

COSTA RICA-PANAMA ARBITRATION

OPINION

Concerning the Question of Boundaries

BETWEEN

The Republics of Costa Rica and Panama

EXAMINED WITH RESPECT TO THE SPANISH LAW AND GIVEN AT THE
REQUEST OF THE GOVERNMENT OF COSTA RICA BY
THEIR EXCELLENCIES,

DON SEGISMUNDO MORET Y PRENDERGAST

Ex-President of the Cabinet Council, Ex-President of the Congress of Deputies, Deputy to
the Cortes, Ex-President of the Central University, Member of the
Permanent Court of Arbitration of the Hague,

and

DON VICENTE SANTAMARÍA DE PAREDES

Professor of Public Law at the Central University, Ex-Minister of Public Instruction, Senator
of the Kingdom, President of the Council of Public Instruction, Member of the
Royal Academies of Moral and Political Sciences and of History,
President of the Technical Commission in the Arbitration Between the Republics of Honduras
and Nicaragua, Decided by H. M. the King of Spain.

WASHINGTON, D. C.
GIBSON BROS., INCORPORATED
1913

The documents to which parenthetical reference is made herein are to be found in "Documents Annexed to the Argument of Costa Rica Before the Arbitrator, Hon. Edward Douglass White," etc., in four volumes.

INTRODUCTION.

I. THE ARBITRATION OF THE BOUNDARY QUESTION PENDING BETWEEN THE REPUBLICS OF COSTA RICA AND PANAMA.

On the 15th of March, 1825, the Republic of Colombia (whose rights are now claimed by that of Panama) and the federated Republic of Central America (of which that of Costa Rica formed a part) entered into a treaty by which, in Article 5, the parties mutually guaranteed the integrity of their respective territories "as they existed prior to the present war of independence," and, in Article 7, they obligated themselves "to respect the boundaries of each other as they now exist," reserving to themselves the duty to make amicably and by means of a special agreement, the demarcation of a divisionary line as soon as circumstances might permit (Doc. No. 257).

On the dissolution of that federation, the Republic of Costa Rica and that of Colombia undertook at various times to establish that divisionary line, preparing agreements which were never ratified and passing through serious conflicts in consequence of their different conceptions as to the extent of their territorial sovereignty.

With the laudable purpose of putting an end amicably to their differences, they entered into an agreement on December 25, 1880, submitting to arbitration "the question of limits existing between them and the designation of a line that shall separate for all time and with entire clearness the territory of the one from the other." By virtue of this agreement the arbitration was entrusted to His Majesty, the King of Spain, at that time Don Alfonso XII (Doc. No. 364).

On the death of that Monarch, Costa Rica and Colombia, on January 20, 1886, entered into another convention, "additional" to that of 1880, in Article 1 of which the Government of Spain is declared to be "competent to proceed with the execution of the arbitration and to deliver a definitive sentence of an irrevocable and unappealable character" (Doc. No. 369).

In Article 2 of this additional convention the extent of the disputed territory was determined, and the claims of the parties litigant were set forth as follows:

"The territorial limit which the Republic of *Costa Rica* claims, on the Atlantic side, reaches as far as the Island of the Escudo de Veragua and the River Chiriquí (Calobebora) inclusive, and, on the Pacific side, as far as the River Chiriquí Viejo, inclusive, to the east of Punta Burica.

"The territorial limit which the United States of *Colombia* claims reaches, on the Atlantic side, as far as Cape Gracias a Dios, inclusive, and, on the Pacific side, as far as the mouth of the Golfito River in the Gulf of Dulce."

In Article 3, it is stated that the arbitral decision should be confined to the *territory in dispute* situated within these extreme limits, and should not affect in any way the rights of a third party who may not have intervened in the arbitration.

New dissensions between Costa Rica and Colombia and their persistent desire for a friendly settlement, led to a third convention, signed November 4, 1896, by which the arbitration was offered in the first place to the President of the French Republic, but it was given to be understood that the failure to designate the Government of Spain as arbitrator was due solely to Colombia's reluctance to exact

from that government so much continuous service, she having only shortly before then subscribed with Ecuador and Peru a boundary treaty in which His Catholic Majesty was named as arbitrator, and this after his laborious trial of the question of the Colombian-Venezuelan frontier (Doc. No. 403).

In this third convention the two prior ones of 1880 and 1886 were ratified and held to be in force, except Articles 2 to 6 of the former, and 1 and 4 of the latter. So that there remained in force: Article 1 of the Convention of 1880, stating the question of limits, and Articles 2 and 3 relating to the boundaries claimed by each of the parties, and the condition that the arbitrator be confined to the *territory in dispute*.

The arbitral proceedings having been submitted to the President of the French Republic, His Excellency Monsieur Loubet, who was then in charge of that very high office, handed down his decision on September 11, 1900 (Doc. Nos. 413 and 414), establishing as a divisionary line that which he traced from Punta Mona on the Atlantic Ocean to Punta Burica on the Pacific Ocean. The Award of Monsieur Loubet sets forth none of the reasoning on which it is based; only the bare decision is given, prefaced by a list of memoranda, documents and maps presented by each party, and an enumeration of the Royal acts cited by both.

The Government of Costa Rica made respectful observations to that of France, in regard to the difficulties of carrying out the Award; and the Minister of Foreign Affairs, Monsieur Delcassé, in his note of November 23, 1900 (Doc. Nos. 421 and 422), addressed to the Minister of Costa Rica in Paris, answered saying:

“For lack of precise geographical data, the Arbitrator has not been able to fix the frontier except by means of general indications; I deem, therefore, that it would be inconvenient to trace them upon a map. But there is no doubt, as you have observed, that in conformity with the terms of Articles 2 and 3 of the Convention of Paris of January 20, 1886, *this frontier line must be traced within the limits of the territory in dispute*, as they are found to be from the text of said Articles. It is according to these principles that the Republics of Colombia and Costa Rica *will have to proceed* in the material determination of their frontiers; and the Arbitrator relies, in this particular, upon the spirit of conciliation and good understanding which has up to this time inspired the two interested governments.”

The Government of Costa Rica understood that the decision did not meet all the conditions stipulated in the arbitration agreement, since it did not establish the divisionary line for all time and with entire clearness; it even went outside the limits of the disputed territory, and left open the field of controversy. In its desire to settle the question of boundaries definitively and as soon as possible, that government sought and in December, 1907, obtained (Doc. Nos. 440 and 442) the friendly mediation of the United States; there was excellent reason for this choice inasmuch as the latter had been constituted by the Treaty of November 18, 1903, guarantor of the independence of the new Republic of Panama.

The result of these negotiations was the Convention of March 17, 1910 (Doc. No. 473), between the Republics of Costa Rica and Panama, submitting the definitive settlement of the matter to the *Chief Justice* of the United States, in the following form:

“The Republic of Costa Rica and the Republic of Panama, although they consider that the boundary between their respective territories designated by the arbitral sentence of His Excellency, the President of the Republic of France, of the 11th of September, 1900, is clear and indisputable in the region of the Pacific, from Punta Burica to a point beyond Cerro Pando in the Central Cordillera near the ninth degree of North Latitude, have not been able to reach an agreement in respect to the interpretation to be given to the Arbitral Award as to the rest of the boundary line; and for the purpose of settling their said disagreements agree to submit to the decision of the Honorable Chief Justice of the United States, who will determine in the capacity of Arbitrator: What is the boundary under and most in accordance with the correct interpretation and true intention of the Award of the President of the Republic of France made the 11th of September, 1900.”

The convention immediately adds:

“In order to decide this, the Arbitrator will take into account all the facts, circumstances and considerations which may have a bearing upon the case, as well as the limitation of the Loubet Award, expressed in the letter of His Excellency, M. Delcassé, Minister of Foreign Affairs of France, to His Excellency, Señor Peralta, Minister of Costa Rica in Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Costa Rica and the Republic of Colombia of January 20, 1886.”

II. OBJECT AND PLAN OF THIS OPINION.

This matter being under submission before the Honorable Chief Justice of the United States, the Government of Costa Rica has been pleased to engage the undersigned

counsel to examine all the antecedents of the case, the allegations of the Parties litigant, and the laws and Royal acts invoked, and to give an opinion in regard to the *boundary question between the Republics of Costa Rica and Panama, as affected by the Spanish colonial law.*

In order to fulfill the duty with which it has honored us, we have carefully examined all the data relating to the question, and after mature reflection, have prepared the present opinion.

We will not go beyond the sphere of *Spanish colonial law*, as to which we are consulted, and we wish to state that we adopt this denomination, not because it has been used in Spain—who called her territories of the Indies kingdoms and provinces, instead of colonies—but for greater clearness and in contradistinction to *international law*, into which we shall not intrude.

What may be the efficacy of the decision of Monsieur Loubet under international law, and what the value of the *intercolonial* boundaries in fixing the international lines between two adjoining provinces dependent upon the same mother country and now converted into sovereign States, are questions foreign to our examination.

But we do contend that to determine the question of the boundaries between Costa Rica and Panama according to Spanish colonial law is equivalent to deciding it under international law, because that law has been fundamentally the basis of the boundary settlements of the Spanish-American republics, because the entire discussion in the present litigation turns upon that law solely, and because the “true intent of the Award” of Monsieur Loubet was to sustain that system of laws.

Although, as we have indicated, this *Award* contains no reasoning whatever, it clearly appears that the Arbi-

trator did not have any other intention, since it refers only to the laws, Royal cédulas and Royal orders of the colonial epoch which it cites in detail in the preamble, save the Treaty of 1825, between the Republics of Central America and Colombia, which recognized as boundaries those then existing; that is to say, the intercolonial boundaries.

And since, according to the Convention of 1910, the Chief Justice must take into account all the facts, circumstances and considerations of the case, and since the case involves the legality of the demarcations of Costa Rica and Panama according to Spanish colonial law, we will have to set forth all those facts, circumstances and considerations arising during the period of the sovereignty of Spain, inasmuch as they contribute to clear up the matter.

The question of boundaries being placed, therefore, in the field of Spanish colonial law, we divide this opinion into *three parts*, comprising the three propositions following:

1. The Province of Costa Rica and the Province of Veragua were definitively established and marked out by the Crown in the XVIth century (1573).

2. *The Recopilación de Indias* (Compilation of the Laws of the Indies) respected and confirmed the existence and demarcation of Costa Rica.

3. Costa Rica continued in the same legal status of differentiation from Veragua, from the publication of the *Recopilación* down to the independence.

Under these three heads we shall group the different controverted questions, developing our opinion thereon as we proceed.

FIRST PART.

THE PROVINCES OF COSTA RICA AND VERAGUA WERE DEFINITELY ESTABLISHED AND BOUNDED BY THE CROWN IN THE XVIth CENTURY (1573).

I. NECESSITY FOR STUDYING THE FORMATION OF THE PROVINCES OF VERAGUA AND COSTA RICA.

- (1) THE "VERAGUA" EQUIVOQUE AS THE PREMISE OF THE PRINCIPAL ARGUMENT OF COLOMBIA.
- (2) THE HISTORY OF THE FORMATION OF THE PROVINCES OF VERAGUA AND COSTA RICA CLEARS UP THE EQUIVOQUE AND CLEARLY DEMONSTRATES HOW THEY WERE RECOGNIZED AND DIFFERENTIATED IN THE XVIth CENTURY.

II. THE PRIMITIVE VERAGUA (1502 TO 1537).

- (1) THE VERAGUA OF CHRISTOPHER COLUMBUS (1502)
- (2) THE VERAGUA OF NICUESA (1508).
- (3) THE VERAGUA BORDERING ON THE CASTILLA DEL ORO OF PEDRARIAS DÁVILA (1513 TO 1527).
- (4) THE VERAGUA OF FELIPE GUTIÉRREZ (1534).

III. PROVINCE OF VERAGUA.

- (1) CREATION OF THE DUKEDOM OF VERAGUA; ROYAL CÉDULAS OF 1537.
- (2) LIMITS OF THIS DUKEDOM.
- (3) SUPPRESSION OF THE DUCAL SEIGNORY (1556).
- (4) ORGANIZATION OF THE PROVINCE OF VERAGUA WITH A GOVERNOR CAPTAIN-GENERAL.

IV. PROVINCE OF COSTA RICA.

- (1) ROYAL VERAGUA; PROVINCE OF COSTA RICA; GOVERNMENT OF SÁNCHEZ DE BADAJOZ (1539).
- (2) PROVINCE OF CARTAGO; GOVERNMENT OF DIEGO GUTIÉRREZ (1540).
- (3) PROVINCE OF NEW CARTAGO OR COSTA RICA, FROM THE BIRTH OF THE PROVINCE OF VERAGUA (1560):
 - (a) *Differentiation of the two Veraguas, after the suppression of the Ducal Seignory;*
 - (b) *Ortiz de Elgueta (1559);*
 - (c) *Juan de Cavallón (1560);*
 - (d) *Denial of the Request of the Governor of Tierra Firme, Figuerola (1561);*
 - (e) *Vázquez de Coronado (1562);*
 - (f) *Perafán de Ribera (1566);*
- (4) THE PROVINCE OF COSTA RICA DEFINITELY ORGANIZED; GOVERNMENT OF ARTIEDA (1573);
 - (a) *Royal Cédula of Philip II, of December 1, 1573;*
 - (b) *Formation of the Province of Teguzgalpa by its Segregation from the Province of Costa Rica, prior to 1573;*
 - (c) *Boundaries with the Province of Veragua;*

V. THE QUESTION OF BOUNDARIES SETTLED BY THE ROYAL CÉDULA OF 1573 AND NOT BY THAT OF 1537.

- (1) IMPORTANCE, CONFIRMATIONS AND SUBSISTENCE OF THE ROYAL CÉDULA OF 1573.
- (2) INEFFICACY AND ABROGATION OF THE ROYAL CÉDULA OF 1537.

1.

NECESSITY FOR STUDYING THE FORMATION OF THE PROVINCES OF VERAGUA AND COSTA RICA.

(1) THE "VERAGUA" EQUIVOQUE AS THE PREMISE OF THE PRINCIPAL ARGUMENT OF COLOMBIA.

The question of boundaries pending between the Republics of Costa Rica and of Panama (the successor to that of Colombia) refers to the territory which was called "Verāgua;" out of this was formed the Province of Costa Rica, which is now the Republic of that name, and the Province of Veragua, which belonged to the Republic of Colombia and now belongs to Panama.

Placing this question of boundaries within the sphere of Spanish colonial law, we find that it was settled in the XVIth century by the formation of these two provinces, and more specifically by the Royal *cédula* of December 1, 1573 (Doc. No. 62), which established forever the differentiation between them. And if it is always useful to know how any political entities which litigate their geographical boundaries were formed, it becomes indispensable in the present case, inasmuch as Colombia has enlarged her claims to the extent of denying the very existence of Costa Rica as a Spanish province, and has asked as her limits those with which Costa Rica ends on the side opposite to the Colombian borders, in order clearly to get from the Arbitrator the greatest extension possible, although it could not be expected that the arbitration would result in the suppression of the adverse international personality.

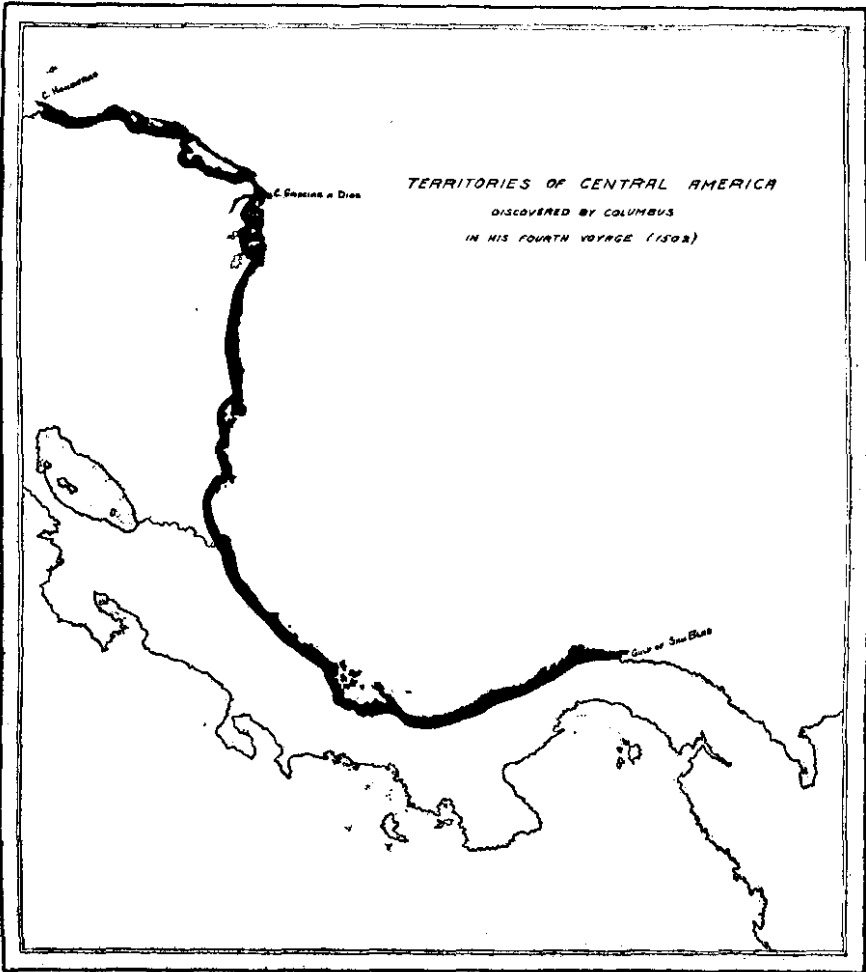
The ancient Veragua passed through various phases in its historico-legal evolution, until its name became con-
creted into one of the three provinces that arose out of it;

Colombia makes use of the "equivoque" to which the variety of the applications of the name gives rise, and founds thereon her argument.

All of Colombia's counsel employ, as their principal argument, the one which may be formulated in the following syllogism: Law 9, title 1, book V, of the *Recopilación de Indias* (Doc. No. 135), with reference to the Royal cédula of Carlos V of March 2, 1537 (Doc. No. 13), says that "the whole Province of Veragua belongs to the Government of Tierra Firme;" therefore it is that since to Colombia belongs that which was under the Government of Tierra Firme, it follows that all of the Province of Veragua belongs to her. And as the Veragua of 1537 comprised all of the territory included between Castilla del Oro and Cape Gracias a Dios, and as within that territory was included that which Costa Rica now holds, the latter should have it, as also that which extends from the Desaguadero, or River San Juan (the boundary of Costa Rica with Nicaragua) as far as Cape Gracias a Dios.

Don Francisco Silvela, who signed the first "Memorandum of Colombia," asserts that according to the Royal cédula of March 2, 1537, Veragua comprised from Castilla del Oro as far as Cape Gracias a Dios, but as the litigation was only with Costa Rica—which went no farther than the river San Juan—that river should be the northern limit on the Atlantic (p. 61).

Monsieur Poincaré says the same in the second and third "Memorandum of Colombia," declaring in the latter, in capital letters, "*let the whole Province of Veragua belong to the Government of Tierra Firme;*" this being the decisive phrase, which solemnly expresses, in his judgment, the thought of the Spanish Monarch (p. 2). In the "Summary (*résumé*) of the Conclusions of Colombia," also pre-



TERRITORIES OF CENTRAL AMERICA

DISCOVERED BY COLUMBUS
IN HIS FOURTH VOYAGE (1502)

C. Honduras

C. San Juan de Dios

Gulf of San Blas

sented to the Arbitrator by Monsieur Poincaré, he condenses the argument as follows:

“The whole of the Province of Veragua depended from the Audiencia of Panama and this Audiencia was swallowed up in the Viceroyalty of Santa Fe. Colombia is unquestionably the successor to the right of the Government of Tierra Firme, of the Audiencia of Panama and the Viceroyalty of Santa Fe. All of the Province of Veragua ought, therefore, to belong to Colombia. Since its origin the Province of Veragua has extended as far as Cape *Gracias a Dios*. (See the Royal cédula of March 2, 1537). It has never been divided.”

(2) THE HISTORY OF THE FORMATION OF THE PROVINCES OF

VOQUE AND CLEARLY DEMONSTRATES HOW THEY WERE RECOGNIZED AND DIFFERENTIATED IN THE XVIIth CENTURY.

History clears up the equivoque upon which Colombia bases her argument, for it shows the different significations

which the denomination “Veragua” had until it came to be applied solely to one determinate province.

This investigation of the formation of the Provinces of Veragua and Costa Rica has, besides its historical interest, the immense importance of clearly demonstrating how the question, which is now being tried between Costa Rica and Panama, was settled in the XVIIth century by the Spanish colonial law— not by virtue of the Royal cédula of 1537, but of the Royal cédulas of December 1, 1573 (Doc. No. 62), and February 18, 1574 (Doc. No. 63).

from its text with historical assertions difficult of comprehension in connection with those texts, without previously taking up the history of the formation of those provinces, as was done by counsel for Costa Rica in his first memorandum. It seems to us better to explain and discuss first the acts and legal dispositions that preceded the *Recopilación*, and then, afterwards, to examine the *Recopilación*, and, taking its laws altogether, apply them to the facts and prior dispositions which are already known, without having to interrupt the doctrinal demonstration with historical digressions appropriate to the preceding epoch.

For greater clearness, also, we divide the historico-legal examination of the epoch prior to the *Recopilación* into three sections, which cover respectively: (1) that which we call *primitive Veragua*, that is, from the discovery by Columbus, in 1502, down to its division into Ducal Veragua and Royal Veragua, in 1537; (2) the *Province of Veragua*, and (3) the *Province of Costa Rica*. Within each section we follow the chronological method, which, thus combined with the geographical division, obviates the confusion that results when, by observing the former exclusively and keeping the order of the dates, different facts relating to distinct provinces, are mingled. From all this examination we shall deduce, at last, that the question of boundaries was settled by the Royal cédula of 1573, and not by that of 1537.

II.

THE PRIMITIVE VERAGUA (1502 TO 1537).

(I) THE VERAGUA OF CHRISTOPHER COLUMBUS (1502).

For many years the territories of Central America lying along the coast of the Atlantic, from Cape Honduras as far as the port of Retrete (now the port of Escribanos), near Cape San Blas, and which Christopher Columbus discovered in his fourth and last voyage of 1502, were known by the name of "*Veragua*."

Strictly speaking this name belonged only to a hamlet and a small surrounding territory. Columbus relates, in his letter from Jamaica, of July 7, 1503, to the Catholic Sovereigns (Doc. No. 1), in which he gives an account of this voyage, that two Indians took him to Carambarú (Zorobaró), where the people went naked, with but a mirror of gold at the neck, telling him of many places on the coast in which gold was to be found; "the farthest," he said, "was *Veragua*, distant from there about 25 leagues." And in describing in detail the same voyage, Diego de Porras explains how Columbus, entering by the river he called Belén, "in the territory of *Veragua*," proved the existence of the mines. So Columbus understood that *Veragua* was situated 25 leagues to the east of Zorobaró and extended to the River Belén.

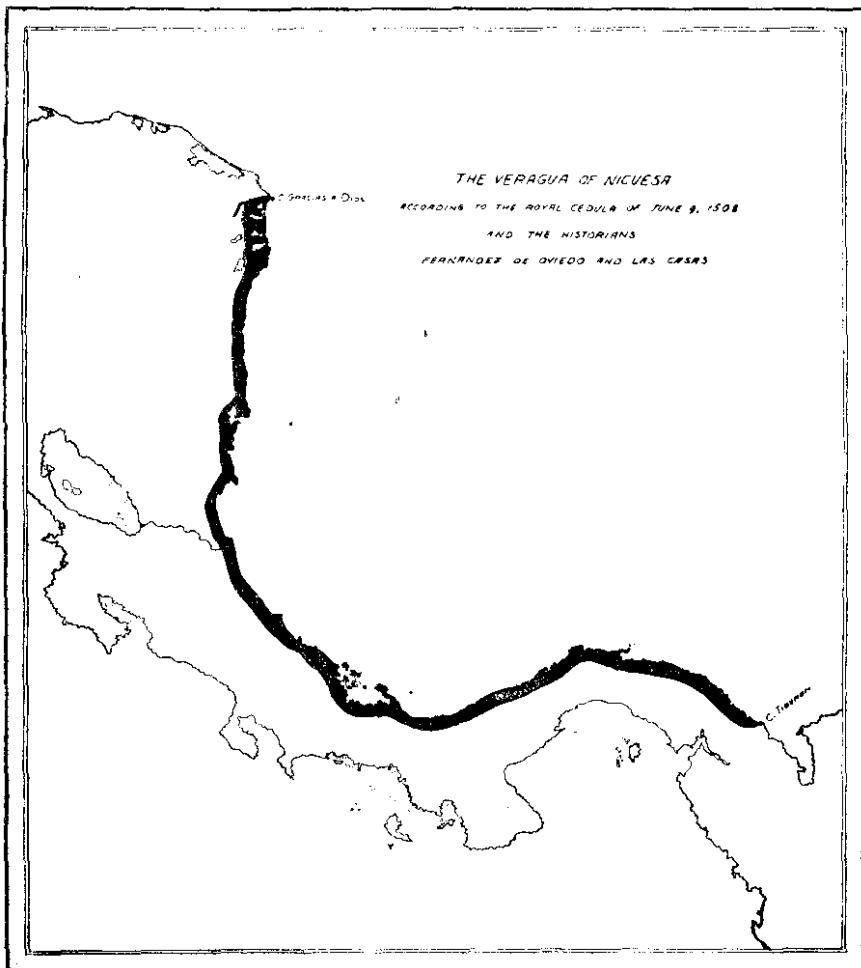
The great fame acquired by this territory of *Veragua*—in which Columbus stated that in the first two days he had seen greater signs of gold than in *Española* (the Island of Hispaniola, or Hayti) during four years—caused its discovery to be considered as the most important of that fourth voyage, and the name "*Veragua*" was applied to all that was discovered there, from Cape Honduras as far as the Cape of San Blas.

(2) THE VERAGUA OF NICUESA (1508).

When Columbus returned to Spain he claimed from the Catholic Sovereigns the fulfillment of the promises made to him, especially as to the seignory of the territory of Veragua, which was the one that he held in the greatest esteem. But he did not have the support of Queen Isabella, who had died, and the Catholic King did not admit his claims, considering them excessive and dangerous to the Royal sovereignty. The Admiral having died without succeeding in his desires, Don Diego Columbus, his son and heir, instituted a suit, in 1508, against the Crown, which was in great part settled by the creation of the Dukedom of Veragua in 1536.

By the Royal *cédula* of Doña Juana, of June 9, 1508 (Doc. No. 2), the Government of Veragua was granted to Diego de Nicuesa; therein he was given besides the military command, "full power and jurisdiction, civil and criminal," although restricted by the right of appeal to the Governor of the Island of Española. In this Royal *cédula* the extremity of Veragua was clearly fixed on the side of Tierra Firme, in the Gulf of Urabá, and it was provided further that the part of Urabá is that granted to Alonso de Ojeda; but there is no indication where the Government of Veragua which was granted to Nicuesa, terminated on the west and north.

Fray Bartolomé de las Casas and other historians of the Indies (like Herrera and Navarrete) say that the Veragua of Nicuesa extended from the Gulf of Urabá as far as Cape Gracias a Dios. Fernández de Oviedo asserts that it was from the same Gulf of Urabá "as far as the end of the territory called Veragua." Señor Peralta observes very properly, that the only data which the



Catholic King had before him on which to base the grant of the Government of Veragua, were the courses and indications of Columbus, and if these be ignored, there is just as much reason to conjecture that it extended to Cape Gracias a Dios as that it extended to Cape Honduras, or any other point in the voyage of the Great Discoverer. This strengthens the extension that was given to the name of Veragua.

Nicuesa did not succeed in founding anything in the territory which was allotted to him; he stayed only in the Veragua of the Belén River and in the Island of the Escudo of Veragua (or Nicuesa), and there endured many misfortunes, disappearing in 1511 in a shipwreck.

Vasco Núñez de Balboa, who had founded the colony of Santa María del Darién, within the jurisdiction of Nicuesa on the western coast of the Gulf of Urabá, in a letter of January 20, 1513 (Doc. No. 3), giving an account to the King of the progress of that colony, asked that he might be allowed to bring back some Indians "of the part of Veragua from a gulf called San Blas, which lies at a distance of 50 leagues from this town down the coast." So that according to Núñez de Balboa, Veragua did not terminate on its eastern side at the Belén River, but included also the territories of the Gulf of San Blas.

Vasco Núñez de Balboa discovered the South Sea (Pacific) on September 25, 1513.

(3) THE VERAGUA BORDERING ON THE CASTILLA DEL ORO OF PEDRARIAS DÁVILA (1513 TO 1527).

By the Royal cédula of July 27, 1513 (Doc. No. 4), Pedrarias Dávila was appointed Captain-General and Governor of the Province of *Castilla del Oro* (the first time that this denomination was applied to Tierra Firme)

“so long as it does not include nor have embraced within it the Province of Veragua, the administration of which belongs to the Admiral Don Diego Columbus, because the Admiral, his father, discovered it in person.” The Province of Castilla del Oro was, therefore, differentiated from the “Province of Veragua,” which was thus denominated before the creation of the dukedom of the same name; but the boundaries between the two were not fixed.

Gonzalo Fernández de Oviedo, the official historian of the Indies, who intervened in the conquest of Tierra Firme and Nicaragua, says that “Castilla del Oro on the North Coast reaches as far as Veragua, with which the Punta de Chame corresponds more or less on the South Coast, fifteen leagues to the West from Panama.”

This limit agrees with that of the jurisdiction of the city of Panama, fixed by the Royal cédula of 1521 (Doc. No. 5), wherein it is stated that it reaches “as far as the Province of Chirú,” which is situated a short distance from the Punta de Chame.

According to this, the Province of Veragua, bordering on Castilla del Oro, did not terminate on the east at the Belén River, but extended as far as the said Punta de Chame.

Pedrarias Dávila governed Castilla del Oro until 1527, when he left to become Governor of Nicaragua.

(4) THE VERAGUA OF FELIPE GUTIÉRREZ (1534).

Whilst the suit instituted by Don Diego Columbus was still pending, but with the declaration made in his favor by the Crown respecting Veragua (excluding it from the Government of Castilla del Oro), the widow, Doña María de Toledo, as guardian of his children and

Vicereine of the Indies, determined to grant the Government of Veragua to Felipe Gutiérrez, and applied to the Council of the Indies for the issuance to him of the requisite Royal decrees. But in accord with the Council, the King Don Carlos preferred to grant the concession directly to Felipe Gutiérrez; this he did by the *capitulación* approved by the Royal cédula of December 24, 1534 (Doc. No. 8), and at the same time, by another Royal cédula, of the same date (Doc. No. 6), he declared that this "is understood to be without prejudice to any right that the said Admiral Don Luis Columbus claims to have to the said government by virtue of his privileges." In the Royal cédula of February 6, 1535 (Doc. No. 9), the title of Governor of Veragua was conferred upon Felipe Gutiérrez with all that pertained thereto.

Both in the Royal cédula of *capitulación*, as well as in the title the text reads:

"The Province of Veragua, which is on the coast of Tierra Firme of our Indies of the Ocean Sea, whence terminate the boundaries of the Government of *Castilla del Oro*, called *Tierra Firme*, and which were designated to Pedrarias Dávila and Pedro de los Ríos, who were our Governors of the said province under the *Provisiones* which were given to them, as far as the Cape *Gracias a Dios*."

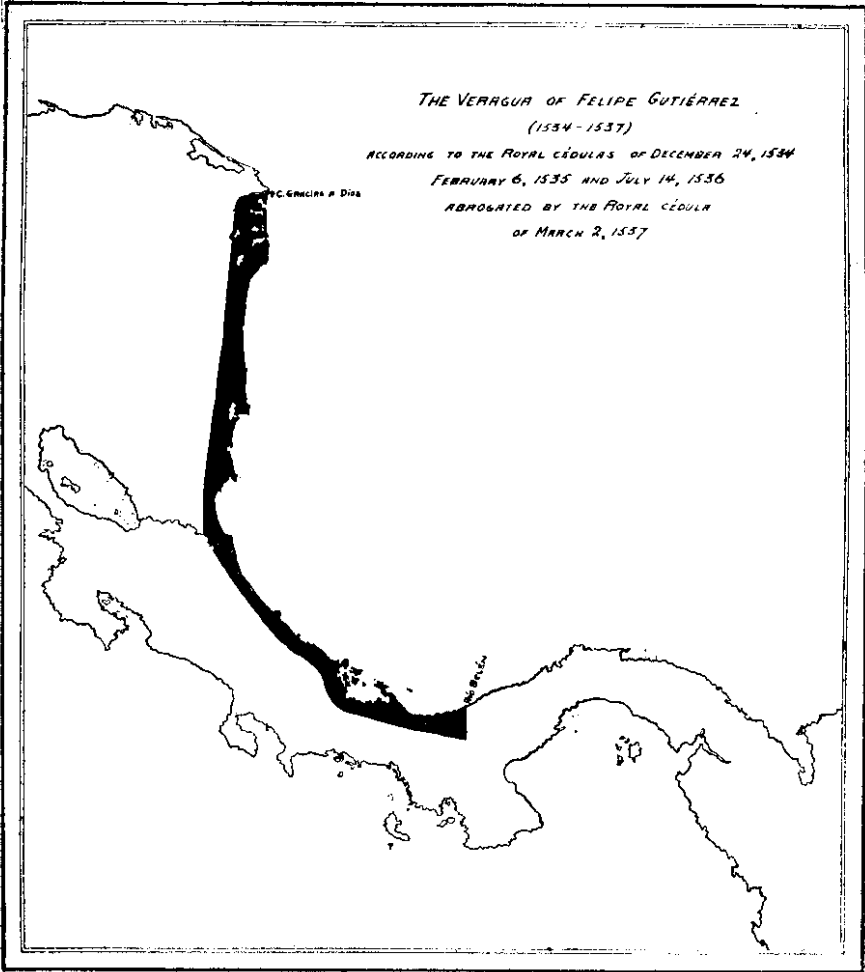
Felipe Gutiérrez, as Governor of Veragua, having presented a complaint against the Governor of Tierra Firme, because the latter had invaded his territory, the Royal cédula of July 14, 1536 (Doc. No. 10), was issued, directing the latter not to enter within the limits of the Province of Urraca, as it fell within that of Veragua. The territories of Urraca were contiguous to Natá and

occupied the heights which divided the waters of the north and the south; so that by this Royal cédula the eastern boundaries of the Province of Veragua were concretely defined.

Almost at the same time Felipe Gutiérrez abandoned his charge and set out for Peru, having failed in his undertaking and being unable to support so many misfortunes.

*THE VERRAGUA OF FELIPE GUTIÉRREZ
(1534-1537)*

*ACCORDING TO THE ROYAL CÉDULAS OF DECEMBER 24, 1534
FEBRUARY 6, 1535 AND JULY 14, 1536
ABROGATED BY THE ROYAL CÉDULA
OF MARCH 2, 1537*



III.

PROVINCE OF VERAGUA.

(I) CREATION OF THE DUKEDOM OF VERAGUA; ROYAL CÉDULAS OF 1537.

The long suit based upon the claims of Christopher Columbus, which his son Don Diego began in 1508 and which was continued by the widow of the latter, Doña María de Toledo—for herself and in the name of her first born, Don Luis, and other children—was decided by the arbitral decision of July 7, 1536¹. This decision was delivered by the Cardinal Fray García de Loaysa, Bishop of Sigüenza, Confessor of the Emperor and President of the Council of the Indies, who was appointed arbitrator by mutual agreement between the Vicereine and the Crown.

Carlos V, in his Royal cédula of January 19, 1537 (Doc. No. 12), states how both parties entrusted the settlement to the Cardinal in order that he might "determine and arbitrate therein as he shall deem best, taking from one party and giving to the other, accordingly as may appear to him proper;" he confirms the Cardinal's decision and in pursuance thereof creates the Dukedom of Veragua in favor of Don Luis Columbus and his successors, making a grant to him and to his house and estate of "twenty-five leagues of land in a square in the Province of Veragua, which is in in Tierra Firme, with its civil and criminal jurisdiction, high and low, simple, mixed imperial, leaving the supreme to His Majesty."

¹Document published by Fernández Duro. *Colón y Pinzón*.

The creation of the Dukedom of Veragua, which segregated a square of twenty-five leagues on each side of the territory known under the name of Veragua, and the government of which had been granted to Felipe Gutiérrez, compelled provision to be made in regard to the legal and the governmental situation in which that territory was left, especially since, at the end of 1536, the desertion of that governor had become known in Spain. This led to the Royal cédula of March 2, 1537 (Doc. No. 13), in which the Emperor revoked the *capitulación* and government of Felipe Gutiérrez, reproduced the disposition concerning the creation of the dukedom and directed that the territories left in the said Province of Veragua, after taking out the twenty-five leagues given to Don Luis Columbus, be understood to belong to the Government of the Province of Tierra Firme, called Castilla del Oro, "during our will and pleasure."

By virtue of this Royal cédula, upon which counsel for Colombia mainly rely in defense of her rights, the territory of the ancient Veragua granted to Felipe Gutiérrez was divided into two parts, which, in order to distinguish them, are designated in the present controversy *Ducal Veragua* and *Royal Veragua*, referring respectively to that which constituted the Dukedom of Veragua and to that which was reserved by the Crown for its free disposal.

(2) LIMITS OF THIS DUKEDOM.

In this Royal cédula of March 2, 1537, as well as in the earlier one of January 19, the boundaries of the Dukedom of Veragua were fixed in the following manner:

"* * * a square of land twenty-five leagues,
in the said Province of Veragua * * * and they

begin from the *River Belén*, inclusive, counting by a parallel, as far as the western part of the *Bay of Zorobaró*; and all the leagues that may be lacking for the said twenty-five leagues, shall be counted forward from the said bay by the said parallel; and where these twenty-five leagues terminate, another twenty-five shall begin by a North-South meridian; and as many others begin from the said River Belén by the said meridian of the said river, North-South; and where these said twenty-five leagues shall end, there shall begin another twenty-five leagues, which shall continue, counting by a parallel, until they end where the twenty-five leagues terminate that are counted proceeding forward from the Bay of Zorobaró; which territory we have commanded to be called the Bay of Zorobaró, and with it we direct to be given him the title of Duke * * *."

As may be seen, the demarcation is mathematical; the grant forms a perfect quadrangle, which has one side definitely determined by the meridian corresponding to the Belén River, included therein. It should be noted that Zorobaró and the Belén River were for Christopher Columbus the indicatory points of the Veragua discovered and coveted by him under this name; and it appears that between the meridian of the Belén River and the Province of Castilla del Oro, which the prior demarcations refer to as bordering on the Province of Veragua, there were lands which were not included in the Dukedom of Veragua.

These facts must be taken into consideration when the time comes to interpret the *Recopilación de Indias* in its relation to the Royal cédula of March 2, 1537; and without concerning ourselves now with the territory of the Royal Veragua left on either side of the twenty-five leagues of the dukedom, let us see how the latter was converted into the Province of Veragua properly so-called.

(3) SUPPRESSION OF THE DUCAL SEIGNORY (1556).

Don Luis Columbus was not fortunate in the conquest and government of the dukedom which was exercised and carried on by governors and captains appointed by him, and after the disaster in which his brother Francisco perished and the failure of Rebolledo, he made a cession to the Crown of the territories and seignory of the Dukedom of Veragua, in consideration of an annual pension of seven thousand ducats, but the title he retained, as he stipulated with the Council of the Indies in writing on July 4, 1556, which stipulation the King approved and directed to be carried out by the Royal cédula of December 2 of the same year (Doc. No. 31).

The territory of the suppressed dukedom was left added to the Government of the Province of Tierra Firme, called Castilla del Oro, it not being true that it was placed under the jurisdiction of the city of *Natá*, as counsel for Colombia assert. The fact is that, by the Royal cédula of January 21, 1557 (Doc. No. 32), the Governor of Tierra Firme was authorized to permit the inhabitants of *Natá* to settle the territory of the dukedom as they had asked permission to do.

The inhabitants of *Natá* organized an expedition under the command of Francisco Vázquez, who was commissioned by the Governor of Tierra Firme, and who, in May, 1558, entered the territory of Urraca, founded some settlements and discovered some mines.

The Governor of Tierra Firme, Monjaraz, learning of this, wanted to make the conquest himself, and set out for *Natá*; but Vázquez hastened to make a complaint to the Audiencia of Peru (Doc. No. 33), and with his men resisted the entry of Monjaraz, defeating him on the banks



of the *Gatú* River, the boundary of the Dukedom of Veragua on the side of Natá.

(4) ORGANIZATION OF THE PROVINCE OF VERAGUA WITH
A GOVERNOR CAPTAIN-GENERAL (1560).

In view of the complaint instituted by Francisco Vázquez, the Audiencia of Peru, by Royal *provisión* of May 20, 1559 (Doc. No. 33), appointed Bernardino de Román to take up the matter and arrange its settlement. Bernardino de Román was informed of all that had happened and then made a long report to the King, giving an opinion very favorable to Vázquez.¹

Philip II put an end to the question by the Royal *cédula* of August 20, 1560 (Doc. No. 40), instituting the Province of Veragua with a Governor Captain-General and appointing for this post Francisco Vázquez, to whom he granted all the attributes necessary for the good government and administration of justice in that province.

The boundaries of the new government were not fixed; but there can be no doubt that it had for its territory that of the suppressed dukedom, according to the antecedents of this Royal *cédula* and to the language used therein respecting the origin of the question decided. Francisco Vázquez, in his petition to the Audiencia of Peru, appears, represented by attorney, as a resident of the city of Natá and relying on the rights established by the Royal *cédula* of January, 1557, which, he says, "commands the Governor of the Province of Tierra Firme to appoint a person who should settle and conquer the Province of Veragua, that was the Dukedom of the Admiral Don Luis Columbus,

¹León Fernández, *Colección de Documentos para la Historia de Costa Rica*, Vol. V, p. 153.

but which His Majesty had placed again under the Royal Crown * * *." The Royal cédula of 1560, appointing him governor, began by stating that he made an agreement and *capitulación* with the Governor of Tierra Firme in order to settle the Province of Veragua, as the latter had been authorized.

Francisco Vázquez, then, was the first of the governors who ruled the Province of Veragua, which continued under that kind of authority during the whole of the Colonial epoch.

IV.

PROVINCE OF COSTA RICA.

(1) ROYAL VERAGUA; PROVINCE OF COSTA RICA; GOVERNMENT OF SÁNCHEZ DE BADAJOZ (1539).

As we have said, by Royal cédula of March 2, 1537, the Veragua the government of which was granted to Felipe Gutiérrez, was left split up into two parts; the dukedom, that is to say, the square of twenty-five leagues given to Don Luis Columbus; and the rest of that territory, herein called for greater clearness *Royal Veragua*, in contradistinction to Ducal Veragua.

The said Royal cédula, from which Colombia derives all her rights, simply says in respect of Royal Veragua, that it was left in the Government of Tierra Firme (Castilla del Oro) during the Monarch's pleasure; and the Monarch repeatedly disposed of it, repealing, therefore, the Royal cédula referred to.

In the first place the jurisdiction over Royal Veragua passed from the Government of Tierra Firme to the Audiencia of Panama, which replaced the former in 1538.

Because of the fact that Royal Veragua depended upon the Government of this Audiencia, its Judge, Dr. Robles, thought that he was authorized to make a *capitulación* giving it to his son-in-law, Hernán Sánchez de Badajoz, who already, through the Vicereine, had the Government of the dukedom under his charge, and because "the one did not go without the other." It was so stated by him in his letter to the Council of the Indies of the 19th of July, 1539 (Doc. No. 15).

But Rodrigo de Contreras, Governor of Nicaragua, had commissioned two captains to undertake the exploration

of the Desaguadero, or River San Juan, and, as the latter disembogued on the Veragua coast which had been granted to Sánchez de Badajoz, the Audiencia of Panama informed that governor of the undertaking by Royal *provisiones* of December 17, 1539 (Doc. No. 16); in this he was told that the grant to Sánchez de Badajoz comprised the right of conquest and Captaincy-General of the Province of *Costa Rica*, "which extends from the borders of the Dukedom of *Veragua and Zorobará* as far as Guaymura (Cape Camarón) and from Sea to Sea." This is the first time that the *name* of COSTA RICA appears officially, and as equivalent to the wider acceptation of Veragua, that is to say, to the coast discovered by Columbus during his last voyage (as far as the dukedom) with the addition of the extension "from Sea to Sea."

The King, in accord with the Council of the Indies, by Royal cédulas communicated to Sánchez de Badajoz, and to the Audiencia, on April 24, 1540 (Doc. No. 17), declared void the concessions which the latter made of "the lands which are left to us in the Province of *Veragua* * * *, because this is a matter that must be treated solely by our Royal Person and in our Council of the Indies."

(2) PROVINCE OF CARTAGO; GOVERNMENT OF DIEGO GUTIÉRREZ (1540).

At the solicitation of Diego Gutiérrez, brother of Felipe, and in accord with the views of the Council of the Indies, the Crown authorized him to undertake the conquest and settlement of Royal Veragua, and issued the Royal cédula of November 29, 1540 (Doc. No. 18), which approved the *capitulación*, and conferred upon him by Royal cédula of December 16 of the same year (Doc. No. 19),



the title of Governor of that province, which was then designated by the name of Cartago.

As appears from these documents, the government granted to Diego Gutiérrez under this denomination of *Cartago*, is the same as that which the Audiencia of Panama improperly granted, under the name of *Costa Rica*, to Sánchez de Badajoz, but with greater precision as to boundaries.

The line of the dukedom is fixed as a basis by the meridian corresponding to the termination of the twenty-five leagues which were to end toward the Bay of *Zorobaró*; the province stretches in length along the coast as far as the River Grande, to the west of Cape Camarón; its width is fixed as from "sea to sea" up to Nicaragua and then limited by this province to fifteen leagues from its Lake Nicaragua and by that of Honduras as far as the River Grande.

This demarcation established by the Royal cédulas of 1540, was confirmed by that of January 11, 1541 (Doc. No. 20), in which all the governors of the provinces were commanded to respect the boundaries of the Province of Cartago; by the sentence of the Council of the Indies, of April 9, 1541 (Doc. No. 232), in the suit instituted in regard to the Desaguadero, and by the Royal cédula of May 9, 1545 (Doc. No. 29), adding the Province of Cartago to the Bishopric of Nicaragua. All of these go to show that the vague reference to the Royal Veragua, made in the Royal cédula of 1537, had no importance and even no legal force after the recognition and delimitation of the Province of Cartago.

Diego Gutiérrez died in a fight with the Indians, and the Crown, in conformity with the designation made by his son in favor of Juan Pérez de Cabrera, conferred

upon the latter the title of Governor of Cartago, on February 22, 1549 (Doc. No. 30). The Council of the Indies having decided that the conquest of this province be postponed, Cabrera was transferred to the Government of Honduras (1552).

(3) PROVINCE OF CARTAGO, OR NEW CARTAGO OR COSTA RICA, FROM THE BIRTH OF THE PROVINCE OF VERAGUA (1560).

(a) *Differentiation of the two Veraguas, after the suppression of the Ducal Seignory.*

It may be thought that by the retrocession of the Dukedom of Veragua to the Crown, in 1556, the difference between the Dukedom of Veragua and the Royal Veragua disappeared, and that they returned to form the Province of Veragua as it existed before the creation of that dukedom by Royal cédula of March 2, 1537. But such was not the case, for each continued with an independent life, with governments of distinct origin and constituted as distinct provinces under different names.

We have already seen how the conquest and settlement of the suppressed dukedom was made, from Tierra Firme, by Francisco Vázquez, under whose command, as Governor and Captain-General, the *Province of Veragua* was organized in 1560—since then the only province of that name.

In order that the ambiguity of the denomination of Veragua might disappear and not be confused with that of the dukedom, the Audiencia of Panama called the Royal Veragua which was improperly granted to Sánchez de Badajoz, *Costa Rica*, and Carlos V called that same Veragua which he granted to Diego Gutiérrez, *Cartago*, perhaps also by not admitting even the name of that grant which he had revoked.

The historian, Fernández de Oviedo, says that Diego Gutiérrez ordered that his Government be called *Cartago and Costa Rica*, under penalty of a hundred lashes to whoever should dare to call it Veragua. In the period that intervened between his government and the year 1573, it was designated indiscriminately by the names of Cartago, New Cartago and Costa Rica, and with each change the latter name came more frequently to be used. *Costa Rica* is, then, the province that was definitively constituted in 1573 by the separation of the portion north of the Desaguadero, which was to be called the Province of Teguzgalpa to differentiate it from that of Veragua; for the latter was reserved the name of Veragua, which has led to so much confusion.

Whilst the formative current of the Province of Veragua came from the side of Tierra Firme, that of the Province of Costa Rica proceeded from Nicaragua and Guatemala, that is to say, from the opposite side.

(b) *Ortiz de Elgueta (1559)*.

The King, Don Philip II, by an unquestionable act of sovereignty and without the intervention of any *capitulación* whatever, entrusted the settlement and government of Royal Veragua to the Licentiate Alonso Ortiz de Elgueta, as *Alcalde mayor* of the Province of Nicaragua, by Royal cédula, dated at Toledo, December 13, 1559 (Doc. No. 34), which begins thus:

“We are informed that *between that Province of Nicaragua and that of Honduras and the Desaguadero of Nicaragua, on the side of (a la parte de) the cities of Nombre de Dios and Panama, between the South Sea and that of the North, there are many Indians without light or knowledge of the faith, but who have shown*

great evidences of yielding obedience and receiving the Christian doctrine; and since we much desire that this country may be settled and properly governed, as well as the natives thereof enlightened and taught in our Holy Catholic Faith, and also that the Spaniards who go that way be benefited and established and may have a fixed location and livelihood * * * we directed it to be discussed in our Council of the Indies * * * and so we command you that you undertake the same * * * and in the said settlement and exploration you will observe, and will cause to be observed, the directions in this instruction contained, which are as follows:" (Then follow the directions.)

By Royal cédula of February 23, 1560 (Doc. No. 37), this resolution was communicated to the Audiencia of the Confines (Guatemala), directing it to give to the Licentiate Ortiz "every encouragement and aid;" and by another of the same date (Doc. No. 38) the commission conferred upon the latter was reiterated, with new instructions; in the latter he was authorized, as he was in the former, to give lands to the settlers and to exempt them from imposts, so that one could almost say that it had the character of a *carta de población* (Royal charter), like those which were given at the period of the Spanish reconquest.

In both of these Royal cédulas the territory allotted to the *Alcalde mayor* of Nicaragua is described in the same words which we have underlined in that of December 13, from which it may be instantly inferred that this territory was the same that was granted to Sánchez de Badajoz under the name of *Costa Rica*, and to Diego Gutiérrez under that of *Carlago*, though it is described with less precision of boundaries than in the latter case.

The illustrious French juriconsult, Monsieur Poincaré, says in the third Memorandum in defense of Colombia (No. 30), that "the province designated under the name of *Costa Rica* in the cédula of February 23, 1560, and granted to the Licentiate Ortiz, *Alcalde mayor* of Nicaragua, did not embrace the ancient Province of Veragua and was no more than a little scrap of land (*un petit lambeau de terre*) included between the Provinces of Honduras and Nicaragua and the Desaguadero."

But in reading this Royal cédula, the name of Costa Rica is not to be found; on the other hand, it may be observed that Monsieur Poincaré has omitted the last part of the description * * * "on the side of the cities of Nombre de Dios and Panama, between the South Sea and that of the North."

With the text thus clipped, the result for Colombia was that "*le petit lambeau de terre*" called Costa Rica was the Mosquito Coast extending from the Desaguadero, or River San Juan, toward the north, which later became the Province of Teguzgalpa. And if it is certain that this portion was also included in the Costa Rica of Sánchez de Badajoz and the Cartago of Diego Gutiérrez, it is not that the territory entrusted (not granted) to the *Alcalde mayor* of Nicaragua should terminate at the Desaguadero, but that it was extended "to the side of (*a la parte de*) the cities of Nombre de Dios and Panama, between the South Sea and that of the North," that is to say, as far as Tierra Firme, which signifies a further abrogation of the Royal cédula of 1537, upon which Colombia bases her rights.

(c) *Juan de Cavallón (1560).*

While Philip II conferred upon Ortiz de Elgueta the commission mentioned, the Audiencia of the Confines

(Guatemala) gave a similar charge to the Licentiate Juan de Cavallón, who had been *Alcalde mayor* of Nicaragua; and advised the King, on December 18, 1559 (Doc. No. 35), that it had commanded him to make settlements in the Province of Veragua "which is otherwise called by the name of New Cartago * * * in this district of ours;" the Audiencia also issued a Royal *provisión* on January 30, 1560 (Doc. No. 36), by which the said Cavallón is granted the regulation and license to explore, settle and govern (with the title of *Alcalde mayor*) the Province of Cartago, or New Cartago and Costa Rica, from that of Nicaragua.

The King replied to the Audiencia of the Confines by the Royal *cédula* of July 18, 1560 (Doc. No. 39), which begins thus:

"You state that the Province of Veragua, which is otherwise called by the name of New Cartago, is in that district of yours and borders on the Province of Nicoya, where we always have a *corregidor* * * *."

And referring to the propositions for its exploration and settlement, the King states as follows:

"For the settlement of Nicoya and territory adjacent thereto, we have provided the Licentiate Ortiz, our *Alcalde mayor* of the Province of Nicaragua, to whom was given the commission necessary therefor; and as to the territory that there is in Veragua, on the side of Natá, Captain Francisco Vázquez has settled it by our order. When the commission of each is examined by you, the proper order will be given."

Colombia has brought to her defense a report prepared by various distinguished archivists, librarians and lawyers of Seville, where the Archives of the Indies are kept, concerning this Royal *cédula* of July 18, 1560; they interpret it as follows:

“The King established with perfect clearness the difference that there is between the territory of Nicoya, the settlement of which had been entrusted to the Licentiate Ortiz, and the other territory not contiguous to Nicoya, territory belonging to Veragua, and which, also by Royal order, the Captain Francisco Vázquez was settling. The expression ‘on the side of *Natá*’ (por la parte de *Natá*) merely indicates the point from whence Francisco Vázquez set out with his men to conquer the territory of Veragua.”

Monsieur Poincaré, making this report his own, states that there had been omitted in the copy of this Royal cédula, cited by Costa Rica, a comma after “Veragua” and before “on the side of *Natá*,” that the name of the Licentiate Ortiz had been confused with that of the Licentiate Cavallón, and that the grant to the Licentiate Ortiz was from Honduras as far as the Desaguadero (third Memorandum of Colombia, No. 30).

Putting aside the latter assertion, which we have just refuted, we will say that the comma does not affect the sense of the text, which, indeed, could not be clearer. The Royal cédula does not place the territory of Nicoya in opposition to that of Veragua, nor does it say that only the former was entrusted to the Licentiate Ortiz, because the latter belonged to the other conquest which Francisco Vázquez had begun by *Natá*.

What this Royal cédula does state, and most clearly, are the very conclusions we have just presented; that is, that the ancient Veragua had been divided into two parts; one, the grant under the government of Francisco Vázquez, by which the Province of Veragua was instituted; and the other, that which was entrusted to Ortiz de Elgueta, coterminous with Nicoya, and to which the Audiencia of the Confines referred in delivering it to Cavallón, and of

which, furthermore, the King had disposed in conferring it upon the former. The Royal *cédula* refers precisely to the commission given to the Licentiate Ortiz, who is mentioned therein by name, which commission was not revoked until later, and then in favor of Cavallón. It is impossible to interpret a legal document with any degree of certainty which is a part of an historical series, without reading it in connection with its antecedents; the best experts will fall into error if they do not follow this procedure or if they undertake to consider that document as an isolated fact.

How Cavallón himself interpreted the concession made to him by the Audiencia of the Confines is very clearly shown by the *legal authority* which he granted on September 22, 1560 (Doc. No. 41), to his associate and deputy, Juan Estrada Rávago, so that he might represent him in his charge and undertaking. Cavallón declares that the Province of Cartago and Costa Rica, the settlement of which belonged to him—

“* * * is all the territory that is left in the Province of Veragua, from sea to sea, inclusive, and which begins from where ends the square of twenty-five leagues that His Majesty granted to the Admiral Don Luis Columbus, toward the west * * * and it terminates at the Río Grande, toward the west, on the other side of Cape Camarón.”

Philip II, who had, as we have seen, reserved the right to provide in regard to the matter, acted by Royal *cédula* of February 5, 1561 (Doc. No. 42), addressed to the Audiencia of the Confines, saying that he revoked the commission which he had given to Licentiate Ortiz, and directed that the Licentiate Cavallón execute it under the

same conditions provided as to the former, and that, if the latter did not accept it, a judge of the said Audiencia should go, or that body should appoint another person to carry out the commission in the same manner. The same directions were given in another Royal cédula of the same date, addressed to Cavallón.

It is clearly understood that when the King turned over to Cavallón the undertaking he had entrusted to Ortiz, he performed an act of pure sovereignty, establishing thereby a different demarcation of the Province of Veragua which was under the charge of Francisco Vázquez.

In view of the results of the expeditions of Cavallón the Audiencia of the Confines thereunto duly authorized, appointed him, by Royal *provisión* of May 17, 1561 (Doc. No. 44), *Alcalde mayor* of New Cartago and Costa Rica, and stated that his jurisdiction, was to extend—

“* * * from the boundaries of the village of Nicoya, of the said Province of Nicaragua, forward * * * as far as the limits and jurisdiction of the city of Natá, of the Kingdom of Tierra Firme, called *Castilla del Oro*, the length of the land to the borders of the *Dukedom of Veragua*, and from the South Sea to the North Sea, as far as the Desaguadero, inclusive.”

The King, by Royal cédulas of August 4, 1561 (Doc. Nos. 45, 46 and 47), confirmed the appointment of Cavallón as *Alcalde mayor* and of Estrada Rávago as his representative, congratulating both at the same time upon the success of their expeditions, the one by land and the other by sea; and he authorized Cavallón to go back whenever he might desire to reside in the Audiencia of the Confines, of which he was appointed the Fiscal.

(d) *Denial of the request of the Governor of Tierra Firme, Figuerola (1561).*

Don Rafael Figuerola, Governor of Tierra Firme, having received word of the death of the Governor of the Province of Veragua, Francisco Vázquez, and that the Audiencia of the Confines had authorized the Licentiate Cavallón "to make the entry into Costa Rica," applied to the King for his own appointment as Governor of the Province of Veragua, and asked that the entry into that of Costa Rica should be prohibited to everybody who did not come from him. He based this latter request upon the fact that the Count of Nieva, Viceroy of Peru, had authorized him to enter into the Dukedom of Veragua, as he in fact had done, continuing into the "interior territory," as he showed in the report of an inquest, which accompanied his application (Doc. No. 233).

Philip II communicated to him, by Royal cédula dated at Madrid on August 9, 1561 (Doc. No. 48), the following resolution, which is of the greatest importance to the question we are discussing:

"* * * as soon as We knew the death of Francisco Vázquez, whom We had designated for the government of the said *Province of Veragua*, We appointed for the said government Francisco Vázquez, his son * * *. And, also, We have approved and held to be good the said commission that was given by the said Audiencia of the Confines to the said Licentiate Cavallón, in order to make the exploration of the *Province of Cartago and Costa Rica* * * *; therefore, I command you that * * * you leave the Government of the said Province of Veragua to the said Francisco Vázquez, and that you do not interfere to explore and settle the said Province of Cartago and

Costa Rica, but leave it to be done by the said Licentiate Cavallón * * * and if you shall have made any discovery or settlement, you shall leave it in the state and condition it may be, without doing more therein; and this you shall do and comply with under the penalties imposed upon persons who do not obey the commands of their King and natural Lord."

Monsieur Poincaré, in the third Memorandum of Colombia hereinbefore cited (No. 32), attaches little importance to this Royal *cédula*; he says that it shows that Costa Rica bordered on the Province of Veragua and was distinguished from it, but that the Province of Veragua was distinct from the old dukedom "attached (*rattaché*) to the city of Natá," and that just as it was defined by the Royal *cédula* of 1537 it belonged jointly with the dukedom itself to the Audiencia of Panama.

So, then, if Costa Rica bordered on the Province of Veragua and was distinguished therefrom, it is clear that *it was not the Province of Veragua*. The petition of Don Rafael Figuerola, giving expression to a personal desire, was the same as the claim of Colombia and was based upon the following syllogism: All Veragua constitutes one entity and belongs to the Government of Tierra Firme; the Dukedom of Veragua and Costa Rica are also Veragua and I am Governor of Tierra Firme; therefore place me in possession of the Dukedom of Veragua and of Costa Rica. But the King denied his petition, declaring that Veragua and Costa Rica were two distinct provinces, with different governments and forbade his interference in either of them.

Substitute the name of Colombia or Panama for Figuerola, and that of the Arbitrator for Philip II, and the present conflict would be solved, without, however,

denying to Panama her rights over the Province of Veragua as differentiated from Costa Rica.

(c) *Vázquez de Coronado (1562).*

Cavallón having left to assume his office of Fiscal of the Audiencia of the Confines, the latter appointed Juan Vázquez de Coronado as *Alcalde mayor* of New Cartago and Costa Rica, in the Royal *provisión* of April 2, 1562 (Doc. No. 49), and prescribed for that office the same conditions as were imposed on Cavallón when the latter "was given jurisdiction."

Philip II, well pleased with the great services of Vázquez de Coronado, appointed him, by the Royal *cédula* of April 8, 1565 (Doc. No. 52), *Governor* for the whole of his life of "the Province and territory of *Costa Rica*," with all the necessary civil and criminal jurisdiction. On the same date he also appointed him Governor of Nicaragua for three years, in order to facilitate the settlement of Costa Rica, conferred upon him the title of *Adelantado* of Costa Rica, for himself and his successors (Doc. No. 53), and made him a grant of a square of land four leagues on each side, wherever he might select them in the latter province. Costa Rica, therefore, as may be seen, remained constituted as such province and was to have its own governor—an office which was increased in importance through the fact that an *Adelantado* was going to be the first to hold it.

The King instituted the province, provided, as stated, with a governor, under the single name of *Costa Rica*, and to it was given the same extension which was determined upon when it was allotted to Ortiz de Elgueta;

this is shown by the Royal cédula of August 7, 1565 (Doc. No. 54), directed to Coronado, which begins thus:

“To Juan Vázquez de Coronado, our Governor of the Province of Nicaragua and Costa Rica, and *Adelantado* of the said Province of Costa Rica: Having been informed that *between the said province of Nicaragua and that of Honduras and the Desaguadero of Nicaragua, on the side of (a la parte de) the cities of Nombre de Dios and Panama, between the South Sea and that of the North, lay the said PROVINCE OF COSTA RICA,* and that there were therein many Indians without light or knowledge of the faith, but who have shown a great desire to accept our authority, and receive the Christian doctrine, the President and Judges of our Royal Audiencia of the Confines *ordered you and gave you a commission* in our name and that you should go and make settlements therein * * * and place under our Crown and Royal Lordship the said * * * territory.”

And after stating what Coronado had done and that he, the King, had directed “its consideration” in the Council of the Indies, he charged him that “this territory shall be settled and placed under good administration and order,” for which purpose he gave to him the proper instruction.

This Royal cédula is a repetition of the one directed to Ortiz de Elgueta, and contains the same statement of boundaries in almost the same language, but in this cédula the expression “the Province of *Costa Rica,*” is used concretely, the direction given by the Audiencia of the Confines to Coronado is confirmed and the work of exploration and settlement already realized within those boundaries is approved, and authorization is given for its conclusion in the same way that it had been begun.

(1) *Perafán de Ribera (1566).*

Vázquez de Coronado having perished on his return voyage to America, the King appointed Perafán de Ribera Governor of the Province of Costa Rica, by the Royal cédula of July 19, 1566 (Doc. No. 56). This cédula, however, does not indicate the boundaries of the territory, the same having been already fixed; but it does state that the governor shall exercise his office "in the matters that it has been customary for the governors who have been up to this time in the said province to conduct."

Perafán de Ribera continued the work of his predecessors, and presented to the King on July 28, 1571 (Doc. No. 58), a "Relation of the Province of Costa Rica," in which he gives a report of his journeys and of the condition in which that province was found. Wearing by his labors and broken down by his misfortunes and poverty, he resigned his government and left the province in 1573.

(4) THE PROVINCE OF COSTA RICA DEFINITELY ORGANIZED; GOVERNMENT OF ARTIEDA (1573).

Cavallón, Estrada Rávago, Vázquez de Coronado and Perafán de Ribera were the ones who by their conquests and establishments created, in fact, the Province of Costa Rica and within the legal boundaries established by the Crown, at the initiation of that work of discovery and settlement, by the orders and instructions given to the *Alcalde mayor* of Nicaragua, Ortiz de Elgueta.

Philip II, knowing the results of the work he had undertaken, and considering the general advantages to be derived from those portions of his dominions, was able with full knowledge of the matter to definitively constitute

the Province of Costa Rica and trace its boundaries with certainty, as he did by his Royal *cédula* dated at the Pardo, December 1, 1573 (Doc. No. 62).

(a) *Royal Cédula of Philip II, of December 1, 1573.*

This Royal *cédula*, issued after consultation with the Council of the Indies, contains the *capitulación* with Diego de Artieda, to discover, settle and pacify, at his own cost, the Province of Costa Rica, for which purpose he was granted the Government and Captaincy-General of this province for his own life and that of an heir, with a salary of two thousand ducats.

The conditions under which he was to settle and govern the province were minutely fixed, and its boundaries indicated with great precision; he was also directed therein to take possession in the name of the King "of that which might not have been appropriated."

Twice are the boundaries fixed; the first time in great detail, when the method to be pursued in making the discovery and settlement is prescribed; the second, in more concise terms, when the government is granted to Artieda.

In this second description of the *Province of Costa Rica*, which Artieda is about to discover, settle, pacify and govern, the Royal *cédula* of 1573 says that it is

"* * * from the North Sea to that of the South in latitude, and, in longitude from the borders of Nicaragua, on the side of Nicoya, straight forward to the Valleys of Chiriquí, as far as the Province of Veragua on the south side; and on that of the north, from the mouths of the Desaguadero, which is on the side of Nicaragua, all the territory as far as the Province of Veragua."

According to this demarcation, by virtue of the Royal cédula of 1573, there was *segregated* from the Province of Costa Rica its upper part, from the Desaguadero of Nicaragua northward; with this part the Province of Teguzgalpa (on the Mosquito Coast) was formed, and the differentiation of the Provinces of Costa Rica and Veragua was confirmed, thus leaving Costa Rica between Teguzgalpa and Veragua.

(b) *Formation of the Province of Teguzgalpa by its segregation from the Province of Costa Rica, prior to 1573.*

Comparing the demarcation of the Royal cédula of 1573 with the earlier demarcations of Costa Rica, it will be at once observed in the description that part of those demarcations, "between the Province of Nicaragua and Honduras and the Desaguadero of Nicaragua" was suppressed, by which suppressed part it had been made to reach from the latter as far as the River Grande and Cape Camarón. The Royal cédula fixed as the northern boundary of the Province of Costa Rica the *Corregimiento* of Nicoya and the Desaguadero of Nicaragua.

By this adjustment tribute was paid to historical fact and concession made to convenience in administration, for although that portion was included in the demarcation of Ortiz de Elgueta, those who, in accordance therewith—Cavallón, Estrada, Coronado and Ribera—made the conquest and the establishments of Costa Rica, concentrated their undertakings between the Desaguadero and the Province of Veragua, and the King acted with much discernment in segregating the upper territory which, from its geographical form and its distance from the capital, presented great difficulties in the way of administration.



COSTA RICA

*ACCORDING TO THE DEMARCATION
MADE BY PHILIP II
(ROYAL CÉDULAS OF DECEMBER 1, 1573
FEBRUARY 18, 1574
DECEMBER 29, 1593, ETC.)*

This very segregation is the best proof of the error of Colombia's counsel who located the little scrap (*le petit lambeau*) called Costa Rica in the portion segregated, when in fact the province of that name was definitively constituted at the time it lost that portion.

The result of that Royal cédula of 1573 was the issuance of that of February 10, 1576 (Doc. No. 65), by which Philip II created the Province of *Teguzgalpa* out of the segregated territory, giving it by *capitulación* to Diego López for settlement and government—a region “which comprises all the territory that is included from the mouth of the *Desaguadero* on the north side as far as Cape *Camarón*, in the same direction where the Province of Honduras begins * * *” (Doc. No. 234).

This territory bordering on *Honduras* and with *Nicaragua* was for a long time disputed by these Republics, until His Majesty the King of Spain, as arbitrator, decided the boundary question between the two in his Award of December 23, 1906 (Doc. No. 437), fixing the point of the divisionary line, for the part that belongs to each, at Cape *Gracias a Dios*.

In that arbitration Don Francisco Silveira defended Honduras and Don Antonio Maura represented Nicaragua. These are the same two distinguished juriconsults who have defended the rights of Colombia by maintaining that to her belonged all of the Veragua of the year 1537, and making that province reach as far as Cape *Gracias a Dios*.

However, in the course of the argument in that arbitral proceeding, both agreed in disregarding the claims of Colombia to the territory of Veragua which began at the *Desaguadero* and which was called the Province of *Teguzgalpa*.

Señor Silvela alleges, as one of the principal bases of the right of Honduras, the *capitulación* of Artieda, of December 1, 1573, saying distinctly: "THERE IS ONE SINGULAR THING IN THIS CAPITULACIÓN AND THAT IS THE FIXING DEFINITELY OF THE BOUNDARIES OF COSTA RICA." (*Alegato* of Honduras, 1905, p. 128.)

Señor Maura, in the *Reply of Nicaragua*, 1905, asserts that the Cartago of Diego Gutiérrez's *capitulación* of 1540 was framed out of the remains of the break-up or division of the ancient Province of Veragua (p. 109); that the *capitulación* of Artieda, of 1573, clearly distinguished Costa Rica from the Province of Nicaragua (p. 72); that nothing is so conclusive as the *capitulación* of Diego López, of 1576, in which there was included (in order to form the Province of Teguzgalpa) all of the territory from the Desaguadero to Cape Camarón (p. 73); and that neither Honduras nor any one, casts doubt of the annexation to Nicaragua of the said coastal zone from the Desaguadero or San Juan River toward the north or the northeast (p. 77).

Costa Rica, then, can rely for support on the authority of Señores Silvela and Maura, counsel for Colombia to combat the following broad assertion made by the latter in her *Summary of Conclusions*, presented to the President of the French Republic and subscribed by Monsieur Poincaré in Paris on July 4, 1900:

"All the Province of Veragua ought then to belong to Colombia. From its origin the Province of Veragua extended as far as Cape Gracias a Dios. (See the Royal cédula of March 2, 1537.) It has never been divided."

(Toute la Province de Veragua doit donc appartenir à la Colombie. Dès l'origine, la Province de Vera-

gua s'est étendue jusqu'au cap de Gracias á Dios (Voir Cédula Royale du 2 Mars 1537). Elle n'a jamais été divisée.

(c) *Boundaries with the Province of Veragua.*

The demarcation made to Ortiz de Elgueta (from the boundary of the segregated territory with which Teguzgalpa was formed) extended from sea to sea, "to the side of (*a la parte de*) the cities of Nombre de Dios and Panama." The Royal cédula of 1573 clearly fixed the Province of Veragua as the end of Costa Rica, both on the north and on the south; it did more, since it expressly included within Costa Rica the Bocas del Drago on the north, and on the south the Valleys of Chiriquí.

In prescribing the manner in which Artieda was to carry out his charge, he is told "* * * and you shall settle in the Province of Costa Rica three cities, * * * one of which must be at the Port of *Bocas del Drago*, which is on the North Sea of said province."

By this name of Bocas del Drago there was designated the Bay of Almirante and the Lagoon of Chiriquí, into which empties the Guaymí, San Diego or Cricamola River, it being perfectly explained that its adjoining territories were included in Costa Rica because they had been traversed and conquered by the founders of this province, with the approval and praise of the King. Estrada Rávago founded, in 1560, the city of Castillo de Austria on the Bay of Almirante; Juan Vázquez de Coronado, in 1564, subjected all the tribes of Indians that occupied its banks nearly as far as the Escudo de Veragua; and Perafán de Ribera traversed the same territories in 1570 and 1571.

Diego de Artieda always understood that they belonged to his government, as is shown by his deeds and his communications to the King, during the fourteen years in which he had it in charge. The Royal cédula of August 30, 1576 (Doc. No. 66), contains this phrase: “* * * it being very well known that the said Guaymí River and Bocas del Drago and the Almirante Bay are the same thing.” The former, in fulfilment of the duty of founding a city at Bocas del Drago, founded the one that he called “*Artieda*,” on the banks of the Guaymí River, as is evidenced by the certificate of December 8, 1577 (Doc. No. 67); and afterwards he took possession of the Valley of Guaymí, as is evidenced by a certificate delivered by a notary in March, 1578 (Doc. No. 68). In front of this valley is the island called *Escudo de Veragua*. The King showed in his cédulas of June 3, 1580 (Doc. No. 69), that he was informed of and satisfied with the settlements made by Artieda at Bocas del Drago.

After Artieda, the indication of *Escudo de Veragua* was confirmed as the point of the divisionary line which left within Costa Rica the lands adjoining the Bay of Almirante and the Lagoon of Chiriquí.

The Royal cédula of Philip III of May 31, 1600 (Doc. No. 71), directed to the Audiencia of Panama, indicated the Island of *Escudo de Veragua* as the end or western extremity of the warring Indian tribes of the Province of Veragua. In a certificate delivered by a notary on October 10, 1605 (Doc. No. 72), Don Diego de Sojo testifies that by virtue of the commission given to him by Don Juan de Océón de Trillo, Governor and Captain-General of Costa Rica, and in the name of the King, he founded the city of *Santiago de Talamanca* and, he says, he

*** * * indicated for it and gave to it for jurisdiction in latitude all the territory and district which there is from the summit of the Cordillera to the North Sea, and in longitude from the River *Tarín* and the ford that is crossed going from the said city to the Province of Tariaca, all the territory that runs to the east, which is the length of it as far as the ESCUDO DE VERAGUA, which is the end that separates this Government from that of Veragua."

The Province or region of Talamanca continued to belong to Costa Rica during the whole of the Spanish domination.

The *Valleys of Chiriquí* constitute that part of the Province of Costa Rica which borders upon the Province of Veragua, on the Pacific side. Colombia argues in her Memoranda (Second, p. 89, and Third, No. 47), that the *capitulación* of Artieda does not speak of the Valleys of Chiriquí as a foreign frontier with Veragua, but only as designating a bearing, as though to say "in the direction of" those valleys. But the text of the Royal *cédula* of 1573 does not admit of this interpretation, for, in stating the longitude of the Province of Costa Rica, it says specifically, "from the borders of Nicaragua, on the side of Nicoya, *straightforward (derecho a)* to the Valleys of Chiriquí, *as far as* the Province of Veragua, on the south side." The direction was indicated by the South Sea, that is the Pacific Ocean; and in this direction the Royal *cédula* expressly declared the right of Costa Rica to the Valleys of Chiriquí. If it is claimed that those valleys only indicated a direction, the longitude of Costa Rica may be continued still further beyond them and its terminal extended "as far as the Province of Veragua."

Such a declaration of right is not strange, inasmuch as Vázquez de Coronado and Perafán de Ribera had traversed

and taken possession of the plains or savannas of Chiriquí, and had considered them to be within their jurisdiction.

Although Costa Rica had the right to the Valleys of Chiriquí, the later governors tolerated the encroachments of the Governors of Veragua as far as the *Chiriquí Viejo* River (*old Chiriquí River*—not to be confused with others of the same name not having this qualification); and this river was left as the divisionary line of Costa Rica, which meant for that country a loss of ten leagues in a square.¹

¹Exactly 208 square leagues (1,872 square miles). Editor's note.

V.

THE QUESTION OF BOUNDARIES SETTLED BY THE ROYAL CÉDULA OF 1573 AND NOT BY THAT OF 1537.

(I) IMPORTANCE, CONFIRMATION AND SUBSISTENCE OF THE ROYAL CÉDULA OF 1573.

The Royal cédula of Philip II of December 1, 1573, is immensely important because it settled the question of boundaries pending between the Republics of Costa Rica and Panama, as far as relates to Spanish colonial law, for thereunder the Province of Costa Rica was definitively constituted and marked out; its legal existence and delimitation, however, is denied by the Republic of Panama, the successor to that of Colombia, on the assumption that it belonged to the latter as an integral part of the ancient Veragua.

It results from all that has been said in the FIRST PART of our opinion, that the Royal cédula of 1573 marked the end of the historico-legal evolution of Veragua, from the time when the whole of the coast discovered by Columbus, from Cape Honduras to the point of San Blas, was understood by that designation until it came to constitute three distinct provinces: that of *Veragua*, properly so-called, that of *Costa Rica* and that of *Teguzgalpa*. The differentiation of the primitive Veragua into two parts, the Ducal Veragua and the Royal Veragua, began by the creation of the Dukedom of Veragua (1537) and the granting of the *capitulación* of Diego Gutiérrez (1540), the result of which was the organization of two different provinces, in 1560: the Province of Veragua, under Francisco Vázquez and the Province of Costa Rica under Cavallón. The Royal cédula of 1573 divides the latter into two parts: that which

is called Teguzgalpa and that properly denominated Costa Rica, in which latter is included Bocas del Drago and the Valleys of Chiriquí, places bordering upon the Province of Veragua.

The demarcation established in this Royal cédula of 1573 was confirmed: (1) by that of February 18, 1574 (Doc. No. 63), which conferred upon Diego de Artieda the title of Governor and Captain-General of Costa Rica, and fixed at the same time the boundaries of his jurisdiction; (2) by the Royal cédula of December 29, 1593 (Doc. No. 70), giving the government of this province to Don Fernando de la Cueva "as it was held by Diego de Artieda Chirino;" and (3) by the other Royal cédulas appointing governors and captain-generals, who held the position with the same salary and within the same bounded territory.

This demarcation is also confirmed by the facts to which we have referred relating to the boundaries, and many acts of the Superior Government, of the Audiencias and of the governors, relating thereto may be cited, since it was in force and subsisted until the end of the Spanish domination. Counsel for Colombia do not mention any other legal demarcation as a substitute therefor, aside from what they state in order to impugn it; but seek for support in the *Recopilación de Indias* and in the Royal order of 1803.

(2) INEFFICACY AND ABROGATION OF THE ROYAL CÉDULA OF 1537.

Colombia concentrates all her forces in support of the proposition that the question of boundaries with Costa Rica was settled by the Royal cédula of Carlos V, of

March 2, 1537, which placed under the administration of Tierra Firme (Castilla del Oro) all that was left of Veragua after taking away the twenty-five leagues for the dukedom.

This means that from Colombia's viewpoint there is no question of boundaries with Costa Rica; rather is it a question of "to be or not to be," involving the very existence of the latter as a nation, for Colombia believes that Costa Rica had no legal existence as a Spanish province and that her territory belonged to that of Tierra Firme, as did all of Royal Veragua.

Bearing in mind that Carlos V, by this Royal *cédula*, provided that Royal Veragua should be kept under the Government of Tierra Firme *whilst* he might deem it desirable, it will be easy to understand its inefficacy against later dispositions of the Crown, since in issuing them it was not infringed.

But if there is any desire to keep it alive, forgetting its conditional character, it must be said that it was repeatedly abrogated, whenever, indeed, the Sovereign made divisions of the territory of Veragua and created different governments from that of Tierra Firme, and also whenever he confirmed these changes.

Thus, the Royal *cédula* of March 2, 1537, was abrogated:

1. By the Royal *cédulas* of November 29, and December 16, 1540 (Doc. Nos. 18 and 19), giving under *capitulación* to Diego Gutiérrez the Province of Cartago and appointing him the Governor thereof; that of January 11, 1541 (Doc. No. 20), directing all the governors of the Indies to respect the boundaries of this Government, and that of February 22, 1549 (Doc. No. 30), giving the title of Governor to Pérez de Cabrera, as successor to Gutiérrez.

2. By the Royal *cédula* of December 13, 1559 (Doc. No. 34), establishing the demarcation which was given

to Ortiz de Elgueta; that of February 23, 1560 (Doc. No. 37), ordering the Audiencia of Guatemala to respect it; that of February 5, 1561 (Doc. No. 42), revoking the commission given to Ortiz and turning it over on the same terms to Cavallón, and that of August 4, of the same year (Doc. No. 47), confirming the appointment of *Alcalde mayor* given by the Audiencia to Cavallón whose acts of settlement and those of his deputy Rávago were approved.

3. By the Royal cédula of July 18, 1560 (Doc. No. 39), which divided Veragua into two parts, one allotted to Ortiz de Elgueta and the other to Francisco Vázquez; that of August 20 of the same year (Doc. No. 40) appointing Francisco Vázquez Governor and Captain-General of the Province of Veragua; and that of August 9, 1561 (Doc. No. 48) denying the claims of Figuerola, by right of his office of Governor of Tierra Firme and by order of the Viceroy of Peru, to govern and settle the Province of Veragua and that of Costa Rica, because these were under the respective charges of Alonso Vázquez and Cavallón—a most important cédula, therefore, inasmuch as those claims were the same as those now made by Colombia and Panama.

4. By the Royal cédula of April 8, 1565 (Doc. No. 53), appointing Vázquez de Coronado Governor and Captain-General of Costa Rica; and by that of August 7, following (Doc. No. 54), describing the province under his command in the same manner as in the commission given to Ortiz de Elgueta.

5. By the Royal cédula of December 1, 1573 (Doc. No. 62), approving the *capitulación* of Diego de Artieda, by which Teguzgalpa was segregated from the Province of Costa Rica and the boundaries of the latter fixed with that of Veragua; that of February 18, 1574 (Doc. No. 63),

conferring upon him the title of Governor and Captain-General of Costa Rica, with that demarcation; that of February 10, 1576 (Doc. No. 65), creating the Province of Teguzgalpa; that of August 30 of the same year (Doc. No. 66), defining the boundaries of Costa Rica by Bocas del Drago; and that of June 3, 1580 (Doc. No. 69), approving the conduct of Diego de Artieda in respect to the settlements he made within the limits of his jurisdiction.

6. By the Royal cédula of December 29, 1593 (Doc. No. 70), granting to Don Fernando de la Cueva the Government of Costa Rica as it had been held by Diego de Artieda; the appointment of the later governors of Costa Rica and the disposition concerning the adjacent audiencias, of which we will speak later.

There can not, then, be the slightest doubt that the Province of Costa Rica was legally constituted and marked out by the Royal cédula of Philip II, of 1573, and not by that of Carlos V, of 1537, which was ineffectual in itself and the subject of so many abrogations.

PART SECOND

THE RECOPIACIÓN DE INDIAS RESPECTED AND CONFIRMED THE EXISTENCE AND DEMARCATION OF COSTA RICA.

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- (2) THIS LAW IS A RESULTANT OF THE HISTORY OF COSTA RICA, WHICH ALWAYS DEPENDS UPON THE AUDIENCIA OF GUATEMALA:
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- (3) EXPLANATION OF THIS LAW, BY MAKING IT REFER TO THE PROVINCE EMANATING FROM THE DUKEDOM.
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- (1) PRINCIPLES ESTABLISHED BY THE RECOPIACIÓN IN REGARD TO THE VALIDITY OF THE ROYAL CÉDULAS PRIOR AND SUBSEQUENT THERETO.
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 - (a) *Juridical Character of the Capitulaciones;*
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I.

THE RECOPIACION DE INDIAS AND ITS ABROGATIVE FORCE.

(I) THE ARGUMENT OF COLOMBIA.

It seems impossible, after what we have said with respect to the inefficacy of the Royal cédula of March 2, 1537, and its numerous abrogations (especially by that of 1573), that Colombia could have maintained the subsistence of the former in contravention of the legal principle that "the later law abrogates the prior ones." But she did; because, relying on this same principle, she gives it as her understanding that the *Recopilación de Indias* re-established the cédula of 1537 and repealed all the dispositions that had abrogated it.

Señor Silvela and Monsieur Poincaré, in their briefs in defense of Colombia, rely upon the Royal cédula of Carlos II, of May 18, 1680 (Doc. No. 91), which sanctioned the *Recopilación*, and which was published at the beginning of it, when they make the assertion that this code a summary of all the Royal dispositions which constituted the system of government for the dominions of Spain beyond the seas abrogated everything that was not included within it, because the King said, "it is our will that from now forward they shall not have any authority whatever."

Señor Maura in his opinion embodied in the defense of Colombia, formulates "the synthetical idea," of the litigation, saying that none of the documents prior to the Royal cédula of May 18, 1680, can be taken into consideration, except under the condition that they be submitted to the obligatory force of the compiled laws, which in every case must prevail over contrary disposition; and

after adding that this principle greatly simplifies the litigation, he goes on to show that the Compilation of the Laws of the Indies was not a mere collection but a real body of laws in which was reenacted all the preceding legislation, with the repeal thereby of whatever was not included, as was done in the "*Fuero Juzgo*" (ancient laws by the Gothic Kings), the "*Fuero Viejo*" (ancient laws), the "*Siete Partidas*" the laws of Castile compiled by King Alfonso the Tenth) and the statutory compilations of Aragón, Catalonia, Navarre and Majorca.

Starting from this basis, counsel for Colombia deny the existence of the Province of Costa Rica, on the ground that they do not find it mentioned in the laws fixing demarcations of audiencias; they merge it in the Province of Veragua, and put the latter back under the Royal cédula of 1537 because they find the latter cited in one of the laws, and, finally, take from the Royal cédulas that fix boundaries all of their authority, because they do not find them converted into laws.

(2) GENERAL CONSIDERATION CONCERNING THE RECOPIACIÓN DE INDIAS AND HOW ITS LAWS RESPECT AND CONFIRM THE EXISTENCE AND DEMARCATION OF COSTA RICA.

The *Recopilación* of the Laws of the Indies was not, in fact, a *collection* (*repertorio* or *répertoire*) compiled with the single purpose of facilitating a knowledge of the old dispositions; neither was it a *code* in the scientific acceptance of that word; that is a coördinate grouping of a particular system of laws under one common principle of unity, formulated once for all and without continuous references to ancient laws further than may be inspired thereby.

The *Recopilación de Indias* was, like all compilations, a collection of the laws of various periods. The texts of

these laws were reproduced, in whole, or part, or in modified form, the chronological sequence of some having been changed for greater convenience, and the citation of its origin or source having been inserted at the head, or on the margin, of each; and it is clear that it may be compared, in this respect, with other compilations which were made in Spain, with the exception of *Siete Partidas*, which possessed the characteristics of a code.

It is certain that the *Recopilación de Indias* did have abrogative force; not absolute, however, as the counsel for Colombia assert, but *limited*, as was clearly expressed in said Royal cédula of Carlos II, of May 18, 1680, the latter part of which counsel persistently omit. This Royal cédula, after directing that the Laws of the *Recopilación* shall control, specifically states,

“* * * leaving in their force and vigor the Cédulas and Ordinances given to our Royal Audiencias, in so far as they are not contrary to the Laws herein.”

And in various texts of the *Recopilación* the subsistence of prior dispositions is declared, always, of course, under the condition that they are not contrary to the said laws.

Therefore, the Laws of the *Recopilación* respect and confirm the existence of the Province of Costa Rica, since, far from suppressing it, they expressly recognized it; they respect and confirm also the boundaries which it then had, as they did not modify the demarcation of audiencias, and the law concerning the boundaries of governments declares in force the existing legal situation.

In the development of this thesis, we will take up all the questions which have been the subject of controversy and relate to the *Recopilación de Indias*, expounding them in the order which we consider most desirable for clearness in the demonstration.

II.

THE DEMARCATON OF THE AUDIENCIAS.

(I) IMPORTANCE OF THE AUDIENCIAS IN THE GOVERNMENT OF THE INDIES.

Carlos V divided the government of the American territories into two great viceroyalties, that of New Spain (Mexico) and that of Peru; he subdivided the former into the four audiencias, of Santo Domingo, Mexico, Guatemala and Guadalajara, which he created; and the second into the three audiencias of Panama, Lima and Santa Fe, which he also created. The number of the audiencias in Peru was increased by Philip II, with the addition of those of Charcas and Quito, by Philip III with that of Chile, and, by Philip IV, with that of Buenos Aires.

This division of territory into audiencias was not merely judicial, but of a general character and admirably adapted. Each audiencia had under its charge, besides the administration of justice, the entire civil and even military government of the provinces included in its district.

Law 1, title 15, book II (Doc. No. 105), of the *Recopilación*, states that in all the territory that had been discovered up to that time in the Kingdoms and Seignories of the Indies, there were founded twelve audiencias and Royal chancelleries (the eleven mentioned and that of Manila), “* * * in order that our vassals may have those who may govern and rule them in peace and with justice; and whereas their districts have been divided into Governments, *Corregimientos* and *Alcaldías mayores* * * * which are subordinate to the Royal Audiencias * * *”

And in this same title the boundaries of the district of each one of them are indicated.

The fact, therefore, that a province belonged to a particular audiencia, not only signified that it depended upon it judicially, but also for civil government.

(2) HISTORY OF THE AUDIENCIAS OF PANAMA AND GUATEMALA.

Colombia, starting out with the theory that she is the heir of the whole of the territory which was under the Audiencia of *Panama* (also called *Tierra Firme*) makes every effort to prove that the *Recopilación*, in including all of the Province of Veragua in the Government of *Tierra Firme*—according to the Royal cédula of 1537—also included the territory of Costa Rica by reason of its being comprehended in the Veragua of that epoch. Leaving till later the interpretation of the law which especially refers to the Province of Veragua, and which, as we shall see, is the province that arose out of the dukedom, let us now examine the laws that treat of the demarcation of the Audiencias of Panama and Guatemala. But before doing so, the history of those two audiencias should be briefly related because it is quite complicated, and also because it will tend to dissipate another of the equivoques of which Colombia has made use in her quibbling; to wit, that the Audiencia of Panama was a very different thing, according to whether it is taken as existing alone in that part of America, or in co-existence with that of Guatemala.

The Audiencia of *Santo Domingo* of the Island of Española was founded in 1526, the first of those established in the Indies, and it had under its jurisdiction, besides, the islands of the Sea of the Antilles, the terri-

ories on the coast discovered by Columbus during his last voyage, to which were given the name of Veragua, and the rest which were discovered on the Isthmus and in southern America.

But at the same time that the conquest and government of Veragua was being organized under Felipe Gutiérrez and the Dukedom of Veragua created—and perhaps with the latter creation in view—the establishment of another *audiencia* was under way; to this was given the name of *Panama* in Tierra Firme. We infer this from Law 4, title 15, book II, of the *Recopilación* (Doc. No. 106), referring to this *audiencia*, which cites as the origin thereof the Royal *cédula* of February 30, 1535, issued two months after the approval of the *capitulación* with Felipe Gutiérrez, and that of March 2, 1537; that is, when this *capitulación* was revoked, the existence of the dukedom (created in the same year) was ratified, and it was declared that the rest of Veragua would be understood to be under the Government of the Province of Tierra Firme, called Castilla del Oro, until the Crown should otherwise provide.

The *Audiencia* of Panama, which was constituted by the Royal *cédula* and ordinances of February 26, 1538 (Doc. No. 14), comprised within its district

“the Province of Tierra Firme, called Castilla del Oro, and Provinces of the Río de la Plata and the Strait of Magellan, and New Toledo and New Castile, called *Pernu*, and River San Juan, *Nicaragua* and Cartagena and *Dukedom of Zorobará*, and whatever islands and provinces there might be both on the South Sea as well as on the North Sea.”

In view of the impossibility of governing such an enormous territory (Central and South America), and

after the death of Pizarro in Peru and of Alvarado in New Spain, Carlos V divided it in his Ordinances of Barcelona, November 20, 1542 (Doc. No. 26), called the "New Laws" and also "Laws of Reformation of the Indies," by suppressing the Audiencia of Panama, creating the Viceroyalty of Peru with an audiencia in Lima and directing another audiencia to be established "within the confines of Guatemala and Nicaragua * * *" which "shall have under its charge the government of said provinces and adjacent regions."

By the Royal cédula of September 13, 1543 (Doc. No. 27), this latter audiencia was in fact created, and denominated the Audiencia of the *Confines* (of the confines, or borders, of Guatemala), comprising within its district the provinces of Guatemala, Nicaragua, Chiapa, Yucatán, Cozumel, Higueras, Cape Honduras * * * and all other provinces and islands that there may be on the coast and in the region of the said provinces as far as the Province of Tierra Firme called Castilla del Oro, inclusive;" that is to say, the whole of Central America, including Veragua, although it was not mentioned. This audiencia was first installed in the city of Gracias a Dios (1544) and afterwards transferred to that of Santiago de los Caballeros de *Guatemala* (1550), and from which it was given the latter name.

But in moving from one capital to another, its district was reduced. Castilla del Oro was lost to it in consequence of the reform made in the Audiencia of Lima whereby a part of the latter was taken away to form the Audiencia of Santa Fe de Bogotá in the New Kingdom of Granada, in obedience to the Royal cédula of June 17, 1549. And there is not the slightest doubt but that Castilla del Oro was separated from the Audiencia of the

Confines, or Guatemala, and therefore from Veragua, for the Royal cédula of Carlos V, of May 2, 1550 (Doc. No. 133), which is Law 7, title 1, book V, of the *Recopilación de Indias*, specifically says:

“We command that the Province of Tierra Firme, called Castilla del Oro, shall belong to the Provinces of Peru and not to those of New Spain (Mexico).”

Abuses committed by the Audiencia of the Confines, or Guatemala, and the convenience of better service, led to its transformation into the *Audiencia of Panama*, upon the territorial basis of that of Guatemala, with important modifications, however, by the Royal cédula of Philip II, of September 8, 1563 (Doc. No. 50); and its headquarters were transferred to the city of Panama. The audiencia lost, according to that cédula, the Province of Guatemala and other territories in the north, and was given for a boundary the Gulf of Fonseca, exclusive, and the Ulúa River, and it gained the Province of Castilla del Oro as far as the Darién River, exclusive.

The Viceroy and the Audiencia of New Spain (Mexico) stated to the King, on February 26, 1564, the defects in this reform, and begged that the Audiencia of *Guatemala* might be re-established; this petition was granted in January, 1567, and that audiencia replaced in the condition it was prior to 1563. The Royal cédula of June 28, 1568 (Doc. No. 57), expressly designated as integral parts thereof, the Provinces of Guatemala, Chiapa, Higueras, Verapaz, Cape Honduras, and Nicaragua. “* * * and whatever other islands and provinces there may be on the coast and in the region of the said provinces, as far as the Province of Nicaragua.” This audiencia was again installed in the city of Santiago de los Caballeros on March 3, 1570.

The Audiencia of *Panama*, however, did not disappear; there remained within it, in 1570, Tierra Firme and the Province of Veragua, which had been constituted in 1560, but not that of Costa Rica, which was contiguous with the Province of Nicaragua.

The Audiencia of *Guatemala* continued thereafter as a dependency of the Viceroyalty of Mexico, whilst that of *Panama*, after the re-establishment of the latter, belonged to the Viceroyalty of Peru, and they were, respectively, the extremes and frontiers of the two viceroyalties.

(3) COMPARISON BETWEEN LAWS 4 AND 6, OF TITLE 15, BOOK II, WHICH TREAT OF THESE AUDIENCIAS.

Law 4, title 15, book II (Doc. No. 106), of the *Recopilación de Indias* (according to the Royal cédulas which it cites with others as complements thereof, and to what was provided by Philip IV in the same *Recopilación*), designates in the following manner the district of the Audiencia of *Panama*:

“It shall have for district the Province of Castilla del Oro, as far as Puertobelo and its territory; the city of Natá and its territory; the Government of Veragua; and, upon the South Sea, toward Peru, as far as the Port Buenaventura, exclusive; and from Puertobelo toward Cartagena, to the River Darién, exclusive, with the Gulf of Urabá and Tierra Firme
* * *.”

And in fixing the boundaries of this district, it says:

“* * * bordering on the east and south upon the Audiencias of the New Kingdom of Granada and San Francisco de Quito; on the west with that of Santiago de Guatemala; and upon the North and South, upon the two seas of the North and South.”

Law 6 of the same title and book (Doc. No. 107), of the *Recopilación* (according to the cédulas mentioned, which it cites with other complementary cédulas, and to what was provided by Philip IV), established the district of the Audiencia of *Guatemala*, as follows:

“It shall have for its district the said Province of Guatemala, and those of Nicaragua, Chiapa, Higueras, Cape Honduras, Verapaz and Soconusco, with the islands of the coast.”

And it adds:

“* * * bordering on the East upon the Audiencia of Tierra Firme, on the West, upon that of New Galicia, and upon the latter and the North Sea, on the North, and, on the South, upon the South Sea.”

The first thing that is noted in comparing these two laws is that no geographical dividing line is designated between the Audiencia of Guatemala and that of Panama. They only state that one begins where the other ends; therefore they do not settle the question of boundaries between the Provinces of Costa Rica and Veragua.

But from the enumeration made by these two laws of the provinces which are comprised in each of these audiencias counsel for Colombia deduce that the territory of Costa Rica was included in the Audiencia of Panama, because this province does not appear to be mentioned by Law 6 as among those of the Audiencia of Guatemala, whereas Law 4 expressly includes the Government of Veragua in that of Panama.

Let us see in the first place how far Law 4 goes with regard to the explicit inclusion, that being the affirmative part of the argument. We shall see later what may be the effect of the omission of the name in Law 6.

(4) INTERPRETATION OF LAW 4; WHAT WERE CASTILLA DEL ORO, NATÁ AND THE GOVERNMENT OF VERAGUA, WHICH WERE INCLUDED BY THAT LAW IN THE AUDIENCIA OF PANAMA.

Law 4 begins the description of the Audiencia of Panama with the Province of *Castilla del Oro*, from Portobelo as far as the Darién River, exclusive. This province which, in some demarcations, appears as the extreme limit of Royal Veragua, was included in the Audiencia of the Confines, or Guatemala, on the creation of the latter in 1543; but the Royal cédula of May 2, 1550, directed that it should belong to the Viceroyalty of Peru, and not to that of New Spain (Mexico). It returned to the Audiencia of the Confines when it was transferred to Panama, in 1563, and remained in that of Panama when the latter was dismembered by the re-establishment of the Audiencia of Guatemala, in 1568; and in the Audiencia of Panama it was retained by the *Recopilación de Indias*. These fluctuations reveal the fact that it was an intermediate province between the Viceroyalties of Mexico and Peru, in which the jurisdiction of the latter prevailed.

In the direction of New Spain, Law 4, locates the city of *Natá* and its territory after *Castilla del Oro*, and lastly the Government of *Veragua*. Counsel for Colombia, continuing to juggle with the equivoque involving this name, understand that this Government of Veragua was the Royal Veragua, in which Costa Rica was included, and not the Ducal Veragua, for the latter has been added to the city and territory of *Natá*.

To dissipate this erroneous interpretation, it is enough to refer to what we have said in PART FIRST, concerning the transformation of the Dukedom into the Province of

Veragua. When the dukedom was suppressed it was not added to *Natá*, but the residents of that city were authorized to go into that country for conquest and settlement; and it was by virtue of that authority that Francisco Vázquez went there with his men; he it was whom the Crown appointed, soon afterwards, Governor of the province that was then left definitively constituted (1560) under the name of Veragua (Ducal Veragua); and this is the Government to which Law 4 alludes, after speaking of the city of Natá and its territory.

Natá, from its origin, in 1520, always belonged to the jurisdiction of Panama (Province and Audiencia), and was administered by an *Alcalde mayor* appointed by the Governor or President of the Audiencia of Tierra Firme. The Province of Veragua, which was formed from the dukedom, was raised to the status of a government and captaincy general, which office was provided for by the King himself, it having by reason of its class and salary a higher rank than that of *alcalde*. Far from the Province of Veragua being united, or subordinated to the city of Natá, the residents of the latter were the ones who, tired of their *alcaldes mayores*, petitioned for the aggregation of their city to that province; but without success.

It cannot, therefore, be successfully maintained that the Dukedom of Veragua was comprised in Natá, in order, later, to include Costa Rica in the "Government of *Veragua*." The farthest counsel for Colombia can go is to consider the two Veraguas—ducal and royal—under this denomination. But to this is opposed the history of the formation of the two provinces of Veragua and Costa Rica, the fact of their existence at the time the *Recopilación* was made, and the provisions of that Compilation, in its Law 1, title 2, book V (Doc. No. 136),

entitled, "*de provisión de oficios*" (provisions for appointments to office), under which there was reserved to the King the right to fill the office of Governor and Captain-General of the Province of *Veragua* (with a salary of one thousand pesos), which is "in our Royal Audiencia of *Panama*," of PERU, and that of the Governor and Captain-General of the Province of *Costa Rica* (with a salary of two thousand ducats), which is "in our Royal Audiencia of *Guatemala*," of NEW SPAIN.

In deference to this law, promulgated in the time of Carlos II, when the *Recopilación* was compiled, it is not possible to interpret the "Government of *Veragua*" by merging therein the Province of *Costa Rica*.

(5) INTERPRETATION OF LAW 6. THE OMISSION OF THE NAME OF COSTA RICA OF NO IMPORTANCE IN TREATING OF THE AUDIENCIA OF GUATEMALA.

It is clearly established from what we have just said, that the Government of *Costa Rica* was included in the Audiencia of *Guatemala*, since it was so expressed in the *Recopilación* itself, and it was a thing distinct from the Government of *Veragua*, with which the demarcation of the Audiencia of *Panama* ends, as stated by Law 4.

The description made by Law 6 of the Audiencia of *Guatemala* is less detailed, doubtless because those who prepared the *Recopilación* did not consider it necessary, *after having specifically provided, in Law 4, that the Audiencia of Panama terminated with the Government of Veragua, deeming it sufficient to affirm that the Audiencia of Guatemala bordered with it on the east.* The omission of the name of *Costa Rica* is explained also by the fact that instead of writing an entirely new law, they took for a text that of the Royal cédula of June 28, 1568,

which, with some corrections, they inserted in the *Recopilación*. And as the main object of this Royal cédula was the advantage of leaving well determined the northern part, which, upon the re-establishment of the Audiencia of Guatemala, was united to that audiencia, no description was made of the lower part, which had always belonged to the Audiencia of the Confines, for it was not the subject of doubt.

But, although Costa Rica was not named in said Royal cédula, it was comprehended within the clause, “* * * and whatever other islands and provinces there may be on the coast and in the region of the said provinces,” among which was mentioned that of Nicaragua. In ordering the promulgation of the “New Laws” of 1542, which created the Audiencia of the Confines (of Guatemala and Nicaragua), it was provided that it should have under its charge “* * * the government of the said province and *adjacent* regions,” a phrase similar to that employed in the re-establishment of that Audiencia, in 1568, under the denomination of “Guatemala.”

The Audiencia of Guatemala having been re-established, that of Panama was advised, by Royal cédula of August 12, 1571 (Doc. No. 59), that it must no longer concern itself with the affairs of the former, while the Royal cédula of July 17, 1572 (Doc. No. 61), bestowed upon the Audiencia of Guatemala jurisdiction over the affairs of the Provinces of Nicaragua and Costa Rica.

The affairs of Costa Rica continued to be dependent upon the Audiencia of Guatemala when the *Recopilación de Indias* was published in 1680; and counsel for Colombia resort to the argument that even if Costa Rica had existed legally as a province, the omission of its name in the laws of demarcation of the contiguous audiencias signified its

suppression, and that the *Recopilación de Indias* thus abrogated the prior Royal cédulas relating to it.

But, although Law 6 does not mention the *Province of Costa Rica*, it includes it between Nicaragua and the divisionary line of the district of the Audiencia of Guatemala, unless it be assumed, as Colombia does assume, that the Government of Veragua, of the Audiencia of Panama, reached as far as Nicaragua. But having proved that that Government did not include Costa Rica, which was recognized by the *Recopilación* as a province belonging to the Audiencia of Guatemala, it must be agreed that Costa Rica was not suppressed by Law 6, although it was not expressly mentioned therein.

To the foregoing we must add that the laws of demarcation of audiencias are not laws of creation and suppression of component provinces of their respective districts, but of differentiation of one district from another, for the purpose of establishing the external boundaries of the territorial jurisdictions of those audiencias.

Whatever subtleties counsel for Colombia may appeal to in order to show that the Province of Costa Rica came to an end with the publication of the *Recopilación de Indias*, their purpose cannot succeed in the face of the decisive reason that the latter expressly recognizes it and its author provided for its needs as such province.