on incomplete and imperfect grants; on proceedings of the Spanish or Mexican authorities, which may or may not have constituted the proper or preliminary steps toward a perfect title, and which, if the territory had remained under Mexican rule, might or might not have been recognized by those authorities as sufficient to entitle the claimant to a full and perfect grant. On Nov. 25, '53, the Mexican Government by law annulled all grants not then approved and properly recorded. Subsequently, Dec. 30, 1853, by a treaty called the Gadsden purchase, the United States acquired more land to the south of the Gila River and grants stood upon substantially the same terms as by the Treaty of Guadalupe Hidalgo, except that Mexicans seeking to protect their titles were required to have recorded their grants at the City of Mexico in accordance with said law of that country, passed Nov. 25, 1853. By the terms of these treaties as well as by the law of

nations, an obligation was imposed on the government of the United States to do, in such cases, that which in the common course of proceedings of the Mexican Government she would have done. This is a political obligation which could not be properly performed by our courts of justice acting in their ordinary judicial capacity, and it was principally to perform this obligation in a manner convenient to claimants, that the present Court was created by act of Congress of March, 1891, though a separation of the public lands from those of individuals was doubtless an important object also.

It will be seen by consideration of the above outline, that the new Court will have to deal with the following classes of titles:

1st. Such as are still retained by religious persons or bodies.[1]

2nd. Such as are still held by Indian communities, if any.

(The Indians holding in severalty are on the same footing as Mexicans, having become citizens under the laws of Mexico.)[2]

3rd. Such as were obtained through grant upon sale to the highest bidder by the State of Sonora.

4th. Such as were granted by Mexican authorities to individual Mexican citizens for meritorious services, or in aid of colonization to any one.

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1. U. S. *v.* Ritchie, 17 Howard, p. 540.
   U. S. *v.* Alemany, Bishop, U. S. District Court, Cal.
   V. Wills' Cal. Titles, pp. 16 and 38.
2. U. S. *v.* Ritchie, 17 Howard, p. 540.
   II. Wills' Cal. Titles, p. 3, *et seq.*

5th. Such as were granted by the Spanish Crown.

6th. Such as have been acquired by individual citizens of the United States, under our laws.

7th. Such as have been granted by the United States to corporations.

8th. Such as have been acquired by corporations under the law of eminent domain.

9th. Lands held by the United States for military and other governmental purposes.

10th. The residue of Public Lands of the United States.

Some of the most important legal features presented in this character of litigation, involve:

Actual Possession.[3]

The Doctrine of Abandonment and Laches.[4]

Law of Evidence as to Boundaries.[5]

Rule as to Proof of Foreign Laws, Usages and Customs.[6]

Questions of Inheritance.

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3. Smith's Case, 10 Peters, p. 330.
4. Hughes' Case, 13 Howard, p. 1.
   Ruggles *v.* De Tournon *et al.*, 16 Howard, p. 242.
   U. S. *v.* Sutter, 21 Howard, p. 170.
   I. Wills' Cal. Titles, p. 478 to 487.
5. U. S. *v.* Lawton, 5 Howard, p. 10 to 29.
   Menard's Heirs *v.* Massey, 8 Howard, p. 293.
   Fossatt's Case, 20 Howard, p. 426.
   II. Wills' Cal. Titles, pp. 150, 155, 174.
   XI. *Idem*, p. 1, *et seq.*
6. Laws in existence before Treaty to be judicially noticed.
   U. S. *v.* Perot, 98 U. S., p. 428.
   U. S. *v.* Arredondo, 6 Peters, p. 714.
   U. S. *v.* Clark, 8 Peters, p. 450.
   Strother *v.* Lucas, 12 Peters, p. 436.
   U. S. *v.* Turner, 11 Howard, p. 668.

Conditions Annexed to Grants.[7]

The Probative Force of Recitals in Foreign Grants.[8]

Citizenship and Treaties.[9]

Learned and exhaustive discussions of these subjects will be found in the briefs of Caleb Cushing, who represented the government in the Supreme Court in the Florida, Louisiana and California cases; and of William Carey Jones, Halleck, Peachy & Billings, who represented claimants before the California Land Commission, and in the Supreme Court; also in the case on appeal from Cal. Dist. Ct. of U. S. *v.* Cruz Cervantes.[10]

JURISDICTION OF THE COURT.

We do not claim as a settled proposition of law that the Court can determine the rights of contestants who do not deraign title from a Mexican or

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Subject in general.
I. Wills' Cal. Titles, pp. 62, *et seq.*, pp. 277, 328.
Text of Mexican Colonization Law of 1824 and decree of 1828.
I. Wills' Cal. Titles, pp. 70, *et seq.*, and p. 335.
Definition of complete grant under Spanish Laws.
Menard's Heirs *v.* Massey, *ubi supra.*
I. Wills' Cal. Titles, p. 90; II. *Idem.*, p. 155.
Distinction between private and empressario grants.
U. S. *v.* Bolton, 23 Howard, 341.
XVI. Wills' Cal. Titles, p. 3.

7. Fremont's Case, 17 Howard, p. 564.
Cervantes' Case, 18 Howard, p. 555.
U. S. *v.* Larkin, *Idem.*, p. 563.
I. Wills' Cal. Titles, pp. 90 to 100, 119, 335.

8. Hornsby *v.* U. S., 10 Wall., p. 224.

9. Soulard *v.* U. S., 4 Peters, p. 511.
I. Wills' Cal. Titles, p. 62, *et seq.*
Table of cases decided under Treaties.
I. Wills' Cal. Titles, p. 332, *et seq.*

10. The following text books are also valuable:
Schmidt's Civil Law of Spain and Mexico; Whites' Recopilacion; Galvan's Coleccion de Decretos; Las Partidas, translated by Moreau & Carleton; Rockwell's Spanish and Mexican Law of Mines and Real Estate.

Spanish grant. But certainly, the Act of Congress intends that the Court shall listen to them as much as it does to the representative of the United States, so that the Mexican title shall be finally *settled: i. e.*, its value as an evidence of ownership finally defined.

After such settlement it may be the province of the Land Office, the United States District or Circuit Court or the State Courts, to determine within their several jurisdictions who shall have the present possession and enjoyment of the lands in question.

At all events it will be safe for all persons within the territorial jurisdiction of the new Court having rights in conflict with claimants under Spanish or Mexican grants, to appear and protect their rights, as advised by counsel.

In the consideration of the questions that will arise before this Court, our private collection of precedents in Florida and Louisiana, briefs of eminent counsel, opinions of the commissions appointed for a similar purpose in California in 1851, extracts from the evidence, oral and documentary, offered before them, translations of documents and foreign laws and treatises used in their proceedings and decisions of United States District and Supreme Courts in leading cases on appeal, will be found invaluable. These will be carefully digested and indexed by the time the Court sits.

Meanwhile it will be profitable to consider what evidence should be collected by the claimant, and what rules of law are to be applied thereto. Of these

subjects we have made close study, and hope to place the result at the disposal of those seeking the aid of said Court when required.

J. ALEXANDER FORBES.

San Francisco, Aug. 1, 1891.