

III.

COSTA RICA WAS EXPRESSLY RECOGNIZED BY THE RECOPIACIÓN AS A PROVINCE OF THE AUDI- ENCIA OF GUATEMALA OF THE VICEROYALTY OF MEXICO.

(I) LAW 1, TITLE 2, BOOK V, OF THE RECOPIACIÓN; ITS IMPORTANCE.

The Kings of Spain having reserved to themselves the power *to fill* directly the offices of viceroys, captains-general, presidents and judges of audiencias, and the most important governments, *corregimientos* and *alcaldías mayores*, the Law 1, title 2, book V, of the *Recopilación* enumerated all of these offices with their annual compensations, and submitted them, classified under audiencias, for each of the two viceroalties.

The enumeration of the offices under the provision of the Crown, in the Viceroyalty of PERU, begins with the *Audiencia of Panama*, in which district it says:

“* * * We have to provide the post of Governor and Captain-General of the Province of *Tierra Firme* and President of the Royal Audiencia for eight years, which has a salary of four thousand five hundred ducats; and that of Governor and Captain-General of the *Province of Veragua*, with one thousand *pesos ensayados* (assayed dollars); the Government of the Island of Santa Catalina, with two thousand pesos; and the *Alcaldía mayor* of San Felipe de Portobelo, with six hundred ducats.”

It then proceeds to speak of the other audiencias of this Viceroyalty, that is to say, those of Lima, Santa Fe, Charcas, Quito, Chile and Buenos Ayres.

Under the denomination of NEW SPAIN, the law enumerates the offices under the provision of the King in the Audiencias of Santo Domingo, Mexico, Guadalajara and Guatemala, in respect to which it says:

“In the district of our Royal Audiencia of *Guatemala*, the post of Governor and Captain-General and President of the Audiencia, for eight years, with a salary of five thousand ducats; that of Governor and Captain-General of Valladolid de *Comayagua*, with two thousand *pesos de minas* (mined dollars); that of GOVERNOR AND CAPTAIN-GENERAL OF THE PROVINCE OF COSTA RICA, with two thousand ducats; that of Governor and Captain-General of the Province of *Honduras*, with one thousand *pesos de minas*; that of Governor of *Nicaragua*, with one thousand ducats; that of Saceronusco, with six hundred *pesos de minas*, and the *Alcaldías mayores* of Verapaz, Chiapa, Nicoya, etc.”

This law offers an almost complete exposition of the organization of the Spanish Colonial Government, by viceroalties, audiencias, provincial governments and *alcaldías mayores*: it is at once a law of territorial division, and one making appropriations.

As it states itself, the law was enacted by “Don Carlos II and the governing Queen, in this *Recopilación*,” in consultation with the Council and upon reports from the Secretaryships of Peru and New Spain. It is, therefore, of great importance as being a faithful expression of the reality of the administrative division at the very date on which the *Recopilación* was published (1680) and as affording a solution for the doubts that might arise from prior enactments in the interpretation of other laws of this Code.

(2) THIS LAW IS A RESULTANT OF THE HISTORY OF COSTA RICA, WHICH ALWAYS DEPENDED UPON THE AUDIENCIA OF GUATEMALA.

The Law 1, title 2, book V, in specifically declaring that the Government and Captaincy-General of the *Province of Costa Rica* belonged to the Audiencia of Guatemala and Viceroyalty of Mexico, not only recognized the existence of that province, but it brought to the *Recopilación* the result of its history, confirming and ratifying such jurisdictional dependency.

(a) *From the Creation of That Audiencia to 1563.*

The importance that was given to primitive Veragua by the *capitulación* of Felipe Gutiérrez and the formation of the dukedom (1534), determined the creation, in 1535, of the Audiencia of *Panama*, or Tierra Firme, which was organized, in 1538, by segregating those territories from the Government of the Island of Española and all others discovered toward the south, to which it was impossible for said government to give further attention. The Audiencia of *Panama* was then the only one in existence for the government of the American continent, from the line marking the end of Mexico's territory down to the Strait of Magellan.

By this Veragua depended at first upon the Government of Tierra Firme, as the Royal cédula of 1537 declared.

But when that vast government was divided by the so-called "New Laws" of 1542, by the creation of the Viceroyalty of Peru and the Audiencia of the *Confines* (which was established in 1543 and afterwards called the Audiencia of *Guatemala*), Costa Rica formed a part of that audiencia, never to be separated therefrom through all the vicissitudes this audiencia underwent while de-

pendent upon the Viceroyalty of Mexico; whereas *Tierra Firme* was made subordinate to the Viceroyalty of Peru by the Royal cédula of 1550, under which it remained definitively after various alterations.

It cannot be successfully maintained that the Veragua which was called Cartago, or Costa Rica, passed, in 1550, with *Tierra Firme* to Peru, for it is clearly shown by the Royal cédula of incorporation that only Castilla del Oro was in question, and it has been shown that the former continued in the Audiencia of the Confines. It is enough to remember how the latter intervened in the affairs of Costa Rica and how the King addressed himself to it in everything relating to the conquest and government which he entrusted to Ortiz, Cavallón, Vázquez de Coronado, Perafán de Ribera and Artieda. The Royal cédula of August 9, 1561 (Doc. No. 48), denying the claims of the Government of *Tierra Firme* with respect to the Province of Veragua and that of Costa Rica, should be especially borne in mind.

The Audiencia of the Confines disappeared in 1563, having been transformed into another, called the Audiencia of *Panama*, as result of the transfer to that city of the capital of the former. And in that Audiencia of *Panama* (which, however, must not be confused with the first of that name), Costa Rica continued, with other provinces that had pertained to the Audiencia of the Confines, from which Guatemala had been segregated and to which *Tierra Firme* was incorporated. The Audiencia of *Guatemala* having been re-established in 1568, and that of *Panama* having been dismembered, Costa Rica followed the former and *Tierra Firme* remained in the latter.

(b) *From its Re-establishment (1568) down to the Promulgation of the Recopilación (1860).*

The Audiencia of Panama objected to being deprived of the jurisdiction which had been segregated from it, and it became necessary for the King, by the Royal cédula of August 12, 1571 (Doc. No. 59), to order that it should not continue any longer to act in matters pertaining to that of Guatemala and to declare, by the Royal cédula of July 17, 1572 (Doc. No. 61), that the affairs of Nicaragua and Costa Rica belonged to the latter.

The Audiencia of Guatemala continued, in fact, to occupy itself with the government of and the administration of justice in Costa Rica, as it had done before its suppression. Thus we see it calling to account Perafán de Ribera, Diego de Artieda, Fernando de la Cueva, Ocón y Trillo and other governors; we see it taking measures concerning allotments of Indians and exemptions from tribute, and intervening in all the other affairs of that province, by virtue of its inherent powers, or by order of the King, until 1680, when the *Recopilación* was published, to say nothing of those acts which are set forth with their dates in the defense of Costa Rica.

The audiencia, however, had to refrain from appointing the Governors of Costa Rica, because the King reserved their appointment to himself, according to the Royal cédula of May 26, 1572 (Doc. No. 60), which he addressed to that body; but it did name those officers *ad interim*, pending permanent appointments by the King, in the case of Alonso de Anguciana (1573), Velázquez Rauiro (1590), Gonzalo de Palma (1592), Gonzalo Vázquez de Coronado (1600), Arias Maldonado (1662), etc.

And, finally, evidence that Costa Rica depended upon the Audiencia of Guatemala, is found in the protracted proceedings arising out of the plan to aggregate it to the Audiencia of Panama. On September 25, 1609 (Doc. No. 75), Philip III asked the Audiencia of Guatemala whether it would be desirable to place the Province of Costa Rica, "which is under the jurisdiction of your Audiencia," in the district of that of Panama; Philip IV informs the President of the latter, on October 24, 1623, that he is investigating the matter, and in 1627 and 1628 (Doc. Nos. 235 and 236), he calls upon the Governor of Costa Rica for reports; and Carlos II, after having asked the Audiencia of Guatemala for further reports concerning the aggregation of the Province of Costa Rica to that of Panama, declares in Law 1, title 2, book V, of the *Recopilación*, that the Government and Captaincy-General of Costa Rica shall form part of the Audiencia of Guatemala, dependent upon the Vicerealty of New Spain (Mexico).

The foregoing clearly demonstrates that, after mature reflection and in harmony with its history, the Province of Costa Rica was expressly recognized by the *Recopilación de Indias* as such province and a dependency of the Audiencia of Guatemala.

IV.

INTERPRETATION OF LAW 9, TITLE 1, BOOK V, DECLARING THAT THE WHOLE OF THE PROVINCE OF VERAGUA IS UNDER THE GOVERNMENT OF TIERRA FIRME.

(1) THE WHOLE PROVINCE OF VERAGUA CANNOT BE RE- FERRED TO AS BEING THE VERAGUA OF 1537.

Law 9, title 1, book V, of the *Recopilación de Indias* (Doc. No. 135), begins by citing as its precedent the Royal cédula issued by the Emperor at Valladolid on March 2, 1537, which has for a caption: "Let the Province of Veragua belong to the Government of Tierra Firme;" and its text contains the single order: "Let the whole Province of Veragua belong to the government of Tierra Firme."

This word "whole," which does not figure in the heading, and the above reference to the Royal cédula of 1537, constitute the principal basis of Colombia's argument in her effort to maintain that the Province of Veragua to which the *Recopilación de Indias* refers as subordinated to the Audiencia of Panama of the Viceroyalty of Peru, comprised the whole of what was Veragua in the purview of that Royal cédula. In her argument Colombia seeks to make the law say, by its citation and its text, that it restores things to the state in which they were found in 1537, and therefore nullifies everything that was done subsequently to that date.

We begin by making it clear that these *citations* of cédulas and *pragmáticas* which are seen at the heads or on the margins of the laws in the compilations, only serve

to indicate the origin or antecedents of the text, they form no part of the text. They have, therefore, no virtue as precepts unless they are reproduced in the text, in which case their authority is revived. Still, they always supply the historical explanation of the respective laws, although not in every case as their commentaries, since they may be complete negations thereof.

The Royal *cédula* of Valladolid, of March 2, 1537, is cited once at the beginning of this Law 9, title 1, book V, relative to Veragua, and *again* at the beginning of Law 4, title 15, book II (Doc. No. 106), which deals with the Audiencia of Panama. Are there two *cédulas* of the same date, or only one? If two, then the one that is cited with reference to Veragua, could not be the one which Colombia defends with so much earnestness; if there is but one, then, since it does not speak of the Audiencia of Panama, the citation of Law 4 can be understood in no other sense than as the authority for the formation of that audiencia.

It is impossible, therefore, to assert successfully that by the mere fact of the citation of the Royal *cédula* of March 2, 1537, by Law 9 it could re-enact that *cédula* and abrogate everything that had been commanded subsequently thereto. That law cited the *cédula* as the organic act of the Province of Veragua, just as another law cited it as a precedent of the Audiencia of Panama.

Let it be observed, furthermore, that that invocation of this Royal *cédula* by Colombia for the purpose of showing that by virtue thereof the *whole* of Veragua became a single province and belonged to the Government of Tierra Firme, is from every point of view *contra-productentem*. First, because this very Royal *cédula* establishes *the division* of Veragua into two parts, con-

the extended demonstration which we have already made of them. It will be sufficient to add this demonstration to the reasons stated, in order to establish conclusively the fact that Law 9, title 15, book V, cannot be interpreted in the sense of referring to the whole Province of Veragua as being the Veragua of 1537.

(2) NOR IS THE HYPOTHESIS ADMISSIBLE THAT VERAGUA IS A MAJOR AND COSTA RICA A MINOR PROVINCE.

Colombia defends herself in retreat, by referring the totality of the Province of Veragua as of the year 1560 and seeking to construct the duality of the Governments of Veragua and Costa Rica, mentioned by the *Recopilación*, by distinguishing them as major and minor provinces.

According to the opinion prepared by one of the eminent counsel, the Royal cédula of July 18, 1560 (Doc. No. 39), reveals the fact that out of ancient Veragua there had been formed two provinces, one a large one which kept the tradition and the name of Veragua, and the other a small one which was subject to the jurisdiction of Nicaragua, this small one being the province called Costa Rica.

In that very Royal cédula, the King specifically declares the division of Veragua into two parts; that entrusted to Francisco Vázquez, with which the Province of Veragua was constituted and of which he was soon after appointed Governor and Captain-General; and the part confided by commission to Ortiz de Elgueta, which his successors conquered and governed under the name of Costa Rica and which reached as far as the boundaries of the other.

Not because it was indicated that the conquest of Costa Rica would be initiated on the side next to Nicoya, or because Ortiz was *Alcalde mayor* of the latter, or because of the fact that governors appointed for Costa Rica were made

also governors of Nicaragua in order to facilitate the conquest, can it be maintained that Costa Rica was reduced to the "little scrap" of which the Memoranda of Colombia speak so disparagingly, or that Costa Rica can be confused with Nicoya or Nicaragua. In our opinion we have made sufficiently clear the manner in which the Province of Costa Rica was formed, from the commission given to Ortiz de Elgueta and transmitted to Cavallón, and it would seem to be unnecessary to return to that historical aspect.

On the other hand, the idea of a distinction into major and minor provinces is not applicable, for according to Law 1, title 1, book V, of the *Recopilación de Indias* (Doc. No. 131), the designation of *major* is only given to the districts of the audiencias, within which were found the *minor* ones, such as the governments, *alcaldías mayores*, etc., and Veragua never was an audiencia, neither was Costa Rica.

But *both were provinces*, in the category of governments and captaincies general, as they are expressly considered by Law 1, title 2, book V, of the *Recopilación*. And as the salaries are in proportion to the rank of the offices, and the latter with the character or importance of the provinces, let us look into the assignment of salaries made by this same law: Governor and Captain-General of the Province of Costa Rica, 2,000 ducats; Governor and Captain-General of the Province of Veragua, 1,000 *pesos ensayados*; Governor of Nicaragua, 1,000 ducats, and *Alcalde mayor* of Nicoya, 200 ducats.

It will be noted that the salary of 2,000 ducats assigned to the Governor and Captain-General of Costa Rica is the same that was provided for that office by the Royal cédulas of 1573 and 1574, which constituted the *capitula-*

ción and appointment of Diego de Artieda—a new fact, by the way, in favor of its efficacy. And if this salary be compared with the others mentioned, how can it be imagined that the Government and Captaincy-General of Costa Rica was of less importance than that of Veragua, or that it could have been made dependent upon, or, subordinated, to the mere Government of Nicaragua or the *Alcaldía mayor* of Nicoya?

Nor does the whole of the Province of Veragua to which Law 9 alludes, constitute the whole of this supposed major province of 1560, with the exception of the “little scrap” (*le petit lambeau*) adhering to Nicoya or Nicaragua.

(3) EXPLANATION OF THIS LAW, BY MAKING IT REFER TO THE PROVINCE EMANATING FROM THE DUKEDOM.

In our opinion Law 9, title 1, book V, can only be interpreted by construing it as referring to the Province of Veragua into which the dukedom was converted, because this interpretation is based on fact, on history, on the reason for its being included in the *Recopilación de Indias* and on its harmony with other laws of the same.

The only Province of Veragua in existence when the *Recopilación* was published, in 1680, was the one definitively constituted in 1560, proceeding from the suppressed ducal seignory, and differing from the remainder of the ancient Royal Veragua. This was called Costa Rica in the time of Sánchez de Badajoz (1539); Cartago and Costa Rica in the time of Diego Gutiérrez (1540); Cartago or New Cartago and Costa Rica in that of Cavallón (1561), and *Costa Rica* only upon being constituted as a province on the occasion of the appointment of Governor of Vázquez de Coronado (1565). The province retained

that name after the separation therefrom of Teguzgalpa when the Government of Diego de Artieda was created (1573), and until it ceased to be a Spanish province; and it is not to be imagined that, upon the publication of the *Recopilación de Indias*, its laws could refer to any Provinces of Veragua and Costa Rica other than those that then existed, abandoning reality and going back over the course of history in order to confuse them with the primitive Veragua of the coast discovered by Columbus, or of the *capitulaciones* with Nicuesa (1508), or with Felipe Gutiérrez (1534).

Colombia places a limit on this historical retrogression at March 2, 1537, and bases her arguments solely upon the citation made in Law 9, giving to those citations which only indicate origins a value they do not possess; but without noting that it was impossible to revive the totality of the old Veragua by the enactment of the Royal *cédula* of that date, since this Royal *cédula* sanctioned its division into two parts: Royal Veragua and Ducal Veragua.

It is just because this division was sanctioned in the Royal *cédula* of March 2, 1537, that we can explain its citation in Law 9, understanding that this law mentions that *cédula as a historico-legal precedent of the Province of Veragua, derived from the dukedom*, which was treated in the text, just as it also cited that same *cédula* as an antecedent to the formation of the Audiencia of Panama or Tierra Firme.

Let this citation be disregarded as being a mere historical reference, and what remains to Colombia wherewith to maintain that the *Recopilación de Indias* abrogated everything subsequent to said Royal *cédula*. The text of the law, far from enacting the Royal *cédula*, differs there-

from as regards the argument of Colombia, since it speaks of totality and not of division, as does that *cédula*.

Why was such a text written into the *Recopilación de Indias*? For the purpose apparent in other similar cases—that of explaining the territorial division and settling the doubts that might be raised concerning the respective jurisdictions.

Title 1, book V, which treats of “the districts, division and aggregation of the governments,” begins, in its Law 1 (Doc. No. 131), by laying down the principle that governors shall preserve the limits of their districts, continues with the explanation of the dependency in which certain *audiencias* are found in respect to the two viceroyalties, and then defines the dependency of certain governments with respect to the *audiencias*.

Because of the fact that the *Audiencia of Panama* went through so many alterations, and was contiguous with the Viceroyalty of New Spain and with other *audiencias* of the Viceroyalty of Peru, it was the one to which the most attention was given, particularly with reference to its Province of Tierra Firme.

Law 2 says (Doc. No. 132): “The Province of Tierra Firme belongs to the Government of Peru.” And to the end that there might be no doubt remaining, by reason of its having figured as a part of the *Audiencia* of the Confines, Law 7 (Doc. No. 133) reproduces the Royal *cédula* of 1550, saying that “* * * the Province of Tierra Firme, called Castilla del Oro, shall belong to the Provinces of Peru and not to those of New Spain.”

Law 8 (Doc. No. 134) thereupon indicates the eastern limit on the north with the *Audiencia* of Santa Fe, to which the Province of Cartagena belonged, and declared that the back portion of the Gulf of Urabá belongs to

Tierra Firme. And finally, in order to fix the western limit and banish all doubt of the fact, that, according to Law 7, the Viceroyalty of Peru and Audiencia of Panama should terminate with Castilla del Oro, Law 9 (Doc. No. 135) provides: “* * * Let the whole Province of Veragua belong to the Government of Tierra Firme.”

This Law, then, forms a harmonious whole with these other laws of the same title, and responds to the same idea that they do. And it is in harmony also with Law 1 of title 2 (Doc. No. 136), which follows thereafter, and includes the Province of Costa Rica in the Audiencia of Guatemala and Viceroyalty of New Spain, in conformity with the resolution taken by Carlos II, when the *Recopilación* was published, after the long proceedings which arose out of the plan to include that province in the Audiencia of Panama.

There cannot, then, be the slightest doubt that the Province of Veragua, to which Law 9 referred, was that which arose out of the dukedom, and this is even confirmed by the same citation of the Royal cédula of 1537, relative to the dukedom of which it was formed.

But if this is the simple and clear explanation of Law 9, the heading of which says that the government of the Province of Veragua belongs to Tierra Firme, how is the placing of the word “whole” at the beginning of its text to be explained?

It may be redundancy, which is frequently made use of to give more force to expression and to leave a phrase more complete; but we think there were special reasons for saying “the whole Province of Veragua.”

The Law could not say “the whole Dukedom of Veragua,” since it had been suppressed; neither could it refer to the boundaries of the latter, because they had not been

actually traced; nor were they in fact, the imaginary boundaries mathematically fixed by meridians and parallels. As to the contiguous provinces, they had been altered in one way or another, and there were also intermediate spaces which had been the object of disputes, and others which at any moment could give rise to controversy. It is enough to remember that from the meridian of the Belén River, the eastern boundary of the dukedom, as far as Castilla del Oro, which was fixed as the limit of the government of Felipe Gutiérrez (1524), there were territories which were not included in the ducal demarcation; that the demarcation of Ortiz de Elgueta, Cavallón and Vázquez de Coronado could lead to the belief that the boundaries of their government reached as far as the line between Nombre de Dios and Panama (1559-1565); and that the demarcation of Artieda (1573) fixed the limit of Costa Rica "as far as the *Province* of Veragua," making it comprise the Bocas del Drago on the north and the Valleys of Chiriquí on the south.

So that even if the Province of Veragua was formed with the territory of the Dukedom of Veragua, it did not coincide with its mathematical limits and it contained parts which were not within their geometrical configuration. And it was in our judgment to avoid doubt about the former dukedom, as well as to confirm the solutions to doubts which had been raised regarding the existence of the province, that the law said: "The whole of the Province of Veragua * * *," which was equivalent to saying, "all that may be or is the Province of Veragua," thus sanctioning its existence with the *whole* extension that it then had.

(4) CASE OF SUPPOSED CONTRADICTION OF THIS LAW
WITH OTHERS.

The result of the foregoing explanation is that Law 9, title 1, book V, is in perfect harmony with the other laws of the *Recopilación de Indias*; but if it be still insisted that this law resuscitated the ancient Veragua by re-enacting the Royal cédula of 1537 and abrogating all provisions subsequent thereto, under which supposition that law would be found to be in contradiction to others of the laws mentioned, we would suggest the following to show how this contradiction might be settled.

It is not unusual in the compilations to find laws which are contradictory, because they have been collected from different periods without due attention always to comparing them, or because of the lack of antecedents essential to their proper interpretation. So that, when it is sought to settle conflicts between laws or parts of a law in a certain compilation, which were originally enacted at different dates, failing any other solution, it may be taken as a rule that the earlier law shall be considered as amended or abrogated by the later one, as the case may be.

Following this criterion, and supposing that Law 9, title 1, book V, could have resuscitated the Government of Tierra Firme of 1537 and included therein all Veragua, ducal and not ducal, that law must be considered as abrogated by Law 7 of the same title; this is the Royal cédula of 1550, according to which only Castilla del Oro was incorporated into the Viceroyalty of Peru, and all of Veragua was left in the Audiencia of the Confines and Viceroyalty of New Spain. And although the effort is made to negative the existence of the Province of Costa Rica by pointing out the omission of its name in Law 6, title 15 of book II (Doc. No. 107), and by saying that that

law was enacted by Philip IV, the reply is instantly forthcoming that the law was modified by his successor, Carlos II, who decreed Law 1, title 2, book V (Doc. No. 136), which included the Government and Captaincy-General of the Province of Costa Rica in the Audiencia of Guatemala and Viceroyalty of New Spain.

V.

VALIDITY OF THE ROYAL CÉDULAS, WHICH ARE DEMARCATORY ACCORDING TO THE RECOPI- LACIÓN.

(I) PRINCIPLES ESTABLISHED BY THE RECOPIACIÓN IN REGARD TO THE VALIDITY OF THE ROYAL CÉDULAS PRIOR AND SUBSEQUENT THERETO.

Counsel for Columbia assume that the rights of Costa Rica are supported only by Royal cédulas, and then deny those cédulas possess any legal force, on the ground that the *Recopilación de Indias* rendered them wholly innocuous.

But it is not a fact, as we have already indicated in speaking of the *Recopilación* in general, that the latter abrogated all the prior dispositions. The Royal cédula of May 18, 1680, which authorized the publication of that code and prefaced it, says:

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

Law 1, title 1, book II (Doc. No. 92) provides that whenever the necessity may arise for making new laws reports shall be made to the Council of the Indies and it declares that the ordinances enacted for cities and communities as well as those made for the welfare of the Indians and for good administration, shall continue without alteration, provided they be not contrary to the laws. And Law 2, of the same title and book (Doc. No. 93), directs that in matters not covered by the laws of the *Recopilación* “or Cédulas, *Provisiones* or Ordinances issued for the Indies and not revoked, or by those which

are promulgated by our order," the laws of Castile shall be enforced.

By Law 2, title 2, book II (Doc. No. 94), the Council of the Indies is given supreme jurisdiction of all the western Indies, and empowered it to "make, with our advice, the general and special Laws, Pragmatics, Ordinances and *Provisiones* * * *;" and the Council is further instructed that those "* * * provisions and commands shall be in everything and by everybody complied with and obeyed in all places."

In this way the *Recopilación de Indias* laid down these principles: First, that Royal cédulas which are not in contradiction to its laws shall continue in force; and second that all Royal cédulas thereafter issued should attain to the dignity of Laws, if enacted by the Council of the Indies, by and with the advice of the King.

2. LEGALITY OF TERRITORIAL DIVISION AND THE BOUNDARIES OF DISTRICTS.

This is perfectly well settled by two laws decreed by the very authors of the *Recopilación de Indias*.

Law 1, title 15, book II, of Philip IV (Doc. No. 105), after explaining how all the discoveries of the Indies were divided into twelve audiencias, the districts of which were subdivided into governments, *corregimientos* and *alcaldías mayores*, which were subordinate to those audiencias, and "* * * all to our Supreme Council of the Indies, which represents our Royal Person," says:

"* * * We establish and command, that now and until We otherwise order, the said twelve Audiencias shall be retained, and that within the district of each one the *Governments, Corregimientos* and

Alcaldías Mayores which they now have shall be preserved, and that no change be made therein, without our express order or that of our said Council."

Then follow the laws making the demarcation of audiencias.

Law 1, title 15, book II, of Philip IV (Doc. No. 105), after setting forth the advantages of the differentiation of the districts and territories, says:

"We order and command the Viceroys, Audiencias, Governors, *Corregidores* and *Alcaldes mayores* to keep and observe *the limits* of their jurisdictions, as *they may be fixed by the Laws* of this book, the *Titles* of their offices, the *Provisiones* of the superior Government of the provinces, or by *use and custom* legitimately introduced."

Then follow the laws designating the districts of various governments, among which are found those of the Audiencia of Panama.

So, then, the *Recopilación de Indias* recognized the existing legality of the demarcations at the moment it was published; and it not only recognized it, but it confirmed it, in so far as it was not in contradiction with its laws, and even prohibited any change therein without express order of the King or of the Council of the Indies.

These provisions relating to territorial division were in accord with the general provisions concerning the value of Royal cédulas prior and subsequent to the *Recopilación*, and they all sanction the validity of the Royal cédulas that established boundaries. Enactments prior to the *Recopilación*, continued in force not only by reason of being Royal cédulas which did not contradict that code, but because they established the *status quo* of territorial divi-

sion; those that were issued afterwards were required to be by the express order of the King or the Council of the Indies, in order to modify the demarcations existing in 1680.

The only condition that qualified the efficacy of the Royal cédulas demarcatory of boundaries, and determining the legal status of 1680, was that they should not be in contradiction to what was provided by the laws contained in the *Recopilación*. But as these laws only indicated in a general way the boundaries of the audiencias and solved various doubts concerning the inclusion of certain provinces therein, the Royal demarcatory cédulas which specified those boundaries and indicated those of the governments— without being opposed to the general demarcation—beside being valid, had the importance of being *complementary* to the *Recopilación* itself.

(3) SPECIAL CONSIDERATION OF THE CAPITULACIONES.

The Royal cédulas approving the *capitulaciones* for the discovery and settlement of territories, being Royal cédulas which were not opposed to the laws of the *Recopilación*, and having produced the legal status of the demarcations, unite the conditions requisite to their validity and efficacy in the matter of territorial division; they disregard the personal aspect of those *capitulaciones* and consider them in their character as demarcatory orders. But counsel for Colombia only see in them a *contract*, of no consequence in public law; we are therefore impelled to a special consideration of the subject.

(a) *Juridical Character of the Capitulaciones.*

Counsel for Colombia say:

“The jurisdictional demarcations, the determination of territories submitted to Viceroy, Governors

or Audiencias, were never made by means of *capitulaciones* or contracts between the State and private individuals, but by *Royal cédulas*, Royal orders, acts of Public Authority and of the sovereignty of a unilateral character, such as the exercise of dominion over the territory of the Nation."

And, generalizing the question, they add:

"It is a principle of Public Law, inherent in the very essence of the sovereignty of the State, that the territorial division shall be a matter submitted directly to the decision of the sovereign. When the sovereignty is exercised over the national territory, it is manifested by acts of Public Authority, in conformity with the constitution of each State * * *, but to no one acquainted with the law would it occur that the concessions of the State to its subjects for the exploitation of territories or regions, their cultivation or their administration under this or that form, implied changes in the political and civil jurisdiction."

In the first place, it may be said, in reply to these assertions, that a *capitulación* presents two aspects: One of *personal* interest, that of the individual in whose favor it was granted, and the other one of *public* interest, that of the discovery, the colonization and administration of the territory designated—a duality in aspect which also characterized the titles of appointment to governorships. The personal aspect disappeared with the individual or the one who held the granted right; the public aspect persisted, the territorial entity being left with the boundaries imposed upon the contracting party or governor, as long as these limits were not changed by any subsequent provision.

Considering the *capitulación* as a *compact*, it was in effect a bilateral act, which produced reciprocal obliga-

tions between an individual and the Crown. But prior to the contract and above its capacity as a contract, it had the character of a *unilateral act of sovereignty*, since by making use of it the Monarch provided this mode of discovering, colonizing and administering a certain territory that he marked out, approved the *capitulación* by Royal cédula, and when its term ended, he appointed within that demarcation another person to continue its administration. Thus were formed the different territorial demarcations which, under the names of governments, *corregimientos* and *alcaldías*, went to fill out or complete the general demarcations of the audiencias, under a régime of territorial division established by the Sovereign. The boundaries prescribed in the *capitulaciones* were the boundaries of governments, and the boundaries of the governments were respected and confirmed by the *Recopilación*.

Even considering the *capitulaciones* as contracts, they can never be compared with those of private law; they might come under the category of contracts for public works and services or of administrative concessions. It is by the use of its sovereignty, and in no sense by abdicating it, that the State undertakes in this manner to perform services and works or to utilize the public domain; and in doing so, it imposes as conditions those which belong to the nature of the concession, work or service. The boundaries of the land designated to the contracting party or the concessionaire subsist for the State as long as it does not modify them. Who doubts, for example, when a railway line granted to a corporation reverts to the State, that it will have the same delimitation that it had previously?

Neither can there be any successful comparison between *capitulaciones* and such administrative acts; these taken altogether constitute a *system of colonization and government* which Spain employed in her exploration, settlement, pacification and government of those vast territories—a system responding to needs that are not felt in countries completely formed to which a law of territorial division is given.

The *Recopilación de Indias* recognized and confirmed the result of this system which had been employed, that is to say, the *status quo* of the demarcations that had been made at the time it was published. Far from disregarding the *capitulaciones* it takes them up especially in its book IV, and gives to them the characteristics of a most singular institution of Public Law, based on the sovereignty.

(b) *The Capitulaciones in the Light of Book IV of the Recopilación.*

Title 1, of book IV treats of “the discoveries” in general, and lays down the principle that no discovery or settlement may be made at the expense of the King, unless the latter expressly authorizes it (Law 17; Doc. No. 115).

It provides how the discoveries are to be granted; no new grants were to be made unless the prior ones should have been carried out and unless the King should be consulted; those to whom the right to make such discoveries had been granted were to qualify as men in whom reliance could be placed; the contracting parties were to be required to observe the laws and instructions, to give an account of their work and to keep within the boundaries indicated; in the event of any doubt or question

concerning *the boundaries* established by the *capitulaciones* they were to be determined by the respective *audiencia*, and in case two *audiencias* should be interested in the same matter and fail to agree, then the matter was to be determined by the Council of the Indies (Laws 1, 2, 4, 11 and 14; Doc. Nos. 108, 109, 110, 113 and 114).

It directs that in all *capitulaciones* the word "*conquest*" should be omitted and that "*pacification and settlement*" be used instead (Law 6; Doc. No. 111), and authorizes the explorers to give names to the territories, rivers and mountains they might discover and to the cities they might establish (Law 8; Doc. No. 112).

Title 2 concerns itself with discoveries by sea. It requires special permission to undertake them (Law 1; Doc. No. 117); it imposes the condition of providing at least two ships (Law 2; Doc. No. 118); and cautions the explorer that in making a landing upon any territory he must take possession in the name of the King (Law 11; Doc. No. 119).

Title 3 treats of discoveries by land. It directs that an inquest be taken before making the *capitulaciones* (Law 1; Doc. No. 120) and fixes the powers of those who enter into them. Among these are the power to appoint *judges* in the territory delimited, which includes the right to dismiss therefrom those who were already there, the power to divide this territory into districts, to appoint *alcaldes* therein, to make ordinances for its proper administration, etc. (Laws 13, 16 and 17; Doc. Nos. 123, 125 and 126).

Both in this title, and in the three that follow, which speak of the pacifications, of the settlements, and of the explorers, pacificators and settlers, various rights are stated as pertaining to the holders of *capitulaciones*, such

as the erection of forts, the establishment of cities, the exercise of jurisdiction during their lives and its transmission to their heirs, the holding of the title of *alcalde mayor*, if their territory borders with that of viceroys or audiencias, and even that of Marquis if it were an *Adelantado*.

The Crown imposed obligations and restrictions upon them in connection with the settlement and pacification of the country. Law 8, title 4 (Doc. No. 129), for example, prohibited the discoverer from making war on the Indians unless absolutely necessary, or doing any other harm or injury, or taking anything from them without payment therefor.

All of this shows very clearly the very special nature of the *capitulaciones*, which were a real *institution of public law*, under the shelter of which were formed the provinces and their districts. The boundaries fixed by the Council of the Indies in the *capitulaciones* granted by the King and placed under the protection of the audiencias, were also, therefore, boundaries of public law.

Law 7, title 7 (Doc. No. 130), provides that “* * * the district and territory which may be granted by *capitulación* for settlement,” shall be allotted by first holding out the town plots, commons and pasture lands for the public, and then separating the remainder into four parts, one for the founder and the other three parts for equal division among the settlers. The demarcation thus made, it created rights in favor of the *settlement* which were not extinguished with the disappearance of the founder.

And, finally, the *Recopilación* declared the *capitulaciones* to be in force provided they were not opposed to it (Law 18, title 1, book IV; Doc. No. 116), as follows:

“We order and command that all discoveries and pacifications, and all *capitulaciones* and writings which may have been made concerning them, are to be suspended if they are or may be *in contravention of the Laws of this book*; and that in all which may be made these Laws shall be observed and executed, without exceeding in whole or in part.”

(c) *Capitulaciones Originating the Provinces of Veragua and Costa Rica.*

By virtue of such *capitulaciones* the Provinces of Veragua and Costa Rica began to take legal form according to the general system of that period.

The Dukedom of Veragua had its birth, in 1536, under the arbitral settlement of a suit growing out of the *capitulaciones* made with Christopher Columbus in 1492. When the dukedom was suppressed by agreement of Don Luis Columbus with the Council of the Indies, in 1556, its territory was granted by *capitulación* to Francisco Vázquez, who was thereunto authorized by the Royal cédula of 1557; and Philip II erected it into a province when he appointed this same Francisco Vázquez as Governor and Captain-General by Royal cédula of August 20, 1560.

Ancient Veragua having been divided into two parts by the Royal cédula of March 2, 1537, in consequence of the creation of the dukedom, the King disposed of the remaining part by giving it to Diego Gutiérrez in the *capitulación* and Royal cédula of November 29, 1540. That instrument fixed as the eastern boundary the meridian that passed along the end of the twenty-five leagues of the dukedom, starting from the meridian of the Belén River. If Colombia denies this Royal

cédula and goes back to that of 1537, she must recognize that the remaining part to which this latter referred was the demarcation given by *capitulación* to Felipe Gutiérrez in 1534 and then existing; according to this demarcation the territory that later was to become Costa Rica, reached as far as the limits of Castilla del Oro, which had been given to Pedrarias Dávila and Pedro de los Ríos, subject to the rights of Columbus.

The personal rights of Diego Gutiérrez in the *capitulación* of 1540 having been extinguished, the exploration and settlement of Costa Rica was made by order of the King *without capitulaciones*, but under the commission given to Ortiz de Elgueta; and the province of that name was constituted in the form of a government and captaincy-general when Vázquez de Coronado was appointed to fill those offices in 1565. The *capitulación* of Artieda, of December 1, 1573, separated the northern part, with which the Province of Teguzgalpa was formed later on by the *capitulación* of Diego López of 1576, and it left the Province of Costa Rica definitively bounded.

It is important to note that the *capitulaciones* of Diego Gutiérrez (1540) and of Artieda (1573) were approved *directly* by the King in Royal cédulas and by accord with the *Council of the Indies*, thus combining *all the requisites* which the *Recopilación de Indias* demands for their validity and continuance in force.

It cannot be said that these *capitulaciones* expired with the death of the persons with whom they were made, for the demarcations made by the King always remained and the *boundaries fixed by them* were those that limited the jurisdiction of the governors who were afterwards appointed, those preserved by the superior authorities in maintaining such governors in their rights,

and those sanctioned by use and custom—those in fact which the *Recopilación* commands to be respected and kept, as stated in Law 1, title 1, book V (Doc. No. 131).

For the reasons above stated, in all the boundary questions of the Spanish-American Republics, the value of *capitulaciones* has been recognized as decisive of territorial divisions. The extinction of the rights of the holders produced no effects on those divisions. This has been demonstrated in the controversies and litigations between Colombia and Venezuela, Peru and Bolivia, Peru and Ecuador, Chile and Argentina, Argentina and Brazil, etc.

In the boundary question between *Honduras* and *Nicaragua*, which was decided by the King of Spain in 1906, the *very same counsel who defended Colombia against Costa Rica* not only recognized the value of *capitulaciones*, but they invoked those here cited in support of the rights they were then defending, as we have already stated; Señor Maura for instance, said, in defense of *Nicaragua*, that the Diego Gutiérrez *capitulación* of 1540 defined the eastern limit of Honduras and that the Artieda *capitulación* of 1573 clearly distinguished Costa Rica from Nicaragua; and Señor Silvela, in defending *Honduras*, asserted that this *capitulación* with Artieda DEFINITELY FIXED THE LIMITS OF COSTA RICA.

(4) UNILATERAL ACTS OF THE CROWN IN THE UNQUESTIONABLE EXERCISE OF SOVEREIGNTY, AND TITLES OF THE GOVERNORS. FINAL DEDUCTIONS.

Although the Royal cédulas approving the *capitulaciones* were acts of pure sovereignty, as we have demonstrated, it is important to remember that the Crown constituted the Provinces of Veragua and Costa Rica by unilateral acts of unquestionable sovereign power.

Philip II, by himself and without contracting with anyone, marked out the Province of Costa Rica in the directions given by Royal cédulas of December 13, 1559, and February 23, 1560, to Ortiz de Elgueta, who was to explore, settle and govern it; and he transmitted this commission to the Licentiate Cavallón in the same terms by Royal cédula of February 28, 1561, in which he charged the Audiencia of the Confines that, if Cavallón did not accept, it should appoint a judge or some other person to carry it out. The boundaries given to Ortiz de Elgueta and to Cavallón were the same as those stated in the appointment of Vázquez de Coronado as Governor of Costa Rica by Royal cédula of August 7, 1565.

Colombia will not be able to deny that these Royal cédulas were unilateral acts of the Crown, expressions of the purest sovereignty; indeed, were they preferred to the *capitulación* of Artieda it becomes evident that Costa Rica could be understood as reaching as far as the cities of Nombre de Dios and Panama.

The Royal cédulas in which audiencias were created and suppressed, in which Costa Rica was declared to be included in the Audiencia of the Confines, or Guatemala, and by which, through that audiencia, questions were determined relating to its administration—all these were also acts involving the unquestionable exercise of sovereignty; and particularly in that category were the cédulas making appointments of governors.

The titles issued to governors are of very great importance in this connection, and for two reasons: as Royal cédulas confirmatory of the demarcations made in the *capitulaciones*, and as means of proof expressly recognized by the *Recopilación* in the matter of boundaries.

Let us remember that under Law 1, title 1, book V, the audiencias, governors and other authorities must keep the *boundaries* of their jurisdictions, "as they may be fixed by Laws of this Book, the Titles of their offices, etc.," the *Titles of the Offices* taking therefore the first place as matter of proof, immediately after the laws; and we will now enumerate the titles of the offices of the Government of Costa Rica, from the time that the distinction was initiated in Veragua (Royal and Ducal), confining ourselves simply to the principal ones and their enumeration only, since their history has been fully written.

1. Title of Governor granted to Felipe Gutiérrez by Royal cédula of February 6, 1535 (Doc. No. 9) in consequence of the approval of his *capitulación* of 1534. By that instrument there was placed under his administration the whole territory, subject to the rights of Columbus, as far as Castilla del Oro, the boundaries of which were those assigned to Pedrarias Dávila and Pedro de los Ríos.

2. Title of Governor granted to Diego Gutiérrez, by Royal cédula of December 16, 1540 (Doc. No. 19), in consequence of the approval of his *capitulación* of November 29, giving him the administration of the Province of Cartago, from the Río Grande west of Cape Camarón as far as the limit of the dukedom, where terminated the twenty-five leagues granted to Columbus, starting from the meridian of the Belén River.

3. Royal cédula of January 11, 1541 (Doc. No. 20), directing that these limits be respected and observed by all the governors of the Indies.

4. Title of Governor granted to Juan Vázquez de Coronado, by Royal cédula of April 8, 1565 (Doc. No. 52), without *capitulación*, giving to him the administration

of the Province and territory of Costa Rica, with all its jurisdiction.

5. Royal Cédula of August 7, 1565 (Doc. No. 54), directed to the same Vázquez de Coronado, Governor and *Adelantado* of the Province of Costa Rica, declaring that this province comprised the territory from Honduras and Nicaragua “* * * on the side of the cities of Nombre de Dios and Panama, between the South Sea and that of the North,” in the same terms in which the demarcation assigned to Ortiz de Elgueta was fixed.

6. Title of Governor granted to Perafán de Ribera, by Royal cédula of July 19, 1566 (Doc. No. 56), without *capitulación*, giving to him the administration of the Province of Costa Rica, “* * * in the matters which it has been customary for the Governors who have been up to this time in the said province to conduct.”

7. Title of Governor and Captain-General granted to Diego de Artieda, by Royal cédula of February 18, 1574 (Doc. No. 63), in conformity with that of December 1, 1573, approving his *capitulación* and giving to him the Government and Captaincy-General of the Province of Costa Rica, which it says extends from the Desaguadero as far as the Province of Veragua, including in Costa Rica the Valleys of Chiriquí on the south and the Bocas del Drago on the north. The latter denomination embraced the Bay of Almirante and the Lagoon of Chiriquí, in which region he was directed to establish a city; this he did, giving to the city the name of Artieda.

8. Royal cédula of December 29, 1593 (Doc. No. 70), giving the government of the Province of Costa Rica, with *capitulación*, to Don Fernando de la Cueva “* * * as it was held by Diego de Artieda Chirino.”

The province having been bounded definitively by the Royal cédulas of 1573 and 1574, the appointments of governors subsequent to Artieda and Cueva were conferred with like jurisdiction. We have seen how the Audiencia of Guatemala filled those offices *ad interim* and now we will add that the Crown continued to exercise its rights to appoint their proprietors.

In fact, after Cueva, the Crown did appoint, as Governors and Captains-General of this Province of Costa Rica, Juan de Ocón y Trillo, in 1603; Juan de Mendoza, in 1612; Alonso del Castillo, in 1618; Juan de Echáuz, in 1622, Juan de Villalta, in 1629; Gregorio de Sandoval, in 1634; Juan de Chaves, in 1644; Juan Fernández Salinas, in 1650; Andrés Arias Maldonado, in 1655; Juan López de la Flor, in 1663; Juan Francisco Sáenz, in 1673, and Miguel Gómez de Lara, on August 7, 1680—that is, two months after the Royal cédula which sanctioned the *Recopilación* (May 18, 1680).

In the titles of these appointments no boundaries were assigned to these Governors and Captains-General of Costa Rica that were distinct from those established by the demarcation of Artieda. And if the Monarch who published the *Recopilación de Indias* recognized in that code the existence of the Government and Captaincy-General of Costa Rica and directed that the boundaries stated in the Titles of the Governors must be respected, is the same one who appointed Governors and Captains-General of Costa Rica (Sáenz and Lara), before and after sanctioning it, without modifying the traditional boundaries clearly established in prior titles, counsel for Colombia show much temerity in disregarding not only the boundaries mentioned, but the very existence even of that province.

Let us conclude, then, by affirming that the *Recopilación de Indias* respected and confirmed the existence of the Province of Costa Rica, with the demarcation established by the Royal cédulas of December 1, 1573, and February 18, 1574.

PART THIRD.

COSTA RICA CONTINUED IN THE SAME LEGAL STATUS OF DIFFERENTIATION FROM VERAGUA FROM THE RECOPIACIÓN DOWN TO THE INDEPENDENCE.

I. FROM THE RECOPIACIÓN (1680) TO 1803.

- (1) CREATION OF THE VICEROYALTY OF SANTA FE AND VICISSITUDES OF THE AUDIENCIA OF PANAMA, UNTIL ITS SUPPRESSION (1717 TO 1751).
- (2) THE PROVINCE OF VERAGUA PASSED INTO DEPENDENCE UPON THE VICEROYALTY AND AUDIENCIA OF SANTA FE. COSTA RICA CONTINUED DEPENDENT UPON THE AUDIENCIA OF GUATEMALA OF THE VICEROYALTY OF MEXICO.
- (3) THE CROWN CONTINUED TO APPOINT GOVERNORS AND CAPTAINS-GENERAL OF THE PROVINCE OF COSTA RICA.
- (4) BOUNDARIES OF THE VICEROYALTY OF SANTA FE WITH COSTA RICA AS A PROVINCE OF THE AUDIENCIA OF GUATEMALA AND BORDERING THEREON:
 - (a) *Antecedents;*
 - (b) *Description of the Kingdom of Tierra Firme by the Comandante General of Panama, Don Antonio Guill, in 1760;*
 - (c) *Description of the Viceroyalty of Santa Fe by its Viceroy, the Marquis de la Vega de Armijo, in 1772;*

- (d) *Report of the Governor of Veragua, Don Félix Francisco Bejarano, in 1775.*
- (e) *Description of the Viceroyalty of Santa Fe, of Tierra Firme and of Veragua, by the Missionary Sobreviela, in 1796;*
- (f) *Official Communication of the Governor of the Islands of San Andrés, in 1802; and Résumé.*

II. THE ROYAL ORDER OF NOVEMBER 20, 1803, REFERRING TO THE MOSQUITO COAST.

1. ANTECEDENTS, FORMATION AND TEXT OF THE ORDER.
2. THAT ORDER WAS NOT APPLICABLE TO COSTA RICA, BECAUSE WHAT WAS CALLED THE MOSQUITO COAST ENDED BEFORE THAT PROVINCE BEGAN.
3. MILITARY AND TRANSITORY CHARACTER OF THIS ROYAL ORDER.
4. THE ORDER COULD NOT CHANGE THE LAWS OF TERRITORIAL DIVISION.
5. THE INEFFICACY AND ABROGATIONS OF THIS ROYAL ORDER.

III. LAST YEARS OF THE SPANISH SOVEREIGNTY.

1. FIRST PERIOD OF THE CONSTITUTIONAL RÉGIME IN SPAIN;
 - (a) *General Organic Provisions;*
 - (b) *Continuation of the Dependency of the Northern Coast of Costa Rica upon the Government of that Province;*

(c) *Description of the Province of Costa Rica in the proposal made by its Deputy in the Cortes for the Creation of a Bishopric.*

2. ABSOLUTE GOVERNMENT OF FERNANDO VII.
3. SECOND CONSTITUTIONAL PERIOD.

IV. THE INDEPENDENCE AND THE "UTI POSSIDETIS."

1. INDEPENDENCE OF THE PROVINCES OF GUATEMALA AND OF NEW GRANADA.
2. THE PRINCIPLE OF COLONIAL "UTI POSSIDETIS."
3. APPLICATION OF THIS PRINCIPLE.

I.

FROM THE RECOPIACIÓN (1680) TO 1803.

I. CREATION OF THE VICEROYALTY OF SANTA FE AND VICIS- SITUDES OF THE AUDIENCIA OF PANAMA, UNTIL ITS SUPPRESSION (1717 TO 1751).

In the XVIIIth century the territorial division established by the *Recopilación de Indias* was modified, by the creation of two more viceroyalties, that of Santa Fe and that of Buenos Aires.

The Viceroyalty of Santa Fe, or of New Granada, was created by decree of the King and Royal cédula of May 27, 1717 (Doc. No. 155), recasting in the Audiencia of Santa Fe the Audiencias of Panama and Quito, all of which depended upon the Viceroyalty of Peru, and adding the Comandancia of Caracas, which belonged to the Audiencia of Santo Domingo. There was placed at the head of this new circumscription a viceroy, who was to reside in the city of Santa Fe and who should be Governor, Captain-General and President of the Audiencia of that name, ' * * in the same manner as are those of Peru and New Spain, and with the same powers.'*

This viceroyalty, not having produced the results expected of it, was suppressed a few years later, in 1723, and the Audiencia of Panama, which had been suppressed when it was formed, was re-established in the latter year.

But in view of the claims of New Granada, and of what was proposed by the Council of the Indies, the King provided for the re-establishment of the viceroyalty, by Royal

cédula of August 20, 1739 (Doc. No. 163), which reads as follows:

"I have resolved to establish anew the Viceroyalty of the New Kingdom of Granada and have appointed therefor the Lieutenant-General Don Sebastián de Eslava * * *, being also President of my Royal Audiencia of the city of Santa Fe in said New Kingdom of Granada and Governor and Captain-General of the jurisdiction thereof and *provinces that have been added thereto*, which are: that of *Panama* with the territory of its Captaincy-General and Audiencia, that is to say those of *Porobelo, Veragua* and *Darién*; those of *Chocó*, Kingdom of *Quito*, *Popayán* and *Guayaquil* * * * the Audiencias of *Panama* and *Quito* to continue and subsist as they are, with the same subordination and dependency from this Viceroy as the others have that are subordinated to the Viceroyalties of Peru and Mexico, with regard to their respective Viceroy."

Within the new viceroyalty and under the dependency of its viceroy, he established three *Comandancias generales*: those of *Panama*, *Cartagena* and *Caracas*.

The Audiencia of *Panama*, then, passed from the Viceroyalty of Peru to that of *Santa Fe*. But it was *suppressed* later on, by the Royal cédula of July 17, 1751 (Doc. No. 168), because of the small amount of business it was called upon to transact, the many conflicts it produced and the decadence of its provinces. The King directed that all the political and military matters of the city of *Panama* and Kingdom of *Tierra Firme* should be left in charge of a governor and lieutenant-general "upon the same footing as the Governors of *Cartagena* and *Veracruz* serve," under the jurisdiction of the Audiencia of *Santa Fe*.

- (2) THE PROVINCE OF VERAGUA PASSED INTO DEPENDENCE UPON THE VICEROYALTY AND AUDIENCIA OF SANTA FE. COSTA RICA CONTINUED DEPENDENT UPON THE AUDIENCIA OF GUATEMALA OF THE VICEROYALTY OF MEXICO.

The Viceroyalty of Santa Fe having been created and the Audiencia of Panama suppressed, the *Province of Veragua* passed, together with that of Tierra Firme, Portobelo and Darién, as the said Royal cédula of 1739 expressly states, into dependence upon the Viceroyalty and Audiencia of Santa Fe, or upon the New Kingdom of Granada, and so remained until the independence.

On the other hand *the Province of Costa Rica*, which from the creation of the Audiencia of the Confines, or Guatemala, formed part of it, continued to depend upon the Audiencia and Captaincy-General of Guatemala, of the Viceroyalty of New Spain (Mexico), until its colonial emancipation.

This is clearly shown by the fact that the Audiencia of Guatemala continued, as it did before the *Recopilación de Indias*, to act, in all the affairs of Costa Rica, as the superior of its governors and to receive the communications and orders of the King for their discharge, as appears from the numerous cases cited in the documents submitted in this litigation.

And this is corroborated by the fact that the *Audiencia of Guatemala* constantly filled the offices of governor and captain-general of Costa Rica, *ad interim*, until the Crown made the appointments. It was in this temporary fashion that the Audiencia of Guatemala appointed, as Governors and Captains-General of Costa Rica, Diego de Herrera Campuzano (1704), José Antonio Lacayo de Briones

(1712), Pedro Ruiz de Bustamente (1716), Francisco Carrandi (1736), Francisco de Olaechea (1739), Luis Díez Navarro (1747), Francisco Fernández de la Pastora (1754), José González Rancaño (1757), Francisco Javier de Oriamuno (1763), Juan Flores (1781), José Antonio de Oriamuno and Juan Martínez de Pinillos (1789).

(3) THE CROWN CONTINUED TO APPOINT GOVERNORS AND CAPTAINS-GENERAL OF THE PROVINCE OF COSTA RICA.

Carlos II who, *before* the publication of the *Recopilación*, appointed Juan Francisco Sáenz as Governor and Captain-General of Costa Rica, and Miguel Gómez de Lara *after* he gave his royal sanction to that code, appointed two others: Manuel de Bustamente (1692) and Francisco Serrano de Reina (1695), fully demonstrating, therefore, that in his compilation of laws, he had not intended to suppress, nor had he suppressed, the Province of Costa Rica.

His successors continued to fill those offices in proprietorship, as appears by the appointments of Lorenzo Antonio de Granda (1703), Diego de la Haya Fernández (1718), Baltasar Francisco de Valderrama (1724), Antonio Vázquez de la Cuadra (1733), Juan Gemmir (1738), Cristóbal Ignacio de Soria (1748), Manuel Soler (1757), José de Nava (1765), Juan Fernández de Bobadilla (1771), José Perié (1777), José Vázquez Téllez (1789), Tomás de Acosta (1796), Juan de Dios de Ayala (1810) and Bernardo Vallarino (1818).

The titles of these governors and captains-general were conferred by Royal cédulas, granting to them the same jurisdiction that their predecessors exercised, but without changing the boundaries of the province.

Señor Maura states in his opinion in behalf of Colombia (page 33) that it is idle to give any attention to the period subsequent to 1680, because both parties were agreed that the designation of the frontier districts of the Audiencias of Panama and Guatemala did not suffer any alteration whatever during the centuries that followed.

(4) BOUNDARIES OF THE VICEROYALTY OF SANTA FE WITH COSTA RICA AS A PROVINCE OF THE AUDIENCIA OF GUATEMALA AND BORDERING THEREON.

After the Viceroyalty of *Sante Fe* was created and the Audiencia of Panama was recast, the boundaries of the Province of Costa Rica continued as a matter of fact to be the same, on the east, as they were before; that is, as separating the Audiencia of Guatemala from the Audiencia of Panama, a dependency of the Audiencia of Peru.

(a) *Antecedents.*

We have already seen, in treating of the demarcation of Artieda of 1573, how, by virtue thereof, there was left included in the Province of Costa Rica, the Valley of Guaymí on the north and within the limit marked by the Escudo de Veragua, and the Valleys of Chiriquí on the south.

Dr. Alonso Criado de Castilla, the Senior Judge of the Audiencia of *Panama*, on May 7, 1575 (Doc. No. 64), wrote his "Description of the Kingdom of *Tierra Firme*, Which is Subject to the Royal Audiencia of Panama," in which he told the King:

"The territory that is settled in this Kingdom, as far as the jurisdiction of your Royal Audiencia of Panama extends, is eighty leagues in length, that is,

from the Gulf of San Miguel *as far as Concepción de Veragua*; and twenty-four in width, which is from the same city of Concepción to Philipina.”

Regarding the Province of Veragua, he asserted that it

“* * * has a district thirty leagues in length, extending from the said city of *Concepción*, as far as the village of Mariato, and in width twenty leagues in its greatest extent, which is from the River *Calobre* as far as the said city of *Concepción*.”

According to this description of the Audiencia of Panama, the demarcation of Artieda was located outside of it. In order to decide the conflict, which had arisen between the latter and the Governor of Veragua in regard to the settlements Artieda had been planning to make the King, by Royal cédula of August 30, 1576 (Doc. No. 66), entrusted to the Audiencia of *Guatemala* the duty of determining upon which side those establishments were going to lie since they should have been dependencies of the governor to whom the Guaymí River, the Bay of Almirante and Bocas del Drago belonged as the boundaries of his government. And, indeed, Artieda founded the city of his name in 1577, and took possession of the Valley of Guaymí in 1578 (Docs. Nos. 67 and 68).

The President of the Audiencia of Guatemala and the Judge Inspector (Juez Visitador) of Costa Rica issued a commission, in 1591 (Doc. No. 78), to Captain Cabral, in the execution of which he traveled over all of Bocas del Drago and the Bays of Almirante; and

“* * * having entered the Guaymí River, he traversed with the soldiers the whole of the isthmus of land which lies from the North Sea to the South Sea and came out to the savannas of Chiriquí.”

We have seen, also, how in 1605, Sojo, the deputy of Ocón y Trillo, Governor of Costa Rica, founded the city of *Santiago de Talamanca*, the territory of which was marked out as far as the line of the Escudo de Veragua, the end of the Government of Costa Rica. Dr. Alonso Criado de Castilla, who knew so well the Audiencia of Panama, was then President of the Audiencia of Guatemala and in his letter to the King of November 30, 1608 (Doc. No. 74), he speaks of the territory of the Bay of Almirante as belonging to Costa Rica, “* * * which borders upon that of Veragua belonging to the district of the Royal Audiencia of Panama,” and he makes allusion to the conquest of Talamanca and the boundaries of the Valley of Duy.

During the XVIIth century the governors of Costa Rica and the Audiencia of Guatemala made great efforts to subdue the Indians of Talamanca, and the King approved the undertakings that were carried on, and even bestowed special rewards on their leaders (Docs. Nos. 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 137, 138, 139, 153, 161, 237, 238 and 239). The missionaries worked admirably in the XVIIIth century to pacify and reduce the Indians of Talamanca, the missions having their headquarters in Guatemala, the audiencia of which, and the Province of Costa Rica, helped them so far as they were able by supplying them with necessities and protecting them with military escorts (Docs. Nos. 140, 142, 143, 144, 145, 147, 149, 152, 153, 158, 164, 170, 172, 175, 178, 217 and 240).

On the southern side of the Province of Costa Rica, the Valleys of Chiriquí, expressly embraced in the demarcation of Artieda, were always a border region with the Province of Veragua, although by toleration they did not

remain wholly within the former, for the *Chiriquí Viejo* River was considered as the divisionary line. At that river was fixed the boundary of the *Corregimiento* of *Quepo* and *Boruca*, to which the Royal cédulas of April 28, 1709 (Doc. No. 146), September 1, 1713 (Doc. No. 152), and May 24, 1740 (Doc. No. 164), refer.

Such was the state of things when the Viceroyalty of Santa Fe was created; but by its creation the Audiencia of Guatemala suffered no change whatever in its boundaries, because all action in the matter of that audiencia was reduced to the effort to preserve its contiguity with the Audiencia of Panama, although dependent upon the new viceroyalty instead of the Viceroyalty of Peru; and when that audiencia (of Panama) was suppressed and its jurisdiction merged in the Viceroyalty of Santa Fe, in which it was recast, there was no variation in the boundaries of Costa Rica.

But it is very interesting to follow the descriptions of the Viceroyalty of Santa Fe, because in stating its boundaries with the Viceroyalty of New Spain and the Audiencia of Guatemala, the boundaries of Costa Rica are confirmed and its existence as a province is evidenced down to the end of the colonial epoch.

(b) *Description of the Kingdom of Tierra Firme by the Comandante General of Panama, Don Antonio Guill, in 1760.*

The Audiencia of Panama having been suppressed in 1751, and its government converted into the *Comandancia general* of Tierra Firme, it was directed by Royal order of May 1, 1758, that a description should be made of it; this was done by Don Antonio Guill y Gonzaga, who was then the *Comandante general*, in a report addressed

from Panama, September 30, 1760 (Doc. No. 171), to the Minister of the Indies.

According to that description, the Government of Tierra Firme, was composed, in 1760, of Darién, Panama, Portobelo and Veragua. The Province of Veragua was ruled by a governor, who had under his orders the sub-governors or deputies of Nuestra Señora de los Remedios and of Santiago al Angel (Alanje), or Chiriquí. The last settlement of the Province of Veragua, on this side, was Bugaba, to the east of Chiriquí Viejo River and distant two leagues from the frontier of Costa Rica.

(c) *Description of the Viceroyalty of Santa Fe, by its Viceroy, the Marquis de la Vega de Armijo, in 1772.*

In the *Description and Status of the Viceroyalty of Santa Fe*, by its Viceroy, the Marquis de la Vega de Armijo, written by Dr. Moreno y Escandón, *Fiscal Protector of the Indians*, in 1772 (Doc. No. 174), it is stated that this viceroyalty borders on that of Mexico by *Costa Rica*, "and being divided from the Audiencia of Guatemala there is left for its district, that of the Province of *Alanje* and *Veragua*, all the South Coast, from the *Bay of Chiriquí* (or of David) by that of Guayaquil to near Cape Blanco
* * *"

The description goes on to treat of the country to the north, east and south down to when it says: "* * * until by Portobelo and the Government of the Province of *Veragua* it closes the boundary upon the Audiencia of Guatemala and Viceroyalty of New Spain. * * *"

(d) *Report of the Governor of Veragua, Don Félix Francisco Bejarano, in 1775.*

The Governor of Veragua, Don Félix Francisco Bejarano, at the request of Guatemala, reported in 1775

Doc. No. 175), that the end of Veragua reached as far as the frontier of *Talamanca*, which is left in Costa Rica, and therefor with its Bay of the Almirante (Bocas del Toro) and its Islands of Tójar, or Colón, etc.

(e) *Description of the Viceroyalty of Santa Fe, of Tierra Firme and of Veragua, by the Missionary Sobreviela, in 1796.*

In the most interesting work of Fray Manuel Sobreviela, Missionary of Ocopa, entitled: "Description, Historic-Geographical, Political, Ecclesiastical and Military, of Southern America," (Lima, 1796; Doc. No. 181), the Viceroyalty of Santa Fe is first described generally, by the statement that it embraces

"* * * from the *River Chiriquí*, of the Kingdom of Tierra Firme, which is the *dividing line* of this Viceroyalty and of the two Americas by the District of *Costa Rica*, of the Province of Guatemala, as far as the neighborhood of the Gulf of Maracaibo."

It then takes up the Kingdom of *Tierra Firme*, and says that it

"* * * is bounded on the east by the Province of Cartagena, from which it is separated by the River San Juan; on the west by the RIVER CHIRIQUÍ, which serves as the *boundary of the Province of Costa Rica*, in the Kingdom of Guatemala; on the north by the North Sea and on the south by the Pacific. It is two hundred leagues in length from east to west; that is, from the River Atrato or Gulf of Darién, as far as the *River Chiriquí (Viejo, or old, of south)*, and eighty in width from north to south, at the widest part, which is from the port or bay of Mariato to the point of the bay or port of the River Chagres. This Kingdom is divided into three provinces, which are Panama, *Veragua* and Darién."

Continuing it takes up *Veragua*:

“It is bounded on the north by the North Sea; on the south by the Pacific Ocean; on the east by the Province of Panama, and on the west by the River Chiriquí, *which divides it from Costa Rica* and Kingdom of Guatemala. It is sixty leagues from east to west, from the city of Natá to the village of Chiriquí and eighty in width from the Cape of Conejos on the South Sea to the extreme of the ESCUDO DE VERAGUAS in the North Sea.”

And in describing the principal *rivers* of the Provinces of the Kingdom of Tierra Firme, it says:

“The first is the River *Chiriquí*, which rises in the mountains in the south part of the Province of Veragua and empties into the South Sea or Pacific (Gulf of Chiriquí or *Sinus Chiriquensis* of the Map of the Jesuits Brentano and La Torre). It serves as boundary to *this province* and to all southern America, *which it separates from the northern and from the District of Costa Rica* in the Kingdom of Guatemala.”

It is thus seen that the description is complete and agrees perfectly with the antecedents we have set forth.

(f) *Official Communication of the Governor of the Islands of San Andrés, in 1802; and Résumé.*

In concluding, let us add that the *Escudo de Veragua* was even recognized as a border point by the Governor of the Islands of San Andrés, Don Tomás O’Neille, of whom we shall speak hereafter as the instigator of the Royal order of 1803, which, according to Colombia, incorporated Costa Rica in the Viceroyalty of Santa Fe.

O’Neille, addressing himself to the President of Guatemala, in an official communication of October 22, 1802 (Doc. No. 184) said:

“If Your Worship will be pleased to write to said Chief (the Viceroy of Santa Fe), and get from him a frequent visit of the vessels of the King on these waters, for they only go as far as the ESCUDO DE VERAGUA, which is the limit of the demarcation between the two Kingdoms, it would avoid great injury to the State, etc. * * *.”

To recapitulate: the boundaries of the Viceroyalty of Santa Fe, with the Audiencia of Guatemala at the beginning of the XIXth century were: on the north the line extending from the *Escudo de Veragua* which corresponds to the *Chiriquí* (not *Viejo*, or old), or *Culebras*, or *Calobébora* River (by which various names it is called); and on the south the *Chiriquí Viejo* River. And, therefore, those were also the boundaries of Costa Rica, the last province of the Audiencia of Guatemala, bordering on that Viceroyalty.

II.

THE ROYAL ORDER OF NOVEMBER 20, 1803, REFERRING TO THE MOSQUITO COAST.

I. ANTECEDENTS, FORMATION AND TEXT OF THE ORDER.

From the time of the conquest of Jamaica, the English never ceased their encroachments upon the islands of San Andrés and the Mosquito Coast, which acts became a source of continuous conflicts; to this, however, the Treaty of London, of July 14, 1786 (Doc. No. 176), sought to put an end by agreeing that the English should evacuate the places where they had established themselves.

Those Islands of San Andrés (embracing under that appellation those of San Andrés, Santa Catalina and Providencia), were the subject of serious attention by the Spanish rulers, nearly all of their inhabitants having been English and the islands themselves centers of smuggling and of forays upon the Mosquito Coast.

Don Tomás O'Neill, a captain of infantry who had been in the military service of the Viceroyalty of Santa Fe was commissioned, in 1789, to visit those islands, where he became intimate in friendship and business with the Taylor brothers who exercised great influence there. The Taylor brothers, in 1794, through the Viceroy of Santa Fe, applied to the King asking that the English might be allowed to continue in the islands, that a governor be appointed (whose salary they would pay), and that Don Tomás O'Neill be named as such governor.

Lieutenant Don José del Río, of the Navy, who also visited those islands by order of the King, gave His Majesty a very minute account of them in his extended report from Trujillo, dated August 23, 1793 (Doc. No.

179); in this he advised that the islands be abandoned and that with their settlers an establishment be made at Bluefields on the Mosquito Coast.

By Royal order of November 6, 1795 (Doc. No. 180), it was provided that "for the present" the English should not be compelled to evacuate the Island of San Andrés and establish themselves at Bluefields; that this might be accomplished later, on a suitable occasion, and that Don Tomás O'Neill should be Governor "dependent upon your Captaincy-General (of Guatemala)."

Scarcely had he taken possession of his office when he fell out with the Captain-General of Guatemala, who ordered him to leave the islands until the conclusion of peace with England, and assigned him to various military duties in Nicaragua. Having had occasion to go back to the islands, he petitioned that there should be conferred upon him the political and military command of the establishments of Trujillo, Cape Gracias a Dios and San Juan de Nicaragua, with a salary of 3,000 pesos, and other extraordinary conditions, all of which the Captain-General of Guatemala refused.

Once back at San Andrés he undertook to free its government from that of Guatemala, to this end making use of his friends, the Taylors, and counting upon the support of his protectors in Santa Fe.

Under date of December 5, 1802 (Doc. No. 185), O'Neill addressed himself to the Minister of War, sending him two statements, one from the *Alcalde*, Juan Taylor, of November 25 (Doc. No. 187), and the other his own, of December 4 (Doc. No. 186), in which he asked for the aggregation of those islands of the Mosquito Coast to the Viceroyalty of Santa Fe; these statements he forwarded through that viceroyalty instead of the Captain-General

of Guatemala—because of the difference in distance, he said.

Both statements went to the Board of Fortifications and Defense of the Indies which, on September 2, 1803 (Doc. No. 189), reported favorably thereon, adding that it would be desirable to follow the same course with regard to the establishments of Cape Gracias a Dios and the Bay of Bluefields on the desert Mosquito Coast. The record in the case was returned to the Board on the 23d of the same month, and its attention called to the fact that if this plan were carried out it would leave Guatemala undefended on the Atlantic side. The Board insisted, in its second report of October 21 (Doc. No. 190), confining itself to the statement that the segregation would not be injurious to Guatemala, since the Mosquito Coast was a wilderness. In accord with these reports it was determined to issue the Royal order which Don Miguel Cayetano Soler, acting as Minister of War, communicated, on November 25, 1803, to the Captain-General of Guatemala (Doc. No. 191).

This same Minister in another communication (Doc. No. 192), transmitted the order to the Viceroy of Santa Fe, and this communication is the one that was invoked by Colombia; it reads as follows:

“SAN LORENZO, November 30, 1803.

“MOST EXCELLENT SIR:

“Don José Antonio Caballero, in a letter of the 20th instant, writes to me, as follows:

““The King has resolved that the Islands of San Andrés and the part of the Mosquito Coast from Cape Gracias a Dios, inclusive, toward the River Chagres, shall be segregated from the Captaincy-General of Guatemala and be dependent upon the Viceroyalty of Santa Fe. And His Majesty has been pleased to

grant to the Governor of the said islands, Don Tomás O'Neill, the salary of 2,000 *pesos fuertes*, instead of the 1,500 which he at present enjoys. By Royal Order I inform Your Excellency of the foregoing in order that the Ministry in your charge should take the necessary steps for the fulfillment of this sovereign mandate.' All of which I state to you by His Majesty's command, for its due execution.

"May God keep Your Excellency many years.

"SOLÉR."

"To the Viceroy of Santa Fe.

- (2) THAT ORDER WAS NOT APPLICABLE TO COSTA RICA, BECAUSE WHAT WAS CALLED THE MOSQUITO COAST ENDED BEFORE THAT PROVINCE BEGAN.

The importance attributed by Colombia to this Royal order is very great, for she assumes that it incorporated into the Viceroyalty of Santa Fe the long stretch of territory that extended from Cape Gracias a Dios as far as the Chagres River, within which extension Costa Rica was embraced. That is to say, that just as Colombia argued that "all Veragua, and therefore Costa Rica, belongs to Tierra Firme," now she argues that "all of the Mosquito Coast as far as the Chagres River, and therefore Costa Rica, belongs to the Viceroyalty of Santa Fe."

But this Royal order was not applicable to Costa Rica for the very simple reason that it referred only to the Mosquito Coast, which ended on the south before that province began.

The origin of the name and the extent of the Mosquito Coast are clearly shown by the official documents.

The *Bishop of Nicaragua*, Fray Benito Garret, in his *report* to the King of November 30, 1711 (Doc. No. 151), relates that in the year 1641 a vessel laden with negroes was wrecked on the coast that extends from Trujillo as

far as the mouth of the San Juan River; that these negroes were forced into a fight with the Carib Indians, and the latter, defeated, withdrew through the mountains toward the territories of Segovia and Chontales; that the victors took to themselves the women of defeated Indians, and that their descendants were called "*Zambos*," the issue of negroes and Indians. This accords, he says, with the account given by a negro, named Juan Ramón, "who lives now in this city (Granada de Nicaragua) and whose advanced age accords well with the recollection which he asserts that he has of the facts he narrates."

The Bishop complained to the King of the lamentable ravages and captures made by the *Zambos* who occupied the locality called Puntagorda and the *said Mosquito territory* which is, as indicated in a parenthesis, the "sea coast from the mouth of the River San Juan as far as the city of Trujillo in the Province of Honduras," the longitude of which, he adds further on, would be about sixty leagues. And he asks the King for the subjugation of the *Zambos*, suggesting the best means to that end.

By *Royal cédula* of April 30, 1714 (Doc. No. 154), the King directed the Captain-General of Guatemala to undertake the conquest of the Mosquitos. He ascribed their origin to the same source as that given in the Bishop's account, and took into consideration the reports of the said captain-general regarding the settlements of the Carib Indians, negroes and *Zambos* in Mosquito Island, on the side of the Province of Nicaragua; and said further that it was well known that they were on the coast of the North Sea, spread over an area of fifty or sixty leagues, beginning to count at twelve leagues from the San Juan River up to twenty from the city of Trujillo; that *Zambos* were skilful in the handling of arms, and were assisted

and protected by the English of Jamaica, with whom they carried on their trade.

The attempt to subdue the Mosquitos was not successful. These people, clever in the management of boats and even the firearms with which they were supplied by the English, made continual incursions by sea and land upon the neighboring settlements, carrying with them desolation, captivity and death. As the result of a report from the Captain-General of Guatemala dated May 10, 1737, and relating to a treaty of peace proposed by the so-called "King" of the Mosquitos, and to the two settlements which the English had begun to establish on that coast, the Council of the Indies rendered an opinion setting forth the means for subduing the Mosquitos and avoiding the evils of their relations with the English; this opinion was approved by the King in the Royal cédula of August 8, 1739 (Doc. No. 162).

In that *Opinion of the Council of the Indies*, of July 8, 1739 (Doc. No. 162), the following appears:

"These people owe their appellation and origin to the Island of Mosquito, where, in the year 1641, there arrived a vessel laden with negroes (who captured the Indians in order to sell them as slaves and kept the women for purposes of procreation) * * *. According to reports from the President and others, they occupy at the present time more than sixty leagues of land extending from the jurisdiction of Comayagua (Honduras) *as far as that of Costa Rica* of the dominions of Your Majesty adjoining the coast of the North Sea, their territory being in width only three leagues of productive and habitable land extending up to the slope of the mountains that separate them from the dominions of Your Majesty * * *. In those sixty leagues they have established for their dwellings twenty-four settlements or hamlets * * *.

By the last and most reliable news that has been received, the Mosquitos number 2,000 men who bear arms. They also have among them Spaniards, French, English, apostate Indians and fugitive slaves, their territory being a general asylum for all the scoundrels who flee from justice * * *. The care of the Council is growing on account of these enemies, because they are found to have considerably increased and not only have they a chief * * *, but they have the boldness to call him a King and demand that Your Majesty shall recognize him as such in a treaty of peace and commerce, which unheard of insolent audacity leads us to suspect that it does not come from them alone. This presumption becomes probable * * * when it is noted that these barbarous Mosquitos are intimate and in league with the English of Jamaica, of New England, etc. * * *."

The Captain-General of Guatemala, Don Pedro de Rivera, in a *report* of November 23, 1742 (Doc. No. 166), addressed to the King in response to his order concerning the measure for the expulsion of the Mosquitos, says of them:

"At a short distance from Cape *Gracias a Dios*, which is on the coast of the Province of Comayagua, there is a small island named *Mosquito*, in which, in the year 1650 (according to tradition) a vessel was wrecked which carried negroes under the charge of Lorenzo Gramalxo, of the Portuguese nation * * *; they interbred with the Indians, and produced the *Zambos*, under the designation of "*Mosquitos*," derived from the island upon which the negroes were shipwrecked, and this is the distinctive appellation by which they are known, and *this name applies to all those that dwell with them*, they being the heathen Indians that inhabit those territories, the mulattoes and negroes who have left the dominions of His

Majesty in order to enjoy the free life without any subjection * * *. The English who live among the *Zambos* are most degraded * * *; the *Zambos* are so far subordinate to the English nation that they obey its orders as if they were under its sovereignty, and the one that they have among them under the title of King is invested with it by the Governor of Jamaica."

The Captain-General of Guatemala enumerates twenty-seven hamlets which the *Zambos* occupied at that time and which lay generally along "the rivers which are to be found *between* the two Provinces of Honduras and Costa Rica," also mentioned by him. And he describes the Island of San Andrés, on which lived the *Zambos* "in conjunction with the English," situated thirty leagues from that coast.

It results from these official documents that the evidence is clear that it was the Mosquito Coast that was occupied by this little race of *Zambos*, which sprang from the union of the negroes who came to the Island of Mosquito and the Carib Indians located in the Province of Nicaragua, between the Provinces of Honduras and Costa Rica. Its length is fixed at sixty leagues.

The Colombian publicist and statesman, Don Pedro Fernández Madrid, claims, like the majority of English geographers, that the Mosquito Coast begins at Cape Honduras, but he says that it ends at *Punta Gorda*, near the most northern arm of the San Juan River of Nicaragua. The Bishop of Nicaragua counts the sixty leagues from the mouth of the San Juan River to the city of Trujillo, indicating *Punta Gorda* as the last point in the south occupied by the *Zambos*, from whence they make their raids. The Royal *cédula* of 1714 begins to count the fifty or sixty leagues, which it says this coast has, at

twelve leagues to the north of the San Juan River up to twenty from the city of Trujillo. The Council of the Indies, in its opinion of 1739, starts from the end of Comayagua; according to this the sixty leagues of which it speaks begin at Cape Gracias a Dios and end in the center of the

lagoon of *Bluefields*.

It must be remembered that the *Province of Costa Rica* ended on the north at the Desaguadero, or San Juan River, and that this boundary is found some ten leagues beyond Punta Gorda, twenty from Bluefields and eighty from Cape Gracias a Dios. Therefore Costa Rica was not embraced in the Mesquite Coast.

and consequently this river does not mark the boundary, but only indicates the direction. Let us remember the laws of the demarcation of audiencias and the numerous Royal orders which we have cited, and it will be seen that whenever it was desired to indicate a boundary, the word naturally employed was "*hasta*" (to, or as far as); whereas, when it was desired to indicate direction the word used was "*hacia*" (toward) or "*a la parte de*" (on the side of). These latter words are more expressive, for instance, when, in the demarcation of the Province of Costa Rica assigned to Ortiz de Elgueta, Cavallón and Vázquez de Coronado, it says from Honduras and Nicaragua "*a la parte de* (on the side of) the cities of Nombre de Dios and of Panama;" and yet Colombia will not acknowledge that this signified that the Province of Costa Rica should have reached as far as the line determined by those two cities. Nor can Colombia be understood as meaning to say that the territory incorporated in the Viceroyalty of Santa Fe was that which reached as far as the Chagres River, next to Portobelo, since Portobelo and the Province of Veragua already belonged to that viceroyalty.

If the reports of the Board of Fortifications (Doc. Nos. 189 and 190), by virtue of which the Royal order of 1803 was issued are read, it will be seen that they do not refer to the whole of the Mosquito Coast, but only to the *establishments* of Cape Gracias a Dios and Bay of Bluefields. When, by virtue of the Treaty of London, of 1786 (Doc. No. 176), the English evacuated the Mosquito Coast, four settlements or establishments of Spaniards were directed to be created therein; and it was especially in order to protect these establishments that that Royal order was issued. If it says the part of the Mosquito Coast from Cape Gracias a Dios toward the Chagres River, it is in order that it

should not be understood as meaning from Cape Gracias a Dios in the direction of Honduras, but toward the south, and as far as those establishments, which had as their maximum limit the Desaguadero or San Juan River, might reach.

3. MILITARY AND TRANSITORY CHARACTER OF THAT ROYAL ORDER.

Even assuming that it had been desired to include Costa Rica in the Royal order of 1803, that order lacked the force to change the legal status of the province as to administrative dependency and boundaries, as we are about to show; and as such a hypothesis is only supported by the words "toward the River Chagres," it cannot be seriously considered as a sufficient basis for the suppression of a province or its transfer from one viceroyalty to another or from one audiencia to another.

From its preparation and its purpose that Royal order can only be characterized as a military order. It was issued by the Minister of War, as a result of petitions addressed to him, and the approval not of the Supreme Council of the Indies, but of the Board of Fortifications and Defense of the Indies; and it was promulgated by the same ministry to the military and not to the civil authorities. Its purpose, as shown by the reports of that Board and deduced from the history that has been given of the Mosquitos, allied with the English, was to provide a better defence for the Islands of San Andrés and the Spanish establishments on the Mosquito Coast, against the attacks from the *Zambos* and English.

Responding to these needs for protection, and also for the prevention of smuggling, other provisions had been previously enacted entrusting the guardianship of these coasts to the neighboring governors without any idea

of making thereby any change in the demarcations of their respective districts. Thus, we see the Royal cédula of August 23, 1745 (Doc. No. 167), which appointed the Governor of Nicaragua, Don Alonso Fernández de Heredia, *Comandante General de las Armas*, and sought to prevent illicit commerce throughout the territory embraced between Cape Gracias a Dios and the Chagres River; the Royal order of September 24, 1786 (Doc. No. 177), addressed to the Captain-General of Guatemala, in which he is informed that the Viceroys of Mexico and Santa Fe have been directed that he shall be given whatever he asks for in order to facilitate the evacuation of the Mosquito territory; that of February 26, 1788, to the *Comandante de Marina* of Havana, to place himself at the orders of the Captain-General of Guatemala,¹ etc.

Such measures were merely transitory in character, and they ceased to be effective when there came a change in the circumstances or personnel which had called them forth. O'Neill knew how to take advantage of the circumstances in which those islands, and the establishments of the Mosquito Coast, were placed by the orders for evacuation given to the English and the latent state of war with England, in order to advance his personal ambitions. But the Royal order of 1803 served only to give to O'Neill the Government of the Island of San Andrés; this he surrendered to the English, in 1806, but it was soon afterwards restored by them to Spain.

4. THE ORDER COULD NOT CHANGE THE LAWS OF TERRITORIAL DIVISION.

If, nevertheless, the Royal order of November 20, 30, 1803, be considered to be a measure not military and transitory,

¹Peralta, *Límites de Costa Rica y Colombia*, p. 189.

in character, but rather one having, as Colombia claims, the capacity of a legislative mandate which changed territorial division, then, the question being placed on this ground, we are impelled to assert—and most positively—that the Royal order in question, according to the laws of the *Recopilación de Indias*, which governed when it was issued was *null and void*.

Both parties are in accord in recognizing that the *Recopilación de Indias* gave the character of *laws* to all those which it embraced in its text, and commanded that they should be obeyed and complied with as such, as directed by the Royal cédula of May 18, 1680, which sanctioned it; and it is important to remember what we have heretofore stated in regard to the value of those laws when discussing their relations to the Royal dispositions prior and subsequent to the publication of that code.

Law 1, title 1, book II (Doc. No. 92), lays down the doctrine that

“* * * those only (the laws of the *Recopilación*) shall have the force of law and pragmatic sanction¹ in that which they decide and determine; and if it should be desirable that others be made beside those contained in this book, let the Viceroy, Presidents, Audiencias, Governors and *Alcaldes mayores* advise and inform us as to the same through the Council of the Indies, giving the motives and reasons why they are submitted in order that, being understood, such resolution may be taken as is most desirable; and they may be added in a separate volume.”

Law 2, title 2, book II (Doc. No. 94), confers on the Council of the Indies supreme jurisdiction over all the

¹A *pragmatic sanction* has the force and effect of a solemn ordinance or decree by the legislative authority of the State.

Western Indies, and empowers that body to "order and make, with our advice the general and special *Laws*, *Pragmatics*, *Ordinances* and *Provisiones*."

Law 1, title 15, book II (Doc. No. 105), of Philip IV, declares that all the territory that is discovered in the Indies is divided into Audiencias, which are subordinate "* * *" to our *Supreme Council of the Indies*, which represents our Royal Person;" and it commands that the audiencias and the governments shall be preserved as "they now" are in the district of each, and that "* * *" no change shall be made therein, without our *express* order or that of our said Council."

To these laws, which we have hereinbefore cited, should be added the following, from title 2, book II, in which the direction is confirmed that measures of a legislative character and, in general, those referring to the administration of the Indies must be passed upon by the Supreme Council of the Indies, which council was to be subject to a fixed procedure, and charged with the execution and observance of those laws.

Law 6 (Doc. No. 95) charges the Council of the Indies that it shall always have a description and full investigation made of all matters concerning the conditions of the Indies "* * *" which may become matters for the administrative or *legal action*." And Law 12 (Doc. No. 96) reads:

"Thus We command, that whenever those of our Council of the Indies may have to *provide and direct* the *Laws* and general *Provisions* for the good government of the Indies, they may be very well informed and sure beforehand of what has already been provided in the matters in question, and they must previously acquire the fullest possible information and notice about the things, affairs and territories concerned, and hear also the advice of those who govern

therein and of those who might be able to throw any light on the matters, unless delay in asking for information may cause detriment."

Law 14 (Doc. No. 97) requires that the Council of the Indies shall meet *in full membership* "* * *" for the consideration of general matters of government, such as *making Laws and pragmatics* and the interpretation of derogation thereof, the *establishment of audiencias*, erection of churches and dismemberment, division and union thereof, and other matters which in the opinion of the President or Governor are *important*." And not only this, but it is particularly provided in Law 15 (Doc. No. 98), that two-thirds of the members of the Council "must agree in an opinion" whenever there shall be a question as to "*making new Laws or repealing the old ones*."

Law 17 (Doc. No. 99) entrusts to the Council the execution of the orders of the King for better provision and certainty; Law 18 (Doc. No. 100) provides that the Council shall report to the King whenever it may receive orders of doubtful interpretation; Law 24 (Doc. No. 101) charges it to arrange always that the new laws and provisions *be published* where and when it may be best, and Law 25 (Doc. No. 102) directs it "* * *" to ascertain and understand how the Laws We provide and order are being obeyed and fulfilled; and that they severely punish according to law those who by perversity or neglect shall not comply therewith or execute them."

We will cite, finally, Law 23, title 6, book II (Doc. No. 104), providing that the provisions and despatches in judicial matters between parties, which are issued by the Council of the Indies, shall be issued in the name of the King, without the formality of his signature; but that all other matters of government, mercy and justice arising in

the Indies shall be considered and despatched by the King, as had been done theretofore.

All of these laws were violated by the Royal order of November 20, 1803, since it was not given by the King, but in the name of the King—it was not dictated in consultation with the Supreme Council of the Indies, but upon a report of the Board of Fortifications; and not having been acted upon by the Council (to which was entrusted the supreme jurisdiction in this regard), the guarantees were left unfulfilled in respect of the information to be given by the authorities interested, the full quorum and the minimum of votes, which the *Recopilación* required in order to change the laws of the Indies.

And as it was not the intention of the Government to make a law which should change the prior laws of territorial division, all of which had been made in the Council of the Indies, but simply to dictate a Royal order of a ministerial character, the order was signed “in the name of the King,” and was transmitted by the Secretaryship of the Department of War, in order to conform to military convenience.

Counsel for Colombia, who expend so much effort in insisting upon legislative acts for the establishment of territorial division—to the extent, even, of denying validity to the Royal demarcatory cédulas that antedated the *Recopilación de Indias*—deliberately ignore that code in order to give legislative force to the Royal order of 1803, and maintain that all the Royal orders issued by the absolute Monarchy had the same legal force as the laws now made by the King and the Cortes, in the Constitutional Monarchy. But that is not correct.

It is true that when the absolute Monarchy had once been consolidated and the glorious traditions of the Cortes

of Castile and Aragón had been lost, the will of the Monarch was law, subject to no external limitations; but this will established differences with regard to the exercise of power and limited itself by dictating rules of a general character, to which resolutions had to be adjusted, according to the nature of the particular cases.

Although the division of powers now in operation did not then exist, the differences between the function of *legislating* and that of *administering* could not have been ignored; neither was it possible for the King to have done everything by himself. Therefore the jurisdiction was divided into that which was *retained* and that which was *delegated*, accordingly as the King reserved to himself the direct exercise of that power or delegated or confided it to the councils, ministers or judges. It is clear that the King did exercise the legislative power, by himself alone, and to avoid all doubt as to the authority from which those legislative acts emanated, they must have been headed with the name of the King and borne the signature, "I, the King." In this manner the resolutions in matters of government and administration reserved to the Monarch were headed and signed. Such provisions emanated directly from the King, and were called *pragmatics* and *Royal cédulas*; they differed essentially from *Royal orders*, which could be issued in his name without his signature.

Notwithstanding the delegation of power to the Council of the Indies was so ample, the *Recopilación* established the rule that the provisions for government, mercy and justice for the Indies, were *to be issued and despatched BY THE KING*, as he had been doing; that is to say, by *Royal cédulas*. And that code, in treating of the territorial division, positively prohibited any alteration be made thereof,

“without the express order of the King or of the Council of the Indies.”

So, then, the Royal order of November 20, 1803, which was not a Royal *cédula* enacted by the King, but a ministerial order issued “in the name of the King,” without the advice of the Council of the Indies, and as the concluding act of an administrative proceeding, almost of a personal character (the government of Don Tomás O’Neill), it was lacking in legislative force, or even in the legal value of a decree in a matter of civil demarcation and jurisdictional fixing of boundaries.

The authority of absolute monarchs, as in every other kind of government, was of two kinds: *discretionary* and *regulated*, accordingly as it was directed to matters that were or were not subject to pre-existing regulations. The monarch was under no compulsion to issue such rules, but once issued he had to act in accordance therewith, unless he modified them or declared exception thereto. The *Recopilación de Indias* established the *procedure for the amendment of the laws* which it contained and for the adoption of new laws, and required previous information to be given to the Council of the Indies, the consideration by the latter in full membership, the favorable opinion of two-thirds of the voting members and the intervention of that Council in the publication and execution of the law. None of these things was done in respect of the Royal order of 1803; therefore, it could not have the character of a law.

Spanish legislation did not tolerate such transgressions of legal procedure. It declared to be *null and void* all dispositions which were not in conformity with legal formalities, or which might be contrary to pre-existing law which might be in force. Law 2, title 4, book III of the *Novísima Recopilación*, says:

“Since it happens that by importunity of some or in some other way We may grant and deliver some letters or Royal patents in contravention of right or contrary to law or statute in force, therefore We command that such letters or Royal patents *shall be of no value nor shall they be complied with*, although they may contain the provision that they are to be executed notwithstanding any statute or law of ordinance or any other abrogatory clauses whatsoever.”

And this is applicable to the present case, not only because it shows that the general system of Spain in the matter of legislation was not one of despotism, but also for the reason that Law 2, title 1, book II (Doc. No. 93), of the *Recopilación de Indias* directs that the legislation of Castile shall be *supplemental* thereto.

It is important, also, to note that the laws of the *Recopilación de Indias* continued in force in the Spanish-American provinces until their independence, in so far as they may not have been modified by subsequent provisions of a legislative character; and the publications of that code which were made after 1680 were nothing more than mere new editions thereof. The fact is that the Royal order of November 20, 1803, does not figure in the chronological list of the Royal cédulas, Royal orders and decrees embraced in the notes appended to the Laws of the Indies, in the fifth Edition (1841), approved by the Court of the Indies (*Sala de Indias*) of the Supreme Tribunal and the Regency of the Kingdom, which we have before us.

We will say, finally, that Colombia's argument, in support of the legal force of the Royal order of 1803, based as it is on the fact that there was another order of like character issued July 15, 1802, relating to the segregating of the Government and *Comandancia General* of *Maynas* from the Viceroyalty of Santa Fe and its aggregation to that of Peru, proves quite the contrary from what Colom-

bia desires to prove and it constitutes the best possible confirmation of the doctrine which we have stated.

It was not by a Royal order, dictated in the name of the King, but by the *Royal cédula* of July 15, 1802 (Doc. No. 183), by the King himself, speaking in his own name, issued to the viceroys affected thereby, that the Government and *Comandancia General* of Maynas was created; it was formed out of territory which was minutely marked out, segregated from the Viceroyalty of Santa Fe and incorporated into that of Peru. It was the result of protracted proceedings that extended over a period of twenty-five years, initiated by Don Francisco Requena, Royal Commissioner of Boundaries, who administered that territory for a long time. It was pursued from the very beginning, before the Council of the Indies which, after the fullest information from the viceroys and audiencias interested, and in conformity with the opinions of the *Fiscales* (Attorneys General) of Peru and New Spain and of the *Contaduría General* (General Financial Office), agreed in full membership to suggest this change in an opinion to the King. The Royal *cédula* approving it was communicated, as was provided therein, to the Viceroys of Peru and New Granada, to the President of the Audiencia of Quito, to the Archbishop of Lima and to the Bishops of Quito and of Trujillo; all obeyed and complied with it. And besides it was proclaimed from town to town.¹

¹This Royal *cédula* of 1802, relating to the Government of Maynas, is discussed at length in the work written by one of the counsel herein. See "A Study of the Question of Boundaries between the Republics of Peru and Ecuador" (*Estudio de la cuestión de límites entre las Repùblicas del Perú y del Ecuador*), Madrid, 1907. Translated into English by Harry Weston Van Dyke, Washington, 1910.

This was the legal course to be pursued, and the course which would have been pursued had it been desired, by the issuance of the Royal order of 1803, to change the demarcation of the Viceroyalties of Santa Fe and New Spain and the jurisdictional limits of their respective audiencias and governments.

(5) THE INEFFICIENCY AND ABROGATION OF THIS ROYAL ORDER.

Furthermore, the Royal order of November 20, 1803, called that of "San Lorenzo," fell morally still-born; no one took any notice of it, and it was contradicted by numerous provisions, which proceeded in every case as though it had never existed.

As soon as the Brigadier, Don Roque Abarca, Inspector of Militia of the Captaincy-General of Guatemala, received knowledge of this Royal order, he sent a communication (Doc. No. 194) to the Captain-General and President of the Audiencia, Don Antonio González, setting forth the great injuries that would result from its execution, and showing that even were it to be insisted upon, it was undesirable in every way to confide its execution to O'Neill. The President, González forwarded these observations to the Minister of War, in the despatch of June 3, 1804 (Doc. No. 195), making them his own and stating that they were in accord with his information and the documents which he had before him.

The Brigadier Abarca declared that O'Neill's sole purpose was to carry on contraband trade on a large scale, as he already had been doing (or protecting it) with Jamaica; that for this purpose he falsified the facts and contradicted what he had said in writing; that the accepted plan of O'Neill was the very same which he

had proposed to them, the captain-general and himself, and which they had rejected with indignation; that the plan conceived by O'Neill was impracticable and its realization could only be considered as the work of a crazy person, or of expert smugglers; and that the plan which ought to be pursued for the colonization of the Mosquito Coast was another and very different one, the one which he advised—slow but sure.

So energetic an attack by the Captain-General of Guatemala took away all the moral authority of the Royal order of 1803, and left it but a dead letter.

The Captain-General of Guatemala kept right on acting in the matters relating to the Mosquito Coast, as is proved by numerous documents and especially by the Royal order of November 13, 1806 (Doc. No. 197). That official had applied to the Secretaryship of State and War (Doc. No. 193), in a complaint against the Intendant of Comayagua (Honduras), who claimed to have the administration of the establishments of the Mosquito Coast, saying that they had "always depended immediately upon this Captaincy-General," and the Royal order says:

"The King having been informed by the letters of Your Worship * * * and by the documents accompanying them. * * * His Majesty has resolved that Your Worship is the one who must have *sole charge* and the absolute cognizance of all the affairs that arise in the Colony of Trujillo and other military posts of the Coast of Mosquitos, relating to the *four* matters referred to (Justice, Police, Finance and War), in compliance with the Royal Orders issued since the year 1762, which authorized you to occupy, defend and settle *that Coast*, until that object being in whole or in part secured, His Majesty may deem it suitable to change the actual system * * *."

So that, even supposing that the Royal order of 1803 ever had any legal value and could have been put into practice, it was abrogated by this order of 1806 which retained the Mosquito Coast under the dependency of Guatemala, in the four departments of *Justice, Police, Finance and War*.

By Royal order of March 31, 1808 (Doc. No. 198), addressed to the Captain-General of Guatemala in reply to his communications of January 3 and June 18, 1805, it was provided that the *San Juan* River of Nicaragua should remain open to navigation and commerce; that, in order to promote the clearing and cultivation of the immediate lands the same favors were granted to their inhabitants that were conceded to the new settlers of the Mosquito Coast by the Royal order of November 20, 1803 (a different order from that of the same date which is invoked by Colombia; Doc. No. 474); that, for a period of ten years there was to be exemption from duties and tithes on the products that might be harvested within a distance of *ten leagues* from the river, on either bank thereof; and that the establishment of a settlement should be undertaken near the said *San Juan de Nicaragua* River. Those ten leagues of the coast to the north lay in what was called the Mosquito Coast; and the ten on the south belonged to Costa Rica. This Royal order of 1808 proves, therefore, that the jurisdiction of the Captaincy-General of Guatemala continued upon the Mosquito Coast, at the mouth of the *San Juan* River, and also in Costa Rica, and that the Royal order of 1803, did not operate against this jurisdiction.

The Valley and Coast of *Matina*, which Colombia claims as embraced within the Mosquito Coast, continued under the command of the Governor of the Province of

Costa Rica, as is shown by several orders which its governor, at that time Don Tomás de Acosta, gave to the Judge and *Comandante* of Matina, and the communications of this Governor to the Captain-General of Guatemala concerning matters in that district (1808 and 1809). The official communication of Don Tomás de Acosta to said captain-general, of September 20, 1809 (Doc. No. 199), merits special attention. In that communication he gives an account of the letter which the Governor of the Island of San Andrés had written to him, telling him that the Government of Matina belonged to that of San Andrés, by reason of its command of the coast from Cape Gracias a Dios as far as the Chagres River; against this Acosta protested, on the ground that it was contrary to immemorial tradition, and he ended by stating to the Captain-General as follows:

“In this Government the *Royal Orders* of 1803 and 1807 which O’Neill cites *do not exist*; wherefore and perhaps because he has not given to them the proper understanding, *I will continue without change in the command of this province and its coasts, until Your Worship may otherwise provide or consult His Majesty in order to avoid disputes.*”

On November 7, 1809, the Captain-General of Guatemala, replied to the Governor of Costa Rica stating that the Governor of the Island of San Andrés had no authority whatever over the Coast of Matina (Doc. Nos. 200 and 201).

The Cortes of Cádiz, on the petition of the Deputy for Costa Rica, Don Florencio del Castillo, without opposition by the representatives of the Viceroyalty of Santa Fe, and after the Council of the Regency had been heard, resolved by decree of December 1, 1811 (Doc. No. 204),

that the Port of *Matina* should be opened, and exemption from duties on exports granted for ten years. The Captain-General of Guatemala referred the decree to the Governor of Costa Rica, on May 25, 1812, because of the fact that the Port of Matina was under his jurisdiction, and the latter governor replied, on July 1, that he was fully advised of this sovereign provision for its execution (Doc. No. 208).

To *summarize*: neither the Mosquito Coast, nor the coastal portion of the Province of Costa Rica, passed to the Viceroyalty of Santa Fe, but continued as a dependency of the Captaincy-General and Audiencia of Guatemala in the Viceroyalty of New Spain. The only effect produced by the Royal order of November 20, 1803, was the creation of the government of O'Neill which was confined to the Islands of San Andrés. Those islands having been the subject of continuous dispute between the Spanish and the English, were left to Spain until the struggles for independence. In 1818 a band of pirates commanded by Captain Louis Aury, took possession of them and held absolute sway for three years; and in 1822 Colombia occupied them, not by rights derived from the Spanish colonial régime, but by having driven off the pirates. The dependency of the islands could not affect, and did not affect, the Province of Costa Rica.

III.

LAST YEARS OF SPANISH SOVEREIGNTY.

I. FIRST PERIOD OF THE CONSTITUTIONAL RÉGIME IN SPAIN.

(a) *General Organic Provisions.*

Spain being under invasion, in 1808, by the troops of Napoleon, and Fernando VII absent from the country, the Supreme Central Junta governed in the Peninsula and in America, and recognized the existence of the Province of Costa Rica. This is shown by the summons for the election of deputies in 1809, in which that province took part (electing for the extraordinary Cortes, Don Florencio del Castillo) and by the appointment of Don Juan de Dios de Ayala as governor of that province in 1810.

America had a numerous and brilliant representation in the Cortes of Cádiz which established the constitutional régime in Spain; indeed, several of its Deputies—among them the same Don Florencio del Castillo—were elevated to the Chairmanship in recognition of their merit, and out of respect for America whose provinces were always looked upon by the Cortes as sisters of those of the Peninsula and subsisting under a common politico-administrative system.

By the side of Don Florencio del Castillo, Deputy for Costa Rica, were the representatives of Guatemala, Nicaragua, Panama and New Granada—Larrazábal, López de la Plata, Ortiz, Mexía Lequerica and Count of Puñonrostro; and when we see that every one assented

to the declarations made and the resolutions passed in that body with respect to Costa Rica, we may safely assume that they responded to the actual facts and to the conveniences of the provinces interested.

The Constitution of Cádiz, of 1812, in its Art. 10 (Doc. No. 205), maintained the separation of Guatemala (which is expressly mentioned) and New Granada (Santa Fe), and preserved the territorial division existing in the Spanish dominions, until another more convenient division should be made by means of a constitutional law, as declared in Art. 11 (Doc. No. 205).

After the Constitution had been adopted the representative Cortes passed two important decrees of a legislative character; one relating to judicial organization and the other concerning provincial government.

The Decree of October 9, 1812 (Doc. No. 210) provided in Art. 1 that until a new division of the territory should be made there would be an audiencia in each of the provinces that then had one, and mentioned as still subsisting, the Audiencias of Guatemala and Santa Fe; it declared in Art. 2 that those audiencias should retain the territory they then had, and the same residential seat. The Province of Costa Rica continued, then, to belong to the Audiencia of Guatemala, and preserved the same eastern boundaries, which were the boundaries of that audiencia with that of Santa Fe.

The Decree of May 24, 1812 (Doc. No. 207), established a new provincial régime, and created the superior political chiefs of the provinces and the provincial deputations, as provided for in the Constitution. In pursuance of that decree there was to be a provincial deputation

in each of the provinces especially mentioned in Art. 10 of the Constitution and therefore in Guatemala; but in *Guatemala* the decree provided, there was to be another, to be established in León de Nicaragua "with the *Province of Costa Rica*." This provincial deputation was called that of *Nicaragua and Costa Rica*,

(b) *Continuation of the dependency of the northern coast of Costa Rica upon the government of that province.*

Although in the light of such provisions of a general organic character, it clearly follows that the Province of Costa Rica in no way depended upon Santa Fe or New Granada, we shall have to insist, as regards this northern coast (which Colombia pretends to consider as embraced in the Mosquito Coast), upon adding more proofs of the inefficacy and abrogation of the Royal order of San Lorenzo, of November 20, 1803.

We have already shown how the extraordinary Cortes, at the petition of Don Florencio del Castillo, Deputy for Costa Rica, decreed the opening of the Port of *Matina*, belonging to that province, on December 1, 1811, and how its governor, Don Juan de Dios de Ayala, by order of the Captain-General of Guatemala, stood ready to carry that decree into effect.

The governor continued to act in connection with the Captain-General of Guatemala in everything that related to *Matina*, as shown by his communications of August 5, and October 5, 1813 (Doc. Nos. 212 and 213).

The Provincial Deputation of Nicaragua having been charged with making the provincial division of districts, resolved, as its secretary certifies, to propose the creation

of two political sub-chiefs; of these, according to the official communication of its president of April 27, 1814 (Doc. No. 214), to the Minister of *Ultramar* (Affairs Beyond the Seas), one was to be assigned to Granada, where the vessels unload which arrive at the port of the San Juan River, on one of whose banks it was suggested to locate a settlement of 300 families—and the other in Cartago, capital of the *Province of Costa Rica*, because of its extent * * * “and because upon its coasts, it has the ports of Punta de Arenas on the south and *Matina* on the north.” This resolution demonstrates that the Mosquito Coast continued under the jurisdiction of Nicaragua, and the coast of Matina under that of Costa Rica, and that the establishment of settlements on the San Juan River, referred to in the Royal order of March 31, 1808 (Doc. No. 198), proceeded in due course.

By Decree of April 29, 1814 (Doc. No. 215), the Cortes resolved to open the port of Punta de Arenas, located to the south “of the Province of Costa Rica.”

(c) *Description of the Province of Costa Rica in the Proposal Made by its Deputy in the Cortes for the Creation of a Bishopric.*

In the session of the Cortes of May 31, 1813, presided over by Don Florencio del Castillo, Deputy for Costa Rica, the proposal of the latter relating to the creation of a Bishopric of that name was read; it begins as follows:

“In the Committee on Affairs Beyond the Seas there is a Memorial from the Noble Municipal Council of the city of Cartago, capital of Costa Rica, which asks for the separation of the said province from the Bishopric of León de Nicaragua to which it is now