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**ORGANIC ACT**

OF THE

**TERRITORY OF HAWAII**

(AS AMENDED)

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**ANNOTATED**

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HONOLULU, JULY 1, 1911

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# AN ACT

## TO PROVIDE A GOVERNMENT FOR THE TERRITORY OF HAWAII.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

### CHAPTER I.—GENERAL PROVISIONS.

#### DEFINITIONS.

SECTION 1. That the phrase "the laws of Hawaii" as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii, in force on the twelfth day

This is the Act of April 30, 1900, 1st Session, 56th Congress; 31 Sts. at L. 141, c. 339; 2 Supp. R. S. 1141; prepared and recommended by a commission appointed by the President under the Joint Resolution of Annexation of July 7, 1898, 2nd Session, 55th Congress; 30 Sts. at L. 750; 2 Supp. R. S. 895. The formal transfer of sovereignty under that Resolution took place Aug. 12, 1898, and this Organic Act, creating the Territory, took effect June 14, 1900. For that Resolution, with notes thereto on the application of the Federal Constitution and laws to Hawaii during the two years between annexation and the establishment of Territorial government, see Revised Laws of Hawaii, 1905, p. 40. For decisions and other matters under this Organic Act, see notes to sections thereof, below. For other legislation by Congress and Proclamations by the President relating to Hawaii, published in the United States Statutes at Large, except appropriations, etc., see:

Nov. 2, 1898; 30 Sts. at L. 1786; proclamation, reserving wharf sites and lots along and near Honolulu harbor for naval purposes.

Mch. 1, 1899; 30 Sts. at L. 966, c. 327; 2 Supp. R. S. 958; extending franking privileges to Hawaii.

Mch. 3, 1899; 30 Sts. at L. 1014, c. 419; 2 Supp. R. S. 980; providing for census of Hawaii. See also Act of July 2, 1909, below.

Sept. 10, 1899; 31 Sts. at L. 1959; proclamation reserving land near Honolulu harbor and lots on Punchbowl slope for naval purposes.

May 26, 1900; 31 Sts. at L. 205, c. 586; 2 Supp. R. S. 1176; providing for return from Hawaii of remains of civil employees and ex-soldiers to the mainland.

May 26, 1900; 31 Sts. at L. 211, c. 586; increasing pay of army officers and enlisted men serving in Hawaii.

May 26, 1900; 31 Sts. at L. 218, c. 589; 2 Supp. R. S. 1178; providing for officers of customs district of Hawaii.

May 31, 1900; 31 Sts. at L. 249, c. 600; 2 Supp. R. S. 1184; act to facilitate entry of steamships, extended to steamships trading between Hawaii and the mainland.

May 31, 1900; 31 Sts. at L. 718; joint resolution, withdrawing royal

**Castle v. Secretary**, 16 H. 779. Referred to also in 14 H. 222, 283; 15 H. 298, 366, 367; 23 Ops. 138. On appointment of members of supreme court, see also s. 82.

## CHAPTER IV.

### THE JUDICIARY.

SEC. 81. That the judicial power of the Territory shall be vested in one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish. And until the legislature shall otherwise provide, the laws of Hawaii heretofore in force concerning the several courts and their jurisdiction and procedure shall continue in force except as herein otherwise provided.

The Organic Act is in the nature of a constitution to the Territorial legislature, but it confers on the legislature the power to organize the courts and fix their jurisdiction and the number of circuit judges, although such judges are appointed by the President and paid by the United States: 23 Ops. 539; **Ter. v. Boyd**, 16 H. 667. The circuit courts may be regarded as constitutional courts from the standpoint of the Territory: **Hind v. Wilder's S. Co.**, 14 H. 222; **Ex p. Smith**, 14 H. 269. This s. did not abrogate the jurisdiction of circuit judges at chambers in equity and probate matters: **Carter v. Gear**, 16 H. 242 (referring also to many other ss. of this act); same, 197 U. S. 352; nor does it prevent the legislature from confining original jurisdiction in habeas corpus cases to the supreme court, its justices and circuit judges, to the exclusion of circuit courts as such: **High Sheriff v. Goto**, 16 H. 266. Several sessions of the same circuit court may be held at the same time and only one judge may preside over each: **Ter. v. Boyd**, 16 H. 667; **Ter. v. Johnson**, 16 H. 747. The circuit courts were held to have jurisdiction in naturalization cases even before the naturalization Act of June 29, 1906; **Ter. v. Kaizo**, 17 H. 296, 299. Territorial courts have jurisdiction in fornication cases under local laws notwithstanding the Edmonds Act: **Ter. v. Martin**, 19 H. 208. This s. was held to continue the jurisdiction of local courts over offenses against local laws on the naval reservation: **Ter. v. Carter**, 19 H. 201. Referred to in 17 H. 430 (recognition of previous laws concerning courts); 18 H. 539.

A provision for a commission to hear claims against the Territory and render final judgments, is not void on the theory that the legislature cannot create an inferior court of final jurisdiction: **Ins. Co. v. Macfarlane**, 14 H. 489. A board of liquor license commissioners is not a court within the meaning of this s.: **Ter. v. Miguel**, 18 H. 403; nor is an act void which provides for final decisions of a commission on appeals from magistrates in insanity cases: **In re Atcherley**, 19 H. 538.

## SUPREME COURT.

SEC. 82. That the supreme court shall consist of a chief justice and two associate justices, who shall be citizens of the Territory of Hawaii and shall be appointed by the President of the United States, by and with the advice and consent of the Senate of the United States, and may be removed by the President: *Provided, however,* That in case of the disqualification or absence of any justice thereof, in any cause pending before the court, on the trial and determination of said cause his place shall be filled as provided by law.

Referred to in 17 H. 408, 430; 23 Ops. 540. On appointments to supreme court, see also s. 80. On appeals from supreme court and relations between Territorial and Federal courts, see note to s. 86. Provision is made for substitutes in case of disqualification or absence by s. 1634 of the Revised Laws as amended by Act 92, Laws of 1905, and Act 14, Laws of 1909.

## LAWS CONTINUED IN FORCE.

SEC. 83. That the laws of Hawaii relative to the judicial department, including civil and criminal procedure, except as amended by this Act, are continued in force, subject to modification by Congress, or the legislature. The provisions of said laws or any laws of the Republic of Hawaii which require juries to be composed of aliens or foreigners only, or to be constituted by impaneling natives of Hawaii only, in civil and criminal cases specified in said laws, are repealed, and all juries shall hereafter be constituted without reference to the race or place of nativity of the jurors; but no person who is not a male citizen of the United States and twenty-one years of age and who cannot understandingly speak, read, and write the English language shall be a qualified juror or grand juror in the Territory of Hawaii. No person shall be convicted in any criminal case except by unanimous verdict of the jury. No plaintiff or defendant in any suit or proceeding in a court of the Territory of Hawaii shall be entitled to a trial by a jury impaneled exclusively from persons of any race. Until otherwise provided by the legislature of the Territory, grand juries may be drawn

in the manner provided by the Hawaiian statutes for drawing petty juries, and shall sit at such times as the circuit judges of the respective circuits shall direct; the number of grand jurors in each circuit shall be not less than thirteen, and the method of the presentation of cases to said grand jurors shall be prescribed by the supreme court of the Territory of Hawaii. The several circuit courts may subpoena witnesses to appear before the grand jury in like manner as they subpoena witnesses to appear before their respective courts.

See 12 H. 446, for rules prescribed under this s. for presentation of cases to grand juries; also ch. 119 of the Revised Laws of Hawaii, and notes thereto, on juries. On juries between annexation and establishment of Territorial government, see note to Joint Resolution of annexation in Revised Laws, p. 40. A single circuit judge cannot require an oath of secrecy by a witness before a grand jury: *In re Anin*, 17 H. 341; nor can a circuit judge require proposed witnesses to give recognizances, or commit them to jail without giving them an opportunity to do so, to appear and testify, when the accused has not been committed or is not held to await the action of the grand jury and no indictment is under consideration by the grand jury: *In re Craig*, 20 H. 453. This s. did not repeal so much of the Hawaiian laws relating to the drawing of juries as to leave the rest inoperative: *Ter. v. Ng Kow*, 15 H. 602. Objections to manner of drawing grand juries, waived, unless presented at first opportunity: *Oriemon v. Ter.*, 13 H. 413; *Ter. v. Ferris*, 15 H. 141; *Tong Kai v. Ter.*, 15 H. 613. Accused has not right to appear before grand jury or have witnesses for him heard by it: *Tong Kai v. Ter.*, above. The right, if any, to assistance of counsel at impanelment of grand jury is waived, if not claimed, though accused is in prison: *Id.* Disqualifications of grand jurors (e. g., non-citizenship) do not destroy the jurisdiction of the court or make the indictment void, and cannot sustain a collateral attack by habeas corpus: *Kaizo v. Henry*, 211 U. S. 148. Verdicts must be unanimous under this act, but unanimity may be waived in civil cases: *Pringle v. Hilo M. Co.*, 13 H. 705; a misdemeanor punishable by imprisonment for a year, is not an infamous offense and does not require an indictment; and in such case trial by jury, while required if demanded, may be waived: *Ex parte Higashi*, 17 H. 432, 439; and a case of conspiracy may be tried by consent by eleven jurors: *Ter. v. Soga*, 20 H. 74, 95; and trial by jury may be waived in civil cases: *Ah Hing v. Ah On*, 15 H. 59. Trial of suit for over \$20 may be before district magistrate first, if jury is provided for on appeal: *Lewers & Cooke v. Redhouse*, 14 H. 290; but an issuance of execution in such case by the magistrate pending appeal would be unconstitutional: *Wong Chow v. Dickey*, 14 H. 524; although a requirement of a bond for the payment of the judgment as a condition of appeal would be constitutional: *Hall & Son v. Dickey*, 15 H. 590. This s. is referred to also in 23 Ops. 543; 13 H. 481, 556; 16 H. 266, 747; 18 H. 539; 20 H. 243; 187 U. S. 309; 190 U. S. 211; 217 U. S. 244; 1 U. S. Dist. Ct. Haw. 43.