

1894, "to give effect to the award rendered by the tribunal of arbitration," which indicate any policy upon the part of this government to enforce any rights against its own citizens, under the statute, consistent with the contentions made, "from the beginning upon the important questions of its right to protect its property and seal fisheries." On the other hand, the entire act clearly shows that it is the policy of the government not to make any such distinction. The act was passed enacting certain rules relative to the control of its own subjects in the exercise of the right which, under the award of the arbitrators, the two countries had in common to kill seal outside of the three-mile limit.

The decree of the district court is reversed, and the cause remanded, with instructions to the district court to dismiss the libel.

McKENNA, Circuit Judge, dissents.

THE ALEXANDER.

PACIFIC TRADING CO. v. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit. June 29, 1896.)

No. 182.

ALASKAN FUR FISHERIES—JURISDICTION OF UNITED STATES IN BEHRING SEA.

By the award of the arbitrators under the treaty between the United States and Great Britain it was settled that the United States have no jurisdiction to forbid the killing of fur-bearing animals in the waters of Behring Sea more than three miles from the shore. *The La Ninfa*, 75 Fed. 513, followed. 60 Fed. 914, reversed.

Appeal from the District Court of the United States for the District of Alaska.

Andros & Frank, for appellant.

Chas. A. Garter, for the United States.

Before **McKENNA** and **GILBERT**, Circuit Judges, and **HAWLEY**, District Judge.

HAWLEY, District Judge. This is an appeal from a decree of forfeiture of the schooner *Alexander* for killing sea otter and seal in violation of the provisions of section 1956 of the Revised Statutes, as amended March 2, 1889. The fourth finding of the court is to the effect that the vessel, her master, officers, and crew, did, on the 5th day of June, 1893, kill two sea otters within 11 miles of the shore of Tugidak island. The fifth finding is to the effect that the vessel, her master, officers, and crew, on the 13th day of June, 1893, did kill one sea otter, and on the 25th of June, 1893, did kill six sea otters and one fur seal, within certain degrees of latitude and longitude, therein mentioned. The sixth finding is that none of the animals mentioned in finding 5 "were actually killed within four marine leagues of any shore of Alaska territory, but they were all killed between the mainland of the Alaska peninsula and a line drawn from the southern end of Tugidak island to Chirikoff island, thence in the direction of the mainland through

the Semidi group, and on to touch Sutkwik island, and thence to the mainland." It thus appears that all the animals when killed by the officers and crew of the Alexander were at a point distant more than three miles from the shore. This fact brings the case within the principles announced in *La Ninfa* (just decided) 75 Fed. 513. Upon the authority of that case the decree of the district court is reversed, and the cause remanded, with instructions to the district court to dismiss the bill.

COBURN v. SAN MATEO COUNTY.

(Circuit Court, N. D. California. July 14, 1896.)

No. 12,030.

1. CALIFORNIA TIDE LANDS—TITLE OF STATE—MEXICAN GRANTS.

In California, the title to tide lands between high and low water mark is in the state, except in cases where grants may have been made by the Mexican government before the territory was acquired by the United States, expressly covering tide lands; in which event the United States, under the treaty of Guadalupe Hidalgo, would be bound to protect all private rights to such lands as against the state.

2. BOUNDARIES—LANDS BORDERING ON SEA—TIDE LANDS.

A grant by the Mexican government in California of land bordering "to the west on the sea" included only the lands above high-water mark, and did not cover the tide lands. A boundary on the "sea" means the same thing as on the "seashore." *More v. Massini*, 37 Cal. 432; *U. S. v. Pacheco*, 2 Wall. 587, followed.

3. SAME—GOVERNMENT SURVEYS—MEANDER LINES.

The meander lines run by the United States surveyors along the margin of the sea in surveying a Mexican grant, like meander lines upon navigable waters generally, are for the purpose of defining the sinuosities of the bank and determining the quantity of land in the grant, and not for the purpose of limiting the boundary, the latter being defined in all cases by the waters themselves. *Railroad Co. v. Schurmeir*, 7 Wall. 272, and *Hardin v. Jordan*, 11 Sup. Ct. 808, 838, 140 U. S. 371, followed.

4. TIDE LANDS—GRANT BY STATE TO COUNTY—CONSTITUTIONAL LAW.

The California act of February 27, 1893, declaring all the tide lands between high and low water mark, at the place known as "Pebble Beach," in San Mateo county, to be public grounds, and granting the same to said county, in trust for the use of the public, is constitutional and valid. The words "Pebble Beach," in this grant, were used merely as words of description, in subordination to the preceding words, "all the tide lands between the line of high and low tide."

5. EASEMENTS BY PRESCRIPTION—HIGHWAYS.

To acquire a public right by prescription, the use by the public must be adverse, continuous, and exclusive. A mere tacit permission or license by the landowner will not suffice. *Held*, therefore, that the fact that a landowner for a long period of years permitted the residents of a neighboring village, and visitors thereto, to pass through his gate, and over his land, to an attractive beach on the seashore, created no prescriptive right to a public road through his land.

6. DEDICATION, HOW MADE.

Two things are necessary to a dedication as distinguished from a prescriptive right by long user: First, a dedication by the owner; and, second, an acceptance by the public. A dedication may be inferred from a long and uninterrupted user by the public with the knowledge and consent of the owner; but mere knowledge and nonaction or failure to assert one's rights are not conclusive evidence of a dedication, for they may be