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ORGANIC ACT

OF THE

TERRITORY OF HAWAII
(AS AMENDED)

ANNOTATED

HONOLULU, JULY 1, 1911

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ORGANIC ACT

OF THE

TERRITORY OF HAWAII.

Annotated by W. F. Frear with references to

United States Statutes at Large, through Vol. 36,

United States Supreme Court Reports, through Vol. 218,

Federal Reporter (U. S. Cir. Ct. of App., 9th Cir.), through
Vol. 185,

United States District Court of Hawaii Reports, 2 Vols. pub-
lished and Vol. 3 and part of Vol. 4 unpublished,

United States Court of Claims Reports, through Vol. 45,

Opinions of United States Attorney General, through Vol. 27,

Hawaiian Supreme Court Reports, nearly through Vol. 20,

Etc.

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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. 760; 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.

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

Feb. 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

mausoleum at Honolulu from disposition under public land laws of United States.

Feb. 15, 1901; 31 Sts. at L. 791, c. 373; 2 Supp. R. S. 1483; privileges of immediate transportation extended to port of Honolulu.

Mch. 3, 1901; 31 Sts. at L. 1448, c. 871; 2 Supp. R. S. 1812; authorizing national banks in Hawaii to be depositaries of customs receipts as well as other public moneys and to act as financial agents of the government.

Mch. 3, 1901; 31 Sts. at L. 1437, c. 858; 2 Supp. R. S. 1806; providing for subports of entry and delivery in Hawaii.

Feb. 19, 1902; 32 Sts. at L. 35, c. 24; authorizing register of barkentine "Hawaii."

Apr. 29, 1902; 32 Sts. at L. 637, c. 172; providing for procurement of trade statistics between the mainland and Hawaii (and other non-contiguous territory).

Apr. 29, 1902; 32 Sts. at L. 176, c. 641; prohibiting Chinese migration from island territory to the mainland and from one portion to another of island territory. See also Joint Resolution of Annexation, s. 101 of this act, and *U. S. v. Wong Kock Yui*, 3 U. S. Dist. Ct. Haw. —.

May 19, 1902; 32 Sts. at L. 200, c. 817; apportioning senators elected at first general election in Territory of Hawaii.

June 28, 1902; 32 Sts. at L. 464; authorizing Secretary of War to acquire leases of lands in Hawaii set aside for purposes of military post. Referred to in 25 Ops. 226.

Jan. 14, 1903; 32 Sts. at L. 770, c. 186; Hawaiian silver coins to be receivable for government dues and received as United States coins.

Jan. 26, 1903; 32 Sts. at L. 780, c. 332; providing for payment up to \$1,000,000 by United States of fire claims against Hawaii and issuance of Hawaiian bonds up to \$500,000 for balance.

Dec. 28, 1903; 33 Sts. at L. 2329; proclamation, taking over Hawaiian light-house establishment for use of United States.

Apr. 8, 1904; 33 Sts. at L. 164, c. 948; amending s. 76 of Org. Act, relating to labor statistics, etc.

Apr. 21, 1904; 33 Sts. at L. 227, c. 1405; amending and ratifying Hawaiian law granting electric light and power franchise, at Honolulu.

Apr. 21, 1904; 33 Sts. at L. 231, c. 1406; amending and ratifying Hawaiian laws granting gas franchises, at Honolulu.

Apr. 22, 1904; 33 Sts. at L. 579, c. 1830; granting right of way through Kahauiki military reservation to Oahu Railway and Land Co.

Mch. 3, 1905; 33 Sts. at L. 1009, c. 1443; providing for establishment of leprosy investigation station on Molokai.

Mch. 3, 1905; 33 Sts. at L. 1035, c. 1465; amending ss. 56 and 80 of Org. Act, relating to appointment and election of city and county officers; and s. 86, relating to appeals and writs of error from Territorial to Federal supreme court.

May 12, 1906; 34 Sts. at L. 190, c. 2453; making Hawaii the fifth great coasting district.

May 26, 1906; 34 Sts. at L. 204, c. 2561; authorizing Territory to dispose of and use proceeds of personal property ceded to United States; and ratifying previous disposals; by implication amending s. 91 of Org. Act.

June 19, 1906; 34 Sts. at L. 302, c. 3435; setting aside block of land at Hilo for Federal building site and authorizing sale of buildings thereon and use of proceeds thereof for improvement of the land. See Act of June 25, 1910, below, restoring part of this block to its previous status.

June 20, 1906; 34 Sts. at L. 309, c. 3441; amending and ratifying Ha-

waiian law granting telephone franchise on island of Oahu. Time extended by Act of Feb. 25, 1909, below.

June 28, 1906; 34 Sts. at L. 550, c. 3582; amending s. 85 of Org. Act, relating to election and privileges of delegate to Congress, and authorizing Territorial legislature to alter election laws.

June 29, 1906; 34 Sts. at L. 596, c. 3592; general naturalization Act, specifically conferring jurisdiction on U. S. district court of Hawaii and all territorial courts of record. See also act of May 27, 1910, below, and notes to ss. 4 and 100 of Org. Act.

Feb. 20, 1907; 34 Sts. at L. 898, c. 1134; general immigration Act, containing special provisions relating to Hawaii and all territories. Referred to in 27 Ops. 481. See also notes to s. 101 of Org. Act and to Joint Resolution of annexation in Revised Laws of Hawaii, p. 40.

Apr. 2, 1908; 35 Sts. at L. 56, c. 124; amending s. 73 of Org. Act, relating to terms of leases of agricultural land.

May 19, 1908; 35 Sts. at L. 165; closing unsettled Hawaiian Postal Savings Bank accounts; supplementary to ss. 102, 103 of Org. Act.

Dec. 24, 1908; 35 Sts. at L. 2208-2214; five proclamations by the President, setting aside lands at Hana (Maui), Lae o Kokole (Kauai), McGregor's Point (Maui), Kahala Point (Kauai), and Ka Lae (Hawaii), respectively, for light-house purposes. Similar proclamations for other light-house sites have been made by the Governor; see note to s. 91 of Org. Act.

Feb. 6, 1909; 35 Sts. at L. 606, c. 80; amending and ratifying Hawaiian laws granting electric light and power franchise at Wailuku and Lahaina; also granting to Wahiawa Water Co. right of way through Wahiawa uka military reservation on certain conditions.

Feb. 25, 1909; 35 Sts. at L. 652, c. 200; extending time for construction of telephone system under Act of June 20, 1906, above.

Mch. 3, 1909; 35 Sts. at L. 838, c. 269; amending s. 86 of Org. Act, increasing number of U. S. district judges in Hawaii and their salaries.

Mch. 4, 1909; 35 Sts. at L. 1084, c. 320; general copyright law, giving U. S. district court of Hawaii original jurisdiction.

July 2, 1909; 36 Sts. at L. 1, c. 2; general census Act, including Hawaii specifically. See also Act of Mch. 3, 1899, above.

Apr. 26, 1910; 36 Sts. at L. 878; joint resolution, providing for special election on prohibition in Hawaii.

May 27, 1910; 36 Sts. at L. 443, c. 258; amending certain ss. of Org. Act as follows: s. 5 (application of general laws of U. S. to Hawaii); s. 26 (salaries of legislators); s. 52 (appropriations); s. 55 (bonds); s. 73 (public lands); s. 84 (disqualifications of judges); s. 91 (status of public property ceded to U. S.); s. 92 (salaries of certain executive and judicial officers); s. 100 (naturalization).

June 25, 1910; 36 Sts. at L. 696, c. 383; dividing block set aside for Federal building site at Hilo by Act of June 19, 1906, above, into two blocks and restoring one to its previous status as public land.

June 25, 1910; 36 Sts. at L. 845, c. 419, amending and ratifying Hawaiian law granting railroad franchise for Kona and Kau districts, island of Hawaii.

Mch. 3, 1911; 36 Sts. at L. 1087, c. 231; judicial code, to take effect Jan. 1, 1912, containing specific references to Hawaii. See particularly s. 116 (Hawaii included in ninth circuit); s. 238 (writs of error and appeals from Federal district court to Federal supreme court); s. 246 (writs of error and appeals from Territorial to Federal supreme court);

s. 259 (traveling expenses and residence of U. S. district judge).

of August, eighteen hundred and ninety-eight, at the time of the transfer of the sovereignty of the Hawaiian Islands to the United States of America.

The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled "Civil Laws" and "Penal Laws," respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as "Civil Laws," "Penal Laws," and "Session Laws."

The volumes mentioned in the second paragraph of this s. did not contain all the laws then in force referred to in the first paragraph, nor were all the laws therein contained then in force. The Civil Laws and Penal Laws were compilations, not enacted by the legislature. These laws were in general continued in force by Congress with certain exceptions and modifications: ss. 6, 7, below; 23 Ops. 539; *Sch. Robert Lewers Co. v. Kekauoha*, 114 Fed. 852, affirming 1 U. S. Dist. Ct. Haw. 75; *U. S. v. Hon. Pl. Co.*, 122 Fed. 587. See also, as to continuation of Hawaiian laws, notes to other ss., especially ss. 5, 6, and 7, below, and to Joint Resolution of annexation in Revised Laws of Hawaii, p. 40.

TERRITORY OF HAWAII.

SEC. 2. That the islands acquired by the United States of America under an Act of Congress entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall be known as the Territory of Hawaii.

By this act Hawaii acquired the status of an incorporated Territory: *Downes v. Bidwell*, 182 U. S. 305; and became an integral part of the United States: *Hawaii v. Mankichi*, 190 U. S. 197; but it did not become liable for torts as a municipal corporation: *Coffield v. Ter.*, 13 H. 481; *Ins. Co. v. Macfarlane*, 14 H. 484; *Dep'y Assessor v. Kaanaana*, 18 H. 255; nor to be joined as a party in a foreclosure suit without its consent: *Kawanakoa v. Polyblank*, 205 U. S. 353 (affirming 17 H. 82). The Territory is not a municipality or quasi-municipality: 27 Ops. 486; but its relation to the Federal government is somewhat like that of a county to a state: *County v. Whitney*, 17 H. 181. It has been a question whether Midway island was acquired by Hawaii on July 5, 1859, and so is a part of the Territory, or was acquired by the United States independently on Aug. 28, 1867; the latter was assumed in *Downes v. Bidwell*, above, at p. 304. Referred to in 108 Fed. 113; 13 H. 21; 23 Ops. 416. See also s. 10.

On the status of Hawaii between annexation and the establishment of Territorial government, see note to Joint Resolution of annexation in Revised Laws of Hawaii, p. 40.

GOVERNMENT OF THE TERRITORY OF HAWAII.

SEC. 3. That a Territorial government is hereby established over the said Territory, with its capital at Honolulu, on the island of Oahu.

Referred to in 108 Fed. 113; 13 H. 21; 23 Ops. 416.

CITIZENSHIP.

SEC. 4. That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.

And all citizens of the United States resident in the Hawaiian Islands who were resident there on or since August twelfth, eighteen hundred and ninety-eight, and all the citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year shall be citizens of the Territory of Hawaii.

Under art. 17, s. 1, of the Const. of 1894 (adapted from the 14th Am. of the U. S. Const.) all persons born or naturalized in the Hawaiian Islands and subject to the jurisdiction of the Republic of Hawaii were citizens thereof. Between 1842 and 1892, 731 Chinese and one Japanese were naturalized in Hawaii; since 1892, none. The Secretary of Hawaii may issue to persons born in Hawaii, certificates of Hawaiian birth, which are prima facie evidence: Act 96, Laws of 1911; see also similar former law: Act 64, Laws of 1905, as am. by Act 79, Laws of 1907. On citizenship of persons born in the United States of alien parents, see *U. S. v. Wong Kim Ark*, 169 U. S. 649.

Chinese who were Hawaiian citizens on Aug. 12, 1898, by either birth or naturalization, whether under the monarchy or the republic, became American citizens under this s.: 23 Ops. 509; *U. S. v. Ching Tai Sai*, 1 U. S. Dist. Ct. Haw. 118; and their wives and children were thereafter entitled to enter the Territory: 23 Ops. 345; and such a citizen could take oath that he was such, and obtain an American register for a vessel which had an Hawaiian register on that date and was then owned and continued to be owned by an Hawaiian citizen until purchased by such Chinese: 23 Ops. 352; Chinese held for deportation may set up American citizenship in habeas corpus or deportation proceedings, but the burden is on them to prove such citizenship: *In re Lau Sam*, 1 U. S. Dist. Ct. Haw. 6; *In re Wong Lin*, 1 U. S. Dist. Ct. Haw. 44; *U. S. v. Kut Yong*, 1 U. S. Dist. Ct. Haw. 104; *U. S. v. Kam You*, 1 U. S. Dist. Ct. Haw. 113; *In re Leong Sai*, 1 U. S. Dist. Ct. Haw. 234. Habeas corpus lies to protect immigrant's right to have question of citizenship determined: *U. S. v. Nakashima*, 160 Fed. 842, affirming *In re Nakashima*, 3 U. S. Dist. Ct. Haw. See also ss. 100 and 101, and notes thereto; also note to Joint Resolution of annexation in Revised Laws of Hawaii, p. 40. Referred to also in 13 H. 21, 556; 162 Fed. 470.

Sec. 5. That the Constitution, and, except as otherwise provided, all the laws of the United States, including laws carrying general appropriations, which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States: *Provided*, That sections eighteen hundred and forty-one to eighteen hundred and ninety-one, inclusive, nineteen hundred and ten and nineteen hundred and twelve, of the Revised Statutes, and the amendments thereto, and an Act entitled "An Act to prohibit the passage of local or special laws in the Territories of the United States, to limit territorial indebtedness, and for other purposes," approved July thirtieth, eighteen hundred and eighty-six, and the amendments thereto, shall not apply to Hawaii. [As amended by s. 1, Act of May 27, 1910; 36 Sts. at L. 443.]

This s., before it was amended, read as follows: "That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States: *Provided*, That sections eighteen hundred and fifty and eighteen hundred and ninety of the Revised Statutes of the United States shall not apply to the Territory of Hawaii."

Compare U. S. Rev. Sts., s. 1891. The Federal constitution and laws were first formally extended to Hawaii by this s.: *Hawaii v. Mankichi*, 190 U. S. 197. See also note to s. 2. On the application of these to Hawaii after the enactment of this act, see: *Peacock v. Pratt*, 121 Fed. 772, and *Robertson v. Pratt*, 13 H. 590 (see also 1 U. S. Dist Ct. Haw. 294), Hawaiian income tax law, valid; constitutional requirement of uniformity of imposts, etc., not applicable to Territorial legislation; exemption of schools, etc., not illegal discrimination; equal protection of laws does not require tax to be uniform on every class of property; exemption of insurance companies because they pay another tax, legal; exemption of private persons and not corporations up to \$1000, valid; non-exemption of judges' salaries, and provisions for unreasonable searches and seizures, cannot be complained of by one not affected thereby; *In re Craig*, 20 H. . . ., and *Robertson v. Pratt*, above, quare whether 14th Am. applies to Hawaii; but that Am. and the 5th Am. are often referred to as applicable to Hawaii: *Ter. v. Pottie*, 19 H. 99, law requiring only such veterinarians as practice in towns of over 5000 inhabitants to pay license fees, invalid; likewise, *Ter. v. McDonald*, 17 H. 389, law requiring only such physicians as should be licensed thereafter to pay license fees, invalid; but, *Ter. v. Toyota*, 19 H. 651, law requiring license fee of \$600 of auctioneers in one district and \$15 in other districts, valid; so, *Trust Co. v. Treasurer*, 19 H. 262, law requiring banking license fees of \$750, \$500 and \$250 in different places, valid; *Estate of Hall*, 19 H. 531, inheritance tax law not invalid in its classifications; *In re Taxes, Agency Contracts*, 17 H. 603, double taxation, not necessarily unconstitutional; *Ter. v. Gunst & Co.*, 18 H. 196,

law against trading-stamps, invalid; *Ter. v. Ah Choy*, 17 H. 331, ordinance against spraying clothes with water from mouth, valid; *In re Taxes, Pineapple Co's*; 19 H. 193, general exemption from taxation for definite period, repeatable; *Achi v. Kapiolani Est.*, 1 U. S. Dist. Ct. Haw. 26, and *Tomikawa v. Gama*, 14 H. 431, clause as to uniformity of duties, not applicable to Hawaiian stamp tax law; *Macfarlane v. Wright*, 1 U. S. Dist. Ct. Haw. 266, uniformity of imposts, interstate commerce, and equal rights clauses, applied to issuance of beer licenses; *Lansing v. Davies*, 13 Haw. 286, interstate commerce and import duty clauses, applied to issuance of merchandise licenses; *In re Craig*, 20 H. . . ., emigrant agent license, valid under taxation and police powers; *Puna S. Co. v. Ter.*, 13 H. 272, law against cutting trees within certain distance from road, invalid as taking private property without compensation; but, *Humphreys v. Mello*, 19 H. 468, law limiting damages recoverable by abutter for injuries to trees on public sidewalk, valid; *U. S. v. Est. Bishop*, 1 U. S. Dist Ct. Haw. 183, compensation on taking private property for public use, must be just; *Calaca v. Caldeira*, 13 H. 215, private property cannot be taken for private use even for compensation; *Ter. v. Cunha*, 15 H. 607, 14th Am. does not invalidate law against permitting minors to be where liquors are sold, etc.; *In re Bitting*, 1 U. S. Dist. Ct. Haw. 69, imprisonment for contempt in the part of Oahu jail used for persons held for trial, etc., not a "cruel and unusual" punishment, although felons are kept in another part of the jail; *Ex parte Higashi*, 17 H. 428, imprisonment in Honolulu jail for misdemeanor not infamous punishment; *Wong Lung v. High Sheriff*, 17 H. 168, compelling prisoner to go through streets and work on parks in jail uniform, is infamous punishment; *Carpenter v. Lawson*, 19 H. 433, costs, though they exceed the judgment, may be imposed on the plaintiff, when the judgment is reduced one-fifth on appeal; *In re Atcherley*, 19 H. 346, 535, 576, 647, law for commitment of insane by magistrate subject to appeal to commission without a jury, valid; *In re Lee Chee Hing*, 1 U. S. Dist. Ct. Haw. 434, restraint for purposes of prostitution, "involuntary servitude;" *Ter. v. Schilling*, 17 H. 249 "twice in jeopardy" doctrine, applied; *Ter. v. Johnson*, 17 H. 751, "speedy trial."

This act extended the national banking laws to Hawaii, but these do not apply to banks existing in Hawaii prior to this act: 23 Ops. 177. The Edmond's Act is applicable to Hawaii and adultery is punishable under either the Federal or the Territorial laws: *U. S. v. Lee Sa Kee*, 3 U. S. Dist. Ct. Haw. . . .; but an acquittal or conviction in either the Federal or the Territorial court will bar a trial in the other: *U. S. v. Perez*, 3 U. S. Dist. Ct. Haw. . . . Extension of Edmond's Act to Hawaii did not repeal local law against fornication: *Ter. v. Martin*, 19 H. 201. See *Robinson v. U. S.*, 42 C. Cls. R. 57, on application to Hawaii, before this s. was amended, of Federal laws relating to territorial generally. For application of other provisions of the Federal Constitution and laws to Hawaii, see note to Joint Resolution of annexation in Revised Laws of Hawaii, p. 40, and notes to other sections of this act, especially ss. 4, 6, 10, 45, 55, 73, 81, 83, 86, 101. This s. is referred to also in 13 H. 20, 556, 706; 18 H. 255, 539; 19 H. 17; 108 Fed. 113; 114 Fed. 849; 122 Fed. 587, 776; 23 Ops. 177, 346; 1 U. S. Dist. Ct. Haw. 49, 88, 91; *U. S. v. Moore*, 3 U. S. Dist. Ct. Haw. . . .

LAWS OF HAWAII.

Sec. 6. That the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of

this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.

All parts of this act must be considered in determining what Hawaiian laws were continued in force: **Carter v. Gear**, 197 U. S. 354. A judicial construction of a statute before annexation, is continued as a part of the statute: **Kealoha v. Castle**, 210 U. S. 153; **Sch. Robert Lewers Co. v. Kekauoha**, 114 Fed. 852; **Castle v. Secretary**, 16 H. 776. The local law against fornication is not repealed by the extension of the Edmond's Act to Hawaii: **Ter. v. Martin**, 19 H. 201. Assault and battery within a naval reservation is within the jurisdiction of the Territorial courts under local laws: **Ter. v. Carter**, 19 H. 200. A Hawaiian corporation chartered before annexation is not a "corporation organized by authority of any laws of Congress," within the meaning of an act of Congress forbidding contributions for election purposes, but, obiter dictum, contra as to corporations chartered (except those incorporated without official consent by filing articles of association) after annexation, whether before or after the establishment of Territorial government: **U. S. v. Haleakala Ranch Co.**, 3 U. S. Dist. Ct. Haw...., Referred to also in 13 H. 481, 706; 14 H. 269, 432; 15 H. 117, 329; 16 H. 266, 401; 18 H. 539; 205 U. S. 354; 217 U. S. 244; 108 Fed. 113; 114 Fed. 849; 122 Fed. 587; 1 U. S. Dist Ct. Haw. 88, 91; **U. S. v. Perez**, 3 U. S. Dist. Ct. Haw....; 23 Ops. 542. See also notes to ss. 1 and 5.

SEC. 7. That the constitution of the Republic of Hawaii and the laws of Hawaii, as set forth in the following acts, chapters, and sections of the civil laws, penal laws, and session laws, and relating to the following subjects, are hereby repealed:

CIVIL LAWS: Sections two and three, Promulgation of laws; chapter five, Flag and seal; sections thirty to thirty-three, inclusive, Tenders for supplies; chapter seven, Minister of Foreign Affairs; chapter eight, Diplomatic and consular agents; section one hundred and thirty-four and one hundred and thirty-five, National museum; chapter twelve, Education of Hawaiian youths abroad; sections one hundred and fifty to one hundred and fifty-six, inclusive, Aid to board of education; chapter fourteen, Minister of the Interior; sections one hundred and sixty-six to one hundred and sixty-eight, inclusive, one hundred and seventy-four and one hundred and seventy-five, Government lands; section one hundred and ninety, Board of commissioners of public lands; section four hundred and twenty-four, Bureau of agriculture and forestry; chapter thirty-one, Agriculture and manufactures; chapter thirty-two, Ramie;

chapter thirty-three, Taro flour; chapter thirty-four, Development of resources; chapter thirty-five, Agriculture; section four hundred and seventy-seven, Brands; chapter thirty-seven, Patents; chapter thirty-eight, Copyrights; sections five hundred and fifty-six and five hundred and fifty-seven, Railroad subsidy; chapter forty-seven, Pacific cable; chapter forty-eight, Hospitals; chapter fifty-one, Coins and currency; chapter fifty-four, Consolidation of public debt; chapter fifty-six, Post-office; chapter fifty-seven, Exemptions from postage; chapter fifty-eight, Postal savings banks; chapter sixty-five, Import duties; chapter sixty-six, Imports; chapter sixty-seven, Ports of entry and collection districts; chapter sixty-eight, Collectors; chapter sixty-nine, Registry of vessels; section one thousand and eleven, Customs-house charges; section eleven hundred and two, Elections; section eleven hundred and thirty-two, Appointment of magistrate; last clause of first subdivision and fifth subdivision of section eleven hundred and forty-four, first subdivision of section eleven hundred and forty-five, Jurisdiction; sections eleven hundred and seventy-three to eleven hundred and seventy-eight, inclusive, Translation of decisions; section eleven hundred and eighty-eight, Clerks of court; sections thirteen hundred and twenty-nine, thirteen hundred and thirty-one, thirteen hundred and thirty-two, thirteen hundred and forty-seven to thirteen hundred and fifty-four, inclusive, Juries; sections fifteen hundred and nine to fifteen hundred and fourteen, inclusive, Maritime matters; chapter one hundred and two, Naturalization; section sixteen hundred and seventy-eight, Habeas corpus; chapter one hundred and eight, Arrest of debtors; subdivisions six, seven, ten, twelve to fourteen of section seventeen hundred and thirty-six, Garnishment; sections seventeen hundred and fifty-five to seventeen hundred and fifty-eight, inclusive, Liens on vessels; chapter one hundred and sixteen, Bankruptcy, and sections eighteen hundred and twenty-eight to eighteen hundred and thirty-two, inclusive, Water rights.

PENAL LAWS: Chapter six, Treason; section sixty-five to

sixty-seven, inclusive, Foot binding; chapter seventeen, Violation of postal laws; section three hundred and fourteen, Blasphemy; sections three hundred and seventy-one to three hundred and seventy-two, inclusive, Vagrants; sections four hundred and eleven to four hundred and thirteen, inclusive, Manufacture of liquors; chapter forty-three, Offenses on the high seas and other waters; sections five hundred and ninety-five and six hundred and two to six hundred and five, inclusive, Jurisdiction; section six hundred and twenty-three Procedure; sections seven hundred and seven hundred and one, Imports; section seven hundred and fifteen, Auction license; section seven hundred and forty-five, Commercial travelers; sections seven hundred and forty-eight to seven hundred and fifty-five, inclusive, Firearms; sections seven hundred and ninety-six to eight hundred and nine, inclusive, Coasting trade; sections eight hundred and eleven and eight hundred and twelve, Peddling foreign goods; sections eight hundred and thirteen to eight hundred and fifteen, inclusive, Importation of live stock; section eight hundred and nineteen, Imports; section eight hundred and eighty-six to nine hundred and six, inclusive, Quarantine; section eleven hundred and thirty-seven, Consuls and consular agents; chapter sixty-seven, Whale ships; sections eleven hundred and forty-five to eleven hundred and seventy-nine, inclusive, and twelve hundred and four to twelve hundred and nine, inclusive, Arrival, entry, and departure of vessels; chapters sixty-nine to seventy-six, inclusive, Navigation and other matters within the exclusive jurisdiction of the United States; sections thirteen hundred and forty-seven and thirteen hundred and forty-eight, Fraudulent exportation; chapter seventy-eight, Masters and servants; chapter ninety-three, Immigration; sections sixteen hundred and one, sixteen hundred and eight, and sixteen hundred and twelve, Agriculture and forestry; chapter ninety-six, Seditious offenses; and chapter ninety-nine, Sailing regulations.

SESSION LAWS: Act fifteen, Elections; Act twenty-six, Duties; Act twenty-seven, Exemptions from duties; Act thirty-

two, Registry of vessels; section four of Act thirty-eight, Importation of live stock; Act forty-eight, Pacific cable; Act sixty-five, Consolidation of public debt; Act sixty-six, Ports of entry; and Act sixty-eight, Chinese immigration.

Referred to in 15 H. 329, 413, 606; 19 H. 209, 210, 213, 214; 197 U. S. 354; 217 U. S. 244; 108 Fed. 113; 1 U. S. Dist. Ct. Haw. 88, 91; *U. S. v. Halaakala Ranch Co.*, 3 U. S. Dist Ct. Haw.... See also ss. 1, 5 and 6, and notes thereto.

CERTAIN OFFICES ABOLISHED.

Sec. 8. That the offices of President, minister of foreign affairs, minister of the interior, minister of finance, minister of public instruction, auditor-general, deputy auditor-general, surveyor-general, marshal, and deputy marshal of the Republic of Hawaii are hereby abolished.

Referred to in 15 H. 115, 274. See also ss. 9, 66; 68, 71-79.

AMENDMENT OF OFFICIAL TITLES.

Sec. 9. That wherever the words "President of the Republic of Hawaii," or "Republic of Hawaii," or "Government of the Republic of Hawaii," or their equivalents, occur in the laws of Hawaii not repealed by this Act, they are hereby amended to read "Governor of the Territory of Hawaii," or "Territory of Hawaii," or "Government of the Territory of Hawaii," or their equivalents, as the context requires.

Referred to in 16 H. 400. Compare Laws of 1893-4, Act 1, and Const. of 1894, art. 92, s. 2.

CONSTRUCTION OF EXISTING STATUTES.

Sec. 10. That all rights of action, suits at law and in equity, prosecutions, and judgments existing prior to the taking effect of this Act shall continue to be as effectual as if this Act had not been passed; and those in favor of or against the Republic of Hawaii, and not assumed by or transferred to the United States, shall be equally valid in favor of or against the government of

the Territory of Hawaii. All offenses which by statute then in force were punishable as offenses against the Republic of Hawaii shall be punishable as offenses against the government of the Territory of Hawaii, unless such statute is inconsistent with this Act, or shall be repealed or changed by law. No person shall be subject to imprisonment for nonpayment of taxes nor for debt. All criminal and penal proceedings then pending in the courts of the Republic of Hawaii shall be prosecuted to final judgment and execution in the name of the Territory of Hawaii; all such proceedings, all actions at law, suits in equity, and other proceedings then pending in the courts of the Republic of Hawaii shall be carried on to final judgment and execution in the corresponding courts of the Territory of Hawaii; and all process issued and sentences imposed before this Act takes effect shall be as valid as if issued or imposed in the name of the Territory of Hawaii: *Provided*, That no suit or proceedings shall be maintained for the specific performance of any contract heretofore or hereafter entered into for personal labor or service, nor shall any remedy exist or be enforced for breach of any such contract, except in a civil suit or proceeding instituted solely to recover damages for such breach: *Provided further*, That the provisions of this section shall not modify or change the laws of the United States applicable to merchant seamen.

That all contracts made since August twelfth, eighteen hundred and ninety-eight, by which persons are held for service for a definite term, are hereby declared null and void and terminated, and no law shall be passed to enforce said contracts in any way; and it shall be the duty of the United States marshal to at once notify such persons so held of the termination of their contracts.

That the Act approved February twenty-sixth, eighteen hundred and eighty-five, "To prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia," and the Acts amendatory thereof and

supplemental thereto, be, and the same are hereby, extended to and made applicable to the Territory of Hawaii.

Compare Const. of 1894, art. 92, ss. 1-3. Admiralty cases were included in "other proceedings" under this s., and those then pending continued in the jurisdiction of the Territorial courts, though subsequent ones could be brought only in the Federal court, and no appeal lay in such pending cases to the Federal circuit court of appeals: *Hind v. Wilder's S. Co.* 13 H. 174; *Wilder's S. Co. v. Hind*, 108 Fed. 113; *Ex p. Wilder S. Co.*, 183 U. S. 545; *Eq. L. Ass. Soc. v. Brown*, 187 U. S. 309. A petition in 1904 for the removal of a guardian appointed in 1899 is in a proceeding pending in 1899; *Carter v. Gear*, 197 U. S. 354. An action by the Territory for taxes due the Republic is not barred: *Dep'y Assessor v. Kaanaana*, 18 H. 255. Imprisonment, for contempt, to compel an administrator to pay creditors pro rata is not imprisonment for debt: *Est. of Ahi*, 19 H. 234; but the execution of a writ of ne exeat, in assumpsit, to obtain security for a judgment that might be recovered would be such imprisonment: *Oahu L. & B. Co. v. Ding Sing*, 15 H. 413. On contract labor laws, see note to Joint Resolution of annexation in Revised Laws of Hawaii, p. 40. On applicability to Hawaii of Federal laws against introduction of contract laborers, see 27 Ops. 479. Referred to also in 18 H. 539; *In re Craig*, 20 H. 197 U. S. 354; 1 U. S. Dist. Ct. Haw. 41.

STYLE OF PROCESS.

SEC. 11. That the style of all process in the Territorial courts shall hereafter run in the name of "The Territory of Hawaii," and all prosecutions shall be carried on in the name and by the authority of the Territory of Hawaii.

Compare Const. of 1894, art. 92, s. 3. Prosecutions under county ordinances should be in the name of the Territory: *County v. Whitney*, 17 H. 185.

CHAPTER II.—THE LEGISLATURE.*

THE LEGISLATIVE POWER.

SEC. 12. That the legislature of the Territory of Hawaii shall consist of two houses, styled, respectively, the senate and house of representatives, which shall organize and sit separately, except as otherwise herein provided.

*C II of this act (ss. 12-62), excepting s. 15, was taken, with some modifications, from the Const. of 1894, the corresponding ss. being as follows:

Org. Act.		Const. of 1894.		Org. Act.		Const. of 1894.	
Secs.	Arts.	Secs.	Arts.	Secs.	Arts.	Secs.	Arts.
12, 13	38	1, 2		35-39	57	1-5	
14	39	1		40	58		
16-21	42-47			41-43	60	1, 2, 4	
22-24	48	1-3		44	61		
25-29	49-53			45-51	63-69		
30-31	54	1, 3		52-54	70	1, 2, 4	
32-33	55	1, 2		57-58	72	1, 2	
34	56			59-62	73-76		

See also 16 H. 245.

The two houses shall be styled "The legislature of the Territory of Hawaii."

SEC. 13. That no person shall sit as a senator or representative in the legislature unless elected under and in conformity with this Act.

GENERAL ELECTIONS.

SEC. 14. That a general election shall be held on the Tuesday next after the first Monday in November, nineteen hundred, and every second year thereafter: *Provided, however,* That the governor may, in his discretion, on thirty days' notice, order a special election before the first general election, if, in his opinion, the public interests shall require a special session of the legislature.

Referred to in 15 H. 266; 20 H. 295. On election of delegate, see s. 85; county elections, ss. 29-59, Act 39, Laws of 1905; city and county elections, ss. 40-75, Act 118, Laws of 1907. For election laws, see ss. 25-112 of the Revised Laws; Act 26, Laws of 1905; Acts 6, 19, 78, 129, Laws of 1907; Act 84, Laws of 1909; Acts 67, 68, 105, Laws of 1911.

EACH HOUSE JUDGE OF QUALIFICATIONS OF MEMBERS.

SEC. 15. That each house shall be the judge of the elections, returns, and qualifications of its own members.

This prevents the secretary of the Territory and the courts from passing on the eligibility of a candidate for the legislature except when it is clearly their duty to do so: *Harris v. Cooper*, 14 H. 184; *In re Contested Election*, 15 H. 329, 332. The supreme court formerly had exclusive jurisdiction in election cases: Const. of 1894, art. 40; 15 H. 328. Referred to also in 15 H. 266; 20 H. 312.

DISQUALIFICATIONS OF LEGISLATORS.

SEC. 16. That no member of the legislature shall, during the term for which he is elected, be appointed or elected to any office of the Territory of Hawaii.

DISQUALIFICATIONS OF GOVERNMENT OFFICERS AND EMPLOYEES.

SEC. 17. That no person holding office in or under or by authority of the Government of the United States or of the Territory of Hawaii shall be eligible to election to the legislature, or to hold the position of a member of the same while holding said office.

Notaries and similar officers were held within inhibition of somewhat similar provision of Const. of 1887; to be eligible, officer must resign before election: *In re Notaries*, 8 H. 561.

SEC. 18. No idiot or insane person, and no person who shall be expelled from the legislature for giving or receiving bribes or being accessory thereto, and no person who, in due course of law, shall have been convicted of any criminal offense punishable by imprisonment, whether with or without hard labor, for a term exceeding one year, whether with or without fine, shall register to vote or shall vote or hold any office in, or under, or by authority of, the government, unless the person so convicted shall have been pardoned and restored to his civil rights.

Referred to in 13 H. 19; 17 H. 13, 18, 248; 18 H. 140. See also note to s. 109 of the Revised Laws.

OATH OF OFFICE.

SEC. 19. That every member of the legislature, and all officers of the government of the Territory of Hawaii, shall take the following oath or affirmation:

I solemnly swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially dis-

charge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii (as the case may be).

Attorneys at law are not required to take this oath: *In re Davis*, 15 H. 383.

OFFICERS AND RULES.

SEC. 20. That the senate and house of representatives shall each choose its own officers, determine the rules of its own proceedings, not inconsistent with this Act, and keep a journal.

The clerk of the house is an officer within the meaning of a Federal statute forbidding officers to destroy public records (vouchers of house expenses): *U. S. v. Meheula*, 2 U. S. Dist. Ct. Haw. 20.

AYES AND NOES.

SEC. 21. That the ayes and noes of the members on any question shall, at the desire of one-fifth of the members present, be entered on the journal.

QUORUM.

SEC. 22. That a majority of the number of members to which each house is entitled shall constitute a quorum of such house for the conduct of ordinary business, of which quorum a majority vote shall suffice; but the final passage of a law in each house shall require the vote of a majority of all the members to which such house is entitled.

SEC. 23. That a smaller number than a quorum may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

SEC. 24. That, for the purpose of ascertaining whether there is a quorum present, the chairman shall count the number of members present.

PUNISHMENT OF PERSONS NOT MEMBERS.

SEC. 25. That each house may punish by fine, or by imprisonment not exceeding thirty days, any person not a member of either house who shall be guilty of disrespect of such house by any disorderly or contemptuous behavior in its presence or that of any committee thereof; or who shall, on account of the exercise of any legislative function, threaten harm to the body or estate of any of the members of such house; or who shall assault, arrest, or detain any witness or other person ordered to attend such house, on his way going to or returning therefrom; or who shall rescue any person arrested by order of such house.

But the person charged with the offense shall be informed, in writing, of the charge made against him, and have an opportunity to present evidence and be heard in his own defense.

This s. does not prevent the garnishment of a senator's salary under a territorial law: *See Kong v. Chillingworth*, 19 H. 428.

COMPENSATION OF MEMBERS.

SEC. 26. That the members of the legislature shall receive for their services, in addition to mileage at the rate of ten cents a mile each way, the sum of six hundred dollars for each regular session, payable in three equal installments on and after the first, thirtieth, and fiftieth days of the session, and the sum of two hundred dollars for each special session: *Provided*, That they shall receive no compensation for any extra session held under the provisions of section fifty-four of this Act. [As amended by s. 2, Act of May 27, 1910; 36 Sts. at L. 443.]

This s., before the amendment, read as follows: "That the members of the legislature shall receive for their services, in addition to mileage at the rate of ten cents a mile each way, the sum of four hundred dollars for each regular session of the legislature, payable in three equal installments on and after the first, thirtieth, and fiftieth days of the session, and the sum of two hundred dollars for each extra session of the legislature."

All appropriations made by congress for Hawaiian legislative expenses, namely, those for the sessions of 1907 (24 Sts. at L. 417), 1909 (36 Sts. at L. 213) and 1911 (36 Sts. at L. 501), have contained a proviso that the legislators should receive not only no compensation but also no mileage for any session held under s. 54.

PUNISHMENT OF MEMBERS.

SEC. 27. That each house may punish its own members for disorderly behavior or neglect of duty, by censure, or by a two-thirds vote suspend or expel a member.

EXEMPTION FROM LIABILITY.

SEC. 28. That no member of the legislature shall be held to answer before any other tribunal for any words uttered in the exercise of his legislative functions in either house.

EXEMPTION FROM ARREST.

SEC. 29. That the members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the respective houses, and in going to and returning from the same: *Provided*. That such privilege as to going and returning shall not cover a period of over ten days each way.

THE SENATE.

NUMBER OF MEMBERS.

SEC. 30. That the senate shall be composed of fifteen members, who shall hold office for four years: *Provided, however*, That of the senators elected at the first general election, two from the first district, one from the second, three from the third, and one from the fourth district shall hold office for two years only, the details of such apportionment to be provided for by the legislature.

Referred to in 13 H. 19. Congress apportioned the senators elected at the first election, on failure of the legislature to do so: 32 Sts. at L. 200. See s. 55, on reapportionment of senators and representatives on the basis of number of citizens as determined by the census.

VACANCIES.

SEC. 31. That vacancies caused by death, resignation, or otherwise shall be filled for the unexpired term at general or special elections.

SENATORIAL DISTRICTS.

SEC. 32. That for the purpose of representation in the senate, until otherwise provided by law, the Territory is divided into the following senatorial districts, namely:

First district: The island of Hawaii.

Second district: The islands of Maui, Molokai, Lanai and Kahoolawe.

Third district: The island of Oahu.

Fourth district: The islands of Kauai and Niihau.

SEC. 33. That the electors in the said districts shall be entitled to elect senators as follows:

In the first district, four;

In the second district, three;

In the third district, six;

In the fourth district, two.

On reapportionment of senators after the census, see s. 55.

QUALIFICATIONS OF SENATORS.

SEC. 34. That in order to be eligible to election as a senator a person shall—

Be a male citizen of the United States;

Have attained the age of thirty years;

Have resided in the Hawaiian Islands not less than three years and be qualified to vote for senators in the district from which he is elected.

This s. does not invalidate the law requiring nominations to be filed within a prescribed time: *Chandler v. Mott-Smith*, 19 H. 227. Referred to in 13 H. 21.

THE HOUSE OF REPRESENTATIVES.

NUMBER OF REPRESENTATIVES.

SEC. 35. That the house of representatives shall be composed of thirty members, elected, except as herein provided, every second year.

TERM OF OFFICE.

SEC. 36. That the term of office of the representatives elected at any general or special election shall be until the next general election held thereafter.

VACANCIES.

SEC. 37. That vacancies in the office of representative caused by death, resignation, or otherwise shall be filled for the unexpired term at special elections.

REPRESENTATIVE DISTRICTS.

SEC. 38. That for the purpose of representation in the house of representatives, until otherwise provided by law, the Territory is divided into the following representative districts, namely:

First district: That portion of the island of Hawaii known as Puna, Hilo, and Hamakua.

Second district: That portion of the island of Hawaii known as Kau, Kona, and Kohala.

Third district: The islands of Maui, Molokai, Lanai, and Kahoolawe.

Fourth district: That portion of the island of Oahu lying east and south of Nuuanu street and a line drawn in extension thereof from the Nuuanu Pali to Mokapu Point.

Fifth district: That portion of the island of Oahu lying west and north of the fourth district.

Sixth district: The islands of Kauai and Niihau.

APPORTIONMENT.

SEC. 39. That the electors in the said districts shall be entitled to elect representatives as follows:

In the first district, four;

In the second district, four;

In the third district, six;

In the fourth district, six;

In the fifth district, six;

In the sixth district, four.

On reapportionment of representatives after the census, see s. 55.

QUALIFICATIONS OF REPRESENTATIVES.

SEC. 40. That in order to be eligible to be a member of the house of representatives a person shall, at the time of election—

Have attained the age of twenty-five years;

Be a male citizen of the United States;

Have resided in the Hawaiian Islands not less than three years;

And shall be qualified to vote for representatives in the district from which he is elected.

This s. does not invalidate the law requiring nominations to be filed within a prescribed time: *Chandler v. Mott-Smith*, 19 H. 227. Referred to in 13 H. 21; 14 H. 146.

LEGISLATION.

SESSIONS OF THE LEGISLATURE.

SEC. 41. That the first regular session of the legislature shall be held on the third Wednesday in February, nineteen hundred and one, and biennially thereafter, in Honolulu.

SEC. 42. That neither house shall adjourn during any session for more than three days, or sine die, without the consent of the other.

SEC. 43. That each session of the legislature shall continue not longer than sixty days, excluding Sundays and holidays: *Provided, however,* That the governor may extend such session for not more than thirty days.

The governor may convene the legislature, or the senate alone, in special session, and, in case the seat of government shall be unsafe from an enemy, riot, or insurrection, or any danger—

ous disease, direct that any regular or special session shall be held at some other than the regular meeting place.

ENACTING CLAUSE—ENGLISH LANGUAGE.

SEC. 44. That the enacting clause of all laws shall be, "Be it enacted by the legislature of the Territory of Hawaii."

All legislative proceedings shall be conducted in the English language.

As to whether a joint resolution without this enacting clause may have the force of law, see message of the governor to the legislature relating to House Joint Resolution No. 8, session of 1911.

TITLE OF LAWS.

SEC. 45. That each law shall embrace but one subject, which shall be expressed in its title.

This provision is mandatory: *Marchant v. Marchant*, 3 H. 661; does not apply to titles of subdivisions of a code: *In re Fernandez*, 12 H. 120; should be liberally construed, it being satisfied if the provisions of the act are naturally connected and expressed in a general way in the title: *In re Walker*, 9 H. 171; *Dole v. Cooper*, 15 H. 299; *Ahmi v. Buckle*, 17 H. 201; all the provisions need not be referred to in the title: *Rex v. Yat Sing*, 3 H. 675; *Castle v. Secretary*, 16 H. 771, 780 (county act); a revision covering many subjects may be enacted as a whole by a separate short act: *In re Tom Pong*, 17 H. 567; the court should, if possible, avoid holding an act invalid on the ground that its title is too narrow: *Ter. v. Miguel*, 18 H. 406; *Ter. v. Wong Feart*, 17 H. 354; the portion not covered by the title may be void and the rest stand: *In re Walker*, 9 H. 171; but not if the void portion is an essential part: *Ter. v. Supervisors*, 15 H. 365; the title has greater weight in the construction of an act under a provision of this kind: *In re Contested Election*, 15 H. 331; the title of a subdivision of this act was considered in construing a subdivision: *Robinson v. U. S.*, 42 C. Cls. R. 55; an act described in its title as an amendment of a preceding act, but which expressly repeals the preceding act, is not itself repealed: *In re Walker*, 9 H. 171; the purposes of this provision are set forth in *Hyman v. Kapena*, 7 H. 78; applied in *The King v. Fernandez*, 7 H. 508. As to whether a joint resolution without a title expressing its subject may have the force of law, see message of the governor to the legislature relative to House Joint Resolution No. 8, session of 1911.

READING OF BILLS.

SEC. 46. That a bill in order to become a law shall, except as herein provided, pass three readings in each house, on separate days, the final passage of which in each house shall be by

a majority vote of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal.

A revision may be enacted by a separate short act without itself being read: *In re Tom Pong*, 17 H. 567. Referred to in 15 H. 298, 366.

CERTIFICATION OF BILLS FROM ONE HOUSE TO THE OTHER.

SEC. 47. That every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

The clerk is an "officer:" see note to s. 20.

SIGNING BILLS.

SEC. 48. That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the governor.

VETO OF GOVERNOR.

SEC. 49. That every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the governor. If he approves it, he shall sign it, and it shall become a law. If the governor does not approve such bill, he may return it, with his objections, to the legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes; but shall veto other bills, if at all, only as a whole.

The clerk is an "officer:" see note to s. 20. See note to next s. re taking effect of law. As to whether a joint resolution may be vetoed, see message of the governor to the legislature relating to House Joint Resolution No. 8, session of 1911.

PROCEDURE UPON RECEIPT OF VETO.

SEC. 50. That upon the receipt of a veto message from the governor each house of the legislature shall enter the same at

large upon its journal and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal.

If after such reconsideration such bill, or part of a bill, shall be approved by a two-thirds vote of all the members to which each house is entitled, it shall thereby become law.

An act authorizing an issuance of bonds was held to take effect upon its passage over the governor's veto, although by its terms it was to "take effect" upon "its approval by the president," the latter words being held intended to refer to the president's approval of the issuance of the bonds, under s. 55, and not to be an attempt to delegate power: **Robinson v. Baldwin**, 19 H. 12; 26 Ops. 463.

FAILURE TO SIGN OR VETO.

SEC. 51. That if the governor neither signs nor vetoes a bill within ten days after it is delivered to him it shall become a law without his signature, unless the legislature adjourns sine die prior to the expiration of such ten days.

If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature by their adjournment prevents its return, in which case it shall not be a law.

The first paragraph of this s. was taken, by the commission which drafted this act, from the Hawaiian constitution of 1894 (s. 69), and the second paragraph was added, by Congress, from the Federal Constitution (art. 1, s. 7). The latter, giving twelve days, including Sundays, in which to return a bill, probably controls the former, and this apparently was recognized by the legislature in the case of Act 143 of the session of 1911.

APPROPRIATIONS,

SEC. 52. That appropriations, except as herein otherwise provided, shall be made by the legislature. [As amended by s. 3, Act of May 27, 1910; 36 Sts. at L. 443.]

This s., before it was amended, read as follows: "That appropriations, except as otherwise herein provided, shall be made biennially by the legislature: **Provided, however,** That pending the time when this Act shall take effect and until a session of the legislature of the Territory of Hawaii shall be held, the President may, in his discretion, authorize and direct the use of such money in the treasury of the Re-

public of Hawaii as well as of the Territory of Hawaii, as he shall think requisite and proper for carrying on the government of the Territory of Hawaii, the preservation of the public health, the completion of the sewerage system of the city of Honolulu, and such other expenditures as in the President's judgment shall seem to be appropriate."

Referred to in 15 H. 364, 535; **Cummins v. Auditor**, 20 Haw.; see note to s. 54.

SEC. 53. That the governor shall submit to the legislature, at each regular session, estimates for appropriations for the succeeding biennial period.

Referred to in 15 H. 364, 535; see note to s. 54.

SEC. 54. That in case of failure of the legislature to pass appropriation bills providing for payments of the necessary current expenses of carrying on the government and meeting its legal obligations as the same are provided for by the then existing laws, the governor shall, upon the adjournment of the legislature, call it in extra session for the consideration of appropriation bills, and until the legislature shall have acted the treasurer may, with the advice of the governor, make such payments, for which purpose the sums appropriated in the last appropriation bills shall be deemed to have been reappropriated. And all legislative and other appropriations made prior to the date when this Act shall take effect, shall be available to the government of the Territory of Hawaii.

The legislature in extra session under this s. may divide the biennial period, covering a portion of it by one appropriation bill and the rest by another: **Boyd v. Auditor**, 15 H. 361; the objects for which appropriations may be made in such extra session are not limited to "necessary current expenses," etc.: **In re Queen's Hospital**, 15 H. 514, 663; when a complete appropriation bill was passed for the first six months of the biennial period and only an incomplete one for the last eighteen months, because the remainder of the expenses were expected to be provided for by counties, and the county act turned out to be void, there was a "failure" within the meaning of this section, but the "last appropriation bills" to be resorted to were those of the previous biennial period and not those of the first six months of the period in question: **In re Haw. Star**, 15 H. 532.

LEGISLATIVE POWER.

SEC. 55. That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent

with the Constitution and laws of the United States locally applicable. The legislature, at its first regular session after the census enumeration shall be ascertained, and from time to time thereafter, shall reapportion the membership in the senate and house of representatives among the senatorial and representative districts on the basis of the population in each of said districts who are citizens of the Territory; but the legislature shall not grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the approval of Congress; nor shall it grant private charters, but it may by general act permit persons to associate themselves together as bodies corporate for manufacturing, agricultural, and other industrial pursuits, and for conducting the business of insurance, savings banks, banks of discount and deposit (but not of issue), loan, trust, and guaranty associations, for the establishment and conduct of cemeteries, and for the construction and operation of railroads, wagon roads, vessels, and irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association: *Provided*, That no corporation, domestic or foreign, shall acquire and hold real estate in Hawaii in excess of one thousand acres; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States, but existing vested rights in real estate shall not be impaired. No divorce shall be granted by the legislature, nor shall any divorce be granted by the courts of the Territory unless the applicant therefor shall have resided in the Territory for two years next preceding the application, but this provision shall not affect any action pending when this Act takes effect; nor shall any lottery or sale of lottery tickets be allowed; nor shall spirituous or intoxicating liquors be sold except under such regulations and restrictions as the Territorial legislature shall provide; nor shall any public money be appropriated for the support or benefit of any sectarian, denominational, or private school, or any school not un-

der the exclusive control of the government; nor shall the government of the Territory of Hawaii, or any political or municipal corporation or subdivision of the Territory, make any subscription to the capital stock of any incorporated company, or in any manner lend its credit for the use thereof; nor shall any debt be authorized to be contracted by or on behalf of the Territory, or any political or municipal corporation or subdivision thereof, except to pay the interest upon the existing indebtedness, to suppress insurrection, or to provide for the common defense, except that in addition to any indebtedness created for such purposes the legislature may authorize loans by the Territory, or any such subdivision thereof, for the erection of penal, charitable, and educational institutions, and for public buildings, wharves, roads, harbor, and other public improvements, but the total of such indebtedness incurred in any one year by the Territory or any such subdivisions shall not exceed one per centum of the assessed value of the property in the Territory or subdivision, respectively, as shown by the then last assessments for taxation, whether such assessments are made by the Territory or the subdivision or subdivisions, and the total indebtedness of the Territory shall not at any time be extended beyond seven per centum of such assessed value of property in the Territory and the total indebtedness of any such subdivision shall not at any time be extended beyond three per centum of such assessed value of property in the subdivision, but nothing in this Act shall prevent the refunding of any indebtedness at any time; nor shall any such loan be made upon the credit of the public domain or any part thereof; nor shall any bond or other instrument of any such indebtedness be issued unless made payable in not more than thirty years from the date of the issue thereof; nor shall any such bond or indebtedness be issued or incurred until approved by the President of the United States: *Provided*, That the legislature may by general act provide for the condemnation of property for public uses, including the condemnation of rights of way for the

transmission of water for irrigation and other purposes. [As amended by s. 4, Act of May 27, 1910; 36 Sts. at L. 443.]

The portion of this s. which was amended, previously read as follows: "nor shall any debt be authorized to be contracted by or on behalf of the Territory, or any political or municipal corporation or subdivision thereof, except to pay the interest upon the existing indebtedness, to suppress insurrection, or to provide for the common defense, except that in addition to any indebtedness created for such purposes the legislature may authorize loans by the Territory, or any such subdivision thereof, for the erection of penal, charitable, and educational institutions, and for public buildings, wharves, roads, and harbor and other public improvements, but the total of such indebtedness incurred in any one year by the Territory or any subdivision shall not exceed one per centum upon the assessed value of taxable property of the Territory or subdivision thereof, as the case may be, as shown by the last general assessment for taxation, and the total indebtedness for the Territory shall not at any time be extended beyond seven per centum of such assessed value, and the total indebtedness of any subdivision shall not at any time be extended beyond three per centum of such assessed value, but nothing in this provision shall prevent the refunding of any existing indebtedness at any time; nor shall any such loan be made upon the credit of the public domain or any part thereof, nor shall any bond or other instrument of any such indebtedness be issued unless made redeemable in not more than five years and payable in not more than fifteen years from the date of the issue thereof; nor shall any such bond or indebtedness be incurred until approved by the President of the United States."

Compare this s. with Rev. Sts., ss. 1851, 1889; 23 Sts. at L. 348; 24 Sts. at L. 170; 25 Sts. at L. 336; 29 Sts. at L. 136, covering similar subjects in relation to territories in general, all of which may have been by implication inapplicable to Hawaii before the amendment of s. 5 and were made inapplicable expressly by that amendment. See note to s. 56.

The legislature has not made any reapportionment of its members. As to rightful subjects of legislation and extent of the legislative power, see 23 Ops. 539, **High Sheriff v. Goto**, 16 H. 266, and note to s. 81, on judiciary; **Peacock v. Pratt**, 121 Fed. 772; **Robertson v. Pratt**, 13 H. 600; **Tomikawa v. Gama**, 14 H. 432; **Achi v. Kapiolani Est.**, 1 U. S. Dist. Ct. Haw. 95; and **Peacock v. Wright**, 1 U. S. Dist. Ct. Haw. 298, on taxation; **In re Craig**, 20 H. . . ., on taxation and police power; 27 Ops. 485, on special tax on incomes in excess of \$4000 for assisting immigration; **Kawanakoa v. Polyblank**, 205 U. S. 354, and **Coffield v. Ter.**, 13 H. 481, on exemption of the Territory from suit without its consent; **Castle v. Secretary**, 16 H. 777, and **County v. Whitney**, 17 H. 174, on creation of municipal corporations. The legislature cannot after a pardon refund a fine paid before the pardon, for that would be an invasion of the judicial and pardoning powers and a diversion of public funds to private uses: **Cummins v. Auditor**, 20 H. . . . The legislature may authorize the garnishment of a legislator's salary: See **Kong v. Chillingworth**, 19 H. 428. Street railways are subject to regulation directly by the legislature or by delegation, as to details, to administrative bodies, and perhaps, as in a state, by delegation to the courts: **Honolulu R. T. Co. v. Hawaii**, 211 U. S. 291; the legislature may delegate to municipalities and local boards of health power to enact health regulations, but it cannot delegate to administrative officers the power of taxation, e. g. the power to fix sewer rates: **McCandless v. Campbell**,

20 H. 411. This s. was referred to also in 13 H. 706; 18 H. 539. See also note to s. 5.

The provisions of this s. against granting special franchises and private charters do not apply to grants of powers to municipal corporations: **Emmeluth v. Supervisors**, 19 H. 176; nor do they prevent the imposition of a license fee for fishing for profit with boats exceeding a certain width: **Ter. v. Matsubara**, 19 H. 643. On status of corporations formed before and after annexation, with reference to their being corporations organized by authority of Federal laws, see note to s. 6. For ratification of franchises granted between annexation and the establishment of Territorial government, see s. 73 and note thereto. For franchises granted by the Territorial legislature and approved, with amendments, by congress, see list of acts of Congress relating to Hawaii at the beginning of this Act.

The absence of legislation for licenses to clubs to sell liquor is no defense for a club selling without a license: **Ter. v. Pacific Club**, 16 H. 599; nor has an ex-licensee such a vested right as will entitle him to sell his stock of liquor after the expiration of his license: **Ter. v. Miguel**, 18 H. 406. Congress provided by Joint Resolution of Apr. 26, 1910, (36 Sts. at L. 878) for a special election on prohibition, at which election the vote was against prohibition.

The legislature may appropriate money for a hospital conducted for indigent sick without distinction as to nationality, creed, etc.: **In re Queen's Hospital**, 15 H. 663. The clause in regard to aid to sectarian schools is referred to in 17 H. 292; 19 H. 148; 206 U. S. 206; 215 U. S. 554.

Before this s. was amended, a county could not issue bonds unless it had the power of taxation: **Robinson v. Baldwin**, 19 H. 9. Legislation substantially lessening the security for payment of county bonds by reducing county revenues might be invalid as an impairment of contract obligations: **Id.** 17. For construction, with reference to delegation of power, of bond statute which in terms was to take effect on the President's approval, see note to s. 50. For special act of Congress authorizing issuance of bonds, for fire claims, see 32 Sts. at L. 780; and for Territorial act relating thereto, see Act 49, Laws of 1903 (Rev. Laws, p. 1304). For acts of the legislature relating to (a) issuance of bonds, see Act 42, Laws of 1903 (Rev. Laws, p. 1302), as amended by Act 9, Laws of 1904 (Rev. Laws, p. 1304), by Act 113, Laws of 1909; and by Act 89, Laws of 1911; (b) refunding, see Act 78, Laws of 1909; and (c) sinking fund, see Act 97, Laws of 1907, as amended by Act 121, Laws of 1909; Acts 105 and 111, Laws of 1909; and Act 166, Laws of 1911.

For act, enacted since amendment of this s., authorizing condemnation of rights of way for transmission of water, see Act 124, Laws of 1911. For earlier eminent domain acts, see Rev. Laws, Ch. 40 and note thereto; also Act 66, Laws of 1905; Act 67, Laws of 1907; Acts 10 and 80, Laws of 1909; and Act 66, Laws of 1911.

TOWN, CITY, AND COUNTY GOVERNMENT.

Sec. 56. That the legislature may create counties and town and city municipalities within the Territory of Hawaii and provide for the government thereof, and all officials thereof shall be appointed or elected, as the case may be, in such man-

ner as shall be provided by the Governor and legislature of the Territory. [As amended by s. 1, Act of March 3, 1905; 33 Sts. at L. 1035.]

The amendment of this s. consisted in adding to it the portion beginning with the words "and all officials."

Compare 20 Sts. at L. 101; 25 Sts. at L. 336.

The Federal statutes prohibiting territories from enacting special laws concerning municipal corporations were superseded as to Hawaii by this s. even before the amendment to s. 5, which expressly declared such statutes inapplicable to Hawaii: **Emmeluth v. Supervisors**, 19 H. 176; **Castle v. Secretary**, 16 H. 777; a county ordinance was held unauthorized because its subject-matter was covered by a Territorial statute: **Ter. v. McCandless**, 18 H. 624, but now see s. 3 of Act 79, Laws of 1909. This s. was referred to in 16 H. 773, 779 (appointment or election of county officers and transfers of powers and duties from Territorial to county officers); and in 17 H. 176 (power to make ordinances). For county act, see Act 39, Laws of 1905; city and county act, Act 118, Laws of 1907; there are also numerous acts amendatory and supplementary to these.

ELECTIONS.

EXEMPTION OF ELECTORS ON ELECTION DAY.

SEC. 57. That every elector shall be privileged from arrest on election day during his attendance at election and in going to and returning therefrom, except in case of breach of the peace then committed, or in case of treason or felony.

SEC. 58. That no elector shall be so obliged to perform military duty on the day of election as to prevent his voting, except in time of war or public danger, or in case of absence from his place of residence in actual military service, in which case provision may be made by law for taking his vote.

METHOD OF VOTING FOR REPRESENTATIVES.

SEC. 59. That each voter for representative may cast a vote for as many representatives as are to be elected from the representative district in which he is entitled to vote.

The required number of candidates receiving the highest number of votes in the respective representative districts shall be the representatives for such districts.

QUALIFICATIONS OF VOTERS FOR REPRESENTATIVES.

SEC. 60. That in order to be qualified to vote for representatives a person shall—

First. Be a male citizen of the United States.

Second. Have resided in the Territory not less than one year preceding and in the representative district in which he offers to register not less than three months immediately preceding the time at which he offers to register.

Third. Have attained the age of twenty-one years.

Fourth. Prior to each regular election, during the time prescribed by law for registration, have caused his name to be entered on the register of voters for representatives for his district.

Fifth. Be able to speak, read, and write the English or Hawaiian language.

This s. applied to the first Territorial election, to the exclusion of H. B. n. 1859: **In re Loucks**, 13 H. 17; residence in the Territory for a year means in the Hawaiian Islands and is not limited to the time subsequent to the establishment of Territorial government: **Id.**; a person who lives on a steamer engaged in interisland trade is not a resident of a particular precinct, though the steamer docks at such precinct when at Honolulu and that is her home port: **In re Irving**, 13 H. 22. This s. and s. 62 control as to qualifications of voters in city and county elections: **Emmeluth v. Supervisors**, 19 H. 178. This s. is referred to also in 14 H. 146; 15 H. 266; 19 H. 227. On qualifications of voters, see also ss. 18, 62, 63; on citizenship, see also ss. 4 and 100; on registration, see s. 64 of this act, and ss. 30, 37-58 of the Revised Laws of Hawaii, and Acts 68 and 105, Laws of 1911.

METHOD OF VOTING FOR SENATORS.

SEC. 61. That each voter for senator may cast one vote for each senator to be elected from the senatorial district in which he is entitled to vote.

The required number of candidates receiving the highest number of votes in the respective senatorial districts shall be the senators for such district.

QUALIFICATIONS OF VOTERS FOR SENATORS AND IN ALL OTHER
ELECTIONS

SEC. 62.—That in order to be qualified to vote for senators and for voting in all other elections in the Territory of Hawaii a person must possess all the qualifications and be subject to all the conditions required by this Act of voters for representatives.

An election under a county act is one of the "other elections" referred to in this section; in such case the registration list for the last previous general election should be used: *Fairchild v. Smith*, 15 H. 265; but now see Acts 68 and 105, Laws of 1911, providing for permanent registration. Referred to in 19 H. 227. See also 19 H. 178, referred to in note to s. 60.

SEC. 63. That no person shall be allowed to vote who is in the Territory by reason of being in the Army or Navy or by reason of being attached to troops in the service of the United States.

Compare U. S. Rev. Sts., s. 1860, subd. 3.

SEC. 64. That the rules and regulations for administering oaths and holding elections set forth in Ballou's Compilation, Civil Laws, Appendix, and the list of registering districts and precincts appended, are continued in force with the following changes, to wit:

Strike out the preliminary proclamation and sections one to twenty-six, inclusive, sections thirty and thirty-nine, the second and third paragraphs of section forty-eight, the second paragraph of section fifty, and sections sixty-two, sixty-three, and sixty-six, second paragraph of section one hundred.

In section twenty-nine strike out all after the word "Niihau" and in lieu thereof insert: "The boards of registration existing at the date of the approval of this Act shall go out of office, and new boards, which shall consist of three members each, shall be appointed by the governor, by and with the advice and consent of the senate, whose terms of office shall be four years. Appointments made by the governor when the senate is not in session shall be valid until the succeeding meeting of that body."

In section thirty-one strike out "the first day of April and the thirtieth day of June, in the year eighteen hundred and ninety-seven," and insert in lieu thereof "the last day of August and the tenth day of October, in the year nineteen hundred."

Strike out the words "and the detailed record" in sections fifty-two and one hundred and twelve.

Strike out "marshal" wherever it occurs and insert in lieu thereof "high sheriff."

Strike out of section fifty-three the words "except as provided in section one hundred and fourteen hereof."

In sections fifty-three, fifty-four, fifty-six, fifty-seven, fifty-nine, sixty, seventy-one, seventy-five, eighty-six, ninety-two, ninety-three, ninety-four, ninety-five, one hundred and eleven, one hundred and twelve, and one hundred and thirteen strike out the words "minister" and "minister of the interior" wherever they occur and insert in lieu thereof the words "secretary of the Territory."

In section fifty-six, paragraph three, strike out "interior office" and insert "office of the secretary of the Territory."

In section fifty-six, first paragraph, after the words "candidate for election" insert "to the legislature;" and in the last paragraph strike out the word "only."

Strike out the word "elective" in section sixty-four.

In sections twenty-seven, sixty-four, sixty-five, sixty-eight, seventy, and seventy-two strike out the words "minister of the interior" or "minister" wherever they occur and insert in lieu thereof the word "governor."

Amend section sixty-seven so that it will read: "At least forty days before any election the governor shall issue an election proclamation and transmit copies of the same to the several boards of inspectors throughout the Territory, or where such election is to be held."

In section seventy-five strike out the word "perfectly," and in section seventy-six strike out "in" and insert "on."

In section one hundred and twelve strike out "interior de

partment" and insert in lieu thereof "office of the secretary of the Territory."

In section one hundred and fourteen strike out the word "Republic" wherever it occurs and insert in lieu thereof "Territory."

In section one hundred and fifteen strike out the words "minister" and "minister of the interior" and insert in lieu thereof "treasurer," and strike out all after the word "refreshments." *Provided, however,* That for the holding of a special election before the first general election the governor may prescribe the time during which the boards of registration shall meet and the registration be made.

Referred to in 14 H. 146, 283; 15 H. 326, 328; 17 H. 247; 18 H. 140; 19 H. 178, 228. These rules and regulations, as amended by this s., are chs. 7 and 8 of the Revised Laws of Hawaii, which see, with the notes thereto. These may be changed by the legislature under the authority of s. 85 as amended (last paragraph).

SEC. 65. That the legislature of the Territory may from time to time establish and alter the boundaries of election districts and voting precincts and apportion the senators and representatives to be elected from such districts.

On change of districts, see also ss. 32 and 38, above. For election districts, not senatorial or representative, prescribed by the legislature, see Act 84, Laws of 1909. The governor also may change precinct boundaries: s. 106 of the Revised Laws of Hawaii.

CHAPTER III.—THE EXECUTIVE.

THE EXECUTIVE POWER.

SEC. 66. That the executive power of the government of the Territory of Hawaii shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold office for four years and until his success shall be appointed and qualified, unless sooner removed by the President. He shall be not less than thirty-five years of age; shall be a citizen of the Territory of Hawaii; shall be commander in chief of the militia

thereof, may grant pardons or reprieves for offenses against the laws of the said Territory and reprieves for offenses against the laws of the United States until the decision of the President is made known thereon.

The legislature cannot exercise the pardoning power: *Cummins v. Auditor*, 20 H. ... Referred to in 23 Ops. 138. Compare U. S. Rev. Stat., s. 1841.

ENFORCEMENT OF LAW.

SEC. 67. That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known.

Referred to in 16 H. 266; 1 U. S. Dist. Ct. Haw. 95. Compare Const. of 1894, art. 31. See *In re Kalaniana'ole*, 10 H. 29, on martial law.

GENERAL POWERS OF THE GOVERNOR.

SEC. 68. That all the powers and duties which, by the laws of Hawaii, are conferred upon or required of the President or any minister of the Republic of Hawaii (acting alone or in connection with any other officer or person or body) or the cabinet or executive council, and not inconsistent with the Constitution or laws of the United States, are conferred upon and required of the governor of the Territory of Hawaii, unless otherwise provided.

Referred to in 15 H. 115; 24 Ops. 603.

SECRETARY OF THE TERRITORY.

SEC. 69. That there shall be a secretary of the said Territory, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and who shall be a citizen of the Territory of Hawaii and hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall record and preserve all the laws and proceedings of the legislature and all acts and proceedings of the governor, and promulgate proclamations of the governor. He shall, within thirty days after the end of each session of the legislature, transmit to the President, the President of the Senate, and the Speaker of the House of Representatives of the United States one copy each of the laws and journals of such session. He shall transmit to the President, semi-annually, on the first days of January and July, a copy of the executive proceedings, and shall perform such other duties as are prescribed in this Act or as may be required of him by the legislature of Hawaii.

Referred to in 23 Ops. 138. Compare U. S. Rev. Sts., ss. 1843, 1844.

ACTING GOVERNOR IN CERTAIN CONTINGENCIES.

SEC. 70. That in case of the death, removal, resignation, or disability of the governor, or his absence from the Territory, the secretary shall exercise all the powers and perform all the duties of governor during such vacancy, disability, or absence, or until another governor is appointed and qualified.

Compare U. S. Rev. Sts., s. 1843.

ATTORNEY-GENERAL.

SEC. 71. That there shall be an attorney-general, who shall have the powers and duties of the attorney-general and those of the powers and duties of the minister of the interior which relate to prisons, prisoners, and prison inspectors, notaries public, and escheat of lands under the laws of Hawaii, except as

changed by this Act and subject to modification by the legislature.

Referred to in 16 H. 773.

TREASURER.

SEC. 72. That there shall be a treasurer, who shall have the powers and duties of the minister of finance and those of the powers and duties of the minister of the interior which relate to licenses, corporations, companies, and partnerships, business conducted by married women, newspapers, registry of conveyances, and registration of prints, labels, and trademarks under the laws of Hawaii, except as changed in this Act and subject to modification by the legislature.

Referred to in 15 H. 274, 719; 16 H. 773.

COMMISSIONER OF PUBLIC LANDS.

SEC. 73. That the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land-commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide. That, subject to the approval of the President, all sales, grants, leases, and other dispositions of the public domain, and agreements concerning the same, and all franchises granted by the Hawaiian government in conformity with the laws of Hawaii, between the seventh day of July, eighteen hundred and ninety-eight, and the twenty-eighth day of September, eighteen hundred and ninety-nine, are hereby ratified and confirmed. In said laws "land patent" shall be substituted for "royal patent;" "commissioner of public lands" for "minister of the interior," "agent of public lands," and "commissioners of public lands," or their equivalents; and the words "that I am a citizen of the United States," or "that I have declared my intention to become a citizen of the United States, as required by law," for the words "that I am a citizen by birth (or naturalization) of the Republic of Hawaii," or "that I have received letters of

denization under the Republic of Hawaii," or "that I have received a certificate of special right of citizenship from the Republic of Hawaii." And no lease of agricultural land shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than fifteen years, and in every such case the land, or any part thereof so leased, may at any time during the term of the lease be withdrawn from the operation thereof for homestead or public purposes, in which case the rent reserved shall be reduced in proportion to the value of the part so withdrawn, and every such lease shall contain a provision to that effect. All funds arising from the sale or lease or other disposal of such lands shall be appropriated by the laws of the government of the Territory of Hawaii and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight: *Provided*, There shall be excepted from the provisions of this section all lands heretofore set apart, or reserved, by Executive order or orders, by the President of the United States.

No person shall hereafter be entitled to receive any certificate of occupation, right of purchase lease, cash freehold agreement, or special homestead agreement who or whose husband or wife shall previously have taken or held any land under any such certificate, lease, or agreement hereafter made or issued, or under any homestead lease or patent based thereon; or who or whose husband or wife, or both of them, shall then own other land in the Territory, the combined area of which and the land in question exceeds eighty acres; or who is an alien, unless he has declared his intention to become a citizen of the United States as provided by law; nor shall any person who, having so declared his intention, shall hereafter take or hold under any such certificate, lease, or agreement, continue so to hold or become entitled to a homestead lease or patent of the land, unless he shall have become a citizen within five years after so taking.

No land for which any such certificate, lease, or agreement

shall hereafter be issued, or any part thereof or interest therein or control thereof shall, without the written consent of the commissioner and governor, thereafter, whether before or after a homestead lease or patent has been issued thereon, be or be contracted to be in any way, directly or indirectly, by process of law or otherwise, conveyed, mortgaged, leased, or otherwise transferred to or acquired or held by or for the benefit of any alien or corporation; or, before or after the issuance of a homestead lease or before the issuance of a patent, to or by or for the benefit of any other person; or, after the issuance of a patent, to or by or for the benefit of any person who owns, holds, or controls, directly or indirectly, other land or the use thereof the combined area of which and the land in question exceeds eighty acres: *Provided*, That these prohibitions shall not apply to transfers or acquisitions by inheritance or between tenants in common.

Any land in respect of which any of the foregoing provisions shall be violated shall forthwith be forfeited and resume the status of public land and may be recovered by the Territory or its successors in an action of ejectment or other appropriate proceedings. And noncompliance with the terms of any such certificate, lease, or agreement, or of the law applicable thereto, shall entitle the commissioner, with the approval of the governor before patent has been issued, with or without legal process, notice, demand, or previous entry, to retake possession and thereby determine the estate: *Provided*, That the times limited for compliance with any such terms may be extended by the commissioner, with such approval upon its appearing that an effort has been made in good faith to comply therewith.

The persons entitled to take under any such certificate, lease, or agreement shall be determined by drawing or lot, after public notice as hereinafter provided; and any lot not taken or taken and forfeited, or any lot or part thereof surrendered with the consent of the commissioner, which is hereby authorized, may be disposed of upon application at not less than the advertised price by any such certificate, lease, or agreement without fur-

ther notice. The notice of any sale, drawing, or allotment of public land shall be by publication for a period of not less than sixty days in one or more newspapers of general circulation published in the Territory.

The commissioner, with the approval of the governor, may give to any citizen of the United States or to any person who has legally declared his intention to become a citizen, and who shall hereafter become such, which said person has, or who and whose predecessors in interest have, improved any parcel of public lands and resided thereon continuously since April thirtieth, nineteen hundred, a preference right to purchase so much of such parcel and such adjoining land as may reasonably be required for a home, at a fair price, to be determined by three disinterested citizens appointed by the governor, in the determination of which price the value of improvements shall, when deemed just and reasonable, be disregarded: *Provided, however,* That this privilege shall not extend to any original lessee or to an assignee of an entire lease of public lands.

The commissioner may also, with such approval, issue, for a nominal consideration, to any church or religious organization, or person or persons or corporation representing it, a patent for any parcel of public land occupied continuously for not less than five years heretofore and still occupied by it as a church site under the laws of Hawaii.

No sale of lands for other than homestead purposes, except as herein provided, and no exchange by which the Territory shall convey lands exceeding either forty acres in area or five thousand dollars in value shall be made. No lease of agricultural lands exceeding forty acres in area, or of pastoral or waste lands exceeding two hundred acres in area, shall be made without the approval of two-thirds of the board of public lands which is hereby constituted, the members of which are to be appointed by the governor as provided in section eighty of this Act, and until the legislature shall otherwise provide said board shall consist of six members and its members be appointed for terms of four years: *Provided, however,* That the com-

missioner may, with the approval of said board, sell for residence purposes lots and tracts, not exceeding three acres in area, and that sales of government lands may be made upon the approval of said board whenever necessary to locate thereon railroad rights of way, railroad tracks, side tracks, depot grounds, pipe lines, irrigation ditches, pumping stations, reservoirs, factories and mills and appurtenances thereto, including houses for employees, mercantile establishments, hotels, churches, and private schools, and all such sales shall be limited to the amount actually necessary for the economical conduct of such business or undertaking: *Provided further,* That no exchange of government lands shall hereafter be made without the approval of two-thirds of the members of said board, and no such exchange shall be made except to acquire lands directly for public uses.

Whenever twenty-five or more persons, having the qualification of homesteaders who have not theretofore made application under this Act shall make written application to the commissioner of public lands for the opening of agricultural lands for settlement in any locality or district, it shall be the duty of said commissioner to proceed expeditiously to survey and open for entry agricultural lands, whether unoccupied or under lease with the right of withdrawal, sufficient in area to provide homesteads for all such persons, together with all persons of like qualification who shall have filed with such commissioner prior to the survey of such lands written applications for homesteads in the district designated in said applications. The lands to be so opened for settlement by said commissioner shall be either the specific tract or tracts applied for or other suitable and available agricultural lands in the same geographical district and, as far as possible, in the immediate locality of and as nearly equal to that applied for as may be available: *Provided, however,* That no leased land, under cultivation, shall be taken for homesteading until any crops growing thereon shall have been harvested.

It shall be the duty of the commissioner of public lands to cause to be surveyed and opened for homestead entry a reason-

able amount of desirable agricultural lands and also of pastoral lands in various parts of the Territory for homestead purposes on or before January first, nineteen hundred and eleven, and he shall annually thereafter cause to be surveyed for homestead purposes such amount of agricultural lands and pastoral lands in various parts of the Territory as there may be demand for by persons having the qualifications of homesteaders; and in laying out any homestead the Commissioner of Public Lands shall include therein an amount, not exceeding eighty acres in area, sufficient to support thereon an ordinary family; and all necessary expenses for surveying and opening any such lands for homestead shall be paid for out of any funds of the territorial treasury derived from the sale or lease of the public lands, which funds are hereby made available for such purposes.

Nothing herein contained shall be construed to prevent said commissioner from surveying and opening for homestead purposes and as a single homestead entry public lands suitable for both agricultural and pastoral purposes, whether such lands be situated in one body or detached tracts, to the end that homesteaders may be provided with both agricultural and pastoral lands wherever there is demand therefor; nor shall the ownership of a residence lot or tract, not exceeding three acres in area, hereafter disqualify any citizen from applying for and receiving any form of homestead entry, including a homestead lease.

All lands in the possession, use, and control of the Territory shall hereafter be managed by the commissioner, except such as shall be set aside for public purposes as hereinafter provided; all sales and other dispositions of such land shall be made by the commissioner or under his direction, for which purpose, if necessary, the land may be transferred to his department from any other department by direction of the governor, and all patents and deeds of such land shall issue from the office of the commissioner, who shall countersign the same and keep a record thereof. Lands conveyed to the Territory in exchange for other lands that are subject to the land laws of Hawaii, as

amended by this Act, shall, except as otherwise provided, have the same status and be subject to such laws as if they had previously been public lands of Hawaii. All orders setting aside lands for forest or other public purposes, or withdrawing the same, shall be made by the governor, and lands while so set aside for such purposes may be managed as may be provided by the laws of the Territory. The commissioner is hereby authorized to perform any and all acts, prescribe forms of oaths, and, with the approval of the governor and said board, make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this section and the land laws of Hawaii into full force and effect. [As amended by Act of Apr. 2, 1908; 35 Sts. at L. 124; and by s. 5 of Act of May 27, 1910; 36 Sts. at L. 443.]

The amendment of Apr. 2, 1908, consisted in substituting the part of the fourth sentence of the first paragraph which begins with "fifteen years" in place of "five years until Congress shall otherwise direct." The amendment of May 27, 1910, consisted in adding all after the first paragraph.

See Joint Resolution of annexation and notes thereto in the Revised Laws of Hawaii, p. 40, in regard to the cession of public lands to the United States, their status, dispositions thereof, laws applicable thereto, application of the proceeds thereof, and grants of franchises, between annexation and the establishment of Territorial government; also note to ch. 20 of the Revised Laws in regard to the land laws of Hawaii; also ss. 75, 89, 91, 95, 97 and 99 of this act on public lands.

Quaere, whether the Federal statutes (24 Sts. at L. 476; 25 Sts. at L. 45; 29 Sts. at L. 618) relating to disabilities of aliens to hold land in the territories in general are applicable to Hawaii.

Under this s. and s. 91, the public lands are under the Territorial laws, but the President may set aside such as he deems proper for the uses of the United States: 24 Ops. 600. For proclamations so setting aside public lands before and after the passage of this act, see note at the beginning of this act; also note to s. 91; the Territory may acquire private lands by exchange, and these may then be so set aside by the President: 24 Ops. 600.

The legislature may add to the duties of the commissioner of public lands: **Lucweiko v. Com'r.**, 18 H. 490. Before the amendment of May 27, 1910, the commissioner's powers were subject to those of the superintendent of public works in respect of certain classes of lands under s. 75: **Pratt v. Holloway**, 17 H. 540 et seq. (town lots); **McCandless v. Carter**, 18 H. 226, 231 (power of exchange). The title of the government to the crown lands cannot be questioned by the courts: **Ter. v. Kapiolani Est.**, 18 H. 645. **Quaere**, whether continuing the Hawaiian land laws in force until Congress otherwise provides, makes them Federal laws so as to permit an appeal to the Federal supreme court on the ground that a Federal question is involved: **McCandless v. Pratt**, 211 U. S. 442.

A franchise granted by the legislature on the day (July 7, 1898) the Joint Resolution of annexation was passed by Congress, whether ratified or not by this s., is not a Federal franchise exempt from Territorial taxation: **Rapid Transit Co. v. Assessor**, 18 H. 18, 20; **Honolulu Transit Co. v. Wilder**, 211 U. S. 142, the latter holding also that a franchise granted July 7, 1898, was not excluded from the franchises granted between that day and a later date, which were ratified by this s. See s. 55 on grants of franchises by the Territorial legislature.

COMMISSIONER OF AGRICULTURE AND FORESTRY.

SEC. 74. That the laws of Hawaii relating to agriculture and forestry, except as changed by this Act, shall continue in force, subject to modification by Congress or the legislature. In said laws "commissioner of agriculture and forestry" shall be substituted, respectively, for "bureau," "bureau of agriculture and forestry," "commissioner," "commissioners of agriculture," and "commissioners for the island of Oahu."

SUPERINTENDENT OF PUBLIC WORKS.

SEC. 75. That there shall be a superintendent of public works, who shall have the powers and duties of the superintendent of public works and those of the powers and duties of the minister of the Interior which relate to streets and highways, harbor improvements, wharves, landings, waterworks, railways, electric light and power, telephone lines, fences, pounds, brands, weights and measures, fires and fireproof buildings, explosives, eminent domain, public works, markets, buildings, parks and cemeteries, and other grounds and lands now under the control and management of the minister of the interior, and those of the powers and duties of the minister of finance and collector-general which relate to pilots and harbor masters under the laws of Hawaii, except as changed by this Act and subject to modification by the legislature. In said laws the word "legislature" shall be substituted for "councils" and the words "the circuit court" for "the Hawaiian Postal Savings Bank."

See note to s. 73. Referred to also in 15 H. 298, 367.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

SEC. 76. That there shall be a superintendent of public instruction, who shall have the powers and perform the duties conferred upon and required of the minister of public instruction by the laws of Hawaii as amended by this Act, and subject to modification by the legislature.

It shall be the duty of the United States Commissioner of Labor to collect, assort, arrange, and present in reports in nineteen hundred and five, and every five years thereafter, statistical details relating to all departments of labor in the Territory of Hawaii, especially in relation to the commercial, industrial, social, educational, and sanitary condition of the laboring classes, and to all such other subjects as Congress may by law direct. The said Commissioner is especially charged to ascertain the highest, lowest, and average number of employees engaged in the various industries in the Territory, to be classified as to nativity, sex, hours of labor, and conditions of employment, and to report the same to Congress. [As amended by Act of Apr. 8, 1904; 33 Sts. at L. 164.]

The amendments consisted (1) in substituting "reports in nineteen hundred and five, and every five years thereafter" for "annual reports" near the beginning of the second paragraph, and (2) in omitting "at as early a date as possible, and as often thereafter as such information may be required" after "ascertain" in the last sentence. In the Statutes at Large the word "the" is by mistake substituted for "this" before "Act" near the end of the first paragraph.

AUDITOR AND DEPUTY AUDITOR.

SEC. 77. That there shall be an auditor and deputy auditor, who shall have the powers and duties conferred upon and required of the auditor-general and deputy auditor-general, respectively, by act thirty-nine of the Session Laws, as amended by this Act, subject to modification by the legislature. In said act "officer" shall be substituted for "minister" where used without other designation.

The provision of the audit law permitting the suspension of the auditor by the governor, was repealed by implication by s. 80 of this act: *In re Austin*, 15 H. 114.

SURVEYOR.

SEC. 78. That there shall be a surveyor, who shall have the powers and duties heretofore attached to the surveyor-general, except such as relate to the geodetic survey of the Hawaiian Islands.

HIGH SHERIFF.

SEC. 79. That there shall be a high sheriff and deputies, who shall have the powers and duties of the marshal and deputies of the Republic of Hawaii under the laws of Hawaii, except as changed by this Act, and subject to modification by the legislature.

Referred to in 14 H. 283; 15 H. 367, 494.

APPOINTMENT, REMOVAL, TENURE, AND SALARIES OF OFFICERS.

SEC. 80. That the President shall nominate and, by and with the advice and consent of the Senate, appoint the chief justice and justices of the supreme court, the judges of the circuit courts, who shall hold their respective offices for the term of four years, unless sooner removed by the President; and the governor shall nominate and, by and with the advice and consent of the senate of the Territory of Hawaii, appoint the attorney-general, treasurer, commissioner of public lands, the commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, surveyor, high sheriff, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration and inspectors of election, and any other boards of a public character that may be created by law; and he may make such appointments when the senate is not in session by granting commissions, which shall, unless such appointments are confirmed, expire at the end of the next session of the senate. He may, by and with the advice and consent of the senate of the Territory of Hawaii, remove from of-

fice any of such officers. All such officers shall hold office for four years and until their successors are appointed and qualified, unless sooner removed, except the commissioners of public instruction and the members of said boards, whose term of office shall be as provided by the laws of the Territory of Hawaii.

The manner of appointment and removal and the tenure of all other offices shall be as provided by law; and the governor may appoint or remove any officer whose appointment or removal is not otherwise provided for.

The salaries of all officers other than those appointed by the President shall be as provided by the legislature, but those of the chief justice and the justices of the supreme court and judges of the circuit courts shall not be diminished during their term of office.

All officers appointed under the provisions of this section shall be citizens of the Territory of Hawaii.

All persons holding office in the Hawaiian Islands at the time this Act takes effect shall continue to hold their respective offices until their successors are appointed and qualified, but not beyond the end of the first session of the senate of the Territory of Hawaii unless reappointed as herein provided.

Provided, however, That nothing in this section shall be construed to conflict with the authority and powers conferred by Section fifty-six of this Act as herein amended. [As amended by s. 2, Act of March 3, 1905; 33 Sts. at L. 1035.]

The amendment consisted in adding the last paragraph.

The governor cannot suspend an officer appointable and removable by him with the consent of the senate and whose term of office is four years, unless sooner removed: *In re Austin*, 15 H. 114. A board of medical examiners appointed by the treasurer under the Hawaiian statute and not by the governor with the consent of the senate under this s., was held to be at least a de facto board; *Nonomiya v. Treasurer*, 15 H. 273. The validity of an income tax law cannot be attacked by any one not affected thereby on the ground that it would effect a diminution of judges' salaries contrary to the provisions of this s.: *Robertson v. Pratt*, 13 H. 594; *Peacock v. Pratt*, 121 Fed. 772. The words "and until their successors are appointed and qualified" apply to officers appointed by the President as well as to those appointed by the governor under this s.: *Robinson v. U. S.*, 42 C. Cls. R. 54. This s. is controlled by s. 56, which authorizes the appointment and election of officers of municipal corporations in other ways:

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.

DISQUALIFICATION BY RELATIONSHIP, PECUNIARY INTEREST, OR PREVIOUS JUDGMENT.

Sec. 84. That no person shall sit as a judge or juror in any case in which his relative by affinity or by consanguinity within the third degree is interested, either as a plaintiff or defendant, or in the issue of which the said judge or juror has, either directly or through such relative, any pecuniary interest; nor shall any person sit as a judge in any case in which he has been of counsel or on an appeal from any decision or judgment rendered by him, and the legislature of the Territory may add other causes of disqualification to those herein enumerated. [As amended by s. 6, Act of May 27, 1910; 36 Sts. at L. 443.]

This s., before it was amended, read as follows:

"That no person shall sit as a judge or juror in any case in which his relative by affinity or by consanguinity within the third degree is interested, either as a plaintiff or defendant, or in the issue of which the said judge or juror may have, either directly or through such relative, any pecuniary interest. No judge shall sit on an appeal, or new trial, in any case in which he may have given a previous judgment."

Interest and relationship. A circuit judge may sit in a suit brought by a deputy of his son as assessor in the name of the government, the son being paid a regular salary: *Rep. v. West*, 10 H. 5. A justice of the supreme court may sit in a disbarment case, although he and his father-in-law were interested in a corporation, in connection with dealings with which, the attorney, representing other parties, was alleged to have acted unprofessionally: *In re Davis*, 15 H. 380; *In re Davis*, 2 U. S. Dist. Ct. Haw. 58. A judge is not disqualified by the fact that a relative within the third degree is a shareholder in a corporation which is a party, the judge having no pecuniary interest through such relative: *Ewa P. Co. v. Assessor*, 18 H. 510. Relationship by affinity within the third degree to the son of a party, is not a disqualification: *Lucas v. Lucas*, 20 H. 434; but such relationship to a party, though the party is such merely as trustee, is a disqualification: *Smith v. Lindsay*, 20 H. 262.

Bias and prejudice; counsel. A justice of the supreme court should not sit in a case in which he would have to pass on the effect of his own testimony: *Est. Banning*, 10 H. 354; but may sit in a disbarment case although he had several times as circuit judge punished the attorney for contempt: *In re Davis*, 15 H. 377; *In re Davis*, 2 U. S. Dist. Ct. Haw. 59; or although he had referred the question of unprofessional conduct to the attorney-general for investigation and action if necessary: *Id.* 57. Before this s. was amended a judge was held not disqualified by reason of having been of counsel if he had not taken an active part in the case: *Love v. Love*, 17 H. 194; or even if he had taken an active part: *Notley v. Brown*, 17 H. 394; *Bierce v. Hutchins*, 18 H. 375; or by reason of having expressed approval of an Act, involved in the case, to a member of a legislative committee when the bill was before it: *Ex parte Higashi*, 17 H. 429. A judge is not disqualified, under the amendment, from sitting in an action of ejectment

by reason of having been of counsel in an action for summary possession of the same land: **Ter. v. Kapiolani Est.**, 20 H.; nor from ordering a guardian to file an account and inventory by reason of having acted as counsel for the appointment of the guardian: **In re Guardianship of Hitchcock**, 20 H. This s. was held not to apply to a Federal district judge in Hawaii, but was considered argumentatively in support of a ruling that having been of counsel, whether actively or merely nominally, was a disqualification: **U. S. v. Thurston**, 4 U. S. Dist. Ct. Haw.; but a judge so disqualified may act in purely formal matters: **Id.**

On appeal. A justice of the supreme court may sit on an appeal in a habeas corpus case brought to obtain the release of a prisoner held under sentence pronounced in a criminal case by such justice when he was a circuit judge: **Ex p. Mankichi**, 13 H. 570; also in a case with which he has had no previous connection, although a question of law is involved which was involved in other distinct cases at the trial of which he had presided when a circuit judge: **Ex p. Ah Oi**, 13 H. 534; and in a disbarment case, although he had previously as circuit judge passed on the insanity of one alleged to have been taken advantage of by the attorney: **In re Davis**, 15 H. 377; **In re Davis**, 2 U. S. Dist. Ct. Haw. 59. Formerly, under the provision of C. C. 1859, s. 820, against sitting "alone" on appeal, etc., a justice could sit with the other justices on appeal from himself: **King v. Paakaula**, 3 H. 30; **Est. Banning**, 9 H. 354; or preside over a jury on appeal from himself: **Unauna v. Kaopokalani**, 4 H. 431; but not sit alone, jury waived, on such an appeal: **Hing Yee v. Chung Wa**, 6 H. 304.

New trial. A circuit judge may sit on a petition for the revocation of the probate of a will admitted to probate by himself: **Est. Opae**, 10 H. 188; or on the second trial of a case in which the jury had disagreed at the first trial: **Boyd v. Gandall**, 11 H. 322; or in an equity case remanded to him for evidence on an issue raised by an amendment to the pleadings made after the close of the original hearing: **Hitchcock v. Judge**, 14 H. 3; or on a motion for a change of venue on the ground that an impartial jury cannot be obtained, after he had ordered a nonsuit, which had been set aside by the supreme court: **Spreckels v. Judge**, 16 H. 477; or upon a trial of the facts, after sustaining defendant's demurrer, which ruling had been reversed on appeal: **Matsumura v. County**, 19 H. 197.

This s. was referred to in 217 U. S. 244.

CHAPTER V.—UNITED STATES OFFICERS.

DELEGATE TO CONGRESS.

SEC. 85. That a Delegate to the House of Representatives of the United States, to serve during each Congress, shall be elected by the voters qualified to vote for members of the house of representatives of the legislature. Such Delegate shall possess the qualifications necessary for membership of the senate of the legislature of Hawaii.

Such election shall be held on the first Tuesday after the

first Monday in November of every even year and at such places as shall be designated by the secretary of the Territory. The ballot for Delegate shall be such as the legislature of Hawaii may designate, and until provision is made by the territorial legislature the ballot shall be of pink paper and shall be of the same general form as those used for the election of representatives to the legislature.

The method of certifying the names of candidates for place on this ballot and all the conduct of the election of a Delegate shall be in conformity to the general election laws of the Territory of Hawaii.

The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly.

Every such Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting. In case of a vacancy occurring in the office of Delegate, the governor of the Territory is directed to call a special election to fill such vacancy: *Provided, however,* That no vacancy shall be filled which occurs within five months of the expiration of a Congressional term.

The legislature of the Territory of Hawaii shall have the right to alter or amend any part of the election laws of said Territory, including those providing for an election of Delegate to Congress, and its action shall be the law, with full, binding force, until altered, amended, or repealed by Congress. [As amended by Act of June 28, 1906; 34 Sts. at L. 550.]

The amendments consisted in substituting the second and third paragraphs for the words "the times, places, and manner of holding elections shall be as fixed by law," and in adding the second sentence in the fifth paragraph and all of the last paragraph. The delegate is not a representative in Congress, although (dictum) he is a member of Congress: **U. S. v. Haleakala R. Co.**, 3 U. S. Dist. Ct. Haw. (construing law against contributions by corporations for election purposes).

FEDERAL COURT.

SEC. 86. There shall be established in the said Territory a district court, to consist of two judges, who shall reside therein

and be called district judges, and who shall each receive an annual salary of six thousand dollars. The said court while in session shall be presided over by only one of said judges. The two judges shall from time to time, either by order or rules of court, prescribe at what times and in what class of cases each of them shall preside. The said two judges shall have the same powers in all matters coming before said court.

The President of the United States, by and with the advice and consent of the Senate of the United States, shall appoint two district judges, a district attorney, and a marshal of the United States for the said district, and said judges, attorney, and marshal shall hold office for six years unless sooner removed by the President.

The said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court of the United States, and shall proceed therein in the same manner as a circuit court; and the said judges, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district and circuit courts of the United States.

Writ of errors and appeals from the said district court shall be had and allowed to the circuit court of appeals for the ninth judicial circuit in the same manner as writs of error and appeals are allowed from circuit courts to circuit courts of appeal as provided by law, and appeals and writs of error may be taken to the Supreme Court of the United States from said district court in cases where appeals and writs of error are allowed from the district and circuit courts of the United States to the Supreme Court, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and

proceedings as between the courts of the United States and the Courts of the Territory of Hawaii. Regular terms of said court shall be held in Honolulu on the second Monday in April and October, and special terms may be held at such times and places in said district as the said judges may deem expedient. The said district judges shall appoint a clerk of said court at a salary of three thousand dollars per annum and shall appoint a reporter of said court at a salary of one thousand two hundred dollars per annum: *Provided*, That writs of error and appeals may also be taken from the supreme court of the Territory of Hawaii to the Supreme Court of the United States in all cases where the amount involved, exclusive of costs, exceeds the sum or value of five thousand dollars. [As amended by s. 3, Act of March 3, 1905; 33 Sts. at L. 1035; and by Act of March 3, 1909; 35 Sts. at L. 838.]

Amendments. The amendment of Mch. 3, 1905, added the proviso at the end of the s. The amendment of Mch. 3, 1909, consisted chiefly in increasing the number of judges from one to two and their salaries (previously covered by s. 92) from \$5,000 to \$6,000. The s., before its amendments, read as follows:

"That there shall be established in said Territory a district court to consist of one judge, who shall reside therein and be called the district judge. The President of the United States, by and with the advice and consent of the Senate of the United States, shall appoint a district judge, a district attorney, and a marshal of the United States for the said district, and said judge, attorney, and marshal shall hold office for six years unless sooner removed by the President. Said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court of the United States, and shall proceed therein in the same manner as a circuit court; and said judge, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district and circuit courts of the United States. Writs of error and appeals from said district court shall be had and allowed to the circuit court of appeals in the ninth judicial circuit in the same manner as writs of error and appeals are allowed from circuit courts to circuit courts of appeals as provided by law, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii. Regular terms of said court shall be held at Honolulu on the second Monday in April and October and at Hilo on the last Wednesday in January of each year; and special terms may be held at such times and places in said district as the said judge may deem expedient. The

said district judge shall appoint a clerk for said court at a salary of three thousand dollars per annum, and shall appoint a reporter of said court at a salary of twelve hundred dollars per annum."

Cases pending when Act took effect. The Territorial courts retained jurisdiction of admiralty cases pending when this act took effect, though not of new admiralty cases, and their decisions in such cases were final: *Ex p. Wilder's S. Co.*, 183 U. S. 545; *Hind v. Wilder's S. Co.*, 13 H. 174; *Wilder's S. Co. v. Hind*, 108 Fed. 113. See also s. 10 and note thereto; also note to Joint Resolution of annexation in Revised Laws of Hawaii, p. 40.

Appeals from Territorial Supreme Court, etc. Before this s. was amended in 1905, the relations between the Federal and Territorial courts were in general similar to those between the Federal and State courts; cases could be taken to the Federal supreme court from the Territorial supreme court, as from a State supreme court, only by writ of error and only when a Federal question was involved, and could not be taken, as from other Territories, either by appeal to the supreme court or at all to the circuit court of appeals: *Eq. L. Ins. Co. v. Brown*, 187 U. S. 309; *Ter. v. Kaizo*, 17 H. 296; and the three cases in the preceding paragraph; but now the amendment changes this so far as to permit appeals as well as writs of error to the supreme court, and in cases involving \$5,000 or more as well as in cases involving Federal questions. A case finally decided on its merits by the Territorial supreme court before the amendment of 1905 cannot be taken to the Federal supreme court on error after that amendment: *Notley v. Brown*, 212 U. S. 570; even though a petition for a rehearing, filed before the amendment, was not denied until after the amendment: *Harrison v. Magoon*, 205 U. S. 501; nor can error be sustained as to a judgment entered before the amendment or a judgment entered after the writ of error was sued out: *Notley v. Brown*, 208 U. S. 429. A case taken to the Territorial supreme court on exceptions cannot ordinarily be taken thence to the Federal supreme court on error or appeal, because, as a rule, no final judgment can be given on exceptions: *Cotton v. Hawaii*, 211 U. S. 169; *Hutchins v. Bierce*, *Id.* 429; but otherwise if the case was first taken to the Territorial supreme court on error: *Spreckels v. Brown*, 212 U. S. 209. On appeal from the Territorial supreme court in a case brought to it on exceptions in a jury-waived case, it was held that that court should have made a statement of facts, but that the case need not be sent back to it for that purpose when it had taken the findings of fact of the trial court to be true: *Bierce v. Hutchins*, 205 U. S. 344; but the Territorial supreme court cannot, by making its statement of facts broad, give the Federal supreme court jurisdiction of questions which it (the Territorial court) could not decide: *Hutchins v. Bierce*, 211 U. S. 431; nor can the Territorial legislature enlarge the jurisdiction of the Federal supreme court in Hawaiian cases as dependent on the question of finality of judgments: *Cotton v. Hawaii*, 211 U. S. 170; nor can a party not personally interested take a case (to prevent an alleged illegal exchange of public land) to the Federal supreme court from the Territorial supreme court, even if he might bring it in the Territorial courts: *McCandless v. Pratt*, 211 U. S. 442. A claim that a Federal question is involved (on the ground that a law of the Republic of Hawaii, ratified by Congress, granting a franchise, is a Federal law) must be presented in the Territorial supreme court in order to be available in the Federal supreme court on error: *Honolulu Transit Co. v. Wilder*, 211 U. S. 145; *quaere*, whether Hawaiian statutes (land laws) continued in force until Congress shall otherwise provide are Federal statutes so as to confer jurisdiction on the ground that a Federal question is involved: *Mc-*

Candless v. Pratt, above. For purposes of appeal, the "amount involved" in an income tax case is the amount of the tax in dispute, irrespective of the total amount of the tax: *In re Taxes, Ewa P. Co.*, 19 H. 73; see also *Honolulu Transit Co. v. Wilder*, 211 U. S. 145; tax returns are not conclusive as to the value of land in dispute: *Spreckels v. Brown*, 212 U. S. 209. Error, not habeas corpus, is the proper method of raising in a different court questions of disqualifications of grand jurors: *Kaizo v. Henry*, 211 U. S. 146. The Federal court leans toward the construction placed on a local law by the Territorial court, especially a construction adopted before annexation: *Kealoha v. Castle*, 210 U. S. 154.

The Federal judicial code (36 Sts. at L. 1087), to take effect Jan. 1, 1912, provides for appeals and writs of error from the Territorial to the Federal supreme court as follows:

"SEC. 246. Writs of error and appeals from the final judgments and decrees of the supreme court of the Territory of Hawaii may be taken and prosecuted to the supreme court of the United States, within the same time, in the same manner, under the same regulations, and in the same classes of cases, in which writs of error and appeals from the final judgments and decrees of the highest court of a State in which a decision in the suit could be had, may be taken and prosecuted to the supreme court of the United States under the provisions of Section two hundred and thirty-seven; and also in all cases wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars."

The provision as to evidence in the Federal stamp act applies to Territorial courts as well as to Federal courts, though not to State courts: *Makainai v. Goo Wan Hoy*, 14 H. 609, 683; *Wo Sing Co. v. Kwong Chong Wai Co.*, 16 H. 20. As to setting up in the Federal supreme court after annexation on writ of error to a State supreme court in an action begun before annexation, a judgment of the supreme court of Hawaii, under R. S., s. 709 (rights, etc., under treaty with foreign country), or Const., art. IV, s. 1 (faith and credit clause), see *Mut. L. Ins. Co. v. McGrew*, 188 U. S. 291. The "faith and credit" clause does not make the mere commencement of an action in a Federal court a bar to an action in a Territorial court: *Brown v. Eq. L. A. Soc.*, 14 H. 85. This s. is referred to also in 23 Ops. 138.

Appeals from U. S. District Court. It was held that when jurisdiction depends entirely on constitutional questions, an appeal lies from the Federal district court in Hawaii only to the Federal supreme court, and not to the circuit court of appeals, even when the appeal is from a preliminary injunction: *Wright v. Macfarlane*, 122 Fed. 770; but see *Royal Ins. Co. v. Martin*, 192 U. S. 160, as to whether appeals from that court, unlike appeals from other district courts, must not be taken in all cases to the circuit court of appeals first. Admiralty cases may be appealed to the circuit court of appeals, since the words "in the same manner" refer to the mode of appeal and not to the classes of cases appealable: *Wilder's S. Co. v. Low*, 112 Fed. 161. The Federal judicial code, above referred to, in specific terms, includes Hawaii in the ninth circuit (s. 116), provides for appeals and writs of error from the Federal court in Hawaii to the Federal supreme court (s. 238), and contains provisions as to the traveling expenses and residence of the local Federal judges (s. 259), and in general terms, relating to all Federal district courts, provides for assignments of other district judges in cases of disqualification, etc., of the local judges, appeals to the circuit court of appeals, etc.; *quaere*, as to how far such general pro-

visions apply to Hawaii. The Federal court in Hawaii is a legislative, not a constitutional court: *Ter. v. Kaizo*, 17 H. 300.

Jurisdiction of U. S. District Court. The district court under this s. has the jurisdiction conferred in terms by other statutes solely on circuit courts, even though such statutes were enacted after this s., and especially if they were merely amendatory of statutes previously enacted: *U. S. v. Burrell Construction Co.*, 3 U. S. Dist. Ct. Haw. Diverse citizenship, for conferring jurisdiction on the Federal court, does not apply as between a citizen of a State and a citizen of the Territory: *Avery v. King*, 1 U. S. Dist. Ct. Haw. 12. The Federal court has jurisdiction of murder committed on a harbor of Hawaii, the words "out of the jurisdiction of any particular State" in the Federal statute being held to apply to States strictly speaking and to exclude Territories: *Wynne v. U. S.* 217 U. S. 234. That court has jurisdiction of adultery under Federal statutes, even though the Territorial courts have like jurisdiction under Territorial statutes: *U. S. v. Lee Sa Kee*, 3 U. S. Dist. Ct. Haw.; but an acquittal or conviction in either court will bar a trial in the other: *U. S. v. Perez*, 3 U. S. Dist. Ct. Haw. Territorial courts have not concurrent or coordinate jurisdiction in bankruptcy, and the Federal court in bankruptcy may, pending hearing, restrain a sale of the bankrupt's property on execution under a Territorial court judgment: *In re Voeller*, 1 U. S. Dist. Ct. Haw. 195; but a trustee in bankruptcy may sue in the Territorial courts for a recovery of property fraudulently transferred before bankruptcy: *Thayer v. Lidgate*, 14 H. 544. A seaman's wages, being exempt from garnishment, may be recovered in the Federal court, though garnished in a Territorial court: *Holland v. Steamship Helene*, 1 U. S. Dist. Ct. Haw. 281. The Federal court will not interfere on habeas corpus with judgments of the Territorial courts except in extreme cases: *In re Marshall*, 1 U. S. Dist. Ct. Haw. 34; *In re Bitting*, Id. 69; *In re Man-kichi*, Id. 303. Decisions of the Territorial supreme court construing charters granted by the Hawaiian legislature, are binding on the Federal court, when no Federal question is involved: *Haw. Tram. Co. v. R. T. & L. Co.*, Id., 164. A local Federal judge who has been of counsel is disqualified to try the case, though he may act in purely formal matters, and no Federal judge from another district can sit in his place under the present law; *quaere*, whether he can under the judicial code after Jan. 1, 1912: *U. S. v. Thurston*, 4 U. S. Dist. Ct. Haw.

Practice in U. S. Dist. Court. The Federal court has more or less discretion to arrange its practice, pleadings, etc., so as to advance justice, e. g., by requiring verification of an answer though that is not required in the Territorial courts, there being no Territorial law against verification: *U. S. v. Est. Bishop*, 1 U. S. Dist. Ct. Haw. 140; it need not follow technically the forms of procedure, etc., of the Territorial courts, e. g., as to allowing further pleading after a plea in bar: *Berger v. Bishop*, Id. 418; but see *U. S. v. Hon. Pl. Co.*, 122 Fed. 581, to the effect that the Federal court must follow the Territorial procedure as near as may be, e. g., by trial by jury in eminent domain proceedings. An action lies in the Federal court in admiralty for death by a wrongful act, if it lies at law in Territorial courts: *Kekauoha v. Robert Lewers Co.*, 1 U. S. Dist. Ct. Haw. 75; 114 Fed. 849. The right of a foreign corporation to sue in the Federal court is not dependent on compliance with Territorial laws: *Spreckels Bros. v. "Nevadan"*, 1 U. S. Dist. Ct. Haw. 354. The rules of evidence governing the Federal court in criminal cases are those in force in Hawaii when Territorial government was established and a Federal district created: *U. S. v. Moore*, 3 U. S. Dist. Ct. Haw. The rights and duties of the re-

porter as respects taking notes, transcribing them, fees therefor and taxing them as costs, in civil and criminal cases, are set forth in *Dyer v. "Ivanhoe"*, 2 U. S. Dist. Ct. Haw. 84.

INTERNAL-REVENUE DISTRICT.

SEC. 87. That the Territory of Hawaii shall constitute a district for the collection of the internal revenue of the United States, with a collector, whose office shall be at Honolulu, and deputy collectors at such other places in the several islands as the Secretary of the Treasury shall direct.

CUSTOMS DISTRICT.

SEC. 88. That the Territory of Hawaii shall comprise a customs district of the United States, with ports of entry and delivery at Honolulu, Hilo, Mahukona, and Kahului.

Honolulu is a Pacific port of the United States within tariff act allowing a drawback on coal used on steamers engaged in trade between Atlantic and Pacific ports of United States: 24 Ops 6. See also ss. 93, 98, of this act; also note at beginning of this act on other legislation by Congress relating to customs and kindred subjects; and note to Joint Resolution of annexation in the Revised Laws of Hawaii, p. 40, as to customs duties between annexation and the establishment of Territorial government.

CHAPTER VI.—MISCELLANEOUS.

REVENUES FROM WHARVES.

SEC. 89. That until further provision is made by Congress the wharves and landings constructed or controlled by the Republic of Hawaii on any seacoast, bay, roadstead, or harbor shall remain under the control of the government of the Territory of Hawaii, which shall receive and enjoy all revenues derived therefrom, on condition that said property shall be kept in good condition for the use and convenience of commerce, but no tolls or charges shall be made by the government of the Territory of Hawaii for the use of any such property by the United States, or by any vessel of war, tug, revenue cutter, or other boat or transport in the service of the United States.

Referred to in 217 U. S. 244 (Federal jurisdiction of murder in harbor of Honolulu).

SEC. 90. That Hawaiian postage stamps, postal cards, and stamped envelopes at the post-offices of the Hawaiian Islands when this Act takes effect shall not be sold, but, together with those that shall thereafter be received at such offices as herein provided, shall be canceled under the direction of the Postmaster-General of the United States; those previously sold and uncanceled shall, if presented at such offices within six months after this Act takes effect, be received at their face value in exchange for postage stamps, postal cards, and stamped envelopes of the United States of the same aggregate face value and, so far as may be, of such denominations as desired.

SEC. 91. That, except as otherwise provided, the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained; managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the governor of Hawaii. And any such public property so taken for the uses and purposes of the United States may be restored to its previous status by direction of the President; and the title to any such public property in the possession and use of the Territory for the purposes of water, sewer, electric, and other public works, penal, charitable, scientific, and educational institutions, cemeteries, hospitals, parks, highways, wharves, landings, harbor improvements, public buildings, or other public purposes, or required for any such purposes, may be transferred to the Territory by direction of the President, and the title to any property so transferred to the Territory may thereafter be transferred to any city, county, or other political subdivision thereof by direction of the governor when thereunto authorized by the legislature. [As amended by s. 7, Act of May 27, 1910; 36 Sts. at L. 443.]

This s., before its amendment, read as follows:

"That the public property ceded and transferred to the United States

by the Republic of Hawaii under the Joint Resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or the governor of Hawaii. And all moneys in the Hawaiian treasury, and all the revenues and other property acquired by the Republic of Hawaii since said cession shall be and remain the property of the Territory of Hawaii."

Under the original s., the Territory could not sell ceded movable property: 25 Ops. 523 (tug boat); but previous sales were ratified and further sales authorized by an Act of May 26, 1906 (34 Sts. at L. 204), which provides:

"That all personal and movable property ceded and transferred to the United States by the Republic of Hawaii under the Joint Resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, may be sold, leased, or otherwise disposed of in such manner as may be provided by the laws of the Territory of Hawaii; **Provided**, That all sales, leases, or other disposals of such property heretofore made by said Territory, under the authority of such laws, are hereby ratified and confirmed, and all moneys or revenues derived from sales or disposals heretofore made, or made under authority of this Act, shall remain the property of said Territory."

The title of the government to the crown lands cannot be questioned by the courts: **Territory v. Puahi**, 18 H. 651; **Ter. v. Kapiolani Est.**, 18 H. 645; 20 H. The Territory may maintain a bill for an injunction to remove obstructions to public rights on the shore outside of high water mark: **Ter. v. Kerr**, 16 H. 376. Setting aside land for a naval reservation does not deprive the Territorial courts of jurisdiction over misdemeanors committed thereon against local laws: **Ter. v. Carter**, 19 H. 200. Referred to in 15 H. 367; 217 U. S. 244; 1 U. S. Dist. Ct. Haw. 95. See also 25 Ops. 225; note to s. 73; and note to the Joint Resolution of annexation in the Revised Laws of Hawaii, p. 40. For proclamations by the President setting aside property for military, naval and lighthouse purposes and Acts of Congress setting aside land for other public purposes, see note at the beginning of this Act. Proclamations have been made by the governor setting aside land for United States lighthouse purposes as follows: Mch. 16, 1909, at Kaawaloa, Hawaii; Jan. 21, 1910, Mokuiaee island, near Kilauea, Kauai; Sept. 13, 1910, Molokini island, near Maui; Dec. 14, 1910, at Keahole Point, Hawaii, and at Kahala Point, Kauai; Mch. 16, 1911, at Cocomanut Point, Hilo, Hawaii; Apr. 4, 1911, at Kawaihae, Hawaii.

SEC. 92. That the following officers shall receive the following annual salaries to be paid by the United States: The governor, seven thousand dollars; the secretary of the Territory, four thousand dollars; the chief justice of the supreme court of the Territory, six thousand dollars; the associate justices of the supreme court, five thousand five hundred dollars each; the judges of the circuit courts, four thousand dollars each; the United States district attorney, four thousand dollars; the

United States marshal, three thousand dollars. And the governor shall receive annually, in addition to his salary, the sum of five hundred dollars for stationery, postage, and incidentals; also his traveling expenses while absent from the capital on official business, and the sum of two thousand dollars annually for his private secretary. [As amended by s. 8, Act of May 27, 1910; 36 Sts. at L. 443.]

This s., before it was amended read as follows:

"That the following officers shall receive the following salaries, to be paid by the United States: The governor, five thousand dollars; the secretary of the Territory, three thousand dollars; the chief justice of the supreme court of the Territory, five thousand five hundred dollars, and the associate justices of the supreme court, five thousand dollars each, and the judges of the circuit courts, three thousand dollars each. The salaries of the said chief justice and the associate justices of the supreme court, and the judges of the circuit courts, as above provided, shall be paid by the United States; the United States district judge, five thousand dollars; the United States marshal, two thousand five hundred dollars; the United States district attorney, three thousand dollars. And the governor shall receive annually, in addition to his salary, the sum of five hundred dollars for stationery, postage, and incidentals; also his traveling expenses while absent from the capital on official business, and the sum of two thousand dollars annually for his private secretary.

IMPORTS FROM HAWAII INTO THE UNITED STATES.

SEC. 93. That imports from any of the Hawaiian Islands, into any State or any other Territory of the United States, of any dutiable articles not the growth, production, or manufacture of said islands, and imported into them from any foreign country after July seventh, eighteen hundred and ninety-eight, and before this Act takes effect, shall pay the same duties that are imposed on the same articles when imported into the United States from any foreign country.

Referred to in 13 H. 21. See also note to s. 88.

INVESTIGATION OF FISHERIES.

SEC. 94. That the Commissioner of Fish and Fisheries of the United States is empowered and required to examine into the entire subject of fisheries and the laws relating to the fishing rights in the Territory of Hawaii, and report to the President

touching the same, and to recommend such changes in said laws as he shall see fit.

Several volumes and many pamphlets have been published on these fisheries by the U. S. Fish Commissioner.

REPEAL OF LAWS CONFERRING EXCLUSIVE FISHING RIGHTS.

SEC. 95. That all laws of the Republic of Hawaii which confer exclusive fishing rights upon any person or persons are hereby repealed, and all fisheries in the sea waters of the Territory of Hawaii not included in any fish pond or artificial inclosure shall be free to all citizens of the United States, subject, however, to vested rights; but no such vested right shall be valid after three years from the taking effect of this Act unless established as hereinafter provided.

Fishing rights covered by land commission awards or held under the early laws of Hawaii, are vested rights under this s.: **Damon v. Hawaii**, 194 U. S. 154 (reversing **Carter v. Ter.**, 14 H. 465); **Carter v. Hawaii**, 200 U. S. 255; **In re Fukunaga**, 16 H. 308. Fisheries in streams are not covered by this s. though the fish come from the sea: **Kapiolani Est. v. Ter.**, 18 H. 462. Fisheries free to citizens and alien residents alike before this Act continued so afterwards: **Matsuno v. Sch. "Concord,"** 3 U. S. Dist. Ct. Haw. This s. repealed the penal remedy provided for in s. 482 of the Revised Laws: **In re Fukunaga**, 16 H. 307. This s. does not prevent the requirement of a license fee for fishing for profit with a boat of more than a certain width: **Ter. v. Matsubara**, 19 H. 643.

PROCEEDINGS FOR OPENING FISHERIES TO CITIZENS.

SEC. 96. That any person who claims a private right to any such fishery shall, within two years after the taking effect of this Act, file his petition in a circuit court of the Territory of Hawaii, setting forth his claim to such fishing right, service of which petition shall be made upon the attorney-general, who shall conduct the case for the Territory, and such case shall be conducted as an ordinary action at law.

That if such fishing right be established, the attorney-general of the Territory of Hawaii may proceed, in such manner as may be provided by law for the condemnation of property for public use, to condemn such private right of fishing to the use of the citizens of the United States upon making just compensa-

tion, which compensation, when lawfully ascertained, shall be paid out of any money in the treasury of the Territory of Hawaii not otherwise appropriated.

The action provided for in this s. is not an action to quiet title to real property and may be brought in a different circuit from that in which the fishery is: *Kapiolani Est. v. Ter.*, 18 H. 460. Referred to also in 205 U. S. 353.

QUARANTINE.

SEC. 97. That quarantine stations shall be established at such places in the Territory of Hawaii as the Supervising Surgeon-General of the Marine-Hospital Service of the United States shall direct, and the quarantine regulations for said islands relating to the importation of diseases from other countries shall be under the control of the Government of the United States. The quarantine station and grounds at the harbor of Honolulu, together with all the public property belonging to that service, shall be transferred to the Marine-Hospital Service of the United States, and said quarantine grounds shall continue to be so used and employed until the station is changed to other grounds which may be selected by order of the Secretary of the Treasury.

The health laws of the government of Hawaii relating to the harbor of Honolulu and other harbors and inlets from the sea and to the internal control of the health of the islands shall remain in the jurisdiction of the government of the Territory of Hawaii, subject to the quarantine laws and regulations of the United States.

Referred to in 13 H. 21.

SEC. 98. That all vessels carrying Hawaiian registers on the twelfth day of August, eighteen hundred and ninety-eight, and which were owned bona fide by citizens of the United States, or the citizens of Hawaii, together with the following-named vessels claiming Hawaiian register, *Star of France*, *Euterpe*, *Star of Russia*, *Falls of Clyde*, and *Willscott*, shall be entitled to be registered as American vessels, with the benefits

and privileges appertaining thereto, and the coasting trade between the islands aforesaid and any other portion of the United States, shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts.

See also s. 88 of this Act. On authority to register Hawaiian vessels after annexation and before this Act, see note to Joint Resolution of annexation in the Revised Laws of Hawaii, p. 40. For special act for register of barkentine "Hawaii," see 32 Sts. at L. 35. On issuance of register to American citizen of Chinese birth, see note to s. 4. Referred to in 182 U. S. 397, and 105 Fed. 78, to show that "coasting trade" is not limited to interior waters or contiguous coast. Referred to also in 23 Ops. 416; 24 Ops. 7.

SEC. 99. That the portion of the public domain heretofore known as Crown land is hereby declared to have been, on the twelfth day of August, eighteen hundred and ninety-eight, and prior thereto, the property of the Hawaiian government, and to be free and clear from any trust of or concerning the same, and from all claim of any nature whatsoever, upon the rents, issues, and profits thereof. It shall be subject to alienation and other uses as may be provided by law.

Compare Const. of 1894, art. 95. In view of this s., the title of the government to the crown lands cannot be questioned by the courts: *Ter. v. Kapiolani Est.*, 18 H. 645; *Ter. v. Puahi*, 18 H. 651; *Ter. v. Kapiolani Est.*, 20 H. When monarchy ceased, the crown lands became part of the public domain, irrespective of this s. or the corresponding s. of the Const. of 1894, and no equitable interest remained in the retiring queen: *Liliuokalani v. U. S.*—C. Cls. R.—(May 16, 1910): if there were any trust it was denied by this s., and the statute of limitations (six years) began to run: *Id.* See also note to s. 73.

SEC. 100. That for the purposes of naturalization under the laws of the United States residence in the Hawaiian Islands prior to the taking effect of this Act shall be deemed equivalent to residence in the United States and in the Territory of Hawaii, and the requirement of a previous declaration of intention to become a citizen of the United States and to renounce former allegiance shall not apply to persons who have resided in said islands at least five years prior to the taking effect of this Act; but all other provisions of the laws of the United States relating to naturalization shall, so far as applicable, apply to persons in the said islands.

All records relating to naturalization, all declarations of intention to become citizens of the United States, and all certificates of naturalization filed, recorded, or issued prior to the taking effect of the naturalization Act of June twenty-ninth, nineteen hundred and six, in or from any circuit court of the Territory of Hawaii, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this Act further validated or legalized. [As amended by s. 9, Act of May 27, 1910; 36 Sts. at L. 443.]

The amendment consisted in adding the second paragraph. Territorial circuit courts were held to have jurisdiction to naturalize even before the general naturalization act of June 26, 1906, which clearly conferred such jurisdiction: *Ter. v. Kaizo*, 17 H. 295; *Kaizo v. Henry*, 211 U. S. 146. The first part of this s. may have been unconstitutional because not "an uniform rule": *U. S. v. Rodiek*, 162 Fed. 470; and it has been repealed by implication by the general naturalization act above referred to: *Id.*, overruling *In re Rodiek*, 3 U. S. Dist. Ct. Haw. Referred to also in 13 H. 21. See s. 4 and note thereto.

SEC. 101. That Chinese in the Hawaiian Islands when this Act takes effect may within one year thereafter obtain certificates of residence as required by "An Act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, as amended by an Act approved November third, eighteen hundred and ninety-three, entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May fifth, eighteen hundred and ninety-two," and until the expiration of said year shall not be deemed to be unlawfully in the United States if found therein without such certificates: *Provided, however*, That no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands.

A Chinese who left Hawaii with a return permit after annexation and before this Act took effect and did not return before this Act took effect, was not within the provisions of this s. and could not thereafter return: *U. S. v. Yong Ho*, 1 U. S. Dist. Ct. Haw. 1. A Chinese domiciled in the U. S. and coming to Hawaii as a seaman on an American vessel from an American port cannot be excluded: *In re Ah*

Sing, 1 U. S. Dist. Ct. Haw. 15. Chinese exclusion laws apply to Hawaii: *In re Wong Lin*, 1 U. S. Dist. Ct. Haw. 49. The right of a Chinese woman to land depends on her status on arrival and is not affected by her marriage after arrival: *U. S. v. Kam You*, 1 U. S. Dist. Ct. Haw. 113. Chinese holding certificates in the U. S. may go to Hawaii, but *quære*, whether they may return to the U. S. from Hawaii; "therein" in this s. refers to Hawaii: 23 Ops. 487. The provision making it a misdemeanor to aid the landing of Chinese in the U. S. from other countries is extended so as to apply to landings from Hawaii on the mainland: *U. S. v. Wong Kock Yui*, 3 U. S. Dist. Ct. Haw. See also s. 4, and note thereto; also Joint Resolution of annexation and note thereto in Revised Laws of Hawaii, p. 40, and general immigration act of Feb. 20, 1907.

SEC. 102. That the laws of Hawaii relating to the establishment and conduct of any postal savings bank or institution are hereby abolished. And the Secretary of the Treasury, in the execution of the agreement of the United States as expressed in an Act entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall pay the amounts on deposit in the Hawaiian Postal Savings Bank to the persons entitled thereto, according to their respective rights, and he shall make all needful orders, rules, and regulations for paying such persons and for notifying such persons to present their demands for payment. So much money as is necessary to pay said demands is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be available on and after the first day of July, nineteen hundred, when such payments shall begin, and none of said demands shall bear interest after said date, and no deposit shall be made in said bank after said date. Said demands of such persons shall be certified to by the chief executive of Hawaii as being genuine and due to the persons presenting the same, and his certificate shall be sealed with the official seal of the Territory, and countersigned by its secretary, and shall be approved by the Secretary of the Interior, who shall draw his warrant for the amount due upon the Treasurer of the United States, and when the same are so paid no further liabilities shall exist in respect of the same against the governments of the United States or of Hawaii.

This and the next s. and the supplementary act of May 19, 1908, carry out the provision in the Joint Resolution of annexation in respect to the Postal Savings Bank. Referred to in 13 H. 21.

SEC. 103. That any money of the Hawaiian Postal Savings Bank that shall remain unpaid to the persons entitled thereto on the first day of July, nineteen hundred and one, and any assets of said bank shall be turned over by the government of Hawaii to the Treasurer of the United States, and the Secretary of the Treasury shall cause an account to be stated, as of said date, between such government of Hawaii and the United States in respect to said Hawaiian Postal Savings Bank.

Referred to in 13 H. 21.

SEC. 104. This Act shall take effect forty-five days from and after the date of the approval thereof, excepting only as to section fifty-two, relating to appropriations, which shall take effect upon such approval.

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