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Sacramento Transcript, Volume 1, Number 61, 12 July 1850 — Report on Land Titles in California,
[ARTICLE]

Report on Land Titles in California,
BY WM. CAREY JONES
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(Continued)

(Continued.)

II. "Chiefly the large grants, as the Missions, and whether the title to them be in assignees, or whether they have reverted, and vested in the sovereign?"

I took much pains both in California and in Mexico, to assure myself of the situation, in a legal and proprietary point of view, of the former great establishments known as the Missions of California. It has been supposed that the lands they occupied were *grants*, held as the property of the church, or of the mission establishments as corporations. Such, however, was not the case. All the missions in Upper California were established under the direction, and mainly at the expense of the Government, and the missionaries there had never any other rights than to the occupation and use of the lands for the purpose of the missions, and at the pleasure of the Government. This is shown by the history and principles of their foundation, by the laws in relation to them, by the constant practice of the Government toward them, and, in fact, by the rules of the Franciscan order, which forbid its members to possess property.

The establishment of missions in remote provinces was a part of the colonial system of Spain. The Jesuits, by a license from the Viceroy of New Spain, commenced in this manner, the reduction of Lower California in the year 1697. They continued in the spiritual charge, and in a considerable degree of the temporal government, of that province, until 1767, when the royal decree abolishing the Jesuit order throughout New Spain was there enforced, and the missions taken out of their hands. They had then founded fifteen missions, extending from Cape St. Lucas, nearly to the head of the sea of Cortes, or California gulf. Three of the establishments had been suppressed by order of the Viceroy; the remainder were now put in charge of the Franciscan monks of the college of san Fernando, in Mexico, hence sometimes called "Fernandinos." The prefect of that college, the Rev. Father Junipero Serra, proceeded in person to his new charge, and arrived, with a number of monks, at Loreto, the capital of the peninsula, the following year, (1768.) He was there soon after joined by Don Jose Galvez, inspector general (*visitador*) of New Spain, who brought an order from the King, directing the founding of one or more settlements in Upper California. It was therefore agreed that Father Junipero should extend the mission establishments into Upper California, under the protection of *presidios* (armed posts) which the gov-

ernment would establish at San Diego and Monterey. Two expeditions, both accompanied by missionaries, were consequently fitted out, one to proceed by sea, the other by land, to the new territory. In June, 1768, they had arrived, and in that month founded the first mission, about two leagues from the port of San Diego. A *presidio* was established at the same time near the port. The same year a *presidio* was established at Monterey, and a mission establishment begun. Subsequently, the Dominican friars obtained leave from the King to take charge of a part of the missions of California, which led to an arrangement between the two societies, whereby the missions of Lower California were committed to the Dominicans, and the entire field of the Upper Province remained to the Franciscans. This arrangement was sanctioned by the political authority, and continues to the present time. The new establishments flourished, and rapidly augmented their numbers, occupying first the space between San Diego and Monterey, and subsequently extending to the northward. A report from the Viceroy to the King, dated at Mexico, 27th December, 1793, gives the following account of the number, time of establishment, and locality of the missions existing in California at that time :

1. Mission San Diego de Alcalá, situated in lat. 32 deg. 42, founded 16th July, 1769;
2. San Carlos de Monterey, lat. 33 33, founded 3d June, 1170;
3. San Antonio de Padua, lat. 36 34, founded 14th July, 1771;
4. San Gabriel de los Temblores, lat. 34 10, founded 8th Sept., 1771;
5. San Luis Obispo, lat. 31 38, founded 1st Sept., 1772;
6. San Francisco, (Dolores,) lat. 39 56, founded 9th October, 1775;
7. San Juan Casistrano, lat. 33 30, founded 1st. Nov., 1776;
8. Santa Clara, lat. 37 00, founded 18th Jan., 1777;
9. San Buena-ventura, lat. 34 36, 31st March, 1782;
10. Santa Barbara, lat. 34 28, 4th Oct. 1786;
11. Purísima Concepción, lat. 35 32, 8th Jan. 1787;
12. Santa Cruz, lat. 36 58, founded 28th August, 1791;
13. La Soledad, lat. 36 38, founded 9th Oct., 1791.

At first the missions nominally occupied the whole territory, except the four small military posts of san Diego, santa Barbara, Monterey and san Francisco; that is, the limits of one mission were said to cover the intervening space to the limits of the next; and there were no other occupants except the wild Indians, whose reduction and conversion was the object of the establishments. The Indians, as fast as they were reduced, were trained to labor in the missions, and lived either within its walls or in small villages near by, under the spiritual and temporal direction of the priests, but the whole under the political control of the governor of the province, who decided contested questions of right or policy, whether between different missions, between missions and individuals, or concerning the Indians. Soon, however, grants of land began to be made to individuals, especially to retired soldiers, who received special favor in the distant colonies of Spain, and became the settlers and founders of the country they had reduced and protected. Some settlers were also brought from the neighboring provinces of Sonora and Sinaloa, and the towns of san Jose, at the head of the Bay of san Francisco, and of Los Angeles, eight leagues from the port of san Pedro, were early founded. The governor exercised the privilege of making concessions of large tracts, and the captains of the presidios were authorized to grant building lots, and small tracts for gardens and farms, within the distance of two leagues from the presidios. By these means the mission tracts began respectively to have something like known boundaries; though the lands they thus occupied were still not viewed, in any light, as the property of the missionaries, but as the domain of the crown, appropriated to the use of the missions while the state of the country should require it, and at the pleasure of the political authority,

It was the custom throughout New Spain, and other parts of the Spanish colonies also, to secularize or to subvert the mission establishments, at the discretion of the ruling political functionary; and this not as an act of arbitrary power, but in the exercise of an acknowledged ownership and authority. The great establishments of Sonora, I have been told, were divided between white settlements and settlements of the Indian pupils, or neophytes of the establishments. In Texas the missions were broken up, the Indians were dispersed, and the lands have been granted to white settlers. In New Mexico, I am led to suppose, the Indian pupils of the missions, or their

descendants, still, in great part, occupy the old establishments, and other parts are occupied by white settlers, in virtue of grants and sales.* The undisputed exercise of this authority over all the mission establishments, and whatever property was pertinent to them, is certain.

The liability of the missions of Upper California, however, to be thus dealt with, at the pleasure of the Government, does not rest only on the argument to be drawn from this constant and uniform practice. It was inherent to their foundation—a condition of their establishment. A belief has prevailed, and it is so stated in all the works I have examined which treat historically of the missions of that country, that the first act which looked to their secularization, and especially the first act by which any authority was conferred on the local government for that purpose, or over their temporalities, was an act of the Mexican Congress of 17th August, 1833. Such, however, was not the case. Their secularization—their subversion—was looked for in their foundation; and I do not perceive that the local author-

*Since writing the above, I have learned from the Hon. Mr. Smith, delegate from the Territory of New Mexico, that the portion of each of the former mission establishments which has been allotted to the Indians is *one league square*. They hold the land, as a general rule, in community, and on condition of supporting a priest and maintaining the Spanish laws concerning the allotments of Indian villages. Some interesting particulars of the foundation, progress and plan of the missions of New Mexico, are contained in the report, or information, before quoted, of 1793, from the Viceroy to the King of Spain, and in extracts from it given in the papers accompanying this report.

ity (certainly not the supreme authority) has ever been without that lawful jurisdiction over them, unless subsequent to the colonization regulations of 21st November, 1828, which temporarily exempted mission lands from colonization. I quote from a letter of "Instructions to the commandant of the new establishments of san Diego and Monterey," given by Viceroy Bucareli, 17th August, 1773:

"Art. 15. When it shall be necessary to

“Art. 15. When it shall happen that a mission is to be formed into a pueblo, or village, the commandant will proceed to reduce it to the civil and economical government, which, according to the laws, is observed by other villages of this kingdom; then giving it a name, and declaring for its patron the saint under whose memory and protection the mission was founded.” (Cuando llegue el caso de que haya de formarse en el pueblo una mision, procedera el commandante a reducirlo al gobierno civil y economico que observan, segun las leyes, los demas de este reyno; poniendole nombre entonces, y declarandole por su titular el santo baja cuya memoria y venerable proteccion se fundo la mision.)

The right, then, to remodel these establishments at pleasure, and convert them into towns and villages, subject to the known policy and laws which governed settlements of that description,* we see was a principle of their foundation. Articles 7 and 10, of the same letter of Instructions, shew us also that it was a part of the *plan* of the missions that their condition should be thus changed; that they were regarded only as the nucleus and basis of communications to be thereafter emancipated, acquire proprietary rights, and administer their own affairs; and that it was the duty of the governor to choose their sites, and direct the construction and arrangement of their edifices, with a view to their convenient expansion into towns and cities. And not only was this general revolution of the establishments thus early contemplated and provided for, but mean time the governor had authority to reduce their possessions by grants within and without, and to change their condition by detail. The same series of instructions authorized the governor to grant lands, either in community, or individually, to the Indians of the missions, in and about their settlements on the mission lands; and also to make grants to settlements of white persons. The governor was likewise authorized at an early day to make grants to soldiers who should

grants to soldiers who should marry Indian women trained in the missions; and the first grant, (and only one I found on record,) under this authorization, was of a tract near the mission edifice of Carmel, near Monterey. The authorization given to the captains of *presidios* to grant lands within two leagues of their posts, expressly restrains them within that distance, so as to leave the territory beyond—though all beyond was nominally attached to one or other of the missions—at the disposition of the superior guardians of the royal property. In brief, every fact, every act of government, and principle of law applicable to the case, which I have met in this investigation, go to show that the missions of Upper California were never, from the first, reckoned other than government establishments, or the founding of them to work any change in the ownership of the soil, which continued in and at the disposal of the crown or its representatives. This position was also confirmed, if, had it needed any confirmation, by the opinions of high legal and official authorities in Mexico. The missions—speaking collectively of priests and pupils—had the *usufruct*; the priests the administration of it; the whole resumable, or otherwise disposable, at the will of the crown or its representatives.

The object of the missions was to aid in the settlement and pacification of the country, and to convert the natives to Christianity. This accomplished, settlements of white people established, and the Indians domiciliated in villages, so as to subject them to the ordinary magistrates, and the spiritual care of the ordinary clergy, the missionary labor was considered fulfilled, and the establishment subject to be dissolved or removed.— This view of their purposes and destiny fully appears in the tenor of the decree of the Spanish Cortes, of 13th Sept. 1813.†— The provisions of that act, and the reason given for it, develop in fact the whole theory of the mission establishments. It was passed “in consequence of a complaint by the Bishop elect of Guina of the evils that afflicted that province, on account of the Indian settlements in charge of missions not being delivered to the ecclesiastical ordinary, though thirty, forty, and fifty years had passed since the reduction and conversion of the Indians. The Cortes therefore decreed :

I. That all the new *reducciones y doctrinas*, (that is, settlements of Indians newly converted, and not yet formed into parishes,) of the provinces beyond sea, which were in charge of missionary monks, and had been ten years subjected, should be delivered immediately to the respective ecclesiastical ordinaries, (bishops) “without resort to any excuse or pretext, conformably to the laws and cédulas in that respect.

2. That as well these missions, (*doctrinas*) as all others which should be erected into curacies, should be canonically provided by the said ordinaries,—observing the laws and cédulas of the royal right of patronage,—with fit ministers of the secular clergy.

3. That the missionary monks, relieved from the converted settlements, which should be delivered to the ordinary, should apply themselves to the extension of religion in benefit of the inhabitants of other wilderness parts, proceeding in the exercise of their missions conformably to the directions of paragraph 10, article 335, of the Constitution.†

* A revolution more than equal to the modern *secularization*, since the latter only necessarily implied the turning over of the temporal concerns of the mission to secular administration. Their conversion into pueblos would take from the missions all semblance in organization to their originals, and include the reduction of the missionary priests from the heads of great establishments and administrators of large temporalities, to parish curates: a change quite inconsistent with the existence in the priests or the church of any proprietary interest or right over the establishment.

†“Collection of Decrees of the Spanish Cortez, reputed in force in Mexico.” Mexico, 1829, p. 106.

‡The following is the clause referred to, namely, paragraph 10, art. 335, Constitution of the Spanish monarchy, 1812:

“The provincial councils of the provinces beyond sea shall attend to the order, economy, and progress of the missions for the conversion of infidel Indians, and to the prevention of abuses in that branch of administration. The commissioners of such missions shall render their accounts to them, which accounts they shall in their turn forward to the government.”

This clause of itself settles the character of these establishments, as a branch of the public administration.

6. That the missionary monks should discontinue immediately the government and administration of the property of the Indians, who should choose by means of their *ayuntamientos*, with intervention of the superior political authority, persons among themselves competent to administer it; the lands being distributed and reduced to private ownership, in accordance with the decree of the 4th January, 1813, on reducing vacant and other lands to private property.”*

It has also been supposed, that the act above alluded to of the Mexican Congress, [act of 17th August, 1833,] was the first assertion by the Mexican government of property in the missions, or that they by that act first became [or came to be considered,] national domain. But this likewise is an error. The Mexican government has always asserted the right of property over all the missions of the country, and I do not think that the supposition has ever been raised in Mexico, that they were the property of the missionaries or the church.

The General Congress of Mexico, in a decree of 4th August, 1824, concerning the public revenue, declares the estates of the inquisition, as well as all temporalities, to be the property of the nation; [that is, no doubt, in contradistinction from property of the States—making no question of their being public property.] This term would include not only the mission establishments, but all rents, profits and income the monks received from them. A like act of 7th July, 1831, again embraces the estates of the inquisition and temporalities as nation property, and places them with “other rural and suburban estates, under charge of a director general. The executive regulations for colonizing the territories, may raise an idea of territorial and native property in them but

territorial and native property in them, but its puts out of the question any proprietary right in the missionaries.

The 17th article of these regulations, [executive regulations for colonization of the territories, adopted 21st of November, 1828,] relates to the missions, and directs that, "In those territories where there are missions, the lands which they occupy shall not at present be colonized, nor until it be determined if they ought to be considered as property of the settlements of the neophyte catechumens and Mexican settlers."

* 'Collection of Decrees of the Spanish Cortes,' &c., p. 55. This decree provides :

1. That "all the vacant or royal lands, and town reservations,—*proprios y arbitrios*, lands reserved in and about towns and cities for the municipal revenue,—both in the Peninsula and islands adjacent, and in the provinces beyond sea, except such commons as may be necessary for the villages, shall be converted into private property; provided, that in regard to town reservations, some annual rents shall be reserved.

2. That "in whatever mode these lands were distributed, it should be in full and conclusive ownership, so that their owners may enclose them,—without prejudice of paths, crossings, watering-places, and servitudes,—to enjoy them freely and exclusively, and destine them to such use or cultivation as they may be best adapted to; but without the owners ever being able to entail them, or to transfer them, at any time or by any title in mortmain."

3. In the transfer of these lands shall be preferred the inhabitants of the villages, or settlements, in the neighborhood where they exist, and who enjoyed the same in common whilst they were vacant."

A SENATORIAL PUN.—Senator Rusk, writing to the Pacific Railroad Convention, says that a road, such as the one described, extending throughout the Union, and having for its *termini* the shores of the Atlantic and Pacific Oceans, might well be styled the 'ossus of *Rhodes*!