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It appears that somewhere about 1900 a French Minister declared, in passing, to the Chamber that the Republic had nothing to do with that lost island in the Southern seas. Since that date the island passed silently (sansbruit) under British influence; but it is curious that up to the present moment doubts still persist about its nationality.

The Colonial Administration does not count Marion Island among French possessions, for the "dependencies" of Madagascar comprise only the Crozete Islands, Kergulen, St. Paul and Amsterdam Islands. On the other hand, in marine circles there does not appear to be any certainty that the island has definitely been included within the British Empire. A discussion was held on this point during the meeting of the preparatory conference on the cruise of the "Bougainville". * One frankly gathered the impression there that the persons present were far from being in agreement. Nevertheless it was decided that the "Bougainville" should call at the

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1/11/1948
SOUTH AFRICA HOUSE,
TRAFALGAR SQUARE,
LONDON, W. C. 2.
1948.

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Political Secretary

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P.M 102/2.

TELEGRAPH Address:
"POSTOFFICE, TRAFALGAR SQUARE, LONDON"



UNION OF SOUTH AFRICA.

SOUTH AFRICA HOUSE,
TRAFALGAR SQUARE,
LONDON, W. C. 2.

Reference No. 19/88/2

SPRINGBOK.

7th January, 1948.

DEPT. OF EXTERNAL AFFAIRS
REGISTRY
10-1-1948
RECORDED *Schedule*
PLACED ON FILE *13/7/48*

TOP SECRET:

THE SECRETARY FOR EXTERNAL AFFAIRS:

Prince Edward Islands.

In continuation of my despatch of the 22nd December, I now send you an extract from a French semi-official publication, entitled "Au Seuil de l'Antarctique Croisière du 'Bougainville'", by Dr. René Jeannel, which affords a significant indication of the attitude of the authorities in Paris on the question of claims to these islands.

You will see that, while the French themselves put forward no claim to Marion Island, they seem to be in some doubt about the British title.

A. Hamilton
Political Secretary.

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/Island.....

Full Title.	Place and date of Signature.	How Union became Party.	When Terminable.	Whether binding on S.W.A. and date.	Where copy of Treaty accessible.	Remarks.
International Radiotelegraphic Convention.	Berlin 3/11/1906.				B.S.P. Vol. 99, page 321.	Abrogated by International Telecommunications Convention of 9.12.1932. See L.N.T.S. CLI, p. 13.
Unification of Pharmacopoeial Formulas for Potent Drugs: Agreement respecting the ...	29.11.1906	By accession of Natal. See also Art. 248 of Union Constitution (vide Remarks).	6 months' notice to Belgian Government.	No.	B.S.P. Vol. 99, page 179.	See B.S.P. CI, page 161.
International Disputes: Protocol for the Accession of non-signatory powers to the Convention of July 29, 1899, for the Pacific Settlement of ..	The Hague 14.6.1907	Signature of U.K. binds whole of British Empire.	Concurrent with Convention of 29/7/1899.		B.S.P. C. page 276.	
Contract Debts: Convention respecting the limitation of employment of force for the recovery of ..	The Hague 18.10.1907	U.K.'s signature binding on whole of British Empire.	12 months' notice.		B.S.P. Vol. C p. 314.	
Hostilities: Convention (No. 3) relative to the opening of ...	The Hague 18.10.1907	- do -	- do -		B.S.P. Vol. C, p. 326.	

The frigate "Transvaal" arrived off Marion Island on 25th December at 11 a.m. South African time but was able to effect a landing and hoist the South African Flag at 11.32 a.m. South African time on the 29th December only. The flag was hoisted on Prince Edward Island on the 4th January, 1948, at 3.55 p.m. South African time. This vessel landed shore parties on both islands which will continue in occupation for a few days pending the arrival of permanent staff to undertake administration of the islands and the provision of meteorological data and wireless contact. The frigate found both islands entirely unoccupied. We have under consideration the issue of a proclamation concerning which you will be further advised.

Pending the issue of a public statement about which you will also be advised secrecy is being maintained.

TOP SECRET

Annex to P(48) 9

TELEGRAM FROM: SECRETARY FOR EXTERNAL AFFAIRS, PRETORIA.

DATED: 6th JANUARY, 1948.

You will have noticed recent press reports regarding certain operations undertaken by the Union Government in connection with the Prince Edward Island Group (Prince Edward and Marion Islands) situated some twelve hundred miles south-south-east of Cape Town. These reports were unauthorised and were based entirely upon press conjectures built up on circumstantial evidence.

The position is that the Union Government have for some time felt the need of additional meteorological information to supplement that available locally and from Tristan da Cunha. Such additional information in large measure would be forthcoming were meteorological data continuously available from the islands in question.

The Union Government has accordingly resolved to establish a permanent meteorological station on one or other or both islands and, after consultation with the Government of the United Kingdom, to annex them.

Though the primary object of the operation is the making available of much needed meteorological data it will be appreciated that possession of these islands might also be of value in the event of the establishment of an air route from the Union to Australia and/or New Zealand and of possible strategical value. Apart from the above-mentioned considerations the islands have little potential value.

Their terrain and climate are most inhospitable. They may present possibilities regarding guano and sealing but these aspects have still to be investigated.

TOP SECRET

P(48) 9

Previous Ref: P(47) 45

POLAR COMMITTEE
PRINCE EDWARD GROUP.

The attached telegram from the Union Department of External Affairs to the Union High Commissioner in London, dated the 6th January, 1948, has been communicated by the South African representative on the Committee.

(Signed) John Chadwick
Secretary
Polar Committee.

Commonwealth Relations Office.
8th January, 1948.

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- (d) It is necessary to add that if we could establish a claim to Title by occupation there does not appear to be any sufficient evidence of intention to give up our sovereignty to support the claim that we have abandoned the Islands, though the cancellation of the leases in 1934 might be quoted against us.

So far as the actual occupation of the Prince Edward Islands by the South African Government is concerned, if this were proposed, all that would seem necessary in the first place would be for the South African Government to establish a Title to the Islands by effective occupation. Any action on these lines could perhaps be supported as perfecting the inchoate or doubtful title already vested in His Majesty as a result of the previous action referred to in paragraph 3 (c) above.

I hope that this information will be of assistance to your Government. If, however, there are any further points on which you require guidance from us we should naturally be only too happy to give you what further assistance we can.

I am writing on similar lines to Heydon at Australia House regarding Heard Island and the McDonald Islands.

Yours sincerely,

(Sgd) John Chadwick.

TOP SECRET

Annex to P(47)45

Commonwealth Relations Office,
Downing Street.

21st November, 1947.

My dear Hewitson,

Would you please refer to your letter No.19/88/2 of the 21st August about the Prince Edward Islands? I am sorry that our reply to the points which you raised should have been so long delayed.

We were most interested to learn of the consideration which the Union Departments concerned are giving to these Islands, and we hope that we may be kept as closely informed as possible of the outcome of their examination of the problems involved.

The result of our own interdepartmental discussions here is briefly that we should see no objection in principle to the transfer of the Prince Edward Islands to South Africa (or of Heard Island and with it the McDonald Islands to Australia). As regards the present Title to the Prince Edward Islands, we have consulted our Legal Adviser and, for your secret information, his views may be summarised as follows:-

- (a) Occupation as a means of obtaining Title to a territory consists of two elements (a) an intention to exercise sovereignty (animus); and (b) actual occupation (factum).
- (b) The evidence of animus is very thin. The mere granting of licences is by itself of little value. The Islands appear not to have been formally annexed to His Majesty's Dominions, nor it seems is there anything before 1926 upon which we could rely to establish factum. Any advantage which we might have obtained from the settlement established in 1909 in the Prince Edward Islands would appear to have been lost by the warning to the South Sealing Company that their operations would be carried out entirely at their own risk. The result appears to be that any occupation of the Islands would be regarded as a private venture and not on behalf of the Crown.
- (c) The strongest claim would seem to rest on the Leases granted in 1926 by the United Kingdom Government and subsequent occupation by the Lessees. Recent authorities, however, require to establish the necessary factum, not only actual occupation, but something in the nature of administration. The Leases may have contained some provision authorising the Company to perform acts of administration. Even so, however, mere occupation for four years (up to 1930) by a Lessee Company under a Lease terminated at the request of the Lessees in 1934 and not followed by any further display of sovereignty would not be likely to impress the International Court.

G. Hewitson, Esq.,

TOP SECRET

Annex to P(47)45

SOUTH AFRICA HOUSE,
Trafalgar Square,
London. W.C.2.

21st August, 1947.

My dear Chadwick,

You will recall that the question of the desirability of attaching the Prince Edward Islands to the Union was discussed at a meeting of the Polar Committee on the 13th March, 1947.

The question has been referred to the Union Departments concerned and their comment shows that the islands would not only be of use to the Union as the site for a meteorological station, but also for direction finding in the event of a direct air route being established between South Africa and Australia. Military considerations also indicate the desirability of proceeding further with the proposal to strengthen the claim of the United Kingdom or of the Union of South Africa of sovereignty over the islands.

Interdepartmental discussions are still proceeding but I have been asked to bring the foregoing comments to your notice, and to enquire whether the views of the United Kingdom departments concerned could be made available at an early date. In this regard you will recall that Mr. Syers intimated at the last meeting of the Polar Committee that he was endeavouring to ascertain the views of the appropriate United Kingdom authorities as to how the British Commonwealth claim to the islands could best be substantiated.

Yours sincerely,

(Sgd) G. Hewitson

G. St. J. Chadwick, Esq.,
Commonwealth Relations Office,
Downing Street,
Whitehall, S.W.1.

TOP SECRET

P (47) 45

Previous Ref: P(47) 13

POLAR COMMITTEE

Prince Edward Islands

1st, 1947.

Annexed are copies of a letter from the South African Representative on the Committee, dated the 21st August, and of the Secretary's reply, dated the 21st November, 1947.

to
Committee

(Signed) John Secretary

Secretary
Polar Committee.

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Commonwealth Relations Office,
Downing Street,
5th January, 1948.

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(Sgd) G. Howitson

G. St. J. Chadwick, Esq.,
Commonwealth Relations Office,
Downing Street,
Whitehall, S.W.1.

Recommendations.

19. As a first step towards establishment of South African sovereignty it is desirable that the United Kingdom Government should now take such action as may be necessary to transfer to the Union Government such title or claims to ownership as they may possess. No communication has yet been made to the United Kingdom Government in this regard. The Prime Minister could perhaps address the necessary request to the United Kingdom authorities in the course of his forthcoming visit to London.

20. In the meantime the Union authorities will explore what further action is practicable and necessary to establish South African claim to sovereignty.

market provided there is effective control to prevent indiscriminate slaughtering of seals. If sealing for the fur trade should prove a profitable venture, arrangements could no doubt be made to collect seal oil at the same time.

15. The President of the Council for Scientific and Industrial Research who has considered the various aspects of the matter, agrees with the general consensus of opinion that steps should be taken to establish South African sovereignty over the islands.

16. The opinions expressed in paragraphs 11 - 15 above are the views of the South African Departments concerned.

Proposal to cede the Islands to the Union of South Africa.

17. As a result of the wartime and post-war revival of interest in the Antarctic and the importance attached by the United Kingdom Government to strengthening its inchoate claims in that area, the Polar Committee in November 1945 invited the Foreign Office and the Colonial Office to examine the question whether it was not desirable that the Prince Edward Islands should be attached to a part of the British Commonwealth for administrative purposes. As a result of comments received it was suggested that the islands might either be attached to the Falkland Island Dependencies or ceded to the Union of South Africa. It should be noted, however, in connection with the first alternative, that the distance between the Prince Edward Islands and the Falkland Islands is some 4,000 miles as compared with 1,200 miles from South Africa.

18. The United Kingdom Government subsequently intimated that there would be no objection to the Union Government "acquiring" the Prince Edward Islands should they wish to do so and they are examining the legal steps which would be needed before the transfer or cession (if such it can be called) would take place.

13. Meteorological Importance.

In the event of an air route being established between the Union and Australia, when the islands will be required for direction finding, regular and frequent weather reports from the islands will be essential in order to secure adequate meteorological protection. It is estimated that an amount of approximately £15,000 would be required to establish a meteorological station equipped with adequate wireless facilities and that an amount of approximately £6,000 including £2,000 for transport would be necessary yearly to maintain the station. Whether or not the outlay would benefit the services in the Union by a corresponding amount is a question which can only be answered by actual trial. There are certainly large possibilities particularly in regard to medium range forecasts (four to five days) for which in the southern hemisphere there is at present too little regular information available particularly from the Antarctic and bordering regions. Professor Spoilhaus who recently surveyed the Union's meteorological services considered that the establishment of temporary meteorological stations on islands towards the Antarctic is desirable in order to determine the value of such stations for routine use in the future.

Economic Importance.

14. Experience prior to 1939 seems to have shown that the islands were of little or no economic importance. In 1942, however, it was reported that considerable quantities of guano were deposited and the Department of Commerce and Industries now considers that it should be possible to obtain a considerable amount of guano annually, provided it is collected before the rainy season starts. Mr. G.D. Irvin of Irvin and Johnson considers that there are favourable sealing possibilities from the point of view of the fur market/...

development of the route but it is a contingency which must now be studied with much more serious attention, in view of the present situation and possible developments in India and the Middle East.

11. In the opinion of the South African Chief of General Staff, modern long range weapons, the fact that accurate weather forecasting is of the greatest importance in warfare, and the present uncertain position in the Indian ocean make these islands of the greatest strategic importance to the Union. From the short term view the islands would undoubtedly be a liability to the Union and at the most would provide a meteorological station which might considerably improve the forecasting of South African weather conditions. In the long view, however, the question arises that if South Africa does not lay claim to the islands now and the United Kingdom allows such claim as it has to lapse, there is the possibility that they may be claimed by some other country that may not be friendly disposed towards the Union. For the proper defence of the Union, therefore, the islands must remain at least in friendly hands. It is felt that the only way to ensure this is for South African sovereignty to be established as soon as possible.

12. Provided costs are not a major consideration it should be possible to lay down a landing strip and to construct a small harbour but until a proper reconnaissance is made, it is impossible to give even a rough estimate of the capital cost. The South African Air Force and the South African Naval Force are in a position to undertake a combined air and sea reconnaissance almost immediately, but to ensure success such reconnaissance should be made during the present summer weather conditions.

13./.....

- (c) Completed claim by occupation, i.e., by the establishment and maintenance of the necessary administration.

In this connection the standard of what constitutes effective occupation and control must vary with the material conditions of the territory concerned. It is no longer sufficient merely to legislate for the territory, to issue whaling or other licences, to arrange occasional visits, to appoint Magistrates or generally exercise the functions of sovereignty. In other words little or no weight now attached to discovery; the requirements of effectiveness of possession are now greater and the necessity of continuity of effective possession is now emerging almost as a new requirement of international law".

9. On the basis of the above opinion the Polar Committee in London decided that it was extremely doubtful whether any but an inchoate British title now exists and that should the islands be formally annexed, the annexing power would have to arrange at least that they should be visited and to exercise some form of effective control.

Strategic Importance of the Islands.

10. In May 1944 the United Kingdom Air Ministry considered the situation in the Antarctic from the point of view of air transport. The Air Staff concluded that "the Antarctic if suitably developed might make possible an air route from the United Kingdom to Australia and the Pacific via South Africa. This would probably require the establishment of staging points on the Prince Edward Islands and Macquarie Island, as well as at several points on the Antarctic continent. Such a route could indeed be of first rate importance if the main Empire route to the East was broken by enemy occupation or domination of India or of some other essential link". As this contingency was at the time a remote one the Air Staff did not recommend development of the route but it is a contingency which must

6. In 1926 the islands were leased by the United Kingdom Government for ten years to the "Kerguelen Sealing and Oiling Company of Cape Town." This British Company, a subsidiary of Irvin and Johnson (S.A.) Ltd., was granted exclusive whaling, sealing, guano and mineral rights. The terms of the lease included permission to display the British flag as occasion might require in proof of occupation and the obligation to erect a navigational beacon. By request of the Company the lease was terminated in 1934, the Company stating that they had not exercised their rights under the lease since 1930 and that conditions had developed which prohibited use being made of these rights; no minerals or guano had been found and the price of oil made elephant sealing unprofitable.

The question of legal title to the Islands.

7. There appears to be some doubt whether the United Kingdom Government possessed a good title to the islands in 1934 (the date when the last lease was terminated). Even if it is considered that this existed in 1934 there remains a doubt whether the islands may not now be regarded as having been abandoned and as having reverted to the situation of terra nullius.

8. The legal aspect of territorial sovereignty has been summarised by the Legal Adviser to the Foreign Office as follows: "Claim to territorial sovereignty may be divided into three categories:

- (a) Claim by virtue of discovery, which gives inchoate right of short duration.
- (b) Claim by virtue of formal act of annexation, again giving inchoate right, effective only for a limited period to perfect a claim by administration.

(c)/.....

in the opinion of their Legal Advisers, "the granting of a lease and the hoisting of a British flag by the occupier were tantamount to annexation". Consequently the islands were never formally annexed before the lease was granted. Dr. Newton, however, never hoisted the British flag nor did he occupy the islands or make any other use of his concession.

3. In 1909 the Southern Sealing Company of Cape Town advised the Acting High Commissioner for South Africa that they had established a settlement of twenty men on Marion Island for the purpose of collecting elephant seal oil and skins and that they owned a small steamer which was being used to maintain communication with Cape Town. The Governor of the Cape Colony informed the Foreign Office of these developments and was instructed that in view of the licence granted to Dr. Newton in 1908 the islands "must be considered as already under British sovereignty".

4. In 1910 it was pointed out that the Legal Advisers' opinion was based on erroneous premises, that the action granting a lease had not been made effective by sufficient acts of occupation, and that the island had never ceased to be terra nullius.

5. In 1910 in reply to an enquiry whether the islands were British territory the Norwegian Government were informed that a licence had been granted to Dr. Newton and that the United Kingdom Government were not prepared to grant a licence to more than one applicant. In reply to a similar enquiry from the French Government in the same year it was stated that the islands had been annexed and were under British sovereignty. In reply to an enquiry from the German Government in 1928 it was stated that the islands had been annexed in 1908 and that a 21 year licence had been granted to Dr. Newton.

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ESTABLISHMENT OF SOUTH AFRICAN SOVEREIGNTY
OVER PRINCE EDWARD ISLANDS.

Geography and History.

1. The two islands of this group, Marion and Prince Edward, are situated 1,200 miles south east of the Union. (lat. 46° 45' S, long. 37° 50' E.) They were discovered by the Frenchman Marion-Dufresne in January, 1772. In 1776 Captain Cook sailed between the two islands and gave them their present names. From 1802 onwards the group was visited by American and British sealers, but very little definite information about their visits has survived. During the nineteenth century soundings off shore were made by British and French vessels. In 1873 a party from a British naval vessel landed on Marion Island for a few hours. In 1910 the "Wakefield" which had been chartered by the Government of Victoria to search for the missing "Waratah" made a thorough search of both islands. Further visits were made in 1929, 1935 by the "Discovery II", 1939 by the French sloop "Bougainville" and in 1940 by H.M.S. "Neptune" but none of these expeditions succeeded in landing.

2. In 1906 Dr. W.B. Newton, a British subject, applied to the Colonial Office for a concession to work the guano deposits then thought to exist on the Prince Edward Islands. Nothing could be found in the Foreign Office or Admiralty Archives to show that the islands had ever been claimed by any Government. Enquiry of the French Government in 1907 elicited the reply that operations on these islands would be a matter of indifference to them. Dr. Newton was granted a lease for 21 years from February 1908. At the time the Colonial Office informed the Foreign Office that

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Recommendations.

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11. In the opinion of the South African Chief of General Staff, modern long range weapons, the fact that accurate weather forecasting is of the greatest importance in warfare, and the present uncertain position in the Indian ocean make these islands of the greatest strategic importance to the Union. From the short term view the islands would undoubtedly be a liability to the Union and at the most would provide a meteorological station which might considerably improve the forecasting of South African weather conditions. In the long view, however, the question arises that if South Africa does not lay claim to the islands now and the United Kingdom allows such claim as it has to lapse, there is the possibility that they may be claimed by some other country that may not be friendly disposed towards the Union. For the proper defence of the Union, therefore, the islands must remain at least in friendly hands. It is felt that the only way to ensure this is for South African sovereignty to be established as soon as possible.

12. Provided costs are not a major consideration it should be possible to lay down a landing strip and to construct a small harbour but until a proper reconnaissance is made, it is impossible to give even a rough estimate of the capital cost. The South African Air Force and the South African Naval Force are in a position to undertake a combined air and sea reconnaissance almost immediately, but to ensure success such reconnaissance should be made during the present summer weather conditions.

13./.....

6. In 1926 the islands were leased by the United Kingdom Government for ten years to the "Kerguelen Sealing and Oiling Company of Cape Town." This British Company, a subsidiary of Irvin and Johnson (S.A.) Ltd., was granted exclusive whaling, sealing, guano and mineral rights. The terms of the lease included permission to display the British flag as occasion might require in proof of occupation and the obligation to erect a navigational beacon. By request of the Company the lease was terminated in 1934, the Company stating that they had not exercised their rights under the lease since 1930 and that conditions had developed which prohibited use being made of these rights; no minerals or guano had been found and the price of oil made elephant sealing unprofitable.

The question of legal title to the Islands.

7. There appears to be some doubt whether the United Kingdom Government possessed a good title to the islands in 1934 [the date when the last lease was terminated]. Even if it is considered that this existed in 1934 there remains a doubt whether the islands may not now be regarded as having been abandoned and as having reverted to the situation of terra nullius.

8. The legal aspect of territorial sovereignty has been summarised by the Legal Adviser to the Foreign Office as follows: "Claim to territorial sovereignty may be divided into three categories:

- (a) Claim by virtue of discovery, which gives inchoate right of short duration.
- (b) Claim by virtue of formal act of annexation, again giving inchoate right, effective only for a limited period to perfect a claim by administration.

(c)/.....

in the opinion of their Legal Advisers, "the granting of a lease and the hoisting of a British flag by the occupier were tantamount to annexation". Consequently the islands were never formally annexed before the lease was granted. Dr. Newton, however, never hoisted the British flag nor did he occupy the islands or make any other use of his concession.

3. In 1909 the Southern Sealing Company of Cape Town advised the Acting High Commissioner for South Africa that they had established a settlement of twenty men on Marion Island for the purpose of collecting elephant seal oil and skins and that they owned a small steamer which was being used to maintain communication with Cape Town. The Governor of the Cape Colony informed the Foreign Office of these developments and was instructed that in view of the licence granted to Dr. Newton in 1908 the islands "must be considered as already under British sovereignty".

4. In 1910 it was pointed out that the Legal Advisers' opinion was based on erroneous premises, that the action granting a lease had not been made effective by sufficient acts of occupation, and that the island had never ceased to be terra nullius.

5. In 1910 in reply to an enquiry whether the islands were British territory the Norwegian Government were informed that a licence had been granted to Dr. Newton and that the United Kingdom Government were not prepared to grant a licence to more than one applicant. In reply to a similar enquiry from the French Government in the same year it was stated that the islands had been annexed and were under British sovereignty. In reply to an enquiry from the German Government in 1928 it was stated that the islands had been annexed in 1908 and that a 21 year licence had been granted to Dr. Newton.

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C.V.

ESTABLISHMENT OF SOUTH AFRICAN SOVEREIGNTY
OVER PRINCE EDWARD ISLANDS.

Geography and History.

1. The two islands of this group, Marion and Prince Edward, are situated 1,200 miles south east of the Union. (lat. $46^{\circ} 45' S$, long. $37^{\circ} 50' E$.) They were discovered by the Frenchman Marion-Dufresne in January, 1772. In 1776 Captain Cook sailed between the two islands and gave them their present names. From 1802 onwards the group was visited by American and British sealers, but very little definite information about their visits has survived. During the nineteenth century soundings off shore were made by British and French vessels. In 1873 a party from a British naval vessel landed on Marion Island for a few hours. In 1910 the "Wakefield" which had been chartered by the Government of Victoria to search for the missing "Waratah" made a thorough search of both islands. Further visits were made in 1929, 1935 by the "Discovery II", 1939 by the French sloop "Bougainville" and in 1940 by H.M.S. "Neptune" but none of these expeditions succeeded in landing.

2. In 1906 Dr. W.B. Newton, a British subject, applied to the Colonial Office for a concession to work the guano deposits then thought to exist on the Prince Edward Islands. Nothing could be found in the Foreign Office or Admiralty Archives to show that the islands had ever been claimed by any Government. Enquiry of the French Government in 1907 elicited the reply that operations on these islands would be a matter of indifference to them. Dr. Newton was granted a lease for 21 years from February 1908. At the time the Colonial Office informed the Foreign Office that

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