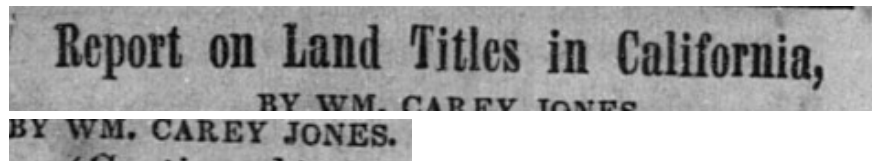


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Sacramento Transcript, Volume 1, Number 68, 20 July 1850 — Report on Land Titles in California,
[ARTICLE]



(Continued.)

The remarks made in a previous part of this report in relation to the Missions, cover, to a good degree, the substance of that branch of the inquiries proposed by the Commissioner of the Land Bureau. I have already stated that, originally, the "mission lands" may be said to have been co-extensive with the province, since, nominally, at least, they occupied the whole extent, except the small localities of the *Presidies*, and the part inhabited by the wild Indians, whom and whose territory it was their privilege to enter and reduce. Among the papers accompanying this report is included a transcript of their recorded boundaries, as stated in a record book heretofore noticed. It will be seen from the fact first mentioned, of their original occupation of the whole province, and from the vast territories accorded to their occupation, as late as the year 1828, how inconsistent with any considerable peopling of the country, would have been any notion of proprietorship in the missionaries.

I am also instructed to "make an inquiry into the nature of the Indian Rights [in the soil,] under the Spanish and Mexican governments."

It is a principle constantly laid down in the Spanish colonial laws, that the Indians shall have a right to as much land as they need for their habitations, for tillage and for pasturage. Where they were already partially settled in communities, sufficient of the land which they occupied was secured them for those purposes.* If they were wild, and scattered in the mountains and wilderness, the policy of the law, and of the instructions impressed on the authorities of the distant provinces, was to reduce them, establish them in villages, convert them to Christianity, and instruct them in useful employ-

ments.† The province of California was not excepted from the operation of this rule. It was for this purpose, especially, that the missions were founded and encouraged. The instructions heretofore quoted, given to the commandant of Upper California in August, 1773, enjoin on that functionary, that “the reduction of the Indians, in proportion as the spiritual conquests advance, shall be one of his principal cares;” that the reduction made, “and as rapidly as it proceeds, it is important for their preservation and augmentation, to congregate them in mission settlements, in order that they may be civilized and led to a rational life;” which, [adds the instructions,] “is impossible, if they be left to live dispersed in the mountains.”

The early laws were so tender of these rights of the Indians, that they forbade the allotment of lands to the Spaniards, and especially the rearing of stock, where it might interfere with the tillage of the Indians. Special directions were also given for the selection of lands for the Indian villages, in places suitable for agriculture, and having the necessary wood and water.‡ The lands set apart to them were likewise inalienable, except by the advice and consent of officers of government, whose duty it was to protect the natives as minors or pupils.||

Agreeably to the theory and spirit of these laws, the Indians in California were always supposed to have a certain property or interest in the missions. The instructions of 1773 authorized, as we have already seen, the commandant of the province to make grants to the mission Indians of lands of the missions, either in community or individually. But apart from any direct grant, they have been always reckoned to have a right of settlement; and we shall find that all the plans that have been adopted for the secularization of the missions, have contemplated, authorized and provided for this right. That the plan of Hajar did not recognise or provide for the settlements of Indians was one of the main objections to it,

urged by Gov. Figueroa and the territorial deputation. That plan was entirely discomfited; all the successive ones that were carried into partial execution, placed the Indian right of settlement amongst the first objects to be provided for. We may say, therefore, that, however mal-administration of law may have destroyed its intent, the law itself has constantly asserted the rights of the Indians to habitations, and sufficient fields for their support. The law always intended the Indians of the missions—all of them who remained here—to have homes upon the mission grounds. The same, I think, may be said of the large ranchos—most, or all of which, were formerly mission ranchos—and of the Indian settlements or rancherias upon them. I understand the law to be, that whenever Indian settlements are established, and they till the ground, they have a right of occupancy in the land which they need and use; and whenever a grant is made which includes such settlements, the grant is subject to such occupancy. The right of occupancy, however—at least when on private estates—is not transferable; but whenever the Indians abandon it, the title of the owner becomes perfect. Where there is no private ownership over the settlement, as where the lands it occupies have been assigned to by a functionary of the country thereto authorized, there is a process, as before shown, by which the natives may alien their title. I believe these remarks cover the principle of the Spanish law, in regard to Indian settlements, as far as they have been applied in California, and are conformable to the customary law that has prevailed here. §

The continued observance of this law, and the exercise of the public authority to protect the Indians in their rights under it, cannot, I think, produce any great inconvenience; while a proper regard for long recognised rights, and a proper sympathy for an unfortunate and unhappy race, would seem to forbid that it should be abrogated, unless for a better. The number of subjugated Indians is now too small, and the lands they occupy too insignificant in amount, for their protection, to the extent of the law, to cause any considerable molestation. Besides, there are causes at work by which even the present small number is rapidly diminishing; so that any question concerning them can be but temporary. In 1834, there were employed in the mission establishments alone the number 30,650. ¶ In 1842, only about eight years after the restraining and compelling hand of the missionaries had been taken off, their number on the missions had dwindled to 4,450: and the pro-

cess of reduction had been going on as rapidly since.

In the wild or wandering tribes, the Spanish law does not recognise any title whatever to the soil.

* Recopilacion de Indias : laws 7 to 20, tit. 12 bk. 4.

† Ib., laws 1 and 9, tit. 3, bk. 6.

‡ Law 7, tit. 12, Recop. Indias; ib. laws 8 and 20, tit. 3, bk 6.

|| Ib. law 27, tit. 6, bk 1. Peña y Peña, 1 Practica Forense Mejicana, 248, &c. Alaman, 1 Historia de Mejico, 23-25.

§ Of course, what is here said of the nature of Indian rights, does not refer to titles to lots and farming tracts, which have been granted in ownership to individual Indians by the government. These, I suppose, to be entitled to the same protection as other private property.

¶ This is not an *estimate*, it is an exact statement. The records of the missions were kept with system and exactness; every birth, marriage, and death, was recorded, and the name of every pupil or *neophyte*, which is the name by which the mission Indians were known; and from this record, an annual return was made to the government of the precise number of Indians connected with the establishment.

To be continued.